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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

STEVEN E. KROLL,

Plaintiff,

vs.

INCLINE VILLAGE GENERAL IMPROVEMENT DISTRICT, a/k/a IVGID, a governmental subdivision of the State of Nevada; et al.,

Defendants.

Case No. 3:08-cv-00166-ECR-RAM

Plaintiff's Reply to Opposition to Motion to Compel Discovery and for Sanctions

Exhibits A, B, and C

and

Certificate of Service

When defendants changed a sworn affidavit they had filed on April 30, 2008 to support their Motion to Dismiss Complaint (Doc. 8 p. 18) from being based on "the best of my recollection" to "from my review of the records of IVGID" (Doc. 14 p. 8, filed May 21, 2008), plaintiff served Interrogatories a few days later asking them to identify the title or description, author, date, and present custodian of each of the records that Affiant had reviewed in coming to her conclusions. See Doc. 25 at p. 17, served May 27, 2008. Four months have gone by and those documents still remain unidentified and unproduced.

Why is this? The Affiant obviously knows what she looked at in coming to her twice-made sworn conclusions, and the documents have been promised constantly, as late as defendants' September 8, 2008 Opposition to Plaintiff's Motion to Compel where counsel for defendants declares that he

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> has had several conversations with Plaintiff in which [defense counsel] indicated that he would endeavor to have copies of all documents referenced in Defendants' interrogatory responses made and produced for Plaintiff's review." (Doc. 26 at page 3 line 23)

Yet *still* these records are missing.

These and many other documents *should* have been forthcoming with the initial Rule 26 Mandatory Disclosures, and Plaintiff hopes that a review of his "Certification of Good Faith Attempts to Avoid Court Intervention" (Doc. 25 pp. 10-15) will adequately rebut defendants' declaration to this Court that plaintiff's filing of this Motion to Compel Discovery is "inappropriate and premature." (Doc. 26 p. 3 line 27). Indeed, had the defendants followed the rules, they would have attached authenticated copies of the documents to the affidavit itself under FRCP Rule 56(e)(1), which requires that "if a paper or part of a paper is referred to in an affidavit, a sworn or certified copy must be attached to or served with the affidavit." As this Court has stated very recently in *Shuffle Master, Inc. v. MP Games LLC*, No. 3:04-CV-00407-ECR (D. Nev. 03/21/2008) at ¶41:

> [I]t is generally the case that "to be considered by the court, documents must be authenticated by and attached to an affidavit that meets the requirements of Rule 56(e) and the affiant must be a person through whom the exhibits could be admitted into evidence." Hal Roach Studios, Inc. v. Richard Feiner and Co., Inc., 896 F.2d 1542, 1550-51 (9th Cir. 1990).

The failure after so much time of defendant IVGID to produce the evidentiary material on which they rely to get dismissal of plaintiff's Complaint raises big questions about the authenticity and reliability of the records when they *are* ultimately produced. Will they have been altered, vetted, massaged? Can they be trusted to represent the actual records relied upon by this defendant's Affiant in concluding that plaintiff has not been required to help finance the purchase and upkeep of public property from which he has been excluded by law? Or will what is finally produced in response to plaintiff's Interrogatories be the work of IVGID's lawyers and accountants unconcerned with the Affiant's actual veracity in their pursuit of proving their point?

With the crash of venerable financial institutions and their accounting practices front page headlines around the country recently, it would be naive to assume that IVGID's motives in continuing to withhold this evidence are totally innocent. Plaintiff respectfully calls this Court's attention to his Third Cause of Action in the Complaint (Doc. 3) alleging that the defendants

> have breached their fiduciary duties to plaintiff by, among other ways, commingling the income and expenditures alleged to come from the segregated BEACH PROPERTIES with the General Funds of THE DISTRICT, and failing

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> and refusing despite plaintiff's demand therefor to establish a separate and segregated Trust Bank Account dedicated solely to accounting for such properties (Doc. 3, ¶110),

and calling for

> an independent audit and court-supervised accounting of defendant IVGID's books … at said defendant's expense to try to unravel THE DISTRICT's commingled funds and ascertain the sums which must be refunded to said plaintiff as having been wrongfully expended for the BEACH PROPERTIES as aforesaid. (*Id*., ¶113).

It would seem that whatever financial sanctions may be considered for defendants' failure to comply with Rule 26 Mandatory Disclosures and Rule 33 specific Interrogatories under the instant Motion to Compel, the most remedial sanction would be for the Court to order such an independent audit so that all question of both the authenticity of the documents relied upon and the conclusions made therefrom could be finally and reliably determined.

Regrettably, defendants' game of Hide and Seek is repeated throughout their discovery responses, crippling plaintiff's ability to prepare for motions for summary judgment based on undisputed facts, and for trial where the evidence requires a jury to sort out contested versions of the fact. The use of Requests for Admission to authenticate documents, for example. This useful tool can cut hours off the time it takes to try a case where "no substantive doubt has been raised that any of the exhibits are authentic, and the circumstantial evidence in each case suggests that the documents are in fact authentic." *Shuffle Master, Inc. v. MP Games LLC,* No. 3:04-CV-00407-ECR (D.Nev. 03/21/2008) at paragraph 41. Yet virtually every document which plaintiff asks defendants to admit is genuine is denied. Reasons range from defendant John A. Bohn "has no legal ability to authenticate the deed which is attached as Exhibit 2 to Plaintiff's Request for Admissions"; "Exhibit 74 does not appear to be a transcript prepared by or for the IVGID Board of Trustees"; defendant Trustee "has not compared the minutes attached as Exhibit 49 to the minutes approved by the IVGID Board," (Exhibit A attached, Response No. 1); and regarding a newspaper article quoting him: "John A. Bohn had nothing whatsoever to do with writing and/or publishing this article." (*Id*., Response No. 11). Defendant Chuck Weinberger cannot authenticate a photograph showing a sign saying "Private Beach" at IVID'S beach property because "Charles Weinberger did not take the photograph, does not know when it was taken nor by whom it was taken [and] … has no way of determining whether the photograph is authentic." See Exhibit B attached hereto, Response No. 7. And defendant Robert C. Wolf cannot authenticate an October 11, 2006 memorandum from the District's General Counsel (Exhibit

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171 attached to his Interrogatories) because such authentication "seeks information concerning a privileged communication between attorney and client" (even though his counsel has actual knowledge that this document was submitted by the District itself in another proceeding and is part of the public record). (See Answers to Interrogatories of defendant Robert C. Wolf attached hereto marked Exhibit C).

It should be noted that here again, had defendants complied with their obligations to produce the records requested by plaintiff or required voluntarily to be turned over, there would have been no need to seek authentication of these various pieces of evidence. This Court declared in *Shuffle Master, Inc. supra* at ¶ 41 of the opinion:

> [D]ocuments that are produced in discovery by a party opponent are, at least in many if not most cases, considered authentic if there is some indication that the documents are what they say they are and there is no substantive challenge to their authenticity.… Accord McQueeney v. Wilmington Trust Co., 779 F.2d 916, 928-29 (3d Cir. 1985) (production of documents in discovery is circumstantial evidence of the documents' authenticity); United States v. Brown, 688 F.2d 1112, 1116 (7th Cir. 1982) (same) …

But with neither disclosure of documents by these defendants nor willingness to recognize that "authentication" only means that "the documents are what they say they are and there is no substantive challenge to their authenticity", *Id.*, *see also* F.R.E. 901(a), this will be an unnecessarily long and painful trial without the forceful intervention of this Court at this time.

Further evidence of such an unhappy result can be seen in defendants' responses to the other discovery plaintiff has conducted to date. When asked to admit that "the geographical boundary of the District as it existed in 1968 encompasses the community known as "Incline Village," defendant John A. Bohn objects because it "assumes facts not in evidence," declares that "I do not know the precise geographical boundaries of IVGID as of 1968" (which was not the question), and says the Request "calls for a legal conclusion in what is meant by the term "Incline Village", citing a Nevada state case dealing with Rule 68 Offers of Judgment having nothing do with anything in this case to support that objection. He then denies this simple, basic-fact establishing Request. (See Response No. 3 in Exhibit A attached hereto). Yet on May 30, 2008 this defendant's Reply to plaintiff's Opposition to the Motion to Dismiss (Doc. 20) gives a detailed statement that

> At this time, there are 8,215 properties located within IVGID's boundaries. Of that number, 7,785 are within the 1968 boundaries of IVGID, thereby permitting them to use the beach properties, while 430 parcels were annexed after 1968 and do not. (Doc. 20 at p. 10).

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How can Mr. Bohn's evasive responses to this discovery request be deemed anything other than made in bad faith?

