UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

Andrew Reyes, Jennifer Boria, and Sonialys Boria minor by her Guardian Ad Litem Jennifer Boria PLAINTIFFS V. DEFENDANTS THE HERITAGE AT ALEXANDER HAMILTON, ALEXANDER HAMILTON ASSOCIATES, LLC PENNROSE PROPERTIES, LLC PENNROSE MANAGEMENT COMPANY JOHN & JANE DOE, I-X, , ABC CORPORATION I-X	Civil Action NO. 2:23-cv-22914-CCC-JBC Judge: Claire C. Cecchi USDJ **BRIEF IN SUPPORT OF** **FRCP 72(a) Objections to December 18, 2024 Ruling**

iii. Defendant's 26 "Responses" and Boilerplate Objections Are Frivolous As **Plaintiff Has Audio & Documentary Proofs of Inspections & City Citations *Related to This Case***, and Defendants Have Not Properly Searched Their Records And ESI as Per FRCP 33(d).

iv. Defendant's General Response that they are Not "in Possession" of *Any* Responsive "Information" or documents, *of Any Nature*, is Evasive as Per FRCP 37(a)(4), thus warranting counsel fees and costs as per FRCP 37(c)(1)(A)

v. Plaintiff Seeks An Order: Vacating the Discovery Bar, Compelling Defendants To *Substantively* Answer All 26 Interrogatories And Requests For Documents, And To Produce A Listing Of All Business Records "Searched" For Answers, And Awarding Counsel Fees And Costs Given Their On-Going Misconduct Since July Of 2024.

CASES

RULES AND STATUTES

OTHER SOURCES

BRIEF

I. Introduction

The pervasive discovery issues in this toxic tort case began on August 1, 2024, with a comprehensive deficiency letter served on defendants immediately after they provided their *non-substantive* "responses" to interrogatories and requests for documents.[1] These responses were grossly deficient, inasmuch as defendants **purported to know absolutely nothing about the multi-dwelling complex they built, rent, and manage *under formidable regulatory scrutiny***.

Defendants in fact **failed to answer *fifteen* interrogatories and *eleven* document requests** - most of the discovery sought - including **three questions which are significant** in light of this Court's July 30, 2024 opinion regarding "***evidence of negligence***", [ECF 22]. See [Counsel Certification of Dec 31, 2024]. Aware of the significance of answering these questions related to city inspections and citations, defendants boldly asserted in their responses that they knew nothing. Defendant(s) - a sophisticated multi-billion dollar company under strict regulatory scrutiny - thus claimed to be wholly unaware of any operational or substantive facts regarding the *property it manages* - particularly if these facts were adverse - as is likely given **plaintiff's proofs that inspections *were* conducted, and city complaints issued, *in relation to the issues in this case***.[2]

A comprehensive motion was then filed on August 14, 2024, in order to meet Judge Clark's August 14, 2024 deadline to "bring to the attention" of the

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[1] See [Exhibit A] (interrogatory responses), [Exhibit B] (requests for documents responses), and [Exhibit C] (deficiency letter). See also [Counsel Certification of December 31, 2024]

[2] See [Counsel Certification of December 31, 2024], and [ECF 48][Exhibit E] (Dec 18, 2024 Certification Citing Proofs of Inspections and City Complaints.)

Court any discovery disputes. [ECF 23]. To be sure, as per the August 1, 2024 deficiency letter, there was "*meet and confer*" regarding *defendant's* deficiencies, but there was no such meet and confer regarding a related *subpoena* issue - since the subpoenaed third parties simply had failed to respond. Thus, given that meet and confer was not possible as to the related *subpoena* issue, an *omnibus* motion [ECF 23] was filed on August 14, 2024, prior to a conference with Judge Clark, which highlighted the subpoena issue *as well as* defendant's comprehensive discovery deficiencies.

Nonetheless, because of the **discovery motion bar** at ¶6 of the initial scheduling order- which required "leave" prior to filing *any* discovery motion of *any* nature - Judge Clark "terminated" the motion on August 21, 2024 [ECF 25], whereupon a conference was held on September 17, 2024.

Prior to the conference Judge Clark had ordered a **joint discovery letter ("JDL")** submission, which required the parties to condense their complex briefs, certifications, and exhibits (nearly 100 pages for plaintiff in the "terminated" motion at [ECF 23]), into **two-and-a-half pages for each side**.

This severely limited JDL submission resulted in Judge Clark on September 18, 2024 "summarizing" defendant's purported lack of knowledge as to anything regarding its business, with the (inadequately informed) "finding" that defendants merely had no responsive "information" at their disposal, thus essentially **resolving *twenty six* comprehensive discovery disputes with one blanket conclusion**. [ECF 31]. No complex law was discussed, exhibits were not reviewed, and there was no individual review of the fifteen interrogatories or eleven document requests.

More fatally, the Judge did not grant "leave" for the plaintiff to re-file the "terminated" motion - thus effectively preventing proper FRCP 72 objections or an appeal - for lack of a proper record based on exhibits.

Subsequently, plaintiff on November 8, 2024 filed a motion to vacate the "discovery motion bar", [ECF #36], which Judge Clark denied on December 18, 2024 [ECF 47] - reasoning only that an appeal or FRCP 72 objections *could* be filed, but failing to discuss the fatal flaw in that JDL submission process - that it *does not allow for the creation of a proper record for review.*

II. Objections and Relief Sought

i. The Discovery Motion Bar Imposed *Ab Initio* Is Barred By The Rules And Should Be *Vacated*

This case's standing scheduling order [ECF 12], ¶6, hereinafter the "**discovery motion bar",** provides as follows:

"***no discovery motion or motion for sanctions for failure to provide discovery shall be made without prior leave of Court***.".

This Court is the only known jurisdiction which has ever imposed this restrictive discovery motion bar,[3] imposed by this Court in the initial scheduling order prior to the onset of discovery, without any formal factual findings regarding its need. Judge Clark thus made no findings, for instance, that a *pro se* litigant had filed multiple frivolous discovery motions - thereby *perhaps* warranting this rather restrictive abrogation of a litigant's rights. **As such, the discovery motion bar lacks a factual basis.**

This prohibitive motion bar also lacks a *legal* foundation, as set forth at [ECF 36] and [Exhibit F] (Nov 8, 2024 Certification), in that FRCP 16(b)(3)(B)(v) and L. Civ. R. 16(f) both contemplate a conference prior to a

[3] [Exhibit F], (Nov 8, 2024 Certification - Motion Vacate Discovery Bar, ¶36)

discovery motion - but **do not bar motions categorically**, as this was clearly not the intent of the drafters of the rules. Ibid. Indeed, the notes to the 2015 amendments to FRCP 16(b)(3)(B)(v) further state that this Court may dispense with the *conference* - but notably they do not state that this Court may *prohibit* discovery motions. Ibid, ¶44. And the motion bar also effectively prevents *proper* appeals or FRCP 72 objections - since it impedes the creation of a proper record through its use of the JDL submission process Ibid, ¶49 et seq, as depicted in the November 8 and December 2 certifications filed in this matter.[4]

More specifically, after he terminated the August 14, 2024 motion [ECF 23] - which was nearly 100 pages long with briefs, certifications, and exhibits - Judge Clark **limited the parties' submissions to a two-and-a-half page** (for each party) Joint Discovery Letter ("JDL"). He then increased this limit to three-and-a-half pages (for each party) after plaintiff filed the November 8, 2024 motion[5], yet this *slight* increase resulted in no progress - as exhibits were not properly reviewed, and Judge Clark reviewed only the three more significant unanswered questions, as well as the lack of responsive documents *generally* (without specificity). Moreover, in those JDL submissions, **defendants repeatedly asserted that they had "answered" all interrogatories, which was false as discussed *infra*, since they had only provided boilerplate objections, followed by the far-fetched statement that they know nothing about their business**.[6]

Having reviewed defendant's misleading statements in the JDL, without resorting to a detailed review of most interrogatories and documents requests, or

[4] See [Exhibit F] (Nov 8, 2024 Certification Motion Vacate Discovery Bar) and [Exhibit G](Dec 2, 2024 Cert on JDL's).

[5] See [ECF 36]. This motion specifically sought to vacate the discovery motion bar.

[6] See [ECF 29][Exhibit H], (August 27, 2024 JDL), and [ECF 43][Exhibit I] (December 16, 2024 Proposed JDL.)

any exhibits, Judge clark then issued an (inadequately informed or even misinformed) ruling which effectively sanctioned the defendant's evasive discovery practices - by supporting the **far fetched proposition that defendants know *nothing* about their operations or their business generally**. [ECF 47]. This ruling was scant on detail regarding the breadth of defendant's discovery lapses, and even **failed to cite the three key "smoking gun" interrogatories regarding "evidence of negligence,"** which defendants claimed to know *nothing* about - despite plaintiff's comprehensive **proofs that the property was inspected - and city citations issued - in connection to the issues in plaintiff's complaint**.[7]

ii. Defendant's Refusal to Answer *Twenty Six* Questions or Requests Warrants Payment of Counsel Fees and an Order Compelling *Substantive* Answers

Defendants failed to answer *eleven* document requests and *fifteen* interrogatories, at least three of which were significant - key interrogatories related to "evidence of negligence" which are relevant in light of this Court's July 30th, 2024 opinion on "evidence of negligence" [ECF 22]. See [Counsel Certification of December 31, 2024]. Moreover, as stated *supra*, defendants are sophisticated billion-dollar landlords who regularly report to governmental entities, and are therefore **reasonably expected to keep *some* records of the activities related to**

[7] [ECF 47] (Judge Clark Ruling of December 18, 2024). See [Exhibit E] (Plaintiff's December 18, 2024 Certification containing proofs of inspections and city citations) and [Counsel Certification of December 31, 2024] (containing additional proofs of city violations and inspections known to defendants). See also [Exhibit D] (Plaintiff Answer to Interrogatories Containing Proofs of Inspections and City Citations)

the properties they built, manage, maintain, and operate. This Court should therefore recognize that their representations that they know *nothing* about *anything* is **facially frivolous**[8] - and warrants fee shifting and payment of plaintiff counsel fees as per FRCP 37(c)(1)(A)[9], inasmuch as defendants have *repeatedly* failed to correct this deficiency since August 1, 2024 despite comprehensive efforts by plaintiff. See, e.g, [ECF 23] (Comprehensive Discovery Motion "Terminated" by this Court), and [ECF 36] (comprehensive motion which sought to vacate the discovery bar to permit the filing of the "terminated" motion).

Fee shifting, as well as proper orders compelling discovery or disclosure of business records "searched" as per FRCP 33(d), are further warranted given that plaintiff has formidable **proofs that inspections were conducted** - *in relation to plaintiff's complaints of mold* - and **city citations were likely issued** - also in relation to plaintiff's complaints. In fact, plaintiff produced as part of her July 30th 2024 answers to interrogatories two official **notices for inspections related to rodents**, dated August 9, 2022 and August 23, 2022.[10]

In addition, plaintiff produced the following notice from a City of Paterson inspector, with the date "*1/24/2022*" handwritten on same, along with a number, "CPT: 22-00209", which plaintiffs have confirmed is a docket number for a

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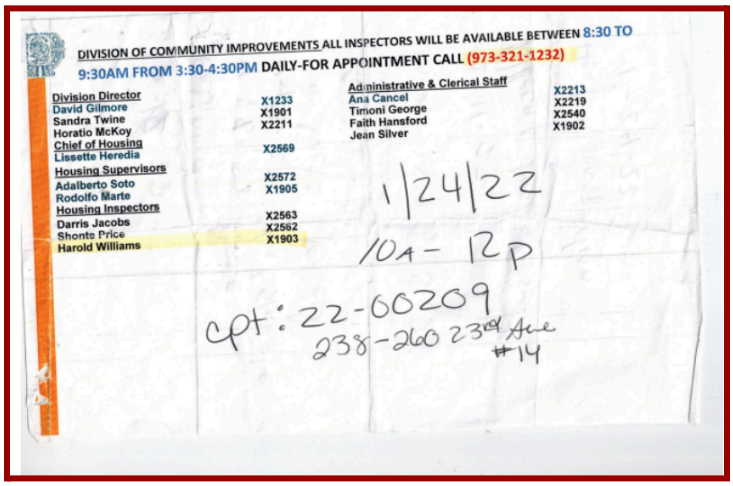
[8] As set forth in the online profile of the "designee" selected to answer interrogatories, **R.J. Saturno**, it is as likely that in fact they now nothing about the properties they manage as it is that rain pours upward from the ground up. See ¶4-5, [Counsel Certification of December 31, 2024].

[9] This rule states that "***[i]f a party fails to provide information …the court, on motion and after giving an opportunity to be heard…may order payment of the reasonable expenses, including attorney's fees, caused by the failure***."

[10] See [ECF 48] and [Exhibit E] (Dec 18, 2024 Plaintiff Cert on Inspections). See also [Exhibit D] (Plaintiff Answer to Interrogatories) and [Counsel Certification of December 31, 2024], ¶11-13.

complaint likely filed against defendants (1608 S 00209 2022), to wit:


DIVISION OF COMMUNITY IMPROVEMENTS ALL INSPECTORS WILL BE AVAILABLE BETWEEN 8:30 TO 9:30AM FROM 3:30-4:30PM DAILY-FOR APPOINTMENT CALL (973-321-1232)

Division Director
David Gilmore X1233
Sandra Twine X1901
Horatio McKoy X2211
Chief of Housing
Lissette Heredia X2569
Housing Supervisors
Adalberto Soto X2572
Rodolfo Marte X1905
Housing Inspectors
Darris Jacobs X2563
Shonte Price X2562
Harold Williams X1903

Administrative & Clerical Staff
Ana Cancel X2213
Timoni George X2219
Faith Hansford X2540
Jean Silver X1902

1/24/22
10A - 12P
cpt: 22-00209
238-260 23rd Ave #14

See [Counsel Certification of December 31, 2024], ¶11-13 and [ECF 48] and [Exhibit E] (Dec 18, 2024 Plaintiff Cert on Inspections). See also [Exhibit D] (Plaintiff Answer to Interrogatories).

In addition to two official notices of inspections of plaintiff's apartment, and a docket number for city complaint against defendants related to her complaints, further proofs of inspections and city citations consist of audio clips recorded by plaintiff as inspectors visited her property. More specifically, in July of 2022 plaintiff recorded an inspector who stated that he **"absolutely" will file a formal complaint against defendants** related to plaintiff's allegations of mold and rodents, and in April of 2022 a city inspector stated he was inclined to issue "tickets" against defendants. To wit:

- A city of Paterson inspector, circa July 20, 2022, indicated he can file a rodent complaint against Alexander Hamilton, and that he will speak to them about mold. See Video Exhibit, Minute 4:36. ***"but I can file a complaint to***

them regarding the rodents and have them responsible for doing the extermination that part absolutely will do." ***See*** http://tiny.cc/ComplaintProof [11]

●City of Paterson Official, Circa April 7, 2022, "if it was up to me I'd just write them a damn ticket" . See http://tiny.cc/April2022Inspector[12]

That defendants claim to know nothing about the multi-dwelling apartment they own, manage, and operate, in light of foregoing proofs, should shock the conscience of this Court - particularly since even in the *absence* of these compelling proofs, defendant's multiple, certified, claims of ignorance are themselves irrational, and should not be ratified by this Court. Defendant is duty bound to know answers to basic questions about the properties it built, manages, and operates - and if it claims unawareness, then it is duty bound to identify the sources it consulted. FRCP 33(d).

In addition, fee shifting as per FRCP 37(c)(1)(A), and even sanctions, are further warranted since defendants *twice* misrepresented their comprehensive discovery violations in the two-and-a-half page "JDL", by falsely asserting that they "answered" everything, and that plaintiff was merely not "satisfied" with the "answers". In fact, they

[11] See [Counsel Certification of December 31, 2024]. See also [Exhibit D] (Plaintiff Answer to Interrogatories).

[12] Ibid.

substantively answered almost nothing - instead they "responded" with every known boilerplate objection, followed by assertions that they didn't see anything, that they know nothing, that they heard nothing.[13]

iii. Defendant Should Be Ordered To Disclose To Plaintiff The Business Records Consulted or "Searched" Pursuant to FRCP 33(d) And/Or To Otherwise Provide *Substantive* Answers

FRCP 33(d) provides that :

> ***If the answer to an interrogatory may be determined by examining, auditing, compiling, abstracting, or summarizing a party's business records (including electronically stored information)****, and if the burden of deriving or ascertaining the answer will be substantially the same for either party,* ***the responding party may answer by****:*
>
> *(1)* ***specifying the records that must be reviewed,*** *in sufficient detail to enable the interrogating party to locate and identify them as readily as the responding party could; and*
>
> *(2)* ***giving the interrogating party a reasonable opportunity to examine and audit the records*** *and to make copies, compilations, abstracts, or summaries.*

The committee notes to this rule —2006 amendments further state:

> *Rule 33(d) is amended to parallel Rule 34(a) by recognizing the* ***importance of electronically stored information****. The term "electronically stored information" has the same broad meaning in Rule 33(d) as in Rule*

[13] It is indeed respectfully submitted that it is difficult to fathom a clearer case which warrants fee shifting and sanctions - defendants have asserted these "earth is flat" propositions, or "answers" to discovery, since July 30, 2024 and show no sign of complying with their obligations under the rules.

34(a). Much business information is stored only in electronic form; the Rule 33(d) option should be available with respect to such records as well.

In the case *sub judice*, defendants claim to know *nothing* about their multi-dwelling properties, as a response to no less than 26 interrogatories and document requests[14], including most prominently interrogatory questions 16, 17, and 23, as set forth at [Counsel Certification of December 31, 2024], ¶8-10. They specifically claim to lack responsive "information" regarding the questions asked or documents requested. See, e.g., [ECF 49]. **One interpretation of this vague statement of "no responsive information" is that they searched their business records for some *unknown search term* - including a search for the inspection and city citation proofs in plaintiff's possession - and found nothing. Another plausible interpretation is that they performed *no search*, but Pennrose executive RJ Saturno, the "designee" who answered interrogatories, simply "did not know" the answer - and did not bother to search.**

It is respectfully submitted that either of these two orders must be entered by this Court:

(i) Order Defendants to describe the records that they searched, e.g. emails, hard copies of files, communications to/with other departments OR

(ii) Order Defendants to conduct such a search.

And to the extent defendants audaciously claim that they searched records and found nothing - they must disclose the details of the search, e.g. sources, search terms, emails to other departments, et al, as FRCP 33(d) requires.

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[14] See [Exhibit A] (Defendant's Responses to Interrogatories), [Exhibit B] (Defendant's Responses to Request for Documents) and [Exhibit C] (August 1, 2024 Deficiency Letter). See also [Counsel Certification of December 31, 2024].

iv. Defendant Is Required, In Answering Interrogatories, To Designate A Corporate Officer With *Substantive* Knowledge

FRCP 33 (b)(1)(B) provides that:

> …interrogatories must be answered….*if that party is a public or private corporation, a partnership, an association, or a governmental agency,* by any officer or agent, who must furnish *the information available* to the party.

Ibid.

It is respectfully submitted that the phrase "*the information available*" in FRCP 33(b)(1)(B) is not incompatible with FRCP 33(d), which reasonably requires the responding or answering party to *search* business records and to provide a listing of documents searched.[15] This proposition is supported by case law which imposes **a duty** on corporate deponents to appoint a *knowledgeable* official or agent to ***substantively*** **answer interrogatories or deposition questions**.

Along those lines, FRCP 30(b)(6) states:

> *In its notice or subpoena, a party may name as the deponent a public or private corporation, ...and must describe with reasonable particularity the matters for examination. The* ***named organization must designate one or***

[15] As Per FRCP 33(d) defendants are bound to search, and attest to having properly searched, the following ESI or documents:

i. Electronic Communications Between the City and Defendants
ii. Records of Notices Mailed to Defendant by The City
iii. Records of Letters Mailed to Defendant by the City
iv. Records Notices or Letters Served with a Process Server
v. Names of counsels retained in relation to city complaints.
vi. All business records containing references to the discovery sought.

> ***more officers****…or designate other persons who consent to testify on its behalf; and it may set out the matters on which each person designated will testify. …The persons designated* ***must testify*** *about information known or reasonably available to the organization.*

Ibid. (emphasis supplied).[16]

In *Bracco Diagnostics Inc. v. Amersham Health Inc.,* C.A. No. 03-6025(SRC), 2005 U.S. Dist. LEXIS 26854, at *3 (D.N.J.2005) this Court interpreted FRCP 30, and set forth the **affirmative duties of corporate parties to provide *substantive* answers** *to questions asked*:

> *A 30(b)(6) deposition more efficiently produces the most appropriate party for questioning,* ***curbs the elusive behavior of corporate agents who, one after another, know nothing about facts clearly available within the organization and suggest someone else has the requested knowledge****,...*
>
> *....a 30(b)(6)* ***deponent is required to know the answers, and the bucks stops with him/her."*** *[citations omitted]*

Ibid. (emphasis supplied).

In *Harris v. State*, 259 F.R.D. 89 (D.N.J. 2007) this Court, citing *Bracco Diagnostics supra,* similarly held that a corporate defendant has an **affirmative duty** to provide *substantive* answers :

> *The testimony of a Rule 30(b)(6) witness ...****goes beyond the individual's personal knowledge. A corporation has an affirmative duty*** ***to***

[16] Thus, if a *substantive* answer is not known, this rule imposes a duty on the designee to search records that are "reasonably available". This has not occurred in the case *sub judice*.

> ***produce a representative who can answer questions that are within the scope of the matters described in the notice***.
>
> *See also Wright, Miller & Marcus, Federal Practice and Procedure: Civil 2d, § 2103 at pp. 30-31 (2d Ed.1994) (...."it is then the* ***duty of the corporation to name one or more persons who consent to testify on its behalf and these persons must testify as to matters known or reasonably available to the corporation****"*
>
> *(See also) Reichold, Inc. v. United States Metal Refining Company, et al., C.A. No. 03-453(DRD), 2007 WL 1428559, at *1, 2007 U.S. Dist. LEXIS 34284, at *3 (D.N.J.2007)(Rule 30(b)(6) does not require that the corporate designee personally conduct interviews, but requires that he " testify as to* ***matters known or reasonably available*** *to the organization").*
>
> ***Rule 30(b)(6) places the burden upon the deponent to "make a conscientious good-faith endeavor to designate the persons*** *having knowledge of the matters sought ...* ***and to prepare those persons in order that they can answer fully, completely, unevasively, the questions posed*** *... as to the relevant subject matters." [citations omitted]*
>
> *The* ***duty of preparation goes beyond matters personally known to the designee*** *or to matters in which the designee was personally involved, and if necessary the* ***deponent must use documents, past employees or other resources to obtain responsive information***. *[citations omitted].*

Ibid. (emphasis supplied).

DUTY TO *SUBSTANTIVELY* ANSWER EXTENDS TO INTERROGATORIES

In *Eisai Inc. v. Sanofi-Aventis U.S., LLC*, Civil Action No.: 08-4168 (MLC), 25 (D.N.J. Nov. 7, 2011), [Exhibit J] , this Court cited precedent which indicated that this **duty to answer *substantively* also extends to FRCP 33 interrogatories**:

> *"While the rule may not require absolute perfection in preparation — it speaks after all of matters known or reasonably available to the organization — it nevertheless certainly requires a good faith effort on the part of the designate to find out the relevant facts — to collect information, review documents, and* ***interview employees with personal knowledge just as a corporate party is expected to do in answering interrogatories****". Wilson v. Lakner, 228 F.R.D. 524, 528-29 (D. Md. 2005).*

Ibid. (emphasis supplied) See [Exhibit J] (*Esai v Sanofi Aventis* Opinion).

This duty to collect information, review documents, and interview employees - in the context of interrogatories as set forth by this Court in *Eisai,* can indeed be reasonably inferred from FRCP 33(d).[17]

Ergo, in the case sub *judice*, defendants are under a duty to provide *substantive* answers - and to identify the documents consulted for their *substantive* answers.

III. Conclusions and Relief Sought

Defendants refused to *substantively* answer 26 questions and

[17]It should be noted that FRCP 30(b)(6) likewise does not *explicitly* set forth a duty to answer *substantively*, as this Court merely reasonably inferred this duty from the text. In the context of **FRCP 33(d), it is respectfully submitted that this duty to answer *substantively* is somewhat clearer and more explicit** - since the rule sanctions the use of business records to "refresh the recollection" of the designee answering interrogatories.

document requests,[18] including three key interrogatories questions, to wit #16, #17, and #23, a brazen form of misconduct given this Court's July 30, 2024 opinion in this case related to "evidence of negligence" - which is precisely what those interrogatories sought.

In the two-and-a-half page JDL, they then mischaracterized as a *substantive* answer their boilerplate objections and **responses to the interrogatories which had asserted** that "they had no information." They did the same with multiple document requests - eleven of them to be sure - claiming repeatedly that "we have no information" is a *substantive* answer. In the best of cases, their evasive "answers" effectively bypass the FRCP 33(d) procedure as set forth above - as well as their duties to designate person(s) who can answer *substantively*.

Their 26 "responses" and boilerplate objections, in addition to clearly being *facially* frivolous, are also *factually* untenable, since plaintiff has audio & documentary proofs of inspections & city citations conducted *in relation to the issues set forth in plaintiff's complaint*, and defendants have not properly searched their records and ESI as per FRCP 33(d).

The foregoing, coupled with their general response that they are not "in possession" of *any* responsive "information" or documents, *of*

[18] See [Exhibit C] (August 1, 2024 Deficiency Letter) and [Counsel Certification of December 31, 2024]

any nature, ***regarding their own business***, is evasive as per FRCP 37(a)(4), and clearly and unequivocally warrants fee shifting, counsel fees and costs, as per FRCP 37(c)(1)(A), given that defendants have refused to answer and have bypassed the rules since they served answers to discovery on July 30, 2024.

Plaintiff therefore seeks an order:

(i) Vacating the discovery motion bar in anticipation of further misconduct by defendants,

(ii) compelling defendants to *substantively* answer all 26 interrogatories and requests for documents, and particularly questions 16, 17, and 23

(iii) compelling defendants to produce a listing of all business records "searched" for answers, and

(iv) awarding counsel fees and costs given their on-going misconduct since July of 2024.

Respectfully Submitted.

Santos A. Perez /s/
Santos A. Perez, Esq.
Attorney for Plaintiffs

Dated: December 31, 2024

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

Andrew Reyes, Jennifer Boria, and Sonialys Boria minor by her Guardian Ad Litem Jennifer Boria PLAINTIFFS V. DEFENDANTS THE HERITAGE AT ALEXANDER HAMILTON, ALEXANDER HAMILTON ASSOCIATES, LLC PENNROSE PROPERTIES, LLC PENNROSE MANAGEMENT COMPANY JOHN & JANE DOE, I-X, , ABC CORPORATION I-X	Civil Action NO. 2:23-cv-22914-CCC-JBC Judge: Claire C. Cecchi USDJ **Certification** **Regarding Defendant's Refusal to Conduct Discovery**

I, Santos A. Perez, of Full Age, do state:

UNANSWERED DISCOVERY WAS *FACIALLY* FRIVOLOUS

1. Defendant's refusals to answer most interrogatories and nearly all document requests are facially frivolous and implausible.

2. Defendants have essentially set forth, under oath, that they keep absolutely no records related to the multi-dwelling buildings they built, manage, and operate, including notably discovery related to city citations or complaints and city inspections (e.g. discovery related to "evidence of negligence").

3. The online profile of **Pennsore executive R.J. Saturno**, employed by Pennrose for over ten years and signatory or "designee" to the offending interrogatories, further buttresses the frivolous nature of Pennrose's far-fetched claims that they saw nothing, heard nothing, and know nothing.

4. As per the its website, Mr. Saturno thus performs the following duties at Pennrose[1]:

> R.J. Saturno is responsible for establishing, implementing, and executing institutional controls and **compliance** for the organization. With over 30 years' experience in risk management and global security initiatives, R.J. has been instrumental in identifying and implementing a number of new policies to enhance company best practices and has provided valuable training to Pennrose employees related to workplace preparedness. R.J. leads the Pennrose activities related to Section 3, Davis Bacon, and **audit protocol, investigations and institutional controls**, due diligence, and other activities related to security and legal issues.

5. Mr. Saturno thus handles investigations and compliance - and is *reasonably* expected to have first hand knowledge of the questions asked and the documents requested, particularly since **compliance reasonably includes regulatory compliance with city codes, and of necessity includes inspections and city complaints - of which he denies any knowledge**

[1] https://www.pennrose.com/about/executive-team/r-j-saturno/

whatsoever.

6. If he has no such personal knowledge, he was duty bound **to consult, or search, proper business records to provide a *substantive* answer**. FRCP 33(d), as per the accompanying brief.

THREE SIGNIFICANT *SUBSTANTIVELY* UNANSWERED QUESTIONS

7. The questions for which Mr. Saturno, and Pennrose, claim to have "no information", include the following (as well as eight others), which are significant in light of this Court's July 30th, 2024 opinion [ECF 22] regarding "evidence of negligence", to wit:

8. ***Substantively*** **Unanswered Interrogatory #23**

> 23. If you have been cited or warned by municipal, state, or federal authorities in the past ten years, in connection with potential, perceived, or actual code violations in the *subject property* or any building in the Alexander Hamilton complex, state the date and circumstances thereof. Code violation includes building codes, electrical codes, plumbing codes, and codes related to the provision of heating, air conditioning, cleanliness, rodent or pest control, and/or air quality.
>
> **Answer:**
>
> **Answering Defendant objects to this Interrogatory as it is overly broad, unduly burdensome, not limited in time and scope, is irrelevant as the information sought cannot prove or disprove the Plaintiffs' claims in this litigation, and is not reasonably calculated to lead to the admissibility of discoverable evidence.**

9. *Substantively* Unanswered Interrogatory #16

16. State whether or not Paterson's Division of Community Improvements has ever conducted inspections, particularly re-rental inspections, of plaintiff's unit, the subject property, for suspected Housing Maintenance Code Violations or for any other reason, in the past ten years. If not, please state why such re-rental inspections were not conducted *generally* and also *just prior to plaintiffs' move-in*. See: https://www.patersonnj.gov/department/division.php

Answer:

While denying Plaintiffs' allegations and denying all liability to Plaintiffs, Answering Defendant objects to this Interrogatory as it is overly broad, unduly burdensome, not limited in time and scope, is irrelevant, and not reasonably calculated to lead to the admissibility of discoverable evidence. Answering Defendant further objects to this Interrogatory as it seeks information not within Answering Defendant's possession or control. Without waiving these denials and objections, Answering Defendant respectfully refers Plaintiffs to any documents produced in connection with their subpoena(s) and/or OPRA request served upon The City of Paterson and its various divisions.

10. *Substantively* Unanswered Interrogatory #17

17. Has Paterson's Division of Health, to your knowledge, received complaints and/or taken action regarding No Heat or Rodent/Vermin infestations, as regards *any unit* in the Alexander Hamilton Complex, in the past ten years? "Action" as used herein includes warnings, citations, remediation, or any such communications with the landlord or the tenant to address issues identified by the Division of Health. https://www.patersonnjhealth.gov/department/division.php?structureid=47

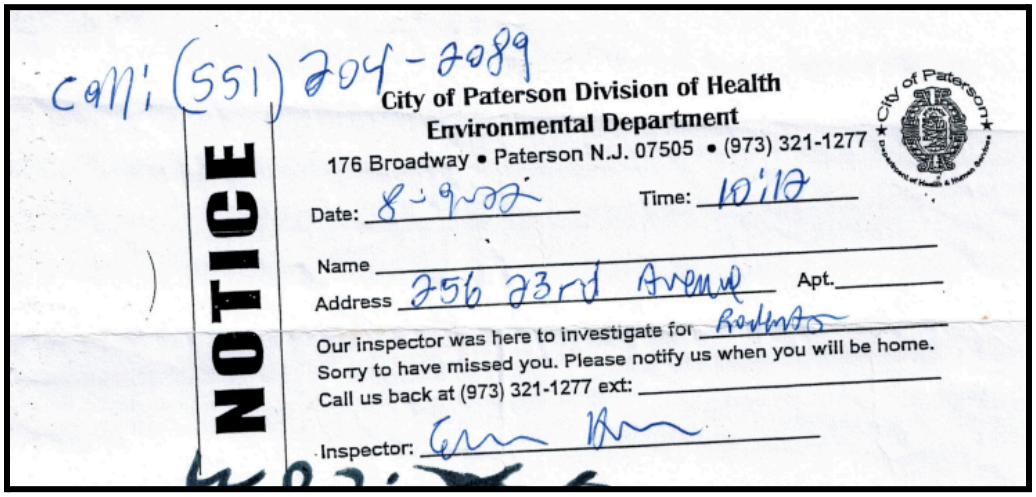
Answer:

While denying Plaintiffs' allegations and denying all liability to Plaintiffs, Answering Defendant objects to this Interrogatory as it is overly broad, unduly burdensome, not limited in time and scope, is irrelevant, and not reasonably calculated to lead to the admissibility of discoverable evidence. Answering Defendant further objects to this Interrogatory as it seeks information not within Answering Defendant's possession or control. Without waiving these objections, Answering Defendant respectfully refers Plaintiffs to any documents produced in connection with their subpoena(s) and/or OPRA request served upon The City of Paterson and its various divisions.

PLAINTIFFS HAVE DIRECT PROOFS THAT CITY CITATIONS WERE ISSUED AND INSPECTIONS CONDUCTED

11. Among plaintiff's proofs of inspections are two official **notices for inspections of plaintiff's apartment related to rodent infestation** dated August 9, 2022 and August 23, 2022, which were forwarded to defendant on

July 30th, 2024 as part of plaintiff's answers to interrogatories. See [Exhibit E] (Dec 18, 2024 Plaintiff Cert on Inspections). See also [Exhibit D] (Plaintiff Answer to Interrogatories).


NOTICE

City of Paterson Division of Health
Environmental Department
176 Broadway • Paterson N.J. 07505 • (973) 321-1277

Date: 8-9-22 Time: 10:12

Name

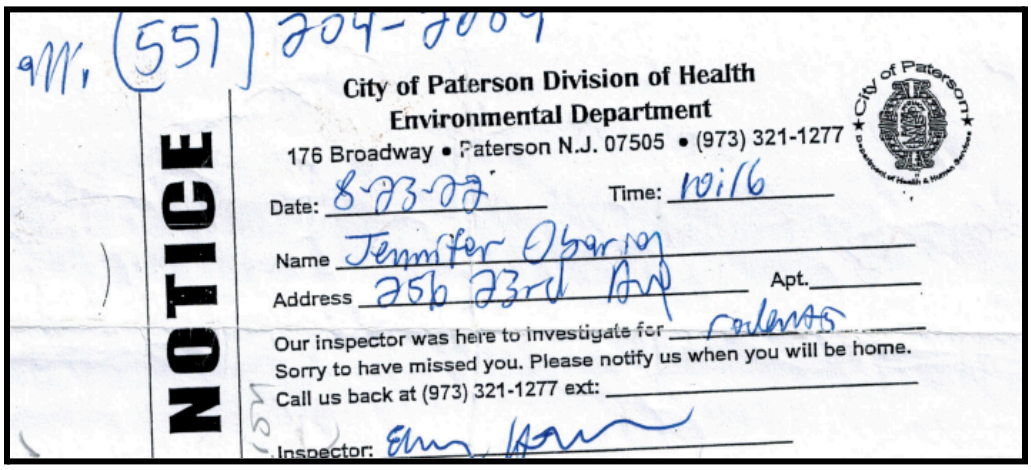
Address 256 23rd Avenue Apt.

Our inspector was here to investigate for Rodents

Sorry to have missed you. Please notify us when you will be home.

Call us back at (973) 321-1277 ext:

Inspector:


NOTICE

City of Paterson Division of Health
Environmental Department
176 Broadway • Paterson N.J. 07505 • (973) 321-1277

Date: 8-23-22 Time: 10:16

Name Jennifer Ogarro

Address 256 23rd Ave Apt.

