

IN THE COMMON PLEAS COURT OF MONTGOMERY COUNTY, OHIO  
CIVIL DIVISION

CITY OF HUBER HEIGHTS, OHIO	*	CASE NO. 12 CV 2947
	*	
Plaintiff,	*	JUDGE MICHAEL TUCKER
	*	
v.	*	
	*	
DON ALLEN HOLBROOK, LLC	*	
	*	
Defendant.	*	

---

MOTION TO COMPEL RESPONSE TO DISCOVERY DIRECTED TO  
DEFENDANT BY PLAINTIFF AND REQUEST FOR DISMISSAL

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NOW COMES Plaintiff, City of Huber Heights, by and through counsel, and, pursuant to Rule 37(A)(2) of the Ohio Rules of Civil Procedure, hereby moves the Court for an Order compelling Defendant to provide discoverable information pursuant to the First Set of Interrogatories and Request for Production of Documents Directed to Defendant by Plaintiff (hereinafter referred to as the "first set of discovery") for the reasons more fully set forth in the Memorandum attached hereto. (A copy of the first set of discovery is attached for the Court's convenience as Exhibit A.)

Additionally, in the event that Defendant fails to comply with any Order compelling a supplemental response to the first set of discovery, Plaintiff requests that the Court dismiss Defendant's counterclaims against Plaintiff and/or grant Plaintiff default judgment



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on its remaining claims pursuant to Rules 37(B)(2)(c) and 37(D) of the Ohio Rules of Civil Procedure. Plaintiff's counsel has attempted to resolve this informally with Defendant's counsel without success and resorts to this motion as a measure of last resort. (See correspondence attached as Exhibit B.) Additionally, as written correspondence proved unsuccessful in resolving this impasse, counsel engaged in several telephone conversations regarding this discovery dispute which proved equally uneventful.

Respectfully submitted,

/s/ L. Michael Bly

L. Michael Bly (0042074)

Joshua M. Kin (0086965)

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### Memorandum In Support

Rule 37(A)(2) of the Ohio Rules of Civil Procedure provides that “upon reasonable notice to the other parties . . . a party may move for an order compelling discovery [if] a party fails to answer an interrogatory submitted under Rule 33, or if a party, in response to a request...submitted under Rule 34...fails to respond that inspection will be permitted as requested or fails to permit inspection as requested. . . .”

Rule 37(B)(2)(c) of the Ohio Rules of Civil Procedure provides that “[i]f any party...fails to obey an order to provide or permit discovery,...the court in which the action is pending may make such orders in regard to the failure as are just...[including] an order dismissing the action...or any part thereof, or rendering a judgment by default against the disobedient party.”

Rule 37(D) of the Ohio Rules of Civil Procedure provides that “[i]f a party...fails...(2) to serve answers or objections to interrogatories submitted under Rule 33, after proper service of the interrogatories, or (3) to serve a written response to a request for inspection submitted under Rule 34, after proper service of the request, the court in which the action is pending on motion and notice may make such orders in regard to the failure as are just, and among others it may take any action authorized under subsections (a), (b), and (c) of subdivision (B)(2) of this rule.”

The first set of discovery was served upon Defendant along with the complaint on April 24, 2012. Defendant responded to the first set of discovery on June 12, 2012. Defendant’s answers and responses to the first set of discovery, however, were incomplete. Specifically, Defendant has failed, despite requests to do so, to provide complete responses to the following Interrogatories and Requests:



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**Interrogatories No. 3 and 4** requested that Defendant identify its expert witnesses, exhibits, and documentary evidence that it intends to rely upon or introduce at the trial of this matter. Defendant responded that the “request was premature and will be supplemented at a future date or by a deadline set by a scheduling order.” Of course, this information is discoverable and Defendant is under a “duty seasonably to supplement their response with respect to any question directly addressed to (a) the identity and location of persons having knowledge of discoverable matters, and (b) the identity of each person expected to be called as an expert witness at trial and the subject matter on which he is expected to testify.” Civ. R. 26(E)(1). These interrogatories seek exactly that information and Defendant is under a duty to timely supplement its responses. “The purpose of discovery is to put parties on notice of each side’s case and how it intends to present it. This is especially true in dealing with expert testimony, which requires preparation on the opposing side beyond what would be done for a lay witness.” *Hudson v. United Services Auto. Assc.*, 2008 Ohio Misc. LEXIS 303. While Defendant is certainly bound by the Court’s scheduling guidelines, it must also abide by the Rules of Civil Procedure, which allows for the discovery of this information.

**Request No. 10** requested a copy of any contracts, SWOT Analyses, reports, Requests for Proposals, or other products or documents identified or referred to in Interrogatory Numbers 8, 9, 10, and 11. Defendant did not make a complete production of documents because many of these agreements allegedly include confidentiality clauses. Plaintiff is amenable to filing the requested information under seal or exploring other options to address Defendant’s confidentiality concerns. But despite any alleged confidentiality clauses, this information is discoverable and is pertinent to both Plaintiff’s



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successful prosecution of its claims and defense against Defendant's counterclaims.

**Request No. 3** requested a copy of all correspondence related to the subject matter of this litigation. Defendant responded those documents "were being gathered and would be produced as soon as possible." To date, these documents have not been provided. Nor has the defendant offered an explanation for the delay in this basic discovery request.

The information and documentation being sought by Plaintiff is discoverable and is directly related to the case.