Defendant John Bohn is a man who has for years publicly expounded on the 1968 Deed and his belief that Crystal Bay residents of IVGID such as the plaintiff are forbidden entry to the beaches under its terms, even declaring in official Minutes dated March 11, 2008 that "the Board of Trustees grants a one-time-only exception" to the Restrictive Covenant, but "if they were to put that in writing it would be a violation of the deed restriction which could potentially result in a lawsuit." Yet when asked in Request No. 4 to formally admit the uncontradicted premise of his position, that

> The Restrictive Covenant in the 1968 Deed requires exclusion from the Beach Properties of all persons who are not Incline Village property owners or their guests, or successors of the original Grantor of the Beach Properties,

Mr. Bohn suddenly finds himself unable to do so because "the Deed speaks for itself", and admitting this fundamental statement of fact "requires John A. Bohn to interpret the provisions of this deed which in turn calls for a legal conclusion." He then denies the Request. In Responses No. 5 and 6 defendant Bohn finds it "vague and ambiguous in what is meant by the term 'property owners from Incline Village,'" denies that "the exclusive right of Incline Village property owners to enter the IVGID Beach Properties has a monetary or economic value" because he "is not an expert concerning the values of property located within the jurisdictional boundaries of IVGID," declares that "Policy 136 speaks for itself" when asked in Request No. 17 to admit that "Policy 136 allows persons who are not 1968 deed holders or guests of 1968 deed holders to enter the Beach Properties for purposes of expressing their First Amendment rights", and when asked to admit that "Policy 136 violates the 1968 Deed and Restrictive Covenant, in your opinion", he objects because it "calls for a legal conclusion" and denies the Request. See Exhibit A attached, Response No. 18. And although he declares in Response No. 12 that "it has always been the understanding of John A. Bohn that as a member of the Board of Trustees he had no authority to waive any of the covenants in the 1968 Deed," he objects to admitting that "in adopting Policy 136 the IVGID Board of Trustees administratively changed the scope of the Restrictive Covenant without a court order" because again, it "calls for a legal conclusion." Response No. 19.

It is worth remembering at this point that FRCP Rule 36 specifically allows Requests for Admissions to ask for the truth of any matters relating to "facts, the application of law to fact, or opinions about either." It is also worth pointing out that defendants are simply wrong in stating in their opposition to the instant motion that "the Federal Rules of Evidence do not cease to op-

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erate in a deposition taken pursuant to FRCP 30(b)(6) [and] opinion testimony by a law witness is improper and inadmissible." Doc. 26 at p. 7. This is not the trial. It is the stage of litigation where the parties discover the evidence and separate the wheat from the chaff so that when the trial comes, the evidence will be clearly and efficiently presented, and no time will be lost in unimportant evidentiary side issues. Rule 26(b)(1) specifically provides that "Relevant information need not be admissible at the trial if the discovery appears reasonably calculated to lead to the discovery of admissible evidence," yet defendants' conduct under the pre-trial Discovery Rules of this Court has thwarted almost every effort of plaintiff to prepare his case.

This has been done in part by a strangulating interpretation of what is "relevant" in this case based on defendants' misrepresentation to the Court of the "fact" that "this entire lawsuit is about Plaintiff's alleged inability to access the beach properties for First Amendment activities." Defendant's Opposition to Motion to Compel, Doc. 26 p. 3. Thus, when plaintiff tries to establish the individual defendants' prohibited conflict in passing legislation concerning District owned property in which they claim a direct economic interest as pled in his Fourth Cause of Action (Doc. 3 beginning p. 34), or the creation of two classes of citizenship within the Incline Village General Improvement District which violates the Equal Protection of the law as pled in his First, Second, and Third Causes of Action, direct questions and requests to admit are avoided and evaded, and his discovery of the evidence necessary to prove his allegations is thwarted altogether. For example, when defendant Chuck Weinberger is asked to admit that

> IVGID Ordinance 7 Section 62 creates two classes of IVGID residents, one class which is granted entry onto and use of the IVGID-owned Beach Properties for recreational purposes, and the other class which is denied entry onto and use of the IVGID-owned Beach Properties for recreational purposes, (Exhibit B attached hereto, Response No. 1),

he denies the Request even while his and the other defendants' May 30, 2008 Reply to plaintiff's Opposition to their Motion to Dismiss (Doc. 20) makes the following remarkable argument (emphasis added) based precisely on the two classes of citizenship which defendant Weinberger denies here:

> Indeed, what Plaintiff's Complaint makes perfectly clear is that the owners of parcels of real property in IVGID on or before May 30, 1968 are treated differently than owners of parcels annexed to IVGID after May 30, 1968. Respectfully, *there is no dissimilar treatment of similarly situated property owners in the instant matter.* Instead, *all of the owners of parcels of real property in IVGID as of May 30, 1968 are all treated similarly.* Indeed, each of these owners was responsible for paying for the real property on which the IVGID beaches are located. Equally clear is that the same property owners have been responsible for pay-

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> ing for all of the improvements to the IVGID beaches. Nowhere does Plaintiff maintain otherwise either in his Complaint or in any documents he has provided to the Court. … This being so, there are no facts either plead or otherwise provided to the Court which allow this claim to proceed beyond on the instant Motion to Dismiss. (Doc. 20 at p. 2).

The misstatement of fact about plaintiff's pleadings and the lack of evidentiary support for defendants' claim that plaintiff has never had to pay to support the Beach Properties has been discussed earlier; but the *legal* assertion made here is breathtaking: that there *are* two classes of IVGID citizenship, and as long as IVGID treats the members of each class similarly, there is no violation of the Equal Protection clause of the Constitution. This is nonsense. And plaintiff needs to prove it so, but every avenue pursued under the discovery rules is foreclosed by defendants' responses. When, for instance, plaintiff asks one of the defendants to admit that

> 17. The property right which you and the District are defending in the above-captioned lawsuit is the perceived right of exclusive access to and use of IVGID's Beach Properties granted to property owners in Incline Village by virtue of the Restrictive Covenant in the 1968 Deed, (see Exhibit B attached),

defendant Chuck Weinberger answers that and the followup Requests for Admissions in these words:

> RESPONSE No. 17: Objection. Request for Admission No. 17 is vague and ambiguous is what is meant by "perceived right of exclusive access." Without waiving this objection, IVGID is defending the issues raised by Plaintiff in his first amended complaint. Further, without waiving this objection, Request for Admission No. 17 is denied.
>
> Request No. 18. Defending the property right of those residents of the District who claim exclusive access to the District's Beach Properties requires that you reject the claim by those residents of the District who are excluded from the Beach Properties and who assert their own rights therein and thereto.
>
> RESPONSE No. 18: Objection. Request for Admission No. 18 assumes facts not in evidence. In this litigation IVGID is not defending the property rights of those residents of IVGID who claim exclusive access to IVGID's Beach Properties. Instead, IVGID is defending the issues raised by Plaintiff in his first amended complaint. Without waiving these objections Request for Admission No. 18 is denied.
>
> Request No. 20. Plaintiff STEVEN E. KROLL herein is a bona fide resident of IVGID but does not enjoy access to and full use of the tax-exempt IVGID Beach Properties for recreational purposes as you do.
>
> RESPONSE NO. 20. Objection. Request for Admission No. 20 is vague and ambiguous in what is meant by the phrase "bona fide resident of IVGID." Further, Charles Weinberger does not know whether Plaintiff has access to IVGID Beach Properties. Without waiving these objections Charles Weinberger can neither admit nor deny Request for Admission No. 20.

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> Request No. 21. The benefit accruing to you personally by voting to maintain exclusive access to IVGID's Beach Properties for 1968 Deed Holders in Incline Village is greater than that accruing to other IVGID property owners in Crystal Bay who are excluded from IVGID's Beach Properties because they are not 1968 Deed Holders.
>
> RESPONSE NO. 21. Objection. Request for Admission No. 21 is vague in what is meant by the phrase "1968 Deed Holders in Incline Village." Without waiving this objection, Request for Admission No. 21 is denied.

What do these answers mean? They seem to admit then deny the same thing, making the time-saving features of Requests for Admissions utterly useless. And how can this defendant declare he "does not know whether Plaintiff has access to IVGID Beach Properties"? He is a Trustee who has access to that information, and the signature on his discovery response constitutes a certification that his answer is "complete and correct as of the time it is made" and formed "after a reasonable inquiry." Rule 26(g)(1)(A) FRCP. If nothing else he would have had the correct answer simply by looking at Exhibit E of plaintiff's Complaint served on him in early March of this year to see a photograph of plaintiff's IVGID Recreation Pass marked "NO BEACH" in big red letters. Instead, plaintiff has to prove this fact in some other way, and that is wrong and wasteful.

The same discovery dead-end occurred when plaintiff focused on violation of Nevada's Open Meeting Law alleged in his Fifth Cause of Action. The following are excerpts from defendant Chuck Weinberger's Admission Responses served September 5, 2008 (Exhibit B attached):

> Request No. 12. At the Meeting of the IVGID Board of Trustees on July 9, 2008 you said in words or substance that there is not nor will there ever be any backroom deals by IVGID Trustees.
>
> RESPONSE TO No. 12. Objection. The comment I made at the bottom of page 12 of the minutes of the IVGID meeting of July 9, 2008 (Exhibit 169) was related to the Machata litigation. This comment was not made in connection with the Kroll litigation. Without waiving this objection, Request No. 12 is denied.

