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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

STEVEN E. KROLL,

Plaintiff,

vs.

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

Defendants.

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

Plaintiff's Hearing Brief on his Motion to Compel Discovery and for Sanctions

Date: Thursday November 6, 2008
Time: 1:30 PM
Judge: Hon. Robert D. McQuaid, Jr.

and

Certificate of Service

COMES NOW Plaintiff/Movant, by and through his attorney undersigned, and submits his Brief in Support of his Motion to Compel Discovery and for Sanctions scheduled for Hearing on November 6, 2008 commencing at 1:30 PM herein.

The Facts of This Case

The Incline Village General Improvement District (IVGID) is made up of two population centers: Incline Village, consisting of about 8,000 parcels, and the vastly smaller Crystal Bay with approximately 300 parcels. Until 1995, the boundaries of Incline Village and the District were coextensive, and Crystal Bay had its own separate General Improvement District. But in that year the two GIDs merged into a single governmental entity named Incline Village General Improvement District. When that happened, Nevada law made Plaintiff Kroll subject "to all of the taxes and charges imposed by the district, and liable for his proportionate share of existing general obligation bonded indebtedness of the district" per NRS §318.258.

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IVGID owns a number of properties devoted to its four authorized services: recreation, water, sewage, and trash removal. With respect to the District's recreational offerings, all IVGID taxpayers contribute on an equal basis through an annual recreation fee of $560 (2007-08 tax year) to the running and financing of the various venues (*e.g.*, a ski area called Diamond Peak; a Tennis Complex; Preston Field, a baseball diamond and park; golf courses, etc.). The non-IVIGID public is invited and even courted to each of these facilities as a source of revenue, where they pay a slightly higher fee than IVGID residents for ski tickets or golf rounds, etc.

One IVGID recreational facility is off-limits to members of the public and to plaintiff herein, being IVGID's three beach properties on the waters of Lake Tahoe. The District's Recreation Pass Ordinance No. 7 [Exhibit B in evidence] incorporates a Restrictive Covenant in the 1968 Deed conveying the Beach Properties which they contend limits exclusive use of the Beach Properties to owners of parcels that lay within the District *as it existed in 1968*. Section 62 of Ordinance 7 provides that "Parcels annexed to the District after May 30, 1968 are not eligible for District beach access as per deed restrictions listed on the beach property."

Except for being completely fenced in with staffed kiosks at the entry gates to each of the three beaches (the only IVGID venue to have such barriers to physical entry), the Beach Properties have all the attributes of a public park. Besides it green lawns and sandy beaches, there are parking areas, vollyball courts, sun decks, rest rooms, picnic areas with barbecue pits, park benches, a snack bar and swimming pool at Burnt Cedar Beach, a boat ramp at Incline Beach, and other such amenities. As with all of IVGID's other government-owned properties, the Beach Properties are exempt from property taxes. Until very recently, each beach bore a sign reading "Private Beach" (see Exhibit B of the First Amendment Complaint), and these properties were and still are treated by the District as private in almost every way.

Even with the Private Beach sign presently removed, all who enter the Beach Properties must stop and identify themselves to the Gate Keeper, and only those with IVGID Recreation Passes not marked "NO BEACH" (which is what is stamped on Crystal Bay members of IVGID such as plaintiff herein (See Exhibit E of the Complaint), or their guests are permitted to go beyond the gates to access the park as a whole. Entry is free to Beach Pass owners, while their guests pay $8 a day to be admitted. Those IVGID residents with Beach Access (the vast majority of the District) pay an additional recreation fee of $150 over the basic $560 fee paid by everyone allegedly to support and maintain the Beach Properties. IVGID asserts in this lawsuit that no Crystal Bay taxpayer money has ever been used to purchase, support, improve, or maintain the

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publicly-owned Beach Properties from which they are excluded under Ordinance 7, notwithstanding NRS §318.258 making all IVGID property owners legally responsible therefor. Plaintiff contests that assertion, and in a Complaint for damages and equitable relief filed March 4, 2008 in Nevada state court and removed here by the defendants on April 2, 2008, he has alleged six separate causes of action connected with his exclusion under color of law from the tax-exempt Beach Properties .

The Complaint alleges that defendants' discrimination against him in the use of its publicly-owned recreational facilities violates the Equal Protection clause in treating and taxing him differently from other members of the District. He alleges a violation of the First Amendment for closing off a traditional public forum for the exercise of his Free Speech and Association rights. He asserts a violation of the Fifth Amendment's takings clause because of the District's use of his Crystal Bay property as collateral for bonds financing governmental facilities closed to his use. He alleges a conspiracy between and among the defendants and their authorized agents, acting under color of law, to deliberately deprive him of the privileges and immunities of a United States citizen in violation of Section 1983 of the Civil Rights Act.

