

ESTTA Tracking number: **ESTTA754205**

Filing date: **06/23/2016**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92062400
Party	Defendant Avalon IP Holding Co.
Correspondence Address	LEE J EULGEN NEAL GERBER & EISENBERG LLP 2 N LASALLE ST SUITE 1700 CHICAGO, IL 60602 UNITED STATES knye@ngelaw.com, leulgen@ngelaw.com, temanuelson@ngelaw.com, dcesek@ngelaw.com, ECFDocket@ngelaw.com
Submission	Motion to Compel Discovery
Filer's Name	Lee J. Eulgen
Filer's e-mail	leulgen@ngelaw.com, knye@ngelaw.com, mhoffman@ngelaw.com
Signature	/Lee J. Eulgen/
Date	06/23/2016
Attachments	MOTION TO COMPEL - Filed 06-23-2016.pdf(19074 bytes) Declartion of K. Nye in Support of Motion to Compel_Part1.pdf(1183860 bytes) Declartion of K. Nye in Support of Motion to Compel_Part2.pdf(995714 bytes) Declartion of K. Nye in Support of Motion to Compel_Part3.pdf(1185618 bytes) Declartion of K. Nye in Support of Motion to Compel_Part4.pdf(1140513 bytes) Declartion of K. Nye in Support of Motion to Compel_Part5.pdf(1330929 bytes) Declartion of K. Nye in Support of Motion to Compel_Part6.pdf(470981 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

AvalonBay Communities, Inc.,)	
)	
Petitioner,)	
)	
v.)	Cancellation No. 92062400
)	
Avalon IP Holding Co., LLC,)	
)	
Registrant.)	

MOTION TO COMPEL

Pursuant to Federal Rule of Civil Procedure 37(a)(3)(b) and 37 C.F.R. §2.120, Registrant Avalon IP Holding Co., LLC, hereby requests that the Board enter an order compelling Petitioner AvalonBay Communities, Inc. to respond fully to Registrant’s first set of discovery requests. Registrant has been forced to file the instant motion as a result of Applicant’s failure to comply with the rules of procedure, and produce relevant documents and provide relevant information. Unless and until Petitioner provides the outstanding responses and documents, Registrant will not be in a position to meaningfully take the deposition of Petitioner’s witnesses or to otherwise prepare this matter for trial.

I. Registrant’s Good Faith Effort to Resolve This Matter

Parties must make a good faith effort to resolve discovery disputes before moving to compel. 37 CFR § 2.120(e)(1); *Intex Recreation Corp. v. The Coleman Co.*, 117 USPQ2d 1799, 1800 (TTAB 2016). Here, Registrant has tried repeatedly to resolve this matter without requiring input from the Board. Specifically, Registrant served its First Set of Interrogatories, First Set of Requests for Admission, and First Set of Requests for Production on Petitioner (collectively, the “Discovery Requests”) on March 3, 2016. (Declaration of Katherine Dennis Nye, ¶ 2.) On April 4, 2016, Petitioner served its Responses and Objections to the Discovery

Requests. (*Id.* at ¶ 3.) Thereafter, counsel for Registrant sent a letter to counsel for Petitioner outlining the deficiencies in Petitioner's discovery responses. (*Id.* at ¶ 4.) Counsel for Petitioner responded via letter, and counsel for Registrant then requested that the parties set a time to discuss specific issues via phone. (*Id.* at ¶¶ 5-6.) The parties did so, and while they were able to resolve a few of the outstanding issues, several issues remain unresolvable without intervention of the Board. (*Id.* at ¶ 7-8.) Accordingly, Registrant has made the required good faith effort to resolve these disputes.

II. The Deficiencies in Petitioner's Responses

As detailed herein, several of Petitioner's Responses are insufficient, and the Board should order Petitioner to respond fully and provide responsive documents.

Request No. 7: All documents that disclose, describe, constitute or otherwise relate to (a) whether Petitioner has conducted or caused to be conducted a search, investigation or other inquiry, including any trademark search in the United States Patent and Trademark Office, concerning whether any marks similar to any of the AVALON marks asserted in the Petition for Cancellation had been or were being used by other parties, or whether other parties had applied for or received registrations for such designations....

Petitioner objected to this request as overly broad and unduly burdensome on the grounds that it seeks all documents that relate to any inquiry Petitioner ever made concerning use of the marks at issue in this proceeding by other parties or to any decision by Petitioner to apply for registration of those marks, and did not specify a date range.

However, Petitioner has asserted a broad range of marks covering numerous goods and services against Registrant's AVALON registration. Registrant, in turn, has asserted the affirmative defense of equitable estoppel, which hinges on the fact that Petitioner has long tolerated third parties' use of AVALON marks in connection with a wide variety of services, including the very services for which it claims to have registered trademarks. Accordingly,

inquiry into Petitioner's searches, investigations, and knowledge regarding those marks are highly relevant to the scope of its rights, and the Board should order their production.

Request No. 8: All documents that disclose, describe, constitute or otherwise relate to:

(a) statements or reports concerning the quality or perceived standards of quality of any products or services offered by Petitioner under any of the AVALON marks asserted in the Petition for Cancellation;

(b) any litigation involving any products or services offered or to be offered by Petitioner under any of the AVALON marks asserted in the Petition for Cancellation; and

(c) any complaints concerning any products or services offered at any time by Petitioner.

Petitioner objected to this Request on the grounds that it is purportedly vague and ambiguous, seeks irrelevant information, and is overly burdensome. On the contrary, however, these facts are highly relevant to the instant proceedings. Specifically, the Petition for Cancellation alleges that Petitioner will be damaged any misimpression that Registrant's services are sponsored or approved by Petitioner, or that it is affiliated with Petitioner. If Petitioner's reputation is already so tarnished by its own poor quality services, as evidenced by the volume of complaints that it has received, this belies any claim of damage.

In discussions with Petitioner, Registrant agreed to limit this Request to seek only: (a) documents constituting statements or reports concerning the quality or perceived standards of quality of any products or services offered by Petitioner under any of the AVALON marks asserted in the Petition for Cancellation; (b) documents sufficient to identify any litigation involving any products or services offered or to be offered by Petitioner under any of the AVALON marks asserted in the Petition for Cancellation; and (c) documents sufficient to identify any complaints concerning any products or services offered at any time by Petitioner. (Nye Decl., Ex. C.) Petitioner indicated that it does not keep a central repository of complaints

received at all of its apartment complexes, but, despite Registrant's counsel indicating this topic would be covered during the teleconference, Petitioner's counsel could not provide additional information about how complaints are tracked or records regarding them are kept. (Nye Decl., ¶¶ 7-8, Ex. F.) Petitioner should be required to respond to this request with all responsive documents, as limited in Registrant's letter and herein.

Request No. 17: All documents related to third-party uses of the term AVALON in connection with real estate services, including but not limited to real estate management, leasing, rental, or providing information regarding the same.

Request No. 18: All documents related to third-party uses of the term AVALON in connection with hotel or resort services.

Request No. 19: All documents related to third-party uses of the term AVALON in connection with printed guides, newsletters, journals, or magazines.

Request No. 20: All documents related to third-party uses of the term AVALON in connection with construction or real estate development.