(In other words, Mr. Weinberger admits he made the statement, but denies it.)

> Request No. 13. By "backroom deals" in your July 9, 2008 public comments, you meant secret meetings and agreements among Trustees of IVGID made outside the public eye without advance public notice and input.
>
> RESPONSE TO No. 13: Objection. Request for Admission No. 13 is unduly vague and ambiguous. Further [it] is compound. Without waiving these objections, actions of the IVGID Bd of Trustees are taken at public meetings. Further, without waiving these objections, Request for Admissions No. 13 is denied."

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The words that defendant Weinberger calls "unduly vague and ambiguous" came from his own mouth, as admitted in the previous Request. One must assume *he* knew what he meant, and his "vague and ambiguous" objection is not well taken. Request No. 13 is also not "compound". Instead, these are discovery responses which appear to be "interposed for [an] improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation" to plaintiff, contrary to FRCP Rule 26(g)(1). Such would be further reason for this Court's granting of plaintiff's Motion to Compel Discovery and for Sanctions herein.

In some of defendants' discovery responses, their game of Hide-and-Go-Seek transforms into a completely new and impossible discovery-rules game whose name is "Catch-22." In the Rule 33(b)(6) deposition of IVGID which occurred July 16, 2008 , Chairwoman of the Board Bea Epstein was designated by defendant IVGID to testify on its behalf "about information known or reasonably available to the organization." Plaintiff did not choose Mrs. Epstein, defendant IVGID did. His deposition of her as an individual defendant will, if taken, cover matters completely different from defendant IVGID's testimony on how Policy 136 came about, which was what plaintiff was specifically after. Yet defendants converted plaintiff's 33(b)(6) deposition of an entity defendant into a personal deposition of the individual they had designated to speak for the entity, and then raised objections applicable to a personal deponent to attack plaintiff's questioning during the deposition. Three times in their Opposition to plaintiff's motion herein they refer to the question asked of the witness speaking for IVGID to "tell me what your idea of the First Amendment is?" (Doc. 26, p.4; see also p. 8 line 10, and p. 10 line 16) without informing the Court that that question had been withdrawn in the first instance. See transcript excerpt attached to defendants' Opposition marked Exhibit A, Doc. 26 at p. 19. And when, in a case which puts the burden of proof upon IVGID to show that its infringement of First Amendment rights served a "compelling governmental interest", *see e.g., Perry Educ. Ass'n v. Perry Local Educators' Ass'n*, 460 U.S. 37, 45-46 (1983) plaintiff put the question properly, as quoted by defendants at page 4 of their Opposition here,

> This is a policy respecting freedom of speech and expression. I want to know what the district had in mind when they passed such legislation" (Doc. 26, p. 21),

defendants object again and dredge up a "mental process privilege" and a "deliberative process privilege" wholly irrelevant to a 30(b)(6) agent designated to testify on behalf of the organization, and completely inapplicable in any event to legislation that takes place in secret where the public can not judge for themselves what deliberative process, if any, was exercised by their elected offi-

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cials. (*Compare* the Ninth Circuit's reference to "the record of proceedings" along with "the facts surrounding enactment of the statute" — both of which are absent in the case at bar — as relevant to First Amendment inquiry. *City of Las Vegas v. Foley*, 747 F.2d 1294, 1297 (9th Cir. 1984)).

Actually, the withdrawn question of what IVGID's "idea of the First Amendment was" was probably not objectionable in light of defendant's representations about that issue made in their Reply to plaintiff's Opposition to their Motion to Dismiss Complaint filed May 30, 2008, Doc. 20. With reference to the Affidavit of Ronald L. Code (Doc. 9 pp. 5-14), for example, defendant's write:

> [T]he statement by Mr. Code that he was wearing a t-shirt which made a policy statement regarding Yucca Mountain again adds little or nothing to the instant matter. Nowhere in his affidavit does Mr. Code indicate that he wanted to access the IVGID beaches for purposes of exercising First Amendment rights. …

In fact Mr. Code *did* make clear his First Amendment purpose, as reading his Affidavit reveals, but what is interesting about defendants' take on this incident is that they apparently think making a statement about Yucca Mountain isn't self-evidently the exercise of Free Speech. At another point in their Reply, defendants coyly infer that even before Policy 136, citizens could enter the Beach Properties if only they declared they were there for constitutional purposes: "Ordinance No. 7 §62," say these parties,

> serves only to define those individuals permitted to take advantage of the recreational facilities of the IVGID beaches. It does not suggest that a person such as Plaintiff who is interested in accessing the properties to give a speech or otherwise exercise his First Amendment rights would be subject to prosecution or would even be denied permission to do so. Doc. 20 p. 4.

Yet in IVGID's Policy 136 deposition on July 16, 2008, plaintiff tried to ask that question and was not allowed to get an answer, leading in part to this Motion to Compel. From page 106 of the transcript:

> BY MR. KROLL:
> Q Is it the board's understanding that the beach properties have always been open for the expression of First Amendment rights or not? Speaking of prior to Policy 136?
> MR. BALKENBUSH: And my objection to that would be that she can't speak for the board on that issue.
> MR. KROLL: I need to terminate this deposition. And I move to terminate the deposition for

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18 the purposes of making a motion. …

Plaintiff expects to prove that Policy 136 was cooked up by defendants' lawyers not to address perceived First Amendment problems (there were none), but as a litigation ploy in the instant lawsuit that they thought would defeat plaintiff's case, which they stubbornly continue to believe is only about the First Amendment. If it is ever allowed to be gathered properly, the evidence herein will show that IVGID's only "compelling government interest" in adopting this infringement on free speech was to secure dismissal of plaintiff's lawsuit against them. And in this case as in the Ninth Circuit's Blue Line Policy case, *Gerritsen v. City of Los Angeles*, 994 F.2d 570 (9th Cir. 1993), plaintiff expects this Court will be unable to

> discern any significant government interest in proposing the permit rule. The record reveals only one express reason for the City's enacting the permit scheme - to make it more difficult for Gerritsen to distribute handbills regarding his political beliefs.
>
> *We hold that this purpose is not a significant government interest. Moreover, it is not a legitimate government interest* - it is precisely the type of viewpoint censorship which the Constitution seeks to prevent. *Id*. ¶¶54-55, emphasis added.

There were other evidentiary problems with IVGID's Rule 30(b)(6) Deposition on July 16, 2008 as well. Defendants claim in their Opposition to this Motion that "Ms. Epstein gave a detailed account of the history of Policy No. 136, from the initial discussions of the policy IVGID had with its legal counsel, through its adoption in April of this year." (Doc. 26 p. 4). They say she "fully described the genesis of the policy", *Id*., "gave exhaustive testimony about the genesis", *Id*. at p. 5, and "testified to all the facts within her knowledge", *Id*. at p. 8. Problem is: she may have got it wrong. In the excerpt from her deposition attached as Exhibit A to defendants' Opposition herein (Doc. 26), Chairwoman Epstein refers to a meeting of all IVGID Board members and legal counsel on or about April 23, 2008, lasting "possibly an hour or more" (Doc. 26 p. 20), and testifies that Policy 136 was discussed and that "we may have made a couple of recommendations in terms of simplification of language," but that "the board members approve[d] of that language at this April 23rd meeting." *Id*.

Based on that testimony, plaintiff framed interrogatories and requests for admissions to other defendants regarding that April 23, 2008 meeting, only to find that they contradicted Mrs. Epstein's testimony, saying that that meeting never occurred. Although defendants are under obligation to "supplement or correct" the July 16th IVGID deposition or the subsequent contradictory discovery testimony by other defendants "in a timely manner if the party learns that in some

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material respect the disclosure or response is incomplete or incorrect," FRCP 26(e), this was never done and plaintiff was sent on a wild goose chase to learn the facts of these non-public meetings on Policy 136 which have *still* not been revealed, even though the dates on which the Trustees or any of them met with their lawyers can be easily obtained through IVGID's (or the lawyers') billing records. Instead, for example, while defendant Robert C. Wolf joins defendants John A. Bohn and Chuck Weinberger in denying that any meeting on or about April 23, 2008 ever took place (Exhibit B, Response 5), he answers Interrogatory No. 4 asking him to "please set forth each and every meeting you had or were invited to attend at which any two or more other IVGID Trustees were in attendance and which was treated as a "private meeting" of the kind referred to in Exhibit 171" by saying he "recalled" a meeting in March of 2008 and another one in May of 2008, with nothing more specific.