Plaintiff further alleges that despite defendants' contention that Crystal Bay residents and he in particular have not been required to pay for the purchase, improvement, support and maintenance of the property from which he is excluded, the finances for this property have been commingled with IVGID's General Fund and he expects to prove that Crystal Bay residents have from the 1995 Merger to today indeed been required to help financially support this property both directly and indirectly, including among other ways not being credited for the value of his loss of use of these valuable District-owned Beach Properties. He charges the defendants with a Breach of Fiduciary Obligation in that regard, and seeks an Accounting at defendants' expense as one of his remedies.

Plaintiff also alleges that the individual Trustees continue the segregation of the Beach Properties because of their own personal economic interest as 1968 Deedholders in maintaining the beaches as private, in violation of conflict of interest laws, and Cause of Action number four seeks a Writ of Prohibition preventing any further such actions by self-interested Trustees. Plaintiff further says that defendants have violated Nevada's Open Meeting Laws in this and other critical matters affecting plaintiff as a member of IVGID, gathering in secret behind the closed doors of lawyers who abuse the attorney client confidentiality laws in order to cloak private meetings at which the Trustees agree to take action with far-reaching effects to the District mak-

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ing their ultimate "Public Meeting" a mere charade. An example of such was Policy and Procedure 136 regulating speech and expression at all District venues [Exhibit "A" in evidence] adopted two months after the instant lawsuit was filed. Plaintiff alleges adoption of Policy 136 was a litigation ploy concocted by the District's lawyers and discussed by the Trustees without notice or input from the public they serve for the sole purpose of defeating plaintiff's lawsuit, not for any compelling governmental concern as they profess.

There is also a cause of action appealing from a decision of the District in its capacity as a public utility offering water services which held the Beach Properties "accessible to the public" in order to reap a financial benefit for reduced fees, while continuing to treat the same properties as "Private Beaches" where access by the public continues in fact to be barred.

Alleging that these violations of rights occurred not innocently or accidentally but rather with a deliberate and malicious and self-interested motive on the part of the individually named defendants to enrich themselves at the expense of plaintiff's privileges and immunities as an American citizen, the Complaint seeks punitive and exemplary damages as well as compensatory ones.

The Issues and Evidence Relevant to this Lawsuit

The range of issues and evidence which are relevant to plaintiff's lawsuit is thus very broad, and includes evidence of motive and intent for punitive damages purposes with respect to the individual defendants.

The Most Pressing Issues for Determination in this Time-Limited Judicial Hearing

I. Answers to Plaintiff's First Set of Interrogatories to IVGID

Documents specifically relied upon to support IVGID employee RAMONA CRUZ's affidavit offered by defendants to "demonstrate that costs associated with the purchase and improvement of the beach properties have been borne solely by the owners of parcels of real property within IVGID boundaries as of 1968" (Defendants' Opposition to Plaintiff's Motion to Compel, DOC 26 p. 2) have *still* not been disclosed in full, and defendants have deliberately obfuscated the evidentiary value of what they have turned over.

Extracts from Relevant Documents to be Referred To in Plaintiff's Argument:

July 31, 2008 letter to Stephen C. Balkenbush from plaintiff's counsel: "… Needless to say, I've STILL not gotten anything from you and I'd like to get your clients' documents (broadly defined) as well. In particular you've been promising to get me the insurance policy that this action is being defended under, and ***you've also promised that the deficiencies in Ramona Cruz's Answers to Interrogatories to IVGID (First Set) would be corrected*** voluntarily, but I haven't heard further from you on any of that and need to."

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August 11, 2008 eMail to Steve Balkenbush and Katherine Parks: "I am sure you understand my disappointment that your promise to get me by the end of last week a draft of our oral agreement regarding discovery and document inspection went unfulfilled. … ***After assurances that the documents and records relied upon by Ramona Cruz in making her Affidavits would be gathered and made available for me to inspect by the end of last week but weren't,*** plus the other matters we've spoken about more than once in the past month without any tangible results, I will have no alternative but to seek a Motion to Compel unless this resolution that I THINK we agree upon can be put into writing, and into action.

September 8, 2008, Defendants' Opposition to Motion to Compel (DOC 26 p.3) "... *counsel for the Defendants indicated that he would endeavor to have copies of all documents referenced in Defendants' interrogatory responses made and produced for Plaintiff's review*. Despite the detailed nature of Defendants' responses and the Defendants' willingness to move forward with the production of the documents referenced therein, Plaintiff has filed the instant motion seeking Court intervention in this issue. His actions in doing so are inappropriate and premature."