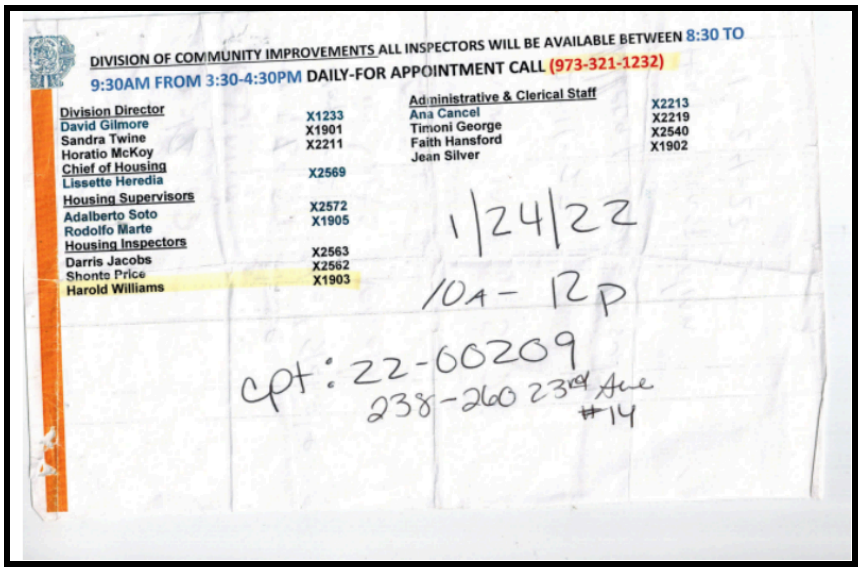
Our inspector was here to investigate for Rodents

Sorry to have missed you. Please notify us when you will be home.

Call us back at (973) 321-1277 ext:

Inspector:

12. In addition, plaintiff produced on July 30th, 2024 the following notice from a City of Paterson inspector, with the date "*1/24/2022*" handwritten on same, along with a number, "CPT: 22-00209", which plaintiffs have confirmed is a docket number for a complaint likely filed against defendants (1608 S 00209 2022).



See [Exhibit E] (Dec 18, 2024 Plaintiff Cert on Inspections). See also [Exhibit D] (Plaintiff Answer to Interrogatories).

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13. In addition to the foregoing, the following audio/video proofs, as asserted in plaintiff's answers to interrogatories, depict inspectors who stated that they would file complaints or "tickets" against defendants relative to plaintiff's complaints:

●City of Paterson Official, circa July 20, 2022, indicated he can file a rodent complaint against Alexander Hamilton, and that he will speak to them about mold. See Video Exhibit, Minute 4:36. ***"but I can file a complaint to them regarding the rodents and have them responsible for doing the extermination that part absolutely will do."***

See ***http://tiny.cc/ComplaintProof***

●City of Paterson Official, Circa April 7, 2022, "***if it was up to me I'd just write them a damn ticket"*** (upon information and belief, inspector Harold Williams). See ***http://tiny.cc/April2022Inspector***

See [Exhibit D] (Plaintiff Answer to Interrogatories).

NO DOCUMENTS PRODUCED FOR ELEVEN OUT OF FIFTEEN DOCUMENT REQUESTS

14. Defendants frivolously objected - on boilerplate grounds devoid of any analytical effort - to nearly *every* document request, and failed to produce anything responsive, with the exception of Anchor Pest and EJ Waterproofing, for which it produced invoices that plaintiff had already forwarded to them previously, and were in plaintiff's possession: [Exhibit C] (August 1, 2024 Deficiency Letter) and [Exhibit B] (Defendant's Responses to Request for Documents).

15. More specifically, defendants failed to produce *any documents* for the following eleven document requests:

INTERROGATORY	NATURE OF RESPONSE
3. **Construction/Waterproofing Documents:** Defendants asserted multiple random objections, including claims of no possession of documents.	
4. **Paterson Housing Authority Inspection or City Citation Documents:** Defendants asserted multiple random objections, including claims of no	

possession of documents.

6. **Construction Permits:** Defendants asserted multiple random objections, including claims of no possession of documents.

8. **Files Related to Known Tenant Immediately Prior to Plaintiff:** Objection on purported grounds of irrelevancy.

9. **Subject Property Photos/Videos:** Defendants asserted multiple random objections, including claims of no possession of documents.

10. **City of Paterson Division of Health Inspection or City Citation Documents:** Defendants asserted multiple random objections, including claims of no possession of documents.

11. **Paterson Community Improvements Inspection of City Citation Documents:** Defendants asserted multiple random objections, including claims of no possession of documents.

12. **Property Inspection Reports of Any Nature:**Defendants asserted multiple random objections, including claims of no possession of documents.

13. **Maintenance Documents:** Defendants asserted multiple random objections, including claims of no possession of documents.

14. **Mold/Pest Documents:** Defendants asserted multiple random objections, primarily based on irrelevancy of mold-related documents in a case exclusively about mold.

15. **All ESI Related to above requests:** Defendants asserted multiple random objections, including claims of no possession of documents.

16. Eleven out of fifteen document requests thus remain unanswered, including significant, key document requests on inspections and city citations clearly relevant as per this Court's opinion in this case, [ECF 22], on the issue of "evidence of negligence".

FIFTEEN UNANSWERED INTERROGATORIES

17. Similarly, most interrogatories were unanswered, and/or were laden w/ frivolous objections or a "response" to a different inquiry (e.g. no answer to the question asked). See [Exhibit A] (Defendant's Responses to Interrogatories) and [Exhibit C] (August 1, 2024 Deficiency Letter).

1. **Job titles and duties of employees disclosed in initial disclosures.** Defendant *repeated* the names of individuals identified in their initial disclosures, but did not answer the question regarding their job duties.

2. **Whether Apartment Had Been Inspected Prior to Tenancy.** Defendants answered a different question - whether apartment had been *cleaned* prior to move-in, which was not the question asked.

3. **Whether the kitchen or bathroom was built with (waterproof) dry wall or cement boards.** Refusal to answer.

8. **Defendant's interpretation of the June 9, 2022 MLG mold report *prior to retaining counsel.*** Refusal to answer although *report had been served on Defendants one year prior to litigation*.

9. **Whether conclusions in the expert mold report were deemed frivolous by defendant *prior to retaining counsel***. Refusal to answer. *Report had been served on Defendants one year prior to litigation*

10. **Whether defendants had consulted their own expert upon receipt of the adverse expert report on mold prior to litigation.** Refusal to answer.

11. **Date of their receipt of the damning expert report on mold, which plaintiffs served them with one year prior to litigation**. Refusal to answer.

14. **Whether defendants are "otherwise aware of prior actual or alleged mold infestation**. Refusal to answer.

16. Whether they were aware of city inspections conducted by Paterson's Division of Community Improvements on *their* property. Refusal to Answer, despite plaintiff's proofs, *supra* ¶12, which include a notice from the Division of Community Improvements.

17. Whether they have knowledge that Paterson's Division of Health received complaints and/or has taken action regarding No Heat or Rodent/Vermin infestations. Refusal to Answer, despite plaintiff's proofs, *supra* ¶11, which include a notice from the Division of Health.

21. **Whether they were aware of the February 2022 air quality study on the property - which had been forwarded to them by plaintiffs.** Refusal to Answer.

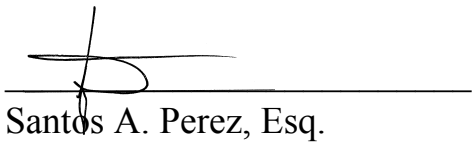
22. **Question regarding prior lawsuits by tenants**. Refusal to answer**.**

23. Question Regarding of City Citations on *their* property. Refusal to Answer, despite plaintiff's proofs, *supra* ¶12, which include a notice from the Division of Community Improvements with the docket# for a city complaint written on same.

24. **Question related to a *specific* tenant of plaintiff's unit, identified by name, whose tenancy immediately preceded plaintiff's.** Refusal to answer.

26. **Whether any tenants of defendant have died in the past ten years.** Refusal to answer.

The foregoing statements made by me are true. I am aware that if same are willfully false, I may be subject to punishment.



Santos A. Perez, Esq.
Attorney for Plaintiffs

DATED: December 31, 2024

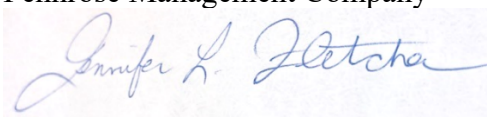
UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

JENNIFER BORIA, ANDREW REYES, AND SONIALYS BORIA, MINOR BY HER GUARDIAN AD LITEM JENNIFER BORIA Plaintiffs, v. THE HERITAGE AT ALEXANDER HAMILTON, ALEXANDER HAMILTON ASSOCIATES, LLC,PENNROSE PROPERTIES, LLC, PENNROSE MANAGEMENT COMPANY, Defendants.	**Civil Action No. 23-22914** Civil Action **DEFENDANT, PENNROSE MANAGEMENT COMPANY'S, RESPONSES TO PLAINTIFFS' INTERROGATORIES**

To: Santos A. Perez, Esq.
The Perez Law Firm
151 W Passaic St,
Rochelle Park, NJ 07662
Attorneys for Plaintiffs,
Jennifer Boria, Andrew Reyes and Sonialys Boria

PLEASE TAKE NOTICE that Defendant, Pennrose Management Company (hereinafter referred to as "Defendant"), hereby provides the following answers to the within Interrogatories. These answers are being furnished with the specific understanding that they do not constitute an adoptive admission as referenced in *Sallo v. Sabatino*, 146 N.J. Super. 416 (App. Div. 1976), *cert. denied* 75 N.J. 24 (1977) and *Skibinski v. Smith*, 206 N.J. Super. 349 (App. Div. 1985).

WOOD SMITH HENNING & BERMAN LLP
Attorneys for Defendants, The Heritage at Alexander Hamilton, Alexander Hamilton Associates, LLC, Pennrose Properties, LLC and Pennrose Management Company



By: _____
JENNIFER L. FLETCHER, ESQ.

Dated: July 30, 2024

GENERAL OBJECTIONS

Answering Defendant makes the following general objections to the enclosed Interrogatories, which are incorporated by reference in Answering Defendant's responses to each request. Each of the responses set forth below, which Defendant expressly reserves the right to amend or supplement, are submitted subject to and without waiver of these general objections.

1. Answering Defendant objects to each Interrogatory insofar as it seeks information subject to the attorney-client privilege or work product.

2. Answering Defendant objects to each Interrogatory insofar as it seeks information that is confidential and proprietary.

3. Answering Defendant objects to each Interrogatory insofar as it is vague, ambiguous, overly broad, and unduly burdensome.

4. Answering Defendant objects to each Interrogatory insofar as it is not reasonably calculated to lead to the discovery of admissible evidence and is not relevant to the subject matter of this action.

5. Answering Defendant objects to each Interrogatory insofar as it is unlimited as to time.

6. Answering Defendant objects to each Interrogatory to the extent they impose upon Answering Defendant an unreasonable burden of inquiry.

7. Answering Defendant objects to each Interrogatory to the extent it seeks information that is within the knowledge and possession of Plaintiff or other parties, or that may be more readily available from a more convenient, less burdensome, and less expensive source.

8. Answering Defendant objects to each Interrogatory to the extent it seeks information outside the scope of permissible discovery pursuant to the Rules governing the Courts of the State of New Jersey.

9. Answering Defendant objects to each Interrogatory insofar as it attempts to elicit protected information subject to the attorney-client privilege or any other applicable privilege; the attorney work product doctrine, including documents containing the impressions, conclusions, opinions, legal research or theories of the attorneys of Co-Defendant(s), or materials prepared in anticipation of litigation.

10. Answering Defendant objects to each Interrogatory to the extent it is vague, ambiguous, and imprecise in that a particular term or phrase is undefined and subject to varying interpretations.

11. Insofar as any of the foregoing objections or any of the specific objections that follow apply to each of the Interrogatories, that Interrogatory is improper.

12. Answering Defendant reserves the right to amend these answers to interrogatories as discovery continues.

DEFENDANT'S ANSWERS TO FORM C INTERROGATORIES

1. Identify the following individuals, produced as your initial disclosures, and state in detail how or why they will aid in your defenses: Pennrose personnel Ella Watson, Tiffany Harris, Simon Kegler, & Natasha Williams, and Anchor Pest Control personnel Keith Downs, Jonathan Beauchamp, Nadir Starts, and Manny Cabasso. For each of these individuals, if they performed any *specific* act or omission which gives rise to your defenses, state the date thereof while setting forth with specificity and sufficient detail the nature of their contribution to your defenses. If you contend this information is privileged, set forth the privilege and the reasons for asserting the privilege, and describe the type of work the above individuals or companies engage in generally, and why they were specifically called to service plaintiff's unit, the subject property, or to otherwise interact with plaintiffs or their unit (subject property).

Answer:

Upon advice of counsel, Answering Defendant objects to as this interrogatory as it seeks the disclosure of privileged legal communications, strategy, or otherwise cannot be answered without legal expertise. Answering Defendant further reserves the right to rely upon all documents produced by any party to this matter, as well as all medical records; police reports; witness statements and testimony; photographs; diagrams; documents produced in response to notices to produce; answers to interrogatories; expert discovery and reports; and all other materials that may be revealed or produced throughout continuing investigation and discovery and up to the time of trial.

Subject to and without waiving said objections, and upon advice of counsel: Ella Watson is a property manager. Tiffany Harris is a regional property manager. Simon Kegler is a maintenance supervisor. Natasha Williams is a former manager and no longer with Pennrose.

Upon advice of counsel, Answering Defendant further objects to this Interrogatory to as is not in possession or control of information pertaining to the Anchor Pest Control personnel.

2. Was plaintiff's unit, the "subject property", inspected *immediately before* their tenancy began, including inspection of the heating, ventilation, and air conditioning (HVAC) system, air filters, heating system, drywall (sheetrock), molding, mold accumulation, rodent infestations, rodent feces, mold growth, and/or rotten pipes (plumbing)? If yes, provide details regarding the type of inspection undertaken, e.g. was it a simple walk-through or a visual inspection with or without specialized equipment or tool? If no such inspection was done immediately prior to plaintiff moving in, and in preparation of her tenancy, please explain. If photos or videos were taken, please so state.

Answer:

Answering Defendant objects to this interrogatory as it is overly broad, unduly burdensome, not reasonably limited in time and scope, and seeks information not reasonably calculated to lead to the discoverability of admissible evidence. Upon information and belief, the apartment was cleaned and painted before the Plaintiffs moved into the subject unit.

3. Were the bathroom or kitchen walls of the *subject property*, plaintiff's unit, *originally* constructed, *or subsequently remodeled with*, drywall/sheetrock, or were water-proof boards, e.g, cement boards, used instead either during remodeling if applicable or in the original construction? Provide detail in your answer, and explain the selection of the specific type of walls used. For example, if drywall was used, was it due to budgetary constraints and/or was it a deliberate design decision? If the original construction was changed (e.g. remodeling/renovation and upgraded from drywall to cement boards, or vice versa), provide the specifics.

Answer:

Answering Defendant objects to this interrogatory as it is overly broad, unduly burdensome, not reasonably limited in time and scope, and seeks information not reasonably calculated to lead to the discoverability of admissible evidence. Without waiving these objections, Answering Defendant is not in possession of information responsive to this request and respectfully refers Plaintiff to any information may receive pursuant to any subpoenas they have issued to architecture and construction companies in this matter.

4. Have there been any recent repairs, renovations, or maintenance conducted on the HVAC, ventilation, heating, sheetrock/drywall, ceiling, flooring, molding, or plumbing of the subject property *in the last ten years*? Renovation includes replacing

sheetrock/drywall, flooring, kitchen cabinets, or major plumbing, electrical/heating, or HVAC work, and excludes a simple paint job not involving construction unless waterproof paint or sealants was/were used.

Answer:

Answering Defendant objects to this interrogatory as it is overly broad, unduly burdensome, contains undefined terms, is not reasonably limited in time and scope, and seeks information not reasonably calculated to lead to the discoverability of admissible evidence. Without waiving these objections, there have been no renovations as Plaintiffs define above in the last ten years. With respect to maintenance, Answering Defendant refers Plaintiffs to the parties referenced in their pleadings and discovery demands regarding the independent parties they have hired to service their unit. Additionally, Anchor Pest Control has serviced Plaintiffs' unit for the alleged rodent issue. P.M.R. has serviced Plaintiffs' unit to clean the air ducts. Answering Defendant reserves the right to amend and/or supplement this response throughout the course of ongoing investigation and discovery and up until the time of trial.

5. What specific remediation, repairs, or preventative measures did Defendants undertake in Plaintiffs' unit in response to their complaints of mold, no or faulty HT/AC air filter, bacteria or rodent infestation, HT/AC generally or lack of Heating, or their respiratory complaints?

Answer:

While denying Plaintiffs' allegations and denying all liability to Plaintiffs, Answering Defendant scheduled an additional service with Anchor Pest Control, Inc. to address any alleged rodent issues, and engaged P.M.R. Services, Inc. to clean the air ducts. Further, Answering Defendant has offered Plaintiffs an alternative residence at The Heritage at Alexander Hamilton, which it has held for Plaintiffs through present day, but the Plaintiffs decline to move.

6. Has the subject property, plaintiff's unit, *ever* been subjected to remediation, repairs, or cleaning, due to air quality, heating, humidity, air conditioning, plumbing, mold growth, moisture accumulation, bacteria proliferation, or rodent infestation?

Answer:

Answering Defendant objects to this Interrogatory to this extent the information sought in this demand has been asked and answered in Interrogatory Number 4. Answering Defendant objects to this interrogatory as it is overly broad, unduly burdensome, not reasonably limited in time and scope, and seeks information not

reasonably calculated to lead to the discoverability of admissible evidence. Answering Defendant further objects to the form of this question. Without waiving these objections, and while denying Plaintiffs' allegations and denying all liability to Plaintiffs, see Answering Defendant's response to Interrogatory Numbers 4 and 5.

7. Since receiving the Mold Law Group report, did Defendants attempt to relocate plaintiffs to a different unit or otherwise take remedial measures (or "remediation" as defined in the definitional section) to resolve the issues set forth in the expert report?

Answer:

While denying Plaintiffs' allegations and denying all liability to Plaintiffs, Answering Defendant objects to this Interrogatory as it requires an expert opinion and is beyond the purview of this Answering Defendant. Without waiving these denials and objections, Answering Defendant did offer Plaintiffs an alternate residence within The Heritage at Alexander Hamilton, which Plaintiffs declined and choose to remain in their current unit.

8. Said Mold Law Group expert report states, "[b]ased upon the foregoing, including the certified environmental microbiology reports from an AIHA certified microbiology laboratory in good standing and the U.S. Federal Government "CLIA" certified medical laboratory which produced the medical testing results, also in good standing with the U.S Federal Government and CLIA, it is my opinion that, based upon my observations, the above-named structure is a health hazard to all occupants." Was it the contention of defendants, prior to retaining counsel, that this expert conclusion in the report was false or fraudulent? If you assert the work product privilege, indicate the date you received the expert report, followed by the date you retained counsel. Nothing herein shall be interpreted as a waiver to move for relief, however, you should refuse to answer questions regarding your views on report prior to you having retained counsel.

Answer:

While denying Plaintiffs' allegations and denying all liability to Plaintiffs, Answering Defendant objects to this as this interrogatory calls for the disclosure of legal impressions of counsel or otherwise requires legal expertise to respond. Answering Defendant further objects to this Interrogatory as it is improper as to this Answering Defendant as it calls for an expert opinion and/or legal conclusion and is beyond the purview of this Answering Defendant. Without waiving these denials and objections, Answering Defendant leaves Plaintiffs to their proofs to establish the veracity of the claims in its expert report, and further reserves the right to amend and/or supplement this response throughout the course of ongoing investigation and discovery and up until the time of trial.

9. The expert report further states that "This opinion is based on the presence of pathogenic molds in the samples along with the presence of pathogenic bacteria and biomarkers of exposure of the pathogenic mold in the urine and/or stool of the resident. Further, by correlating the environmental and medical results, it has led me to render an opinion, with a great amount of scientific and medical certainty, that the pathogenic species offungi found in the exposure victim's mold-infested structure produced the same disease-causing mycotoxins that tested positive in the mold exposure victim's bodies." Did defendants, prior to consulting or retaining counsel, contend that this conclusion (and the correlation) was false or fraudulent? If you assert the work product privilege, indicate the date you received the expert report, followed by the date you retained counsel.

Answer:

While denying Plaintiffs' allegations and denying all liability to Plaintiffs, Answering Defendant objects to this as this Interrogatory calls for the disclosure of legal impressions of counsel or otherwise requires legal expertise to respond. Answering Defendant further objects to this Interrogatory as it is improper as to this Answering Defendant as it calls for an expert opinion and/or legal conclusion and is beyond the purview of this Answering Defendant. Without waiving these denials and objections, Answering Defendant leaves Plaintiffs to their proofs to establish the veracity of the claims in its expert report, and further reserves the right to amend and/or supplement this response throughout the course of ongoing investigation and discovery and up until the time of trial.

10. As to that same expert conclusion passage *supra*, did defendants – *prior to retaining counsel* – consult with an expert or scholar, or otherwise perform their own "research" online, to refute the scientific correlation noted in plaintiff's expert report? If they consulted an independent expert through the services of counsel, state the date thereof, and other permissible details, without revealing work-product. Disclaimer: Nothing herein shall be interpreted as a waiver by plaintiff to seek such work product in the event the information sought - to wit whether defendants knowingly ignored the expert report thereby further harming plaintiffs- cannot be obtained from less intrusive sources.

Answer:

While denying Plaintiffs' allegations and denying all liability to Plaintiffs, Answering Defendant objects to this Interrogatory as it is improper as to this Answering Defendant as it calls for an expert opinion and/or legal conclusion and is beyond the purview of this Answering Defendant. Answering Defendant further objects to this as this Interrogatory calls for the disclosure of legal impressions of counsel or otherwise requires legal expertise to respond. Answering Defendant also objects to this Interrogatory to the extent it asks about expert witnesses who may have been consulted by Answering Defendant for purposes of litigation. The Plaintiffs are not entitled to inquire about consulting expert witnesses until such witnesses have been

identified as witnesses for trial. Answering Defendant additionally objects to this Interrogatory to the extent that it seeks information protected by the attorney-client privilege and/or the work-product doctrine or seeks materials prepared in anticipation of litigation. Without waiving these denials and objections, Answering Defendant will provide a response in accordance with the Rules of Court if and when experts are retained. This answer may be amended based upon what further investigation and discovery reveal.

11. To date, defendants have not provided plaintiffs with an expert report refuting the findings of plaintiffs' expert report. Given this context, state when you first received plaintiffs' expert report, and outline with specificity the remediation (as defined in the definitional section) efforts you employed after your receipt of said report.

Answer:

While denying Plaintiffs' allegations and denying all liability to Plaintiffs, Answering Defendant objects to the form of this Interrogatory as the status of the defense expert report has no relevance on the balance of this Interrogatory. Without waiving these objections, Answering Defendant cannot pinpoint the exact date they received the expert report, but in response to Plaintiffs' general allegations as to rodent issues and air ventilation, see Interrogatories Number 4 - 5.

12. As regards the *specific* complaints regarding air quality, heating, humidity, air conditioning, plumbing, mold growth, moisture accumulation, bacteria proliferation, or rodent infestation made by plaintiffs in their first amended complaint, describe any *remediation* undertaken in response to same**,** setting forth *when you first became aware of these complaint.*

Answer:

While denying Plaintiffs' allegations and denying all liability to Plaintiffs, objection, as asked and answered.

13. Has the subject property ever been tested for mold generally, and/or for aspergillus mold, including particularly just prior to plaintiffs' move in?

Answer:

While denying Plaintiffs' allegations and denying all liability to Plaintiffs, Answering Defendant objects to this Interrogatory as it is overly broad, unduly burdensome, not limited in time and scope, and not reasonably calculated to lead to the admissibility of discoverable evidence. Without waiving these denials and

objections, upon information and belief the subject unit was not tested for mold in between the prior tenant and the Plaintiffs moving into the unit.

14. Are you otherwise aware of *prior* actual or alleged mold infestation, air quality problems, heating problems, plumbing problems, rodent infestation problems, humidity problems, or bacteria proliferation problems in the *subject property* or any building in the Alexander Hamilton complex? If so, provide the name of the source(s) who identified the infestation, names of vendors who conducted remediation, and the nature and circumstances of the issue identified and/or resolved.

Answer:

While denying Plaintiffs' allegations and denying all liability to Plaintiffs, Answering Defendant objects to this Interrogatory as it is overly broad, unduly burdensome, contains undefined terms, is not reasonably limited in time and scope, is irrelevant, and is not reasonably calculated to lead to the admissibility of discoverable evidence. Without waiving these denials and objections, Answering Defendant has provided responsive information to the extent possible to the Interrogatories herein pertaining to the Plaintiffs allegations and this lawsuit.

15. How often are the air filters in the HVAC or ventilation systems of the units at the Alexander Hamilton Complex inspected or replaced, and/or how often are such HVAC units generally (every component besides the air filter) inspected and by whom?

Answer:

While denying Plaintiffs' allegations and denying all liability to Plaintiffs, Answering Defendant objects to this Interrogatory as it is overly broad, unduly burdensome, contains undefined terms, is not limited in time and scope, is irrelevant, and not reasonably calculated to lead to the admissibility of discoverable evidence. Without waiving these objections, upon information and belief, with respect to the Plaintiffs' unit during their tenancy, P.M.R. Services, Inc. serviced the air ducts in Plaintiffs' unit.

16. State whether or not Paterson's Division of Community Improvements has ever conducted inspections, particularly re-rental inspections, of plaintiff's unit, the subject property, for suspected Housing Maintenance Code Violations or for any other reason, in the past ten years. If not, please state why such re-rental inspections were not conducted *generally* and also *just prior to plaintiffs' move-in*. See: https://www.patersonnj.gov/department/division.php

Answer:

While denying Plaintiffs' allegations and denying all liability to Plaintiffs, Answering Defendant objects to this Interrogatory as it is overly broad, unduly burdensome, not limited in time and scope, is irrelevant, and not reasonably calculated to lead to the admissibility of discoverable evidence. Answering Defendant further objects to this Interrogatory as it seeks information not within Answering Defendant's possession or control. Without waiving these denials and objections, Answering Defendant respectfully refers Plaintiffs to any documents produced in connection with their subpoena(s) and/or OPRA request served upon The City of Paterson and its various divisions.

17. Has Paterson's Division of Health, to your knowledge, received complaints and/or taken action regarding No Heat or Rodent/Vermin infestations, as regards *any unit* in the Alexander Hamilton Complex, in the past ten years? "Action" as used herein includes warnings, citations, remediation, or any such communications with the landlord or the tenant to address issues identified by the Division of Health. https://www.patersonnjhealth.gov/department/division.php?structureid=47

Answer:

While denying Plaintiffs' allegations and denying all liability to Plaintiffs, Answering Defendant objects to this Interrogatory as it is overly broad, unduly burdensome, not limited in time and scope, is irrelevant, and not reasonably calculated to lead to the admissibility of discoverable evidence. Answering Defendant further objects to this Interrogatory as it seeks information not within Answering Defendant's possession or control. Without waiving these objections, Answering Defendant respectfully refers Plaintiffs to any documents produced in connection with their subpoena(s) and/or OPRA request served upon The City of Paterson and its various divisions.

18. Are any pest or mold control property management guidelines, standards, or *policies* currently in place for the Alexander Hamilton Apartment Complex? If so, please describe same stating *inter alia* whether they include both inspection and remediation. If no such internal policies, standards, or rules exist, state your reasons for the exclusion of same in your management or operation of the Alexander Hamilton Complex.

Answer:

Answering Defendant objects to this Interrogatory as it is overly broad, unduly burdensome, not limited in time and scope, is irrelevant, and not reasonably calculated to lead to the admissibility of discoverable evidence. Without waiving these objections, The Heritage at Alexander Hamilton has routine, scheduled treatments for pest control with Anchor Pest Control. Any other alleged tenant complaints are

addressed on a case-by-case basis, and appropriate service providers may be engaged, depending on the nature of the alleged issue. For example, and in the instant matter, the Answering Defendant reiterates that The Heritage at Alexander Hamilton contacted Archer Pest Control for an additional service, P.M.R to clean the air ducts and offered Plaintiffs alternate housing, which they declined.

19. If any of the companies listed below were involved in the design and construction of plaintiff's unit, the "subject property", state, for each such company, the waterproofing methods employed during construction, remodeling, or renovation, e.g., use of cement boards, seals at the junction between the wall and the roof, flashing on the roof, caulking around windows and doors, and mortar joints in a brick or stone façade. If the companies involved in the construction are not listed below, identify these presently unknown companies, and answer this interrogatory accordingly. To wit (list of companies): Wallace, Roberts and Todd (WRT), EJ Waterproofing, AJD Construction, and SB Conrad.

Answer:

Answering Defendant objects to this Interrogatory as it is overly broad, unduly burdensome, not limited in time and scope, is irrelevant, not reasonably calculated to lead to the admissibility of discoverable evidence and seeks information not within this Answering Defendant's possession or control. Without waiving these objections Answering Defendant is not in possession of information responsive to this request and respectfully refers Plaintiffs to the information provided in response any of these above-referenced entities provided in response to the subpoenas Plaintiffs served on them.

20. List all known services provided to defendants in the past ten years, by EJ Waterproofing or any other waterproofing company, in connection with the Alexander Hamilton Complex (any unit), including plaintiff's unit.

Answer:

Answering Defendant objects to this Interrogatory as it is overly broad, unduly burdensome, not limited in time and scope, is irrelevant, not reasonably calculated to lead to the admissibility of discoverable evidence and seeks information not within this Answering Defendant's possession or control. Without waiving these objections Answering Defendant is not in possession of information responsive to this request and respectfully refers Plaintiffs to the information provided in response to the subpoenas Plaintiffs served on EJ Waterproofing.

21. As to EJ Waterproofing, did they in 2021-2022 perform services at plaintiff's specific unit, the "subject property", including an air quality test, and if so, summarize the findings of that test, and state whether or not the findings warranted your further attention,

including remediation or any other affirmative act on your behalf to address the issues identified, if any.

Answer:

See Answering Defendant's response to Interrogatory Number 20.

22. If, in the last ten years, any of the named defendants in the within lawsuit have been sued by a *tenant* for personal injury or property damage - or a claim opened by the tenant alleging said defendant's *liability* in a personal injury or property damage matter, state the date of the complaint, or the date of the claim if no complaint was filed, and describe the circumstances of the lawsuit or claim, all parties involved, and the claim number and docket number if applicable. "Circumstances" means the alleged basis for liability, the relief sought, and the final disposition of the matter. The following personal injury lawsuits or claims are excluded from this interrogatory: slip and falls, fire-related claims or suits, flood-related claims or suits, and theft-related claims or suits.

Answer:

Answering Defendant objects to this Interrogatory as it is overly broad, unduly burdensome, not limited in time and scope, is irrelevant as the information sought cannot prove or disprove the Plaintiffs' claims in this litigation, and is not reasonably calculated to lead to the admissibility of discoverable evidence.

23. If you have been cited or warned by municipal, state, or federal authorities in the past ten years, in connection with potential, perceived, or actual code violations in the *subject property* or any building in the Alexander Hamilton complex, state the date and circumstances thereof. Code violation includes building codes, electrical codes, plumbing codes, and codes related to the provision of heating, air conditioning, cleanliness, rodent or pest control, and/or air quality.

Answer:

Answering Defendant objects to this Interrogatory as it is overly broad, unduly burdensome, not limited in time and scope, is irrelevant as the information sought cannot prove or disprove the Plaintiffs' claims in this litigation, and is not reasonably calculated to lead to the admissibility of discoverable evidence.

24. Has any prior tenant of the *subject property (plaintiffs' unit), including prior tenant* Eudosia Bermudez, *ever* complained of the condition of said property as regards air quality, heating, humidity, air conditioning, plumbing, mold growth, moisture accumulation, bacteria proliferation, or rodent infestation? If so, state the date, name of the complainant (prior tenant), and the nature of the anomaly alleged, regardless of whether or not a lawsuit was filed or a claim opened, or remediation undertaken.

Answer:

Answering Defendant objects to this Interrogatory as it is overly broad, unduly burdensome, not limited in time and scope, not reasonably calculated to lead to the discovery of admissible evidence, and is irrelevant as the information sought cannot prove or disprove the Plaintiffs' claims in this litigation. Answering Defendant further objects to this Interrogatory to the extent it seeks confidential and personal identifying information not subject to disclosure. Answering Defendant further objects to this Interrogatory as it is directed towards third-parties.

25. Set forth all the waterproofing methods, as that term is defined in the definitional section of these interrogatories, used during original construction, remodeling/renovation, or during routine maintenance of plaintiff's unit or apartment, the "subject property".

Answer:

Upon advice of counsel, Answering Defendant objects to this interrogatory as it is overly broad, unduly burdensome, not reasonably limited in time and scope, and seeks information not reasonably calculated to lead to the discoverability of admissible evidence, and is irrelevant as it does not prove or disprove Plaintiffs' claims. Without waiving these responses, Answering Defendant further objects to this Interrogatory to the extent it has been asked and answerer in Interrogatories Numbers 19-20. Answering Defendant further respectfully refers Plaintiffs to information produced in connection with any subpoenas Plaintiffs have served on architecture companies in connection with this matter.

26. If any Alexander Hamilton Complex tenant has ever died on the premises or otherwise transported to hospitals by ambulance during the past ten years, identify the tenant by their age, date of hospitalization or death, and the apartment or unit number they resided in, excluding their name or other personal identifiers. As to deceased tenants, such tenants include tenants who have died of suspected old age or illness, but excludes tenants who have died because of sudden traumatic injury (e.g. slip and falls, falling debris).

Answer:

Answering Defendant objects to this Interrogatory as it is overly broad, unduly burdensome, not limited in time and scope, is irrelevant as the information sought cannot prove or disprove the Plaintiffs' claims in this litigation, and is not reasonably calculated to lead to the admissibility of discoverable evidence. Answering Defendant

further objects to this Interrogatory to the extent it seeks confidential and personal identifying information, which is not subject to disclosure.

CERTIFICATION

I hereby certify that the foregoing answers in response to Plaintiffs' interrogatories are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

I hereby certify that the copies of the reports annexed hereto provided by either treating physicians or proposed expert witnesses are exact copies of the entire report or reports provided by them; that the existence of other reports of said doctors or experts are unknown to me, and if such become later known or available, I shall serve them promptly on the propounding party.

R.J. SATURNO
Print name

Signature

Dated: 7/30/24

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

JENNIFER BORIA, ANDREW REYES, AND SONIALYS BORIA, MINOR BY HER GUARDIAN AD LITEM JENNIFER BORIA Plaintiffs, v. THE HERITAGE AT ALEXANDER HAMILTON, ALEXANDER HAMILTON ASSOCIATES, LLC, PENNROSE PROPERTIES, LLC, PENNROSE MANAGEMENT COMPANY, Defendants.	**Civil Action No. 23-22914** **DEFENDANTS' RESPONSES TO PLAINTIFFS' NOTICE TO PRODUCE**

To: Santos A. Perez, Esq.
The Perez Law Firm
151 W Passaic St,
Rochelle Park, NJ 07662
Attorneys for Plaintiffs,
Jennifer Boria, Andrew Reyes and Sonialys Boria

PLEASE TAKE NOTICE that Defendants, The Heritage at Alexander Hamilton, Alexander Hamilton Associates, LLC, Pennrose Properties, LLC and Pennrose Management Company, (hereinafter referred to as "Defendants"), hereby provide the following responses to Plaintiffs' Notice to Produce. While each Defendant incorporates by reference their responses to Plaintiffs' Interrogatories with respect to the knowledge of each party, for economy and efficiency, one set of documents is produced to Plaintiffs' demand herewith. These answers are being furnished with the specific understanding that they do not constitute an adoptive admission as referenced in *Sallo v. Sabatino*, 146 N.J. Super. 416 (App. Div. 1976), *cert. denied* 75 N.J. 24

(1977) and *Skibinski v. Smith*, 206 N.J. Super. 349 (App. Div. 1985).

WOOD SMITH HENNING & BERMAN LLP
Attorneys for Defendants, The Heritage at Alexander Hamilton, Alexander Hamilton Associates, LLC, Pennrose Properties, LLC and Pennrose Management Company

By: _____
JENNIFER L. FLETCHER, ESQ.

Dated: July 30, 2024

GENERAL OBJECTIONS

Answering Defendants makes the following general objections to the enclosed demands, which are incorporated by reference in Answering Defendants' responses to each request. Each of the responses set forth below, which Defendants expressly reserves the right to amend or supplement, are submitted subject to and without waiver of these general objections.

1. Answering Defendants object to each demand insofar as it seeks information subject to the attorney-client privilege or work product.

2. Answering Defendants object to each demand insofar as it seeks information that is confidential and proprietary.

3. Answering Defendants object to each demand insofar as it is vague, ambiguous, overly broad, and unduly burdensome.

4. Answering Defendants object to each demand insofar as it is not reasonably calculated to lead to the discovery of admissible evidence and is not relevant to the subject matter of this action.

5. Answering Defendants object to each demand insofar as it is unlimited as to time.

6. Answering Defendants object to each demand to the extent they impose upon Answering Defendants an unreasonable burden of inquiry.

