

**IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT
IN AND FOR ORANGE COUNTY, FLORIDA
CIRCUIT CIVIL DIVISION**

CENTRAL FLORIDA TOURISM OVERSIGHT
DISTRICT,

Plaintiff,

v.

WALT DISNEY PARKS AND RESORTS U.S., INC.,

Defendant.

Case No. 2023-CA-011818-O

DEFENDANT’S MOTION TO COMPEL DISCOVERY

Walt Disney Parks and Resorts U.S., Inc. (“WDPR”) moves to compel the production of discovery from Central Florida Tourism Oversight District (the “District”). In support of this motion, WDPR relies on the attached December 22, 2023 Declaration of Stephen D. Brody (the “12/22 Brody Decl.”), incorporated by reference.

INTRODUCTION

The District has repeatedly missed agreed-upon deadlines and deprived WDPR of the critical discovery it needs to develop its affirmative defenses, counterclaims, and arguments in opposition to the District’s Complaint. Despite WDPR’s good faith efforts to obtain discovery from the District, the Court’s intervention is now necessary to ensure that WDPR can fairly defend itself against the District’s claims and advance its counterclaims.

As the Court is aware, WDPR was forced to seek—and the Court granted—a 75-day continuance of the December 12 summary judgment hearing after the District: (i) failed to produce a single document for nearly two months following WDPR’s requests; (ii) broke commitments to agreed-upon deadlines; and (iii) failed to produce discovery that WDPR needs

not just to develop its summary judgment opposition, but to support its affirmative defenses and counterclaims and to rebut the allegations in the District's Complaint.

Since the Court's November 17, 2023 Order granting the continuance, the District has continued to delay providing WDPR discovery. Despite agreeing to produce requested documents and acknowledging their relevance, the District has missed multiple production deadlines—including, most recently, the date it committed it would substantially complete its production—and produced only 888 documents since the Court continued the summary judgment hearing date. The District has also refused to respond to three of WDPR's five interrogatories, which go to the heart of WDPR's defenses and counterclaims.

WDPR cannot let more time pass waiting for the District to fulfill its empty promises to produce the critical discovery WDPR needs both to defend against the District's claims and advance its own counterclaims. Moreover, even with the new March 12, 2024 summary judgment hearing date, WDPR's deadline to file its opposition is only two months away. Absent the Court's intervention, there is little hope that the District will produce outstanding discovery, not to mention with adequate time for WDPR to review it in advance of depositions or its deadline to submit its summary judgment opposition.

Accordingly, WDPR seeks the Court's intervention to compel the District, within seven calendar days of an order granting this Motion, to: (i) complete its production of documents responsive to the requests it has agreed merit a response¹; and (ii) respond to WDPR's Interrogatories Nos. 3, 4, and 5.

¹ RFP Nos. 2, 3, 4, 5, 6, 7, 8, 9, 10, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 34, 39, 40, 41, 42, 43, 53, 54, 55, and 58.

BACKGROUND²

On August 29, 2023, WDPR served the District with WDPR's First Set of Interrogatories and Requests for Production of Documents. 10/26 Brody Decl. Ex. 1. On September 28, 2023, the District served its responses to WDPR's First Set of Interrogatories and Requests for Production of Documents. 10/26 Brody Decl. Ex. 2. The District produced no documents, and responded to only two of WDPR's five interrogatories.

Two days later, on September 30, 2023, WDPR asked for the District's availability to meet and confer to discuss the District's responses and objections to WDPR's discovery requests. 10/26 Brody Decl. Ex. 3. During the parties' first meet-and-confer on October 3, 2023, the District agreed to produce documents responsive to Requests Nos. 3, 4, 5, 6, 7, 8, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 40, 41, 42, 43, and 58, without limitation, and also agreed to promptly advise whether it would agree to supplement its interrogatory answers. 10/26 Brody Decl. Ex. 4. These agreements were memorialized in a letter dated October 5, 2023. *Id.*

During a meet-and-confer teleconference on October 9, 2023, the District agreed to provide a date for substantial completion of the District's document production by October 12, 2023. 10/26 Brody Decl. ¶ 13. The District also agreed during that call to provide by October 20, 2023 supplemental responses to Interrogatories No. 1 and 2. *Id.* After October 12 came and went without the promised updates, WDPR followed up by email on October 13, 2023 and October 16, 2023. *Id.* ¶¶ 14-15.