September 10, 2008 letter from defendant's counsel to plaintiff's counsel: "IVGID may use the documents disclosed in IVGID's Answers to Plaintiff's First Set of Interrogatories to support its defenses. *IVGID intends to produce these documents to Plaintiff within the next two weeks. …"*

October 1, 2008 letter from defendants' counsel to plaintiff's counsel: "In accordance with our telephone conversation on Friday, September 26, 2008 ***I am enclosing documents which have been date-stamped IVGID-00001 through IVGID-02534.*** *These documents include revenue and expense information concerning the IVGID beaches during the time period July 1, 2001 through June 30, 2008.* … Also, information similar to that contained in the attached documents has been retrieved concerning the time period July 1, 1995 through June 30, 2001. As soon as I receive this information back from the duplicating service, I will forward same to you. With respect to additional financial information concerning the IVGID beaches, I have discussed with Ramona Cruz what, if any, of this information can be produced in a PDF format. She is looking at the potential to PDF additional documents in this format."

October 2, 2008 letter from plaintiff's counsel to defendant's counsel: "Receipt is hereby acknowledged of a cardboard box of what appear to be ***2,534 pages*** **of IVGID documents dated from July 1, 2001 through June 30. 2008** ***which you tell me are a portion of the records reviewed by Ramona Cruz as testified to in her Affidavit in this case dated May 21, 2008.*** I can understand the "better your floor than my floor" point you make in sending me these materials despite *my request in our September 26th conversation that I'd rather get all the documents at once before I could make sense of them, obviously*, and I gather you will be sending me another box of similar materials dated from July 1, 1995 through June 30, 2001 which will still not complete that task. I will therefore await receipt of all such documents —- in whatever form you choose to provide them, perforce — before I begin my examination of the material.

Because of the volume of paper delivered to me, to be multiplied several fold by the time you have completed your disclosure of these materials, I want to make sure that what you have provided me, and will be providing me in the future, is in fact responsive to my Interrogatory request, which was to "identify with particularity each

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and every IVGID record personally reviewed by IVGID's Director of Finance, Accounting, and Information Technology RAMONA CRUZ in reaching her conclusion" on each of the matters she testified to in her May 21, 2008 Affidavit. As I have discussed with you several times, my interest right now is in seeing the records Ms. Cruz reviewed for that Affidavit, not every IVGID document in its database. Accordingly, I am assuming that what you have sent me for the years 2001-2008 reproduce "each and every IVGID record" Ms. Cruz "personally reviewed" for those years in coming to her Affidavit conclusions, and that she did NOT review any record that is NOT included within the 2,534 pages now received. If this assumption is incorrect you must let me know in writing on or before this coming Monday, October 6th; otherwise, I shall proceed on the understanding that the documents produced are indeed responsive to the aforementioned assumption. …"

October 2, 2008 [received October 7, 2008] letter from defendants' counsel to plaintiff's counsel: "In follow up to my letter of October 1, 2008, I am enclosing documents which have been date-stamped IVGID -02535 through IVGID-03295 … concerning the IVGID beaches primarily during the time period July 1, 1995 through June 30, 2002. … ***The documents date-stamped IVGID-00001 through IVGID-03295 will serve to supplement Defendants' FRCP 26 production in this matter."***

October 8, 2008 email from plaintiff's counsel to defendant's counsel: " I picked up from the post office yesterday another smaller box of IVGID documents sent by you, consisting of 760 numbered pages which you say "include revenue and expense information concerning the IVGID beaches primarily during the time period July 1, 1995 through June 30, 2002." ***I need to call your attention to the wording of your October 2nd letter*** *transmitting these materials, which I can only hope was an inadvertent mistake on your part and not a deliberate effort to alter the basis on which these papers are being turned over to me.* ***You write that these latest documents "will serve to supplement Defendants' FRCP 26 production in this matter." But these disclosures, and the 2500+ documents that appeared on my doorstep last week, were declared by you and understood by me to be in response to the Interrogatories on IVGID served May 27, 2008 which asked for an identification of each and every document relied upon by IVGID employee Ramona Cruz in coming to the sworn conclusions set forth in her Affidavit of May 21, 2008.*** **That means that your initial document delivery and this supplementation just received were made pursuant to FRCP Rule 33(d), not Rule 26. This is a critically important distinction,** *since if you are allowed to change in midstream the basis for your discovery compliance, you can later deny at trial any attempt to impeach Ms. Cruz's testimony with these documents by saying that you were not answering Plaintiff's Interrogatories, but simply complying (5 months late!) with your voluntary Rule 26 disclosures in this avalanche of paper.* … You did telephone me the same day, however, to say that **yes, Ramona Cruz had reviewed each and every document but that no, those 2500+ pages did not include ALL the documents she reviewed in coming to her conclusion, and that she was gathering those additional documents for me, further confirming the 33(d) nature of your response.** So which is it, Steve? Are you just dumping documents on me which you contend are pursuant to your voluntary disclosure requirements of Rule 26? Or are you, as I (and the Court in your Opposition filing) have been led to believe up to this moment, supplying me with the documents your client relied on in swearing out her Affidavit? **Since the answer to this question is absolutely central to my Motion to Compel Discovery now under submission, I request that you clarify in writing** no later than a week from the date of this letter what exactly your position is here, so that I can see

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if I have a problem here or not. Thanks."