Conclusion

Only two weeks ago in another case announced by this Court, *Bally Gaming, Inc. v. IGT,* No. 3:06-CV-0483-ECR-RAM (D.Nev. 09/09/2008), Judge Reed observed that before presenting a Rule 56 Motion for Summary Judgment "the moving party must have made reasonable efforts to discover whether the nonmoving party has enough evidence to carry its burden at trial." ¶15. With a Hearing scheduled for October 8, 2008 on plaintiff's motion to enjoin IVGID Policy 136 regulating the content and location of Free Speech contrary to the First Amendment, where "the usual presumption of constitutionality afforded congressional enactments is reversed" and "the Government bears the burden of showing their constitutionality," *United States v. Playboy Entertainment Group, Inc.*, 529 U.S. 803, 817 (2000), plaintiff *still* does not know — despite his "reasonable efforts to discover" — what evidence the defendants in this case will be able to introduce to demonstrate a "compelling state interest" sufficient to overcome the presumption of unconstitutionality. Similarly, vast amounts of information have been denied plaintiff in the planning of the trial of the other issues raised by his Complaint, and this Reply Memorandum has not discussed any number of other defects in the defendants' discovery responses to date because of space limitations and lack of time.

But if the parties are to make good use of Rule 56 Summary Judgment to pare this case down to only the issues that are genuinely disputed for trial; and if they are to "move on to the very important issues of gathering all of the evidence each of us will need to present the best possible case for each side in as cordial and professional a manner as possible, and then abide the resolution of our conflict by the Court", as plaintiff's counsel wrote his opposite number on April

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29, 2008 (See Counsel's Certification of Good Faith, Doc. 25 p. 11), plaintiff respectfully submits these goals will be achieved only by this Court's intervention in this matter, and its granting of the instant Motion to Compel Discovery and For Sanctions.

DATED: at Crystal Bay, Nevada this 22nd day of September, 2008.

Respectfully submitted,

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EXHIBIT A:

Defendant JOHN A. BOHN's Responses to Plaintiff's Requests for Admissions to Defendant John A. Bohn (First Set)

(A different first page was submitted by defendants following service of this document to correct a technical defect but this has not yet been scanned)

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Attorneys for Defendants
Incline Village General Improvement District, John A. Bohn, Gene Brockman, Bea Epstein, Chuck Weinberger and Robert C. Wolf

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEVADA

STEVEN E. KROLL,

Plaintiff

vs.

INCLINE VILLAGE GENERAL IMPROVEMENT DISTRICT, aka IVGID, a governmental subdivision of the State of Nevada; JOHN A. BOHN; GENE BROCKMAN; BEA EPSTEIN, CHUCK WEINBERGER and ROBERT C. WOLF, individually and as Trustees of IVGID; DOES 1 through 25, inclusive, each in their individual and official capacities,

Defendants.

Case No. 3:08-CV-0166-ECR-RAM

DEFENDANT INCLINE VILLAGE GENERAL IMPROVEMENT DISTRICT'S RESPONSES TO PLAINTIFF'S REQUESTS FOR ADMISSIONS TO DEFENDANT JOHN A. BOHN (FIRST SET)

COMES NOW, Defendant, INCLINE VILLAGE GENERAL IMPROVEMENT DISTRICT, (hereinafter "IVGID") by and through its attorneys of record, THORNDAL, ARMSTRONG, DELK, BALKENBUSH & EISINGER, and in accordance with Rule 36 of the Federal Rules of Civil Procedure, hereby responds to Plaintiff's Requests for Admissions to Defendant John A. Bohn as follows:

REQUEST NO. 1

Each of the following documents exhibited with this Request is genuine:

(a) The 1968 Deed conveying the Beach Properties to the Incline Village General Improvement District [hereinafter sometimes referred to as "the 1968 Deed" and "IVGID"] attached hereto to Plaintiff's Exhibit 2 for identification, and which is attached to Plaintiff's First

Amended Complaint herein marked Exhibit A;

(b) The extracts for the IVGID Minutes of its Regular Meeting of August 30, 2006, pages 32 through 38, marked Plaintiff's Exhibit 94 for identification, attached hereto;

(c) The front-page article in the September 1, 2006 issue of the North Lake Tahoe Bonanza newspaper entitled "Residents Debate Rec Passes", attached hereto as Exhibit 88 for identification;

(d) The partial transcript extracts of the Board of Trustees' public hearing on Beach Access which took place on June 18, 2007 attached hereto marked Exhibit 74 for identification, and that it is an accurate transcription of the audio recording of said public hearing.

RESPONSE NO. 1

(a) Objection. John A. Bohn has no legal ability to authenticate the deed which is attached as Exhibit 2 to Plaintiff's Requests for Admissions. Without waiving this objection, Request for Admission 1(a)is denied.

(b) Objection. John A. Bohn has not compared the minutes attached as Exhibit 49 to Plaintiff's Requests for Admissions to the minutes approved by the IVGID Board. The minutes attached as Exhibit 49 to Plaintiff's Requests for Admissions appear genuine. Without waiving these objections, Request for Admission 1(b) is denied.

(c) John A. Bohn has no legal ability to authenticate Exhibit 88 attached to Plaintiff's Requests for Admissions. Without waiving this objection, Request for Admission 1(c) is denied.

(d) Objection. Exhibit 74 does not appear to be a transcript prepared by or for the IVGID Board of Trustees concerning a meeting which took place on June 18, 2007. It is not a function of my position as a member of the IVGID Board of Trustees to prepare verbatim transcripts of IVGID Board of Trustees meeting. Without waiving this objection, Request for Admission 1(d) is denied.

REQUEST NO. 2

The 1968 Deed granted exclusive access to the Beach Properties to the Seller of that property and to peoperty owners and their tenants within the geographical boundaries of the District as it existed in 1968 and their successors, and to such of the guests as IVGID's Board of

Trustees should determine. [These provisions of the 1968 Deed are sometimes referred to herein as the "Restrictive Covenant"].

RESPONSE NO. 2

Objection. Plaintiff's Request for Admission No. 2 requests that John A. Bohn interpret Exhibit 2 which is a legal document. Exhibit 2 attached to Plaintiff's Request for Admission speaks for itself. John A. Bohn is not an attorney. Further, Plaintiff's Request for Admission No. 2 calls for a legal conclusion. See Morgan v. Demille, 106 Nev. 671,676, 799 P.2d 561 (1990). Without waiving these objections, Request for Admission No. 2 is denied.

REQUEST NO. 3

The geographical boundary of the District as it existed in 1968 encompasses the community known as "Incline Village."

RESPONSE NO. 3

Objection. Request for Admission No. 3 assumes facts not in evidence. I do not know the precise geographical boundaries of IVGID as of 1968. Further, Request for Admission No. 3 assumes that whatever the geographical boundaries were of IVGID in 1968, these boundaries were identical with what is now known as "Incline Village." I do not know this to be true. Further, Request for Admission No. 3 calls for a legal conclusion in what is meant by the term "Incline Village." See Morgan v. Demille supra. Without waiving this objection, Request for Admission No. 3 is denied.

REQUEST NO. 4

The Restrictive Covenant in the 1968 Deed requires exclusion from the beach Properties of all persons who are not Incline Village property owners or their guests, or successors of the original Grantor of the Beach Properties.

RESPONSE NO. 4

Objection. The deed attached as Exhibit 2 to Plaintiff's Requests for Admissions speaks for itself. Further, Request for Admission No. 4 requires John A. Bohn to interpret the peovisions of this deed which in turn calls for legal conclusion. See Morgan v. Demille, supra. Without waiving these objections, Request for Admission No. 4 is denied.

REQUEST NO. 5

The Incline Village General Improvement District today has expanded beyond its 1968 boundaries, and prior to May 1, 2008 IVGID has always denied access to the Beach Properties to members of the District who are not property owners from Incline Village unless they were guests of an Incline Village property owner.

RESPONSE NO. 5

Objection. Request for Admission No. 5 is compound. Further, Request for Admission No. 5 is vague and ambiguous in what is meant by the term "property owners from Incline Village." Without waiving these objections John A. Bohn admits that the boundaries for IVGID are greater today than they were in 1968. Without waiving these objections, Request for Admission No. 5 is denied.

REQUEST NO. 6

In your opinion, the exclusive right of Incline Village property owners to enter the IVGID Beach Properties has a monetary or economic value

RESPONSE NO. 6

Objection. Request for Admission No. 6 is vague and ambiguous in what is meant by the phrase "Incline Village property owners." Further, John A. Bohn is not an expert concerning the values of property located within the jurisdictional boundaries of IVGID. Without waiving this objection, Request for Admission No. 6 is denied.

REQUEST NO. 7

You, John A. Bohn, are a 1968 Deed holder in Incline Village.

RESPONSE NO. 7

Objection. Request for Admission No. 7 is vague and ambiguous in what is meant by the phrase "1968 Deed Holder in Incline Village." Without waiving this objection John A. Bohn admits that he owns a parcel of real property which was located within the boundaries of IVGID prior to 1968. Without waiving these objections, Request for Admission No. 7 is denied.

