

IN THE TWELFTH JUDICIAL CIRCUIT  
IN AND FOR MANATEE COUNTY, FLORIDA

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

Plaintiffs,

v.

CASE NO. 2008 CA 11315

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

Defendants.

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**MOTION FOR AWARD OF ATTORNEYS FEES AND COSTS**  
**PURSUANT TO 57.105(1) AND (4)**

COMES NOW Trailer Estates Park and Recreation District (hereinafter referred to as the  
"District"), and hereby files the above-referenced Motion and as grounds thereof states:

1. In the Amended Complaint dated April 13, 2009 filed by the Plaintiffs and their  
counsel in this matter, Plaintiffs make various allegations and claims which are not supported by the  
material facts necessary to establish such claims, including those set forth below:

...

37(p) *In December 2008, Board members and Board members elect, including  
Jones, Salerno, and Martha Brauer ("Brauer") held meetings outside the  
Sunshine where they drafted, revised and developed a budget questionnaire  
to assist with the upcoming Trailer Estates budget. [Plaintiffs' claim that  
this event occurred and/or violated the Sunshine law is not supported by  
material facts necessary to establish the claim.]*

...

37(t) *The Board's inclusion and adoption of an additional page 4 of the Trailer  
Estates Park and Recreation District Public Records Policy and Procedure  
("Public Records Policy"). [Plaintiffs' claim that this event occurred and/or  
violated the Sunshine law is not supported by material facts necessary to  
establish the claim.]*

...

- 37(y) *The determination by Board members Jones and Vander Molen in April 2008 that free internet service should be offered to the residents of Trailer Estates. [Plaintiffs' claim that this event occurred and/or violated the Sunshine law is not supported by material facts necessary to establish the claim.]*
- 62(a) *In October 2005 and August 2006, Smith requested a copy of a citation for purported violations of the Deed restrictions that was issued to the property located at 6603 Arizona ("citation") and McNulty stated that the citation was unavailable and failed to produce the public record. [Plaintiffs' allegations that such a citation exists is not supported by material facts necessary to establish this claim. Plaintiffs know that such a citation from the District does not exist.]*
- 62(b) *In April 2008, Denson and other members of the Trailer Estates Future Planning Committee (FPC) submitted a public records request for a copy of the Trailer Estates database for use in preparation of the Board of Trustee direct survey, Vander Molen denied this request, and Trailer Estates has never produced these public records. [Plaintiffs' allegations that the District did not produce these records is not supported by material facts necessary to establish this claim. Plaintiffs know that the database has been produced.]*
- 62(c) *In November 2008, Denson submitted a public records request for items 'number 73 and 76' of the Trailer Estates public records log regarding a disruption that occurred at a February Board meeting. [The allegation that the District did not comply with this Request is not supported by material facts necessary to establish this claim. Plaintiffs know these public records have been produced.]*
- 62(d) *In November 2008, Denson submitted a Public Records Request regarding the Board's policy on Trailer Estates keeping files on individual residents. [The allegation that the District did not comply with this Request is not supported by material facts necessary to establish this claim. Plaintiffs know that such a policy does not exist.]*
- 62(e) *In December 12, 2008, Smith requested the e-mails between the Trustees and Trustee elects from January 1, 2006 to December 12, 2008. [The allegation that the District did not comply with this Request is not supported by material facts necessary to establish this claim. In January 2009, Plaintiffs were permitted an entire day to inspect and copy the requested public records.]*
- 62(f) *On March 12, 2009, Smith requested all letters Kirk-Pinkerton provided to Trailer Estates during January - March of 2009 regarding litigation and legal fees, and all documents from anyone at Ruden McClosky, Robert Turffs, Dye, Dietrich, Petruff, St. Paul and Matthews, Eastmoore, Hardy,*

*Crauwels and Garcia from December 1, 2008 to the present.* [The allegation that the District did not comply with this Request is not supported by material facts necessary to establish this claim. Plaintiffs know these public records have been produced.]

2. In the Amended Complaint dated April 13, 2009 filed by the Plaintiffs and their counsel in this matter, Plaintiffs make various allegations and claims set forth below which are not or would not be supported by the application of then existing law to these material facts, including those set forth below:

37(i) *In 2006, McNulty as Chairman issued a policy that any Trustees needing to contact the Trailer Estates attorney must first discuss the issue with a member of the administrative committee.* [Plaintiffs know this alleged sunshine violation is not supported by the application of then existing law to the material facts. Plaintiffs do not present a good faith argument for the extension, modification, or renewal of existing law or the establishment of new law, as it applies to the material facts, with a reasonable expectation of success.]

