

**IN THE TWELFTH JUDICIAL CIRCUIT
IN AND FOR MANATEE COUNTY, FLORIDA
CIVIL DIVISION**

MARY LOU SMITH
an individual, and
SHARON DENSON,
an individual

Plaintiffs,

vs.

CASE NO.: 08 CA 11315
Division B

TRAILER ESTATES PARK AND
RECREATION DISTRICT,
an independent special taxing district,
JANET JONES, an individual,
JOHN VANDERMOLEN, an individual,
JOSEPH SALERNO, an individual, and
MARY LOU MCNULTY, an individual

Defendants.

**PLAINTIFFS' MOTION TO QUASH DEFENDANT, TRAILER ESTATES PARK
AND RECREATION DISTRICT'S NOTICE TO PRODUCE AT HEARING PURSUANT
TO RULE 1.410(c)**

COMES NOW, Plaintiffs MARY LOU SMITH and SHARON DENSON (hereinafter referred to as "Plaintiffs") by and through their undersigned counsel and pursuant to Rule 1.410 Florida Rules of Civil Procedure, hereby file this Motion to Quash Defendant, Trailer Estates Park and Recreation District's Notice to Produce at Hearing Pursuant to Rule 1.410(c) as grounds therefore state as follows:

1. On June 9, 2009, the Trailer Estates Park and Recreation District ("District") and the Plaintiffs participated in mediation, which ultimately resulted in an impasse.

2. On July 29, 2009, the District filed its Motion for Sanctions Against Plaintiffs for Violating Mediation Confidentiality alleging that the Mary Lou Smith knowingly and willingly violated of the Mediation Confidentiality Privilege Act by stating that the Plaintiffs “reached a mediated settlement with the Chairman of the Board of Trustees” during the course of mediation.

3. On July 31, 2009, the District filed its Notice to Produce at Hearing Pursuant to Rule 1.410(c) (“Notice to Produce”), requesting the following items be produced five days later.

1. A copy of the email from Mary Lou Smith referenced in the July 26, 2009 article published in the Bradenton Herald attached hereto as Exhibit A.

2. Copy of all emails which forward or copy the above referenced e-mail to any person or party.

3. All documents reflecting a communication between any person or entitled (other than between attorney/client or between Plaintiffs and mediators or between mediation participants or parties) which mentions or discusses the mediation in this matter or any communication occurring during that mediation or any purported settlement, preliminary or otherwise, resulting from that mediation. This request includes, but is not limited to, letters, emails, internet posts, blog posts, Twitter’s, instant messages and the like.

3. Pursuant to Rule 1.140(c), *Florida Rules of Civil Procedure*, the Court, “upon motion made promptly and in any event at or before the time specified in the subpoena for compliance therewith, may . . . quash or modify the subpoena if it is unreasonable and oppressive.” It is within the trial courts’ discretion to determine whether a subpoena is unreasonable and oppressive, and therefore, should be quashed. *Mathews v. Kant*, 427 So. 2d 369, 370 (Fla. 2d DCA 1983).

4. In *Sunrise Shopping Center, Inc. v. Allied Stores Corp.*, the District Court upheld the trial court’s order granting the motion to quash the subpoena duces tecum, where the subpoena duces tecum required an extensive and exhaustive list of documents that **were not in the possession**

and control of the witness. *Sunrise Shopping Center, Inc. v. Allied Stores Corp.*, 270 So. 2d 32, 34 (Fla. 4th DCA 1972) (emphasis supplied).

5. Plaintiff Smith will produce the email specified in request 1 and any other emails between Plaintiff Smith and the Bradenton Herald regarding the Bradenton Herald article referenced in the District's Notice to Produce. However, Plaintiff Smith objects to the production of any other responsive documents beyond those produced, as the District's Notice to Produce is oppressive. Specifically, the District's Notice to Produce fails to limit the documents to be produced to those in the possession of Plaintiff Smith, fails to identify any timeframe for the documents requested, seeks privileged documents, and provides for an unreasonably short period for response.

6. Item 2 of the Notice to Produce requests the production of attorney client privileged documents.

7. Item 3 of the Notice to Produce requests the production of documents not in possession or control of Plaintiff Smith. Currently there are at least three known websites that have published information on the mediation in this matter. Mrs. Smith does not operate these websites and thus would have no way to ensure that she has produced all of the posts, blogs, etc... transmitted over those websites. Further, Mrs. Smith does not have control over the approximately 1200 homes located within the District that may have information responsive to the District's Notice of Production. Additionally, the District has public records and public broadcasts that would contain information responsive to the District's request and it is unreasonable to expect Mrs. Smith to produce the District's records. Further, any of the Court's records reflecting mediation would also be responsive to the District's Notice to Produce, yet it would be unreasonable and

duplicative for Mrs. Smith to have to produce those records to the District at the upcoming hearing.

8. Furthermore, the time given for response to this production is unreasonably short. Mrs. Smith is not a resident of Florida and is currently out of state at her home in Michigan. Mrs. Smith returned to her home in Michigan following mediation and does not intend to attend the upcoming hearing on the Motion for Sanctions. Further, documents responsive to the District's overbroad request may be located at Mrs. Smith's Florida residence and Plaintiffs' counsel does not have access to such documents. Finally, even if Plaintiff Smith desired to attend the hearing or was compelled to attend, she is unable to return to Florida within the five days the District has provided her to respond to this request.

9. Finally, the request is unreasonable and unnecessary as the District has the email between Plaintiff Smith and the Bradenton Herald which is the basis of its motion.

WHEREFORE, the Plaintiffs respectfully request this Court find that the District's Notice to Produce is oppressive and unreasonable, grant Plaintiffs Motion to Quash the District's Notice to Produce at Hearing Pursuant to Rule 1.410(c), and grant such other and further relief as this Court deems to be reasonable and appropriate. In the alternative, the Plaintiffs respectfully request this Court enter an order limiting the scope of the District Notice to Produce to exclude documents that are not in Mrs. Smith's possession and control, privileged documents, and documents that are public records, including the District's and Court's records, and grant such other and further relief as this Court deems to be reasonable and appropriate.

Respectfully submitted,



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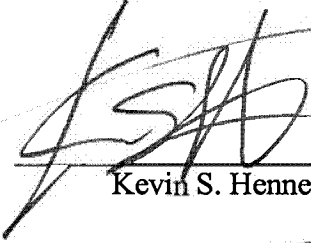
Bradenton, Florida 34205

Telephone (941) 708-4040

Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that a true and correct copy of the foregoing has been furnished to **Hunter Carroll, Esquire**, Matthews, Eastmoore, Hardy, Crauwels & Garcia, P.A., 1777 Main Street, Suite 500, Sarasota, FL 34236, **James D. Dye, Esquire**, Dye, Deitrich, Petruff, & St. Paul, 1111 Third Ave. West, Suite 300, Bradenton, FL 34205, **Robert E. Turffs, Esquire**, 1444 First Street, Suite B, Sarasota, FL 34236, **Daniel E. Scott, Esquire**, Daniel E. Scott, P.A., 2033 Main Street, Suite 408, Sarasota, FL 34237, **Thomas D. Shults, Esquire**, Kirk Pinkerton, P.A., 50 Central Avenue, Suite 700, Sarasota, FL 34236, by *Facsimile*, this 6TH day of August, 2009.


Kevin S. Hennessy, Esquire