7. Answering Defendants object to each demand to the extent it seeks information that is within the knowledge and possession of Plaintiff or other parties, or that may be more readily available from a more convenient, less burdensome, and less expensive source.

8. Answering Defendants object to each demand to the extent it seeks information outside the scope of permissible discovery pursuant to the Rules governing the Courts of the State of New Jersey.

9. Answering Defendants object to each demand insofar as it attempts to elicit protected information subject to the attorney-client privilege or any other applicable privilege; the attorney work product doctrine, including documents containing the impressions, conclusions, opinions, legal research or theories of the attorneys of Co-Defendant(s), or materials prepared in anticipation of litigation.

10. Answering Defendants object to each demand to the extent it is vague, ambiguous, and imprecise in that a particular term or phrase is undefined and subject to varying interpretations.

11. Insofar as any of the foregoing objections or any of the specific objections that follow apply to each of the demand, that demand is improper.

12. Answering Defendants reserve the right to amend these answers as discovery continues.

Defendants' Responses to Plaintiffs' Demand for Documents

1. All documents regarding services provided, of any nature, during the past 5 years, by EJ WATERPROOFING, in connection with the Alexander Hamilton Complex, including the air quality test performed at the subject property circa February of 2022, and any other documents or ESI regarding services provided to defendant or plaintiff circa December of 2021 in connection with the subject property.

Response:

Answering Defendants object to this demand as it is overly broad, unduly burdensome, not limited in time and scope, and irrelevant, not reasonably calculated to lead to the admissibility of discoverable evidence and seeks information not within this Answering Defendants' possession or control. Without waiving these objections Answering Defendants are not in possession of information responsive to this request beyond what Plaintiffs have already provided, which Defendants are not required to reproduce, and respectfully refers Plaintiffs to the information provided in response to the subpoenas Plaintiffs served on EJ Waterproofing.

2. All documents regarding services provided, of any nature, during the past 5 years, by ANCHOR PEST CONTROL.

Response:

Answering Defendants object to this demand as it is overly broad, unduly burdensome, not limited in time and scope, and irrelevant, not reasonably calculated

to lead to the admissibility of discoverable evidence and seeks information not within this Answering Defendants' possession or control. Without waiving these objections, Answering Defendants refer Plaintiffs to any information produced in response to their subpoena to Anchor Pest Control and see documents produced herewith.

3. Documents regarding the following entities, to wit, Wallace, Roberts and Todd LLC (WRT), SB Conrad, AJD Construction, as they relate to the subject property and waterproofing of same as that term is defined in the definitional section of this request. Documents encompasses inter alia photos or videos taken during construction or remodeling/renovation, architectural plans or drawings (only if electronically available), shop drawings, invoices for services, work orders, as-built drawings, inspection reports, maintenance records, change orders, safety data sheets, and/or any other documents depicting the use or non-use of waterproofing methods in construction of the property (e.g. the use or non-use of cement boards). Photographs showing the interior of the property, taken during construction, are an example of such documents, as are any documents from a hardware store (e.g. invoices) showing the waterproofing materials purchased. The documents in this request shall be limited to documents in connection with original construction, or remodeling/renovation (or other subsequent major construction), of the subject property, only as those documents relate to waterproofing of the subject property (as defined supra), and includes photos or videos taken of the subject property during construction or remodeling/renovation.

Response:

Answering Defendants object to this demand as it is overly broad, unduly burdensome, not limited in time and scope, and irrelevant, not reasonably calculated to lead to the admissibility of discoverable evidence and seeks information not within this Answering Defendants' possession or control. Without waiving these objections, Answering Defendants refer Plaintiffs to any information produced in response to their subpoenas to these above-referenced entities.

4. All documents from or to the Paterson Housing Authority concerning any issue referenced in the First Amended Complaint, as they relate to any building in the Alexander Hamilton complex or the subject property. Such issues include mold infestation, mold remediation, rodent infestation, and mold/rodent remediation. Said documents must have been drafted or must be dated within the past 8 years.

Documents as used herein include but are not limited to:

- Inspection reports related to mold and/or rodent infestations.
- Communication regarding mold testing results, abatement plans, and remediation efforts.
- Resident complaints or concerns regarding mold or rodent infestations at the Alexander Hamilton complex.
- Contracts or agreements with any vendors or contractors involved in mold or rodent remediation at the complex.
- Emails, memoranda, or other internal communications referencing mold or rodent issues at the Alexander Hamilton complex.

- Any digital photographs or video recordings documenting mold or rodent infestations at the complex.

Response:

Answering Defendants object to this demand as it is overly broad, unduly burdensome, not limited in time and scope, and irrelevant, not reasonably calculated to lead to the admissibility of discoverable evidence and seeks information not within this Answering Defendants' possession or control. Without waiving these objections, Answering Defendants refer Plaintiffs to any information produced in response to their subpoenas to the Paterson Housing Authority.

5. All documents or ESI related to the heating, ventilation, and air conditioning (HVAC) system and plumbing at the subject property. This request specifically focuses on documents related to the period from April 11, 2014, to the present date. Requested documents include:

Documents as used herein include but are not limited to:

- Documents as used herein include but are not limited to:
- Inspection reports related to mold and/or rodent infestations.
- Communication regarding mold testing results, abatement plans, and remediation efforts.
- Resident complaints or concerns regarding mold or rodent infestations at the Alexander Hamilton complex.
- Contracts or agreements with any vendors or contractors involved in mold or rodent remediation at the complex.
- Emails, memoranda, or other internal communications referencing mold or rodent issues at the Alexander Hamilton complex.

  Any digital photographs or video recordings documenting mold or rodent infestations at the complex.

Response:

Answering Defendants object to this demand as it is overly broad, unduly burdensome, not limited in time and scope, and irrelevant, not reasonably calculated to lead to the admissibility of discoverable evidence and seeks information not within this Answering Defendants' possession or control. Without waiving these objections, Answering Defendants refer Plaintiffs to any information produced in response to their subpoenas to Archer Pest Control and any other relevant companies. Without waiving these objections, see documents enclosed herewith.

6. All permits for construction for the past ten years, including electrical, HVAC, plumbing and heating and related to maintenance or repair of the subject property, plaintiff's unit.

Response:

Answering Defendants object to this demand as it is overly broad, unduly burdensome, contains undefined terms, is not limited in time and scope, is irrelevant, not reasonably calculated to lead to the admissibility of discoverable evidence and this demand seeks information not within this Answering Defendants' possession or control.

7. Plaintiff's entire tenancy file, including her lease, complaints, emails, text messages and other communications. If you have taken photographs or videos of her apartment during her tenancy, or in preparation for her tenancy, this request includes said photographs or videos.

Response:

Answering Defendants object to this demand to the extent it seeks information Plaintiffs have previously provided and Answering Defendants do not have to reproduce. Without waiving these objections, see documents produced herewith.

8. Entire Tenancy file for prior tenant Eudosia Bermudez, and any other tenants of the subject property, for the ten years preceding plaintiff's tenancy. This request includes photographs or videos, complaints by the tenant, and citations, notices, or warnings given to you by state, municipal, or federal authorities in connection with the subject tenancy.

Response:

Answering Defendants object to this demand as it seeks personal and confidential information pertaining to a third-party and is irrelevant to this matter and Plaintiffs' alleged claims.

9. Pictures, images, or video of the subject property interior or exterior, dating back to original construction to the present.

Response:

Answering Defendants object to this demand as it is overly broad, unduly burdensome, contains undefined terms, is not limited in time and scope, is irrelevant, not reasonably calculated to lead to the admissibility of discoverable evidence and this demand seeks information not within this Answering Defendants' possession or control.

10. All documents from or directed to the City of Paterson Division of Health, for the past ten years, including notices, warnings, or citations, as well as communications related to the habitability or inspections of any unit in the Alexander Hamilton Complex.

Response:

Answering Defendants object to this demand as it is overly broad, unduly burdensome, contains undefined terms, is not limited in time and scope, is irrelevant, not reasonably calculated to lead to the admissibility of discoverable evidence and this demand seeks information not within this Answering

Defendants' possession or control.

11. All documents from or directed to the Paterson Division of Community Improvements for the past ten years, including notices, warnings, or citations, as well as communications related to the habitability or inspections of any unit in the Alexander Hamilton Complex.

Response:

Answering Defendants object to this demand as it is overly broad, unduly burdensome, contains undefined terms, is not limited in time and scope, is irrelevant, not reasonably calculated to lead to the admissibility of discoverable evidence and this demand seeks information not within this Answering Defendants' possession or control.

12. All inspection reports, of any nature, by or on behalf of any entity, regarding the subject property for the past 15 years, including but not limited to inspection reports for the purpose of refinancing, purchase, rental, or sale of the subject property, and reports in connection with municipal, state, or federal compliance of building or construction codes.

Response:

Answering Defendants object to this demand as it is overly broad, unduly burdensome, contains undefined terms, is not limited in time and scope, is irrelevant, not reasonably calculated to lead to the admissibility of discoverable evidence and this demand seeks information not within this Answering Defendants' possession or control.

13. All documents related to maintenance of the subject property, dated or otherwise drafted within the past five years. Maintenance includes cleaning, repairing, installing, rebuilding, fixing, or servicing any aspect, appliance, hardware, or structures within the subject property.

Response:

Answering Defendants object to this demand as it is overly broad, unduly burdensome, contains undefined terms, is not limited in time and scope, is irrelevant, not reasonably calculated to lead to the admissibility of discoverable evidence and this demand seeks information not within this Answering Defendants' possession or control.

14. Documents related to mold inspection, mold remediation, and/or pest control or rodent infestation or remediation for the subject property and/or the buildings in the Alexander Hamilton complex dated or otherwise drafted within the past ten years.

Response:

Answering Defendants object to this demand as it is overly broad, unduly

burdensome, not limited in time and scope, contains undefined timers, is irrelevant, not reasonably calculated to lead to the admissibility of discoverable evidence and this demand seeks documents or information previously produced herewith.

15. All ESI related to above requests.

Response:

Answering Defendants object to this demand as it is overly broad, unduly burdensome, contains undefined terms, is not limited in time and scope, is irrelevant, not reasonably calculated to lead to the admissibility of discoverable evidence and seeks information not within this Answering Defendants' possession or control.

Delaney Perez Injury Lawyers

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Phone: (201)875-2266
Fax: (201)875-3094

August 1, 2024

JENNIFER FLETCHER, ESQ.
Wood Smith Henning & Berman LLP
400 CONNELL DR #1300,
BERKELEY HEIGHTS, NJ 07922

RE: ***Jennifer Boria et al v. The Heritage At Alexander Hamilton et al.***
Docket: 2:23-cv-22914-CCC-JBC

Dear Ms. Fletcher,

Once again, it was great speaking with you prior to your production, and I appreciate your candid demeanor regarding your objections and limited answers.

That said, I am hopeful we can **avoid burdening the court with needless motions** once you amend your answers as per below comments.

Thank you. (**Please note "you" means defendants, not counsel**).

1. This interrogatory contained two parts, the first part asked for a description regarding how these individuals in your disclosures would aid in your defenses, and second part asked a non-privileged question in the event you deemed the first part privileged, to wit, for you to describe the nature of the duties of the identified individuals. **You answered neither part**. While you *repeated* their names, and their title, you did not describe their duties. Essentially, **this interrogatory was not answered, at all**, e.g. *evasive literary legerdemain.*

2. You answered only that the apartment was cleaned and painted prior to move in -

but you did not answer the interrogatory - whether the apartment was **inspected**. **Cleaning and painting is not a substitute for an inspection**. **You did not answer this interrogatory, at all**, e.g. *evasive literary legerdemain.*

3. Regarding the use of drywall and/or cement boards - this is your (defendant's) property, and you (defendant) claim not to be aware of the nature of the construction materials used - thus constituting negligence or recklessness on your behalf.

4. Distilled, you have answered that there were no renovations, and that only two contractors provided maintenance, Anchor Pest (rodents) and PMR (HVAC), in *the last ten years*. **This constitutes an admission that property management has done nothing in ten years**, despite known problems (e.g. the adverse June 9, 2022 MLG report and two adverse air quality studies prior to then).

   If, in fact, *in-house property management* undertook remedial measures, repairs, or maintenance *during the last ten years*, you are required to answer this interrogatory accordingly or risk impeachment by omission at trial.

5. This question was limited in scope - whether maintenance or remediation was undertaken *after* circa Oct 2021, or February 2022, the time period during which plaintiff complained and forwarded to management the contents of two adverse air quality studies, in addition to the adverse June 9, 2022 MLG report. You answered that PMR and Anchor Pest were both retained for service after these complaints, and that plaintiff was offered alternative housing within the complex. **This constitutes an admission that in-house property management did nothing, and that defendants only delegated their *non-delegable* duties to third parties**.

   If, in fact, *in-house* property management undertook remedial measures, repairs, or maintenance *after* this time period, you are required to answer this interrogatory accordingly or risk impeachment by omission at trial.

6. Same critique as in 4 and 5 above.

7. In answering the question of whether defendants undertook remedial measures *after* receipt of the June 9, 2022 report, you only answered that they were offered alternative housing. You did not answer whether any remedial measures were

taken *after* receipt of this damning report.

If, in fact, *in-house* property management - or third party vendors - undertook remedial measures, repairs, or maintenance *after* June 9, 2022, you are required to answer this interrogatory accordingly or risk impeachment by omission at trial.

8. You did not answer this question - which specifically asked for **non-privileged** information of defendant's interpretation of the adverse June 9, 2022 report prior to retaining counsel. **This is not privileged**.

9. Same as #8, in the context of defendant's belief in the veracity of the June 9, 2022 report prior to retaining counsel.

10. Same as #8, in the context of defendant's failure to consult with a mold expert in response to the adverse June 9, 2022 report, and prior to retaining counsel.

11. You did not answer this question, which specifically asked for the date of your receipt of the June 9, 2022. If you claim you cannot "pinpoint" the exact date, this constitutes **an admission of negligence**.

12. You claim this question was "asked and answered", which is presumably as per questions 4, 5, 6, and 7, subject to the comments *supra*.

13. Your answer constitutes an admission that the subject unit was **not tested for mold** prior to plaintiff moving in.

14. You did not answer this question, to wit whether defendants are "otherwise aware of prior actual or alleged mold infestation, air quality problems, heating problems, plumbing problems, rodent infestation problems, humidity problems, or bacteria proliferation". **Plaintiff reserves the right to move to compel and/or for sanctions accordingly**.

15. This answer constitutes an admission that a third party, PMR, has been delegated the non-delegable duty of inspecting the HVAC units for any problems or issues, and that property management undertakes no such inspections.

If this interpretation is misleading, you are required to *properly* answer this interrogatory which *specifically* asked who *inspected* the HVAC.

16. You (defendant) claim(s) not to be aware of **city inspections** conducted on *your* property. This answer is evasive, likely false, and may subject you to sanctions. **Plaintiff reserves all rights.**

17. Same as above. **This answer is likely false**, particularly since inspectors visited the property numerous times, and after an August 9, 2022 visit, city officials likely rendered a rodent infestation report which was forwarded to defendants, and which resulted in a *second* visit *circa* August 23, 2022. In fact, your document production depicts knowledge of this August 2022 encounter. In addition, in a January 2022 document, a city official wrote the complaint number 22-00209, which appears to be a complaint lodged against defendants.

Plaintiff reserves all rights accordingly.

18. This question has the distinction of being perhaps the only question you attempted to answer in good faith. My warmest regard and thank you.

19. This answer indicates that you are not aware of the composition of subject property, e.g. cement boards, and/or of the types of waterproofing guards in place, thus constituting an admission of negligence.

20. This answer constitutes an admission that you have not retained or consulted waterproofing companies in the past ten years.

21. This answer is evasive and potentially false. You indicate that you are not aware of the February 2022 air quality study on the property - yet you produced said study (select pages) in response to the document production.

Plaintiff reserves all rights.

22. You did not answer this question. Prior lawsuits by tenants is relevant and discoverable.

Plaintiff reserves all rights.

23. City citations is not only discoverable - but also relevant and potentially admissible.

Plaintiff reserves all rights, including seeking sanctions for not answering this significant interrogatory.

24. This question related to a *specific* identified (by name) prior tenant, whose tenancy immediately preceded plaintiff's, is likewise not only discoverable - but also relevant and potentially admissible.

Plaintiff reserves all rights, including seeking sanctions for not answering this significant interrogatory.

25. This answer constitutes an admission that you are not aware of the safety guardrails, e.g. waterproofing, in place for the subject property, thus constituting an admission of negligence unless amended and properly answered.

26. As to your answer regarding tenants who have passed away, the undersigned will reserve comments for the time being.

Sincerely,
Santos A. Perez, Esq.
SANTOS A. PEREZ, ESQ.

SAP/mp
Encl.
cc:\\Jennifer Fletcher, Esq.
cc:\\Andrew Delaney, Esq.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

Andrew Reyes, Jennifer Boria, and Sonialys Boria minor by her Guardian Ad Litem Jennifer Boria PLAINTIFF V. DEFENDANTS THE HERITAGE AT ALEXANDER HAMILTON, ALEXANDER HAMILTON ASSOCIATES, LLC PENNROSE PROPERTIES, LLC PENNROSE MANAGEMENT COMPANY JOHN & JANE DOE, I-X, fictitious names for heretofore unknown defendants ABC CORPORATION I-X, fictitious names for heretofore unknown corporate entities XYZ PARTNERSHIP, I-X, fictitious names for heretofore unknown defendants	Civil Action NO. 2:23-cv-22914-CCC-JBC Judge: Claire C. Cecchi USDJ ANSWERS TO DEFENDANT'S INTERROGATORIES

TO:

JENNIFER FLETCHER, ESQ.
Wood Smith Henning & Berman LLP
400 CONNELL DR #1300,
BERKELEY HEIGHTS, NJ 07922
COUNSEL FOR DEFENDANTS

Plaintiffs, hereby answer defendant's interrogatories as follows:

DISCLAIMER

Statements by plaintiffs made to the Mold Law Group experts shall not be construed as adoptive admissions. *Sallo v. Sabatino*, 146 N.J. Super. 416, 418 (App.Div. 1976), certif. den., 75 N.J. 24 (1977).

CONFIDENTIALITY

Medical Records and Personally Identifiable Information, as Well as References to Medical Symptoms of the Plaintiffs, are Hereby Designated as CONFIDENTIAL Pursuant to the Protective Order Which is On File.

ANSWERS

1. **State your full name, date of birth, and home address.**

   Ms. Jennifer Boria, DOB 1/22/84 (US Citizen by Birth)
   Mr. Andrew Reyes, DOB 2/14/1978 (US Citizen by Birth)
   Ms. S.B., DOB /2007 (US Citizen by Birth) (redacted for minor)

   256 23rd Avenue, Paterson, NJ 07513

2. **Describe the relationship between Jennifer Boria and Andrew Reyes and their relationship with minor SB.**

   Objection, vague. Without waiving same, the relationship between Ms. Boria and Reyes is healthy, supportive, and loving. They live as a family unit, with Mr. Reyes also acting as a live-in aid for Ms. Boria given her lifelong disability, and a step-father to S.B., Ms. Boria's daughter.

3. **Identify each educational institution which you attended beginning with high school to present and include all colleges or other schools with names and addresses of each school or institution, dates of attendance, the course of study, and the degree, diploma, and/or certificate awarded.**

   ANDREW REYES

   G.E.D. 2002

   JENNIFER BORIA

   John F Kennedy, high school
   61-127 Preakness Ave Paterson NJ 07501

Class of 2003

SB

International High School
Paterson, NJ

4. State, in chronological order, for each employment or self-employment, you have had since high school your title and nature of duties, the name, address, and telephone number of your employer and immediate supervisor, the dates of employment and the position or self-employment, the salary for each employment, the yearly income for each self-employment, and the reason for leaving each employment or self-employment.

Jennifer Boria: None.
SB: None

Andrew Reyes: Since *circa* 2019, supporting spouse and live-in aid for Jennifer Boria. Prior to then, worked at various locations, Including JKJ Auto Sales, Midas Tire, QDOBA restaurant Philadelphia, as a certified trainer at La Fitness, and as freelancer/independent contractor/consultant/laborer for various persons or entities, e.g. refrigeration units on trucks, tires, construction. More specifically:

- QDOBA Philadelphia, from *circa* 5-2010 to 7 -2010
- LA Fitness, from *circa* 11-2010 to 1-2012, certified trainer
- D&L Construction, *circa* 2012-2013
- JKJ Auto Sales circa 2013 and 2015
- Media Entertainment Business (self employed), *circa* 2015-2018.
- Mr. Jose Mata, (Employer) - AC refrigeration from *circa* 2018-2021

ADDRESSES:

D&L Construction 424 Lakeview Ave Clifton, New Jersey 07503	J.K.J Auto Sale 234 East 29th Street Paterson, New Jersey 07514
L.A Fitness (GYM) 852 NJ-3 Clifton, New Jersey 07012	Jose Mata 1553 Englishtown RD Old Bridge, NJ 08857

5. **State the name and address of each person with knowledge of the facts related to this civil action and as to each person with any knowledge of the facts related to this civil action, state whether the person has given any statement concerning the subject matter of the complaint and the date and summary of each statement.**

Objection, overbroad or vague. Without waiving same, all persons or entities referenced in the complaint, answer, and discovery responses. Plaintiff's addresses have already been Provided, and defendants are aware of their own addresses. City official addresses are identified in the documentary discovery, and the city inspector names have not been identified as we are not yet in receipt of subpoena or other discovery related to city inspections.

Without waiving objection:

●Edward Knappenberger & Jessie Ferraro, d/b/a EJ Waterproofing,
18 Mason Ave,
East Brunswick, NJ 08816

●Ace Mold Inspection, LLC
11 George Washington Drive
Monroe Township, NJ 08831
PHONE: 908-307-0216
E-mail: frankbabino@gmail.com

●Anchor Pest Control
(address known by defendants)

●Services for Home,
28204 Cherry Blossom Ct,
Lawrence, NJ 08648

●City Inspector Harold Williams (upon information and belief)
111 Broadway,
Paterson, NJ 07505

●DR. Annette B. Hobi, NMD,
4420 S. Terrace Rd.
Tempe, AZ 85282
(480) 253- 9338 |
Email: drannettehobi@gmail.com

●Dr. Shakil A. Saghir, MSc, MSPH, PhD
Diplomate, American Board of Toxicology (DABT)
European Registered Toxicologist (ERT)
United Kingdom Registered Toxicologist (UKRT)
Fellow, Academy of Toxicological Sciences (FATS)
Fellow, Royal Society of Biology (FRSB)
President, ToxInternational, Inc.

●The Mold Test Company
Dawsonville, GA 30534
MoldTestCompany.Com

STATEMENTS CONCERNING SUBJECT MATTER

As to "**statements" "given" by any person with knowledge**, objection, vague and overbroad as any communication by anyone is a "statement". Without waiving same, upon information and belief, no *formal* statements have been "given" regarding the subject matter (**mold, air quality, rodent infestation, et al**). However, statements have been "made" by subject-matter experts and others. To wit:

●Mold Law Group Report *Case Summary Report* of June 9, 2022
●Mold Law Group Report *Forensic Toxicology Report* of June 9, 2022
●EJ Waterproofing February 2022 Invoice
●Adverse EJ Waterproofing Air Quality Test of Oct 29 2021 (Missing)
●Adverse *InspectorLab* Air Quality Test of February 2022
(High levels of smut/myxomycetes fungi, 600% higher than control**)**
●Statements in Sept 2021 Services for Home Invoice
●Sept 11 2023 Landlord Notice in Response to Aug 11, 2023 Lawsuit
●Statements made by Treating Physicians in Reports
●City of Paterson Official, *circa* July 20, 2022, indicated he can file a

rodent complaint against Alexander Hamilton, and that he will speak to them about mold. See Video Exhibit, Minute 4:36.

●City of Paterson Official, Circa April 7, 2022, "*if it was up to me I'd just write them a damn ticket*" (upon information and belief, inspector Harold Williams).

●Statements made by Anchor Pest Control in invoices et al

●Statements made by City officials *circa* Jan 2022 and Aug 2022

●A Report Authored by a City Inspector in or about August 9, 2022, regarding rodent infestation

●The contents of a purported complaint, filed circa January 2022, purportedly bearing docket #S 1608 22-00209

●Statements by Plaintiffs to MLG experts or their physicians, subject to disclaimer *infra*

Disclaimer: Statements by plaintiff made to the Mold Law Group experts shall not be construed as adoptive admissions. *Sallo v. Sabatino*, 146 N.J. Super. 416, 418 (App.Div. 1976), certif. den., 75 N.J. 24 (1977).

6. If you have ever been arrested or convicted of a crime, set forth all details including the date of each arrest, the offense for which you were arrested, the place of each arrest, whether you were convicted on any offense for which you were arrested, and the court where the matter was heard and the date of the hearing.

Objection, question is meant to harass plaintiffs and is irrelevant as this matter is not a fraud-related matter - it is rather a toxic tort matter involving bacteria, toxins, and microbes, and their effect on the human body. There is no evidence that plaintiffs conspired to fake their symptoms, or went "doctor shopping" for physicians to diagnose a pathology or etiology. Moreover, MLG physicians established a biological connection between the toxins or bacteria, and plaintiff's symptoms, and it is unlikely these microbes, toxins, or bacteria would knowingly conspire. See **MLG Report of** June 9, 2022.

7. Identify each and every **area at the Property** where you allege there was mold contamination and/or rodent conditions at any time.

See MLG Report of June 9, 2022. In addition, embedded exhibits in complaint show kitchen infestation/mold/rot, and exhibits included in this production show mold infestation in the bathroom, and rodent feces throughout the apartment, including air ducts, filers, and on the floor throughout the apartment. See also **Exhibits**(pictures of kitchen and bathroom mold).

More specifically, as per the June 9, 2022 MLG report, the following areas tested positive for fungi/mold/bacteria:

- ***Kitchen:*** *Aspergillus/Penicillium, Basidiospores, Chaetomium, Cladosporium, Epicoccum, Pestalotia, and Rust were all found in the kitchen. The kitchen sink had Brevundimonas diminuta, Klebsiella oxytoca, and Stenotrophomonas maltophilia bacteria present.*

- ***Living Room:*** *Aspergillus/Penicillium, Basidiospores, Cladosporium, Pithomyces, Pollen, and Rust were found in the living room.*

- ***Second Floor:*** *Aspergillus/Penicillium, Basidiospores, Chaetomium, Cladosporium, Epicoccum, Myxomycetes, and Pollen were found on the second floor.*

- ***Outside:*** *Basidiospores, Cladosporium, and Hyphal Fragment were found outside.*

The kitchen faucet also tested positive for endotoxin at a concentration of 8.92 EU/mL1.

And as per the MLG CSR Report of June 9, 2022: *investigation revealed potential microbial growth, particularly in the second-floor bathroom,to wit:*

Table 2. Other Types of Fungi Detected (Air-O-Cell, Swab, Tape Life, Bulk)

Fungi Detected	Pathogenic (Y/N)	Area Detected
Ascospores	Y	Kitchen, Second Floor
Aspergillus/Penicillium	Y	Living Room, Kitchen, Second Floor
Basidiospores	Y	Living Room, Kitchen, Second Floor, Outside
Chaetomium	Y	Kitchen
Cladosporium	Y	Living Room, Kitchen, Second Floor, Outside
Epicoccum	Y	Kitchen, Second Floor
Myxomycetes++	N	Second Floor
Pestalotia++	Y	Kitchen
Pithomyces++	Y	Living Room
Hyphal Fragment	Y	Outside
Pollen	Y	Living Room, Second Floor
Rust	Y	Living Room, Kitchen

Table 3. Types of Bacteria Detected

Bacteria Detected	Pathogenic	Area Detected
Brevundimonas diminuta	Yes[1]	Kitchen Sink (5,000,000 CFU/Swab)
Klebsiella oxytoca	Yes[2]	Kitchen Sink (38,000,000 CFU/Swab)
Stenotrophomonas maltophilia	Yes[3]	Kitchen Sink (8,000,000 CFU/Swab)

[1] *Brevundimonas diminuta* has been reported to cause infections in cancer patients (Han and Andrade 2005, J Antimicro Chemother

Table 4. Areas where Endotoxin Detected

Area Detected	Concentration (EU/mL)
100/ Kitchen Faucet	8.92

8. Set forth the manner in which and the date when you first became aware of the alleged presence of mold contamination and/or rodent conditions at the Property.

As per the November 2023 FAC:

i. Promptly upon moving into the unit August 15, 2021, plaintiffs observed mold buildup, including visible mold and evidence of a rodent infestation

ii. They immediately notified defendants, requesting cleaning of the HVAC unit and the room due to visible mold growth and rodent droppings.

iii. Specifically, upon moving in plaintiffs noticed that the apartment had not been cleaned or made ready for occupation.

iv. They noticed *inter alia* that there was black mold on the bathroom floor and tub area tiles.

v. In addition, they noticed that the washing machine pipes had a dead

stinking rodent in it, and there was rodent feces spread about the entire apartment.

vi. Layers of dirt were found in all the vents and when the HVAC was turned on the entire apartment started to smell like dead rodents.

As Per June 9, 2022 MLG CSR Report (p 97):

August 2021 Andrew Reyes reports he noticed upon moving in that the apartment ***had not been cleaned*** *or made ready for occupation. When first moving into the residence there was* ***black mold on the bathroom floor*** *and tub area tiles. The washing machine pipes had a dead stinking rodent in it and there was rodent feces all over the entire apartment. Layers of dirt were found in all the vents and when the HVAC was turned on the entire apartment started to smell like dead rodents. The HVAC closet was locked and the Reyes family did not have access upon moving in. The family members immediately started coughing and choking on the dust coming out of the vents and could see white dust layers and rodent feces when looking into the vents. The rodent issues and condition of the home was reported to the management and maintenance staff was sent out to remove the dead rodent and feces. A work order was put in for a non-working HVAC.*

Jennifer Boria states she figured out she was getting sick and then noticed the walls were wet and turning black. The AC system had a beeping sound and she could hear it with her cochlear implant and notified the manager that it was happening and they told her that there was an alarm going off in the HVAC due to ***moisture in the HVAC****. They sent someone out and opened the formerly locked closet and Jennifer saw inside the HVAC closet. She states she was not allowed to take pictures of the inside of the closet. She saw the machine had a* ***red light lit up indicating moisture*** *and watched him push a button to reset the button and the AC system came on. She* ***noticed there were rodent droppings all over the floor surrounding the AC unit filter box*** *and asked the maintenance man Klaus to clean out the rodent feces and he told her that it was not in his job description. Jennifer Boria also sent a letter and text message to the manager regarding the feces observed in the AC closet and sent pictures of the apartment as it looked at the time of move in.*

There was a change of management in December 2021 and she also ***notified the new property manager,*** *Natasha Williams that was brought in*

in late March 2022 of the issues with the apartment and dirty AC closet and sent pictures and copies of the emails from communication. At first Natasha Williams replied that she was going to send someone to address it and has not followed through since then. Nothing has been done to date.

9. **Identify any and all reports, studies, and/or evaluations prepared by you and/or on your behalf concerning the investigation, remediation, and/or cause of the alleged mold contamination and/or rodent conditions at the Property and a summary of the results of those reports, studies, and/or evaluations.**

I. Mold Law Group Report of June 9, 2022 "Case Summary Report":

*The report aimed to determine the presence of mold and other environmental hazards in the building. The investigation involved a visual inspection of the property, measurement of relative humidity (RH) levels, and collection of various samples for laboratory analysis. The samples, including air, swabs, bacteria, and endotoxins, were collected on April 11, 2022, and sent to EMSL Analytical, Inc. for analysis. The report states that there were "**suspect visible molds**" found in the second-floor bathroom.*

The report outlines the following key aspects of the case:

- ***Environmental Testing:** Mold Law Group collected environmental samples from the subject property to analyze for mold and mycotoxin presence. They used a multi-pronged approach, **including air quality samples, bacteria testing, and a direct swab of the HVAC** unit.*

- ***Medical Testing:** In conjunction with the environmental testing, plaintiffs underwent medical testing to ascertain the presence of toxins in their bodies. The testing included urinalysis and stool samples, which revealed elevated levels of various mycotoxins, including Ochratoxin A, Aflatoxin M1, and Citrinin. These mycotoxins are linked to various health issues, such as kidney disease, neurological effects, liver damage, and cancer.*

- ***Correlation of Findings:** The report emphasizes connecting the environmental and medical data. A team of experts, including a Certified*

Industrial Hygienist, Epidemiologist, and Toxicologist, reviewed the findings to confirm if the toxins in the residents' bodies matched those in the home environment.

●***Expert Opinion:*** *Dr. Shakil A. Saghir, a Toxicologist, concluded that the structure* ***poses a health hazard*** *due to pathogenic molds, bacteria, and biomarkers found in the occupants' urine and stool samples. Thus, after correlating the environmental and medical results of the plaintiffs, he concluded, "with a great amount of scientific and medical certainty," that* ***the pathogenic species of fungi found in the mold-infested structure produced the same mycotoxins that tested positive in the family members' bodies****. He then recommended immediate evacuation of the building.*

II. Mold Law Group June 9, 2022 Forensic Toxicology Report

This Toxicology Report analyzes the relationship between the presence of mycotoxins in the subject property and their potential impact on the health of the residents. Dr. Shakil A. Saghir, MSc, MSPH, PhD, a certified and registered Toxicologist, compiled information based upon environmental testing performed at the residence, certified microbiology laboratory reports, medical reports and records, interviews with the home's occupants, and pertinent scientific literature.

The following subjects are discussed:

●**Mycotoxin Testing & Results***: Tables within the report detail the* ***levels of specific mycotoxins found in the bodies of the home's occupants, Andrew Reyes, Jennifer Boria, and their daughter, Sonialys****. All three residents showed elevated levels of* ***Ochratoxin A****. In addition, both Sonialys and Jennifer had elevated levels of* ***Mycophenolic Acid****, and Sonialys also had elevated levels of* ***Aflatoxin M1****.*

●**Health Impacts of Mycotoxin Exposure***: Dr.Shakil A. Saghir,notes that human exposure to mycotoxins can cause a variety of health issues impacting the neurological, immunological, and psychological systems.*

III. **EJ Waterproofing Adverse Air Quality Test of Oct 29 2021 -** *Missing and under subpoena.*

IV. **Ace Mold Inspection Air Quality Test of February 2022 -** Showed a Smut/Myxomycetes fungi count which was 600% higher than the outdoor sample.

V. **City Inspector Report of Circa August 2023 Concerning Rodent Infestation**

VI. **Upon information and belief, all reports related to summonses and complaints issued by the City of Paterson, including one with docket #**S 1608 22-00209.

10. **State whether you and/or your agents exchanged any written correspondence including e-mails and letters with any person about the alleged mold contamination and/or rodent conditions at the Property and for each such instance identify the parties to it as well as the date and substance thereof.**

Objection, vague and ambiguous, overbroad, as the interrogatory does not properly define "exchange". Without waiving same:

I. All communications referenced in the Nov 2023 FAC and the attached text messages and emails (**Exhibits**). In addition, see interrogatory answer #8.

II. All Communications with city inspectors, as set forth in these answers and the complaint. All communications with inspectors and others as set forth in the "statements" section of interrogatory #5, related to air quality studies, remediation, et al.

III. Communications with city inspectors as per the video recordings of July 20, 2022, and April 7, 2022 (**Attached Exhibit**).

11. **State whether you and/or your agents engaged in any communications with the Defendants or any other person concerning transfer from the Property to**

another unit and for each such instance identify the parties to it as well as the date and substance thereof.

Objection. Vague, and as to "agents", privileged attorney client. Without waiving same:

Plaintiffs were offered a new, smaller, unit circa September of November of 2023. However, the plaintiffs had already inspected and considered said unit prior to the beginning of their tenancy, and found same to be uninhabitable because of dirty carpets, feces, and other anomalies. Further, because that unit had been vacant for years, plaintiff suspected it was not habitable. ***Plaintiffs were also aware of other empty units in the complex which were not offered to them.*** *Having declined the smaller uninhabitable unit, plaintiffs were then encouraged to seek housing elsewhere, and were specifically referred to* ***Piazza & Associates,*** *an alternative housing provider. However, plaintiffs searched google for Piazza and found negative reviews, with subsequent searches showing* ***over six complaints lodged against them with the Better Business Bureau (BBB)****. Moreover, plaintiffs had reasons to be skeptical of the landlord's intentions and they did not trust them, since they had neglected to offer other, better, empty units in their own complex. Plaintiffs thereafter made efforts to find alternative housing, but were unable to do so for numerous reasons, including that landlord kept promising them they would fix the identified issues in their apartment. (*It should also be noted that online google reviews for Piazza & Associates are negative*).*

In addition to the foregoing, property managers occasionally suggested to plaintiffs that due to ongoing litigation, they were unable to offer remediation or relocation services.