REQUEST NO. 8

In your personal opinion the economic value of your exclusive right as a 1968 Deed

Holder to enter the IVGID Beach Properties and to sponsor as many guests thereto as you may wish exceeds the sum of $10,000.

RESPONSE NO. 8

Objection. The phrase "1968 Deed Holder" used in Request for Admission No. 8 is vague and ambiguous. Further, Request for Admission No. 8 is compound. Finally, Request for Admission No. 8 seeks opinion testimony on an issue wherein John A. Bohn is not an expert. Without waiving these objections, Request for Admission No. 8 is denied.

REQUEST NO. 9

At the IVGID Regular Meeting on or about August 30, 2006 (a portion of whose Minutes are attached hereto marked Plaintiff's Exhibit 94 for identification), you said in words or substance: "this Board can no more give away the pink slip to your car then they can give away access to the beaches; only a court of law can vacate those restrictive covenants."

RESPONSE NO. 9

Admit.

REQUEST NO. 10

At the same IVGID meeting on or about August 30, 2006, you said in words or substance that with respect to granting beach access specifically to residents of IVGID who did not live in Incline Village but lived in Crystal Bay "that it wasn't this Board's decision to make, rather it was for a court of law to decide".

RESPONSE NO. 10

At the IVGID meeting on or about August 30, 2006 I made a statement to the effect that the validity and scope of the restrictive covenants set forth in the 1968 Deed conveying the Beach Properties to IVGID were the proper subject of a court's interpretation and not the IVGID Board of Trustees. Without waiving these objections, Request for Admission No. 10 is denied.

REQUEST NO. 11

The following report in the September 1, 2006 edition of the Tahoe Bonanza (Exhibit 88 attached) is essentially accurate: "On the latter topic, chairman John Bohn said deed restrictions on the beaches explicitly state that Crystal Bay residents are not eligible for beach privileges, and

that changing the rules would require a court order."

RESPONSE NO. 11

Objection. Request for Admission No. 11 refers to a newspaper article allegedly published by the Tahoe Bonanza. John A. Bohn had nothing whatsoever to do with writing and/or publishing this article. Further, John A. Bohn does not recall making a statement on September 1, 2006 which is referenced in said article. Without waiving this objection, John A. Bohn believes that the validity and scope of the restrictive covenant contained in the 1968 Deed conveying the Beach Properties to IVGID present legal issues which should be resolved by a court of law. Further, without waiving these objections, Request for Admission No. 11 is denied.

REQUEST NO. 12

At an IVGID public hearing on Beach Access at the Chateau on or about June 18, 2007, you told a constituent from Crystal Bay named Joy Dahlgren in words or substance that with respect to the 1968 deed restriction, "this Board and other Boards have decided that it's not an administrative thing that we can waive, it has to be done by a court of law."

RESPONSE NO. 12

Objection. Request for Admission No. 12 purports to relate to Exhibit 74 attached to Plaintiff's Requests for Admissions. John A. Bohn is not familiar with this document and is informed and believes that this document was not prepared by a representative of IVGID. Without waiving these objections, it has always been the understanding of John A. Bohn that as a member of the Board of Trustees he had no authority to waive any of the covenants in the 1968 Deed conveying the Beach Properties to IVGID. Further, without waiving these objections, Request for Admission No. 12 is denied.

REQUEST NO. 13

On or about April 23, 2008 you met with other IVGID Trustees without notice to the public outside the public eye and discussed what was later to become Policy 136

RESPONSE NO. 13

Deny.

REQUEST NO. 14

At the Board meeting of April 30, 2008 at which the adoption of Policy 136 was on Agenda, you moved the formal adoption of Policy 136 without disclosing that you had previously met in secret with other Trustees to discuss this matter.

RESPONSE NO. 14

Deny.

REQUEST NO. 15

You had decided upon the way you intended to vote on Policy 136 before the public meeting of the Board on April 30, 2008 and notwithstanding whatever public input was made at the meeting.

RESPONSE NO. 15

Deny.

REQUEST NO. 16

Policy 136 was adopted by a unanimous vote of the Board on April 30, 2008, and went into effect the next day.

RESPONSE NO. 16

Admit.

REQUEST NO. 17

Policy 136 allows persons who are not 1968 deed holders or guests of 1968 deed holders to enter the Beach Properties for purposes of expressing their First Amendment rights

RESPONSE NO. 17

Objection. Policy 136 speaks for itself. Further, Policy 136 allows all persons to enter Beach Properties for purposes of expressing their First Amendment rights. Finally, without waiving these objections, Request for Admission No. 17 is denied.

REQUEST NO. 18

Policy 136 violates the 1968 Deed and Restrictive Covenant, in your opinion.

RESPONSE NO. 18

Objection. Request for Admission No. 18 calls for a legal conclusion. See Morgan v. Demille, supra. Without waiving this objection, Request for Admission No. 18 is denied.

REQUEST NO. 19

In adopting Policy 136, the IVGID Board of Trustees administratively changed the scope of the Restrictive Covenant without a court order.

RESPONSE NO. 19

Objection. Request for Admission No. 19 calls for a legal conclusion. See Morgan v. Demille, supra. Without waiving this objection, Request for Admission No. 19 is denied.

DATED this 18th day of August, 2008.

THORNDAL, ARMSTRONG,
DELK, BALKENBUSH & EISINGER

By _____
STEPHEN C. BALKENBUSH, ESQ.
6590 South McCarran Blvd., Suite B
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(775) 786-2882

Attorneys for Defendants
INCLINE VILLAGE GENERAL IMPROVEMENT DISTRICT, JOHN A. BOHN, GENE BROCKMAN, BEA EPSTEIN, CHUCK WEINBERGER and ROBERT C. WOLF

CERTIFICATE OF SERVICE

Pursuant to FRCP 5(b), I certify that I am an employee of Thorndal, Armstrong, Delk, Balkenbush & Eisinger, and that on this day I deposited for mailing at Reno, Nevada the original of **Plaintiff's requests for admissions to Defendant John A. Bohn (First Set)**, addressed as follows:

Steven E. Kroll, Esq.
Post Office Box 8
Crystal Bay, NV 89402

DATED this 25th day of August, 2008.

Susan Balkenbush

EXHIBIT B:

Defendant Charles Weinberger's Responses to Plaintiff's Requests for Admissions to Defendant Chuck Weinberger (First Set)

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P.O. Box 8 • Crystal Bay, NV 89402
Tel: 775-831-8281
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Attorneys for Defendants
Incline Village General Improvement District, John A. Bohn, Gene Brockman, Bea Epstein, Chuck Weinberger and Robert C. Wolf

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEVADA

STEVEN E. KROLL,

Plaintiff

vs.

INCLINE VILLAGE GENERAL IMPROVEMENT DISTRICT, aka IVGID, a governmental subdivision of the State of Nevada; JOHN A. BOHN; GENE BROCKMAN; BEA EPSTEIN, CHUCK WEINBERGER and ROBERT C. WOLF, individually and as Trustees of IVGID; DOES 1 through 25, inclusive, each in their individual and official capacities,

Defendants.

Case No. 3:08-CV-0166-ECR-RAM

CHARLES WEINBERGER'S RESPONSES TO PLAINTIFF'S REQUESTS FOR ADMISSIONS (FIRST SET)

COMES NOW, Defendant, CHARLES WEINBERGER by and through his attorneys of record, THORNDAL, ARMSTRONG, DELK, BALKENBUSH & EISINGER, and in accordance with Rule 36 of the Federal Rules of Civil Procedure, hereby responds to Plaintiff's Requests for Admissions as follows:

REQUEST NO. 1

IVGID Ordinance 7 Section 62 creates two classes of IVGID residents, one class which is granted entry onto and use of the IVGID-owned Beach Properties for recreational purposes, and the other class which is denied entry onto and use of the IVGID-owned Beach Properties for recreational purposes.

RESPONSE NO. 1

Denied.

REQUEST NO. 2

Except for the Incline Village General Improvement District in which you sit as a Trustee, you are personally aware of no other city or other municipal government in any state of the United States today which prohibits certain residents of that municipality as a class from entering or using their government-owned recreational facilities for recreational purposes, while allowing certain other residents as a class to enter and use those same facilities for recreational purposes.

RESPONSE NO. 2

Objection. Request for Admission No. 2 is an incomplete hypothetical, an inaccurate and incomplete statement of facts concerning this case and is not reasonably calculated to lead to the discovery of admissible evidence. Without waiving these objections, I am not aware of any municipal government entity in the nation which was deeded property with a deed restriction similar to the restriction in the 1968 Deed which is attached as Exhibit 1 to Plaintiff's first amended complaint. Accordingly, I can neither admit nor deny Request for Admission No. 2.

REQUEST NO. 3

While in Law School, you took a course in Constitutional Law.