Request No. 21: All documents related to third-party uses of the term AVALON in connection with online information services.

Request No. 22: All documents related to third-party uses of the term AVALON in connection with recreational or exercise facilities.

Request No. 23: All documents related to third-party uses of the term AVALON in connection with online social networking.

Petitioner objected to these Requests as overly broad on the basis that they would "include duplicative documents, documents where the burden of production outweighs any marginal relevance, and documents that are not relevant to any claim or defense of the parties." Petitioner also objected on the grounds that these Requests did not specify a date limitation, and that they requested documents available through public sources. This is further gamesmanship on the part of Petitioner. It knows that uncontrolled third-party use of the AVALON mark in connection with the very same services offered by Petitioner is central to Registrant's defense, and, just like Request No. 7, these Requests seek documents that are highly relevant to the

strength of Petitioner's asserted marks, as well as Registrant's affirmative defenses. Petitioner's counsel has agreed to "discuss with [their] client supplementing these requests, if possible." However, to date, no such supplementation, or even assurances that such supplementation is forthcoming, has been received, despite the fact that these Requests have been pending for nearly four months. Accordingly, Registrant has been forced to seek intervention of the Board to order Petitioner to provide complete responses without further delay.

Request No. 23: All documents referring or relating to Petitioner's intent to offer, plans to offer, or consideration of offering vacation rentals or other short-term leasing arrangements.

Petitioner initially objected to these Requests as irrelevant, overly broad and unduly burdensome, and on the basis of the attorney client privilege and work product doctrine. In its most recent correspondence, Petitioner has indicated it will produce responsive documents, but no production has yet been made. These documents are also critical to Registrant's defense insofar as it is Registrant's belief that this entire matter has been filed by Petitioner for the purpose of being able to expand directly into Registrant's lines of business.

WHEREFORE, for the foregoing reasons, Registrant respectfully requests that the Board enter an Order compelling Petitioner to respond in full to Registrant's discovery requests within 10 days of the entry of such Order, and granting such other relief as the Board deems appropriate.

Dated: June 23, 2016

By: /Katherine Dennis Nye/
One of the Attorneys for Registrant,
Avalon IP Holding Co., LLC

Lee J. Eulgen
Katherine Dennis Nye
Neal Gerber & Eisenberg LLP
2 N LaSalle St Suite 1700
Chicago, Illinois 60602
(312) 269-8000

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

AvalonBay Communities, Inc.,)	
)	
Petitioner,)	
)	
v.)	Cancellation No. 92062400
)	
Avalon IP Holding Co., LLC,)	
)	
Registrant.)	

**DECLARATION OF KATHERINE DENNIS NYE IN SUPPORT OF
MOTION TO COMPEL DISCOVERY**

I, Katherine Dennis Nye, an attorney, state that, if called to testify as a witness in this matter, I could competently testify as follows:

1. I am licensed to practice law in the State of Illinois. I am an associate at the law firm Neal, Gerber & Eisenberg LLP, and serve as counsel to Registrant Avalon IP Holding Co., LLC in the above-captioned matter.

2. On March 3, 2016, Registrant served its First Set of Requests for Production of Documents on Petitioner (the "Requests") via First Class Mail, with courtesy copies via email. True and correct copies of the Requests are attached hereto as Exhibit A.

3. On April 4, 2016, Petitioner served its Responses and Objections to the Requests on Registrant via First Class Mail, with courtesy copies via email. True and correct copies of these Responses and Objections are attached hereto as Exhibit B.

4. On May 2, 2016, counsel for Registrant, Lee Eulgen, sent a letter to counsel for Petitioner, Brent Sokol, outlining the deficiencies in Petitioner's discovery responses. A true and correct copy of this letter is attached hereto as Exhibit C.

5. On May 24, 2016, counsel for Petitioner, Anna Raimer, sent a letter to Mr. Eulgen, responding to the discovery deficiencies raised in the May 2 letter. A true and correct copy of this letter is attached hereto as Exhibit D.

6. On June 9, 2016, I sent an email to Ms. Raimer, requesting a time to discuss the issues raised in the May 2 and May 24 letters by phone, and outlining the specific issues for discussion. A true and correct copy of this email is attached hereto as Exhibit E.

7. On June 14, 2016, Ms. Raimer and I met and conferred via telephone, discussing the issues outlined in my June 9 email.

8. On June 15, 2016, I sent an email to Ms. Raimer, confirming the substance of our teleconference. A true and correct copy of this email is attached hereto as Exhibit F.

I declare under penalty of perjury of the laws of the United States that the foregoing is true and correct.

Dated: June 22, 2016



Katherine Dennis Nye

Exhibit A

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

AvalonBay Communities, Inc.,)	
)	
Petitioner,)	
)	
v.)	Cancellation No. 92062400
)	
Avalon IP Holding Co., LLC,)	
)	
Registrant.)	

REGISTRANT'S FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS

Pursuant to Rule 34 of the Federal Rules of Civil Procedure and Rule 2.120 of the Trademark Rules of Practice, Registrant Avalon IP Holding Co., LLC, hereby requests that Petitioner, AvalonBay Communities, Inc., produce to Petitioner's attorneys the items described hereafter for inspection and copying at the offices of Neal, Gerber & Eisenberg LLP, Two North LaSalle Street, Suite 1700, Chicago, Illinois, 60602, within thirty (30) days after the service hereof. These document requests are intended to be continuing in nature and shall include documents which are discovered subsequent to any initial compliance herewith. Such later discovered documents shall be produced within thirty (30) days after their discovery.

Requests for Production

1. Documents sufficient to fully describe the following:
 - (a) when and where Petitioner first obtained a licensed to do business, was registered to do business or was qualified to do business;
 - (b) all other places where Petitioner is licensed to do business, is registered to do business or is qualified to do business; and
 - (c) all corporations or other entities in which Petitioner has a controlling interest.

2. Documents sufficient to identify:

- (a) all products and services offered by Petitioner under each of the AVALON marks asserted in the Petition for Cancellation;
- (b) the manner in which Petitioner uses or intends to use each of the AVALON mark asserted in the Petition for Cancellation;
- (c) the geographic scope of Petitioner's efforts to market any product or services under each of the AVALON marks asserted in the Petition for Cancellation;
- (d) the geographic scope in which Petitioner sells or otherwise provides any product or service under each of the AVALON marks asserted in the Petition for Cancellation;
- (e) the date on which Petitioner first marketed or offered to provide any product or service under each of the AVALON marks asserted in the Petition for Cancellation;
- (f) the date on which Petitioner first sold or provided any product or service under each of the AVALON marks asserted in the Petition for Cancellation in: (i) intrastate commerce in the United States; (ii) interstate commerce in the United States; and (iii) foreign commerce (if applicable).

3. For each and every product or service offered by Petitioner under each of the AVALON marks asserted in the Petition for Cancellation, documents sufficient to identify:

- (a) the prices the Petitioner charges for each such product or service; and
- (b) Petitioner's sales (in units and dollars) of each such product or service, by state.

