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IN THE CIRCUIT COURT OF THE
15TH JUDICIAL CIRCUIT IN AND FOR
PALM BEACH COUNTY, FLORIDA

CIRCUIT CIVIL DIVISION: "AF"

CASE NO.: 502023CA015733XXXAMB

BETH SAFFER and ARTHUR ROBINS, individually and on behalf of others similarly situated,

Plaintiffs,

v.

SANDRA KLIMAS, an individual; ROBERT THOM aka ROB THOM, an individual; ANTHONY DiGENNARO, an individual; and ROBERT STERN aka BOB STERN, an individual,

Defendants.

_____/

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PLAINTIFFS' SUPPLEMENTAL REPLY MEMORANDUM IN SUPPORT OF MOTION TO STRIKE MOTION FOR PROTECTIVE ORDER FOR FAILURE TO COMPLY WITH LOCAL RULE 4

COMES NOW, Plaintiffs BETH SAFFER and ARTHUR ROBINS, individually and on behalf of others similarly situated ("Plaintiffs"), and respectfully file the following supplemental memorandum in support of Plaintiffs' Motion to Strike Motion for Protective Order ("Motion"):

1. The Defendants apparently oppose Plaintiff's Motion to Strike by filing a new notice of hearing saying they have attempted to meet and confer by telephone regarding their Motion. The problem is that the email trail attached to the Declaration of El'ad Botwin demonstrates that the Defendants never once, during negotiations, identified the primary

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grounds for their requested discovery stay, to wit: the claim of "immunity from suit." Had they met and conferred regarding this ground, the Motion would have never been filed. The law and the local rules of this Court require actual conferral regarding such arguments and had the Defendants conferred before filing their Motion they would have been unlikely to advance such frivolous grounds. In short, condominium directors have never been held "immune from suit altogether" and yet such immunity is relied upon by the Defendants in bringing their stay Motion. *See, e.g., Raphael v. Silverman,* 22 So. 3d 837 (Fla. Dist. Ct. App. 2009) (collecting cases demonstrating condominium directors have never been held immune from litigation altogether)*; compare, e.g., Fuller v. Truncale,* 50 So.3d 25, 27–28 (Fla. 1st DCA 2010) (***judicial officer*** enjoying total immunity from suit and therefore "it would be compromised, and irreparable harm sustained, simply by forcing a judicial party to become involved in litigation, irrespective of its outcome"); *Seminole Tribe of Fla. v. McCor,* 903 So.2d 353, 357–58 (Fla. 2d DCA 2005) (quoting *Tucker*, 648 So.2d at 1189) (***tribal sovereign immunity,*** like the qualified immunity enjoyed in ***civil rights cases by public officials,*** "involves 'immunity from suit rather than a mere defense to liability' ...") (citations omitted).

2. Furthermore, an amended notice of hearing is not enough to rebut a sworn declaration by a member of the Bar. In the event the Defendants wish to prove that they conferred fully regarding their Motion, it is necessary for them to submit a sworn statement rebutting each salient point made in Plaintiff's Motion to Strike and accompanying declaration of El'ad Botwin, including that their "immunity from suit altogether" ground advanced in the Motion at pages 4 (¶ 11) and 8 (as opposed to "immunity from certain claims") was never

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so much as addressed (even a little bit) in the correspondence pre-dating the filing of the Motion and the new notice of hearing.

WHEREFORE, Plaintiffs respectfully request the Court to strike the Motion for Protective Order for failure to meet and confer as required by Local Rule 4.

Dated: December 28, 2023

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CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the foregoing was furnished via e-filing, which will deliver electronic copies of this filing to the designated e-mail addresses for all counsel of record pursuant to Fla. R. Jud. Admin. 2.516, and we also certify a true and correct copy of the foregoing was furnished via e-mail, on this 28th day of December, 2023, to: KEVIN YAMBOR, ESQ., and LABEED A. CHOUDRY, ESQ., Kaufman Dolowich, LLP, Attorneys for Defendants, 100 SE 3rd Avenue, Suite 1500, Ft. Lauderdale, FL 33301 (kyombor@kaufmandolowich.com; tbell@kaufmandolowich.com; Labeed.choudhry@kaufmandolowich.com; sfranchi@kaufmandolowich.com).

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