Plaintiff's counsel has made a good faith effort to resolve the impasse with regard to discovery, but the information and documentation sought has not been provided. Defendant did not respond to Plaintiff's July 24, 2012 letter (Exhibit B). A brief discussion was held prior to a recent pretrial scheduling conference, but no resolution was reached. And counsel engaged Defendant's counsel many times via telephone to no effect. Plaintiff again requested the opportunity to discuss this discovery dispute with the Defendant prior to filing this motion, but Defendant has not provided the requested information or provided a reasonable explanation or alternative.

By refusing to provide discoverable information directly related to the case, Defendant is hindering Plaintiff in both the prosecution and defense of this matter and is failing to timely prosecute its counterclaim. Further, Defendant appears to be unable or unwilling, to provide adequate information and documentation to support its claims against Plaintiff. Without any explanation from Defendant, Plaintiff must resort to this motion to compel.

WHEREFORE, Plaintiff respectfully moves this Court for an Order compelling Defendant to provide the information and documentation requested by counsel for Plaintiff



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in the first set of discovery, within ten (10) days of the date such Order is entered; dismissing Defendant's counterclaims against Plaintiff pursuant to Rules 37(B)(2)(c) and 37(D) of the Ohio Rules of Civil Procedure in the event Defendant does not comply with such Order; awarding Plaintiff's attorney fees and costs associated with the preparation and filing of this Motion; and awarding to Plaintiff such other and further relief to which it may be entitled.

Respectfully submitted,

/s/ L. Michael Bly

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## CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing *Motion to Compel Response to Discovery Directed to Defendant by Plaintiff and Request for Dismissal* was filed electronically in accordance with this Court's electronic filing guidelines on the 22<sup>nd</sup> day of January 2013. Notice of this filing will be sent to counsel by operation of this Court's electronic filing system or will be served by ordinary United States mail, postage prepaid, upon counsel or parties who are *not* sent electronic notification. Parties may access this filing through this Court's electronic filing system.

SUE SEEBERGER

Attorney for 3<sup>rd</sup> Party Plaintiff/Defendant, Don Allen Holbrook LLC

KEVIN WILLIAM KITA

Attorney for 3<sup>rd</sup> Part Defendant, Heather Dorbrott, Cynthia Calvert, Hartburg Publications, and Hartburg Publications dba The Tribune

ADAM R. WEBBER

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ANDREW J. REITZ

Attorney for 3<sup>rd</sup> Party Defendants, Craig Malisow, Houston Press, and Pahrump Valley Times

ROBERT P. BARTLETT

Attorney for 3<sup>rd</sup> Party Defendant, Craig Malisow, Houston, and Pahrump Valley Times

FRANK MAURIZIO

Attorney for 3<sup>rd</sup> Party Defendant, Frank Maurizio

/s/ L. Michael Bly

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**IN THE COMMON PLEAS COURT OF MONTGOMERY COUNTY, OHIO  
CIVIL DIVISION**

CITY OF HUBER HEIGHTS, OHIO

Plaintiff,

v.

DON ALLEN HOLBROOK, LLC

Defendant.

CASE NO. 2012-CV-02947  
JUDGE MICHAEL TUCKER

**RESPONSES AND OBJECTIONS OF  
DEFENDANT DON ALLEN  
HOLBROOK, LLC TO PLAINTIFF'S  
FIRST SET OF INTERROGATORIES  
AND REQUESTS FOR PRODUCTION  
OF DOCUMENTS**

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Pursuant to Rules 33 and 34 of the Ohio Rules of Civil Procedure, Defendant Don Allen Holbrook, LLC, ("Defendant") responds to and makes the following general objections to Plaintiffs' First Set of Interrogatories and Requests for Production of Documents.

**I. INTRODUCTION**

The following responses are made without waiver of and with preservation of:

1. All questions as to competency, relevancy, materiality, privilege, and admissibility of each response and the subject matter thereof as evidence for any purpose in the further proceedings in this action, including trial of this action, and in any other action;
2. The right to object to the use of any response, or the subject matter of any response, on any ground and in any further proceeding of this action, including trial of this action, and in any other action;
3. The right to object on any ground at any time to any demand or request for further response to these or any other requests or other discovery proceedings involving or relating to





the subject matter of the request herein responded to; and

4. The right to revise, correct, add to, supplement, and/or clarify any of the following responses at any time. The following responses are made expressly without acknowledging the materiality or relevancy of the discovery requests and without acknowledging that the requests are in any way reasonably calculated to lead to the discovery of admissible evidence. These responses are limited to properly discoverable information relevant to the allegations set forth in Plaintiff's Complaint and Defendant's Answer and Counterclaim.

## **II. GENERAL OBJECTIONS**

1. Defendant objects to Plaintiff's Interrogatories and Requests for Production of Documents to the extent that they seek information which is protected by attorney-client privilege and/or work product privilege.

2. Defendant objects to Plaintiffs' Interrogatories and Requests for Production of Documents to the extent that they are vague and ambiguous.

3. Defendant objects to Plaintiff's Interrogatories and Requests for Production of Documents as oppressive, unduly burdensome, and constituting harassment.

4. Defendant objects to Plaintiff's Interrogatories to the extent that they are not susceptible to answer by a brief, categorical response. See Penn Central Transp. Co. v. Armco Steel Corp. (Mont. C.P. 1971), 27 Ohio Misc. 76, 77.

5. Defendant objects to Plaintiff's Interrogatories and Requests for Production of Documents to the extent that they seek discovery not contemplated under Rules 33 and 34.