RESPONSE NO. 3

Objection. Request for Admission No. 3 is not reasonably calculated to lead to the discovery of admissible evidence in that whether Charles S Weinberger took a course in constitutional law while he was in law school is not germane to any of the issues raised in this case. Without waiving this objection, Request for Admission No. 3 is admitted.

REQUEST NO. 4

You are aware by virtue of your schooling and life experiences of the segregationist history of the American South, and of the practice by some municipal governments during those times of transferring their publicly-owned recreational facilities to private ownership so that the exclusion of people of color from those recreational facilities could continue to be enforced.

RESPONSE NO. 4

Objection. The history of the American South and the alleged transferring of the ownership of public recreational facilities to private ownership so that people of color could be excluded from using those recreational facilities has nothing whatsoever to do with the instant matter and, accordingly, Request for Admission No. 4 is not reasonably calculated to lead to the discovery of admissible evidence. Without waiving these objections, Request for Admission No. 4 is denied.

REQUEST NO. 5

You are the originator of the term "public with restricted access" to describe the status of the IVGID Beach Properties.

RESPONSE NO. 5

Denied.

REQUEST NO. 6

"Public with restricted access" is another way of saying "private."

RESPONSE NO. 6

Objection. Request for Admission No. 6 is vague and ambiguous in what is meant by "public with restricted access." Further, I do not know what is meant by the phrase "public with restricted access." Insofar as I have no understanding of the phrase "public with restricted access" Request for Admission No. 6 is denied.

REQUEST NO. 7

The photograph attached hereto as Plaintiff's Exhibit 4 for identification is genuine, and among other details shows a sign saying "Private Beach" affixed to the entry kiosk of what you personally recognize as one of IVGID's Beach Properties.

RESPONSE NO. 7

With respect to the photograph attached as Exhibit 4 to Plaintiff's Requests for Admissions, Charles Weinberger did not take the photograph, does not know when it was taken nor by whom it was taken. Without this foundational understanding, Charles Weinberger has no way of determining whether the photograph is authentic.

REQUEST NO. 8

The 1954 Deed for a piece of real property in Crystal Bay, Nevada attached hereto and marked Plaintiff's Exhibit 152 for identification is genuine.

RESPONSE NO. 8

Objection. The 1954 Deed attached as Exhibit 152 to Plaintiff's Requests for Admissions is not germane to the issues in this litigation and is not reasonably calculated to lead to the discovery of admissible evidence. Further, Charles Weinberger can neither admit nor deny the authenticity of the 1954 Deed which is attached as Exhibit 152 to the Requests for Admissions in that he has no knowledge whatsoever concerning same.

REQUEST NO. 9

The 1954 Deed attached hereto as Plaintiff's Exhibit 152 for identification contains a Restrictive Covenant prohibiting the Crystal Bay premises being transferred from ever, at any time, being sold, conveyed, leased, or rented to any person other than of the Caucasian Race.

RESPONSE NO. 9

Objection. The language contained in the 1954 deed attached as Exhibit 152 to Plaintiff's Requests for Admissions has nothing to do with the issues in this litigation and, therefore, is not reasonably calculated to lead to the discovery of admissible evidence. Further, Request for Admission No. 9 seeks information which calls for a legal conclusion. See Disability Rights Council of Greater Washington v. Washington Metropolitan Area Transit Authority, 234 F.R.D.1, 3 (D. D.C. 2006). Without waiving this objection Exhibit 152 appears to contain a reservation and restriction which provides as follows: "2. No part of said premises ever, at any time, shall be sold, conveyed, leased, or rented to any person other than of the Caucasian Race."

REQUEST NO. 10

You would never under any circumstances, whether in the capacity of an individual homeowner or as an elected government official, support the enforcement of the Restrictive Covenant contained in the 1954 Deed attached hereto as Plaintiff's Exhibit 152 for identification.

RESPONSE NO. 10

Objection. The language contained in the 1954 deed attached as Exhibit 152 to Plaintiff's

Requests for Admissions has nothing to do with the issues in this litigation and, therefore, is not reasonably calculated to lead to the discovery of admissible evidence. Further, Request for Admission No. 10 is vague and ambiguous concerning which restrictive covenant of the 1954 deed is being referenced and, accordingly, Charles Weinberger can neither admit nor deny Request for Admission No.10.

REQUEST NO. 11

The excerpt from the Minutes of the Board of Trustees on July 9, 2008 attached hereto as Plaintiff's Exhibit 169 for identification is genuine.

RESPONSE NO. 11

Charles Weinberger admits that Exhibit 169 attached to Plaintiff's Requests for Admissions are pages 7, 8, 12, 13 and 14 of the minutes of the IVGID Board of Trustees meeting of July 9, 2008.

REQUEST NO. 12

At the Meeting of the IVGID Board of Trustees on July 9, 2008 you said in words or substance that there is not nor will there ever be any backroom deals by IVGID Trustees.

RESPONSE NO. 12

Objection. The comment I made at the bottom of page 12 of the minutes of the IVGID meeting of July 9, 2008 (Exhibit 169) was related to the Machata litigation. This comment was not made in connection with the Kroll litigation. Without waiving this objection, Request for Admission No. 12 is denied.

REQUEST NO. 13

By "backroom deals" in your July 9, 2008 public comments, you meant secret meetings and agreements among Trustees of IVGID made outside the public eye without advance public notice and input.

RESPONSE NO. 13

Objection. Request for Admission No. 13 is unduly vague and ambiguous. Further, Request for Admission No. 13 is compound. Without waiving these objections, actions of the IVGID Board of Trustees are taken at public meetings. Further, without waiving these

objections, Request for Admission No. 13 is denied.

REQUEST NO. 14

On or about April 23, 2008 you met with other IVGID Trustees without notice to the public and outside the public eye and discussed what was later to become Policy 136.

RESPONSE NO. 14

Denied.

REQUEST NO. 15

At the Board meeting of April 30, 2008 at which the adoption of Policy 136 was on the Agenda, you voted for the formal adoption of Policy 136 without disclosing that you had previously met in secret with other Trustees to discuss this matter.

RESPONSE NO. 15

Objection. Request for Admission No. 15 is vague and ambiguous in what is meant by the phrase "met in secret." Without waiving this objection, Charles Weinberger admits that he voted to adopt IVGID Policy 136 at the IVGID Board's regularly scheduled meeting on April 30, 2008. Further, without waiving these objections, Request for Admission No. 15 is denied.

REQUEST NO. 16

At the Meeting of the IVGID Board of Trustees on July 9, 2008 which you attended, Trustee Bob Wolf said in words or substance that the purpose of IVGID's defense of the Beach Access litigation now in Federal Court "is to protect property rights," and you agreed then and agree now with that statement of IVGID's purpose.

RESPONSE NO. 16

Objection. Request for Admission No.16 includes an interpretation of what Trustee Wolf meant by a comment he made at the July 9, 2008 IVGID Board meeting. I do not know what Trustee Wolf meant by his comments referred to in Request for Admission No.16, therefore I can neither admit nor deny Request for Admission No.16.

REQUEST NO. 17

The property right which you and the District are defending in the above-captioned lawsuit is the perceived right of exclusive access to and use of IVGID's Beach Properties granted

to property owners in Incline Village by virtue of the Restrictive Covenant in the 1968 Deed.

RESPONSE NO. 17

Objection. Request for Admission No. 17 is vague and ambiguous is what is meant by "perceived right of exclusive access." Without waiving this objection, IVGID is defending the issues raised by Plaintiff in his first amended complaint. Further, without waiving this objection, Request for Admission No. 17 is denied.

REQUEST NO. 18

Defending the property right of those residents of the District who claim exclusive access to the District's Beach Properties requires that you reject the claim by those residents of the District who are excluded from the Beach Properties and who assert their own rights therein and thereto.

RESPONSE NO. 18

Objection. Request for Admission No. 18 assumes facts not in evidence. In this litigation IVGID is not defending the property rights of those residents of IVGID who claim exclusive access to IVGID's Beach Properties. Instead, IVGID is defending the issues raised by Plaintiff in his first amended complaint. Without waiving these objections Request for Admission No. 18 is denied.

REQUEST NO. 19

You, CHUCK WEINBERGER, are a 1968 Deed Holder in Incline Village and enjoy access to and full use of the tax-exempt IVGID Beach Properties.

RESPONSE NO. 19

Objection. Request for Admission No. 19 is vague in what is meant by the phrase "1968 Deed Holder in Incline Village." Further, Request for Admission No.19 is compound. Without waiving these objections, Charles Weinberger currently owns a piece of real property in IVGID which said parcel of real property existed prior to 1968 and he has access to IVGID Beach Properties. Further, without waiving these objections, Request for Admission No. 19 is denied.

REQUEST NO. 20

Plaintiff STEVEN E. KROLL herein is a bona fide resident of IVGID but does not enjoy

access to and full use of the tax-exempt IVGID Beach Properties for recreational purposes as you do.