4. All documents that identify, constitute, disclose, depict or otherwise relate to:

- (a) the manner by which Petitioner advertises or promotes, or has advertised or promoted, its products or services under each of the AVALON marks asserted in the Petition for Cancellation;
- (b) any publications in which Petitioner has placed print advertisements, articles, or other information concerning Petitioner's products or services offered using each of the AVALON marks asserted in the Petition for Cancellation;
- (c) any Internet website referencing Petitioner's use of each of the AVALON marks asserted in the Petition for Cancellation, including but not limited to printouts of all such website pages.

5. All documents that disclose, describe, or otherwise relate to:

- (a) the characteristics or profiles of the type of person or entity that purchases or otherwise receives the types of products or services sold and/or provided by Petitioner under each of the AVALON marks asserted in the Petition for Cancellation.
 - (b) any incident(s) wherein any persons or entities have indicated that they understood or believed that Registrant's business, products or services, and Petitioner's business, products, or services were in any way affiliated, associated or connected with one another; and
 - (c) with regard to any such incident(s), produce all documents that disclose, describe or are related to:
 - (i) the place of such incident;
 - (ii) the date of such incident;
 - (iii) the identify of all persons or entities involved in or having knowledge of such incident, and the nature of their involvement or knowledge;
 - (iv) the products or services involved in such incident;
 - (v) the nature of the incident;
 - (vi) how the incident came to the attention of Petitioner; and
 - (vii) efforts to ascertain or monitor such incidents.
6. All documents constituting, describing, referring to or otherwise related to:
- (a) misdirected correspondence (including electronic mail) or telephone calls received by Petitioner that appear to be intended for Registrant, and
 - (b) Registrant or Registrant's products or services (other than documents filed with the Trademark Trial and Appeal Board in connection with this matter), including but not limited to message slips and telephone logs.
7. All documents that disclose, describe, constitute or otherwise relate to:
- (a) whether Petitioner has conducted or caused to be conducted a search, investigation or other inquiry, including any trademark search in the United States Patent and Trademark Office, concerning whether any marks similar to any of the AVALON marks asserted in the Petition for Cancellation had been or were being used by other parties, or whether other parties had applied for or received registrations for such designations;

- (b) the decision by Petitioner to apply for registration of each of the AVALON marks asserted in the Petition for Cancellation, including but not limited to all documents related to any discussions concerning such decision; and
 - (c) all documents filed with either the United States Patent and Trademark Office or any state's trademark office concerning any attempted registration by Petitioner of any of the AVALON marks asserted in the Petition for Cancellation.
8. All documents that disclose, describe, constitute or otherwise relate to:
- (a) statements or reports concerning the quality or perceived standards of quality of any products or services offered by Petitioner under any of the AVALON marks asserted in the Petition for Cancellation;
 - (b) any litigation involving any products or services offered or to be offered by Petitioner under any of the AVALON marks asserted in the Petition for Cancellation; and
 - (c) any complaints concerning any products or services offered at any time by Petitioner.
9. Documents sufficient to identify the date on which Petitioner first became aware of Registrant's use of its AVALON mark.
10. Documents sufficient to identify the date on which Petitioner first became aware of Registrant's application to register or registration of its AVALON mark.
11. All documents supporting your allegation in Paragraph 7 of the Petition for Cancellation that "consumers have come to recognize the AVALON marks as uniquely associated with AvalonBay and an indication of origin."
12. All documents supporting your allegation in Paragraph 10 of the Petition for Cancellation that "Registrant's Services are closely related to those offered by AvalonBay under its AVALON marks."

13. All documents supporting your allegation in Paragraph 11 of the Petition for Cancellation that “Registrant’s Services are also likely to be sold to the same or overlapping classes of purchasers and trade channels as goods and services bearing the AVALON marks.”

14. All documents that refer, relate to, or constitute any survey or public opinion poll concerning any of Petitioner’s AVALON marks, Registrant’s AVALON mark, or any other mark containing the term AVALON.

15. All documents that refer, relate to, or constitute an instance where Petitioner has requested that a third party abandon or change a trademark, commenced a trademark opposition or cancellation proceeding (other than the instant proceedings), or engaged in litigation involving or relating to any of Petitioner’s AVALON marks.

16. All documents that refer, relate to, or constitute an instance where a third party has requested that Petitioner abandon or change any of its AVALON marks, commenced a trademark opposition or cancellation proceeding relating to any of Petitioner’s AVALON marks, or engaged in litigation involving or relating to any of Petitioner’s AVALON marks, including Petitioner’s response(s) to any such requests or actions.

17. All documents related to third-party uses of the term AVALON in connection with real estate services, including but not limited to real estate management, leasing, rental, or providing information regarding the same.

18. All documents related to third-party uses of the term AVALON in connection with hotel or resort services.

19. All documents related to third-party uses of the term AVALON in connection with printed guides, newsletters, journals, or magazines.

20. All documents related to third-party uses of the term AVALON in connection with construction or real estate development.

21. All documents related to third-party uses of the term AVALON in connection with online information services.

22. All documents related to third-party uses of the term AVALON in connection with recreational or exercise facilities.

23. All documents related to third-party uses of the term AVALON in connection with online social networking.

24. All documents referring or relating to the domain name <avalonbayvacationrentals.com>.

25. All documents referring or relating to Petitioner's intent to offer, plans to offer, or consideration of offering vacation rentals or other short-term leasing arrangements.

26. All documents consulted in the preparation of, or which are requested to be identified in, Petitioner's responses to Registrant's First Set of Interrogatories to Petitioner.

27. All documents relating to any document retention policy of Petitioner or the destruction of documents by Petitioner at any time.

Definitions and Instructions

As used herein, the words and phrases set out below shall have the following meaning or meanings prescribed for them:

1. The term "Petitioner" shall mean AvalonBay Communities, Inc., as well as its affiliates, subsidiaries, divisions, officers, directors, employees, licenses, agents and assignees.

2. The term "Registrant" shall mean Avalon IP Holding Co., LLC, as well as its affiliates, subsidiaries, divisions, officers, directors, employees, licenses, agents and assignees.

3. The term "Petition for Cancellation" shall mean the Petition for Cancellation filed in the instant proceedings, namely, Cancellation No. 92062400.

4. The term "person" shall mean any individual, firm, partnership, corporation, proprietorship, association, or other organization or entity.

5. The term "documents" shall mean any and all writings of any nature whatsoever or other means by which information is retained in retrievable form, as well as drafts and all non-identical copies thereof, including but not limited to memoranda, stenographic or handwritten notes, contracts, agreements, records, audio and video recordings, correspondence, communications, reports, studies, summaries, surveys, statistical compilations, minutes, charts, manuals, brochures, schedules, price lists, telegrams, teletypes, facsimiles, e-mail, signage, certificates of registration, labels, specimens, writings, sketches, and computer disks, and any other documents as defined in Rule 34 of the Federal Rules of Civil Procedure.

6. The terms "relate to," "related to," or "relating to" shall mean directly or indirectly mentioning or describing, pertaining to, connected with, or reflecting upon a state subject matter.

7. The singular shall include the plural and the plural shall include the singular.

8. A masculine, feminine or neuter pronoun shall not exclude the other genders.

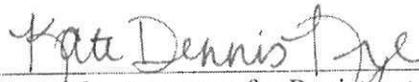
9. The terms "and" as well as "or" shall be construed disjunctively or conjunctively as necessary in order to bring within the scope of the document request all responses which might otherwise be construed to be outside its scope.