6. Defendant objects to Plaintiff's Interrogatories and Requests for Production of Documents to the extent that they seek responses or documents from Defendant about or from other entities not parties to this lawsuit or that would invade personal and private information

about persons not parties to this lawsuit.

7. Defendant objects to Plaintiff's Interrogatories and Requests for Production of Documents to the extent that they are unduly broad and overly burdensome, and to the extent that they seek information which cannot be retrieved by Plaintiff without undue burden or expense.

8. Defendant objects to Plaintiff's Interrogatories and Requests for Production of Documents to the extent that they do not appear to be relevant to the subject matter of the case or reasonably calculated to lead to the discovery of admissible evidence.

9. Defendant objects to Plaintiff's Interrogatories and Requests for Production of Documents to the extent that they fail to provide a time frame for which the information requested, or provide such a broad time frame as to render it impossible or impractical for Plaintiff to provide responsive information.

10. Defendant objects to the duplicative nature of Plaintiff's Interrogatories and Requests for Production of Documents.

11. Defendant objects to the compound nature of some of Plaintiff's Interrogatories and pursuant to Civ.R. 33(A) is only required to respond to 40 interrogatories, including all subparts.

12. Pursuant to Civ.R. 33(C), Defendant will produce business records in response to certain interrogatories, unless such records have already been produced to Plaintiff or are available to Plaintiff as public records. While Defendant has made every effort to produce all requested records on a timely basis, Defendant will supplement its production of requested records should other records be located or as needed.

13. Defendant objects to Plaintiff's Interrogatories and Requests for Production of

Documents to the extent that they seek information or documents that are not yet required to be exchanged under the Court's Scheduling Order.

14. Defendant objects to Plaintiff's Requests for Production of Documents to the extent that they request documents that do not exist.

15. Defendant objects to Plaintiff's Requests for Production of Documents to the extent that they request documents to which Plaintiff already has possession of or has access.

16. Defendant objects to Plaintiff's Interrogatories and Requests for Production of Documents to the extent that they request documents that are public and as easily accessible to Plaintiffs as to Defendant.

17. Defendant objects to the definitions set forth in Plaintiff's Definitions and Instructions directed to Defendant as overbroad, invading into privileged areas, inaccurate, and not following common and ordinary usage of terms. The use of any terms by Defendant that have been defined by Plaintiff does not indicate that Defendant consents to or is using such definitions.

18. Defendant objects to Plaintiff's Requests for Production of Documents to the extent that they request documents from an entity that is not a party to this litigation and is not affiliated with Defendant.

19. Defendant objects to Plaintiff's Interrogatories and Requests for Production of Documents to the extent that they request information and/or documents that Defendant had agreed to keep confidential with entities that are not parties to this litigation.

## **II. INTERROGATORIES**

1. State the name, current place of employment, address of current residence, and telephone number of each person who participated in providing answers to this first set of interrogatories.

**ANSWER:** Don Allen Holbrook, self-employed consultant and member of Don Allen Holbrook, LLC, 9200 Dalmahoy Place, Las Vegas, NV 89145, (928) 706-4440.

2. State the name, current address, and telephone number of each and every person Defendant intends to call as a witness at the trial of this action; and, with respect to each such person, state the general subject matter of the witness' expected testimony.

**OBJECTION:** See General Objection Nos. 1, 2, 3, 4, 7, 11, 13, 17. Without waiving any objections, Defendant answers as follows:

**ANSWER:** To date and to the extent that such things are known at this early time:  
Steve Carne, 3804 Berrywood Drive, Dayton, Ohio 45424 (937) 620-2445  
John Turner, 34 Tyler Court, Avon, CT 06001 (917) 533-1789  
Gary Adams, 613 Highview Court, Oswego, IL, 60543 (630) 453-8840  
Ron Fisher, 6131 Taylorsville Road, Huber Heights, Ohio 45424  
Jim Borland, 6131 Taylorsville Road, Huber Heights, Ohio 45424  
Donnie Jones, 6131 Taylorsville Road, Huber Heights, Ohio 45424  
Trisha Reents, 6131 Taylorsville Road, Huber Heights, Ohio 45424  
Mark Campbell, 6131 Taylorsville Road, Huber Heights, Ohio 45424  
Joe Greene, 1001 Shiloh Springs Road, Dayton, Ohio 45415 (937) 224-1619  
Dan Bullen, 1043 South Main Street, Dayton, Ohio 45409 (937) 275-7777  
William "Bill" Jump, DEC Investment Group, 6375 Riverside Dr. Suite 220, Dublin, OH 43017-614-717-4444

3. Identify each expert witness Defendant intends to call at the trial of this lawsuit, or use in preparation for this lawsuit, and produce the following, to wit:

- a. The expert witness' name;
- b. The expert witness' business address;
- c. The expert witness' business telephone number;
- d. The curriculum vitae of each such expert witness;
- e. The written opinion of each such expert witness; and
- f. The facts and data considered by such expert witness.

**OBJECTION:** See General Objection Nos. 1, 4, 11, 13, 17. Without waiving any objections, Defendant answers as follows:

**ANSWER:** This request is premature and will be supplemented at a future date or by a deadline set by a scheduling order.

4. Identify each and every exhibit and/or item of documentary evidence that you intend, contemplate, or expect to introduce into evidence, to use to refresh a witness' recollection, or to be identified at the trial of this matter.



**OBJECTION:** See General Objection Nos. 1, 2, 3, 4, 7, 11, 13, 15, 17. Without waiving any objections, Defendant answers as follows:

**ANSWER:** This request is premature and will be supplemented at a future date or by a deadline set by a scheduling order.

