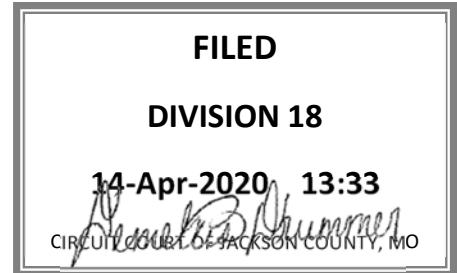


**IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI  
AT KANSAS CITY**

ERIC SCHULTE, et al., )  
)  
Plaintiffs, ) Case No. 1916-CV15246  
)  
v. ) Division 18  
)  
PARK RESERVE, LLC, et al., )  
)  
Defendants. )



**ORDER**

NOW, before the Court, is Plaintiffs’ Motion for Enforcement of Discovery, filed November 26, 2019. Defendants filed their response on January 6, 2020, and Plaintiffs filed their Reply on January 17, 2020. On April 7, 2020, the Court conducted a telephonic hearing which was attended by Mark W. Schmitz for Plaintiffs and by Philip A. Klawuhn for Defendants.

After reviewing the record and hearing the Parties’ arguments, the Court deems that the Motion should be, and is hereby, **GRANTED**.

A summary of the Court’s specific rulings follows:

**Interrogatories.**

Interrogatory 2 is the same for Defendant Park Reserve, LLC and Defendant Interstate Underground Warehouse & Industrial Park, Inc. (“Interstate Underground”), and asks for the identity of fact witnesses:

Identify, by name, last known cell phone number, and last known residential address, each person YOU<sup>1</sup> know to have knowledge and/or whom YOU believe to have knowledge of any of the matters alleged in any of the Pleadings in this lawsuit, each person from whom YOU have sought to gather information and/or preserve testimony in connection with this lawsuit, each person from whom YOU have received information in connection with this lawsuit, and each person from whom YOU have received document(s) and/or information to assist in responding to any discovery requests directed at YOU in this lawsuit.

Defendants’ privilege objections are **OVERRULED**.

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<sup>1</sup> YOU was defined to refer to the recipient of the discovery requests. Accordingly, for the interrogatories and document requests directed at Park Reserve, LLC, YOU refers to Park Reserve, LLC. For the interrogatories and document requests directed at Interstate Underground, YOU refers to Interstate Underground.

Interrogatory 3 to Park Reserve, LLC sought the identity of members of Park Reserve, LLC, along with basic information about each member:

For each person or entity who is or was a member of Park Reserve, LLC at any time on or after February 28, 2013, identify the following:

- a. Their name;
- b. If member of Park Reserve, LLC, before or after<sup>2</sup> February 28, 2013;
- c. Whether they are a current or former member;
- d. If they are a former member, did membership terminate before or after<sup>3</sup> February 28, 2013;
- e. Their last known address; and,
- f. For each current member of Park Reserve, LLC, identify their current membership share (percentage);
- g. Whether they have, or had at any time, authority to make decisions on behalf of Park Reserve, LLC independent of any other member.

Park Reserve, LLC objected on temporal scope grounds, on relevance grounds, and on the grounds that this request has more than two sub-parts. These objections are all **OVERRULED**.

Interrogatory 4 asked Park Reserve, LLC to describe the nature of its relationship with Interstate Underground:

Describe the nature of YOUR relationship, if any, with Interstate Underground Warehouse & Industrial Park, Inc. If that relationship has changed at any time on or after February 28, 2013, describe the date, nature, and reason for each change.

Park Reserve, LLC did not object to this request, but it also has not responded. It is ordered to respond within **FOURTEEN (14) DAYS** of the date of this Order.

Interrogatory 5 asked Park Reserve, LLC to identify the individuals responsible for handling consumer complaints:

Identify, by name and job title, all persons who were responsible for reviewing, investigating, and/or responding to consumer complaints YOU received on or after February 28, 2013. If any of these persons are no longer in YOUR employ, also identify their last known cell phone number (or home phone, if cell phone is unavailable) and last known residential address.

Defendant objected to the temporal scope of this request, along with a relevance objection, and as having more than two subparts. These objections are **OVERRULED**.

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<sup>2</sup> If on or after February 28, 2013, specify date of membership.