12. Describe in full all **damages** allegedly sustained by you as to each claim in each count of your first amended complaint.

As Per Dr. Annette B. Hobi, NMD, Mold Law Group Report Exhibit, July 28, 2022 encounter date, to wit:

●**Economic Damages:**

Ten years medical treatment expected at $214,305.00 for each plaintiff.

●**Injuries, Non-Economic Damages, as per MLG Report of June 9, 2022**:

⇒**Andrew Reyes:**

- Respiratory problems: asthma, allergies, fungal sinusitis, shortness of breath, chronic cough
- Gastrointestinal issues: nausea, diarrhea, abdominal pain, bloating, GERD, chronic diarrhea/GI disturbances
- Skin problems: skin irritation, rashes
- Cardiovascular issues: heart palpitations
- Neurological and cognitive impairment
- Vision problems
- Fatigue
- Loss of appetite
- Anxiety disorder

⇒**Jennifer Boria:**

- Worsening lupus (systemic lupus erythematosus)
- Clotting disorder
- Fungal infections:
    - Fungal sinusitis
    - Aspergillosis
    - Candida enteritis (fungal infection in the intestines)
- Gastrointestinal problems:
    - Chronic diarrhea/GI disturbances
    - Nausea
    - GERD
    - Abdominal pain
    - Abdominal bloating
- Respiratory issues:
    - Shortness of breath
    - Chronic cough
- Skin issues:
    - Unspecified rash
- Neurological issues:

- Fatigue
- Headaches

- Mental health:
  - Unspecified anxiety disorder

⇒**Sonyialys Boria:**

- Skin issues:
  - Itchy skin rash with red raised bumps
  - Eczema
  - Hives
  - Unspecified rash
- Respiratory problems:
  - Fungal sinusitis
  - Aspergillosis
  - Shortness of breath
  - Chronic cough
- Gastrointestinal issues:
  - Candida enteritis (fungal infection in the intestines)
  - Protozoal intestinal disease
  - Chronic diarrhea/GI disturbances
  - Nausea
  - GERD
  - Abdominal pain
  - Abdominal bloating
- General symptoms:
  - Fatigue
  - Malaise
  - Headaches
- Mental health:
  - Unspecified anxiety disorder
  -

13. If you contend that you sustained **damage** ***as a result of*** the purported improper conduct of Defendants state the nature and extent of such damage, describe how the alleged damage was caused, the date that the cause of such damage occurred, describe how the acts or omissions contributed in any way to the alleged damage, and state the specific monetary value for each item of damage.

See answer #12.

In addition:

Mold Law Group Report of June 9, 2022 "Case Summary Report":

> *Dr. Shakil A. Saghir, a Toxicologist, concluded that the structure* ***poses a health hazard*** *due to pathogenic molds, bacteria, and biomarkers found in the occupants' urine and stool samples. Thus, after* ***correlating the environmental and medical results of the plaintiffs,*** *he concluded, "with a great amount of scientific and medical certainty," that* ***the pathogenic species of fungi found in the mold-infested structure produced the same mycotoxins that tested positive in the family members' bodies****. He then recommended immediate evacuation of the building.*

14. Identify each and every **medical provider** you have been diagnosed by and treated **for injuries allegedly related to exposure to mold contamination and/or rodent conditions** at the Property and for each such instance further identify the name and address of the medical provider, the date of diagnosis and treatment, and the substance of the diagnosis and treatment.

See Andrew Reyes Doctor List (EXHIBIT), and Jennifer Boria Doctor List (EXHIBIT).

See also Exhibits M, N, O, June 9, 2022 MLG CSR Report, to wit:

⇒Jennifer Boria (MLG CSR Exhibit N)

●DR. Annette B. Hobi, NMD,
4420 S. Terrace Rd. Tempe, AZ 85282 |
Contact: (480) 253- 9338 |
Email: drannettehobi@gmail.com

●Daniel M Matassa, MD,

140 Bergen St Level F,
Newark, NJ 07103

●Dr Sharon Li MD (Oncology)
●Dr Eugene Capitle MD (Rheumatology)
●Dr Abraham Alle (Neurology)

●Dr. Louis Arroyo, MD (psychiatry)
Paterson, NJ

⇒**Andrew Reyes (MLG CSR Exhibit M)**

●DR. Annette B. Hobi, NMD,
4420 S. Terrace Rd. Tempe, AZ 85282 |
Contact: (480) 253- 9338 |
Email: drannettehobi@gmail.com

●Dr. Robert Rizzo from Paterson, NJ.
●Dr. Jessica Blume an allergist from Glenrock, NJ.

●Dr. Raffaella Kalishman, MD,
22-02 Broadway #304, Fair Lawn, NJ 07410

⇒**Sonialys Boria (MLG CSR Exhibit O)**

●Dr. Annette B. Hobi, NMD,
4420 S. Terrace Rd. Tempe, AZ 85282 |
Contact: (480) 253- 9338 |
Email: drannettehobi@gmail.com

15. Describe all skin and/or eye and/or respiratory and/or other pulmonary diseases, illnesses, and/or conditions that you were diagnosed with and treated for prior to residing at the Property and for each such diagnosis and treatment identify the name and address of the medical provider, the date of the diagnosis and treatment, and the substance of the diagnosis and treatment.

SKIN CONDITIONS PRIOR TO MOVING IN

None.

RESPIRATORY/PULMONARY PRIOR TO MOVING IN

–Jennifer Boria: Asthma
-Sonialys had asthma when she was 5, but was asymptomatic just prior to moving into the unit

SKIN CONDITIONS AFTER MOVING IN

●All three plaintiffs were diagnosed with an unspecified rash.

RESPIRATORY/PULMONARY AFTER MOVING IN

●All three plaintiffs presented with shortness of breath.
●All three plaintiffs were diagnosed with a chronic cough.
● Andrew Reyes and Jennifer Boria had been experiencing breathing issues since moving into their residence.

● The MLG Report states that Cladosporium can produce fine and ultra-fine particulates that can lead to asthma, lung collapse, and respiratory failure.

● As per the MLG Report, Exposure to endotoxins can cause permanent and irreversible lung damage.

The MLG Report also states that Aspergillus, a type of mold found in the Boria/Reyes home, can cause allergic reactions that range from hay fever-like symptoms to severe respiratory problems. Exposure to Aspergillus can also lead to Aspergillosis, which can manifest in the sinuses, lungs, skin, and internally. additionally, some individuals with asthma or cystic fibrosis experience allergic bronchopulmonary aspergillosis, which presents with fever, cough (that may include blood or mucus plugs), worsening asthma, and fungal mass.

16. **Describe any repairs and/or remediation of the alleged mold contamination and rodent conditions that you undertook or arranged at the Property and for each such repair and/or remediation identify the pertinent dates thereto, the type of repair and/or remediation, the name and address of any contractors involved, and the results thereof.**

Mold Remediation by Plaintiff

Plaintiffs purchased multiple fans and humidifiers from 2021 to present to address humidity and mold issues in the home. In addition, they cleaned the house daily, and sometimes used mold removal spray (e.g. Lysol) as needed, to no avail.

1. Stanley Steemer HVAC Sept 2021 - Called but unable to service HVAC b/c of insulation issue
2. Services for Home Sept 2021 - Air Duct Cleaning and Sanitation. See **Exhibit**.
3. EJ Waterproofing Oct 29, 2021 - Air Quality Test (missing adverse test)
4. EJ Waterproofing Feb 2022 - Air Quality test with high levels of myxomycetes fungi - 600% higher than outdoors (See **Exhibit**)

Rodent Remediation by Plaintiff

Budget permitting, plaintiffs purchased a few mouse traps and roach "hotels" from 2023 to 2024, but could not purchase professional grade extermination or poison.

17. Describe any **repairs and/or remediation of the alleged mold contamination and/or rodent conditions that the Defendants undertook** and for each such instance identify the pertinent dates thereto, the type of repair and/or remediation, the name and address of any contractors involved, and the results thereof.

Mold Remediation by Defendant

Immediately upon moving into this unit plaintiffs noticed a mold issue. They discovered visible mold in the home as well as evidence of a rodent infestation the day they moved into the new unit. They notified their property management and requested that the HVAC unit and the room it was housed in be cleaned, as they could see it was filled with rodent droppings and visible mold growth. On or about September 01, 2021, [plaintiffs] emailed the property management regarding the issue, but it

took ten months for them to respond. The property management kept on promising that they will address the issue but to no avail.

Management eventually sent a member of the maintenance team to clean the room the HVAC unit was housed in, but they did an insufficient job and did not address the mold.

Rodent Remediation by Defendant

Upon information and belief, Third Party Defendant Anchor Pest, from 2021 to present provided mouse traps, roach hotels, and rat poison, which it is believed they improperly placed throughout the apartment, as plaintiffs had to incur thousands of dollars in veterinary costs for their pet dog as a result of potential poisoning. In addition, city inspectors visited the property circa August 9, 2022, requested rodent-related repairs in a report they prepared, and defendant made attempts to comply. However, a subsequent visit by city inspectors circa August 23, 2022 revealed such attempts were insufficient.

18. State the name and address of any person working **on behalf of a governmental entity** that inspected the Property for assessment of the alleged mold and rodent conditions and state when each inspection was conducted and the findings and conclusions reached on each occasion.

Various inspectors throughout 2022 to present, names unknown.

Upon information and belief, city inspector Harold Williams *circa* Jan 24 2022. See **Jan 24, 2022 Exhibit.**

Circa February of 2022 - city inspector, name unknown, found rodent feces and holes in unit, may have put in a complaint.

***Circa* April 7, 2022**, conversation with city inspector, name unknown. See **Video Exhibit.** **(city inspector asserted "*if it was up to me, I'd just write them a damn ticket.*")**

Circa August 9, 2022 and August 23, 2022 (rodent inspector name unknown). See **Aug 9 and 23 2022 Exhibit**. Upon information and belief, a report was prepared after the Aug 9 visit.

Circa July 20, 2022 - unknown name city inspector. See **Video Exhibit.** **(city inspector asserted "*but I can file a complaint to them regarding the rodents and have them responsible for doing the extermination that part absolutely will do.*")**

19. If you or anyone acting on your behalf made any **report or complaint pertaining to any governmental agency or professional organization** concerning the allegations set forth in the first amended complaint state the name and address of the person making the complaint, the person, governmental agency, or professional organization to which the report was made, the date of the complaint and/or report, whether the complaint or report was oral or written, and the substance of the complaint and report.

Upon information and belief, at least one complaint was filed, including (potentially) one with docket S 1608 22-00209. See **Jan 24, 2022 Exhibit**.

Upon information and belief, a report was prepared after an August 9, 2022 visit by a city inspector. See **Aug 9 and Aug 23, 2022 Exhibit**.

Circa February of 2023, plaintiffs contacted the US Department of Housing and Urban Development, complaining of no heat, rodents, and mold, and Received a response in May of 2023. See **May 2023 HUD Letter Exhibit**.

20. Identify all **contracts and agreements, whether written or verbal, related to the Property and the repair and/or remediation of** the alleged mold contamination and rodent conditions therein and for each state the parties involved, the date of the contract or agreement, scope of work, and describe in detail the performance of services provided by each party to such contracts and agreements.

Objection, vague, does not clarify the parties to the contract (e.g. landlord or tenant). Without waiving same, contracts by and between Tenant and:

EJ Waterproofing. See **Exhibits**.
Services for Home. See **Exhibits**.
Mold Law Group. See **Exhibits**.
Stanley Steemer, See Answer to Interrogatory #16.

21. Identify **all communications between each party to this action and with any other person** related to the Property and the alleged mold contamination and rodent conditions therein and describe the substance, date, form, and persons involved in each communication.

Objection, vague and overbroad. Without waiving same, all communications set forth in these answers between plaintiffs, city inspectors, defendants, and third party vendors. See also **Exhibits** (emails and text messages with landlord, communications with MLG, EJ Waterproofing, and other vendors).

22. Describe whether there was any **causal relationship** between the actions or inaction of Defendants and the presence of the alleged mold contamination and rodent conditions at the Property.

See June 9, 2022 MLG Report, e.g:

> "*[b]ased upon the foregoing, including the certified environmental microbiology reports from an AIHA certified microbiology laboratory in good standing and the U.S. Federal Government "CLIA" certified medical laboratory which produced the medical testing results, also in good standing with the U.S Federal Government and CLIA, it is my opinion that, based upon my observations,* ***the above-named structure is a health hazard to all occupants***."
>
> .....
>
> *This opinion is based on the presence of pathogenic molds in the samples along with the presence of pathogenic bacteria and biomarkers of exposure of the pathogenic mold in the urine and/or stool of the resident. Further, by correlating the environmental and medical results, it has led me to render an opinion, with a great amount of scientific and medical certainty, that* ***the pathogenic species of fungi found in the exposure victim's mold-infested structure produced the same disease-causing mycotoxins that tested positive in the mold exposure victim's bodies.***

23. Identify all **admissions** made by any party related to the subject matter of this action and for each identify the person making the admission, the person(s) to whom it was made, the manner (in person, telephone, email, etc.) in which it was made, and the contents of said admission.

Statements by plaintiff made to the Mold Law Group experts shall not be construed as adoptive admissions. *Sallo v. Sabatino*, 146 N.J. Super. 416, 418 (App.Div. 1976), certif. den., 75 N.J. 24 (1977).

Circa Aug 9, 2022 - defendant made some repairs after Aug 9 2022 visit by inspector regarding rodents. Repairs were deemed insufficient.

By offering an alternative unit to plaintiffs in late 2023, defendants acknowledged the adverse MLG Report of June 2022, as well as the adverse EJ Waterproofing air quality study of Oct 29, 2021 (missing) and the adverse air quality study of February of 2022 (which found elevated or abnormal smut/myxomycetes levels, 6x higher than outdoors).

24. State the names and addresses of all persons you expect to call as a fact witness at trial and provide a brief description of their anticipated testimony.

Any person listed herein, including plaintiffs, inspectors, and vendors who performed studies on the property.

25. Identify the name and address of each and every person who you expect to call as an **expert witness at trial** and the subject matter which he or she is expected to testify about.

Dr. Shakil A. Saghir, MSc, MSPH, Ph. D. - Causation
Dr. Annette B. Hobi, NMD - Economic and Non-Economic Damages

26. Identify all **parties to the lease agreement** related to rental of the Property.

See **Lease Exhibit**.

Parties to Lease: Jennifer Boria, Sonialys Boria, and a "live-in Aid", e.g. Andrew Reyes

27. State all reasons for the **failure of Andrew Reyes to sign the lease agreement** related to rental of the Property.

Objection, irrelevant and ambiguous, **this interrogatory is meant to harass plaintiffs,** and assumes that he was asked to sign said lease by defendants, who were aware of his presence and was liked by everyone at the complex including property managers. Without waiving same, it was Mr. Reyes' understanding that he was permitted as a **live-in-aid**. In addition, plaintiffs have reason to believe he was initially encouraged to remain as a "live in aid" *only* - and not as a tenant - in order to avoid jeopardizing *the landlord's* federal rental subsidies. After the within lawsuit was filed, however, the landlord abruptly served a "Cease and Desist" notice on the plaintiff, in or about September 11, 2023, asserting the purported illegality of Mr. Reyes's tenancy.

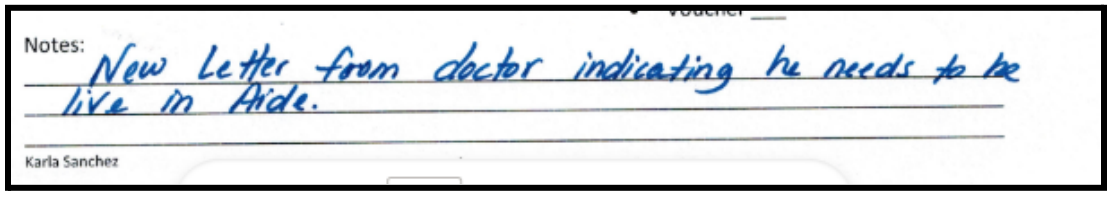
28. State the substance of your response to the **September 11, 2023, letter from counsel for the landlord** of the Property advising that Andrew Reyes was an unapproved, unauthorized occupant residing in your apartment" in violation of the lease agreement.

Objection, vague, ambiguous, this interrogatory is meant to harass plaintiffs, and constitutes potential Confidential Attorney Client material. Without waiving same, management led plaintiffs to believe that Mr. Reyes' presence was lawful as a "**live-in-aid**", and he was generally liked by everyone, including property managers. It was not until *after* plaintiffs filed suit, that defendants - in bad faith - served this September 11, 2023 letter. Plaintiffs read the letter and spoke to their attorney regarding same. *The landlord has also indicated to plaintiffs that there is ongoing litigation which prevents them from adding Reyes to the lease.*

29. Did Andrew Reyes seek approval and authorization to reside at the Property and sign the lease agreement as an occupant/tenant in response to the September 11, 2023, letter or otherwise?

Objection, irrelevant, ambiguous, and this interrogatory is meant to harass plaintiffs. Without waiving same, it was Mr. Reyes' understanding that he was permitted as a live-in-aid. In addition, plaintiffs have reason to believe he was initially encouraged to remain as a "live-in-aid" in order to avoid jeopardizing the landlord's federal rental subsidies. After the within lawsuit was filed, however, the landlord abruptly served a "Cease and Desist" notice on the plaintiff, in or about September 11, 2023, asserting the purported illegality of Mr. Reyes's tenancy.

Specifically, *circa* Oct of 2023 an attempt was made by plaintiffs to add Reyes as a tenant, and defendants encouraged or *supported* Reyes to stay as a "live-in-aid", presumably since doing so would not jeopardize landlord's federal rental subsidies, to wit:


Notes: New Letter from doctor indicating he needs to be live in Aide.

Karla Sanchez

See Oct 2023 "live-in-aid" Exhibit. See also September 18, 2019 Letter from Doctor's Office Authorizing Live-in-aid (EXHIBIT).

30. State all reasons for the **failure of Andrew Reyes to seek approval and authorization to reside at the Property** as an occupant/tenant and sign the lease agreement in response to the September 11, 2023, letter or otherwise if he did not do

Objection, irrelevant, ambiguous, and this interrogatory is meant to harass plaintiffs. Without waiving same, see answer to #29.

I swear or affirm that the foregoing statements are true. I am aware that if same are willfully false, I may be subject to punishment.

DATE: July 30, 2024

Jennifer Boria, individually and
On behalf of Sonialys Boria

Andrew Reyes

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

Andrew Reyes, Jennifer Boria, and Sonialys Boria minor by her Guardian Ad Litem Jennifer Boria PLAINTIFFS V. DEFENDANTS THE HERITAGE AT ALEXANDER HAMILTON, ALEXANDER HAMILTON ASSOCIATES, LLC PENNROSE PROPERTIES, LLC PENNROSE MANAGEMENT COMPANY JOHN & JANE DOE, I-X, , ABC CORPORATION I-X	Civil Action NO. 2:23-cv-22914-CCC-JBC Judge: Claire C. Cecchi USDJ **SUPPLEMENTAL CERTIFICATION Of December 18, 2024**

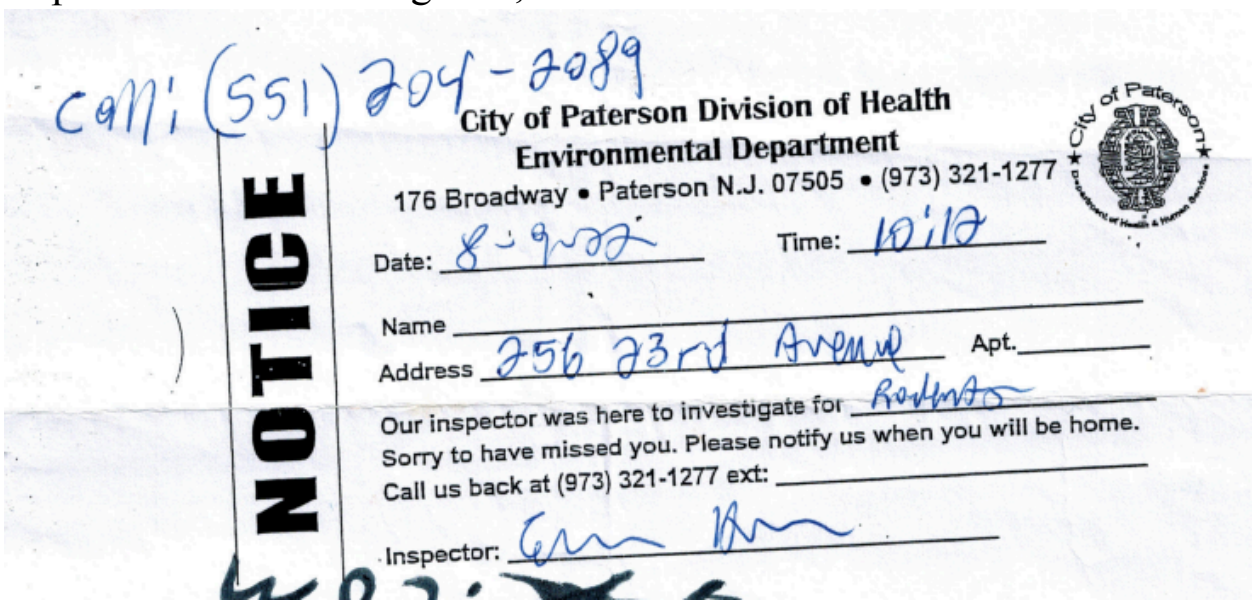
I, Santos A. Perez, of full age, under oath, do state:

1. This certification relates to the Court's order of even date, which states that defendant shall "*provide Plaintiffs with a letter confirming that Defendants are not in possession of information responsive to Plaintiffs' Interrogatory Nos. 16, 17 and 23*".

2. Reference is made to the motion at ECF 23, which contains such evidence of said inspections and city complaints, which are responsive.

3. More specifically, the evidence includes, as stated on even date, the following:

4. Inspection Notice of August 9, 2022:


Cell: (551) 204-2089

NOTICE

City of Paterson Division of Health
Environmental Department
176 Broadway • Paterson N.J. 07505 • (973) 321-1277

Date: 8-9-22 Time: 10:17

Name

Address 256 23rd Avenue Apt.

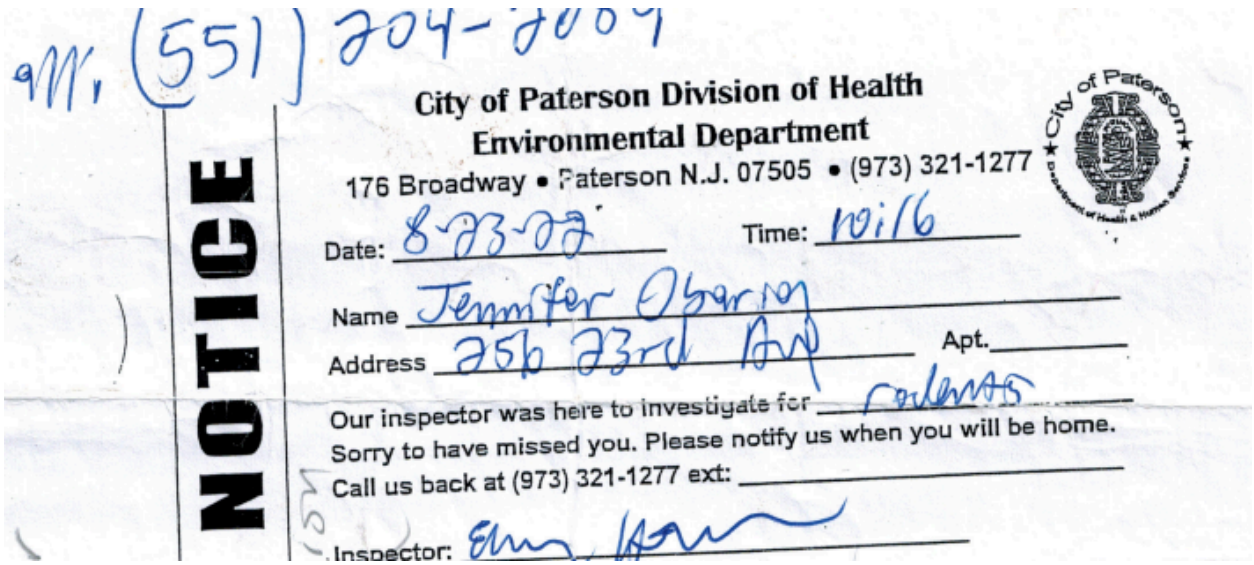
Our inspector was here to investigate for Rodents

Sorry to have missed you. Please notify us when you will be home.

Call us back at (973) 321-1277 ext:

Inspector:

5. Inspection Notice of August 23, 2022:


Cell: (551) 204-2089

NOTICE

City of Paterson Division of Health
Environmental Department
176 Broadway • Paterson N.J. 07505 • (973) 321-1277

Date: 8-23-22 Time: 10:16

Name Jennifer Oberon

Address 256 23rd Ave Apt.

Our inspector was here to investigate for rodents

Sorry to have missed you. Please notify us when you will be home.

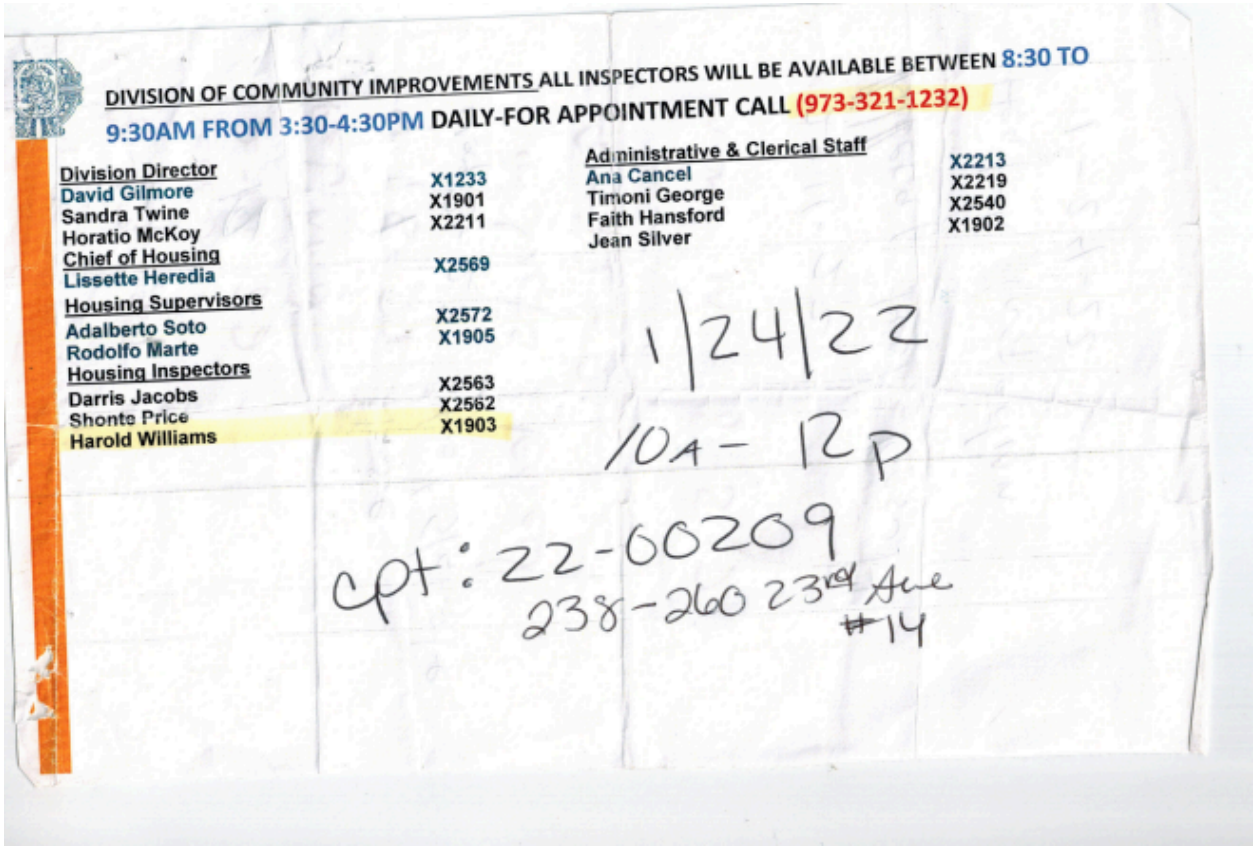
Call us back at (973) 321-1277 ext:

Inspector:

6. The foregoing evidence fully identifies the address, and the inspectors.

7. Further evidence of inspections and city citations include a notice

dated January 24, 2022, which contains a docket number, and references "inspectors", with the name "Harold Williams" - an inspector - highlighted, to wit:



DIVISION OF COMMUNITY IMPROVEMENTS ALL INSPECTORS WILL BE AVAILABLE BETWEEN 8:30 TO 9:30AM FROM 3:30-4:30PM DAILY-FOR APPOINTMENT CALL (973-321-1232)

Division Director	
David Gilmore	X1233
Sandra Twine	X1901
Horatio McKoy	X2211
Chief of Housing	
Lissette Heredia	X2569
Housing Supervisors	
Adalberto Soto	X2572
Rodolfo Marte	X1905
Housing Inspectors	
Darris Jacobs	X2563
Shonte Price	X2562
Harold Williams	X1903

Administrative & Clerical Staff	
Ana Cancel	X2213
Timoni George	X2219
Faith Hansford	X2540
Jean Silver	X1902

1/24/22
10A - 12P
cpt: 22-00209
238-260 23rd Ave #14

8. "CPT" is short for "complaint", and references a complaint filed against defendants.

9. **The foregoing constitutes "information responsive to Plaintiffs' Interrogatory Nos. 16, 17 and 23" which you are duty bound to discuss with your client, defendants herein.**

The foregoing statements made by me are true. I am aware that if same are willfully false, I may be subject to punishment.

Santos A. Perez, Esq.

Attorney for Plaintiffs

DATED: December 18, 2024

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

Andrew Reyes, Jennifer Boria, and Sonialys Boria minor by her Guardian Ad Litem Jennifer Boria PLAINTIFFS V. DEFENDANTS THE HERITAGE AT ALEXANDER HAMILTON, ALEXANDER HAMILTON ASSOCIATES, LLC PENNROSE PROPERTIES, LLC PENNROSE MANAGEMENT COMPANY JOHN & JANE DOE, I-X, , ABC CORPORATION I-X	Civil Action NO. 2:23-cv-22914-CCC-JBC Judge: Claire C. Cecchi USDJ **CERTIFICATION** To Vacate The Discovery Motion Bar At ¶6 Of The Standing Scheduling Order, And For Other Relief

I. BACKGROUND - THE NEED FOR CITY INSPECTION OR CITATION EVIDENCE IN THIS TOXIC TORT CASE

i. This Court's Opinion of July 30, 2024 Highlights the Need for City Citation or Inspection Discovery

ii. Discovery of Such Records Is Being Unlawfully Withheld

II. DEFENDANT'S REFUSAL TO ANSWER MULTIPLE INTERROGATORIES AND TO PRODUCE BUSINESS RECORDS OF THE TYPE GENERALLY KEPT BY LANDLORDS *IS CLEAR AND COMPREHENSIVE*

i. Defendants Unlawfully Refused to Answer "Smoking Gun" Questions, Without Asserting Privileges, Since they Are Aware that this Court in a Publicly Accessible Opinion Did Not Rule out the Use of Such City Citation or Inspection Records as "Evidence" of Negligence

ii. City Citation or Inspection Documents Defendants claim are not within their possession or control are reasonably the type of standard business or tenancy records kept by landlords in the ordinary course of business

iii. Defendant's frivolous objections to the interrogatories and requests for documents *do not include assertions of privilege* and therefore warrant sanctions

III. THE JOINT DISCOVERY LETTER AND DEFENDANT'S MISPRESETATIONS AT THE FIFTEEN MINUTE TELEFONIC CONFERENCE IS NO SUBSTITUTE FOR THE COMPREHENSIVE DISCOVERY MOTION "TERMINATED" BY THIS COURT

i. The Comprehensive August 14, 2024 Discovery Motion "Terminated" by This Court on August 21, 2024, Without Review on the Merits,

ii. This Court "Terminated" A Comprehensive Motion Pursuant to ¶6 of the Standing Scheduling Order, Which Runs Afoul of the Rules of Civil Procedure

iii. The Parties's *Severely Limited* Joint Discovery Letter of August 27, 2024

iv. The September 17, 2024 Conference and Defendant's Misrepresentations of their Comprehensive Discovery Lapses

v. This Court's Ruling Based On A Fifteen Minute Conference, Misrepresentations, And Without The Benefit Of Having Reviewed The "Terminated" August 14, 2024 Discovery Motion

IV. A "YES", OR "NO" ANSWER TO CITY INSPECTION OR CITATION INTERROGATORIES CARRIES MORE WEIGHT THAN AN ADVERSE INFERENCE

i. A Yes Or No Answer Can Be Used To Impeach Defendants

ii. Defendant's Staggering And Unequivocal Refusals To Answer These Questions Without Asserting A Privilege Have Substantially Prejudiced Plaintiff's Case, By Inter Alia Preventing Plaintiffs from Obtaining More Specific Discovery from the City

iii. An adverse inference is not a proper substitute for the foregoing relief sought, as same is less impactful than the needed discovery or a yes/no answer

V. THIS COURT'S REFUSAL TO PERMIT A MOTION TO COMPEL NECESSITATES THAT THIS COURT FORMALLY VACATE THE DISCOVERY MOTION BAR AT PARAGRAPH 6 OF THE STANDING SCHEDULING ORDER

i. This District is the Only Known Jurisdiction to Bar Discovery Motions Categorically
ii. The City Subpoena Responses Supports The Relief Requested Herein
iii. This Court Did Not Rule on a Letter Motion Filed Regarding this Issue, thus necessitating the within motion
iv. ¶6 of the Scheduling Order Should Be Vacated Accordingly

VI. PARAGRAPH 6 OF THE STANDING SCHEDULING ORDER - WHICH PROHIBITS DISCOVERY MOTIONS UNLESS ON "LEAVE", RUNS AFOUL OF THE RULES OF CIVIL PROCEDURE

i. The Rules Do Not Permit a Discovery Motion Bar
ii. Discovery Motion Bar Prevents Appeals and Objections
iii. ¶6 Should Be Vacated and Declared Antithetical to the Rules
iv. Since Defendants Repeatedly Failed to Correct The Identified Deficiencies, and have Substantially Prejudiced Plaintiffs Case in Chief, Attorneys Fees Should be Awarded or Sanctions Imposed, and Discovery Extended by One Year

I.

BACKGROUND - THE NEED FOR CITY INSPECTION OR CITATION EVIDENCE IN THIS TOXIC TORT CASE

1. This Court on July 30, 2024 specifically discussed the issue of negligence per se, and its counterpart "*evidence of negligence*", as these doctrines apply in the case *sub judice*.[1]

2. This publicly available opinion, *known to both defendants* as well as the City of Paterson, highlighted that plaintiff's **primary theory of liability** was premised on **city citations and inspections**.

[1] Available at https://casetext.com/case/boria-v-the-heritage-at-alexander-hamilton [**ECF 22**].[Exhibit A]

3. Plaintiffs indeed have credible proofs that *numerous* such inspections *were* conducted on their property, and that city summonses, complaints, or citations *likely were* - issued. See [ECF 23] ("Terminated" August 14 2024 Motion) and **August 1, 2024 Deficiency Letter** to Defense Counsel. [Exhibit B].

4. Defendants are *keenly* aware of the **relevancy** of such inspection and city citation evidence, inasmuch as this Court in its opinion [ECF 22] cited with approval a New Jersey Supreme Court case, *Braitman*, which had held that a violation of New Jersey's Hotel Multiple Dwelling Law (HMDL) regulations **can be used as "evidence of [a] defendant's negligence**". *Boria v. The Heritage at Alexander Hamilton*, Civil Action 23-22914, 4 (D.N.J. Jul. 30, 2024). [ECF 22] [Exhibit A] [2].

5. **This Court's opinion [ECF 22] [Exhibit A], thus makes it clear that the city citation and inspection evidence sought by plaintiff, which is *being unlawfully withheld by defendant and the City of Paterson,* can be used as "evidence of negligence" in the case *sub judice*.**

[2] This Court also cited another NJ Supreme Court decision, *Alloway,* for that same proposition in the context of OSHA, e.g. use of OSHA violations as evidence of negligence.