5. Identify each and every individual who worked on, or contributed in any way to, any of the work identified in the November 2, 2011 letter attached to the Complaint as Exhibit 1.

**OBJECTION:** See General Objection Nos. 2, 10, 11, 13, 17. Without waiving any objections, Defendant answers as follows:

**ANSWER:** Don Allen Holbrook, John Turner, and Steve Carne.

6. When did you first contact Plaintiff to provide the services and products identified in Exhibit 1 of the Complaint.

**OBJECTION:** See General Objection Nos. 2, 10, 11, 13, 17. Without waiving any objections, Defendant answers as follows:

**ANSWER:** To the best of my recollection it was in August of 2011, although I had first met Mayor Ron Fisher in June of 2011 on another project, to the best of my recollection.

7. List the dates Defendant spent working to provide the services and products identified in Exhibit 1 of the Complaint and provide a description of the time spent and a description of the work performed.

**OBJECTION:** See General Objection Nos. 2, 3, 4, 7, 10, 11, 13, 14, 17. Without waiving any objections, Defendant answers as follows:

**ANSWER:** Don Allen Holbrook, LLC does not bill for its time or its subcontractors' time on an hourly basis nor does it keep hourly or daily "time sheets" so providing a list of dates is not possible because none exists. Don Allen Holbrook, LLC bills a flat rate for its professional services and the professional services of others as stated in Exhibit 1 to the Complaint. Don Allen Holbrook, LLC paid John Turner to research and prepare a simple overview of the retail market of the City and visitor market trends and current scenario and used this as the basis for the opinion of Don Allen Holbrook, LLC. Don Allen Holbrook, LLC paid for three trips to the market meetings with individuals, staff and elected officials as well as potential end users of its recommendation strategy. These trips were on average 3½ days of time each. The preparation of Don Allen Holbrook, LLC was conversations with staff (mostly Gary Adams) and e-mail responses along with contemplation time and discussions with its own team members. Don Allen Holbrook, LLC estimates that it spent at least a minimum amount of 60 man hours in the field in total. Don Allen Holbrook, LLC estimates that it had approximately an additional 100

hours of report preparation, discussions, and contemplation and follow-up for this report work. When Don Allen Holbrook, LLC charges for work on an hourly basis, it charged \$250 an hour before 2012. In 2012, Don Allen Holbrook, LLC raised its hourly charge to \$395, plus a performance bonus on public economic incentive strategies of 3% of the gross value of the incentives utilized cumulatively by a public-private development agreement once it is executed. This fee is not dependent upon financing, rather is due by the public agency once the development agreement (intent to use) is executed between the developer and the public agency.

8. Identify any states, counties, townships, municipalities, or other organizations that Defendant provided a Strengths, Weaknesses/Limitations, Opportunities, and Threats Analysis (SWOT Analysis), or other services or products similar to those described in Exhibit 1 of the Complaint, to in the past five years.

**OBJECTION:** See General Objection Nos. 2, 3, 4, 6, 7, 8, 11, 13, 17, 19. Without waiving any objections, Defendant Don Allen Holbrook, LLC answers as follows:

**ANSWER:** Claremore, Oklahoma, Hard Rock Theme Park, John Marlin, private developer; Pahrump, Nevada, Contour Entertainment; Livingston Parish, Louisiana; Regional Development Australia-Midwest Gascoyne; EarthQuest, Marlin Atlantis/EMCID [Eastern Montgomery County [Texas] Improvement District]; Nebraska Center for Rural Affairs.

9. For any states, counties, townships, municipalities, or other organizations identified in the preceding interrogatory, describe each service or product provided, list the date the service of product was provided and state the amount paid for each service or product.

**OBJECTION:** See General Objection Nos. 2, 3, 4, 6, 7, 8, 11, 13, 17, 19. Without waiving any objections, Defendant answers as follows which are taken directly from the proposals given to the named entities:

**ANSWER:** Fees and scope

Claremore, Oklahoma - In general, the Contour/Vercitas Team will meet with CIEDA representatives as well as to conduct a preliminary review of the area. We will investigate existing tourism and entertainment projects in the market as well as potential new competitive project information. (Such local knowledge and information to be supplied by CIEDA). Through the discussions with CIEDA, we will begin to establish the high-level potential for Public Support for a project as well as to establish the goals and hopes for the long-term impact of such a project. Through the initial site tour and a review of any supplied demographic and tourism data, we will begin to assess the potential of the existing market to support a location based entertainment anchored development in the area.

*Phase I – High-Level Assessment of the Market and ED Potential*

During Phase I, Don Holbrook from Vercitas and Chris Brown from Contour will visit Claremore and meet with the CIEDA team, Tourism and other Public officials as well as to visit

any existing leisure businesses and potential future project sites. During this trip, CIEDA will provide copies of regional and local demographic surveys and reports, a summary of existing incentive legislation and any other available information on current or past leisure projects in the region as well as any other documents as available to the Team that might be useful in understanding what exists and is currently planned in Claremore. Included in the supplied data should be information regarding any potential thoughts – or past successful initiatives – for the intended structure for any project financing that involves public sector support through bond issues, special zone creation and/or tax abatements. These documents, coupled with the interviews, will be key to ascertain the true Public Sector willingness to support new project initiatives.

Following the field investigation trip, the Team will review the data collected to begin to understand the existing market and its potential to support a new project. We will begin to establish the general areas where we see potential and to conceive of a high-level conceptual direction to complement existing assets in the community and to take advantage of unexploited areas in the entertainment and leisure markets.