October 29, 2008 email from plaintiff's counsel to defendants' counsel: "… As I've done before, if I come upon anything that I know you would want, I'll send it to you. I regret that it bears repeating for the umpteenth time that *I continue sending you relevant evidence as required by my Federal Rules obligations, but except for* ***several thousand useless pages of finance department material that might as well be the Reno telephone book,*** *everything I've EVER got were things I have had to ask for specifically, often many more times than twice*, and even there I have STILL not got stuff I asked for long ago. …"

II. Failure of Defendants to Supplement Responses to their Discovery Found by Them to be Incorrect or Misleading

IVGID's Rule 30(b)(6) deposition established that the Trustees met together in secret with their lawyers on or about April 23, 2008 without prior or subsequent notice to the public and discussed and worked out their new Policy and Procedure 136 regulating Speech and Expression at all District-owned venues. Subsequent discovery of other IVGID Trustees contradict that evidence, yet it has never been corrected or supplemented.

III. The Problem of Impeachment Using Statements Made in Requests for Admissions Signed Only by the Attorney

Defendant Chuck Weinberger's Responses to Request for Admissions illustrate a problem in every other defendant's Admission Responses as well: both an evasive and incomplete answer as a substantive matter, but the problem at trial of impeaching the witness with statements he has obviously made, but which are not signed by him but by his attorney. Weinberger's response to Request No. 6, for example, asking him to admit that the phrase "Public with restricted access" is another way of saying "private" is:

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

Plaintiff will want to impeach this false statement later at trial with evidence, *e.g.*, that this defendant knew of IVGID's Policy 1701 which used the following pertinent language: "All the beaches within the Incline Village General Improvement District are private, **have restricted access** and are available for the exclusive use of the Incline Village property owners"; knew and voted for a revision of Policy 1701 on June 27, 2007 which deleted the phrase "all the beaches within IVGID are private" so that it now reads: "All the beaches within the IVGID have restricted access and are available for the exclusive use of the Incline Village property owners"; and was aware, notwithstanding his statement to the contrary, that "District officials reiterated the policy, per Ordi-

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nance No. 7, that **Incline, Ski, and Burnt Cedar beaches are 'public with restrictions**'", as reported by the local newspaper on September 14, 2008 after a seaplane crashed into Lake Tahoe just off IVGID's Beach Properties. (The hearsay aspects of this piece of evidence are discussed in Issue Number IV below).

How will Plaintiff use this and other evidence of inconsistent statements to impeach these defendants later on? In a letter to the attorney for defendants dated September 14, 2008, plaintiff's counsel alluded to Mr. Weinberger's evasive answer and counsel's ill-taken legal objection in his Admissions Responses in the following words:

> "Is it because I used the wrong words in my Request for Admissions to defendant "Charles" WEINBERGER that he testifies in his Response No. 6 that "I have no understanding of" and "I do not know what is meant by the phrase "public with restricted access"? Is your own objection to that Request that "public with restricted access" is "vague and ambiguous," but "public with restrictions" would not be? These, too, are games my friend. **You are required to "fairly respond to the substance of the matter", and your signature certifies you have done so.** FRCP Rule 26(g)(1). …"

IV: Future Problems with Late-Disclosed Evidence

Only in the last few weeks has evidence emerged that points to a deliberate attempt to suppress evidence and cover up activities which IVGID knows to have been wrong and harmful to their case. A passing reference never heard of before to "First Amendment Policy: Instructions to Gate Host" (Exhibit "H" in evidence) in one of a number of IVGID Beach Incident Reports which were finally turned over to plaintiff revealed a damaging document completely contradicting defendants' assurances to the Court that Policy 136 as written was and is the only governing regulation on Free Speech rights. It requires people wanting to enter the Beach Properties to exercise their First Amendment rights to use certain magic words before being granted entry; refuses entry to anyone who will not accept a copy of Policy 136; and imposed a number of other heretofore unknown prior restraints on speech and expression. In an email to defense counsel on November 4, 2008, Plaintiff's counsel wrote the following, which addresses one of the major complaints behind this Motion to Compel Discovery, and illustrates the problems plaintiff faces if the present discovery posture of the defendants is not altered:

> "I also requested that you provide me with (or at least identify) any other written rules or instructions or policies which Ms Eckles may have promulgated over the years she has been doing that, whether or not they are still in full force and effect, and whether or not they have anything to do with the Beach Properties or anything in my Complaint, unless they are so voluminous as to make my request unreasonable. *As I told you in some detail over the phone, I need to compare how the District handled Ms. Eckles' "First Amendment Policy: Instructions to Gate Host" -- which you now tell me in this morning's call is "not*

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now in effect" although there is no evidence in the public record to support that statement -- with how the District handled other routine rules or whatever that Ms Eckles has issued in the past. The Trustees slapped down messers Horn and Brooke for promulgating their "Success List" set forth in the May 15, 2008 General Manager's Report [Exhibit "F" in evidence, my Exhibit #102], and now are apparently trying to make it look like they disown another of their employee's efforts to grapple with Policy 136. *But unlike Mr. Horn's May 15 Report,* ***Janet Eckles' "First Amendment Policy: Instructions to Gate Host" was never made public, and its existence appears to have been affirmatively suppressed by the District until I discovered it by happenstance*** *when I came across a single reference to it in one of the Incident Reports* [Exhibit "I" in evidence; my Ex. No. 185] given me only weeks ago. **This and other recent incidents (including but not limited to the seaplane crash into Lake Tahoe) lead me to believe that there is a deliberate effort being made by the defendants in this case to hide and suppress evidence they know to be relevant and helpful to Plaintiff's lawsuit herein. I am thus asking you for further documentation if any exists, from Ms. Eckles or any other IVGID source, of how Ms. Eckles' "First Amendment Policy: Instructions to Gate Host" was handled here** -- *When exactly was it promulgated? Did she consult with anyone before promulgating it? Receive approval from anyone at all? Who got copies? How many copies were made? Who made the copies? You say her Instructions are not now in effect: who made that determination? Presumably that was in writing, where is that writing? Are there or have there been other rules to Gate Hosts, and how were they dealt with? Were any of them withdrawn at any time, and how was that handled? Etc. Etc.*

Despite what seems to me the quite obvious relevance this information has to my case, you made some objection to producing this information (although you do not yet even know if it exists), and I would like you to explain your objection in writing because what you said made no sense to me. I am entitled to this (and so much other) critical evidence, and *I do not want to have to be running to the Court every time you take it upon yourself to decide what evidence is relevant to my case and what not*. I hope to take this up with Judge McQuaid at the Hearing day after tomorrow, and would appreciate your written response before then. Thanks."

The Law

"Rule 11 sanctions must be aimed at deterrence, not punishment. Fed. R. Civ. P. 11(c)(4)". *Lewis v. Duff*, No. 03:99-CV-00386-LRH-RAM (D.Nev. 09/03/2008) ¶20

"Rule 11 sanctions reach only the parties' filings. Christian, 286 F.3d at 1130." Id at ¶33

"Factors to consider in deciding whether to impose sanctions and what kind of sanctions to impose include [w]hether it was part of a pattern of activity, or an isolated event; whether it infected the entire pleading, or only one particular count or defense; whether the person has engaged in similar conduct in other litigation; whether it was intended to injure; what effect it had on the litigation process in time or expense; whether the responsible person is trained in the law; what amount, given the financial resources of the responsible person, is needed to deter that person from repetition in the same case; what amount is needed to deter similar activity by other litigants." *Id* @ ¶35

"[Awarding a sanction of treble the costs and attorneys fees incurred in fighting sanctionable conduct, Judge Hicks continues:] This sanction will serve the purpose of compensat-

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ing Lewis and, more importantly, deterring such conduct." Id. @ ¶44.

Remedies Sought By Plaintiff for Discovery Abuses

Although a monetary sanction is sought for purposes of compensation and deterrence, this motion is not about money but about correcting an unacceptable interference with plaintiff's pre-trial discovery efforts in what Judge Reed has called "an important case". Plaintiff seeks practical workarounds to his future discovery. He is willing to waive any objection he might later have to defendants' own failure to interpose any objection if that will reduce or eliminate the barrage of objections — more than one hundred in third-party witness TOM BRUNO's deposition — in future discovery. He would like to eliminate hard-copy service by mail in favor of the Court's Electronic Filing System which the Local Rules allow to be used for such upon agreement of the parties. He suggests the reduction of time to respond to discovery from 30 to 21 days. He seeks, without an idea how it could be accomplished, to avoid the costly and cumbersome procedures of motions such as this to get discovery disputes resolved promptly so that the task of evidence-gathering can continue unabated and the matter set for trial.