As of October 19, 2023, the District still had not responded to WDPR's October 13, 2023 or October 16, 2023 emails, produced any documents, or provided deposition dates for its four

² WDPR's October 26, 2023 Motion to Continue Summary Judgment Hearing for 75 Days and the accompanying Declaration of Stephen D. Brody (Filing #184820959) ("10/26 Brody Decl.") provide a detailed account of WDPR's discovery efforts until that date. For the sake of brevity, WDPR does not fully recount those details here and they are incorporated by reference.

summary judgment declarants. Accordingly, on October 19, 2023, WDPR wrote to the District, explaining that it would be seeking to continue the December 12, 2023 summary judgment hearing date because, “[w]ithout any assurance that we will receive documents or be able to meaningfully review those documents before taking depositions, it is clear that we will not have the opportunity to integrate this discovery into our summary judgment briefing unless the current hearing date is vacated.” 10/26 Brody Decl. Ex. 7. The District also ignored this October 19, 2023 communication.

After business hours on October 24, 2023—and less than a month before WDPR’s deadline to file its summary judgment opposition—the District made its first production, which contained 1,209 documents and a privilege log. 10/26 Brody Decl. ¶ 19. WDPR quickly reviewed the associated metadata and determined that the documents came from just eight custodians, none of whom was a District summary judgment declarant or a member (past or present) of the Board of the District. *Id.* ¶¶ 19-20. And because most of WDPR’s discovery requests remained outstanding with less than a month before WDPR’s deadline to file its summary judgment opposition brief, on October 26, 2023 WDPR sought a 75-day continuance of the Court’s December 12, 2023 summary judgment hearing. Def’s Mot. to Continue Summary Judgment Hearing for 75 Days (Filing #184820959). The Court granted the continuance to allow WDPR time to obtain discovery, setting the new hearing for March 12, 2024. Order Granting Def’s Motion to Continue Summary Judgment Hearing for 75 Days (Filing #186406866).

The day after the continuance hearing, WDPR promptly emailed the District to set up a time to discuss discovery issues. 12/22 Brody Decl. Ex. B. On a November 14, 2023 meet-and-confer, the District agreed to provide by November 17, 2023:

- i. Supplemental responses to WDPR's Interrogatories No. 1 and 2;
- ii. A date for another partial production of documents for those RFPs for which the District agreed to produce (RFP Nos. 3, 4, 5, 6, 7, 8, 9, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 39, 40, 41, 42, 43, and 58);
- iii. A date to substantially complete the production of all documents;
- iv. Confirmation whether the District would produce documents responsive to RFPs 2, 10, 25-32, 34, and 53-55; and
- v. Confirmation whether the District would respond to or stand on its objections to WDPR's Interrogatories 3 through 5. 12/22 Brody Decl. Ex. B.

The District also acknowledged that WDPR “would like to have substantial production completed by mid-December” and stated that “[r]egarding the depositions of the 4 declarants, assuming document production is completed in December, we will likely plan for their depositions during the weeks of January 15 and 22.” 12/22 Brody Decl. Ex. B.

The District did not supplement its responses to WDPR's Interrogatories 1 and 2—originally promised by October 20, 2023—by November 17, but instead said it was “still finalizing the supplemental responses” and would not provide them until November 22. 12/22 Brody Decl. Ex. B. The District separately promised to make another production by November 21 or 22 and “have substantial production completed by mid-December.” *Id.* The District also agreed to produce documents responsive to Request Nos. 2, 10, 25-32, 34 and 53-55, and stated

that it would amend its objections (but not respond) to Interrogatory 3³ and stand by its objections to Interrogatories 4⁴ and 5⁵. 12/22 Brody Decl. Ex. B.

But the District did not produce any documents on November 22 as promised. Instead, the District emailed WDPR on November 22 to note that the production “vendor ... had a hiccup in getting [the District’s] next round of documents for production” and that the District hoped to make the production the following week, by November 28, 2023. 12/22 Brody Decl. Ex. C. The District made its second production on that date, but it consisted of only 888 documents. 12/22 Brody Decl. ¶ 14. Despite the District’s promise to substantially complete its production by mid-December and WDPR’s notice that it would seek relief from the Court if the District did not do so by December 15, 12/22 Brody Decl. Ex. C, that day passed without a production from the District—and without any further communication about when a further production might be made, let alone document production completed.

