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THIRD CIRCUIT
3CCV-21-0000188
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IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAII

PUALANI ESTATES AT KONA
COMMUNITY ASSOCIATION, a Hawaii
non-profit corporation,

Plaintiff,

vs.

DEE ANN WUNSCHER, an individual;
JOHN DOES 1-10, DOE
GOVERNMENTAL AGENCIES 1-10 and
DOE ENTITIES 1-10 and Does 1 to 10,

Defendants.

CIVIL NO. 3CCV-21-188

**ORDER DIRECTING PARTIES TO
PARTICIPATE IN NON-BINDING
ALTERNATIVE DISPUTE RESOLUTION**

**ORDER DIRECTING PARTIES TO PARTICIPATE IN NON-BINDING
ALTERNATIVE DISPUTE RESOLUTION**

This matter having come before the Court as a non-hearing motion by Defendant, DEE ANN WUNSCHER filed September 9, 2021 and the Court having ordered the parties to alternative dispute resolution pursuant to RCCH Rule 12,

The Court further clarifies its Order filed October 20, 2021 as follows:

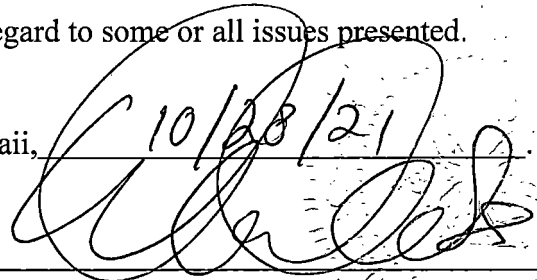
1. The parties shall engage in the ADR process as defined in Rule 12.2, within ninety (90) days from the date of this order, **January 26, 2022**.
2. All ADR fees and expenses of the neutral shall be borne equally by the parties unless otherwise agreed to by the parties, ordered by the court, or as provided

for by law. A party who cannot afford to pay all or any portion of fees or expenses charged under this rule may file a motion with the court to be excused from payment or to pay an appropriately reduced amount or rate.

3. The parties shall first attempt to select a neutral by mutual agreement. If the parties cannot agree, then each party shall submit a list to the court nominating up to three (3) prospective neutrals by **November 15, 2021**. The court shall provide the parties with a combined list of all nominees and allow each party to rank all prospective neutrals. The person receiving the highest rank on the combined list shall be selected as the neutral. In the event of a tie, the judge shall decide which person shall serve as the neutral. If at any time the neutral becomes unable or unwilling to serve, and the parties are unable to agree on the selection of another neutral, the judge will select the next highest ranking nominee available to serve.
4. Unless waived by all parties, the parties, counsel, and neutral shall make a reasonable inquiry concerning and disclose to each other the identity of the parties, potential witnesses who may be called at trial, and other participants who may be included in the ADR process. In addition, the neutral shall make a reasonable inquiry and disclose as soon as practical before accepting mediation any other facts and information, including a financial or personal interest in the outcome of the mediation and any existing or past relationships, that a reasonable person would consider likely to affect the impartiality of the neutral, including the neutral's relationships with counsel, a mediation party, foreseeable mediation party, or non-party participant in the mediation. The parties, counsel, and neutral shall have a continuing obligation to disclose as soon as practicable any information they subsequently learn during the ADR process that a reasonable person would consider likely to affect impartiality of the neutral.
5. Lead trial counsel and clients, representatives, and third persons with full settlement authority shall attend, in person, all ADR conferences scheduled by the neutral, unless excused by the neutral.

6. Unless the parties otherwise agree in writing or it is otherwise authorized and approved by the adjudicating court pursuant to the Uniform Mediation Act or other law, the neutral, counsel, the parties, and other participants in any mediation, **shall not** communicate with the civil court adjudicating the merits of the mediated matter (including the settlement or trial judge) about the substance of any position, offer, or other matter related to mediation, nor shall a court request or order disclosure of such information unless such disclosure is required to enforce a settlement agreement, adjudicate a dispute over mediator fees, or provide evidence in any attorney disciplinary proceeding, and then only to the extent required to accomplish such purpose. However, the neutral may disclose to a court whether the ADR process is concluded or terminated; who attended; and, if applicable, whether a settlement or resolution was reached with regard to some or all issues presented.

Dated: Kailua-Kona, Hawaii,

10/28/21


WENDY M. DEWEESE
JUDGE OF THE ABOVE ENTITLED COURT