RESPONSE NO. 20

Objection. Request for Admission No. 20 is vague and ambiguous in what is meant by the phrase "bona fide resident of IVGID." Further, Charles Weinberger does not know whether Plaintiff has access to IVGID Beach Properties. Without waiving these objections Charles Weinberger can neither admit nor deny Request for Admission No. 20.

REQUEST NO. 21

The benefit accruing to you personally by voting to maintain exclusive access to IVGID's Beach Properties for 1968 Deed Holders in the Incline Village is greater than that accruing to other IVGID property owners in Crystal Bay who are excluded from IVGID's Beach Properties because they are not 1968 Deed Holders.

RESPONSE NO. 21

Objection. Request for Admission No. 21 is vague in what is meant by the phrase "1968 Deed Holders in Incline Village." Without waiving this objection, Request for Admission No. 21 is denied.

REQUEST NO. 22

Because any vote by you as a Trustee on matters involving Beach Access personally benefits you to the detriment of those of your constituents who are denied Beach Access by IVGID law, you are prohibited from voting on such matter by Nevada Revised Statue Section 281.501

RESPONSE NO. 22

Objection. Request for Admission No. 22 calls for a legal conclusion. . See Disability Rights Council of Greater Washington v. Washington Metropolitan Area Transit Authority, 234 F.R.D.1, 3 (D. D.C. 2006). Without waiving this objection, Request for Admission No. 22 is denied.

REQUEST NO. 23

NRS 281.421 requires that you must commit yourself to avoid conflicts between your

private interests and those of the general public whom you serve as a Trustee.

RESPONSE NO. 23

Objection. Request for Admission No. 23 calls for a legal conclusion. See Disability Rights Council of Greater Washington v. Washington Metropolitan Area Transit Authority, 234 F.R.D.1, 3 (D. D.C. 2006). Without waiving this objection, Charles Weinberger admits that NRS 281A.020(1)(b) provides as follows: "a public officer or employee must commit himself to avoid conflicts between his private interests and those of the general public whom he serves."

REQUEST NO. 24

When you were sworn in as a Trustee of the Incline Village General Improvement District, you took the following oath in the words or substance: "I do solemnly swear that I will support, protect and defend the constitution and government of the United States, and the constitution and government of the State of Nevada, against all enemies, whether domestic or foreign, and I will bear true faith, allegiance and loyalty to the same, any ordinance, resolution or law of any state notwithstanding, and that I will well and faithfully perform all the duties of the office of Trustee, Incline Village General Improvement District."

RESPONSE NO. 24

Admit.

REQUEST NO. 25

In your personal opinion, your obligation to the Constitution of the United States and Constitution of the State of Nevada to guarantee the equal protection of the law to all residents and taxpayers within the governmental body known as the Incline Village General Improvement District trumps any obligation you may have to protect the Restrictive Covenant of the 1968 Deed.

RESPONSE NO. 25

Objection. Request for Admission No. 25 is vague and ambiguous as to what is meant by the term "trumps." Further, Request for Admission No.25 calls for a legal conclusion. See Disability Rights Council of Greater Washington v. Washington Metropolitan Area Transit Authority, 234 F.R.D.1 (D. D.C. 2006). Without waiving these objections, Request for

Admission No. 25 is denied.

REQUEST NO. 26

You are the individual who originated the idea of creating Free Speech zones at the IVGID Beach Properties which ultimately became Policy 136.

RESPONSE NO. 26

Denied.

REQUEST NO. 27

Policy 136 allows persons who are not 1968 Deed Holders or guests of 1968 Deed Holders to enter the Beach Properties for purposes of expressing their First Amendment rights.

RESPONSE NO. 27

Objection. Request for Admission No.27 is vague and ambiguous in what is meant by the phrase "1968 Deed Holders." Without waiving this objection, it is the understanding of CHARLES Weinberger that Policy 136 allows any person to enter the IVGID Beach Properties for purposes of expressing their First Amendment rights.

REQUEST NO. 28

You recognize that by allowing persons who are not 1968 Deed Holders or their guests to gain access to and use of the Beach Properties, Section 62 of Ordinance 7 and the Restrictive Covenant of the 1968 Deed upon which it is based are violated.

RESPONSE NO. 28

Objection. Request for Admission No. 28 calls for a legal conclusion. See Disability Rights Council of Greater Washington v. Washington Metropolitan Area Transit Authority, 234 F.R.D.1, 3 (D. D.C. 2006). Further, Request for Admission No.28 is vague and ambiguous in what is meant by the phrase "1968 Deed Holders." Further, Request for Admission No.28 is compound. Without waiving this objection, Request for Admission No. 28 is denied.

REQUEST NO. 29

At the Board of Trustees Meeting of July 9, 2008, referring to another IVGID-owned piece of deed-restricted real property you stated in words or substance that "the Board won't be changing the deed restriction because the only body that has the authority to do that is the court."

RESPONSE NO. 29

Objection. Request for Admission No. 29 is not reasonably calculated to lead to the discovery of admissible evidence in that it includes a discussion of an IVGID parcel which has nothing whatsoever to do with the IVGID Beach Properties or the deed associated with same. Further, the comment made by Charles Weinberger at the July 9, 2008 IVGID Board of Trustees meeting was in reference to an IVGID parcel of real property and a parcel of real property referred to as the Machata parcel in an entirely unrelated lawsuit. Without waiving this objection, Request for Admission No.29 is admitted.

REQUEST NO. 30

By adopting Policy 136 on April 30, 2008, the IVGID Board effectively changed the deed restriction without applying to a court.

RESPONSE NO. 30

Objection. Request for Admission No. 30 calls for a legal conclusion. See Disability Rights Council of Greater Washington v. Washington Metropolitan Area Transit Authority, 234 F.R.D.1 (D. D.C. 2006). Further, Request for Admission No.30 is vague and ambiguous as to what "deed restriction" is being referenced. Without waiving this objection, Request for Admission No. 30 is denied.

DATED this 5th day of September, 2008.

THORNDAL, ARMSTRONG,
DELK, BALKENBUSH & EISINGER

By _____
STEPHEN C. BALKENBUSH, ESQ.
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Attorneys for Defendants
INCLINE VILLAGE GENERAL IMPROVEMENT DISTRICT, JOHN A. BOHN, GENE BROCKMAN, BEA EPSTEIN, CHARLES WEINBERGER and ROBERT C. WOLF

CERTIFICATE OF SERVICE

Pursuant to FRCP 5(b), I certify that I am an employee of Thorndal, Armstrong, Delk, Balkenbush & Eisinger, and that on this day I deposited for mailing at Reno, Nevada the original of **CHARLES WEINBERGER'S RESPONSES TO PLAINTIFF'S REQUESTS FOR ADMISSIONS (FIRST SET)**, addressed as follows:

Steven E. Kroll, Esq.
Post Office Box 8
Crystal Bay, NV 89402

DATED this 5th day of September, 2008.

Susan Balkenbush

EXHIBIT C:

Defendant ROBERT C. WOLF's Answers to Interrogatories (First Set)

(A different first page was submitted by defendants following service of this document to correct a technical defect but this has not yet been scanned)

Steven E. Kroll • Attorney at Law
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Stephen C. Balkenbush, Esq.
State Bar No. 1814
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6590 South McCarran Blvd., Suite B
Reno, Nevada 89509
(775) 786-2882
Attorneys for Defendants
Incline Village General Improvement District, John A. Bohn, Gene Brockman, Bea Epstein, Chuck Weinberger and Robert C. Wolf

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEVADA

STEVEN E. KROLL,

Plaintiff

vs.

INCLINE VILLAGE GENERAL IMPROVEMENT DISTRICT, aka IVGID, a governmental subdivision of the State of Nevada; JOHN A. BOHN; GENE BROCKMAN; BEA EPSTEIN, CHUCK WEINBERGER and ROBERT C. WOLF, individually and as Trustees of IVGID; DOES 1 through 25, inclusive, each in their individual and official capacities,

Defendants.

Case No. 3:08-CV-0166-ECR-RAM

ROBERT C. WOLF'S ANSWERS TO PLAINTIFF'S INTERROGATORIES (First Set)

COMES NOW, Defendant, INCLINE VILLAGE GENERAL IMPROVEMENT DISTRICT, (hereinafter "IVGID") by and through its attorneys of record, THORNDAL, ARMSTRONG, DELK, BALKENBUSH & EISINGER, and in accordance with Rule 33 of the Federal Rules of Civil Procedure, hereby answers Plaintiffs' Interrogatories to Defendant Robert C. Wolf (First Set) as follows:

IVGID has not completed its discovery and investigation of the facts and circumstances involved in this case, and therefore, these answers may be incomplete. These answers are given without prejudice to produce and introduce at trial evidence of any subsequently discovered facts, information or circumstances. These answers may be supplemented, changed, modified or

amended in light of subsequently discovered facts and information. IVGID reserves the right to continue its discovery and investigation in this matter for additional facts, data, information and witnesses to support its claims and defenses.