10. All objections to document requests in which Opposer fails or refuses to fully respond on the ground of any claim of privilege of any kind whatever shall:

(a) state the nature of the claim of privilege;

- (b) state all facts relied upon in support of the claim of privilege or related thereto;
- (c) identify all documents related to the claim of privilege;
- (d) identify all persons having knowledge of any facts related to the claim of privilege; and
- (e) identify all events, transactions or occurrences related to the claim of privilege.

Respectfully submitted,



One of the Attorneys for Registrant,
Avalon IP Holding Co., LLC

Date: March 3, 2016

Lee J. Eulgen
Katherine Dennis Nye
Neal, Gerber & Eisenberg LLP
2 N. LaSalle Street, Suite 1700
Chicago, Illinois 60602
312.269.8000

CERTIFICATE OF SERVICE

I, Katherine Dennis Nye, an attorney, state that I served a copy of *Registrant's First Set of Requests for Production of Documents* upon:

Brent Sokol
Anna Raimer
JONES DAY
555 S Flower St., 50th Fl.
Los Angeles, CA 90071

via U.S. Mail, with a courtesy copy via email, on this 3rd day of March, 2016.

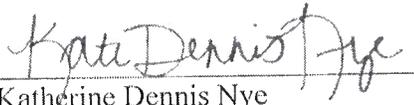

Katherine Dennis Nye

Exhibit B

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

AVALONBAY COMMUNITIES, INC.,)	Cancellation No. 92062400
)	
Petitioner,)	
v.)	
)	
AVALON IP HOLDING CO.,)	
)	
)	
Registrant.)	

**PETITIONER’S RESPONSES AND OBJECTIONS TO REGISTRANT’S FIRST SET OF
REQUESTS FOR PRODUCTION OF DOCUMENTS AND THINGS**

Pursuant to Federal Rules of Civil Procedure 34 and Rule 2.120 of the Trademark Rules of Practice, Petitioner AvalonBay Communities, Inc. (“AvalonBay or Petitioner”) hereby sets forth its responses and objections to the First Requests for Production of Documents propounded by Registrant Avalon IP Holding Co. (“Registrant”) as follows:

REQUEST NO. 1:

Documents sufficient to fully describe the following:

- a) when and where Petitioner first obtained a licensed to do business, was registered to do business or was qualified to do business;
- b) all other places where Petitioner is licensed to do business, is registered to do business or is qualified to do business; and
- c) all corporations or other entities in which Petitioner has a controlling interest.

RESPONSE:

AvalonBay objects to Document Request No. 1 to the extent it imposes a duty on AvalonBay to undertake a search for documents that are equally available to Registrant through

public sources as they are to AvalonBay. As indicated in the Petition and on the registrations for Petitioner's marks, AvalonBay Communities, Inc. is a Maryland corporation. As such, business information and documents regarding AvalonBay are available to Registrant through the State of Maryland's public website (<http://sdat.dat.maryland.gov/ucc-charter/>). AvalonBay is also a publicly traded real estate investment trust, meaning that it regularly files business and financial information with the U.S. Securities and Exchange Commission ("SEC") that is available to the public at (<http://www.sec.gov/edgar/searchedgar/companysearch.html>).

Since AvalonBay is a Maryland corporation, the request for documents that "fully describe" "all other places where Petitioner is licensed . . . , is registered . . . or is qualified to do business," is unintelligible. To the extent this request seeks all places where any AvalonBay entity is licensed, registered, or qualified to do business, AvalonBay's website (<https://www.avaloncommunities.com/about-us>) shows that there are AvalonBay communities in California, Connecticut, D.C., Maryland, Massachusetts, New Jersey, New York, Rhode Island, Texas, Virginia, and Washington. As such, business information and documents about those entities are available to Registrant through public websites: (<http://kepler.sos.ca.gov/>), (<http://www.concord.sots.ct.gov/>), (<https://corp.dera.dc.gov/>), (<http://sdat.dat.maryland.gov/ucc-charter/>), (<http://corp.sec.state.ma.us/corpweb/corpsearch/CorpSearch.aspx>), (<https://www.njportal.com/dor/businessrecords/>), (http://www.dos.ny.gov/corps/bus_entity_search.html), (<http://ucc.state.ri.us/CorpSearch/CorpSearchInput.asp>), (<http://www.sos.state.tx.us/Corp/sosda/index.shtml>), (<https://sccfile.scc.virginia.gov/Find/Business>), and (https://www.sos.wa.gov/corps/corps_search.aspx).

AvalonBay also objects to this request as overly broad and unduly burdensome, as it seeks documents sufficient to "fully describe" "all corporations or other entities in which Petitioner has a controlling interest." This request is also vague and ambiguous as to the phrase

“controlling interest.” As noted in AvalonBay’s 10-K Annual Report (available on the SEC’s website), as of January 31, 2016, AvalonBay had direct or indirect ownership interests in:

- 257 operating apartment communities . . . in 10 states and the District of Columbia, of which 238 communities . . . were consolidated for financial reporting purposes, two communities . . . were held by joint ventures in which we hold an ownership interest, and 17 communities . . . were owned by the Funds . . . ;
- 26 wholly-owned communities under construction . . . ; and
- rights to develop an additional 32 communities

Also as noted in AvalonBay’s 10-K, AvalonBay had investments of varying amounts in numerous real estate entities, including AvalonBay Value Added Fund II, LP, a 31.3% combined general partner and limited partner equity interest; Archstone Multifamily Partners AC LP, a 28.6% combined general partner and limited partner equity interest; Multifamily Partners AC JV, a 20.0% equity interest; MVP I, LLC, a joint venture in which AvalonBay holds a 25.0% equity interest; Brandywine Apartments of Maryland, LLC, a joint venture in which AvalonBay holds a 28.7% interest; Residual JV, through which the company had a 20.0% interest in a joint venture that was disposed of in 2015; and a joint venture agreement in Sudbury, Massachusetts, in which the company has a 60.0% ownership interest. To the extent this request seeks documents to “fully describe” these seven real estate entities and over 250 apartment communities in which AvalonBay has an interest, this request seeks an incredible volume of documents that are neither relevant to the parties’ claims or defense nor “proportional to the needs of the case.” Fed. R. Civ. P. 26. Further, this request seeks the production of documents in a format not maintained by AvalonBay in the ordinary course of business and would require the creation of documents.

REQUEST NO. 2:

Documents sufficient to fully describe the following:

- a) all products and services offered by Petitioner under each of the

- AVALON marks asserted in the Petition for Cancellation;
- b) the manner in which Petitioner uses or intends to use each of the AVALON mark [sic] asserted in the Petition for Cancellation;
 - c) the geographic scope of Petitioner's efforts to market any product or services under each of the AVALON marks asserted in the Petition for Cancellation;
 - d) the geographic scope in which Petitioner sells or otherwise provides any product or service under each of the AVALON marks asserted in the Petition for Cancellation;
 - e) the date on which Petitioner first marketed or offered to provide any product or service under each of the AVALON marks asserted in the Petition for Cancellation;
 - f) the date on which Petitioner first sold or provided any product or service under each of the AVALON marks asserted in the Petition for Cancellation in: (i) intrastate commerce in the United States; (ii) interstate commerce in the United States; and (iii) foreign commerce (if applicable).