At the end of Phase I, the team will supply a high-level, executive summary report to explain the investigation completed and to present the Team's opinions. The intention here would be to flag any significant problems that we see so that if the potential is not really there to develop a significant project, this opinion will be stated with a minimal cost for the analysis. \$15,000.00

Hard Rock Theme Park Analysis- Site Location Incentive Negotiations, Strategy Development and Incentive Modeling \$90,000.00, plus a performance bonus of 5% of the gross value of the incentives utilized cumulatively by a public-private development agreement once it is executed.

Town of Pahrump- Site Evaluation, SWOT of economic development climate, evaluation of political support for the project and key-leader meetings to build awareness and support for the conceptual direction and discovery phase. Recommendation for economic development next step considerations. \$36,000

Livingston Parish- (Baker Leisure Group)

Holbrook will facilitate the appropriate public investment jurisdictions and create the model public investment portfolio in conjunction with the BLG Final Report to LEDC. Holbrook will find acceptable new suitable site(s) in the Livingston Parish (target area for consideration) for meeting the targeted recommendations as specified in the Final BLG report. Holbrook will coordinate all work in conjunction with client and any other contractors as directed by the Client. The project shall remain confidential. \$30,000.00 50% upon execution of contract/ 50% upon submittal of final report.

RDWMWG- A written report will be presented including:

- a. A Review of the Process to date with next step recommendations that are fully costed out based on realistic observations by the team of the local conditions
- b. A Market Research Report indicating the summary data and findings with respect to the Resident and Tourist Markets, the competitive landscape for the leisure and attractions to be

considered and the implications for the potential elements, in addition the first step will recommend a story for development if the team concludes it is possible from a book to film aspect.

- c. A brief Concept Treatment describing an overview of the proposed development responding to the recommendations of the Market Research Report
- d. A draft Program List of Elements recommended and preliminary size and capacity assumptions
- e. A Final Status Report on the progress in discussions regarding the
  - (i) funding support strategies and tools for the project including the development of the appropriate local investment support for the concepts and the ROI for such investors. Total cost \$73,250 plus \$23,000 in travel costs.

EarthQuest- Site Location analysis, business incentive model to investor business case, design economic zone, solicitation support of investor/developer discussions, SWOT analysis of mitigation of bankruptcy of Developer, Strategy for movement to new developer and revised public-private partnership agreement.

(i) \$1,052,000.00 plus a remainder upon land purchase of \$810,000 today.

(ii) On-going consultation \$200,000 through June 1, 2012

Nebraska Center for Rural Affairs- Services will begin October 7, 2009, through December 7, 2009. Activities are listed below:

- Assessment of how the rapidly growing renewable clean technology and “green” energy industry could be connected to existing workforce and micro-businesses located in rural America and create opportunities for micro-business development around this industry.
- Analysis of workforce needs and availability by:
  - Analyzing existing workforce skills assessments relevant to the green energy field
  - Interview key leaders from the economic and workforce development fields
  - Assess any existing economic development/workforce development programs that are focused on the green energy field
  - Develop an ACT WorkKey list of possible occupations that should be profiled for work force needs and micro-business development in the green and clean technology energy field
- ☐ Interviews with key industry leaders engaged in the green energy field to determine what their workforce needs are, and what the potential is to engage workers, micro-businesses and potential micro-business development located in rural America to meet those needs by:
  - Identifying and interviewing 6-8 representatives of senior management from green energy companies regarding their workforce and supply chain needs
  - Analysis of the potential for workers located in rural America to meet these needs
  - Assessment of the potential for micro-business development and existing micro-businesses located in rural America to meet the needs of green energy industry. Assessment will include potential of micro-businesses providing services via the Internet and include very small, "non-growth center" communities.
  - Determine the viability of an economic gardening approach in the green and renewable energy field for rural economic development

Fee \$20,000.00 - \$10,000 was the portion of the scope of work for Don Allen Holbrook, LLC.



10. Identify any states, counties, townships, municipalities, or other organizations that Defendant provided a Request for Proposal or Scope of Work and Fees for Services Proposal to in the past five years.

**OBJECTION:** See General Objection Nos. 2, 3, 4, 5, 6, 8, 10, 11, 13, 17, 19. Without waiving any objections, Defendant Don Allen Holbrook, LLC answers as follows:

**ANSWER:** Proposals-

- a. Bearfire Resort, TX- \$45,000 Incentive design business case plus \$195/hr/\$1500 per day
- b. US Africa Enterprise- 5% of negotiated incentives
- c. Baker Leisure Group- 360 Resort- Business incentives model \$45,000 plus 5% of negotiated incentives.
- d. GVW Car & Truck- incentives negotiations and model \$45,000 5% of negotiated incentives value
- e. Baker Leisure Group-LEDC \$30,000 plus \$195/hr incentives evaluation and recommendation for business case.
- f. Brad Smith Associates 441 Corridor- \$10,000 plus \$1800 day/\$225 hour time and material. Public-private partnership and economic development incentive evaluation and recommendations
- g. Brad Smith Associates- Destiny FL- incentive evaluations, design and recommendations, \$10,000 plus \$225/hr \$1800 per day time and material.
- h. Cabo Verde Resort, Puerto Rico- \$45,000 plus 5% of negotiated incentives, evaluation of business incentives in support of the project, recommendation of negotiated incentives to be sought.
- i. Dupage Biz- \$45,000 plus \$250 hr/\$2000 day- Fundraising assessment of private and public sector funders for operational funding. Key leader follow-up for intent to support the organization.
- j. EMCID- \$81,000.00 plus \$195/hr \$1500 day- plus bonus schedule for performance outcomes- incentive model to match private sector investment project costs.
- k. EMCID- \$90,000.00 \$195/hr \$1500 day- business incentive model with recommended development agreement example.
- l. Southwest Louisiana ED Alliance- \$20,000 plus \$5,000 per negotiation and \$250/hr or \$2,000 day plus performance fees. Business attraction strategy.
- m. Greater New Orleans, Inc. \$45,000 \$195/day \$1500 =- business attraction strategy in support of existing strategy by another consultant.
- n. LEDC-\$278.5K - \$250/hr or \$2000 day- Sports and destination entertainment assessment and recommendation strategy
- o. US Africa Heritage- \$55,000 – Incentive solicitation and negotiations with private sector plus 5% of negotiated value
- p. Integrity Development Group-Music City Theme Park- \$65,000.00 plus 5% of negotiated incentives in support of the projects capital investment plan. \$250/hr- \$2000 day.
- q. Ventura Sports- Laredo Minor League Baseball Team- incentive analysis and recommendation with negotiations- \$15,000 Flat fee