<sup>3</sup> Same as footnote 2

Interrogatory 6 is the same for both Park Reserve, LLC and Interstate Underground, and asked for any statements made by Plaintiffs which contradict any allegations in the Petition:

If YOU contend one or both of PLAINTIFFS<sup>4</sup> made any statements against interest, admissions, and/or statements which contradict, in any way, any of the allegations made in the Petition, identify what was said, the date and time one or both of PLAINTIFFS made the statement/admission, and all persons who were present at the time of the statement/admission.

Missouri Supreme Court Rule 56.01(b)(3) expressly entitles Plaintiffs to this discovery, and accordingly any objection to this request is **OVERRULED**.

Interrogatory 7 asked for the identity of any architects, engineers, and consultants used as part of the conversion of the Trinity Lutheran Hospital into Park Reserve:

Identify any and all architects, engineers, and consultants YOU used at any phase during the remodel or construction of Park Reserve. For each such person or entity, provide their name, last known address, last known telephone number, date(s) of work, and nature of work done.

Defendants objected on the basis of temporal scope and as seeking irrelevant information in that it relates to the other buildings of Park Reserve. These objections are **OVERRULED**.

Interrogatory 8 was the same for Park Reserve, LLC and Interstate Underground, and asked for the identification of any policies which, if followed, could or would prevent false disclosures or representations about issues such as amenities, roof leaks, and/or mold:

Identify and describe in detail all policies, practices, and procedures, written or unwritten, which, if followed, could or would have prevented a false and/or inaccurate disclosure of property amenities, failure to disclose water leakage from the roof, and/or failure to disclose the presence of mold at Park Reserve to PLAINTIFFS prior to their purchase of the CONDO from YOU, including what steps were to be taken, by whom, when, and any oversight or enforcement mechanism(s) for the policies, practices, and/or procedures.

Defendants objected to this request as argumentative, speculative, assuming facts not in evidence, and as having more than 2 sub-parts. These objections are **OVERRULED**.

Interrogatory 9 asked for the identity of any of Park Reserve, LLC's employees or agents

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<sup>4</sup> PLAINTIFFS was defined to refer individually and collectively to the two named Plaintiffs.

who interacted with Plaintiff, along with the training they received (if any):

For each of YOUR employee(s), agent(s) (or other persons acting on YOUR behalf) who interacted with one or both of PLAINTIFFS, identify and describe all training they received concerning disclosure of property amenities and potential issues at a property to potential buyers, including when they received that training, what that training entailed, how long that training lasted, who trained them, and any oversight measures to ensure that the training was effective.

Defendant objected to this request only on the basis that it contains more than 2 sub-parts. This objection is **OVERRULED**.

Interrogatory 10 asked for the identification of anyone who interacted with Plaintiffs while acting at Park Reserve, LLC's instruction. If Defendants cannot produce those people without the need for a subpoena, this request also asked for their contact information:

Identify each of YOUR employee(s), agent(s), independent contractor(s), and other persons acting on YOUR behalf or instruction who interacted with one or both of PLAINTIFFS. For each person whom YOU cannot or will not produce for a deposition without the need for a subpoena, also identify their last known cell phone number and last known address.

Defendant did not object to this request, it simply did not respond. It is ordered to respond within **FOURTEEN (14) DAYS** of the date of this Order.

Interrogatory 11 asked Park Reserve, LLC to identify what representations it made to Plaintiffs about the amenities, roof leak, and mold, along with the date of each representation and who made the representations:

Identify all representation(s) YOU, or any person(s) or entity(ies) acting on YOUR behalf or instruction, made to one or both of PLAINTIFFS concerning property amenities, water leakage from the roof, and/or the presence of mold at Park Reserve, the date of the representation, and who made the representation.

Defendant objected to this request only on the basis that it contains more than 2 sub-parts. This objection is **OVERRULED**.

Interrogatory 12 asked Park Reserve, LLC to identify all steps it took to maintain, repair, upgrade, or replace the roof of the Yellowstone building (in which Plaintiffs reside). If those steps involved outside contractors, it requires the identification of the contractors and basic information

about those contractors:

Identify all steps taken to repair, maintain, upgrade, and/or replace the roof of the Yellowstone building at Park Reserve, along with the date of each step and who took the step. If any outside contractors were used, identify the name, last known address, last known telephone number, date(s) of service, and nature of work done, for any and all such contractors.

Defendant objected to this request only on the basis that it contains more than 2 sub-parts. This objection is **OVERRULED**.