RESPONSE:

AvalonBay objects to Document Request No. 2 as overly broad and unduly burdensome, as it seeks documents sufficient to "fully describe" "all products and services" offered under the AVALON marks, "the manner in which Petitioner uses or intends to use" each of the marks, and the "geographic scope" of all Petitioner's sales and marketing efforts for any product or service under the marks. This request fails to specify a date range or other reasonable limitation on the scope of documents sought, and AvalonBay is unable to infer such a limitation based on the

request as posed. Furthermore, AvalonBay objects to this request to the extent it imposes a duty on AvalonBay to undertake a search for documents that are equally available to Registrant through public sources (<http://www.sec.gov/edgar/searchedgar/companysearch.html>), as AvalonBay's most recent 10-K Annual Report (available on the SEC's website) states:

We operate our apartment communities under three core brands *Avalon*, *AVA* and *Eaves by Avalon*. We believe that this branding differentiation allows us to target our product offerings to multiple customer groups and submarkets within our existing geographic footprint. The "*Avalon*" brand is our core offering, focusing on upscale apartment living and high end amenities and services in urban and suburban markets. Our "*AVA*" brand is designed for people who want to live in or near urban neighborhoods and in close proximity to public transportation, services, shopping and night-life. *AVA* apartments are generally smaller, many engineered for roommate living and feature modern design and a technology focus. Our *Eaves by Avalon* brand is designed for renters who seek good quality apartment living, often in a suburban setting, with practical amenities and services at a more modest price point. . . .

We develop, redevelop, acquire, own and operate multifamily apartment communities primarily in New England, the New York/New Jersey metro area, the Mid-Atlantic, the Pacific Northwest, and Northern and Southern California. . . . Our communities are predominately upscale and generally command among the highest rents in their markets. However, we also pursue the ownership and operation of apartment communities that target a variety of customer segments and price points, consistent with our goal of offering a broad range of products and services. . . .

Moreover, AvalonBay has provided responses and documents that establish AvalonBay's valid and continuous use of the AVALON marks since the date of first use and its priority of use, and AvalonBay therefore objects to providing these additional documents and things as irrelevant, unreasonably cumulative and because the burden of production outweighs the probative value of the information sought. AvalonBay also objects to this request to the extent it seeks the production of documents in a format not maintained by AvalonBay in the ordinary course of business and also to the extent it requires the creation of documents.

Subject to, and without waiver of, the foregoing objections, AvalonBay responds that it will produce non-privileged documents in its possession, custody or control responsive to subparts (a) and (f)(ii) of the request on a rolling basis, with production expected to be completed by May 13, 2016.

REQUEST NO. 3:

For each and every product or service offered by Petitioner under each of the AVALON marks asserted in the Petition for Cancellation, documents sufficient to identify:

- a) the prices the Petitioner charges for each such product or service; and
- b) Petitioner's sales (in units and dollars) of each such product or service, by state.

RESPONSE:

AvalonBay objects to Document Request No. 3 as overly broad and unduly burdensome to the extent it seeks documents “[f]or each and every product or service offered by Petitioner under each of the AVALON marks” without any date range or other reasonable limitation on the scope of documents sought. Again, AvalonBay currently operates over 250 communities. Hence, producing pricing information specific to each community for every year of its existence would be extremely burdensome and not “proportional to the needs of the case.” As such, AvalonBay interprets this request as seeking average pricing and sales information for 2015-2016 by state and/or region, where applicable. AvalonBay also objects to this request to the extent it seeks the production of documents in a format not maintained by AvalonBay in the ordinary course of business or to the extent it requires the creation of documents.

Subject to, and without waiver of, the foregoing objections, AvalonBay responds that it will produce non-privileged documents in its possession, custody or control responsive to the request on a rolling basis, with production expected to be completed by May 13, 2016.

REQUEST NO. 4:

All documents that identify, constitute, disclose, depict or otherwise relate to:

- a) the manner by which Petitioner advertises or promotes, or has advertised or promoted, its products or services under each of the AVALON marks asserted in the Petition for Cancellation;
- b) any publications in which Petitioner has placed print advertisements, articles, or other information concerning Petitioner's products or services offered using each of the AVALON marks asserted in the Petition for Cancellation;
- c) any Internet website referencing Petitioner's use of each of the AVALON marks asserted in the Petition for Cancellation, including but not limited to printouts of all such website pages.

RESPONSE:

AvalonBay objects to Document Request No. 4 as overly broad and unduly burdensome in that it seeks "all documents" related to the manner by which Petitioner currently or has ever advertised under each of its marks and "any publications" in which Petitioner has advertised, without specifying a date range or other reasonable limitation on the scope of documents sought. Producing "all documents" that are in any way related to Petitioner's advertising at any point in time, including all publications in which Petitioner has placed "information concerning [its] products or services offered using each of the AVALON marks," would be extremely

burdensome and not “proportional to the needs of the case.” Further, AvalonBay has provided responses and documents that establish AvalonBay’s valid and continuous use of the AVALON marks since the date of first use, and AvalonBay therefore objects to providing additional documents and things as unreasonably cumulative and because the burden of production outweighs the probative value of the information sought. As such, AvalonBay interprets this request as seeking documents sufficient to exemplify Petitioner’s advertising under each of its marks by state and/or region, where applicable.

AvalonBay also objects to this request to the extent it seeks the production of documents in a format not maintained by AvalonBay in the ordinary course of business or to the extent it requires the creation of documents. Moreover, AvalonBay objects to this request to the extent it imposes a duty on AvalonBay to undertake a search for documents that are as equally available to Registrant through public sources as they are AvalonBay, as AvalonBay’s current website is available to Registrant at (<https://www.avaloncommunities.com/>), and previous versions of that website are available through internet archiving (<https://archive.org/web/>).

Subject to, and without waiver of, the foregoing objections, AvalonBay responds that it will produce exemplary, non-privileged documents in its possession, custody or control responsive to the request on a rolling basis, with production expected to be completed by May 13, 2016.

REQUEST NO. 5:

All documents that disclose, describe, or otherwise relate to:

- a) the characteristics or profiles of the type of person or entity that purchases or otherwise receives the types of products or services sold and/or provided by Petitioner under each of the AVALON marks asserted in the

Petition for Cancellation.

- b) any incident(s) wherein any persons or entities have indicated that they understood or believed that Registrant's business, products or services, and Petitioner's business, products, or services were in any way affiliated, associated or connected with one another; and
- c) with regard to any such incident(s), produce all documents that disclose, describe or are related to:
 - (i) the place of such incident;
 - (ii) the date of such incident;
 - (iii) the identify [sic] of all persons or entities involved in or having knowledge of such incident, and the nature of their involvement or knowledge;
 - (iv) the products or services involved in such incident;
 - (v) the nature of the incident;
 - (vi) how the incident came to the attention of Petitioner; and
 - (vii) efforts to ascertain or monitor such incidents.