- r. National Sports Services- Minor League Baseball Stadium/Team LA- business incentives recommendations, design, and negotiations with public sector- \$324,000 plus \$250/hr
- s. SWLA ED Alliance- Workforce Solutions recommendations and design strategy- \$48,000 plus \$250/hr \$2000 day
- t. Wilkes County EDC- Land Use Concept (ROM) with business incentives strategy- Concept to solicitation commencement for investments- \$526,000 plus performance fees.
- u. Georgia Dept. Economic Development- Cluster Industry Analysis and targeted business attraction strategy- \$192,000 yr/plus travel
- v. Contour Entertainment- Roswell- Evaluation \$7,500 plus 5% of performance fees, not to exceed \$750,000 plus \$250/hr.
- w. Greenwood, SC (Contour)- \$496,300.00- Destination Themed attraction concept to solicitation in conjunction with Contour.

11. Identify any states, counties, townships, municipalities, or other organizations that Defendant contracted with in the past five years.

**OBJECTION:** See General Objection Nos. 2, 3, 4, 5, 6, 7, 8, 11, 13, 17. Without waiving any objections, Defendant Don Allen Holbrook, LLC answers as follows:

**ANSWER:** See response to Interrogatory No. 9.

12. List any person, subcontractors, advisors, businesses, independent contractors or any other entities or individuals Defendant relied upon to prepare for, or complete, any work for Plaintiff.

**OBJECTION:** See General Objection Nos. 2, 4, 6, 11, 13, 17. Without waiving any objections, Defendant Don Allen Holbrook, LLC answers as follows:

**ANSWER:** John Turner, Proforma Advisors; Steve Carne, independent consultant.

13. Describe and list any reports, studies, books, articles, websites or any other tools, materials, or resources used or relied upon in completing the work identified in Exhibit 1 of the Complaint.

**OBJECTION:** See General Objection Nos. 2, 3, 4, 7, 11, 13, 17. Without waiving any objections, Defendant Don Allen Holbrook, LLC answers as follows:

**ANSWER:** Don Allen Holbrook, LLC relied upon the following primary sources and did not use secondary sources. The interim report provided to Don Allen Holbrook, LLC by John Turner and ProForma Advisors and the primary research conducted by John Turner, Steve Carne and Don Allen Holbrook, LLC in our in market research trip as well as the interviews of individuals representing various aspects of the market that Don Allen Holbrook, LLC believed to be credible additional information that would either support or not support the directional

opinion that Don Allen Holbrook, LLC was asked to provide the City Council. These interviews done by Don Holbrook and Steve Carne. Don Allen Holbrook, LLC also relied upon its own historical experience to form an opinion of what direction it would recommend to the City Council with regard to the further support or directional opportunities that would assist in the further development of retail opportunities given the current market situation and what additional public partners might be needed for such a direction. In addition, this opinion was to evaluate whether a much more aggressive full due diligence proposal should be brought forward at considerable more expense. It was the recommendation of Don Allen Holbrook, LLC as per its final report that the City expand the scope of full due diligence very specifically along the lines of the next step recommendations stated in the report. The majority of the report from Don Allen Holbrook, LLC was based upon the professional purchase of its opinion of the best over-all direction that the City could or should take that would best support their current project with the developer Bill Jump and also best achieve their long-term economic development destination tourism industry as a new industry niche.

14. Describe any reason why you were unable or impaired in completing the work contemplated in Exhibit 1 of the Complaint.

**OBJECTION:** See General Objection Nos. 2, 3, 4, 7, 9, 11, 13, 17. Without waiving any objections, Defendant Don Allen Holbrook, LLC answers as follows:

**ANSWER:** Contrary to the express language in the Agreement between the parties (see Exhibit 1 to Complaint), the Staff of the City of Huber Heights failed to collaborate and respond to questions for information by Don Allen Holbrook, LLC. Contrary to the express language in the Agreement between the parties, the Staff of the City of Huber Heights failed to investigate different creative options on financing models and failed to confront the realities of the current financial condition of the City. Contrary to the express language in the Agreement between the parties, the Staff of the City of Huber Heights failed to investigate whether a joint City and Montgomery County financing mechanism could provide a compelling basis for county-wide participation in the financing of such a project.

