

**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 COMPEL

COMES NOW, Plaintiffs MARY LOU SMITH and SHARON DENSON (hereinafter referred to as "Plaintiffs") by and through their undersigned counsel and pursuant to Rules 1.310, 1.350, and 1.380, Florida Rules of Civil Procedure, hereby file this Motion to Compel as grounds therefore state as follows:

1. On or about November 26, 2008, the Plaintiffs filed suit against the Trailer Estates Park and Recreation District ("District"), an independent special taxing district, and four individuals including Janet Jones ("Jones"), John Vandermolen ("Vandermolen"), Joseph Salerno ("Salerno"), and Mary Lou McNulty ("McNulty"), who are current and previously elected members of the Board of Trustees that governs the District. The Amended Complaint asserts a

four (4) count cause of action against the Defendants for violations of the Public Records and Sunshine Laws, Florida Statutes §§ 119.07 and 286.011, respectively.

2. On December 12, 2008, Plaintiffs filed their First Request for Production, wherein the Plaintiffs requested the following:

Any and all emails sent between District Board of Trustee members and member(s)-elect relating to the District from January 1, 2006, to the present.

Any and all emails sent by a District Board of Trustee members and member(s)-elect that carbon copies another District Board of Trustee member(s) relating to the District from January 1, 2006, to the present.

Any and all blogs, chat rooms, chalkboards, bulletin boards, instant messages, groups, or other electronic mediums where two or more District Board of Trustee members and member(s)-elect have communicated regarding District issues from January 1, 2006, to the present.

Further, in the instructions of the Plaintiffs First Request for Production, the Plaintiffs specified that "If any such email is contained in computer memory, magnetic tape or similar non-legible storage, you are requested to produce the computer containing the document for inspection and copying."

3. Upon information and belief, the Defendants' have emails contained in their computers' memory and other non-legible storage that were not produced. Further, the Defendants' failed to produce their respective computers for inspection.

4. Further, on May 20, 2009, the District produced Martha Brauer as the District representative for deposition in the instant matter. Prior to the conclusion of the District Representative's deposition, District counsel requested the deposition be continued and agreed to provide the District Representative at a later date for the continuance of the deposition.

5. On May 29, 2009, the District and Plaintiffs stipulated to an Amended Order Pending Hearing on Plaintiffs' Motion for Temporary Injunction/Order Requiring Mediation, wherein the

parties agreed to suspend discover until completion of the mediation. Further, District agreed to all depositions that has adjourned in the past shall be completed no later than a week prior to a hearing on the Plaintiffs' Motion for Temporary Injunction.

6. On July 15, 2009, Gary Larsen filed the Mediation Report stating that mediation had resulted in an impasse.

7. On July 17, 2009, Plaintiffs counsel contacted the District's counsel to schedule a time to continue the District's Representative's deposition. The District's counsel later informed the Plaintiffs' counsel that the District's Representative was not available until September 1, 2009.

8. On July 22, 2009, Plaintiffs counsel learned that Martha Brauer was going to be in town for the Trailer Estates Board Meeting scheduled for July 29, 2009. Plaintiffs' counsel immediately contacted the District's counsel and requested the District's Representative's deposition be scheduled while Ms. Brauer was in town for the Board meeting. District's counsel informed the Plaintiffs counsel that Ms. Brauer would not be in town for the upcoming Board meeting. Subsequently, Ms. Brauer attended the Board meeting in person. See Attachment A.

9. On July 29, 2009, Plaintiffs' counsel again requested the District's Representative's deposition be scheduled while Ms. Brauer was in town. Subsequently, on Sunday, August 1, 2009, District counsel emailed Plaintiffs counsel stating that he would make the District's Representative available for deposition on Tuesday, August 4, 2009, at 2pm for 3 hours, a time that Plaintiffs counsel was unavailable. Upon Plaintiffs counsel's requested for the deposition to be held on August 5th or 6th, District's counsel stated that Ms. Brauer would be leaving town on August 5th and he would not request that she change her flight. See Attachment B.

10. Ms. Brauer is a Florida Resident and has her property within the District homesteaded. See Attachment C. Ms. Brauer was the designated by the District's Board of Trustees at the District Representative.

11. Counsel for the District is intentionally withholding the District Representative and has agreed to only produce her for deposition on **the day before the discovery period is ordered to conclude.**

12. Rule 1.380 of the Florida Rules of Civil Procedure states that if a Motion to Compel is granted, the party whose conduct necessitated that motion shall pay the moving party's reasonable expenses, including attorney's fees. See, Fla. R. Civ. Pro. 1.380(a)(4); see also *Ford Motor Co. v. Garrison*, 415 So.2d 843, 844 (Fla. 1st DCA 1982); *Walker v. Senn*, 340 So. 2d 975 (Fla. 1st DCA 1976).

WHEREFORE, the Plaintiffs respectfully request this Court grant Plaintiffs Motion to Compel, enter an order compelling production of the Defendants' computers on August 12, 2009 and compelling the District to provide the District's Representative for her continued deposition to occur within the next 10 days, and awarding Plaintiffs' attorneys' fees and expenses associated with the filing of this Motion.

Certificate of Good Faith

Pursuant to Local Rule 5 (b), the undersigned hereby certifies that the undersigned has conferred with counsel for the Defendants in a good faith effort to resolve the issues raised in this Motion to Compel and that the parties have been unable to resolve the issues raised in this motion.

Respectfully submitted,



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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