RESPONSE:

AvalonBay objects to Document Request No. 5 as overly broad and unduly burdensome to the extent it seeks "all documents" that relate in any way to Petitioner's customer profiles or incidents of confusion as to the affiliation between Petitioner's and Registrant's businesses, products, or services. AvalonBay also objects to this request as vague and ambiguous with respect to the terms "characteristics" and "profiles." In terms of customer "profiles," to the extent that term is understood, AvalonBay objects to this request to the extent it imposes a duty

on AvalonBay to undertake a search for documents that are equally available to Registrant through public sources, as AvalonBay's most recent 10-K Annual Report (available on the SEC's website) states:

[AvalonBay] deliver[s] a range of multifamily offerings tailored to serve the needs of the most attractive customer segments in the best-performing U.S. submarkets. A substantial majority of our current communities are upscale, which generally command among the highest rents in their markets. However, we also pursue the ownership and operation of apartment communities that target a variety of customer segments and price points, consistent with our goal of offering a broad range of products and services.

Furthermore, AvalonBay objects to this request to the extent it seeks the production of documents in a format not maintained by AvalonBay in the ordinary course of business or to the extent it requires the creation of documents. AvalonBay also objects to this request to the extent that it seeks information protected by the attorney-client privilege, the attorney work product doctrine, and/or any other applicable privilege, immunity, or other limitation on discovery.

Subject to, and without waiver of, the foregoing objections, AvalonBay responds that it is not aware of any documents responsive to subparts (b) and (c) of this request, but to the extent AvalonBay becomes aware of such documents, AvalonBay will produce any such non-privileged documents in its possession, custody or control responsive to these subparts on a rolling basis, with production expected to be completed by May 13, 2016. AvalonBay will also produce exemplary, non-privileged documents in its possession, custody or control responsive to subpart (a) of the request on a rolling basis, with production expected to be completed by May 13, 2016.

REQUEST NO. 6:

All documents constituting, describing, referring to or otherwise related to:

- a) misdirected correspondence (including electronic mail) or telephone calls received by Petitioner that appear to be intended for Registrant, and

- b) Registrant or Registrant's products or services (other than documents filed with the Trademark Trial and Appeal Board in connection with this matter), including but not limited to message slips and telephone logs

RESPONSE:

AvalonBay objects to Document Request No. 6 as duplicative to the extent Registrant has requested that information in its other requests, e.g. Document Request No. 5 (requesting documents related to incidents of confusion as to the affiliation between Petitioner's and Registrant's businesses). AvalonBay also objects to this request to the extent that it seeks information protected by the attorney-client privilege and the attorney work product doctrine.

Subject to, and without waiver of, the foregoing objections, AvalonBay responds that it is not currently aware of misdirected correspondence or telephone calls of the type described. To the extent AvalonBay becomes aware of such correspondence or calls, AvalonBay will produce any non-privileged documents in its possession, custody or control responsive to the request on a rolling basis, with production expected to be completed by May 13, 2016.

REQUEST NO. 7:

All documents that disclose, describe, constitute or otherwise relate to:

- a) whether Petitioner has conducted or caused to be conducted a search, investigation or other inquiry, including any trademark search in the United States Patent and Trademark Office, concerning whether any marks similar to any of the AVALON marks asserted in the Petition for Cancellation had been or were being used by other parties, or whether other parties had applied for or received registrations for such designations;

- b) the decision by Petitioner to apply for registration of each of the AVALON marks asserted in the Petition for Cancellation, including but not limited to all documents related to any discussions concerning such decision; and
- c) all documents filed with either the United States Patent and Trademark Office or any state's trademark office concerning any attempted registration by Petitioner of any of the AVALON marks asserted in the Petition for Cancellation.

RESPONSE:

AvalonBay objects to Document Request No. 7 as overly broad and unduly burdensome to the extent it seeks "all documents" that relate in any way to any inquiry Petitioner ever made concerning use of the marks at issue in this proceeding by other parties or to any decision by Petitioner to apply for registration of the marks at issue. This request fails to specify a date range or other reasonable limitation on the scope of documents sought, and AvalonBay is unable to infer such a limitation based on the request as posed.

AvalonBay also objects to this request to the extent that it seeks information protected by the attorney-client privilege and the attorney work product doctrine. Further, AvalonBay also objects to this request to the extent it imposes a duty on AvalonBay to undertake a search for documents that are as equally available to Registrant through public sources as they are to AvalonBay, as Registrant requests "all documents filed with either the United States Patent and Trademark Office or any state's trademark office concerning any attempted registration by Petitioner of any of the AVALON marks" at issue. With respect to the request for documents relating to the decision to apply for registration of the AVALON marks, given AvalonBay has

provided responses and documents that establish AvalonBay's valid and continuous use of the AVALON marks since the date of first use and its priority of use, AvalonBay further objects to providing these additional documents and things as irrelevant, unreasonably cumulative and because the burden of production outweighs the probative value of the information sought.

Subject to, and without waiver of, the foregoing objections, AvalonBay responds that it will produce non-privileged documents in its possession, custody or control responsive to subpart (c) of the request related to AvalonBay's USPTO filings on a rolling basis, with production expected to be completed by May 13, 2016.

REQUEST NO. 8:

All documents that disclose, describe, constitute or otherwise relate to:

- a) statements or reports concerning the quality or perceived standards of quality of any products or services offered by Petitioner under any of the AVALON marks asserted in the Petition for Cancellation;
- b) any litigation involving any products or services offered or to be offered by Petitioner under any of the AVALON marks asserted in the Petition for Cancellation; and
- c) any complaints concerning any products or services offered at any time by Petitioner.

RESPONSE:

AvalonBay objects to Document Request No. 8 as vague and ambiguous with respect to the phrase "perceived standards of quality of any products or services offered by Petitioner," such that AvalonBay is not able to determine which documents fall within the request.

AvalonBay also objects to this request to the extent it seeks documents and things that are not relevant to the above-captioned proceeding or “proportional to the needs of the case,” and for which the burden of production outweighs any potential benefit. First, AvalonBay objects to this request as overly broad and unduly burdensome in seeking “all documents” relating to “any litigation” involving “any products or services offered or to be offered by Petitioner under any of the AVALON marks.” This request necessarily sweeps in hundreds of thousands of documents from hundreds of lawsuits that may “involv[e]” an Avalon property—such as landlord-tenant, personal injury, or employment-related litigation—but have no connection to Petitioner’s use of its trademarks or any fact that could be relevant to this cancellation proceeding. Second, AvalonBay objects to this request as overly broad and unduly burdensome in seeking “all documents” relating to “any complaints concerning any products or services offered at any time by Petitioner.” The only goods and services relevant to this proceeding are those offered under the AVALON marks, so complaints that concern other products and services are irrelevant. Moreover, even if Registrant’s request is limited to “any complaints concerning any products or services” that *are* offered under the AVALON marks, it is unclear how such complaints bear any relevance to this proceeding. This request fails to specify any reasonable limitation on the scope of information sought by the request, and producing all complaints for each of Petitioner’s over 250 communities for the entirety of their existence would be prohibitively burdensome.