With respect to defendants' failure after all this time to identify or produce the documents relied upon under oath by RAMONA CRUZ used to prove a central defense proposition in this lawsuit, there can be no question that she knows what she reviewed, it is only a few months ago, and the conclusion seems inescapable that either the documents she says she read she actually didn't, or she did but the conclusions she reached were not supported by that documentation. If defendants have some other explanation we have yet to hear it (indeed, promises have been made and broken for months to produce this evidence), but in any event the only truly remedial order for this failure to comply with Plaintiff's Interrogatories would be to have the District's books independently audited at its expense for the answer to whether or not plaintiff has in fact contributed financially to the support of property from which he has been excluded, and if so, in what amount.

The Federal Rules of Civil Procedure: Discovery Rules Pertinent to This Motion, with Points Plaintiff Wishes to Emphasize Highlighted

Rule 1. - Scope and Purpose. … "[These Rules] should be construed and administered to secure the *just, speedy, and inexpensive determination of every action* and proceeding."

Rule 26. Duty to Disclose; General Provisions Governing Discovery

(a) Required Disclosures. (1) Initial Disclosures.

(A) In General. Except as exempted … a party must, *without awaiting a discovery*

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request, provide to the other parties:

(i) the name and, if known, the address and telephone number of each individual likely to have discoverable information — along with the subjects of that information — that the *disclosing party may use to support its claims or defenses,* unless the use would be solely for impeachment;

(ii) *a copy — or a description by category and location — of all documents,* electronically stored information, and tangible things *that the disclosing party has in its possession, custody, or control and may use to support its claims or defenses,* unless the use would be solely for impeachment;

(iii) a computation of each category of damages claimed by the disclosing party — who must also make available for inspection and copying as under Rule 34 the documents or other evidentiary material, unless privileged or protected from disclosure, on which each computation is based, including materials bearing on the nature and extent of injuries suffered; and

(iv) for inspection and copying as under Rule 34, *any insurance agreement under which an insurance business may be liable to satisfy all or part of a possible judgment in the action or to indemnify or reimburse for payments made to satisfy the judgment.*

… **(C) Time for Initial Disclosures** — In General. A party must make the initial disclosures *at or within 14 days after the parties' Rule 26(f) conference …*

… **(E) Basis for Initial Disclosure; Unacceptable Excuses.** A party must make its initial disclosures based on the information then reasonably available to it. ***A party is not excused from making its disclosures because it has not fully investigated*** **the case** or because it challenges the sufficiency of another party's disclosures or because another party has not made its disclosures.

… (4) Form of Disclosures.

Unless the court orders otherwise, *all disclosures under Rule 26(a) must be in writing, signed, and served.*

(b) Discovery Scope and Limits. (1) Scope in General.

Unless otherwise limited by court order, the scope of discovery is as follows: *Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense* — including the existence, description, nature, custody, condition, and location of any documents or other tangible things and the identity and location of persons who know of any discoverable matter. For good cause, the court may order discovery of any matter relevant to the subject matter involved in the action. ***Relevant information need not be admissible at the trial*** *if the discovery appears reasonably calculated to lead to the discovery of admissible evidence.* All discovery is subject to the limitations imposed by Rule 26(b)(2)(C).

… **(5) Claiming Privilege or Protecting Trial- Preparation Materials.**

(A) Information Withheld. *When a party withholds information otherwise discoverable by claiming that the information is privileged* or subject to protection as trial-preparation material, *the party must:*

(i) expressly make the claim; and

(ii) describe the nature of the documents, communications, or tangible things not produced or disclosed — and do so in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the claim.

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… **(e) Supplementation of Disclosures and Responses.** (1) In General.

A party who has made a disclosure under Rule 26(a) — or who has responded to an interrogatory, request for production, or request for admission — must supplement or correct its disclosure or response:

(A) in a timely manner if the party learns that in some material respect the disclosure or response is incomplete or incorrect, and if the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing; or

(B) as ordered by the court.

… (f) Conference of the Parties; Planning for Discovery (1) Conference Timing.

… the parties must confer as soon as practicable — and in any event at least 21 days before a scheduling conference is to be held or a scheduling order is due under Rule 16(b).

(2) Conference Content; Parties' Responsibilities.

In conferring, the parties must consider the nature and basis of their claims and defenses and the possibilities for promptly settling or resolving the case; make or arrange for the disclosures required by Rule 26(a)(1); discuss any issues about preserving discoverable information; and develop a proposed discovery plan. The attorneys of record … are jointly responsible for arranging the conference, for attempting in good faith to agree on the proposed discovery plan, and for submitting to the court within 14 days after the conference a written report outlining the plan. The court may order the parties or attorneys to attend the conference in person.

… **(g) Signing Disclosures and Discovery Requests, Responses, and Objections.**

(1) Signature Required; Effect of Signature.