...  
37(q) *In January and February 2009, the website committee held meetings where the website committee, which included Brauer, developed, and determined the operation and content of the Trailer Estates website on behalf of Trailer Estates and these meetings were not open to the public or properly noticed. Furthermore, during this time, the website committee utilized the process for altering the Trailer Estates website in direct violation of the Board established policy regarding altering the website.* [Plaintiffs know this alleged sunshine violation is not supported by the application of then existing law to the material facts. Plaintiffs do not present a good faith argument for the extension, modification, or renewal of existing law or the establishment of new law, as it applies to the material facts, with a reasonable expectation of success.]

...  
37(t) *The Board's inclusion and adoption of an additional page 4 of the Trailer Estates Park and Recreation District Public Records Policy and Procedure ("Public Records Policy").* [Plaintiffs know this alleged sunshine violation is not supported by the application of then existing law to the material facts. Plaintiffs do not present a good faith argument for the extension, modification, or renewal of existing law or the establishment of new law, as it applies to the material facts, with a reasonable expectation of success.]

37(u) *The Board's decisions to deny the publication of articles authored by Denson in the Tribune (the newsletter published by the Trailer Estates).* [Plaintiffs know this alleged sunshine violation is not supported by the application of then existing law to the material facts. Plaintiffs do not present a good faith argument for the extension, modification, or renewal of existing law or the establishment of new law, as it applies to the material facts, with a reasonable expectation of success.]

...  
37(y) *The determination by Board members Jones and Vander Molen in April 2008 that free internet service should be offered to the residents of Trailer Estates.* [Plaintiffs know this alleged sunshine violation is not supported by the application of then existing law to the material facts. Plaintiffs do not present a good faith argument for the extension, modification, or renewal of existing law or the establishment of new law, as it applies to the material facts, with a reasonable expectation of success.]

3. In paragraph 64 (a), (b), and (c), Plaintiffs allege examples of unreasonable delay in providing public records. These allegations are not supported by the material facts necessary to establish these claims.

4. After the conduct of several depositions and production of documents in this matter, it became apparent that the Plaintiffs and the Plaintiffs' counsel knew or should have known that the matters set forth above when initially presented to the Court, or during the discovery process thereafter, were not supported by the material facts necessary to establish the claims or would not be supported by the application of then existing law to those material facts.

5. Based upon the foregoing, the District seeks an award of reasonable attorney's fees to be paid to the District in equal amounts by the Plaintiffs and their counsel. It is clear that the Plaintiffs and their counsel knew or should have known that the claims described herein when initially presented to the Court, or during the course of discovery, were not supported by the material facts necessary to establish the claims and/or that the claims were not supported by the application of

existing law to the material facts.

6. Pursuant to the provisions of F.S. 57.105, a copy of this Motion was served on Plaintiffs at least 21 days prior to filing this Motion. The Plaintiffs failed to withdraw or appropriately correct the claims and allegations described herein.


WHEREFORE, the District respectfully requests this Honorable Court to enter an award of reasonable attorney's fees to be paid in equal amounts by the Plaintiffs and their counsel.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served via U.S. Mail to Kevin S. Hennessy, Esquire, Lewis, Longman & Walker, P.A., 1001 Third Avenue West, Suite 670, Bradenton, Florida 34205, Daniel E. Scott, Esquire, Center Pointe, Suite 408, Sarasota, Florida 34237-6056, Robert E. Turffs, P.A. 1444 First Street, Suite B, Sarasota, Florida 34236, James D. Dye, Esquire, Dye Deitrich, Petruff & St. Paul, P.L., 1111 3rd Avenue W., Bradenton, FL 34205-7834, and Hunter W. Carroll, Esquire, Matthews, Eastmoore, Hardy, Crauwels & Garcia, P.A., 1777 Main Street, Suite 500, Sarasota, FL 34236, on this 15<sup>th</sup> day of March, 2010.

**KIRK ■ PINKERTON, P.A.**  
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By: \_\_\_\_\_

  
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