6. ***Ergo,* defendant's claim of irrelevancy in their *refusals* to answer such inspection and citation questions, *infra*, is patently <u>frivolous</u> and merits <u>sanctions</u>.**

7. This Court should therefore permit a motion to compel *and for sanctions* to be filed, and ¶6 Of the standing scheduling order prohibiting such motions unless on "leave" should be declared as running afoul of the rules, as set forth in the accompanying brief and elsewhere in this certification.

II.

DEFENDANT'S REFUSAL TO ANSWER MULTIPLE INTERROGATORIES AND TO PRODUCE BUSINESS RECORDS OF THE TYPE GENERALLY KEPT BY LANDLORDS- PARTICULARLY AS REGARDS CITY INSPECTIONS OR CITATIONS - *IS CLEAR AND COMPREHENSIVE*

8. Defendants frivolously refused to answer, on grounds of relevancy, numerous questions, including a question specifically inquiring as to City Citations/Complaints/Summonses and city code violations:

23. If you have been cited or warned by municipal, state, or federal authorities in the past ten years, in connection with potential, perceived, or actual code violations in the *subject property* or any building in the Alexander Hamilton complex, state the date and circumstances thereof. Code violation includes building codes, electrical codes, plumbing codes, and codes related to the provision of heating, air conditioning, cleanliness, rodent or pest control, and/or air quality.

Answer:

Answering Defendant objects to this Interrogatory as it is overly broad, unduly burdensome, not limited in time and scope, is irrelevant as the information sought cannot prove or disprove the Plaintiffs' claims in this litigation, and is not reasonably calculated to lead to the admissibility of discoverable evidence.

9. Defendants also frivolously refused to answer a question regarding City **Inspections:**

16. State whether or not Paterson's Division of Community Improvements has ever conducted inspections, particularly re-rental inspections, of plaintiff's unit, the subject property, for suspected Housing Maintenance Code Violations or for any other reason, in the past ten years. If not, please state why such re-rental inspections were not conducted *generally* and also *just prior to plaintiffs' move-in.* See: https://www.patersonnj.gov/department/division.php

Answer:

While denying Plaintiffs' allegations and denying all liability to Plaintiffs, Answering Defendant objects to this Interrogatory as it is overly broad, unduly burdensome, not limited in time and scope, is irrelevant, and not reasonably calculated to lead to the admissibility of discoverable evidence. Answering Defendant further objects to this Interrogatory as it seeks information not within Answering Defendant's possession or control. Without waiving these denials and objections, Answering Defendant respectfully refers Plaintiffs to any documents produced in connection with their subpoena(s) and/or OPRA request served upon The City of Paterson and its various divisions.

10. Defendants further frivolously refused to answer a *second* question

regarding City **Inspections:**

17. Has Paterson's Division of Health, to your knowledge, received complaints and/or taken action regarding No Heat or Rodent/Vermin infestations, as regards *any unit* in the Alexander Hamilton Complex, in the past ten years? "Action" as used herein includes warnings, citations, remediation, or any such communications with the landlord or the tenant to address issues identified by the Division of Health. https://www.patersonnjhealth.gov/department/division.php?structureid=47

Answer:

While denying Plaintiffs' allegations and denying all liability to Plaintiffs, Answering Defendant objects to this Interrogatory as it is overly broad, unduly burdensome, not limited in time and scope, is irrelevant, and not reasonably calculated to lead to the admissibility of discoverable evidence. Answering Defendant further objects to this Interrogatory as it seeks information not within Answering Defendant's possession or control. Without waiving these objections, Answering Defendant respectfully refers Plaintiffs to any documents produced in connection with their subpoena(s) and/or OPRA request served upon The City of Paterson and its various divisions.

11. A list of nearly a dozen other refusals to answer or evasive answers can be found at [**ECF 23**] ("Terminated" Aug 14 2024 Discovery Motion) as well in an August 1, 2024 deficiency letter emailed to defense counsel to Counsel. [Exhibit B]

12. The **document requests served on defendants** were also comprehensively and frivolously unanswered by defendants, as referenced in the terminated August 14, 2024 discovery motion. [**ECF 23**]

13. Defendants - professional landlords, thus claim to have no access to the tenancy file for the tenancy immediately preceding plaintiff's, which was identified by name in the document requests. [**ECF 23**]

14. Most, if not all, of these refusals to answer were not accompanied by assertions of applicable privileges - which do not otherwise apply.

15. The foregoing discovery lapses are comprehensive, atypical, and brazen, particularly in light of this Court's opinion, [ECF 22] [Exhibit A]**, which made it clear that such city citation and inspection evidence related to violations can be used as "proof of negligence".**

16. As such, sanctions are warranted, *infra*.

III.
THE PARTIES' JOINT DISCOVERY LETTER, AND DEFENDANT'S MISPRESETATIONS AT THE FIFTEEN MINUTE TELEFONIC CONFERENCE, IS NO SUBSTITUTE FOR THE COMPREHENSIVE DISCOVERY MOTION "TERMINATED" BY THIS COURT WITHOUT PROPER REVIEW

17. On August 1, 2024, plaintiff served defendants with a deficiency letter outlining comprehensive discovery violations, refusals to answer, refusals to produce, and misleading answers. [Exhibit B]

18. Having received no response, on August 14, 2024 the plaintiff then filed a comprehensive discovery motion to compel. [ECF 23].

19. One week after the filing of the discovery motion, on August 20, 2024, this Court then unexpectedly canceled a previously scheduled telephonic conference to take place on that date, and rescheduled same to September 17, 2024. (ECF 24).

20. The following day, on August 21, 2024 [ECF 25], this Court "terminated" the discovery motion, effectively removing it from the docket without disposition - and substantially prejudicing the plaintiff's rights to the discovery sought. (ECF 25)

21. The Court then instructed the parties to draft a **five page** *joint* discovery letter, listing the *comprehensive* discovery violations which had been raised in the "terminated" motion, [ECF 23], which encompassed *circa* 100 pages w/ the exhibits.

22. The severely limited five page Joint Discovery Letter [ECF 29] was filed on August 27, 2024.

23. At the September 17, 2024 conference, defendants misrepresented the nature of their comprehensive refusals to answer - thereby prejudicing plaintiffs, and compelling the judge to deny any relief relative to the motion to compel defendants to answer interrogatories and produce documents.[ECF 31] [3]

24. This Court issued this non-reviewable, non-appealable, "summary" ruling, **without having reviewed the significant discovery lapses by defendants as had been set forth in the August 14, 2024 "terminated" motion** [ECF 23] (Terminated Motion). See [ECF 31] (Letter Order).

25. Respectfully, the foregoing issue of defendant's refusals to answer is not a "marginal" or close case, or an ambiguous case of malfeasance by a party. Instead, defendant's refusals to answer, or claims of having no responsive documents, are a **clear, unambiguous, discovery violation**.

26. So brazen were these refusals that they require sanctions.

[3] The parties consented to a *separate* motion to compel the city subpoenas, thereby allowing the judge to permit *that* motion. However, everything requested by plaintiff which defendant did not consent to - was DENIED. [ECF 31].

27. It is respectfully submitted that the foregoing non-reviewable "summary" process by this Court is no substitute for individualized review of the discovery violations as set forth in the August 14, 2024 "terminated" motion [ECF 23].

28. As such, this Court should vacate ¶6 of the standing scheduling order [ECF 12], permit the filing of a motion to compel, award sanctions, and extend discovery by one year.

IV.
A "YES", OR "NO" ANSWER TO CITY INSPECTION OR CITATION INTERROGATORIES CARRIES MORE WEIGHT THAN AN ADVERSE INFERENCE

29. A "Yes" or "No" answer to the interrogatories on city inspections or citations, in lieu of the unlawful and sanctionable refusal to answer, would have guided further discovery, and could have been used to impeach defendant's credibility.

30. A "Yes" answer, for instance, would have been accompanied by a description of the citations or inspections, which **could have been used to obtain more specific discovery from the city**.

31. Conversely, a "No" answer could have been used to impeach defendants at trial, or their deposition, upon receipt of discovery from the city - or with the evidence in plaintiff's possession which shows that such inspections *were* conducted, and citations likely issued, notwithstanding their "no" answer. See **August 14, 2024 "Terminated" Discovery Motion** [**ECF 23**].

32. An adverse inference, on the other hand, would leave a potential jury with nothing of evidentiary value - except doubt - and would not serve as a viable substitute for a substantive answer as set forth *supra*.

33. As a result of the foregoing, plaintiffs have been **substantially prejudiced - perhaps irreparably so** - and this Court should therefore permit the filing of a motion to compel, award sanctions, and extend discovery.

V.

THIS COURT'S REFUSAL TO PERMIT A MOTION TO COMPEL NECESSITATES THAT THIS COURT FORMALLY VACATE THE DISCOVERY MOTION BAR AT PARAGRAPH 6 OF THE STANDING SCHEDULING ORDER

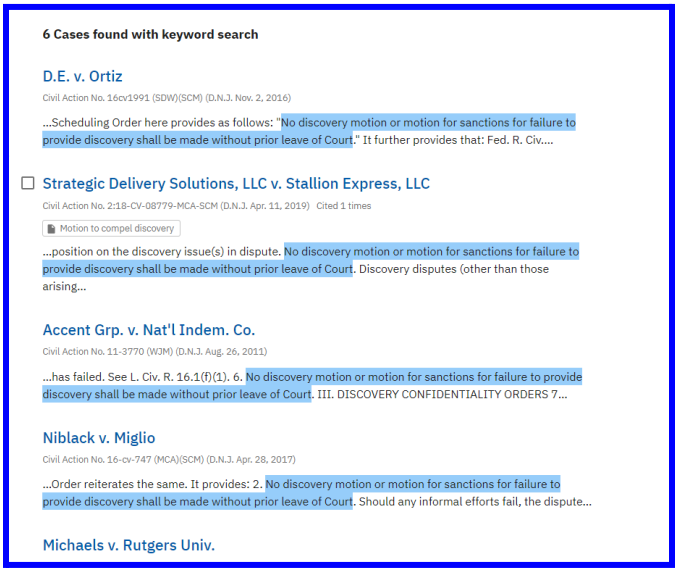
34. This case's standing scheduling order [ECF 12], ¶6, hereinafter the "**discovery motion bar",** provides as follows:

"***no discovery motion or motion for sanctions for failure to provide discovery shall be made without prior leave of Court***.".

35. Indeed, this Court is the only known District Court which imposes such discovery bars - and which can result in counsels or litigants engaging in discovery misconduct such as in the case at bar - which has significantly prejudiced plaintiff.

36. A search in WestLaw's *Casetext* in fact confirms that this Court is likely in the minority as regards such discovery bars.

See http://tiny.cc/DiscoveryMotionBar:



6 Cases found with keyword search

D.E. v. Ortiz

Civil Action No. 16cv1991 (SDW)(SCM) (D.N.J. Nov. 2, 2016)

...Scheduling Order here provides as follows: "No discovery motion or motion for sanctions for failure to provide discovery shall be made without prior leave of Court." It further provides that: Fed. R. Civ....

Strategic Delivery Solutions, LLC v. Stallion Express, LLC

Civil Action No. 2:18-CV-08779-MCA-SCM (D.N.J. Apr. 11, 2019) Cited 1 times

Motion to compel discovery

...position on the discovery issue(s) in dispute. No discovery motion or motion for sanctions for failure to provide discovery shall be made without prior leave of Court. Discovery disputes (other than those arising...

Accent Grp. v. Nat'l Indem. Co.

Civil Action No. 11-3770 (WJM) (D.N.J. Aug. 26, 2011)

...has failed. See L. Civ. R. 16.1(f)(1). 6. No discovery motion or motion for sanctions for failure to provide discovery shall be made without prior leave of Court. III. DISCOVERY CONFIDENTIALITY ORDERS 7...

Niblack v. Miglio

Civil Action No. 16-cv-747 (MCA)(SCM) (D.N.J. Apr. 28, 2017)

...Order reiterates the same. It provides: 2. No discovery motion or motion for sanctions for failure to provide discovery shall be made without prior leave of Court. Should any informal efforts fail, the dispute...

Michaels v. Rutgers Univ.

37. Another Search in WestLaw's *Casetext* also confirms that most other jurisdictions require a conference prior to a discovery motion, but do not bar same.[4]

38. The city subpoenas issue, referenced in the "terminated motion" [ECF 23], as well as in the Joint Discovery letter [ECF 29], highlights the **prejudice plaintiff has suffered as a result of the foregoing,** in that a "yes" or "no" answer to the interrogatories directed at *defendant* would have guided the *scope* of said subpoenas - **a "yes" answer by defendant (as to the existence of inspections or city citations) likely also compelling the city to provide the discovery the City is unlawfully withholding**. See [ECF 23] and [ECF 35].

39. In fact - to date - **the city refuses to acknowledge that the nearly two-decade old subject multi-apartment complex has *ever* been subjected to inspections, or city citations, despite the plaintiff's proofs**, [ECF 23] and [ECF 29], showing that numerous inspections did take place - and citations likely issued. See [ECF 35], October 17, 2024 Letter Motion.

[4] See http://tiny.cc/DiscoveryBarSearch

40. And although the city on October 29, 2024 amended its deficient responses to the subpoenas, this amendment depicts only *one irrelevant* inspection/citation, occurring circa October of 2024 - and therefore does little to dispel the proposition that their deficient answers and claims of no responsive documents are evasive - and likely false.[5]

41. The foregoing issues were raised in an October 17, 2024 letter motion, which remains unadjudicated. [ECF 35], October 17, 2024 Letter Motion.

VI.
PARAGRAPH 6 OF THE STANDING SCHEDULING ORDER - WHICH PROHIBITS DISCOVERY MOTIONS UNLESS ON "LEAVE", RUNS AFOUL OF THE RULES OF CIVIL PROCEDURE

42. This case's standing scheduling order [ECF 12], ¶6, hereinafter the "**discovery motion bar",** provides as follows:

> "***no discovery motion or motion for sanctions for failure to provide discovery shall be made without prior leave of Court***.".

[5] On September 18, 2024 (ECF 31), this Court permitted a motion as to the subpoenas - which motion had been consented to by defendants. However, given that this Court has permitted defendants to brazenly refuse to answer numerous significant interrogatories, such a motion would presumably encompass an exercise in futility, since the city has also claimed the impossible - e.g. that no inspections have *ever* taken place - and this Court is likely to accept this far-fetched proposition. See October 17, 2024 Letter Motion [ECF 35]. Moreover - **if defendants properly answer *their* interrogatories, the request to the city could be more specific and streamlined.**

43. In contrast, the rules allow this Court to require a conference prior to the filing of discovery motions - but **does not explicitly support such a discovery motion bar,** to wit, FRCP 16(b)(3)(B)(v) provides as follows:

> "***Permitted Contents. The scheduling order may…. direct that before moving for an order relating to discovery, the movant must request a conference with the court***."

44. The Notes to the 2015 amendments to FRCP 16(b)(3)(B)(v), further state that this Court may dispense with the *conference* - but notably it does not state that this Court may *prohibit* discovery motions:

> **Finally, the order may direct that before filing a motion for an order relating to discovery the movant must request a conference with the court. Many judges who hold such conferences find them an efficient way to resolve most discovery disputes without the delay and burdens attending a formal motion, but *the decision whether to require such conferences is left to the discretion of the judge* in each case.**

45. L. Civ. R. 16(f) further contemplates that discovery motions may be conditioned on a conference, but this rule does not contemplate discovery bars, to wit, "*any such dispute not resolved shall be presented by telephone conference call or letter to the Judge. This presentation* ***shall precede any formal motion***."

46. The rules, then, clearly contemplate, and permit, the filing of discovery motions after or even without a conference, and **there is no indication in said rules that the Magistrate Judge may *sua sponte* impose a discovery bar preventing *all* discovery motions unless on leave**.

47. FRCP 16(b)(3)(B)(v), and/or the local rules, therefore **do not sanction the discovery bar** imposed by this Court *sua sponte* on March 24, 2024. [ECF 12].

48. In fact, this Court's discovery bar effectively allows discovery rulings which are **non-appealable and non-objectionable** under FRCP 72, thus undermining the legal process, and allowing unscrupulous litigants to engage in comprehensive discovery misconduct.

49. The rules, however, explicitly contemplate such appeals or objections - which this court **may not bypass with such a "summary" process devoid of substantive review of the discovery in lieu of biased counsel "summaries"**.

50. L. Civ. R. 72.1 (c)(1) thus provides that "**Any party may appeal** from a Magistrate Judge's determination of a non-dispositive matter within 14 days."

51. L. Civ. R. 72.1 (a)(1) further provides that "**An appeal** from a Magistrate Judge's determination of such a non-dispositive motion **shall** be served and filed in accordance with L.Civ.R. 72.1(c)(1)."

52. ¶6 of the standing scheduling order effectively bypasses these appeal rights - through a "secretive" process whereby counsels can misleadingly "summarize" complex discovery issues - thereby leaving no substantive "record" to appeal.

53. Given the foregoing, ¶6 of the standing scheduling order should be vacated and declared antithetical to the rules, particularly since defendants have been *repeatedly* asked to to remedy same, including by way of the October 17, 2024 letter motion, [**ECF 35**], and have knowingly failed to correct their comprehensive malfeasance (refusals to answer and false claims of no responsive documents).

54. Such *comprehensive* misconduct merits *comprehensive* sanctions, and an extension of discovery by one year, so as to permit plaintiffs to file new actions, or more specific requests for documents against the City - with the benefit of responsive answers by defendants which can be used to describe the documents sought with more specificity.

The foregoing statements made by me are true. I am aware that if same are willfully false, I may be subject to punishment.

Santos A. Perez, Esq.
Signer ID: BLSHRMZF12...
Attorney for Plaintiffs

DATED: November 8, 2024

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

Andrew Reyes, Jennifer Boria, and Sonialys Boria minor by her Guardian Ad Litem Jennifer Boria PLAINTIFFS V. DEFENDANTS THE HERITAGE AT ALEXANDER HAMILTON, ALEXANDER HAMILTON ASSOCIATES, LLC PENNROSE PROPERTIES, LLC PENNROSE MANAGEMENT COMPANY JOHN & JANE DOE, I-X, , ABC CORPORATION I-X	Civil Action NO. 2:23-cv-22914-CCC-JBC Judge: Claire C. Cecchi USDJ **SUPPLEMENTAL CERTIFICATION**

1. Defendants forwarded their proposed *second* joint discovery letter (JDL) on Thanksgiving eve, while the undersigned was on vacation, in an attempt to comply with ECF 37.

2. Nonetheless, the undersigned *while on vacation* promptly responded and wrote to this Court on November 29, 2024 (ECF 38), stating essentially that defendants were engaging in the same used-car-sales-type skullduggery, and that a *second* JDL would therefore be futile, thus necessitating a ruling of the motion at ECF 36.

3. On even date, at 5pm, this Court indicated that the parties were nonetheless under Court order to draft the second such JDL (the *first* one having had no success because of defendant's used-car-sales tactics).

4. The undersigned then emailed defendants, stating that the following interrogatory questions *must* be included in said *second* JDL, and that the JDL must include a reference to this Court's opinion in the case sub judice, which established relevancy of these questions, to wit (unanswered interrogatory questions):

> 23. If you have been cited or warned by municipal, state, or federal authorities in the past ten years, in connection with potential, perceived, or actual code violations in the *subject property* or any building in the Alexander Hamilton complex, state the date and circumstances thereof. Code violation includes building codes, electrical codes, plumbing codes, and codes related to the provision of heating, air conditioning, cleanliness, rodent or pest control, and/or air quality.
>
> **Answer:**
>
> **Answering Defendant objects to this Interrogatory as it is overly broad, unduly burdensome, not limited in time and scope, is irrelevant as the information sought cannot prove or disprove the Plaintiffs' claims in this litigation, and is not reasonably calculated to lead to the admissibility of discoverable evidence.**

5.

> 16. State whether or not Paterson's Division of Community Improvements has ever conducted inspections, particularly re-rental inspections, of plaintiff's unit, the subject property, for suspected Housing Maintenance Code Violations or for any other reason, in the past ten years. If not, please state why such re-rental inspections were not conducted *generally* and also *just prior to plaintiffs' move-in.* See: https://www.patersonnj.gov/department/division.php
>
> **Answer:**
>
> **While denying Plaintiffs' allegations and denying all liability to Plaintiffs, Answering Defendant objects to this Interrogatory as it is overly broad, unduly burdensome, not limited in time and scope, is irrelevant, and not reasonably calculated to lead to the admissibility of discoverable evidence. Answering Defendant further objects to this Interrogatory as it seeks information not within Answering Defendant's possession or control. Without waiving these denials and objections, Answering Defendant respectfully refers Plaintiffs to any documents produced in connection with their subpoena(s) and/or OPRA request served upon The City of Paterson and its various divisions.**

6.

17. Has Paterson's Division of Health, to your knowledge, received complaints and/or taken action regarding No Heat or Rodent/Vermin infestations, as regards *any unit* in the Alexander Hamilton Complex, in the past ten years? "Action" as used herein includes warnings, citations, remediation, or any such communications with the landlord or the tenant to address issues identified by the Division of Health. https://www.patersonnjhealth.gov/department/division.php?structureid=47

Answer:

While denying Plaintiffs' allegations and denying all liability to Plaintiffs, Answering Defendant objects to this Interrogatory as it is overly broad, unduly burdensome, not limited in time and scope, is irrelevant, and not reasonably calculated to lead to the admissibility of discoverable evidence. Answering Defendant further objects to this Interrogatory as it seeks information not within Answering Defendant's possession or control. Without waiving these objections, Answering Defendant respectfully refers Plaintiffs to any documents produced in connection with their subpoena(s) and/or OPRA request served upon The City of Paterson and its various divisions.

7. In the second *and* first JDL's, defendants in defense of their refusal to answer the foregoing questions, alluded to their defense of their refusal to produce documentation - which is a different inquiry - thus stating that they "*don't have responsive documents*" in response to "*why didn't you answer these yes/no questions*".

8. However - the interrogatories are not asking for documents - but rather a yes/no answer.

9. Defendants are therefore knowingly engaging in elementary,

non-impressive, used-car-sales-type skullduggery to avoid confronting this issue - specifically why are they unlawfully refusing to answer relevant, smoking-gun questions.

10. As of 11:30PM on December 2, 2024, defendants had not yet filed the second JDL with the foregoing statements the undersigned proposed, thus underscoring the merits of the ECF 36 Motion which this Court, apparently, is not inclined to rule on.

11. The undersigned, it is respectfully submitted, cannot be penalized or blamed for calling out these outrageous used-car-sales type transgressions by defendants.

12. This Court is duty bound to rule in favor of plaintiffs, and/or to otherwise rule on the motion at ECF 36.

The foregoing statements made by me are true. I am aware that if same are willfully false, I may be subject to punishment.

Santos A. Perez, Esq.
Attorney for Plaintiffs

DATED: December 2, 2024

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August 27, 2024

Honorable Judge James B. Clark, III,USMJ
United States District Court, New Jersey
Martin Luther King Building & U.S. Courthouse
50 Walnut Street Room 4015
Newark, NJ 07101

RE: ***Jennifer Boria et al v. The Heritage At Alexander Hamilton et al.***
Docket: 2:23-cv-22914-CCC-JBC

Dear Honorable Judge James B. Clark, USMJ,

In response to this Court's directive of August 21, 2024 (ECF 25), kindly accept this missive as the parties' joint statement on discovery issues.

JOINT STATEMENT

Discovery Issue 1. Plaintiff has identified numerous deficiencies in defendant's answers to interrogatories, which include **fifteen fully unanswered interrogatory questions, and seven questions which were answered evasively, or through "creative legerdemain", thus constituting a comprehensive failure of defendant to engage in discovery in good faith.** Requests for admissions fared no better - defendant essentially producing 80 pages which consisted of plaintiff's lease (over 30 pages), and documents in the possession of plaintiff, many such documents incomplete (e.g. the pivotal air quality study of February 2022).

Significantly, the unanswered questions include defendant's failure to produce *any* documents or answer interrogatories regarding **city inspections and city citations (complaints) against**

defendants, despite plaintiff having presented evidence of numerous such inspections, which includes at least one significant rodent infestation report *not in plaintiff's possession,* and evidence of at least one - and potentially more - criminal complaint/summonses against defendants, which are *not in plaintiff's possession*.

Although plaintiff requested such city citations and inspection reports since April of 2024 - through burdensome & expensive **subpoenas and OPRA requests** *infra* - the City of Paterson has yet to respond, producing only one report related to a different entity not a party to this action.

These criminal citations, as well as the city inspections, are not only relevant - but potentially a "smoking gun", particularly given plaintiff's proofs of their existence, and defendant is duty bound to produce same, in addition to answering the other 21 unanswered questions, and producing related documentary discovery.

Defendants' Position as to Discovery Issue 1
(City Citations and Inspections)

Defendants principally rely on FRCP 26(b)(1) (**relevancy**) & FRCP 26(b)(2)(C)(i)-(iii) (**cumulative or duplicative discovery**), to posit it has no such duty to answer the interrogatories or to produce documents, particularly since "plaintiff is in possession of this evidence" (which is inaccurate, *supra*) and since defendant itself is purportedly not in possession of *any* city citation or city inspection discovery (defendants significantly not having answered *whether* they have been cited or inspected) to wit:

Here, and notwithstanding any objections the Defendants raised in their discovery responses, Defendants contend their responses are not deficient because they ***do not have "relative access" to the information the Plaintiff seeks.*** *(Fed. R. Civ. P. 26(b)(1).)* ***Simply stated, the Defendants cannot provide information beyond their knowledge or documents they do not have****. The Defendants have produced the responsive information and documents within their possession and control.*

Additionally, several of the Plaintiffs' demands seek information pertaining to third-parties that are not affiliated with the these Defendants. Plaintiffs have also served subpoenas on those same third-parties. These ***subpoenas seek information duplicative to the demands propounded on these Defendants.*** *As such, in addition to the original objections noted in Defendants' responses and herein, the Defendants maintain that the* ***Plaintiffs can obtain the information it seeks regarding these third-parties from these third-parties themselves.*** *Defendants therefore maintain that these subpoenas allow Plaintiffs to obtain the discovery "from some other source that is more convenient" and "less burdensome." (Fed. R. Civ. P. 26(b)(2)(C)(i).)*

Lastly, Plaintiffs are seeking information and documentation from the Defendants that the Plaintiffs already have, then alleging the Defendants are deficient for not producing this same discovery. As ***Plaintiff is already in possession of the discovery it seeks,*** *and because Defendants cannot produce information or documents that they do not have, the Defendants maintain any such discovery demands are "unreasonably cumulative or duplicative." (Fed. R. Civ. P. 26(b)(2)(C)(i).)*

For all of these reasons, Defendants' responses are not deficient. Further, Defendants respectfully submit they cannot produce discovery they do not have, and they should not be compelled to produce discovery that is irrelevant, duplicative, cumulative and burdensome, pursuant to Rule 26 of the Federal Rules of Civil Procedure.

Discovery Issue 2: The fifteen wholly unanswered questions include questions related to: the tenancy *immediately* preceding plaintiff's tenancy, a **job *description* of witnesses** defendants identified in their initial disclosures, the **date defendants received the adverse June 9, 2022 MLG Report**, whether defendant was **aware of prior mold issues** in the subject apartment, whether defendant was **aware of the EJ Waterproofing air quality report of February 2022** which plaintiffs had forwarded to them, questions regarding prior lawsuits by tenants, et al.

Defendant's Position As to Discovery Issue 2

Defendant cites to FRE 401, Relevancy, and posits irrelevancy accordingly, also contending *inter alia* that a job description of their witnesses *was* provided (although plaintiff has identified no such job description in defendant's answers), and that they do not have "relative access" to the information sought by plaintiff (which includes discovery related to a known prior tenancy immediately preceding plaintiff's, the date they received the MLG report, and their awareness of prior mold issues in the subject apartment), *to wit*:

For the reasons stated more fully in Defendants' discovery responses, many of Plaintiffs' above-referenced demands are irrelevant under FRE 401. Specifically, the matter at issue involves the Plaintiffs' alleged personal injury complaints and alleged rodent and mold allegations pertaining to the Plaintiffs' subject apartment. Conversely, many of Plaintiffs' discovery demands ask for the names and other confidential information of tenants who are not parties to this lawsuit. ***The Defendants therefore contend these demands are irrelevant, as the information sought has no bearing on proving or disproving the Plaintiffs' allegations and is of no consequence in determining the action****. (FRE 401.) Further, Fed. R. Civ. P 26(b)(1) requires discovery demands to be relevant. (Id.) Plaintiffs are not entitled to a fishing expedition. (See Id.) Defendants therefore contend that the above questions are not relevant to any party's claim or defense, that the demands are disproportional to the needs of the case, and the discovery sought does not resolve the alleged issues at bar. (Fed. R. Civ. P. 26(b)(1); FRE 401.)) Defendants therefore maintain these demands are outside of the scope of discovery pursuant to the Federal Rules of Civil Procedure Rule 26(b)(1), are therefore improper, and no further responses are required.*

As to Plaintiffs' inquiries regarding the ***job description of*** *any potential witnesses identified in Defendants' initial disclosures, the Defendants did provide this information for those affiliated with Defendant Pennrose Management Company. Defendants did not have this information for any individual affiliated with Anchor Pest Control. This is not a deficiency, this is information the Defendants simply did not have and therefore could not provide. Defendants further*

respectfully assert Plaintiffs can either obtain this information in connection with their subpoena of Anchor Pest Control, or by contacting Anchor Pest control directly. Plaintiffs could therefore obtain this information from "some other source that is more convenient," specifically, Anchor Pest Control. (See Fed. R. Civ. P. 26(b)(2)(C)(i).)

With respect to the balance of Plaintiff's above-referenced questions, the Defendants provided the responsive information ***within their possession and control****, and the Plaintiffs sought information, documents or information that they already have. Defendants therefore contend they are not deficient because they* ***do not have "relative access" to the information the Plaintiffs seek*** *(Fed. R. Civ. P. 26(b)(1)), or it is duplicative of what is already in the Plaintiffs' possession. (Fed. R. Civ. P. 26(b)(2)(C)(i).)*

As such, the Defendants respectfully submit there are no deficiencies here and the Plaintiffs are not entitled to the discovery sought with respect to such demands.

Discovery Issue 3: **City of Paterson Subpoena Enforcement is Not Opposed by Defendant**:

Diligent efforts have been made since April of 2024, to obtain records regarding **inspections and city citations**, said efforts including OPRA forms (numerous), and a federal subpoena. The City of Paterson took over five months to answer the first OPRA form (not the subject of a subpoena), which contained records for the wrong entity. The May 2024 OPRA forms, also requested with a federal subpoena, have not been answered, despite extensive efforts. **The plaintiff has produced evidence showing numerous such inspections and (potential) city summonses/complaints, thus warranting this discovery**.

Discovery Issue 4: **EJ Waterproofing Subpoena Enforcement Not Opposed by Defendant**:

EJ Waterproofing conducted an **air quality test** in plaintiff's apartment *circa* October 29, 2021, which in text messages to plaintiff they deemed "inconclusive" - hence acknowledging it is in their possession. They have failed to produce this study, and defendant seeks enforcement of the subpoena directing them to produce same.

Sincerely,
Santos A. Perez, Esq.
SANTOS A. PEREZ, ESQ.

SAP/mp
Cc:\\all parties of record via ECF

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Jennifer L. Fletcher
direct dial 973.265.9979
email jfletcher@wshblaw.com
refer to 10784-2149

December 16, 2024

VIA CM/ECF
Hon. James B. Clark, III
United States Magistrate Judge
United States District Court,
District of New Jersey
Martin Luther King Building
& U.S. Courthouse
50 Walnut Street
Newark, NJ 07102

Re: ***Jennifer Boria, et al. v. The Heritage at Alexander Hamilton, et al.***
Our Clients: The Heritage at Alexander Hamilton, Alexander Hamilton Associates, LLC, Pennrose Properties, LLC, and Pennrose Management Company
Case No.: 2:23-cv-22914
Our File No.: 10784-2149

Dear Judge Clark:

This firm represents Defendants/Third-Party Plaintiffs, The Heritage at Alexander Hamilton, Alexander Hamilton Associates, LLC, Pennrose Properties, LLC, and Pennrose Management Company (hereinafter "Defendants"), in connection with the above-referenced matter. In furtherance of the December 2, 2024 Court Order requiring compliance with the November 12, 2024 Court Order, these Defendants have made good faith efforts to meet and confer to resolve the discovery disputes set forth in Plaintiffs' November 8, 2024 motion to vacate the scheduling order and to compel certain discovery. The Defendants further drafted the enclosed proposed joint letter to the Court illustrating their outstanding discovery disputes. ("Exhibit A.")

The parties unfortunately remain at an impasse. The Defendants' position remains that we have provided all information and documentation responsive to Plaintiffs' request within our possession or control. Although the Plaintiffs have not provided any evidence for their assertions, the Plaintiffs insist that the Defendants are willfully refusing to provide certain information or documents. The Plaintiffs are particularly focused on whether the Defendants have been cited for code violations from the City of Paterson's Division of Health, and whether the City of Paterson's Division of Community Improvements have ever conducted inspections or re-rental inspections in the past ten years. The Defendants' discovery responses advised that they do not have information responsive to this request.

Hon. James B. Clark, III
Our File No.: 10784-2149

The Plaintiffs also served the City of Paterson with an OPRA request for information pertaining to inspection or complaints. In response, in an email dated October 1, 2024, and enclosed as "Exhibit B" hereto, the City advised the following:

> After thorough review with the Department of Health and Human Services, the Division of Engineering, and the Construction Office, the City of Paterson does not have the requested documents. The City maintains its original response sent to your office on August 13, 2024.

Additionally, the City of Paterson sent a second email to Plaintiffs on October 2, 2024, enclosed hereto as "Exhibit C," confirming its findings:

> The City of Paterson has provided your response with records from the fire department on August 13, 2024 (attached).
>
> To be clear, the response sent to you stated that other departments were not in possession of the records you requested.
>
> The City is committed to transparency and will take further steps to look into this. Please provide any proof you may have of the inspections and complaints so we may further assist you.

The Defendants are therefore perplexed by Plaintiffs' insistence that the Defendants are deliberately withholding these documents, especially when the City of Paterson itself has no record of such documents.

The Plaintiffs also address their demand regarding "citations or warnings by municipal, state, or federal authorities in the past ten years, in connection with potential, perceived, or actual code violations in the subject property, or any building in the Alexander Hamilton Complex, state the date and circumstances thereof." The Defendants did object to this interrogatory as overly broad, unduly burdensome, not limited in time and scope, and irrelevant, as the information sought could not prove or disprove the Plaintiffs' claims in this litigation, as The Heritage at Alexander Hamilton consists of multiple buildings. Notwithstanding Defendants' objections, and to facilitate judicial economy, the Defendants responded that they were not in possession of information responsive to this request.

Despite Defendants' best efforts to resolve this discovery dispute, Plaintiff's' counsel remains adamant that the Defendants are withholding information. In response to the Defendants' proposed joint letter to the Court, Plaintiffs' counsel advised, via an email dated December 2, 2024 ("Exhibit D" hereto) that:

Hon. James B. Clark, III
Our File No.: 10784-2149

This submission is insufficient. The letter must contain the following:

1. This Court on July 30, 2024 specifically discussed the issue of negligence per se, and its counterpart "*evidence of negligence*", as these doctrines apply in the case *sub judice*. https://casetext.com/case/boria-v-the-heritage-at-alexander-hamilton **[ECF 22].**

2. This publicly available opinion, *known to both defendants* as well as the City of Paterson, highlighted that plaintiff's **primary theory of liability** was premised on **city citations and inspections**.

3. Defendants are thus *keenly* aware of the **relevancy** of such inspection and city citation evidence, inasmuch as this Court in its opinion [ECF 22] cited with approval a New Jersey Supreme Court case, *Braitman*, which had held that a violation of New Jersey's Hotel Multiple Dwelling Law (HMDL) regulations **can be used as "evidence of [a] defendant's negligence**". *Boria v. The Heritage at Alexander Hamilton*, Civil Action 23-22914, 4 (D.N.J. Jul. 30, 2024). [ECF 22]

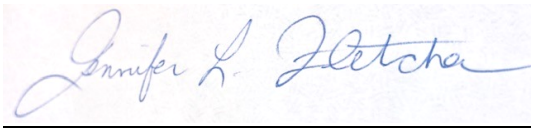
On December 3, 2024, the Defendants responded that, while Plaintiffs may intend to base their claims of negligence per se and "evidence of negligence" on city citations and inspections, the Defendants are not in possession of such documents. (Defendants' reply email is attached hereto as "Exhibit E.") The Defendants reiterated that the City of Paterson did not even have such information. As such, the Defendants are unclear as to what is in dispute, or how the Defendants can be compelled to produce documents that neither they, nor the City, have.