AvalonBay also objects to this request to the extent it seeks the production of documents in a format not maintained by AvalonBay in the ordinary course of business and thus requires the creation of documents. Furthermore, AvalonBay objects to this request to the extent it imposes a duty on AvalonBay to undertake a search for documents that are as equally available to Registrant through public sources as they are to AvalonBay.

REQUEST NO. 9:

Documents sufficient to identify the date on which Petitioner first became aware of Registrant's use of its AVALON mark.

RESPONSE:

AvalonBay objects to Document Request No. 9 to the extent it seeks information that is not relevant to the above-captioned proceeding. The date Petitioner first became aware of Registrant's use of the mark AVALON is not relevant to the issues in this opposition proceeding. AvalonBay also objects to this request to the extent it seeks information protected by the attorney-client privilege and the attorney work product doctrine.

Subject to, and without waiver of, the foregoing objections, AvalonBay responds that it will produce non-privileged documents in its possession, custody or control responsive to the request on a rolling basis, with production expected to be completed by May 13, 2016.

REQUEST NO. 10:

Documents sufficient to identify the date on which Petitioner first became aware of Registrant's application to registration of its AVALON mark.

RESPONSE:

AvalonBay objects to Document Request No. 10 to the extent that it seeks information protected by the attorney-client privilege and the attorney work product doctrine.

Subject to, and without waiver of, the foregoing objections, AvalonBay responds that it will produce non-privileged documents in its possession, custody or control responsive to the request on a rolling basis, with production expected to be completed by May 13, 2016.

REQUEST NO. 11:

All documents supporting your allegation in Paragraph 7 of the Petition for Cancellation that “consumers have come to recognize the AVALON marks as uniquely associated with AvalonBay and an indication of origin.”

RESPONSE:

AvalonBay objects to Document Request No. 11 as overly broad and unduly burdensome to the extent it seeks “all documents” supporting Petitioner’s allegation. AvalonBay also objects to this request to the extent that it seeks information protected by the attorney-client privilege and the attorney work product doctrine.

Subject to, and without waiver of, the foregoing objections, AvalonBay responds that it will produce non-privileged documents in its possession, custody or control responsive to the request on a rolling basis, with production expected to be completed by May 13, 2016.

REQUEST NO. 12:

All documents supporting your allegation in Paragraph 10 of the Petition for Cancellation that “Registrant’s Services are closely related to those offered by AvalonBay under its AVALON marks.”

RESPONSE:

AvalonBay objects to Document Request No. 12 as overly broad and unduly burdensome to the extent it seeks “all documents” supporting Petitioner’s allegation, and as prematurely seeking information concerning matters as to which discovery is ongoing. AvalonBay also objects to this request to the extent it seeks the production of documents in a format not maintained by AvalonBay in the ordinary course of business, and so would require the creation

of documents, and to the extent that it seeks information protected by the attorney-client privilege and the attorney work product doctrine.

Subject to, and without waiver of, the foregoing objections, AvalonBay responds that it will produce any non-privileged documents in its possession, custody or control responsive to the request on a rolling basis, with production expected to be completed by May 13, 2016.

REQUEST NO. 13:

All documents supporting your allegation in Paragraph 11 of the Petition for Cancellation that “Registrant’s Services are also likely to be sold to the same or overlapping classes of purchasers and trade channels as goods and services bearing the AVALON marks.”

RESPONSE:

AvalonBay objects to Document Request No. 13 as overly broad and unduly burdensome to the extent it seeks “all documents” supporting Petitioner’s allegation, and as prematurely seeking information concerning matters as to which discovery is ongoing. AvalonBay also objects to this request to the extent it seeks the production of documents in a format not maintained by AvalonBay in the ordinary course of business, and so would require the creation of documents, and to the extent that it seeks information protected by the attorney-client privilege and the attorney work product doctrine.

Subject to, and without waiver of, the foregoing objections, AvalonBay responds that it will produce any non-privileged documents in its possession, custody or control responsive to the request on a rolling basis, with production expected to be completed by May 13, 2016.

REQUEST NO. 14:

All documents that refer, relate to, or constitute any survey or public opinion poll concerning any of Petitioner's AVALON marks, Registrant's AVALON mark, or any other mark concerning the term AVALON.

RESPONSE:

AvalonBay objects to Document Request No. 14 as overly broad and unduly burdensome to the extent it seeks "all documents" relating to any survey or public opinion poll concerning any mark with "the term AVALON." This request fails to specify any date range or other reasonable limitation on the scope of documents sought. AvalonBay also objects to the extent that it seeks information protected by the attorney-client privilege and the attorney work product doctrine.

Subject to, and without waiver of, the foregoing objections, AvalonBay responds that it will produce any non-privileged documents in its possession, custody or control responsive to the request on a rolling basis, with production expected to be completed by May 13, 2016.

REQUEST NO. 15:

All documents that refer, relate to, or constitute an instance where Petitioner has requested that a third party abandon or change a trademark, commenced a trademark opposition or cancellation proceeding (other than the instant proceedings), or engaged in litigation involving or relating to any of Petitioner's AVALON marks.

RESPONSE:

AvalonBay objects to Document Request No. 15 to the extent it seeks documents and things that are not relevant to the above-captioned proceeding or as to which the burden of production outweighs the probative value, as other communications or proceedings initiated by

AvalonBay are not relevant to the likelihood of confusion between AvalonBay's AVALON marks and Registrant's use of the AVALON marks. AvalonBay also objects to this request as overly broad and unduly burdensome to the extent it seeks "all documents" relating to any such third party communications or proceedings "involving or relating to any of Petitioner's AVALON marks." This request fails to specify any date range or other reasonable limitation on the scope of documents sought, and AvalonBay is unable to infer such a limitation based on the request as posed. AvalonBay also objects to this request to the extent it seeks information protected by the attorney-client privilege and the attorney work product doctrine.

Subject to, and without waiver of, the foregoing objections, AvalonBay responds that it will produce non-privileged documents in its possession, custody or control responsive to the request and related to the incidents described in Petitioner's response to Registrant's Interrogatory No. 15 on a rolling basis, with production expected to be completed by May 13, 2016.

REQUEST NO. 16:

All documents that refer, relate to, or constitute an instance where a third party has requested that Petitioner abandon or change any of its AVALON marks, commenced a trademark opposition or cancellation proceeding relating to any of Petitioner's AVALON marks, or engaged in litigation involving or relating to any of Petitioner's AVALON marks, including Petitioner's response(s) to any such requests or actions.

RESPONSE:

AvalonBay objects to Document Request No. 16 to the extent it seeks documents and things that are not relevant to the above-captioned proceeding, as other communications or proceedings initiated by AvalonBay are not relevant to the likelihood of confusion between

AvalonBay's AVALON marks and Registrant's use of the AVALON marks. AvalonBay also objects to this request as overly broad and unduly burdensome to the extent it seeks "all documents" relating to any such third party communications or proceedings "involving or relating to any of Petitioner's AVALON marks." This request fails to specify any date range or other reasonable limitation on the scope of documents sought, and AvalonBay is unable to infer such a limitation based on the request as posed. AvalonBay also objects to this request to the extent that it seeks information protected by the attorney-client privilege and the attorney work product doctrine.