ARGUMENT

Florida’s discovery “framework allows for broad discovery in order to advance the state’s important interest in the fair and efficient resolution of disputes.” *Alterra Healthcare Corp. v. Est. of Shelley*, 827 So. 2d 936, 945 (Fla. 2002); *see also Palm Beach Newspapers, Inc. v. Burk*, 504 So. 2d 378, 382 (Fla. 1987) (confirming that Defendants’ discovery rights are accordingly

³ Interrogatory 3 requests the District to “Identify all discussions, meetings, phone conversations, or other Communications You have had concerning the Development Agreement, Restrictive Covenants, Comprehensive Plan, or Senate Bill 1604 with Florida Governor Ron DeSantis, any Person in the Office of Governor Ron DeSantis, or any agent or consultant of Governor DeSantis of his Office.” 12/22 Brody Decl. Ex. D.

⁴ Interrogatory 4 requests the District to “Identify all Persons with knowledge of the process used to identify potential candidates for and nominate members to the Board of Supervisors of the Central Florida Tourism Oversight District.” *Id.*

⁵ Interrogatory 5 requests the District to: “Identify all Persons with knowledge of the process used to identify potential candidates for Administrator of the Central Florida Tourism Oversight District.” *Id.*

“very broad”); *Towers v. City of Longwood*, 960 So. 2d 845, 849 (Fla. 5th DCA 2007) (confirming the “liberality” of the discovery process). Accordingly, parties “may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter of the pending action, whether it relates to the claim or defense of the party seeking discovery or the claim or defense of any other party.” Fla. R. Civ. P. 1.280(b)(1). A trial court is empowered to enter an order compelling discovery when a party fails to respond to requests or fails to timely produce documents. Fla. R. Civ. P. 1.380(a)(2); *see, e.g., Allendorfer v. Wood*, 449 So. 2d 1312, 1313 (Fla. 5th DCA 1984).

The District purported to agree to respond to the majority of WDPR’s document requests and has acknowledged the relevance of that discovery. 10/26 Brody Decl. Ex. 7. But saying it will respond to WDPR’s discovery means nothing when the District continues to delay. In light of the District’s repeated failures to meet its discovery obligations, WDPR cannot rely on the District’s empty promises to produce the discovery WDPR needs to defend against the District’s allegations and to advance its own counterclaims. Absent Court intervention, there is no realistic prospect that the District will produce the outstanding discovery in timely manner, including in time for WDPR to have a meaningful opportunity to review discovery before depositions or its deadline to submit an opposition to the District’s summary judgment motion. WDPR addresses in turn below each category of outstanding discovery that WDPR seeks to compel.

Documents in Response to Requests for Production: The District’s document production has been woefully deficient, containing only 2,097 documents and devoid of critical materials. For example, the District has produced only a handful of custodial files for its Board members, including just two documents for Charbel Barakat, twelve documents for Brian Aungst, Jr., and one document for former Board member Michael Sasso. *See* 12/22 Brody Decl.

¶ 14. It has not produced any custodial files for the other three current Board members, Bridget Ziegler, Ron Peri, or Chairman Martin Garcia. It has produced a total of just 25 custodial documents for District Administrator and summary judgment declarant Glenton Gilzean. *Id.* The District has repeatedly agreed that it would produce documents (and substantially complete production) by dates certain, only to let those dates pass without any document production—or even any explanation for its failure to meet agreed upon deadlines.

In these circumstances, Florida courts are empowered to and have set deadlines for a party to meet its discovery obligations. *See, e.g., Deutsche Bank Nat’l Tr. Co. v. Basanta*, 88 So. 3d 216, 217 (Fla. 3d DCA 2011) (noting “the trial court entered an order granting the motion to compel” and “require[d a party] to provide all documents responsive to the request for production” by a certain date); *Sunstream Jet Ctr., Inc. v. Lisa Leasing Corp.*, 423 So. 2d 1005, 1006 (Fla. 4th DCA 1982) (same). Doing so is critical to serve the purpose of “secur[ing] the just, speedy, and inexpensive determination of every action.” Fla. R. Civ. P. 1.010; *see also Bainter v. League of Women Voters of Fla.*, 150 So. 3d 1115, 1118 (Fla. 2014) (“full and fair discovery is essential to the truth-finding function of our justice system, and parties and non-parties alike must comply not only with the technical provisions of the discovery rules, but also with the purpose and spirit of those rules”) (cleaned up).