Interrogatory 13 asked Park Reserve, LLC to identify everything it did to attempt to remediate mold at Park Reserve, including in any common areas:

Identify all steps taken to remediate the presence and/or growth of mold in any condo and/or common space at Park Reserve, along with the date of each step and who took the step. If any outside contractors were used, identify the name, last known address, last known telephone number, date(s) of service, any mold remediation certifications, and nature of work done, for any and all such contractors.

Defendant objected to this request on the basis of temporal scope, relevance, and as having more than 2 sub-parts. These objections are **OVERRULED**.

Interrogatory 14 asked Park Reserve, LLC to identify all of its agents and employees who participated in mold remediation at Park Reserve:

For any of YOUR agents and/or employees who assisted, supervised, or otherwise participated in mold remediation, including drywall removal, within the CONDO<sup>5</sup> or any other condo and/or common space within Park Reserve, identify any mold remediation certifications and mold remediation training for each person.

Defendant objected to this request on the basis of temporal scope, relevance, and as having more than 2 sub-parts. These objections are **OVERRULED**.

Interrogatory 15 asked Park Reserve, LLC to identify all of its maintenance personnel who performed any maintenance, repair, or remediation work at Park Reserve:

Identify all of YOUR maintenance personnel who have performed any maintenance, repair, and/or remediation work at Park Reserve on or after February 28, 2013. If any of those personnel are no longer in your employ, identify the date they left, the reason they left, and their last known address.

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<sup>5</sup> CONDO was defined to refer to the specific unit in which Plaintiffs reside.

Defendant objected to this request on the basis of temporal scope, relevance, and as having more than 2 sub-parts. These objections are **OVERRULED**.

### **Document Requests**

Document Request 2 asked Park Reserve, LLC to produce all advertisements pertaining to amenities at Park Reserve dating back to February 28, 2013:

A copy of all advertisements YOU posted and/or utilized at any time on or after February 28, 2013, which discuss or disclose any current or future amenities at Park Reserve.

Defendant objected to this request on the basis of temporal scope and relevance as to the other buildings. These objections are **OVERRULED**.

Document Request 4 asked for Park Reserve, LLC's Operating Agreement, including any modifications:

A copy of YOUR current LLC operating agreement. If YOUR operating agreement has been modified at any time on or after February 28, 2013, produce a copy of each modification.

Defendant initially objected to this request, but later produced portions of the Operating Agreement. Plaintiffs posit that the Operating Agreement, as produced by Defendant, is incomplete. To the extent there are missing pages, Defendant is ordered to produce a complete copy. Further, if there have been any modifications to the Operating Agreement, Defendant shall produce those modifications.

Document Request 5 asked for a copy of Park Reserve, LLC's bylaws:

A copy of YOUR current bylaws. If YOUR bylaws have been modified at any time on or after February 28, 2013, produce a copy of each modification.

Defendant initially objected, and then later supplemented "without waiving" its objections, claiming that there are no responsive documents. The Court orders Defendant produce (if any) all documents withheld on the basis of the objections.

Document Request 6 asked for all disclosure documents Park Reserve, LLC gave to

Plaintiffs:

A copy of all disclosure documents YOU (and/or anyone acting on your behalf or instruction) provided to PLAINTIFF(S) concerning the CONDO and/or Park Reserve.

Defendant objected to the phrase “disclosure documents” as vague. This objection is **OVERRULED**, as in the context of this case.

Document Request 8 asked Park Reserve, LLC to produce statements made by Plaintiffs, and was the same as Document Request 4 to Interstate Underground:

All written or recorded statements made or given by PLAINTIFFS, including but not limited to, emails, text messages, recorded phone calls, recorded in-person meetings, notes from phone calls, notes from in-person meetings, deposition transcripts, affidavits, and declarations. If known, identify the date and time of each statement.

Rule 56.01(b)(3) entitles Plaintiffs to this information, so all objections to these requests are **OVERRULED**.

Document Request 9 asked for conversations Park Reserve, LLC had with its seller’s agent concerning amenities, code violations, elevators fire alarm systems, fire suppression systems, leaks, and/or mold at Park Reserve:

All conversations on or after February 28, 2013 between YOU and any of your Seller’s Agents (i.e. realtors) concerning the current and/or future amenities, any code violations, the elevators, the fire alarm systems, the fire suppression systems, leaks, and/or mold at Park Reserve.