INTERROGATORY NO. 1

Is the Memorandum to the IVGID Board of Trustees from General Counsel T. Scott Brooke dated 11 October 2006 referencing "Petition" attached hereto marked Plaintiff's Exhibit 171 for identification genuine to the best of your information and belief?

ANSWER NO. 1

Objection. Interrogatory No.1 seeks information concerning a privileged communication between attorney and client. Exhibit 171 attached to Plaintiff's Interrogatories is a memorandum from general counsel for IVGID to the Board of Trustees for IVGID and specifically provides: "This Memorandum is protected by the Attorney/Client Privilege."

INTERROGATORY NO. 2

Did you attend in person or by telephone or other remote device the "private meeting" on November 8, 2006 referred to by Mr. Brooke in his Memorandum to the Board dated 11 October 2006 set forth in Plaintiff's Exhibit 171 attached hereto?

ANSWER NO. 2

No.

INTERROGATORY NO. 3

If your answer to the foregoing Interrogatory No. 2 is affirmative, please state:

a) The address where the "private meeting" took place;

b) The name of each person present in person or by telephone or other remote hookup at any time, however briefly, during the course of the "private meeting;"

c) The approximate time of day the "private meeting" began and the approximate time it ended;

d) Whether any audio or video recording was made of any portion of the "private meeting;"

e) Whether any minutes or informal notes were taken of the "private

meeting," and if so the name of the person or persons taking such informal notes or minutes;

f) Whether you received or read the "updated summary on the entire beach property issue , for distribution to the Trustees in anticipation of a private meeting" referred to in Mr. Brooke's October 11, 2006 Memorandum marked as Plaintiff's Exhibit 171 attached hereto, and if so, the approximate date you received and/or read said "updated summary;"

g) Whether you have under your custody or control a copy of the "updated summary on the entire beach issue" referred to by Mr. Brooke in his Memorandum of October 11, 2006, Exhibit 171 attached hereto?

ANSWER NO. 3

Not applicable.

INTERROGATORY NO. 4

Starting from January 1, 2006 and continuing to the date of your Answers to these Interrogatories, please set forth each and every meeting you had or were invited to attend at which any two or more other IVGID Trustees were in attendance, and which was treated as a "private meeting" of the kind referred to in Exhibit 171 attached hereto, and for each such "private meeting" state:

a) The date of each such meeting;

b) The name and address of the location at which each such meeting took place;

c) The name of the individual or individuals calling such meeting, and the means by which you were notified thereof;

d) The approximate time of day each such meeting commenced and ended;

e) The name of each individual present in person or by telephone or other remote means for whatever period of time during the course of each such meeting;

f) Whether any minutes or informal notes, or audio or video recordings were taken or made of each such meeting, and if so the name of the person or persons with

custody or control over any such records or documents; and

g) In general terms, the topics discussed at each such meeting.

ANSWER NO. 4

Objection. Interrogatory No. 4 seeks information which is not reasonably calculated to lead to the discovery of admissible evidence. Although it is unclear, Interrogatory No. 4 appears to seek information regarding Plaintiff's Fifth Cause of Action concerning alleged violations of Nevada's Open Meeting Law. See paragraph 121 of Plaintiff's First Amended Complaint. In accordance with the provisions of NRS 241.037(3) any suit brought against IVGID under NRS 241.037 which seeks compliance with the provisions of Chapter 241 of the NRS must be brought within 120 days after the action objected to was taken by IVGID. Plaintiff's First Amended Complaint was filed in this matter on 4/16/08. Accordingly, to the extent that Plaintiff is entitled to any information regarding any meetings by the IVGID Board of Trustees with its legal counsel to discuss potential or threatened lawsuits, such information is limited to meetings which took place on or after 12/14/07. Interrogatory No. 4 seeks information concerning meetings of the IVGID Board and its counsel to discuss pending or threatened lawsuits as far back as 1/1/06.

Without waiving this objection, I recall a meeting with legal counsel Gordon DePaoli, Esq., Scott Brooke Esq. and other IVGID Board members to discuss potential or existing litigation in March of 2008. The meeting was requested by legal counsel and took place at 893 Southwood Blvd., Incline Village, Nevada. I do not recall the time of day the meeting took place and I took no notes concerning same, nor am I aware of any notes which were taken concerning this meeting. The matters discussed at the meeting are protected by the attorney client privilege.

Further, without waiving this objection, I also recall a meeting with legal counsel Scott Brooke, Esq. and Stephen C. Balkenbush, Esq. to discuss existing litigation in May of 2008. I believe the entire Incline Board of Trustees attended this meeting. The meeting was requested by Scott Brooke, Esq. The meeting took place at 893 Southwood Blvd., Incline Village, Nevada. I took no notes concerning same, nor am I aware of any notes which were taken concerning this meeting. The matters discussed at the meeting are protected by the attorney client privilege.

INTERROGATORY NO. 5

Did you attend a non-public meeting on or about April 23, 2008 with other Trustees at which issues of First Amendment rights and Free Expression on the IVGID Beach Properties were discussed?

ANSWER NO. 5

No.

INTERROGATORY NO. 6

If your answer to the foregoing Interrogatory No. 5 is affirmative, state to the best of your knowledge:

a) Who called the meeting that took place on or about April 23, 2008?

b) The name of each individual who was present in person or by telephone or other remote device during any part of that meeting of April 23, 2008, and in what capacity each such individual appeared;

c) Whether the main topic of discussion during this meeting on or about April 23, 2008, was the adoption of what was to become Policy 136?

d) Whether any other topic was discussed during that meeting on or about April 23, 2008, and if so what?

e) Whether during the discussion on or about April 23, 2008 the 1968 Deed to the Beach Properties or the Restrictive Covenant therein was raised by any participant, and if so, the name of the participant(s) and the general contents of any discussion arising therefrom.

f) Whether during the discussion on or about April 23, 2008 the Nevada Open Meeting Law was raised by any participant, and if so, the name of the participant(s) and the general contents of any discussion arising therefrom.

ANSWER NO. 6

Not applicable.

INTERROGATORY NO. 7

Are you aware whether IVGID made an audio recording of the April 30, 2008 Board of

Trustees Meeting, and if it did, please state who has custody and control over that recording.

ANSWER NO. 7

Yes. The person who has custody of the audio recording of this meeting is Susan Herron, secretary to the IVGID Board of Trustees.

DATED this 5th day of September, 2008.

THORNDAL, ARMSTRONG,
DELK, BALKENBUSH & EISINGER

By _____
STEPHEN C. BALKENBUSH, ESQ.
6590 South McCarran Blvd., Suite B
Reno, NV 89509
(775) 786-2882

Attorneys for Defendants
INCLINE VILLAGE GENERAL IMPROVEMENT DISTRICT, JOHN A. BOHN, GENE BROCKMAN, BEA EPSTEIN, CHUCK WEINBERGER and ROBERT C. WOLF

VERIFICATION

STATE OF NEVADA)
: ss.
COUNTY OF WASHOE)

COMES NOW, ROBERT C. WOLF, being duly sworn, deposes and says as follows:

1. That he has read the above and foregoing **ROBERT C. WOLF'S ANSWERS TO PLAINTIFF'S INTERROGATORIES (First Set)** and knows the contents thereof.

2. That the same is true of his own knowledge, except for those matters stated upon information and belief, and as to those matters he believes them to be true.

ROBERT C. WOLF

SUBSCRIBED and SWORN to before me this 8th day of September, 2008.

NOTARY PUBLIC

SUSAN A. HERRON
Notary Public - State of Nevada
Appointment Recorded in Washoe County
No: 99-2758-2 - Expires December 8, 2010

CERTIFICATE OF SERVICE

Pursuant to FRCP 5(b), I certify that I am an employee of Thorndal, Armstrong, Delk, Balkenbush & Eisinger, and that on this day I deposited for mailing at Reno, Nevada the original of **Robert C. Wolf's Answers to Plaintiff's Interrogatories (First Set)**, addressed as follows:

Steven E. Kroll, Esq.
Post Office Box 8
Crystal Bay, NV 89402

DATED this 5th day of September, 2008.

Susan Balkenbush

CERTIFICATE OF ELECTRONIC SERVICE

Pursuant to Rule 5(b) FRCP, I certify that I am the attorney for Plaintiff in the above entitled action, and that on this date I caused a true and correct copy of the **"Plaintiff's Reply to Opposition to Motion to Compel Discovery and for Sanctions, Exhibits A, B, and C"** herein to be served upon the parties or attorneys by electronically filing the same with this Court pursuant to and in compliance with its CM/ECF filing system, to which the following named attorney for all named defendants is a signatory:

Stephen C. Balkenbush, Esq.
Thorndal, Armstrong, Delk, Balkenbush & Eisinger
6590 South McCarran Blvd. Suite B
Reno, Nevada 89509

DATED: this 22nd day of Sepember, 2008.

STEVEN E. KROLL