Accordingly, WDPR asks the Court to compel the District to complete its production of documents **within seven calendar days of an Order granting this motion**, so that WDPR has adequate time to review the discovery before taking fact depositions in January and February.

Interrogatories 3, 4 & 5: The District has refused outright to respond to three of WDPR’s five interrogatories—interrogatories that seek information directly relevant to WDPR’s counterclaims and affirmative defenses. Interrogatory 3 asks the District to identify “all

discussions, meetings, phone conversations, or other Communications You have had concerning the Development Agreement, Restrictive Covenants, Comprehensive Plan, or Senate Bill 1604 with Florida Governor Ron DeSantis, any Person in the Office of Governor Ron DeSantis, or any agent or consultant of Governor DeSantis of his Office.” 12/22 Brody Decl. Ex. D. And Interrogatories 4 and 5 seek the identities of persons with knowledge of the process to identify potential candidates for the District’s Board and Administrator roles, respectively. *Id.*

These interrogatories seek important information. They bear directly on WDPR’s counterclaims, including alleged violations of the Free Speech Clause of the Florida Constitution (Count IX) and First Amendment of the United States Constitution (Count XIII). WDPR alleges that the District acted with retaliatory intent to punish WDPR for its public statements on House Bill 1557—political speech protected by the Free Speech Clause of the Florida Constitution and First Amendment of the United States Constitution. *See* Def’s Amended Counterclaim for Declaratory, Injunctive and Other Relief at ¶¶ 130–133, 156–159. Following threats from Governor DeSantis to punish WDPR for its speech, the District retaliated against WDPR by passing the legislative declaration and by enforcing Senate Bill 1604. Through those actions, the District impermissibly interfered with the Development Agreement and Restrictive Covenants (the “Contracts”). *Id.* WDPR is entitled to know why District Administrator Glenton Gilzean and the new District Board members were selected for their respective roles—chiefly, whether the District Administrator and the new District Board were selected based on their willingness to continue the State’s campaign of retaliation against WDPR for expressing a viewpoint that Governor DeSantis and his legislative allies disagree with.

Interrogatory 3 seeks communications between the District and Governor DeSantis about the very documents they have attacked in this litigation—the Development Agreement,

Restrictive Covenants, and Comprehensive Plan. WDPR is entitled to uncover the nature of those discussions and any views expressed by Governor DeSantis or the District, such as their reason for seeking to void the Development Agreement and Restrictive Covenants. Although the Governor's public statements evidence his and the District's retaliatory purpose, Interrogatory 3 goes directly to the District's violations of the Free Speech Clause of the Florida Constitution and First Amendment of the United States Constitution by abrogating the Contracts.

Although the District objects to producing this discovery on the ground that the Board members' illicit motives are legally irrelevant, the District is wrong as a matter of law. In its objections to Interrogatory 3, the District relies on *In re Hubbard*, 803 F.3d 1298 (11th Cir. 2015), for the proposition that courts are categorically barred from considering the motives of a legislature in evaluating a challenge to a law that is facially non-discriminatory. *See* 12/22 Brody Decl. Ex. D at 10. But the District badly overreads *Hubbard*'s holding. *Hubbard* limits inquiry into legislative motive on First Amendment challenges to *generally-applicable* laws only—not First Amendment challenges to laws that specifically *target* an easily identifiable entity, as the District did here. *See Hubbard*, 803 F.3d at 1314 (citing *Ga. Ass'n of Educators v. Gwinnett Cnty. Sch. Dist.*, 856 F.2d 142, 144-45 (11th Cir. 1988)). Here, the District's actions targeted WDPR alone in retribution for protected speech. The District cannot now claim protection from *Hubbard*'s limitation on inquiry into legislative motive behind “generally-applicable” acts. Thus, any communications between the District and the Governor's Office that show “illicit motives” are plainly relevant to this case. *See, e.g., Mt. Healthy City Sch. Dist. Bd. of Educ. v. Doyle*, 429 U.S. 274, 287 (1977) (district court properly considered whether constitutionally-protected speech was a “motivating factor” behind refusal to renew a teacher's contract with a school board).