Defendant objected to the temporal scope of this request, and to the fact that it requests information to multiple buildings. Defendant also objected that “conversations” was vague. These objections are **OVERRULED**.

Document Request 10 asked Park Reserve, LLC to produce all conversations it had with the Homeowner’s Association about amenities:

All conversations on or after February 28, 2013 which YOU have had with the Park Reserve Homeowner’s Association concerning the current and/or future amenities at Park Reserve.

Defendant objected to the request based upon its temporal scope and the fact that it seeks

information as to the other buildings. Defendant also objected to “conversations” as vague. These objections are **OVERRULED**.

Document Request 11 asked Park Reserve, LLC to produce all notices given to residents and potential residents about amenities:

All notices YOU have given to any resident and/or potential resident of Park Reserve concerning the current and/or future amenities at Park Reserve.

Defendant objected to the temporal scope of this request and to the fact that it seeks information about other buildings. Defendant also objected to “notices” as vague. The Court **SUSTAINS** Defendant’s vague objection.

The Court orders the Defendants to produce any written, documented, recorded, or verifiable correspondence, advertisement or reference concerning the current and/or future amenities at Park Reserve.

Document Request 12 asked Park Reserve, LLC to produce conversations it had with the Kansas City Fire Department concerning the elevators, occupancy certificates, fire code, fire suppression systems, and/or fire alarm systems at Park Reserve:

All conversations on or after February 28, 2013 which YOU have had with the Kansas City Fire Department concerning the elevators, occupancy certificates, fire code compliance and violations, fire suppression systems, and/or fire alarm systems at Park Reserve.

Defendant objected to the temporal scope of this request, and insofar as it seeks information about multiple buildings. Defendant also objected to “conversation” as vague. These objections are **OVERRULED**.

Document Request 13 mirrors request 12, but seeks conversation with the Kansas City Fire Marshal:

All conversations on or after February 28, 2013 which YOU have had with the Kansas City Fire Marshal concerning the elevators, occupancy certificates, fire code compliance and violations, fire suppression systems, and/or fire alarm systems at Park Reserve.

Defendant made the same objections as to request 12. They are similarly **OVERRULED**.



Document Request 14 mirrors requests 12 and 13, but seeks conversations with the City of

Kansas City, Missouri:

All conversations YOU have had with the City of Kansas City, Missouri concerning the elevators, occupancy certificates, fire code compliance and violations, fire suppression systems, and/or fire alarm systems at Park Reserve.

Defendant made the same objections as to request 12 and 13. They are similarly **OVERRULED**.

Document Request 18 asked for a copy of any complaints alleging similar misconduct to what Plaintiffs alleges in this case:

All complaints YOU received during the TIME PERIOD<sup>6</sup> from any person or entity, including from any state or federal attorney general or agency, any consumer watchdog group(s), any branch of the better business bureau, and/or from consumers or their attorneys, in which YOU were alleged, in any way, to have misrepresented amenities available at any one or multiple of YOUR properties, failed to disclose the presence of mold, fire code violations, flooding, and/or water leakage from a roof prior to the sale of one of YOUR properties, and/or failed to provide timely and/or adequate maintenance and/or repairs at any one or multiple of YOUR properties, along with a copy of YOUR response to those complaints.

Defendant objects to the temporal scope of this request, and to the relevance as it seeks information about other buildings. These objections are **OVERRULED**.

Document Request 19 asks Park Reserve, LLC for a copy of other lawsuits alleging violations of the Missouri Merchandising Practices Act, and is the same as Document Request 15 to Interstate Underground:

If YOU have been a party to any lawsuit or arbitration (other than this lawsuit) which was commenced or in any state of pendency during the TIME PERIOD, and in which YOU were alleged, in any way, to have violated the Missouri Merchandising Practices Act, produce a copy of all pleadings in those lawsuit(s) and arbitration(s).

Defendants objected to the temporal scope of these requests, and to the extent they seek information about other buildings. These objections are **OVERRULED**.

Document Request 21 asked Park Reserve, LLC to produce all remodel designs, blueprints, and plans, including drafts:

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<sup>6</sup> TIME PERIOD was defined as February 28, 2013-present.

A copy of all remodel designs, blueprints, and/or plans for Park Reserve. This is to include both the Yellowstone and the Grand Teton buildings, and also includes drafts.

Defendant objected to the temporal scope of this request and to the extent it seeks documents pertaining to other buildings. Plaintiff also posits that this request also seeks the as-built drawings.