Finally, the Defendants respectfully address Plaintiffs' assertion that they failed to answer Plaintiffs' interrogatories or document demands. There is a distinction between not answering questions, and stating the Defendants do not have the information the Plaintiffs are requesting. The latter is the present case. To every response, the Defendants have either provided the relevant information, objected, or advised Plaintiffs that such information not within their possession or control.

Nevertheless, and for these aforementioned reasons, the parties remain locked in a stalemate and are unable to resolve the outstanding discovery disputes prior to the December 18, 2024 conference before this Honorable Court. We thank you for your kind attention and courtesies to this matter.

Hon. James B. Clark, III
Our File No.: 10784-2149

Respectfully submitted,



JENNIFER L. FLETCHER

JLF
Enclosure: as stated

cc: **VIA CM/ECF**
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November 27, 2024

Honorable James B. Clark III, USMJ
Unites States District Court of New Jersey
Martin Luther King Building &
U.S. Courthouse
50 Walnut Street Room 4015
Newark, New Jersey 07102

Re: ***Jennifer Boria et al. v. The Heritage at Alexander Hamilton et al.***
Our Clients: The Heritage at Alexander Hamilton, Alexander Hamilton Associates, LLC, Pennrose Properties, LLC, Pennrose Management Company

Case No.: 2:23-cv-22914-CCC-JBC

Dear Judge Clark:

Counsel to the above-referenced matter jointly submits this letter regarding any outstanding discovery disputes, as directed in Your Honor's November 12, 2024 correspondence.

I.) PLAINTIFFS' CONTENTIONS: THE DEFENDANTS HAVE NOT PROVIDED RESPONSES TO VARIOUS INTERROGATORIES AND DISCOVERY DEMANDS, PARAGRAPH 6 OF THE SCHEDULING ORDER MUST BE VACATED, PLAINTIFFS SHOULD BE GRANTED LEAVE TO FILE A MOTION TO COMPEL DISCOVERY; AND DISCOVERY MUST BE EXTENDED ONE YEAR

Plaintiffs, Jennifer Boria, Andrew Reyes, and minor Sonialys Boria, bring the instant motion before this Honorable Court to: (i) vacate ¶ 6 of the standing scheduling order; (ii) for leave to file a motion to compel answers to interrogatories and document requests and for sanctions, and (iii) for a FRCP 16(b)(4) discovery extension.

Plaintiffs' Motion overarchingly asserts the following:

1. The Defendants, The Heritage at Alexander Hamilton, Alexander Hamilton Associates, LLC, Pennrose Properties, LLC, Pennrose Management Company ("Defendants")

have "refused to answer" various discovery questions in this matter and are "withholding known, key, potentially 'smoking gun' evidence," with respect to alleged city violations and inspections;

2. Defendants' failure to answer these "smoking gun" questions regarding the alleged city violations and inspections "handicapped plaintiff's ability to obtain further discovery from the city or build their case in chief, requires that this Court vacate ¶ 6 of the standing scheduling order, and permit the filing of a motion to compel;" and

3. Paragraph 6 of the standing scheduling order states that, "no discovery motion or motion for sanctions for failure to provide discovery shall be made without prior leave of Court." Plaintiffs assert this paragraph runs afoul of FRCP 16(b)(3)(B(v), which states, "Permitted Contents. the scheduling order may…direct that before moving for an order relating to discovery, the movant must request a conference with the Court."

As to the first two points above, Plaintiffs allege that Defendants' failure to answer certain discovery responses resulted in substantial prejudice to their case. As such, Plaintiffs ask the Court to grant its motion to compel, award sanctions and extend discovery.

Plaintiffs further respectfully assert that the ¶ 6 of the scheduling order is essentially a "discovery motion bar," and has resulted in alleged discovery misconduct and "significantly prejudiced plaintiff." As such, the Plaintiffs were unable to file a motion to compel the responses the Defendants allegedly failed to answer and were unable to file a motion to compel further discovery from the City of Paterson.

As to point 3 above, the Plaintiffs respectfully posit that there is no indication in the FRCP or local rules that indicate that a Magistrate Judge may *sua sponte* impose a discovery bar preventing *all* discovery motions unless on leave. Further, the Court's discovery bar effectively allows discovery rulings which are non-appealable and non-objectionable under FRCP 72, thus undermining the legal process, and allowing unscrupulous litigants to engage in comprehensive discovery misconduct.

As such, and for the foregoing reasons, the Plaintiffs assert the Defendants have brazenly refused to answer "smoking gun" questions, which have handicapped Plaintiffs' ability to obtain further discovery from the city, or build their case in chief, requires that this Court vacate ¶ 6 of the standing schedule order, and permit the filing of a motion to compel, and for sanctions, as well as extending discovery by one year.

II.) Defendants' Response: Plaintiffs' Motion to Compel is Moot Because Defendants Have Provided Responses to Plaintiffs' Demands, the City of Paterson Substantiated That Certain Documents Did Not Exist, and the Defendants Cannot be Compelled to Produce Information They Do Not Have

The Defendants, The Heritage at Alexander Hamilton, Alexander Hamilton Associates, LLC, Pennrose Properties, LLC, Pennrose Management Company ("Defendants"), have responded to the Plaintiffs' discovery demands with the information in their knowledge, possession, or control. Defendants therefore respectfully maintain they have responded to Plaintiffs' Interrogatories and Demands. To further support their position, the Defendants hereto enclose their Responses to Plaintiffs' Interrogatories ("Exhibit A") and Notice to Produce ("Exhibit B").

As these responses demonstrate, Plaintiffs' instant Motion miscategorizes the Defendants' responses by stating Defendants have "refused to answer." There is a clear distinction between a failure to respond to discovery, and a response that states the Defendants do not have information responsive to the Plaintiffs' requests. The latter is how the Defendants have responded, except where objections were otherwise asserted. Straightforwardly put, the Defendants cannot be compelled to produce information they do not have.

Further, and as Defendants have previously informed the Court at the September 17, 2024 conference, the Plaintiffs are either seeking information they already possess, or will obtain via subpoenas issued to various entities or municipalities, including, but not limited to: The City of Paterson; EJ Waterproofing; Angelo's Construction; Coffey Bros; F&G mechanical, Lowther's Contracting; South Shore Contracting; the Division of Environmental Health; and Services for Home. As such, the Plaintiffs should be able to obtain the information they seek directly from the sources. Notwithstanding the fact that the Defendants have responded to Plaintiffs' demands to the extent possible, Plaintiffs have offered no reason as to why pursuing the information they seek via subpoenas is inadequate.

Beyond their bald allegations, Plaintiffs have offered no proof that the Defendants have acted in bad faith or have otherwise deliberately failed to produce various documents. To the contrary, the City of Paterson has vindicated the Defendants' responses by confirming they have no records pertaining to any alleged inspections and complaints against the Defendants. On October 1, 2024, an emailed OPRA response from the City of Paterson to Plaintiffs' counsel stated that the City of Paterson does not have any records of the alleged inspections and complaints against Defendants.

The City of Paterson advised Plaintiffs:

> After thorough review with the Department of Health and Human Services, the Division of Engineering, and the Construction Office, the City of Paterson does not

> have the requested documents. The City maintains its original response sent to your office on August 13, 2024.
>
> [Ibid., "Exhibit C."]

On October 2, 2024, the City of Paterson once again advised Plaintiffs that no such records exist:

> To be clear, the response sent to you stated that other departments were not in possession of the records you requested.
>
> The City is committed to transparency and will take further steps to look into this. Please provide any proof you may have of the inspections and complaints so we may further assist you.
>
> [Ibid., "Exhibit D."]

Enclosed as "Exhibits C and D" hereto are the email responses dated October 1, 2024 and October 2, 2024 from the City of Paterson to Plaintiffs' counsel. These emails directly undermine Plaintiffs' assertions that Defendants are not producing certain pertaining to inspections and complaints, as the City of Paterson does not even have them.

Lastly, the Defendants do not agree with Plaintiffs' contention that the Scheduling Order violates FRCP 16(b)(3)(B(v), but leaves the Plaintiffs to its proofs regarding its position before this Honorable Court.

For all these reasons, and for those discussed during our September 17, 2024 conference, Defendants respectfully assert there are no outstanding discovery issues and Plaintiffs' instant motion should be denied.

Respectfully submitted,

WOOD, SMITH, HENNING & BERMAN LLP

By: _____
JENNIFER L. FLETCHER, ESQ.

THE PEREZ LAW FIRM

By:_____
SANTOS A. PEREZ, ESQ.

EXHIBIT A TO PROPOSED JOINT SUBMISSION LETTER: DEFENDANT INTERROGATORY RESPONSES

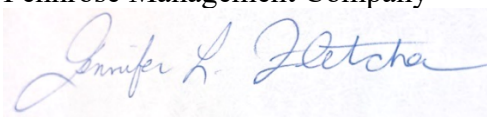
UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

JENNIFER BORIA, ANDREW REYES, AND SONIALYS BORIA, MINOR BY HER GUARDIAN AD LITEM JENNIFER BORIA Plaintiffs, v. THE HERITAGE AT ALEXANDER HAMILTON, ALEXANDER HAMILTON ASSOCIATES, LLC,PENNROSE PROPERTIES, LLC, PENNROSE MANAGEMENT COMPANY, Defendants.	**Civil Action No. 23-22914** Civil Action **DEFENDANT, PENNROSE MANAGEMENT COMPANY'S, RESPONSES TO PLAINTIFFS' INTERROGATORIES**

To: Santos A. Perez, Esq.
The Perez Law Firm
151 W Passaic St,
Rochelle Park, NJ 07662
Attorneys for Plaintiffs,
Jennifer Boria, Andrew Reyes and Sonialys Boria

PLEASE TAKE NOTICE that Defendant, Pennrose Management Company (hereinafter referred to as "Defendant"), hereby provides the following answers to the within Interrogatories. These answers are being furnished with the specific understanding that they do not constitute an adoptive admission as referenced in *Sallo v. Sabatino*, 146 N.J. Super. 416 (App. Div. 1976), *cert. denied* 75 N.J. 24 (1977) and *Skibinski v. Smith*, 206 N.J. Super. 349 (App. Div. 1985).

WOOD SMITH HENNING & BERMAN LLP
Attorneys for Defendants, The Heritage at Alexander Hamilton, Alexander Hamilton Associates, LLC, Pennrose Properties, LLC and Pennrose Management Company



By: _____
JENNIFER L. FLETCHER, ESQ.

Dated: July 30, 2024

GENERAL OBJECTIONS

Answering Defendant makes the following general objections to the enclosed Interrogatories, which are incorporated by reference in Answering Defendant's responses to each request. Each of the responses set forth below, which Defendant expressly reserves the right to amend or supplement, are submitted subject to and without waiver of these general objections.

1. Answering Defendant objects to each Interrogatory insofar as it seeks information subject to the attorney-client privilege or work product.

2. Answering Defendant objects to each Interrogatory insofar as it seeks information that is confidential and proprietary.

3. Answering Defendant objects to each Interrogatory insofar as it is vague, ambiguous, overly broad, and unduly burdensome.

4. Answering Defendant objects to each Interrogatory insofar as it is not reasonably calculated to lead to the discovery of admissible evidence and is not relevant to the subject matter of this action.

5. Answering Defendant objects to each Interrogatory insofar as it is unlimited as to time.

6. Answering Defendant objects to each Interrogatory to the extent they impose upon Answering Defendant an unreasonable burden of inquiry.

7. Answering Defendant objects to each Interrogatory to the extent it seeks information that is within the knowledge and possession of Plaintiff or other parties, or that may be more readily available from a more convenient, less burdensome, and less expensive source.

8. Answering Defendant objects to each Interrogatory to the extent it seeks information outside the scope of permissible discovery pursuant to the Rules governing the Courts of the State of New Jersey.

9. Answering Defendant objects to each Interrogatory insofar as it attempts to elicit protected information subject to the attorney-client privilege or any other applicable privilege; the attorney work product doctrine, including documents containing the impressions, conclusions, opinions, legal research or theories of the attorneys of Co-Defendant(s), or materials prepared in anticipation of litigation.

10. Answering Defendant objects to each Interrogatory to the extent it is vague, ambiguous, and imprecise in that a particular term or phrase is undefined and subject to varying interpretations.

11. Insofar as any of the foregoing objections or any of the specific objections that follow apply to each of the Interrogatories, that Interrogatory is improper.

12. Answering Defendant reserves the right to amend these answers to interrogatories as discovery continues.

DEFENDANT'S ANSWERS TO FORM C INTERROGATORIES

1. Identify the following individuals, produced as your initial disclosures, and state in detail how or why they will aid in your defenses: Pennrose personnel Ella Watson, Tiffany Harris, Simon Kegler, & Natasha Williams, and Anchor Pest Control personnel Keith Downs, Jonathan Beauchamp, Nadir Starts, and Manny Cabasso. For each of these individuals, if they performed any *specific* act or omission which gives rise to your defenses, state the date thereof while setting forth with specificity and sufficient detail the nature of their contribution to your defenses. If you contend this information is privileged, set forth the privilege and the reasons for asserting the privilege, and describe the type of work the above individuals or companies engage in generally, and why they were specifically called to service plaintiff's unit, the subject property, or to otherwise interact with plaintiffs or their unit (subject property).

Answer:

Upon advice of counsel, Answering Defendant objects to as this interrogatory as it seeks the disclosure of privileged legal communications, strategy, or otherwise cannot be answered without legal expertise. Answering Defendant further reserves the right to rely upon all documents produced by any party to this matter, as well as all medical records; police reports; witness statements and testimony; photographs; diagrams; documents produced in response to notices to produce; answers to interrogatories; expert discovery and reports; and all other materials that may be revealed or produced throughout continuing investigation and discovery and up to the time of trial.

Subject to and without waiving said objections, and upon advice of counsel: Ella Watson is a property manager. Tiffany Harris is a regional property manager. Simon Kegler is a maintenance supervisor. Natasha Williams is a former manager and no longer with Pennrose.

Upon advice of counsel, Answering Defendant further objects to this Interrogatory to as is not in possession or control of information pertaining to the Anchor Pest Control personnel.

2. Was plaintiff's unit, the "subject property", inspected *immediately before* their tenancy began, including inspection of the heating, ventilation, and air conditioning (HVAC) system, air filters, heating system, drywall (sheetrock), molding, mold accumulation, rodent infestations, rodent feces, mold growth, and/or rotten pipes (plumbing)? If yes, provide details regarding the type of inspection undertaken, e.g. was it a simple walk-through or a visual inspection with or without specialized equipment or tool? If no such inspection was done immediately prior to plaintiff moving in, and in preparation of her tenancy, please explain. If photos or videos were taken, please so state.

Answer:

Answering Defendant objects to this interrogatory as it is overly broad, unduly burdensome, not reasonably limited in time and scope, and seeks information not reasonably calculated to lead to the discoverability of admissible evidence. Upon information and belief, the apartment was cleaned and painted before the Plaintiffs moved into the subject unit.

3. Were the bathroom or kitchen walls of the *subject property*, plaintiff's unit, *originally* constructed, *or subsequently remodeled with*, drywall/sheetrock, or were water-proof boards, e.g, cement boards, used instead either during remodeling if applicable or in the original construction? Provide detail in your answer, and explain the selection of the specific type of walls used. For example, if drywall was used, was it due to budgetary constraints and/or was it a deliberate design decision? If the original construction was changed (e.g. remodeling/renovation and upgraded from drywall to cement boards, or vice versa), provide the specifics.

Answer:

Answering Defendant objects to this interrogatory as it is overly broad, unduly burdensome, not reasonably limited in time and scope, and seeks information not reasonably calculated to lead to the discoverability of admissible evidence. Without waiving these objections, Answering Defendant is not in possession of information responsive to this request and respectfully refers Plaintiff to any information may receive pursuant to any subpoenas they have issued to architecture and construction companies in this matter.

4. Have there been any recent repairs, renovations, or maintenance conducted on the HVAC, ventilation, heating, sheetrock/drywall, ceiling, flooring, molding, or plumbing of the subject property *in the last ten years*? Renovation includes replacing

sheetrock/drywall, flooring, kitchen cabinets, or major plumbing, electrical/heating, or HVAC work, and excludes a simple paint job not involving construction unless waterproof paint or sealants was/were used.

Answer:

Answering Defendant objects to this interrogatory as it is overly broad, unduly burdensome, contains undefined terms, is not reasonably limited in time and scope, and seeks information not reasonably calculated to lead to the discoverability of admissible evidence. Without waiving these objections, there have been no renovations as Plaintiffs define above in the last ten years. With respect to maintenance, Answering Defendant refers Plaintiffs to the parties referenced in their pleadings and discovery demands regarding the independent parties they have hired to service their unit. Additionally, Anchor Pest Control has serviced Plaintiffs' unit for the alleged rodent issue. P.M.R. has serviced Plaintiffs' unit to clean the air ducts. Answering Defendant reserves the right to amend and/or supplement this response throughout the course of ongoing investigation and discovery and up until the time of trial.

5. What specific remediation, repairs, or preventative measures did Defendants undertake in Plaintiffs' unit in response to their complaints of mold, no or faulty HT/AC air filter, bacteria or rodent infestation, HT/AC generally or lack of Heating, or their respiratory complaints?

Answer:

While denying Plaintiffs' allegations and denying all liability to Plaintiffs, Answering Defendant scheduled an additional service with Anchor Pest Control, Inc. to address any alleged rodent issues, and engaged P.M.R. Services, Inc. to clean the air ducts. Further, Answering Defendant has offered Plaintiffs an alternative residence at The Heritage at Alexander Hamilton, which it has held for Plaintiffs through present day, but the Plaintiffs decline to move.

6. Has the subject property, plaintiff's unit, *ever* been subjected to remediation, repairs, or cleaning, due to air quality, heating, humidity, air conditioning, plumbing, mold growth, moisture accumulation, bacteria proliferation, or rodent infestation?

Answer:

Answering Defendant objects to this Interrogatory to this extent the information sought in this demand has been asked and answered in Interrogatory Number 4. Answering Defendant objects to this interrogatory as it is overly broad, unduly burdensome, not reasonably limited in time and scope, and seeks information not

reasonably calculated to lead to the discoverability of admissible evidence. Answering Defendant further objects to the form of this question. Without waiving these objections, and while denying Plaintiffs' allegations and denying all liability to Plaintiffs, see Answering Defendant's response to Interrogatory Numbers 4 and 5.

7. Since receiving the Mold Law Group report, did Defendants attempt to relocate plaintiffs to a different unit or otherwise take remedial measures (or "remediation" as defined in the definitional section) to resolve the issues set forth in the expert report?

Answer:

While denying Plaintiffs' allegations and denying all liability to Plaintiffs, Answering Defendant objects to this Interrogatory as it requires an expert opinion and is beyond the purview of this Answering Defendant. Without waiving these denials and objections, Answering Defendant did offer Plaintiffs an alternate residence within The Heritage at Alexander Hamilton, which Plaintiffs declined and choose to remain in their current unit.

8. Said Mold Law Group expert report states, "[b]ased upon the foregoing, including the certified environmental microbiology reports from an AIHA certified microbiology laboratory in good standing and the U.S. Federal Government "CLIA" certified medical laboratory which produced the medical testing results, also in good standing with the U.S Federal Government and CLIA, it is my opinion that, based upon my observations, the above-named structure is a health hazard to all occupants." Was it the contention of defendants, prior to retaining counsel, that this expert conclusion in the report was false or fraudulent? If you assert the work product privilege, indicate the date you received the expert report, followed by the date you retained counsel. Nothing herein shall be interpreted as a waiver to move for relief, however, you should refuse to answer questions regarding your views on report prior to you having retained counsel.

Answer:

While denying Plaintiffs' allegations and denying all liability to Plaintiffs, Answering Defendant objects to this as this interrogatory calls for the disclosure of legal impressions of counsel or otherwise requires legal expertise to respond. Answering Defendant further objects to this Interrogatory as it is improper as to this Answering Defendant as it calls for an expert opinion and/or legal conclusion and is beyond the purview of this Answering Defendant. Without waiving these denials and objections, Answering Defendant leaves Plaintiffs to their proofs to establish the veracity of the claims in its expert report, and further reserves the right to amend and/or supplement this response throughout the course of ongoing investigation and discovery and up until the time of trial.

9. The expert report further states that "This opinion is based on the presence of pathogenic molds in the samples along with the presence of pathogenic bacteria and biomarkers of exposure of the pathogenic mold in the urine and/or stool of the resident. Further, by correlating the environmental and medical results, it has led me to render an opinion, with a great amount of scientific and medical certainty, that the pathogenic species offungi found in the exposure victim's mold-infested structure produced the same disease-causing mycotoxins that tested positive in the mold exposure victim's bodies." Did defendants, prior to consulting or retaining counsel, contend that this conclusion (and the correlation) was false or fraudulent? If you assert the work product privilege, indicate the date you received the expert report, followed by the date you retained counsel.

Answer:

While denying Plaintiffs' allegations and denying all liability to Plaintiffs, Answering Defendant objects to this as this Interrogatory calls for the disclosure of legal impressions of counsel or otherwise requires legal expertise to respond. Answering Defendant further objects to this Interrogatory as it is improper as to this Answering Defendant as it calls for an expert opinion and/or legal conclusion and is beyond the purview of this Answering Defendant. Without waiving these denials and objections, Answering Defendant leaves Plaintiffs to their proofs to establish the veracity of the claims in its expert report, and further reserves the right to amend and/or supplement this response throughout the course of ongoing investigation and discovery and up until the time of trial.

10. As to that same expert conclusion passage *supra*, did defendants – *prior to retaining counsel* – consult with an expert or scholar, or otherwise perform their own "research" online, to refute the scientific correlation noted in plaintiff's expert report? If they consulted an independent expert through the services of counsel, state the date thereof, and other permissible details, without revealing work-product. Disclaimer: Nothing herein shall be interpreted as a waiver by plaintiff to seek such work product in the event the information sought - to wit whether defendants knowingly ignored the expert report thereby further harming plaintiffs- cannot be obtained from less intrusive sources.

Answer:

While denying Plaintiffs' allegations and denying all liability to Plaintiffs, Answering Defendant objects to this Interrogatory as it is improper as to this Answering Defendant as it calls for an expert opinion and/or legal conclusion and is beyond the purview of this Answering Defendant. Answering Defendant further objects to this as this Interrogatory calls for the disclosure of legal impressions of counsel or otherwise requires legal expertise to respond. Answering Defendant also objects to this Interrogatory to the extent it asks about expert witnesses who may have been consulted by Answering Defendant for purposes of litigation. The Plaintiffs are not entitled to inquire about consulting expert witnesses until such witnesses have been

identified as witnesses for trial. Answering Defendant additionally objects to this Interrogatory to the extent that it seeks information protected by the attorney-client privilege and/or the work-product doctrine or seeks materials prepared in anticipation of litigation. Without waiving these denials and objections, Answering Defendant will provide a response in accordance with the Rules of Court if and when experts are retained. This answer may be amended based upon what further investigation and discovery reveal.

11. To date, defendants have not provided plaintiffs with an expert report refuting the findings of plaintiffs' expert report. Given this context, state when you first received plaintiffs' expert report, and outline with specificity the remediation (as defined in the definitional section) efforts you employed after your receipt of said report.

Answer:

While denying Plaintiffs' allegations and denying all liability to Plaintiffs, Answering Defendant objects to the form of this Interrogatory as the status of the defense expert report has no relevance on the balance of this Interrogatory. Without waiving these objections, Answering Defendant cannot pinpoint the exact date they received the expert report, but in response to Plaintiffs' general allegations as to rodent issues and air ventilation, see Interrogatories Number 4 - 5.

12. As regards the *specific* complaints regarding air quality, heating, humidity, air conditioning, plumbing, mold growth, moisture accumulation, bacteria proliferation, or rodent infestation made by plaintiffs in their first amended complaint, describe any *remediation* undertaken in response to same**,** setting forth *when you first became aware of these complaint.*

Answer:

While denying Plaintiffs' allegations and denying all liability to Plaintiffs, objection, as asked and answered.

13. Has the subject property ever been tested for mold generally, and/or for aspergillus mold, including particularly just prior to plaintiffs' move in?

Answer:

While denying Plaintiffs' allegations and denying all liability to Plaintiffs, Answering Defendant objects to this Interrogatory as it is overly broad, unduly burdensome, not limited in time and scope, and not reasonably calculated to lead to the admissibility of discoverable evidence. Without waiving these denials and

objections, upon information and belief the subject unit was not tested for mold in between the prior tenant and the Plaintiffs moving into the unit.

14. Are you otherwise aware of *prior* actual or alleged mold infestation, air quality problems, heating problems, plumbing problems, rodent infestation problems, humidity problems, or bacteria proliferation problems in the *subject property* or any building in the Alexander Hamilton complex? If so, provide the name of the source(s) who identified the infestation, names of vendors who conducted remediation, and the nature and circumstances of the issue identified and/or resolved.

Answer:

While denying Plaintiffs' allegations and denying all liability to Plaintiffs, Answering Defendant objects to this Interrogatory as it is overly broad, unduly burdensome, contains undefined terms, is not reasonably limited in time and scope, is irrelevant, and is not reasonably calculated to lead to the admissibility of discoverable evidence. Without waiving these denials and objections, Answering Defendant has provided responsive information to the extent possible to the Interrogatories herein pertaining to the Plaintiffs allegations and this lawsuit.

15. How often are the air filters in the HVAC or ventilation systems of the units at the Alexander Hamilton Complex inspected or replaced, and/or how often are such HVAC units generally (every component besides the air filter) inspected and by whom?

Answer:

While denying Plaintiffs' allegations and denying all liability to Plaintiffs, Answering Defendant objects to this Interrogatory as it is overly broad, unduly burdensome, contains undefined terms, is not limited in time and scope, is irrelevant, and not reasonably calculated to lead to the admissibility of discoverable evidence. Without waiving these objections, upon information and belief, with respect to the Plaintiffs' unit during their tenancy, P.M.R. Services, Inc. serviced the air ducts in Plaintiffs' unit.

16. State whether or not Paterson's Division of Community Improvements has ever conducted inspections, particularly re-rental inspections, of plaintiff's unit, the subject property, for suspected Housing Maintenance Code Violations or for any other reason, in the past ten years. If not, please state why such re-rental inspections were not conducted *generally* and also *just prior to plaintiffs' move-in*. See: https://www.patersonnj.gov/department/division.php

Answer:

While denying Plaintiffs' allegations and denying all liability to Plaintiffs, Answering Defendant objects to this Interrogatory as it is overly broad, unduly burdensome, not limited in time and scope, is irrelevant, and not reasonably calculated to lead to the admissibility of discoverable evidence. Answering Defendant further objects to this Interrogatory as it seeks information not within Answering Defendant's possession or control. Without waiving these denials and objections, Answering Defendant respectfully refers Plaintiffs to any documents produced in connection with their subpoena(s) and/or OPRA request served upon The City of Paterson and its various divisions.

17. Has Paterson's Division of Health, to your knowledge, received complaints and/or taken action regarding No Heat or Rodent/Vermin infestations, as regards *any unit* in the Alexander Hamilton Complex, in the past ten years? "Action" as used herein includes warnings, citations, remediation, or any such communications with the landlord or the tenant to address issues identified by the Division of Health. https://www.patersonnjhealth.gov/department/division.php?structureid=47

Answer:

While denying Plaintiffs' allegations and denying all liability to Plaintiffs, Answering Defendant objects to this Interrogatory as it is overly broad, unduly burdensome, not limited in time and scope, is irrelevant, and not reasonably calculated to lead to the admissibility of discoverable evidence. Answering Defendant further objects to this Interrogatory as it seeks information not within Answering Defendant's possession or control. Without waiving these objections, Answering Defendant respectfully refers Plaintiffs to any documents produced in connection with their subpoena(s) and/or OPRA request served upon The City of Paterson and its various divisions.

18. Are any pest or mold control property management guidelines, standards, or *policies* currently in place for the Alexander Hamilton Apartment Complex? If so, please describe same stating *inter alia* whether they include both inspection and remediation. If no such internal policies, standards, or rules exist, state your reasons for the exclusion of same in your management or operation of the Alexander Hamilton Complex.

Answer:

Answering Defendant objects to this Interrogatory as it is overly broad, unduly burdensome, not limited in time and scope, is irrelevant, and not reasonably calculated to lead to the admissibility of discoverable evidence. Without waiving these objections, The Heritage at Alexander Hamilton has routine, scheduled treatments for pest control with Anchor Pest Control. Any other alleged tenant complaints are

addressed on a case-by-case basis, and appropriate service providers may be engaged, depending on the nature of the alleged issue. For example, and in the instant matter, the Answering Defendant reiterates that The Heritage at Alexander Hamilton contacted Archer Pest Control for an additional service, P.M.R to clean the air ducts and offered Plaintiffs alternate housing, which they declined.

19. If any of the companies listed below were involved in the design and construction of plaintiff's unit, the "subject property", state, for each such company, the waterproofing methods employed during construction, remodeling, or renovation, e.g., use of cement boards, seals at the junction between the wall and the roof, flashing on the roof, caulking around windows and doors, and mortar joints in a brick or stone façade. If the companies involved in the construction are not listed below, identify these presently unknown companies, and answer this interrogatory accordingly. To wit (list of companies): Wallace, Roberts and Todd (WRT), EJ Waterproofing, AJD Construction, and SB Conrad.

Answer:

Answering Defendant objects to this Interrogatory as it is overly broad, unduly burdensome, not limited in time and scope, is irrelevant, not reasonably calculated to lead to the admissibility of discoverable evidence and seeks information not within this Answering Defendant's possession or control. Without waiving these objections Answering Defendant is not in possession of information responsive to this request and respectfully refers Plaintiffs to the information provided in response any of these above-referenced entities provided in response to the subpoenas Plaintiffs served on them.

20. List all known services provided to defendants in the past ten years, by EJ Waterproofing or any other waterproofing company, in connection with the Alexander Hamilton Complex (any unit), including plaintiff's unit.

Answer:

Answering Defendant objects to this Interrogatory as it is overly broad, unduly burdensome, not limited in time and scope, is irrelevant, not reasonably calculated to lead to the admissibility of discoverable evidence and seeks information not within this Answering Defendant's possession or control. Without waiving these objections Answering Defendant is not in possession of information responsive to this request and respectfully refers Plaintiffs to the information provided in response to the subpoenas Plaintiffs served on EJ Waterproofing.

21. As to EJ Waterproofing, did they in 2021-2022 perform services at plaintiff's specific unit, the "subject property", including an air quality test, and if so, summarize the findings of that test, and state whether or not the findings warranted your further attention,

including remediation or any other affirmative act on your behalf to address the issues identified, if any.

Answer:

See Answering Defendant's response to Interrogatory Number 20.

22. If, in the last ten years, any of the named defendants in the within lawsuit have been sued by a *tenant* for personal injury or property damage - or a claim opened by the tenant alleging said defendant's *liability* in a personal injury or property damage matter, state the date of the complaint, or the date of the claim if no complaint was filed, and describe the circumstances of the lawsuit or claim, all parties involved, and the claim number and docket number if applicable. "Circumstances" means the alleged basis for liability, the relief sought, and the final disposition of the matter. The following personal injury lawsuits or claims are excluded from this interrogatory: slip and falls, fire-related claims or suits, flood-related claims or suits, and theft-related claims or suits.

Answer:

Answering Defendant objects to this Interrogatory as it is overly broad, unduly burdensome, not limited in time and scope, is irrelevant as the information sought cannot prove or disprove the Plaintiffs' claims in this litigation, and is not reasonably calculated to lead to the admissibility of discoverable evidence.

23. If you have been cited or warned by municipal, state, or federal authorities in the past ten years, in connection with potential, perceived, or actual code violations in the *subject property* or any building in the Alexander Hamilton complex, state the date and circumstances thereof. Code violation includes building codes, electrical codes, plumbing codes, and codes related to the provision of heating, air conditioning, cleanliness, rodent or pest control, and/or air quality.

Answer:

Answering Defendant objects to this Interrogatory as it is overly broad, unduly burdensome, not limited in time and scope, is irrelevant as the information sought cannot prove or disprove the Plaintiffs' claims in this litigation, and is not reasonably calculated to lead to the admissibility of discoverable evidence.

24. Has any prior tenant of the *subject property (plaintiffs' unit), including prior tenant* Eudosia Bermudez, *ever* complained of the condition of said property as regards air quality, heating, humidity, air conditioning, plumbing, mold growth, moisture accumulation, bacteria proliferation, or rodent infestation? If so, state the date, name of the complainant (prior tenant), and the nature of the anomaly alleged, regardless of whether or not a lawsuit was filed or a claim opened, or remediation undertaken.

Answer:

Answering Defendant objects to this Interrogatory as it is overly broad, unduly burdensome, not limited in time and scope, not reasonably calculated to lead to the discovery of admissible evidence, and is irrelevant as the information sought cannot prove or disprove the Plaintiffs' claims in this litigation. Answering Defendant further objects to this Interrogatory to the extent it seeks confidential and personal identifying information not subject to disclosure. Answering Defendant further objects to this Interrogatory as it is directed towards third-parties.

25. Set forth all the waterproofing methods, as that term is defined in the definitional section of these interrogatories, used during original construction, remodeling/renovation, or during routine maintenance of plaintiff's unit or apartment, the "subject property".

Answer:

Upon advice of counsel, Answering Defendant objects to this interrogatory as it is overly broad, unduly burdensome, not reasonably limited in time and scope, and seeks information not reasonably calculated to lead to the discoverability of admissible evidence, and is irrelevant as it does not prove or disprove Plaintiffs' claims. Without waiving these responses, Answering Defendant further objects to this Interrogatory to the extent it has been asked and answerer in Interrogatories Numbers 19-20. Answering Defendant further respectfully refers Plaintiffs to information produced in connection with any subpoenas Plaintiffs have served on architecture companies in connection with this matter.

26. If any Alexander Hamilton Complex tenant has ever died on the premises or otherwise transported to hospitals by ambulance during the past ten years, identify the tenant by their age, date of hospitalization or death, and the apartment or unit number they resided in, excluding their name or other personal identifiers. As to deceased tenants, such tenants include tenants who have died of suspected old age or illness, but excludes tenants who have died because of sudden traumatic injury (e.g. slip and falls, falling debris).

Answer:

Answering Defendant objects to this Interrogatory as it is overly broad, unduly burdensome, not limited in time and scope, is irrelevant as the information sought cannot prove or disprove the Plaintiffs' claims in this litigation, and is not reasonably calculated to lead to the admissibility of discoverable evidence. Answering Defendant

further objects to this Interrogatory to the extent it seeks confidential and personal identifying information, which is not subject to disclosure.

CERTIFICATION

I hereby certify that the foregoing answers in response to Plaintiffs' interrogatories are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

I hereby certify that the copies of the reports annexed hereto provided by either treating physicians or proposed expert witnesses are exact copies of the entire report or reports provided by them; that the existence of other reports of said doctors or experts are unknown to me, and if such become later known or available, I shall serve them promptly on the propounding party.

R.J. SATURNO
Print name

Signature

Dated: 7/30/24

EXHIBIT B TO PROPOSED JOINT SUBMISSION LETTER:
DEFENDANT RESPONSES TO PLAINTIFFS' NOTICE TO PRODUCE
(DOCUMENT PRODCUTION OMITTED)

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

JENNIFER BORIA, ANDREW REYES, AND SONIALYS BORIA, MINOR BY HER GUARDIAN AD LITEM JENNIFER BORIA Plaintiffs, v. THE HERITAGE AT ALEXANDER HAMILTON, ALEXANDER HAMILTON ASSOCIATES, LLC, PENNROSE PROPERTIES, LLC, PENNROSE MANAGEMENT COMPANY, Defendants.	**Civil Action No. 23-22914** **DEFENDANTS' RESPONSES TO PLAINTIFFS' NOTICE TO PRODUCE**

To: Santos A. Perez, Esq.
The Perez Law Firm
151 W Passaic St,
Rochelle Park, NJ 07662
Attorneys for Plaintiffs,
Jennifer Boria, Andrew Reyes and Sonialys Boria

PLEASE TAKE NOTICE that Defendants, The Heritage at Alexander Hamilton, Alexander Hamilton Associates, LLC, Pennrose Properties, LLC and Pennrose Management Company, (hereinafter referred to as "Defendants"), hereby provide the following responses to Plaintiffs' Notice to Produce. While each Defendant incorporates by reference their responses to Plaintiffs' Interrogatories with respect to the knowledge of each party, for economy and efficiency, one set of documents is produced to Plaintiffs' demand herewith. These answers are being furnished with the specific understanding that they do not constitute an adoptive admission as referenced in *Sallo v. Sabatino*, 146 N.J. Super. 416 (App. Div. 1976), *cert. denied* 75 N.J. 24

(1977) and *Skibinski v. Smith*, 206 N.J. Super. 349 (App. Div. 1985).