The District separately objects to Interrogatory 3 on the basis that the Board members' motives are legally irrelevant because the legislative declaration is merely the opinion and protected speech of the District through its Board. *See* CFTOD MTD at 17-18, 27. But they are wrong about that too. *Pleasant Grove City v. Summum*, 555 U.S. 460 (2009), provides no support for the District's "protected speech" claim. In *Summum*, the Supreme Court rejected a Free Speech challenge to a city's decision to exclude a private monument from a public park, explaining that the government's choice about which private monuments to place was "linked to the City's identity" and "best viewed as a form of government speech"—*i.e.*, a form of expression that was "meant to convey and ha[d] the effect of conveying a government message." *Id.* at 473-74. By contrast, the Legislative Declaration was not an identity-affirming act of government expression; it was a concrete repudiation of contractual obligations with significant commercial value to WDPR.

The District also relies on *Houston Community College System v. Wilson*, 595 U.S. 468 (2022), but that case is equally irrelevant. *Wilson* involved a First Amendment retaliation claim brought by a board of trustees member against fellow board members who issued a "purely verbal censure" of the plaintiff's behavior. *Id.* at 473-74. The Court explained that the plaintiff, as an elected official, was expected to "shoulder a degree of criticism about [his] public service," and the only "action" plaintiff challenged was "a form of speech from [his] colleagues that concern[ed] the conduct of public office." *Id.* at 478. Unlike *Wilson*, WDPR is not "one member of an elected body" being reprimanded "by other members of the same body," *id.* at 482, and the Declaration did not merely subject WDPR to "a degree of criticism," *id.* at 478. The Legislative Declaration made official findings with the immediate effect of repudiating the District's contractual obligations.

In any event, the information sought in Interrogatories 3, 4, and 5 have relevance beyond WDPR's First Amendment counterclaims. These interrogatories are also relevant to WDPR's counterclaim that the District breached its duty of good faith and fair dealing (Count V). Interrogatories 3, 4, and 5 aim to discover, among other things, whether the District, its Board members, or Administrator expressed any views about the Contracts during their hiring process or to Governor DeSantis. Views about the Contracts and the District Board's or Administrator's willingness to fulfill the wishes of the Governor are directly relevant to whether the District acted in good faith to perform under the Contracts—or, to the contrary, whether it deliberately refused to discharge its legal obligation to honor them.

Accordingly, WDPR asks the Court to compel the District to respond to Interrogatories Nos. 3, 4 and 5 **within seven calendar days of an Order granting this motion.**

CONCLUSION

For the foregoing reasons, WDPR respectfully requests that the Court grant this Motion to Compel, and require the District to complete its production of documents and respond to WDPR's Interrogatories Nos. 3, 4 and 5 **within seven calendar days of an Order granting this motion.**

Dated: December 22, 2023

Respectfully submitted.

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CERTIFICATE OF GOOD FAITH CONFERENCE

Pursuant to Fla. R. Civ. P. 1.380(a)(2), I hereby certify that a lawyer in my firm with full authority to resolve this matter had substantive conversations by telephone with Plaintiff in a good faith effort to resolve this motion before the motion was noticed for hearing. The parties have exchanged correspondence and met and conferred on numerous occasions to resolve these issues. Counsel were unable to resolve these matters, thereby necessitating this Motion.

Dated: December 22, 2023

Respectfully submitted.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing was electronically filed with the Clerk of Court by using the ECF system, which will provide electronic notification to Alan Lawson, Esquire at alan@lawsonhuckgonzalez.com, paul@lawsonhuckgonzalez.com, jason@lawsonhuckgonzalez.com, David Thompson, Esquire at dthompson@cooperkirk.com, Pete Patterson, Esquire at ppatterson@cooperkirk.com, Joe Masterman, Esquire at jmasterman@cooperkirk.com, and Megan Wold, Esquire at mwold@cooperkirk.com, A. Kurt Ardaman, Esquire at ardaman@fishbacklaw.com, Daniel W. Langley at dlangley@fishbacklaw.com and sc@fishbacklaw.com this 22nd day of December 2023.



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