These objections are **OVERRULED**.

Document Request 22 asked for all engineering inspections and reports for Park Reserve:

A copy of all engineering inspections and/or reports for Park Reserve.

Defendant objected to the temporal scope of this request and to the extent it seeks information for other buildings. These objections are **OVERRULED**.

Document Request 23 asked for all architectural inspections and reports for Park Reserve:

A copy of all architectural inspections and/or reports for Park Reserve.

Defendant made the same objections as it did to Document Request 22, and they are similarly **OVERRULED**.

Document Request 24 seeks amenities plans:

A copy of all plans, designs, and/or blueprints for all amenities at Park Reserve.

Defendant objected to temporal scope and to the extent the request seeks information about other buildings. Plaintiff also posits that this request also seeks the as-built drawings. These objections are **OVERRULED**.

Document Request 25 seeks permits and applications:

All permits and permit applications for Park Reserve, including for construction, remodeling, designing, demolition, the elevators, and the fire suppression and alarm systems.

Defendant objected to the temporal scope of this request and to the extent it seeks information about other buildings. These objections are **OVERRULED**.

Document Request 26 seeks occupancy certificates and applications:

All occupancy certificates and applications for Park Reserve.

Defendant objected to the temporal scope of this request and to the extent it seeks information about other buildings. These objections are **OVERRULED**.

Document Request 27 seeks the plans for fixing any water leaks at Park Reserve:

All plans, designs, and/or blueprints for fixing any water leaks at Park Reserve.

Defendant objected to the temporal scope of this request and to the extent it seeks information about other buildings. These objections are **OVERRULED**.

Document Request 28 seeks the plans for mold remediation at Park Reserve:

All plans, designs, and/or blueprints for mold remediation at Park Reserve.

Defendant made the same objections as to document request 27, and they are similarly **OVERRULED**.

Document Request 31 seeks communications with the Kansas City Fire Department about inspections and fire code violations:

All communications on or after February 28, 2013 between YOU or any of YOUR agents and/or employees and the Kansas City Fire Department discussing inspections and/or fire code violations at Park Reserve.

Defendant objected to the temporal scope of this request to the extent it seeks information about other buildings. These objections are **OVERRULED**.

Document Request 32 seeks communications with the City of Kansas City, Missouri about the elevators, elevator inspections, and/or elevator code violations at Park Reserve:

All communications on or after February 28, 2013 between YOU or any of YOUR agents and/or employees and the City of Kansas City, Missouri discussing any elevator, elevator inspection, and/or elevator code violation at Park Reserve.

Defendants objected to the temporal scope of this request and to the extent it seeks information about other buildings. These objections are **OVERRULED**.

Document Request 33 asked Park Reserve, LLC for policies and procedures for the handling of complaints, and is the same as Document Request 29 to Interstate Underground:

All policies, procedures, and practices YOU have implemented or used at any time during the TIME PERIOD which govern or affect the way consumer complaints are handled,

investigated, and/or answered. If any of those policies, procedures, and/or practices have been modified in any way during that time, produce a copy of each such modification and identify the date each such modification became effective.

Defendants objected to the temporals cope of this request and to the extent it seeks information about other buildings. These objections are **OVERRULED**.

Defendants Park Reserve, LLC and Interstate Underground shall supplement their discovery responses in accordance with the dictates of this Order within **FOURTEEN (14) DAYS** of the date of this Order. Defendants shall file a Certificate of Compliance with this order within **FIVE (5) DAYS** of completion of the supplements. The Parties may agree to extend these deadlines without seeking Court permission, but any such agreement must be in writing.

At the conclusion of the hearing, the Court and counsel also addressed issues concerning depositions. Defendant objected to the taking of depositions due to the COVID-19 pandemic. The Court, due to the current and obvious circumstances, is cognizant and not rigid as it pertains to counsel's concerns and dilemma. However, the Court strongly urges all counsel during this time, to explore alternatives, that under different circumstances, would be unimaginable (remote depositions via telephone or videoconferencing). The Court relies on counsel's experience, professionalism and discretion in working toward a resolution without the sacrifice of personal health and safety.

**IT IS SO ORDERED.**

April 14, 2020  
DATE

  
\_\_\_\_\_  
KEVIN D. HARRELL, JUDGE

**CERTIFICATE OF SERVICE**

A copy of the foregoing was delivered to:

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Law Clerk or JAA, Division 18