Contrary to the express language in the Agreement between the parties, the Staff of the City of Huber Heights failed to pinpoint and make any final recommendation on an acceptable real estate site for the project that would not be harmful to William Jump's existing plans. Because the Staff of the City of Huber Heights failed to identify any final real estate site, it was not possible to perform a cost-benefit analysis and final location recommendations could not be finalized into a report.

The Staff of the City of Huber Heights never indicated to Don Allen Holbrook, LLC that it was dissatisfied with any of the reports prepared. On two separate occasions, the City asked that the scope of work be expanded and stated that the reason for this was Council Member Mark Campbell. Don Allen Holbrook, LLC complied with those requests each time without charging anything additional for the change in scope of work under the Agreement. Council members gave Don Allen Holbrook, LLC directions that appeared to be in direct conflict with directions

that Don Allen Holbrook, LLC received from the City Staff on the time to submit any report, to submit response review, and final compilation.

15. List any and all civil lawsuits you have ever been a party to, including but not limited to those involving breach of contract or fraud, and specify whether you were plaintiff or defendant, identify by name and address each and every other party to any such lawsuit, and state with specificity the court where filed and the caption, case number, and subject of each such lawsuit.

**OBJECTION:** See General Objection Nos. 1, 2, 3, 4, 5, 6, 8, 9, 11, 16, 17. Without waiving any objections, Defendant Don Allen Holbrook, LLC answers as follows:

**ANSWER:** Don Holbrook, not a party to this litigation, filed a wrongful termination suit against the Red Wing Port Authority, Minnesota, approximately 1998, that was settled out of court. Don Holbrook, not a party to this litigation, filed a breach of contract case against the Red Wing Mall, Minnesota, approximately 1998.

16. State any and all criminal convictions against Don Holbrook, listing the date, the name and address of the court in which the criminal conviction occurred, the description by statutory section or ordinance of the criminal charge, the name and address of any attorney retained with regard to each criminal conviction, and the time spent in jail or prison for each criminal conviction, including the dates of the time served as well as the name and address of the penal institution.

**OBJECTION:** See General Objection Nos. 5, 8, 9, 11, 17. Without waiving any objections, Defendant Don Allen Holbrook, LLC answers as follows:

**ANSWER:** Don Holbrook, not a party to this litigation, has no criminal convictions.

17. State the employment history for Don Holbrook during the ten (10) years immediately prior to answering these interrogatories by specifying the name(s) of his employer(s) (or his businesses if self-employed), the dates of employment, and his work responsibility during said employment. Also state with specificity the current annual salary for Don Holbrook and the annual salary for Don Holbrook at the time of the subject incident and for the five (5) years before the incident.

**OBJECTION:** See General Objection Nos. 2, 3, 4, 7, 11, 17. Specifically, Don Holbrook is not a party to this litigation nor are any other entities in which Mr. Holbrook may be a member or have some ownership interest. Without waiving any objections, Defendant Don Allen Holbrook, LLC answers as follows:

**ANSWER:** 2001 – 2004: President and CEO of Lake Havasu Partnership for Economic Development, salary was about \$95,000.00 a year to the best of my recollection.



2004 – 2006: Wayne County, EDC-President, salary was about \$110,000.00 a year to the best of my recollection.

2006 – 2007: Managing Partner of Holbrook Development Company

2008 – present: Member of Don Allen Holbrook, LLC

### **III. REQUEST FOR PRODUCTION OF DOCUMENTS**

1. A copy of any and all documents you intend to introduce into evidence at the trial of this matter or to use in connection with any motion or other paper to be filed in this action.

RESPONSE: This request is premature and will be supplemented at a future date.

2. A copy of any and all documents reviewed and/or referred to in the preparation of your responses to the first set of interrogatories.

RESPONSE: To the extent that any documents were reviewed and/or referred to in the preparation of the responses to Plaintiff's First Set of Interrogatories, they are already in the possession of Plaintiff or have been previously shared with Plaintiff.

3. A copy of any and all correspondence, including, but not limited to, letters, e-mails, faxes and any similar written communications that pertains in any way to the subject matter of this litigation.

RESPONSE: Such documents are being gathered and will be produced as soon as possible and on a timely basis.

4. A copy of all reports or memoranda prepared on your behalf or issued to you by any witness or any expert witness which may be called at the trial of this matter or by any expert consulted by you who may or may not be called as a witness at the trial of this matter.

RESPONSE: At this time, no such reports or memoranda exist.

5. Produce a copy of any drafts of the November 2, 2011 Letter attached as Exhibit 1 to the Complaint.

RESPONSE: See documents produced.

6. Produce a copy of any exhibits used for any presentations to the City of Huber Heights or that you intend to use at trial.

RESPONSE: Copies of all such documents or “exhibits” were provided to the City at the time of the presentations. Requests for copies of anticipated exhibits for use at trial are premature at this time.

7. A copy of any and all documents presented to the City of Huber Heights for any purpose.

RESPONSE: Copies of all such documents “presented” to the City were provided to the City at the time of the presentation.

8. A copy of the current resume and/or curriculum vitae for each of Defendant’s expert witness(es), along with any documents pertaining to, referring to and/or relating to any opinion expressed by any expert witness.

RESPONSE: To date, Defendant has not identified any expert witnesses.

9. A copy of any drafts of the SWOT Analysis provided to the Plaintiff.

RESPONSE: See documents produced.

10. A copy of any contracts, SWOT Analysis, reports, Requests for Proposals, or other products or documents identified or referred to in Interrogatory Numbers 8, 9, 10, and 11.