Every disclosure* under Rule 26(a)(1) or (a)(3) *and every discovery request, response, or objection must be signed *by at least one attorney of record in the attorney's own name* — or by the party personally, if unrepresented — and must state the signer's address, e-mail address, and telephone number. ***By signing, an attorney or party certifies that to the best of the person's knowledge, information, and belief formed after a reasonable inquiry:***

(A) with respect to a disclosure, it is complete and correct as of the time it is made; and

(B) with respect to a discovery request, response, or objection, it is:

(i) ***consistent with these rules and warranted by existing law*** *or by a nonfrivolous argument for extending, modifying, or reversing existing law, or for establishing new law;*

(ii) ***not interposed for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; and***

(iii) neither unreasonable nor unduly burdensome or expensive, considering the needs of the case, prior discovery in the case, the amount in controversy, and the importance of the issues at stake in the action.

(2) Failure to Sign.

Other parties have no duty to act on an unsigned disclosure, request, response, or objection until it is signed, and the court must strike it unless a signature is

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promptly supplied after the omission is called to the attorney's or party's attention.

(3) Sanction for Improper Certification.

If a certification violates this rule without substantial justification, the court, on motion or on its own, ***must impose an appropriate sanction*** *on the signer, the party on whose behalf the signer was acting, or both.* **The sanction may include an order to pay the reasonable expenses, including attorney's fees, caused by the violation.**

Rule 30. Deposition by Oral Examination …(b)(6) Notice or Subpoena Directed to an Organization.

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 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.

(c) (2) Objections.

An objection at the time of the examination — whether to evidence, to a party's conduct, to the officer's qualifications, to the manner of taking the deposition, or to any other aspect of the deposition — *must be noted on the record, but the examination still proceeds;* ***the testimony is taken subject to any objection. An objection must be stated concisely in a nonargumentative and nonsuggestive manner.*** *A person may instruct a deponent not to answer only when necessary to preserve a privilege,* to enforce a limitation ordered by the court, or to present a motion under Rule 30(d)(3).

(d) Duration; Sanction; Motion to Terminate or Limit.

(2) Sanction.

The court may impose an appropriate sanction — including the reasonable expenses and attorney's fees incurred by any party — on a person who impedes, delays, or frustrates the fair examination of the deponent.

(3) Motion to Terminate or Limit.

(A) Grounds. At any time during a deposition, the deponent or a party may move to terminate or limit it on the ground that it is being conducted in bad faith … If the objecting deponent or party so demands, the deposition must be suspended for the time necessary to obtain an order.

… (3) To the Taking of the Deposition.

(A) Objection to Competence, Relevance, or Materiality. An objection to a deponent's competence — or to the competence, relevance, or materiality of testimony — *is not waived by a failure to make the objection before or during the deposition,* unless the ground for it might have been corrected at that time.

(B) Objection to an Error or Irregularity. An objection to an error or irregularity at an oral examination is waived if:

(i) it relates to the manner of taking the deposition, the form of a question or answer, the oath or affirmation, a party's conduct, or other matters that might have been corrected at

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that time; and

(ii) it is not timely made during the deposition.

Rule 33. Interrogatories to Parties

(a) In General. … (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.

… **(5) Signature.**

The person who makes the answers must sign them, and the attorney who objects must sign any objections.

(c) Use.

An answer to an interrogatory may be used to the extent allowed by the Federal Rules of Evidence.

(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.

Rule 36. Requests for Admission

(a) Scope and Procedure. (1) Scope.

A party may serve on any other party a written request to admit, for purposes of the pending action only, *the truth of any matters within the scope of Rule 26(b)(1) relating to:*

*(A) **facts, the application of law to fact, or opinions about either; and***
(B) the genuineness of any described documents.

(4) Answer.

*If a matter is not admitted, the answer must specifically deny it or state in detail why the answering party cannot truthfully admit or deny it. **A denial must fairly respond to the substance of the matter;** and when good faith requires that a party qualify an answer or deny only a part of a matter, the answer must specify the part admitted and qualify or deny the rest. The answering party may assert lack of knowledge or information as a reason for failing to admit or deny only if the **party states that it has made reasonable inquiry and that the information it knows or can readily obtain** is insufficient to enable it to admit or deny.*

(5) Objections.

*The grounds for objecting to a request must be stated. **A party must not object solely on the ground that the request presents a genuine issue for trial.***

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(6) Motion Regarding the Sufficiency of an Answer or Objection.

The requesting party may move to determine the sufficiency of an answer or objection. ***Unless the court finds an objection justified, it must order that an answer be served. On finding that an answer does not comply with this rule, the court may order either that the matter is admitted or that an amended answer be served.*** The court may defer its final decision until a pretrial conference or a specified time before trial. Rule 37(a)(5) applies to an award of expenses.

Rule 37. Failure to Make Disclosures or to Cooperate in Discovery; Sanctions

(a) Motion for an Order Compelling Disclosure or Discovery. (1) In General.