WOOD SMITH HENNING & BERMAN LLP
Attorneys for Defendants, The Heritage at Alexander Hamilton, Alexander Hamilton Associates, LLC, Pennrose Properties, LLC and Pennrose Management Company

By: _____
JENNIFER L. FLETCHER, ESQ.

Dated: July 30, 2024

GENERAL OBJECTIONS

Answering Defendants makes the following general objections to the enclosed demands, which are incorporated by reference in Answering Defendants' responses to each request. Each of the responses set forth below, which Defendants expressly reserves the right to amend or supplement, are submitted subject to and without waiver of these general objections.

1. Answering Defendants object to each demand insofar as it seeks information subject to the attorney-client privilege or work product.

2. Answering Defendants object to each demand insofar as it seeks information that is confidential and proprietary.

3. Answering Defendants object to each demand insofar as it is vague, ambiguous, overly broad, and unduly burdensome.

4. Answering Defendants object to each demand insofar as it is not reasonably calculated to lead to the discovery of admissible evidence and is not relevant to the subject matter of this action.

5. Answering Defendants object to each demand insofar as it is unlimited as to time.

6. Answering Defendants object to each demand to the extent they impose upon Answering Defendants an unreasonable burden of inquiry.

7. Answering Defendants object to each demand to the extent it seeks information that is within the knowledge and possession of Plaintiff or other parties, or that may be more readily available from a more convenient, less burdensome, and less expensive source.

8. Answering Defendants object to each demand to the extent it seeks information outside the scope of permissible discovery pursuant to the Rules governing the Courts of the State of New Jersey.

9. Answering Defendants object to each demand insofar as it attempts to elicit protected information subject to the attorney-client privilege or any other applicable privilege; the attorney work product doctrine, including documents containing the impressions, conclusions, opinions, legal research or theories of the attorneys of Co-Defendant(s), or materials prepared in anticipation of litigation.

10. Answering Defendants object to each demand to the extent it is vague, ambiguous, and imprecise in that a particular term or phrase is undefined and subject to varying interpretations.

11. Insofar as any of the foregoing objections or any of the specific objections that follow apply to each of the demand, that demand is improper.

12. Answering Defendants reserve the right to amend these answers as discovery continues.

Defendants' Responses to Plaintiffs' Demand for Documents

1. All documents regarding services provided, of any nature, during the past 5 years, by EJ WATERPROOFING, in connection with the Alexander Hamilton Complex, including the air quality test performed at the subject property circa February of 2022, and any other documents or ESI regarding services provided to defendant or plaintiff circa December of 2021 in connection with the subject property.

Response:

Answering Defendants object to this demand as it is overly broad, unduly burdensome, not limited in time and scope, and irrelevant, not reasonably calculated to lead to the admissibility of discoverable evidence and seeks information not within this Answering Defendants' possession or control. Without waiving these objections Answering Defendants are not in possession of information responsive to this request beyond what Plaintiffs have already provided, which Defendants are not required to reproduce, and respectfully refers Plaintiffs to the information provided in response to the subpoenas Plaintiffs served on EJ Waterproofing.

2. All documents regarding services provided, of any nature, during the past 5 years, by ANCHOR PEST CONTROL.

Response:

Answering Defendants object to this demand as it is overly broad, unduly burdensome, not limited in time and scope, and irrelevant, not reasonably calculated

to lead to the admissibility of discoverable evidence and seeks information not within this Answering Defendants' possession or control. Without waiving these objections, Answering Defendants refer Plaintiffs to any information produced in response to their subpoena to Anchor Pest Control and see documents produced herewith.

3. Documents regarding the following entities, to wit, Wallace, Roberts and Todd LLC (WRT), SB Conrad, AJD Construction, as they relate to the subject property and waterproofing of same as that term is defined in the definitional section of this request. Documents encompasses inter alia photos or videos taken during construction or remodeling/renovation, architectural plans or drawings (only if electronically available), shop drawings, invoices for services, work orders, as-built drawings, inspection reports, maintenance records, change orders, safety data sheets, and/or any other documents depicting the use or non-use of waterproofing methods in construction of the property (e.g. the use or non-use of cement boards). Photographs showing the interior of the property, taken during construction, are an example of such documents, as are any documents from a hardware store (e.g. invoices) showing the waterproofing materials purchased. The documents in this request shall be limited to documents in connection with original construction, or remodeling/renovation (or other subsequent major construction), of the subject property, only as those documents relate to waterproofing of the subject property (as defined supra), and includes photos or videos taken of the subject property during construction or remodeling/renovation.

Response:

Answering Defendants object to this demand as it is overly broad, unduly burdensome, not limited in time and scope, and irrelevant, not reasonably calculated to lead to the admissibility of discoverable evidence and seeks information not within this Answering Defendants' possession or control. Without waiving these objections, Answering Defendants refer Plaintiffs to any information produced in response to their subpoenas to these above-referenced entities.

4. All documents from or to the Paterson Housing Authority concerning any issue referenced in the First Amended Complaint, as they relate to any building in the Alexander Hamilton complex or the subject property. Such issues include mold infestation, mold remediation, rodent infestation, and mold/rodent remediation. Said documents must have been drafted or must be dated within the past 8 years.

Documents as used herein include but are not limited to:

- Inspection reports related to mold and/or rodent infestations.
- Communication regarding mold testing results, abatement plans, and remediation efforts.
- Resident complaints or concerns regarding mold or rodent infestations at the Alexander Hamilton complex.
- Contracts or agreements with any vendors or contractors involved in mold or rodent remediation at the complex.
- Emails, memoranda, or other internal communications referencing mold or rodent issues at the Alexander Hamilton complex.

- Any digital photographs or video recordings documenting mold or rodent infestations at the complex.

Response:

Answering Defendants object to this demand as it is overly broad, unduly burdensome, not limited in time and scope, and irrelevant, not reasonably calculated to lead to the admissibility of discoverable evidence and seeks information not within this Answering Defendants' possession or control. Without waiving these objections, Answering Defendants refer Plaintiffs to any information produced in response to their subpoenas to the Paterson Housing Authority.

5. All documents or ESI related to the heating, ventilation, and air conditioning (HVAC) system and plumbing at the subject property. This request specifically focuses on documents related to the period from April 11, 2014, to the present date. Requested documents include:

Documents as used herein include but are not limited to:

- Documents as used herein include but are not limited to:
- Inspection reports related to mold and/or rodent infestations.
- Communication regarding mold testing results, abatement plans, and remediation efforts.
- Resident complaints or concerns regarding mold or rodent infestations at the Alexander Hamilton complex.
- Contracts or agreements with any vendors or contractors involved in mold or rodent remediation at the complex.
- Emails, memoranda, or other internal communications referencing mold or rodent issues at the Alexander Hamilton complex.
  Any digital photographs or video recordings documenting mold or rodent infestations at the complex.

Response:

Answering Defendants object to this demand as it is overly broad, unduly burdensome, not limited in time and scope, and irrelevant, not reasonably calculated to lead to the admissibility of discoverable evidence and seeks information not within this Answering Defendants' possession or control. Without waiving these objections, Answering Defendants refer Plaintiffs to any information produced in response to their subpoenas to Archer Pest Control and any other relevant companies. Without waiving these objections, see documents enclosed herewith.

6. All permits for construction for the past ten years, including electrical, HVAC, plumbing and heating and related to maintenance or repair of the subject property, plaintiff's unit.

Response:

Answering Defendants object to this demand as it is overly broad, unduly burdensome, contains undefined terms, is not limited in time and scope, is irrelevant, not reasonably calculated to lead to the admissibility of discoverable evidence and this demand seeks information not within this Answering Defendants' possession or control.

7. Plaintiff's entire tenancy file, including her lease, complaints, emails, text messages and other communications. If you have taken photographs or videos of her apartment during her tenancy, or in preparation for her tenancy, this request includes said photographs or videos.

Response:

Answering Defendants object to this demand to the extent it seeks information Plaintiffs have previously provided and Answering Defendants do not have to reproduce. Without waiving these objections, see documents produced herewith.

8. Entire Tenancy file for prior tenant Eudosia Bermudez, and any other tenants of the subject property, for the ten years preceding plaintiff's tenancy. This request includes photographs or videos, complaints by the tenant, and citations, notices, or warnings given to you by state, municipal, or federal authorities in connection with the subject tenancy.

Response:

Answering Defendants object to this demand as it seeks personal and confidential information pertaining to a third-party and is irrelevant to this matter and Plaintiffs' alleged claims.

9. Pictures, images, or video of the subject property interior or exterior, dating back to original construction to the present.

Response:

Answering Defendants object to this demand as it is overly broad, unduly burdensome, contains undefined terms, is not limited in time and scope, is irrelevant, not reasonably calculated to lead to the admissibility of discoverable evidence and this demand seeks information not within this Answering Defendants' possession or control.

10. All documents from or directed to the City of Paterson Division of Health, for the past ten years, including notices, warnings, or citations, as well as communications related to the habitability or inspections of any unit in the Alexander Hamilton Complex.

Response:

Answering Defendants object to this demand as it is overly broad, unduly burdensome, contains undefined terms, is not limited in time and scope, is irrelevant, not reasonably calculated to lead to the admissibility of discoverable evidence and this demand seeks information not within this Answering

Defendants' possession or control.

11. All documents from or directed to the Paterson Division of Community Improvements for the past ten years, including notices, warnings, or citations, as well as communications related to the habitability or inspections of any unit in the Alexander Hamilton Complex.

Response:

Answering Defendants object to this demand as it is overly broad, unduly burdensome, contains undefined terms, is not limited in time and scope, is irrelevant, not reasonably calculated to lead to the admissibility of discoverable evidence and this demand seeks information not within this Answering Defendants' possession or control.

12. All inspection reports, of any nature, by or on behalf of any entity, regarding the subject property for the past 15 years, including but not limited to inspection reports for the purpose of refinancing, purchase, rental, or sale of the subject property, and reports in connection with municipal, state, or federal compliance of building or construction codes.

Response:

Answering Defendants object to this demand as it is overly broad, unduly burdensome, contains undefined terms, is not limited in time and scope, is irrelevant, not reasonably calculated to lead to the admissibility of discoverable evidence and this demand seeks information not within this Answering Defendants' possession or control.

13. All documents related to maintenance of the subject property, dated or otherwise drafted within the past five years. Maintenance includes cleaning, repairing, installing, rebuilding, fixing, or servicing any aspect, appliance, hardware, or structures within the subject property.

Response:

Answering Defendants object to this demand as it is overly broad, unduly burdensome, contains undefined terms, is not limited in time and scope, is irrelevant, not reasonably calculated to lead to the admissibility of discoverable evidence and this demand seeks information not within this Answering Defendants' possession or control.

14. Documents related to mold inspection, mold remediation, and/or pest control or rodent infestation or remediation for the subject property and/or the buildings in the Alexander Hamilton complex dated or otherwise drafted within the past ten years.

Response:

Answering Defendants object to this demand as it is overly broad, unduly

burdensome, not limited in time and scope, contains undefined timers, is irrelevant, not reasonably calculated to lead to the admissibility of discoverable evidence and this demand seeks documents or information previously produced herewith.

15. All ESI related to above requests.

Response:

Answering Defendants object to this demand as it is overly broad, unduly burdensome, contains undefined terms, is not limited in time and scope, is irrelevant, not reasonably calculated to lead to the admissibility of discoverable evidence and seeks information not within this Answering Defendants' possession or control.

Santos A. Perez, Esq. <sperez@njlawcounsel.com>

Boria et al v. The Heritage At Alexander Hamilton,

Zainab Awelenje <zawelenje@patersonnj.gov> Tue, Oct 1, 2024 at 2:15 PM
To: "Santos A. Perez, Esq." <sperez@njlawcounsel.com>

Good afternoon,

I hope all is well.

For this one time, Mr. Aboushi has authorized the acceptance of your most recent subpoena to me via email. However, please note the alleged service to the front desk security guard is not considered acceptable service under the Rules, and that any future subpoenas must be appropriately served.

After thorough review with the Department of Health and Human Services, the Division of Engineering, and the Construction Office, the City of Paterson does not have the requested documents. The City maintains its original response sent to your office on August 13, 2024.

The City maintains its right to amend its response should this proceed to further litigation, assert a more formal response, as well as assert all objections available to it, including to service and failure to comply with the Federal Rules of Civil procedure.

Zainab Awelenje Esq.

Assistant Corporation Counsel / Municpal Court Prosecutor

City of Paterson

155 Market Street

Paterson, NJ 07505

Tel: (973) 321-1366 x2360

Santos A. Perez, Esq. <sperez@njlawcounsel.com>

Boria et al v. The Heritage At Alexander Hamilton,

Zainab Awelenje <zawelenje@patersonnj.gov> Wed, Oct 2, 2024 at 11:11 AM
To: "Santos A. Perez, Esq." <sperez@njlawcounsel.com>, "Mayor Sayegh Distribution Group" <mayorsayegh@patersonnj.gov>, "Andrew DeLaney" <adelaney@andrewdelaneylaw.com>, "Jennifer Boria" <jboria86@gmail.com>, "Maritza Davila" <mdavila@patersonnj.gov>, "Lilisa Mimms" <lmimms@patersonnj.gov>
Cc: <aaboushi@patersonnj.gov>

Good morning,

The City of Paterson has provided your response with records from the fire department on August 13, 2024 (attached).

To be clear, the response sent to you stated that other departments were not in possession of the records you requested.

The City is committed to transparency and will take further steps to look into this. Please provide any proof you may have of the inspections and complaints so we may further assist you.

Zainab Awelenje Esq.

Assistant Corporation Counsel / Municpal Court Prosecutor

City of Paterson

155 Market Street

Paterson, NJ 07505

Tel: (973) 321-1366 x2360

Jennifer L. Fletcher

From: Santos A. Perez <sperez@njlawcounsel.com>
Sent: Monday, December 2, 2024 8:00 PM
To: Jennifer L. Fletcher
Subject: [EXTERNAL] Re: FW: Boria - Draft Counsel Joint Letter Submission Re Judge Clark Order to Settle Disputes by December 2, 2024

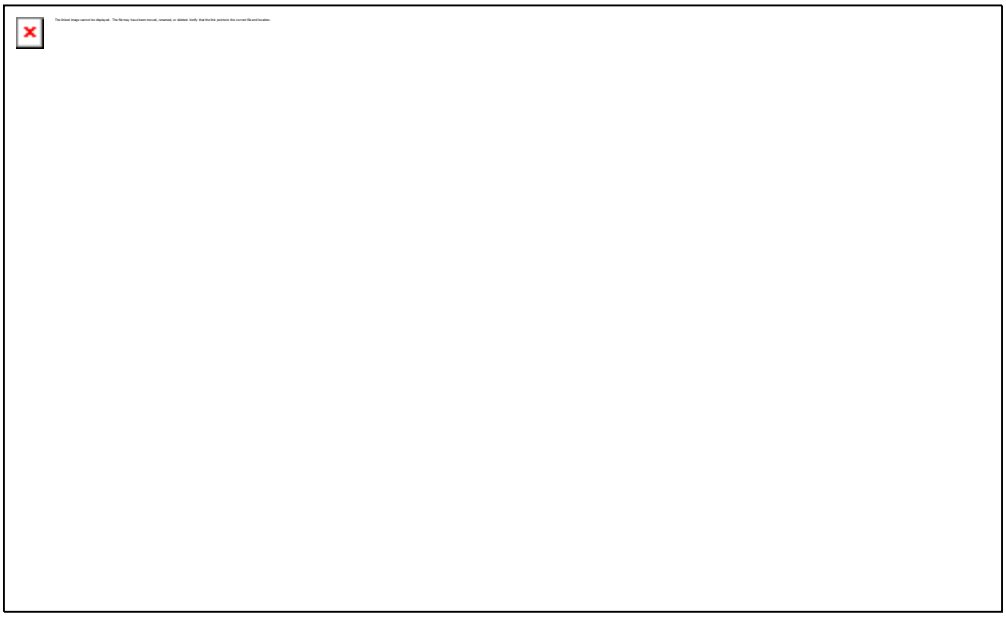
This submission is insufficient. The letter must contain the following:

1. This Court on July 30, 2024 specifically discussed the issue of negligence per se, and its counterpart "*evidence of negligence*", as these doctrines apply in the case *sub judice*. https://casetext.com/case/boria-v-the-heritage-at-alexander-hamilton [**ECF 22**].

2. This publicly available opinion, *known to both defendants* as well as the City of Paterson, highlighted that plaintiff's **primary theory of liability** was premised on **city citations and inspections**.
3. Defendants are thus *keenly* aware of the **relevancy** of such inspection and city citation evidence, inasmuch as this Court in its opinion [ECF 22] cited with approval a New Jersey Supreme Court case, *Braitman*, which had held that a violation of New Jersey's Hotel Multiple Dwelling Law (HMDL) regulations **can be used as "evidence of [a] defendant's negligence**". *Boria v. The Heritage at Alexander Hamilton*, Civil Action 23-22914, 4 (D.N.J. Jul. 30, 2024). [ECF 22]
4. Notwithstanding, they knowingly and brazenly failed to answer the following questions, thus warranting sanctions:

5.

6.



7.

Santos A. Perez, Esq.

New Jersey Litigation

The **P**erez **L**aw **F**irm
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Puerto Rico Litigation

Bufete Federal Perez Mercado
http://www.PerezMPR.Com
(787)773-1477
perezm@perezMPR.Com (Federal Litigation Puerto Rico)

On Mon, Dec 2, 2024 at 6:17 PM Jennifer L. Fletcher <JFletcher@wshblaw.com> wrote:

> Hi, Santos,
>
> I just left you a voicemail regarding same, but, this evening, Judge Clark uploaded the enclosed Order requiring us to file a joint letter to resolve the outstanding discovery disputes. To that end, I once again enclose my proposed draft for your review.
>
> Further, we really need to sort out the issue regarding the alleged city citations and inspections at The Heritage at Alexander Hamilton. As previously advised, our clients are not in possession of such documents, and the City of Paterson has thrice advised that they do not have such documents. I am therefore uncertain how the Court can compel the production of documents that do not exist and what relief specifically you are seeking in this regard. I have a similar question regarding the other discovery, as we have advised we do not have that information in our possession.

Please let me know when you are available to speak tonight or tomorrow. Thank you.

Regards,

Jennifer L. Fletcher
Senior Counsel
WOOD SMITH HENNING & BERMAN LLP

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E jfletcher@wshblaw.com W www.wshblaw.com

Personal Bio · **LinkedIn** · **Facebook** · **X**

From: Jennifer L. Fletcher
Sent: Wednesday, November 27, 2024 10:24 PM
To: Santos A. Perez, Esq. <sperez@njlawcounsel.com>
Cc: Kassie C. Kuenzle <KKuenzle@wshblaw.com>
Subject: Boria - Draft Counsel Joint Letter Submission Re Judge Clark Order to Settle Disputes by December 2, 2024

Hi, Santos,

Please see the enclosed draft letter and let me know your thoughts. Please bear in mind we are limited to 7 pages in total, so I tried to evenly split the page limit. I welcome any revisions.

Regards,

WSHB
WOOD·SMITH HENNING·BERMAN
COAST TO COAST REPRESENTATION

Jennifer L. Fletcher
Senior Counsel

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E jfletcher@wshblaw.com W www.wshblaw.com

Personal Bio · **LinkedIn** · **Facebook** · **X**

Jennifer L. Fletcher

From: Jennifer L. Fletcher
Sent: Tuesday, December 3, 2024 2:23 PM
To: Santos A. Perez, Esq.; Kenya Overton
Cc: Brendan A. Johnson
Subject: RE: [EXTERNAL] Reyes/Boria Voicemail
Attachments: [EXTERNAL] Boria et al v. The Heritage At Alexander Hamilton,; [EXTERNAL] Re: FW: Boria - Draft Counsel Joint Letter Submission Re Judge Clark Order to Settle Disputes by December 2, 2024

Hi, Santos,

Yes, I was following up regarding your email from last night. The Court's Order from yesterday required us to engage in a meaningful meet and confer (per the original Order in Docket 37). It seems we are at a bit of an impasse, and I am wondering if something is lost in translation.

As I understand it, you are predicating your claims of negligence per se and "evidence of negligence," based on city citations and inspections. However, our clients' discovery responses advised we don't have these documents. The City of Paterson also say they do not have such documents via their enclosed emails dated 10/1, 10/2, and referencing a prior August response. As such, I am not sure what is in dispute, or how my clients can be compelled to produce documents neither our clients nor the City have. Further, you assert my clients have failed to answer questions. There is a distinction between not answering questions and stating we do not have the information you are requesting. I would like to discuss where you believe we did not answer the questions at all, because that is an important distinction.

My hope is that we can figure out the disconnect, have a meaningful and productive conversation, and then submit any genuine disputes to the Court. Please let me know when you are available to speak.

Regards,

Jennifer L. Fletcher
Senior Counsel
WOOD SMITH HENNING & BERMAN LLP

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From: Santos A. Perez, Esq. <sperez@njlawcounsel.com>
Sent: Tuesday, December 3, 2024 2:00 PM
To: Jennifer L. Fletcher <JFletcher@wshblaw.com>; Kenya Overton <KOverton@wshblaw.com>; Jill A. Mucerino <JMucerino@wshblaw.com>
Subject: [EXTERNAL] Reyes/Boria Voicemail

Hi Jennifer!

Good to hear from you - I see you called, but your voicemail went to SPAM and I could not recover it.

Please let me know if I can help you in any way.

Regards,

Santos A. Perez, Esq.
The **P**erez **L**aw **F**irm
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Civil Action No.: 08-4168 (MLC)
United States District Court, D. New Jersey

Eisai Inc. v. Sanofi-Aventis U.S., LLC

Decided Nov 7, 2011

Civil Action No.: 08-4168 (MLC).

November 7, 2011

MEMORANDUM OPINION AND ORDER

DOUGLAS ARPERT, Magistrate Judge

I. INTRODUCTION

This matter having come before the Court on a Motion by Defendants Sanofi-Aventis U.S., LLC and Sanofi-Aventis, U.S., Inc. (collectively, "Defendants" or "sanofi-aventis US") to "compel more detailed responses to Defendants' Second Set of Interrogatories . . . and . . . the identification and production of a witness for deposition" [dkt. entry. no. 142], returnable June 6, 2011. Plaintiff Eisai Inc. ("Plaintiff" or "Eisai") filed opposition on May 23, 2011. Defendant filed a reply brief on May 26, 2011. The Court conducted oral argument on October 19, 2011. For the reasons stated herein, Defendants' Motion is **GRANTED** in part and **DENIED** in part.

II. FACTUAL BACKGROUND AND PROCEDURAL HISTORY

Plaintiff has marketed "Fragmin, a type of injectable anticoagulant drug" in the United States since 1996. *See* Pl.'s Compl., dkt. entry no. 1 at 2. Defendants market a competitor "anticoagulant product known as Lovenox". *Id.* On August 18, 2008, Plaintiff filed a Complaint alleging "monopolization of all relevant markets" pursuant to 15 U.S.C. § 2 (*see* Pl.'s Compl. at 21), "attempted monopolization of all relevant markets" pursuant to 15 U.S.C. § 2 (*Id.* at 22), "sale on condition not to use goods of competitor and to force use of full line of Lovenox goods in all relevant markets" pursuant to 15 U.S.C. § 14 (*Id.* at 23), "agreements in restraint of trade in all relevant markets" pursuant to 15 U.S.C. § 1 (*Id.* at 23-24), and violation of the "New Jersey Antitrust Act" pursuant to N.J.S.A. §§ 56:9-3 and 56:9-4 (*Id.* at 24-25), based upon Plaintiff's contention that Defendants designed "contractual practices . . . to preserve . . . [their] substantial and enduring monopoly in the market for injectable anticoagulant drugs" as Plaintiff contends that Defendants account "for in excess of 90% of all sales for these drugs" (*Id.* at 1-2).

2 *2

More specifically, Plaintiff alleges that Defendants have "expanded, protected, and maintained [their] monopoly power unlawfully, through a variety of anticompetitive means, including exclusionary contracts that draw upon and further protect the monopoly position of Lovenox". *Id.* at 2. Plaintiff asserts that "Lovenox contractual provisions require that a hospital customer purchase at least 90% of its relevant injectable anticoagulant purchases from Defendants . . . [in order] to avoid losing a discount of up to 30% off the customer's total Lovenox purchases", a provision which Plaintiff refers to as "the monopoly-share contractual condition". *Id.* "Once a hospital's purchases fall below 90%, it forfeits significant discounts" and, if "the customer purchases less than 75% of its requirements from Defendants, the customer receives only a 1% discount". *Id.* Plaintiff maintains that Defendants do "not offer the Lovenox discount without the monopoly-share contractual condition". *Id.* As a result, Plaintiff

alleges, the "monopoly-share condition causes anticompetitive effects in at least two ways". *Id.* at 3.

"First, [the monopoly-share condition] operates as a *de facto* one-way exclusive dealing arrangement" such that "[i]n order to obtain the discount, a hospital must effectively agree to take at least 90% of its requirements from Defendants" and thereby "effectively [places] a . . . 10% [cap] on Defendants' anticoagulant competitors' combined sales to hospitals". *Id.* Thus, Plaintiff contends, Defendants' practices "blockad[e] entry by any firm not already in the market by *3 assuring that after entry no new entrant [can] compete for more than 10% of market sales", "forestall effective competition from Plaintiff . . . by imposing barriers to Plaintiff's expansion of its market share . . . [and] thereby disabling Plaintiff from obtaining the same reputational advantages and economies of scale in manufacturing, marketing, and distribution that Defendants enjoy", and "deny consumers unrestricted choice of products, suppress improvements in patient care, reduce innovation, and prohibit lower prices". *Id.* at 4. "Second, the monopoly-share condition restricts Plaintiff's ability to obtain formulary status at hospitals . . . by erecting a substantial barrier to inclusion in hospitals' formularies". *Id.* Plaintiff maintains that "Lovenox already enjoys a 90% market share and is the predominant drug on most hospital formularies" such that "replacing Lovenox with a new anticoagulant drug within that formulary is costly and time consuming for any hospital" and, "although Fragmin and Lovenox are both approved for a variety of uses, Lovenox has obtained a comparative stronghold with respect to certain uses". *Id.* Thus, Plaintiff contends, Defendants' "monopoly-share condition operates so that a hospital that wishes to purchase anticoagulant drug products at the lowest price has no effective alternative other than to purchase at least 90% of its product needs from Defendants" and therefore "excludes rival anticoagulant sellers from hospitals". *Id.* at 4-5.

On January 10, 2011, Defendants served interrogatories "seeking specific information about Plaintiff's lost business resulting from Defendants' allegedly anticompetitive conduct". *See* Def.'s Decl. of David Gelfand ("Gelfand"), dkt. entry no. 142-2, Ex. H at 3. Specifically, Defendants' interrogatories requested the following information:

> 2. Identify every customer or potential customer of Fragmin that purchased less Fragmin than it otherwise would have as a result of the Lovenox Discount Program ("Program") and/or any other practice or act by sanofi-aventis US that is alleged to be part of the antitrust violation asserted in this case. For each customer or potential customer, provide the following information: (1) the *4 name and contact information for all employees or representatives of the customer or potential customer who dealt with any employee or representative of Eisai in discussing purchases or potential purchases from Eisai; (2) the names of all Eisai employees, contractors, or other representatives who are knowledgeable about the circumstances surrounding the loss of Fragmin sales to the customer or potential customer; and (3) a description of the circumstances surrounding the loss of Fragmin sales to the customer or potential customer.

> 3. Identify every customer or potential customer of Fragmin during the relevant time period that declined to place Fragmin on its formulary as a result of the Program and/or any other practice or act by sanofi-aventis US that is alleged to be part of the antitrust violation asserted in this case. For each such customer or potential customer, provide the following information: (1) the name and contact information for all employees or representatives of the customer or potential customer who dealt with any employee or representative of Eisai in discussing the possible placement of Fragmin on formulary; (2) the names of all Eisai employees, contractors, or other representatives who are knowledgeable about the circumstances surrounding the customer's or potential customer's decision not to place Fragmin on formulary; and (3) a description of the circumstances surrounding the decision by the customer or potential customer not to place Fragmin on formulary.
>
> 4. For every customer or potential customer of Fragmin during the relevant time period that purchased less Fragmin than it otherwise would have or that declined to place Fragmin on its formulary as a result of the Program or any other practice or act by sanofi-aventis US that is alleged to be part of the antitrust violation asserted in this case, identify what Eisai did to counter, respond to, or compete with any and all such contracts, practices, or acts including but not limited to a detailed description of any discounts, or other responsive actions taken by Eisai to obtain formulary status for Fragmin or to obtain sales of Fragmin to the customer or potential customer.

Id., Ex. A.

In response to Defendants' Interrogatory No. 2, Plaintiff stated:

> 2. . . . Objection. This Interrogatory seeks information already known to Defendants, and supported by information and documents already in Defendants' possession. . . . Eisai states that [*5] from the time that Defendants or their predecessors implemented the anti-competitive Program, every Lovenox customer whose purchase of Lovenox was subject to or related, directly or indirectly, to the Program may have purchased less Fragmin or other LTC products than it otherwise would have due to the Program and/or Defendants' anticompetitive behavior. . . . Below are some examples that . . . reflect Defendants' anticompetitive behavior, which have interfered with customers' choices and effectively foreclosed the LTC market (Eisai has learned of these events through its interaction in the field with customers and with Lovenox representatives).

Id., Ex. B at 4-5. Additionally, Plaintiff provided general information about anticompetitive practices that impacted hospitals, HMOs, and customers in certain areas without including the names or contact information of any customers, potential customers, or Eisai employees. *Id.* at 5-6. Thereafter, Plaintiff added:

> Eisai is confident . . . that these practices have occurred on a regular basis at hospitals and hospital systems in every part of the United States since Lovenox has been in the market. Eisai has sought discovery from Defendants in this regard, and fully expects that Defendants' discovery will identify many more examples; to date, Defendants have refused to begin searching for said discovery.

> In addition, upon agreement of the parties regarding the scope of discovery related to the field sales force, Eisai will identify information responsive to subsections (2) and (3), to the extent said information is available and appropriate. In accordance with the Court's scheduling order, Eisai also will produce its expert reports, which Eisai anticipates will discuss the impact on customers and patients of Defendants' anticompetitive behavior, and will set forth the damages Eisai has sustained due to Defendants' foreclosure of the LTC market. Eisai reserves the right to supplement this Answer as discovery proceeds in this case.

In response to Defendants' Interrogatory No. 3, Plaintiff stated:

> 3. Objection. This Interrogatory seeks information already known to Defendants, and supported by information and documents already in Defendants' possession. . . . This Interrogatory also seeks information not in the custody of Eisai, but within the control of third parties; logic dictates that customers forced to refuse Fragmin and/or other LTC products due to Defendants' *6 behavior may not inform Eisai of such. . . . [B]ased on a review of the contracts produced thus far by Defendants, a production that is incomplete, below is a list of some Lovenox customers that have not purchased Fragmin.

Id., Ex. B at 7-8. Notwithstanding this objection, Plaintiff provided the names of ten (10) customers, without including any individual names or contact information or any description of the surrounding circumstances. *Id.* at 8. Thereafter, Plaintiff reiterated:

> In addition, upon agreement of the parties regarding the scope of discovery related to the field sales force, Eisai will identify information responsive to subsections (2) and (3), to the extent said information is available and appropriate. In accordance with the Court's scheduling order, Eisai also will produce its expert reports, which Eisai anticipates will discuss the impact on customers and patients of Defendants' anticompetitive behavior, and will set forth the damages Eisai has sustained due to Defendants' foreclosure of the LTC market. Eisai also states that from the time that Defendants or their predecessors implemented the anticompetitive Program, the choices of every Lovenox customer whose purchase of Lovenox was subject to or related, directly or indirectly, to the Program have been illegally restricted, by the Program and/or Defendants' anticompetitive behavior. . . . Eisai reserves the right to supplement this Answer as discovery proceeds in this case.

Id., Ex. B at 8-9. In response to Defendants' Interrogatory No. 4, Plaintiff stated:

> 4. See Objections and Answers to Interrogatory Nos. 2 and 3. Eisai also refers Defendants to the documents it will produce on a rolling basis throughout the discovery process, which includes contracts, brand plans, sales, marketing, and pricing analyses, promotional materials, sales training, and other documents that reflect Eisai's unsuccessful efforts to compete against Defendants' anticompetitive and monopolistic behavior. In accordance with the Court's scheduling order, Eisai also will produce its expert reports, which will inform on Defendants' foreclosure of the market and the damages suffered by Eisai as a result. Eisai reserves the right to supplement this Answer as discovery proceeds in this case.

Id., Ex. B at 8-9.

On March 7, 2011, Defendants sent a letter seeking to clarify Plaintiff's responses, requesting "a complete list of every customer and instance responsive to these requests", *7 requesting "information regarding every potential customer with whom Eisai actively sought or took affirmative steps to have Fragmin placed on formulary but was declined", and confirming that Plaintiff would "not withhold any documents or information on the basis of [its] objection" that "discovery from Defendants will be the greatest source of information". *Id.*, Ex. C at 1-3. On March 9 and 16, 2011, the parties met and conferred on the concerns outlined in Defendants' March 7, 2011 letter. *Id.*, Ex. D at 1. In a letter dated March 21, 2011 summarizing the results of their meet and confer sessions, Defendants stated that "Eisai continues to refuse to provide a comprehensive and exhaustive list of specific customers known to Eisai that were allegedly lost as a result of the Program" despite the fact that "Eisai acknowledged that Defendants [are] entitled to the information responsive to these interrogatories" and "has agreed to search for and produce documents relating to its alleged lost business". *Id.*, Ex. D at 1-2. In an attempt to obtain the requested discovery "through an alternative route, on March 23, 2011 Defendants served a Notice of Rule 30(b)(6) Deposition upon Eisai" that included "topics . . . [which were] the subject matter sought in Defendants' interrogatories". *Id.*, Ex. H at 3; *see also Id.*, Ex. E.

On April 4, 2011, Plaintiff responded to Defendants' March 21, 2011 letter and stated that "Eisai does not and has not refused to comprehensively respond to" Interrogatory Nos. 2, 3, and 4 and Document Request No. 4 which seek "the identities of customers who either declined to purchase Fragmin or purchased less Fragmin based on Defendants' anti-competitive practices". *Id.*, Ex. G at 2. Rather, "Eisai has fully answered the requests, and in fact, has produced more information than was sought in the requests" and "made it abundantly clear in its formal responses . . . that it believes every contract and every customer subject to the Program and Defendants' other anti-competitive behavior by its sales force is one that may have purchased less Fragmin or declined altogether to purchase Fragmin". *Id.* Plaintiff stated that "as discovery *8 continues and it is appropriate, Eisai will supplement these responses" because it "has every intention of fully complying with its discovery obligations". *Id.* However, Plaintiff also contends that Defendants' "request that Eisai confirm if the examples given in its interrogatory responses constitute a complete universe of specific customers or alleged instances currently known to Eisai" is "not an obligation contemplated by the rules of discovery" because the "parties . . . [are only required to] produce responsive discoverable information within a timely manner during the discovery period . . . to ensure that there is no unfair surprise at trial". *Id.* Separately, on April 4, 2011, Plaintiff responded to Defendants' March 23, 2011 Notice of Rule 30(b)(6) Deposition stating that it would "not produce a responsive witness" at this time because the notice "was premature" based upon "the current state of discovery" and because "the notice contains several subjects that are objectionable on a variety of grounds including the attempt to require Eisai to designate a corporate witness to testify as to legal conclusions". *Id.*, Ex. F at 1. "Regarding the current state of discovery, although Defendants have started the process of producing documents . . ., [Eisai has] not been provided any estimates from Defendants as to when production will be complete or on what schedule [Eisai] will likely receive documents". *Id.* In addition, "Eisai served subpoenas on Defendants for depositions . . . on August 20, 2009 . . . [and] January 17, 2011" but has "received no deposition dates for these deponents" to date. *Id.* Plaintiff insists that "Defendants honor their pending discovery obligations . . . before Eisai . . . respond[s] to the deposition notice". *Id.* "Once [Eisai is] provided with a better understanding of when . . . Defendants' documents . . . [will be produced] and

when the . . . previously requested depositions of Defendants' employees will be scheduled, [Eisai] will be in a better position to determine the appropriate timing for the deposition of an Eisai witness responsive to this request" and "will be happy to discuss the scope of the notice . . . in an 9 effort to resolve any *9 disputes prior to the deposition". *Id.* The Court notes that it appears the "parties did not meet-and-confer regarding this deposition notice". *See* Pl.'s Opp'n Br., dkt. entry 10 no. 144 at 3.