RESPONSE: Some of those agreements include confidentiality clauses with entities that are not parties to this lawsuit. To the extent that such requested documents do not include confidentiality clauses and are still in the possession, custody and control of Defendant Don Allen Holbrook, LLC, they will be made available when located.

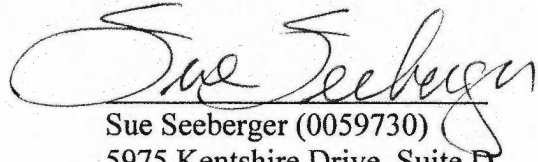
11. A copy of any documentation supporting your answer to Interrogatory Number 7.

RESPONSE: See response to Interrogatory No. 7.

12. A copy of any and all other documents in your possession referring to and/or relating to any of the allegations or issues raised in Plaintiff’s Complaint in addition to those documents responsive to the foregoing requests.

RESPONSE: This request is premature. To the extent that any such documents are in the possession, custody, or control of Don Allen Holbrook, LLC, they will be provided on a timely basis.

Respectfully Submitted,

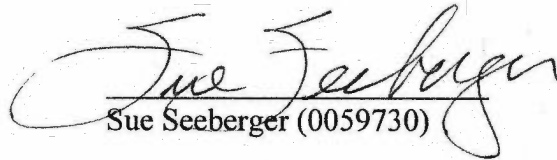


Sue Seeberger (0059730)  
5975 Kentshire Drive, Suite D  
Dayton, Ohio 45440-4264  
Voice: (937) 291-8646  
Fax: (937) 291-8650  
sueseberger@biegely.com  
Attorney for Defendant Don Allen  
Holbrook, LLC

### **CERTIFICATE OF SERVICE**

I certify that a copy of the foregoing was served by U.S. Mail on this 12<sup>th</sup> day of June, 2012, upon the following:

L. Michael Bly  
Joshua Kin  
Pickrel, Schaeffer & Ebeling  
2700 Kettering Tower  
Dayton, Ohio 45423

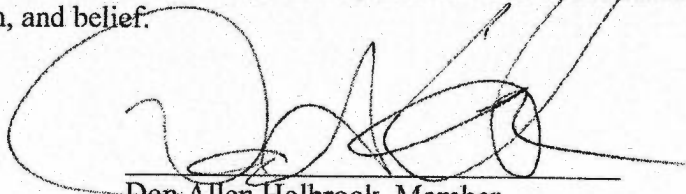


Sue Seeberger (0059730)

VERIFICATION PAGE

STATE OF NEVADA                    )  
  )     SS  
COUNTY OF CLARK                )

Don Allen Holbrook, a member of and on behalf of Don Allen Holbrook, LLC, an Arizona limited liability company, after being cautioned and sworn, states that the above responses to the interrogatories directed to Don Allen Holbrook, LLC are true and accurate to the best of my knowledge, information, and belief.



Don Allen Holbrook, Member  
Don Allen Holbrook, LLC

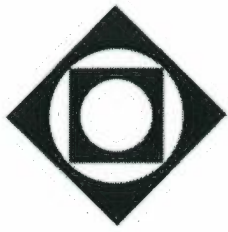
Subscribed and sworn to before me by Don Allen Holbrook this 11 day of June, 2012.



Notary Public







# PICKREL, SCHAEFFER AND EBELING

A LEGAL PROFESSIONAL ASSOCIATION

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OF COUNSEL  
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<sup>1</sup> Also licensed in FL  
<sup>2</sup> Also licensed in FL and MI

<sup>3</sup> Also licensed in NY

<sup>4</sup> Also admitted in MA

<sup>5</sup> Also admitted in NY and CT

mbly@pselaw.com

July 24, 2012

Sue Seeberger  
5975 Kentshire Dr., Suite D  
Dayton, Ohio 45440-4264

Re: **Huber Heights v. Don Allen Holbrook, LLC;**  
**Case No. 2012 CV 02947**

Dear Sue:

I am writing in follow-up to your responses to the City's First Set of Interrogatories and Requests for Production of Documents. Your client's responses to the following were less than complete.

Interrogatories No. 3 and 4. Parties are under a "duty seasonably to supplement his response with respect to any question directly addressed to (a) the identity and location of persons having knowledge of discoverable matters, and (b) the identity of each person expected to be called as an expert witness at trial and the subject matter on which he is expected to testify." Civ. R. 26(E)(1). These interrogatories seek exactly that information and you are under a duty to timely supplement your responses.

Request No. 10 requested a copy of any contracts, SWOT Analyses, reports, Requests for Proposals, or other products or documents identified or referred to in Interrogatory Numbers 8, 9, 10, and 11. You did not make a complete production of documents because many of these agreements allegedly include confidentiality clauses. We are open to entering into a protective order or allowing those confidential documents being filed under seal, but the requested documents are discoverable and should be made available as soon as possible.

Request No. 3 requested a copy of all correspondence related to the subject matter of this litigation. You indicated that such documents are being gathered and would be produced as soon as possible. Your client was served with our discovery requests on May 7, 2012. Please provide responsive documents to Request No. 3 or provide an explanation as to why further delay is necessary.

*Serving Dayton – Serving You*



This is an informal attempt to resolve a discovery dispute. I believe these matters can be resolved amicably without resort to the Court's intervention, but if you fail to respond to these concerns within fourteen (14) days, I will assume you do not wish to resolve this discovery dispute as required by the Rules of Civil Procedure and will be forced to file a Motion to Compel.

Sincerely,

PICKREL SCHAEFFER & EBELING CO., LPA

L. Michael Bly

LMB:CSM