On notice to other parties and all affected persons, a party may move for an order compelling disclosure or discovery. *The motion must include a certification that the movant has in good faith conferred or attempted to confer with the person or party failing to make disclosure or discovery in an effort to obtain it without court action.* …

(4) Evasive or Incomplete Disclosure, Answer, or Response.

For purposes of this subdivision (a), ***an evasive or incomplete disclosure, answer, or response must be treated as a failure to disclose, answer, or respond.***

(5) Payment of Expenses; Protective Orders.

(A) **If the Motion Is Granted (or Disclosure or Discovery Is Provided After Filing).** If the motion is granted — *or if the disclosure or requested discovery is provided after the motion was filed — the court* ***must****, after giving an opportunity to be heard, require the party or deponent whose conduct necessitated the motion, the party or attorney advising that conduct, or both to pay the movant's reasonable expenses incurred in making the motion, including attorney's fees.* But the court must not order this payment if:

(i) the movant filed the motion before attempting in good faith to obtain the disclosure or discovery without court action;

(ii) the opposing party's nondisclosure, response, or objection was substantially justified; or

(iii) other circumstances make an award of expenses unjust.

(c) Failure to Disclose; to Supplement an Earlier Response, or to Admit.

(1) Failure to Disclose or Supplement.

If a party fails to provide information or identify a witness as required by Rule 26(a) or 26(e), *the party is not allowed to use that information or witness to supply evidence on a motion, at a hearing, or at a trial,* unless the failure was substantially justified or is harmless. *In addition to or instead of this sanction, the court, on motion* and after giving an opportunity to be heard:

(A) *may order payment of the reasonable expenses, including attorney's fees, caused by the failure;*

(B) *may inform the jury of the party's failure;* and

(C) may impose other appropriate sanctions, including any of the orders listed in Rule 37(b)(2)(A)(i)-(vi).

(2) Failure to Admit.

If a party fails to admit what is requested under Rule 36 and if the requesting

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party later proves a document to be genuine or the matter true, the requesting party may move that the party who failed to admit pay the reasonable expenses, including attorney's fees, incurred in making that proof. The court must so order unless: …

(f) Failure to Participate in Framing a Discovery Plan.

If a party or its attorney fails to participate in good faith in developing and submitting a proposed discovery plan as required by Rule 26(f), the court may, after giving an opportunity to be heard, require that party or attorney to pay to any other party the reasonable expenses, including attorney's fees, caused by the failure.

The Discovery Undertaken So Far

(1) On **May 27, 2008, Plaintiff served his First Set of Interrogatories upon defendant IVGID**. Answered July 14, 2008.

(2) On **July 16, 2008 Plaintiff took the deposition of defendant IVGID pursuant to FRCP Rule 30(b)(6) on the sole issue of Policy 136.** Deposition terminated by plaintiff to make this motion.

(3) On **July 23, 2008 Plaintiff took the deposition of TOM BRUNO, a non-party witness. M**ore than one hundred objections were made by Counsel for Defendants during the course of the deposition.

(4) On **July 31, 2008 Plaintiff transmitted to Counsel for Defendants 168 separate documents and records on computer disk in compliance with his duties of Mandatory Disclosure pursuant to Rule 26 FRCP,** and he has been sending additional documents and audio files as discovered and indexed.

(5) On **July 28, 2008 Plaintiff served his Request for Admissions (First Set) of defendant JOHN BOHN** upon Counsel for said Defendant. Responses thereto were served August 28, 2008.

(6) On **August 5, 2008, Plaintiff served his Request For Admissions (First Set) of defendant CHUCK WEINBERGER** upon Counsel for said Defendant. Responses thereto were served September 5, 2008.

(7) On **August 8, 2008, Plaintiff served his Interrogatories to Defendant ROBERT C. WOLF (First Set)** upon Counsel for said Defendant. Responses thereto were served September 5, 2008.

(8) On **August 25, 2008 Plaintiff served a Notice of Deposition for non-party witness G. STUART YOUNT** scheduled for October 1, 2008. That deposition was postponed pending the instant hearings herein, and will be re-set for later.

(9) **On November 4, 2008** Plaintiff posed a number of informal

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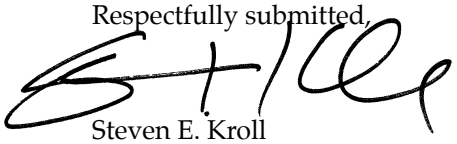
questions to defense counsel seeking further information on the previously undisclosed "First Amendment Policy: Instructions to Gate Host" (Exhibit "H" in evidence).

DATED: at Crystal Bay this 5th day of November 2008.

Respectfully submitted,



Steven E. Kroll
Attorney for Plaintiff

CERTIFICATE OF ELECTRONIC SERVICE

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

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

DATED: this _5th_ day of November, 2008.

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