Based on these continuing discovery disputes, Defendants wrote to the Court on April 8, 2011. *See* Def.'s Decl. of Gelfand, Ex. H. Plaintiff responded in a letter dated April 19, 2011. *Id.*, Ex. I. On April 27, 2011, the Court conducted a telephone conference call and attempted to resolve the issues outlined by the parties. *See* Pl.'s Opp'n Br., dkt. entry no. 144 at 1. Plaintiff states that it understood the Court's views as expressed during the conference call to be as follows:

> (1) to the extent that Eisai' litigation team (including its outside counsel and inside counsel tasked with managing this litigation) was aware of lost customers and/or sales resulting from Defendants' anti-competitive conduct, such information was discoverable and had to be disclosed; and
>
> (2) to the extent that further information regarding lost customers and/or sales might exist within Eisai's sales force at large but was not currently known to the litigation team, such information should only be subject to discovery as part of any agreed upon sampling of the sales force.

Id. at 3. "Given its understanding of the Court's guidance . . . [during] the April 27" conference call, "Eisai began preparing comprehensive and exhaustive supplemental discovery responses that disclosed all of the information related to the lost customers/sales topics of which the litigation team was aware". *Id.* at 4. Despite the fact that the parties "scheduled a further meet-and-confer on May 4, 2011", "[a]s directed by the Court", Plaintiff notes that the "day before this conference . . . Defendants filed the instant motion to compel — not based on the supplemental responses that Eisai had begun preparing after the April 27" conference call, "but on the Original Responses of February 14". *Id.* On May 9, 2011, Plaintiff maintains that it "served its Supplemental Responses" which "identify, in exhaustive detail, all information known to Eisai's *10 litigation team on the lost customer/sales issue, including the identity of customers, the identity of Eisai and customer employees with relevant information, the circumstances of the anti-competitive conduct, and Eisai's efforts to market to customers". *Id.* Specifically, Plaintiff's supplemental responses state the following:

> 2. . . . [I]n supplement to its prior answer, Eisai states that below is information obtained through its own internal investigation and the limited discovery conducted thus far. Eisai has not interviewed every employee and former employee that worked on Fragmin to ascertain the full scope of Eisai's knowledge. However, Eisai underscores that it is confident, and indeed Defendants' monopolistic 90% share of the relevant market and the widespread proliferation of anticompetitive behavior strongly suggests, that although an incident with a specific customer may be identified below, these practices are occurring on a regular basis at hospitals and hospital systems in every part of the United States. Eisai further emphasizes that, as is the case with Brian Miller's custodial file, Defendants' document production will uncover more such instances and customers. Indeed, much of Eisai's information at this early stage of discovery is from Fragmin customers who have indicated that they have withstood Defendants' tactics aimed at prohibiting them from purchasing Fragmin. Eisai anticipates that Defendants' documents will uncover the multiple customers who could not withstand Defendants' tactics and were forced to purchase Lovenox over another, cheaper but comparable, low molecular weight heparin. To the extent that Eisai's investigation identified a customer employee with direct knowledge of a specific incident, the person is identified below. However, generally, Eisai understands that the employees in the Pharmacies at the various hospitals tend to be the targets of Defendants' tactics resulting in lost business to Eisai and others in the relevant market. All information below is based on Eisai's information and belief, and in addition to the individuals identified, Mary Myers has knowledge regarding Defendants' illegal behavior, its impact on customers, and the detrimental effect on Eisai and other members of the relevant market. No employee identified below may be contacted except through counsel for Eisai.

11

See Pl.'s Opp'n Br., dkt entry no. 144-3, Ex. C at 6-7. Plaintiff went on to provide additional information about anticompetitive practices that impacted hospitals, HMOs, and customers in certain areas and identified some customers, potential customers, and Eisai employees by name *11 and location by state or region for some. *Id.* at 7-13. Thereafter, Plaintiff added:

> Eisai reserves the right to supplement this Answer, as permitted by the Federal Rules.
>
> 3. Eisai incorporates its initial objections and answer. In supplement, Eisai refers Defendants to Answer and Supplemental Answer to Interrogatory No. 2, which incorporates the information responsive to this Interrogatory. Any customer that is prohibited from putting Fragmin on its formulary due to Defendants' anticompetitive behavior vis a vis Lovenox is one who has purchased less Fragmin than it otherwise would have but for Defendants' conduct. Further, because of the pervasive nature of Defendants' conduct, Eisai contends that every Lovenox customer that has not purchased Fragmin is one that was prohibited from doing so by Defendants' conduct. Accordingly, as discovery continues — of third parties and Defendants — Eisai will identify additional customers.

> 4. In supplement, Eisai states that, because Defendants are a monopoly, with more than a 90% share of the market, including before Eisai began selling Fragmin, every action and effort by Eisai to compete in the market necessarily constitutes a counter or response to Defendants' anticompetitive behavior. Accordingly, Eisai refers Defendants to the promotional, marketing, sales, sales training, brand plan, contracting, and other documents that have been produced and will continue to be produced throughout discovery, which show Eisai's efforts to market and sell Fragmin within the artificial, monopolistic environment created by Defendants. In addition, regarding instances of improper conduct by Lovenox representatives with specific customers, when Fragmin sales representatives learned of such conduct, they worked with the customers to provide on label and accurate information from which the customers could make their purchasing and prescribing decisions. See also Answer and Supplemental Answer to Interrogatory No. 2, which identifies employees at Eisai who have knowledge of their specific responses to Defendants' counsel. Mary Myers, former Director, Sales Operations, Oncology Administration, and Gary Woods, former Field Sales Director, Institutional Care, both of whom were identified in Eisai's initial discovery responses, also have knowledge about the efforts made by Eisai to address specific acts of misconduct towards customers. Eisai reserves the right to supplement this Answer, as provided by the Federal Rules.

12 *Id.* at 13-16. *12

The Court notes that Defendants' Motion was filed on May 3, 2011. *See* dkt. entry no. 142. In a reply brief filed on May 26, 2011, Defendants maintain that Plaintiff's supplemental responses remain inadequate (*see* dkt. entry no. 145) and seek the following relief:

> 1. Eisai shall fully respond to Interrogatory numbers 2, 3, and 4 of Defendants' Second Set of Interrogatories in accordance with the Federal Rules of Civil Procedure within [___] days of this Order.
>
> 2. Eisai shall supplement its Answers to sanofi-aventis US's Interrogatory numbers 2, 3, and 4 to provide the following information currently known to Eisai:
>
> a. the name and contact information for every customer or potential customer that purchased less Fragmin than it otherwise would have as a result of the Lovenox Discount Program and/or any other practice or act by sanofi-aventis US that is alleged to be part of the antitrust violation asserted in this case;
>
> b. the name and contact information for all employees or representatives of the customer or potential customer who dealt with any employee or representative of Eisai in discussing purchases or potential purchases from Eisai;
>
> c. a description of the circumstances surrounding the loss of Fragmin sales to the customer or potential customer;
>
> d. the name and contact information for every customer or potential customer of Fragmin that declined to place Fragmin on its formulary as a result of the Program and/or any other practice or act by sanofi-aventis US that is alleged to be part of the antitrust violation asserted in this case, or in the alternative, Eisai should confirm if there are no such customers currently known to Eisai;

e. the name and contact information for all employees or representatives of the customer or potential customer who dealt with any employee or representative of Eisai in discussing the possible placement of Fragmin on formulary, or in the alternative, Eisai should confirm if there are no such customers currently known to Eisai;

f. the names of Eisai's employees, contractors or other *13 representatives who are knowledgeable about the circumstances surrounding the customer's or potential customer's decision not to put Fragmin on formulary, or in the alternative, Eisai should confirm if there are no such customers currently known to Eisai;

g. a description of the circumstances surrounding the decision by the customer or potential customer not to place Fragmin on formulary, or in the alternative, Eisai should confirm if there are no such customers currently known to Eisai; and

h. for every customer or potential customer of Fragmin that purchased less Fragmin than it otherwise would have or that declined to place Fragmin on its formulary as a result of the Program and/or any other practice or act by sanofi-aventis US that is alleged to be part of the antitrust violation asserted in this case, identify what Eisai did to counter, respond to, or compete with any and all such contracts, practices, or acts including but not limited to a detailed description of any discounts, or other responsive actions taken by Eisai to obtain formulary status for Fragmin or to obtain sales of Fragmin to the customer or potential customer, or in the alternative, Eisai should confirm if there were no such specific actions taken to counter, respond to, or compete with sanofi-aventis US currently known to Eisai.

3. No later than, 2011, Eisai shall identify and produce a witness knowledgeable about the topics listed in the Notice of 30(b)(6) Deposition served on Eisai on March 23, 2011.

See Def.'s Proposed Form of Order, dkt. entry no. 145-1, Ex. C.

A. Defendants' Arguments in Support of the Motion

In reply to Plaintiff's opposition and contention that its supplemental responses to the interrogatories at issue moot this Motion, Defendants note that "Plaintiff's supplemental answers were only provided after both an informal application and the instant motion were made to the Court" and "advise what remains at issue in [their] motion to compel". *See* Def.'s Reply Br., dkt. entry no. 145 at 1. Defendants maintain that while Plaintiffs' supplemental answers "are a step in the right direction", they "remain insufficient" because they "continue to assert broad, *14 sweeping responses . . . without the detail requested . . . and fail to address Defendants' need

for a Rule 30(b)(6) deposition on these particular topics". *Id.* Defendants argue that they "cannot proceed with discovery against all the third party hospitals that Plaintiff claims form the basis of its alleged foreclosure from the anticoagulant market because Plaintiff continues to represent that every Lovenox customer that has not purchased Fragmin is one that was prohibited from doing so by Defendants' conduct". *Id.* at 1-2. Defendants contend that it "is impractical to expect [them] to conduct discovery of the entire universe of U.S. hospitals (over 5,000) without any specific evidence of foreclosure from Plaintiff, particularly because Plaintiff has admitted that some of its own examples may not reflect business lost as a result of Defendants' allegedly anticompetitive conduct". *Id.* at 2. "If the only known instances of lost business due to Defendants' allegedly anticompetitive behavior are those included on the list provided in its answers and supplemental answers", Defendants argue that "Plaintiff should confirm this rather than continuing to make unsupported blanket assertions". *Id.* Despite Plaintiff's representations, Defendants "request that the Court . . . compel Plaintiff to appropriately respond to the interrogatories propounded . . . and to produce a competent witness to testify on the topics covered in those interrogatories". *Id.*

1. Plaintiff's supplemental answers regarding allegedly lost sales remain incomplete.

Defendants' "Interrogatory 2 requests information regarding lost sales including the name and contact information for all employees or representatives of the customer or potential customer who dealt with any employee or representative of Eisai in discussing purchases or potential purchases from Eisai". *Id.* Defendants maintain that "[o]f the examples listed in Eisai's Supplemental Answers, several fail to appropriately identify the hospital" while others "continue to refer only to regions including customers in the Houston area or customers in

15 central *15 California". *Id.* "Without the names and identifying information", Defendants argue that "it is impossible to collect discovery on these hospitals". *Id.* By way of example, Defendants point out that "Eisai identifies St. Joseph's Hospital and Baptist Hospital as Fragmin customers, but does not provide a complete name, location, or hospital contact for either institution". *Id.* Defendants "cannot move forward with subpoenas because over 80 hospitals use St. Joseph and over 60 hospitals use Baptist as part of their names". *Id.* Defendants contend that "the identity of its own customers must be known to Eisai . . . and[,] consistent with its discovery obligations, Eisai should provide complete information to Defendants". *Id.*

Defendants also note that "[c]ustomer contact names are also important to determine where responsive information can be found within these hospitals, some of which are enormous systems with hospitals in multiple states". *Id.* at 2-3. "Of the alleged examples of lost sales provided in Eisai's Supplemental Answers, almost half fail to identify any employee or representative of the customer or potential customer". *Id.* at 3. Defendants point out that they have "already received objections to subpoenas served on hospitals because they do not identify any particular person associated with Eisai's allegations". *Id.* "Without identifying individual employees or representatives of the customer", third parties served with subpoenas "are unable to meaningfully respond and Defendants must somehow address the objections for lack of specificity, where the specificity required is in the complete control of Eisai". *Id.* Defendants maintain that "[a]bsent additional information regarding the specific hospitals and contacts at these institutions who purportedly made statements to Eisai employees regarding the Lovenox contract or actions by Defendants' sales representatives, there is . . . no way for Defendants to investigate these allegations". *Id.* "If Eisai truly conducted an investigation and interacted in the

field with customers and with Lovenox representatives as it claims to have done",
16 Defendants *16 assert that Eisai "should be able to provide specific answers to this interrogatory". *Id.* As such, Defendants request that the "Court order Eisai to provide a complete response . . . that specifically identifies, by name and contact information, each hospital or facility and each customer or potential customer contact that are responsive to the request". *Id.*

2. Plaintiff has not provided any specific information regarding restrictions on formulary access.

Defendants note that "Interrogatory 3 seeks information regarding specific hospitals which have allegedly refused to place Fragmin on formulary as a result of the Lovenox contract and/or anticompetitive actions by Defendants" and requests "specific information regarding the name and contact information for all employees or representatives of the customer or potential customer with knowledge regarding these allegations". *Id.* at 3. Initially, "Eisai admittedly only reviewed the contracts produced by Defendants and then parroted back a list of some Lovenox customers that have not purchased Fragmin, which included the names of 10 hospitals and none of the requisite contact information sought in the interrogatory". *Id.* Defendants contend that Plaintiff's original answer was "not responsive to the question posed" and note that "Eisai has since retracted the names of two of these hospitals because apparently they have purchased Fragmin after all". *Id.*

With respect to Plaintiff's supplemental answers, Defendants maintain that they "provide no information about specific hospitals . . . that have refused to place Fragmin on formulary due to the alleged anticompetitive conduct" and they "do not identify the individuals with relevant knowledge at the eight remaining hospitals that Eisai previously had identified as not having purchased Fragmin". *Id.* "Eisai returns to its blanket assertion that every Lovenox customer that has not purchased Fragmin is one that was prohibited from doing so by Defendants' conduct" and Defendants argue that this "vague, conclusory answer is inappropriate".
17 *Id.* Defendants *17 contend that "Eisai can . . . [either] identify specific customers that it knows have refused to add Fragmin to their respective formularies as a result of Defendants' alleged misconduct or it cannot" and, if "no such hospitals are currently known, . . . Eisai should confirm that". *Id.* at 3-4. As such, Defendants request that the "Court order Eisai to either (a) provide a complete response . . . that identifies, by name and contact information, each hospital or facility and each customer or potential customer contact that are responsive to the request, or (b) confirm in writing that there are no responsive hospitals or facilities currently known to Eisai". *Id.* at 4.

3. Plaintiff has not provided any information about its steps to compete for business.

Defendants' "Interrogatory 4 seeks information on a customer-by-customer basis of what steps Eisai took to respond to lost sales or allegedly anticompetitive tactics by Defendants or to overcome barriers to obtaining formulary status for Fragmin". *Id.* at 4. Defendants maintain that "Eisai's Supplemental Answers fail to provide any customer-specific information . . . and merely state that when Fragmin sales representatives learned of such conduct, they worked with the customers to provide on label and accurate information from which the customers could make their purchasing and prescribing decisions". *Id.* Citing FED. R. CIV. P. 33(b)(3) and *Graco, Inc. v. PMC Global, Inc.*, 2011 WL 1114233, at *29 (D.N.J. 2011), Defendants argue that "[t]his vague response does not provide [them] with enough information to investigate Eisai's claims" and "Eisai cannot rely on such blanket assertions to satisfy its discovery obligations". *Id.* Citing FED. R. CIV. P. 33(b)(4), Defendants contend that it is "not sufficient for Eisai to refer generally to the marketing materials

included in its production of documents in order to satisfy this request" because "Eisai must specify the records that must be reviewed in sufficient detail to enable the interrogating party to locate and identify them". *Id.*

Citing *Tampa Elec. Co. v. Nashville Coal Co.*, 365 U.S. 320, 328 (1961) and *R.J.* *18 *Reynolds Tobacco Co. v. Philip Morris, Inc.*, 199 F. Supp. 2d 362, 394-95 (M.D.N.C. 2002), *aff'd*, 67 Fed. Appx. 810 (4th Cir. 2003), Defendants maintain that "[w]hat Eisai did to compete pertains not only to the factual background of Eisai's Complaint, but also to the merits of Eisai's antitrust claims". *Id.* "If Eisai truly conducted an investigation and interacted in the field with customers and with Lovenox representatives as it claims to have done", Defendants assert that "Eisai should be able to provide specific answers to this interrogatory". *Id.* As such, Defendants request that the "Court order Eisai to provide a complete response to Interrogatory 4 that . . . provides customer-specific, responsive information". *Id.*

4. Plaintiff's supplemental answers do not moot the need for a Rule 30(b)(6) deposition.

Defendants note that "Eisai addresses Defendants' Motion to Compel a Rule 30(b)(6) deposition in only a mere passing footnote in its Opposition brief" and "purports to argue that [Eisai's] Supplemental Answers . . . moot Defendants' right to seek relevant discovery by way of deposition testimony". *Id.* at 5. Defendants argue that "there is nothing in Eisai's Supplemental Answers that would obviate Eisai's obligation to produce a knowledgeable witness on the topics noticed". *Id.* Therefore, Defendants maintain that "the Court should order Eisai to produce the appropriate witness or witnesses who may testify to the topics identified in Defendants' Rule 30(b)(6) deposition notice". *Id.* **B. Plaintiff's Arguments in Opposition to the Motion**

1. Defendants' Motion is based on Plaintiff's original responses and is thus moot; Plaintiff's supplemental responses disclose all responsive information known to Plaintiff's litigation team.

Plaintiff notes that Defendants' Motion is "based on Plaintiff's original responses" and their contention that "Plaintiff refuses to identify the customers it is currently aware of who have refused to do business with Plaintiff as a result of the Program and alleged misconduct that is at *19 issue in this case"; "Plaintiff has identified four customers who purportedly told Plaintiff one thing or another about their Lovenox contracts and the names of ten other customers that allegedly have not purchased Fragmin but has apparently made no attempt to provide a complete list"; "the examples Plaintiff has provided of lost customers are vague . . . and Plaintiff has failed to provide any information at all identifying the knowledgeable individuals". *See* Pl.'s Opp'n Br., dkt. entry no. 144 at 5. Plaintiff maintains that "[w]hatever the merits of Defendants' assertions in regards to Plaintiff's original response, Defendants' assertions have no merit in light of Plaintiff's supplemental responses" and Defendants "presumably would not have filed the instant motion" if they had waited to receive the supplemental responses. *Id.*

Specifically, "Eisai's Supplemental Response provided detailed information (to the extent available) . . . regarding incidents in which Lovenox representatives: falsely represented to customers that the use of Fragmin carried increased risks of bleeding, DVTs and/or PEs; threatened customers with legal action when they considered expanded use of Fragmin; provided misinformation about their discounting structure and contract; reminded clinicians of the financial support that Defendants had provided; discouraged customers from proceeding with Fragmin formulary proposals; threatened

systemwide loss of discounts if individual hospitals increased their use of Fragmin; promoted off-label uses of Lovenox; and engaged in misinformation and scare tactics regarding potential malpractice suits if physicians switched to Fragmin". *Id.* at 6. Further, "Eisai catalogued these specific incidents with the identities of over three dozen involved customers, dozens of identified Eisai employees, and almost two dozen customer representatives identified by name and/or title". *Id.* Plaintiff provides the text of its supplemental answer to Interrogatory No. 2 to support its assertion that same is "reasonable". *Id.* at 6-15. Separately, Plaintiff provides the text of
20 its supplemental answer to Interrogatory No. 4 *20 in order to demonstrate "Eisai's efforts to market to . . . actual or potential customers". *Id.* at 15-16. Both supplemental answers indicate that "Eisai reserves the right supplement . . . as permitted by the Federal Rules". *Id.*

Finally, Plaintiff notes that "as part of [its] ongoing document production, the parties have agreed to complete by July 22, 2011 the custodial files of, *inter alia*, the witnesses with relevant knowledge detailed above (other than that of the sales force at large . . .)". *Id.* at 16. "These custodial files include, among others, those of the home office employees likely to have discoverable information on this topic". *Id.* Plaintiff further notes that "Defendants [have] already issued non-party subpoenas to several customers identified by Eisai, including Tenet Healthcare, Texas Health Resources, University Community Hospital, Hospital Corporation of America, Wellmont Health System, DeKalb Medical Center, and HealthPartners HMO". *Id.*

2. Any further discovery would require discovery of the sales force, which Defendants admit they do not seek.

Plaintiff maintains that "[a]ny further discovery of information regarding Eisai's lost customers — beyond that currently known to the litigation team — would require discovery of the sales force". *Id.* at 16. "However, because of the necessarily attendant burdens, the parties currently contemplate only a limited mutual sampling of discovery of the sales force".[1] *Id.* By way of example, Plaintiff states that "although discoverable information regarding Defendants' anti-competitive conduct is likely to exist within the knowledge and custodial files of most, if not all, of Defendants' more than 1,600 current and former Lovenox sales representatives, Eisai has agreed to limit its document discovery to just 75 sales representatives, less than 5% of the sales force, and deposition discovery of an even smaller
21 number". *Id.* Plaintiff maintains that *21 Defendants have "agreed, in regards to the instant motion, that the discovery at issue pertains only to the information known to the litigation team . . . and not to the sales force at large". *Id.* Plaintiff references Defendants' motion papers and their statement that all they seek "is to have the same information currently known to Eisai — not to require Eisai to further inspect all the files of its sales force or conduct interviews". *Id.* at 16-17. As such, Plaintiff maintains that "Defendants acknowledge that [they] seek no further relief than has already been provided in Eisai's Supplemental Responses". *Id.* at 17. Additionally, Plaintiff argues that the "same is true of Defendants' Rule 30(b)(6) Deposition Notice, through which Defendants seek to utilize an alternate method of gathering information currently known to Eisai about allegedly lost business as a result of Defendants' purportedly anti-competitive behavior". *Id.*

[1] Parenthetically, the Court notes that Plaintiff takes the opposite position with in opposition to Defendants' application to compel the production of responsive documents from a targeted list of Plaintiff's field sales force representatives. *See* Pl.'s Opp'n Letter dated September 13, 2011.

III. DISCUSSION

1. Discovery

A. Legal Standards

Pursuant to FED. R. CIV. P. 26(b)(1), "parties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense" and "the court may order discovery of any matter relevant to the subject matter involved in the action", although "relevant information need not be admissible at trial if the discovery appears reasonably calculated to lead to the discovery of admissible evidence". *See also Pearson v. Miller*, 211 F.3d 57, 65 (3d Cir. 2000). Importantly, pursuant to FED. R. CIV. P. 26(b)(2)(C), "the court must limit the frequency or extent of discovery otherwise allowed by these rules or by local rule if it determines that:

> (i) the discovery sought is unreasonably cumulative or duplicative, or can be obtained from some other source that is more convenient, less burdensome, or less expensive;
>
> (ii) the party seeking discovery has had
22 ample opportunity *22 to obtain the information by discovery in the action; or
>
> (iii) the burden or expense of the proposed discovery outweighs its likely benefit, considering the needs of the case, the amount in controversy, the parties' resources, the importance of the issues at stake in the action, and the importance of the discovery in resolving the issues.

The precise boundaries of the Rule 26 relevance standard depend upon the context of each particular action, and the determination of relevance is within the discretion of the District Court. *See Barnes Found. v. Twp. of Lower Merion*, 1996 WL 653114, at *1 (E.D. Pa. 1996). Importantly, "Courts have construed this rule liberally, creating a broad vista for discovery". *Takacs v. Union County*, 2009 WL 3048471, at *1 (D.N.J. 2009) (*citing Tele-Radio Sys. Ltd. v. DeForest Elecs., Inc.*, 92 F.R.D. 371, 375 (D.N.J. 1981)); *see also Oppenheimer Fund, Inc. v. Sanders*, 437 U.S. 340, 351 (1978); *Evans v. Employee Benefit Plan*, 2006 WL 1644818, at *4 (D.N.J. 2006); *Jones v. Derosa*, 238 F.R.D. 157, 163 (D.N.J. 2006); *Caver v. City of Trenton*, 192 F.R.D. 154, 159 (D.N.J. 2000); *Lesal Interiors, Inc. v. Resolution Trust Corp.*, 153 F.R.D. 552, 560 (D.N.J. 1994). "Review of all relevant evidence provides each party with a fair opportunity to present an effective case at trial". *Jones*, 238 F.R.D. at 163; *see also Caver*, 192 F.R.D. at 159; *Nestle Foods Corp. v. Aetna Cas. Sur. Co.*, 135 F.R.D. 101, 104 (D.N.J. 1990). "Mutual knowledge of all the relevant facts gathered by both parties is essential to proper litigation . . . [and] either party may compel the other to disgorge whatever facts he has in his possession". *Hickman v. Taylor*, 329 U.S. 495, 507 (1947). "Whether certain documents are relevant is viewed in light of the allegations of the complaint, not as to evidentiary admissibility". *Id.*; *see also Scouler v. Craig*, 116 F.R.D. 494, 496 (D.N.J. 1987). Importantly, "the party resisting discovery has the burden of clarifying and explaining its objections to provide support therefor". *Tele-Radio*, 92 F.R.D. at 375; *see also*
23 *Gulf Oil Corp. v. Schlesinger*, 465 F. Supp. *23 913, 916-17 (E.D. Pa. 1979); *Robinson v. Magovern*, 83 F.R.D. 79, 85 (E.D. Pa. 1979); *Nestle Foods*, 135 F.R.D. at 104-105.

However, "a discovery request may be denied if, after assessing the needs of the case, the amount in controversy, the parties' resources, the importance of the issues at stake in the action, and the importance of the discovery in resolving the issues, the District Court finds that there exists a likelihood that the resulting benefits would be outweighed by the burden or expenses imposed as a consequence of the proposed discovery". *Takacs*, 2009 WL 3048471, at *1; *see also Bayer AG v. Betachem, Inc.*, 173 F.3d 188, 191 (3d Cir. 1999). "The purpose of this rule of proportionality is to guard against redundant or disproportionate discovery by giving the court authority to reduce the amount of discovery that may be directed to

matters that are otherwise proper subjects of inquiry". *Takacs*, 2009 WL 3048471, at *1 (*citing Bowers v. National Collegiate Athletic Assoc.*, 2008 WL 1757929, at *4 (D.N.J. 2008)); *see also Leksi, Inc. v. Federal Ins. Co.*, 129 F.R.D. 99, 105 (D.N.J. 1989); *Public Service Group, Inc. v. Philadelphia Elec. Co.*, 130 F.R.D. 543, 551 (D.N.J. 1990).

2. Interrogatories to Parties

Pursuant to FED. R. CIV. P. 33,

> . . . (a)(2) Scope. An interrogatory may relate to any matter that may be inquired into under Rule 26(b). An interrogatory is not objectionable merely because it asks for an opinion or contention that relates to fact or the application of law to fact, but the court may order that the interrogatory need not be answered until designated discovery is complete, or until a pretrial conference or some other time.
>
> . . . (b)(3) Answering Each Interrogatory. Each interrogatory must, to the extent it is not objected to, be answered separately and fully in writing under oath.
>
> (4) Objections. The grounds for objecting to an interrogatory must be stated with
24 specificity. Any ground not stated in a *24 timely objection is waived unless the court, for good cause, excuses the failure.
>
> . . . (d) Option to Produce Business Records. If the answer to an interrogatory may be determined by examining, auditing, compiling, abstracting, or summarizing a party's business records (including electronically stored information), and if the burden of deriving or ascertaining the answer will be substantially the same for either party, the responding party may answer by:
>
> (1) specifying the records that must be reviewed, in sufficient detail to enable the interrogating party to locate and identify them as readily as the responding party could; and
>
> (2) giving the interrogating party a reasonable opportunity to examine and audit the records and to make copies, compilations, abstracts, or summaries.

"The more progressive approach to interrogatories dealing with legal matters is to view them in the factual context within which they arise". *Microtron Corp. v. Minnesota Mining Mfg. Co.*, 269 F. Supp. 22, 25 (D.N.J. 1967); *see also Singer Manufacturing Co. v. Brother International Co.*, 191 F. Supp. 322 (S.D.N.Y. 1960). "If the answer might serve some legitimate purpose, either in leading to evidence or in narrowing the issues, and to require it would not unduly burden or prejudice the interrogated party, the court should require [an] answer". *Id.*; *see also* 4 MOORE'S FEDERAL PRACTICE, 2d Ed. 2534; *Gagen v. Northam Warren Corp.*, 15 F.R.D. 44 (S.D.N.Y. 1953).

3. Deposition of a Corporate Designee

Pursuant to FED. R. CIV. P. 30(b)(6),

> In its notice or subpoena, a party may name as the deponent a public or private corporation, a partnership, an association, a governmental agency, or other entity and must describe with reasonable particularity the matters for examination. The named organization must then designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on its behalf; and it may set out the matters on which each person
> 25 *25 designated will testify. A subpoena must advise a nonparty organization of its duty to make this designation. The persons designated must testify about information known or reasonably available to the organization. This paragraph (6) does not preclude a deposition by any other procedure allowed by these rules.

"Rule 30(b)(6) places the burden upon the deponent to `make a conscientious good faith endeavor to designate the persons having knowledge of the matters sought . . . and to prepare those persons in order that they can answer fully, completely, unevasively, the questions posed . . . as to the relevant subject matters". *Costa v. County of Burlington*, 254 F.R.D. 187, 189 (D.N.J. 2008) (*quoting Harris v. New Jersey*, 259 F.R.D. 89, 92 (D.N.J. 2007)). "The duty of preparation goes beyond matters personally known to the designee or to matters in which the designee was personally involved, and if necessary the deponent must use documents, past employees, or other sources to obtain responsive information". *Harris*, 259 F.R.D. at 92-93. "While the rule may not require absolute perfection in preparation — it speaks after all of matters known or reasonably available to the organization — it nevertheless certainly requires a good faith effort on the part of the designate to find out the relevant facts — to collect information, review documents, and interview employees with personal knowledge just as a corporate party is expected to do in answering interrogatories". *Wilson v. Lakner*, 228 F.R.D. 524, 528-29 (D. Md. 2005). Pursuant to FED. R. CIV. P. 37(d)(1)(A), "the court where the action is pending may, on motion, order sanctions if: (i) a party or a party's officer, director, or managing agent — or a person designated under Rule 30(b)(6) or 31(a)(4) — fails, after being served with proper notice, to appear for that person's deposition . . .". Importantly, "when a witness is designated by a corporate party to speak on its behalf pursuant to Rule 30(b)(6), `producing an unprepared witness is tantamount to a failure to appear' that is sanctionable under Rule 37(d)". *Black Horse Lane Assoc., L.P. v. Dow Chem. Corp.*, 228 F.3d 275, 304 (3d Cir. 2000) (*quoting*
26 *United States v. Taylor*, 166 F.R.D. 356, *26 363 (M.D.N.C. 1996)).

Notably, in *Novartis Pharms. Corp. v. Abbott Labs.*, 203 F.R.D. 159, 162-63 (D. Del. 2001), the Court denied Novartis' motion to compel a 30(b)(6) deposition where *Abbott Labs.* agreed to be bound by the testimony previously provided by an individual, who was deposed in his individual capacity, who would have been the designee for a 30(b)(6) deposition. In *Johnson v. Geico Cas. Co.*, 269 F.R.D. 406, 415-16 (D. Del. 2010), the Court granted — in part — Geico's motion for protective order as to a 30(b)(6) deposition notice based upon the fact that Geico previously "produced thousands of documents" and the plaintiff had "already deposed witnesses" with respect to the particular topic, finding that plaintiff's 30(b)(6) notice was "duplicative and unduly burdensome". In *State Farm Mut. Auto. Ins. Co. v. New Horizont, Inc.*, 254 F.R.D. 227, 234-36 (E.D. Pa. 2008), the Court granted New Horizont's motion for protective order as to a 30(b)(6) deposition notice based upon the fact that New Horizont failed to provide good cause as to why the subject topics "were not noticed at the previous two Rule 30(b)(6) depositions". *See also* FED. R. CIV. P. 26(b)(2)(C).

B. Defendants' Motion

Having reviewed Defendants' Interrogatory Nos. 2-4 and Plaintiff's answers thereto, the Court finds Defendants' requests are "relevant . . . [and] reasonably calculated to lead to the discovery of admissible evidence" pursuant to FED. R. CIV. P. 26(b)(1) and are within the "broad vista for discovery" afforded to litigants. *Takacs*, 2009 WL 3048471, at *1; *see also Tele-Radio*, 92 F.R.D. at 375; *Jones*, 238 F.R.D. at 163. The Court notes, however, that Defendants only seek "to have the same information currently known to Eisai — not to require Eisai to further inspect all the files of its sales force or conduct interviews". *See* Def.'s Br., dkt. entry no. 142-1 at 3. Based upon Plaintiff's representation that it "has provided all responsive
27 information *27 regarding the lost customer/sales issue known to its litigation team after reasonable inquiry, including the identity of specific customers, the names of Eisai and customer employees, and the circumstances thereof", the Court finds that subject to supplementation by Plaintiff throughout the course of discovery — including upon production of custodial files and upon the "limited mutual sampling of discovery of the sales force" (Pl.'s Opp'n Br. at 16) — Plaintiff has, in part, adequately responded to Defendants' Interrogatory Nos. 2-4. However, the Court directs Plaintiff to provide all responsive information in its possession and "currently known", absent an inspection of "all the files of its sales force or . . . interviews" of the sales force, with respect to Interrogatory Nos. 2-3 and including subparts (1)-(3) of both interrogatories. If Plaintiff does not know the names or contact information for customers, potential customers, employees, contractors, or other representatives with knowledge regarding loss of Fragmin sales or a decision not to place Fragmin on formulary, it must so state. If Plaintiff does not know the circumstances surrounding a loss of Fragmin sales or a decision not to place Fragmin on formulary, it must so state. Similarly, with respect to Interrogatory No. 4, the Court directs Plaintiff to "specify the records that must be reviewed in sufficient detail to enable the interrogating party to locate and identify them" by referencing specific responsive documents by Bates number rather than categories of documents and by referencing specific individuals rather than department(s) absent an inspection of "all the files of its sales force or . . . interviews" of the sales force. FED. R. CIV. P. 33(d)(1). The Court notes that its direction is by way of example rather than fully inclusive of the information that Plaintiff should provide. However, the Court further notes that Plaintiff may not avoid or limit its responses to Defendants' interrogatories by excluding specific information that it possesses based on its contention that discovery produced by Defendants may yield additional information or based on its contention
28 *28 that "the choices of every Lovenox customer . . . have been illegally restricted . . . by the Program and/or Defendants' anticompetitive behavior" such that the universe of customers or potential customers is a sufficient response. *See* Def.'s Decl. of Gelfand, Ex. B at 4-9.

With respect to Defendants' Notice of Rule 30(b)(6) Deposition, the Court notes that "a party may name as the deponent a public or private corporation . . . and must designate with reasonable particularity the matters for examination". FED. R. CIV. P. 30(b)(6). Further, the Court notes that this is not an instance where Plaintiff has agreed to be bound by the testimony of any other witness or where prior 30(b)(6) depositions have been taken. *See Novartis Pharms. Corp.*, 203 F.R.D. at 162-63; see also *Johnson*, 269 F.R.D. at 415-16; *State Farm Mut. Auto. Ins. Co.*, 254 F.R.D. at 234-36. Therefore, subject to a meet and confer session between the parties wherein a schedule for depositions should be set and the topics for deposition should be agreed upon, the Court finds that Defendants are entitled to conduct a 30(b)(6) deposition. *See* Pl.'s Opp'n Br. at 3.

IV. CONCLUSION AND ORDER

The Court having considered the papers submitted and opposition thereto, and having conducted oral argument on October 19, 2011, and for the reasons stated on the record and set forth above;

IT IS on this 7th day of November, 2011,

ORDERED that Defendants' Motion to "compel more detailed responses to Defendants' Second Set of Interrogatories . . . and . . . the identification and production of a witness for deposition" [dkt. entry. no. 142] is **GRANTED** in part and **DENIED** in part consistent with the findings set forth above; and it is further

ORDERED that Plaintiff shall produce further
29 information responsive to Interrogatory *29 Nos. 2-4 by **November 28, 2011** ; and it is further

ORDERED that Defendants shall identify 30(b)(6) topics by **November 14, 2011** and Plaintiff shall designate a 30(b)(6) witness that can respond to those topics by **November 21, 2011** .