Subject to, and without waiver of, the foregoing objections, AvalonBay responds that it will produce non-privileged documents in its possession, custody or control responsive to the request and related to the incidents described in Petitioner's response to Registrant's Interrogatory No. 14 on a rolling basis, with production expected to be completed by May 13, 2016.

REQUEST NO. 17:

All documents related to third-party uses of the term AVALON in connection with real estate services, including but not limited to real estate management, leasing, rental, or providing information regarding the same.

RESPONSE:

AvalonBay objects to Document Request No. 17 as overly broad to the extent it seeks "all documents" bearing any relation to third-party uses of the term AVALON with real estate services, which would include duplicative documents, documents where the burden of production outweighs any marginal relevance, and documents that are not relevant to any claim or defense of the parties. This request fails to specify any date range or other reasonable

limitation on the scope of documents sought, and AvalonBay is unable to infer such a limitation based on the request as posed. Furthermore, AvalonBay objects to this request to the extent it imposes a duty on AvalonBay to undertake a search for documents that are as equally available to Registrant through public sources as they are to AvalonBay.

REQUEST NO. 18:

All documents related to third-party uses of the term AVALON in connection with hotel or resort services.

RESPONSE:

AvalonBay objects to Document Request No. 18 as overly broad to the extent it seeks “all documents” bearing any relation to third-party uses of the term AVALON with hotel or resort services, which would include duplicative documents, documents where the burden of production outweighs any marginal relevance, and documents that are not relevant to any claim or defense of the parties. This request fails to specify any date range or other reasonable limitation on the scope of documents sought, and AvalonBay is unable to infer such a limitation based on the request as posed. Furthermore, AvalonBay objects to this request to the extent it imposes a duty on AvalonBay to undertake a search for documents that are as equally available to Registrant through public sources as they are to AvalonBay.

REQUEST NO. 19:

All documents related to third-party uses of the term AVALON in connection with printed guides, newsletters, journals, or magazines.

RESPONSE:

AvalonBay objects to Document Request No. 19 as overly broad to the extent it seeks “all documents” bearing any relation to third-party uses of the term AVALON with printed

guides, newsletters, journals, or magazines, which would include duplicative documents, documents where the burden of production outweighs any marginal relevance, and documents that are not relevant to any claim or defense of the parties. This request fails to specify any date range or other reasonable limitation on the scope of documents sought, and AvalonBay is unable to infer such a limitation based on the request as posed. Furthermore, AvalonBay objects to this request to the extent it imposes a duty on AvalonBay to undertake a search for documents that are as equally available to Registrant through public sources as they are to AvalonBay.

REQUEST NO. 20:

All documents related to third-party uses of the term AVALON in connection with construction or real estate development.

RESPONSE:

AvalonBay objects to Document Request No. 20 as overly broad to the extent it seeks “all documents” bearing any relation to third-party uses of the term AVALON with construction or real estate development, which would include duplicative documents, documents where the burden of production outweighs any marginal relevance, and documents that are not relevant to any claim or defense of the parties. This request fails to specify any date range or other reasonable limitation on the scope of documents sought, and AvalonBay is unable to infer such a limitation based on the request as posed. Furthermore, AvalonBay objects to this request to the extent it imposes a duty on AvalonBay to undertake a search for documents that are as equally available to Registrant through public sources as they are to AvalonBay.

REQUEST NO. 21:

All documents related to third-party uses of the term AVALON in connection with online information services.

RESPONSE:

AvalonBay objects to Document Request No. 21 as overly broad to the extent it seeks “all documents” bearing any relation to third-party uses of the term AVALON with online information services, which would include duplicative documents, documents where the burden of production outweighs any marginal relevance, and documents that are not relevant to any claim or defense of the parties. This request fails to specify any date range or other reasonable limitation on the scope of documents sought, and AvalonBay is unable to infer such a limitation based on the request as posed. Furthermore, AvalonBay objects to this request to the extent it imposes a duty on AvalonBay to undertake a search for documents that are as equally available to Registrant through public sources as they are to AvalonBay.

REQUEST NO. 22:

All documents related to third-party uses of the term AVALON in connection with recreational or exercise facilities.

RESPONSE:

AvalonBay objects to Document Request No. 22 as overly broad to the extent it seeks “all documents” bearing any relation to third-party uses of the term AVALON with recreational or exercise facilities, which would include duplicative documents, documents where the burden of production outweighs any marginal relevance, and documents that are not relevant to any claim or defense of the parties. This request fails to specify any date range or other reasonable limitation on the scope of documents sought, and AvalonBay is unable to infer such a limitation based on the request as posed. Furthermore, AvalonBay objects to this request to the extent it imposes a duty on AvalonBay to undertake a search for documents that are as equally available to Registrant through public sources as they are to AvalonBay.

REQUEST NO. 23:

All documents related to third-party uses of the term AVALON in connection with online social networking.

RESPONSE:

AvalonBay objects to Document Request No. 23 as overly broad to the extent it seeks “all documents” bearing any relation to third-party uses of the term AVALON with online social networking, which would include duplicative documents, documents where the burden of production outweighs any marginal relevance, and documents that are not relevant to any claim or defense of the parties. This request fails to specify any date range or other reasonable limitation on the scope of documents sought, and AvalonBay is unable to infer such a limitation based on the request as posed. Furthermore, AvalonBay objects to this request to the extent it imposes a duty on AvalonBay to undertake a search for documents that are as equally available to Registrant through public sources as they are to AvalonBay.

REQUEST NO. 24:

All documents referring or relating to the domain name <avalonbayvacationrentals.com>.

RESPONSE:

AvalonBay objects to Document Request No. 24 as overly broad and unduly burdensome to the extent it seeks “all documents” with any reference or relation to the stated domain name. This request fails to specify a date range or other reasonable limitation on the scope of documents sought, and AvalonBay is unable to infer such a limitation based on the request as posed. Furthermore, AvalonBay objects to this request to the extent it imposes a duty on AvalonBay to undertake a search for documents that are as equally available to Registrant through public sources as they are to AvalonBay.

Subject to, and without waiver of, the foregoing objections, AvalonBay responds that it is not currently aware of documents referring or relating to the domain name described given that AvalonBay did not register the domain name. To the extent AvalonBay becomes aware of such documents, AvalonBay will produce any non-privileged documents in its possession, custody or control responsive to the request on a rolling basis, with production expected to be completed by May 13, 2016.

REQUEST NO. 25:

All documents referring or relating to Petitioner's intent to offer, plans to offer, or consideration of offering vacation rentals or other short-term leasing arrangements.

RESPONSE:

AvalonBay objects to Document Request No. 25 to the extent it seeks documents and things that are not relevant to the above-captioned proceeding, as AvalonBay's intent to offer, plans to offer, or consideration of offering vacation rentals or other short-term leasing arrangements are not relevant to the likelihood of confusion between AvalonBay's AVALON marks and Registrant's use of the AVALON marks. AvalonBay also objects to the request as overly broad and unduly burdensome to the extent it seeks "all documents" relating to Petitioner's intentions with regard to offering vacation rentals or other short-term leasing arrangements. AvalonBay also objects to this request to the extent that it seeks information protected by the attorney-client privilege and the attorney work product doctrine.

REQUEST NO. 26:

All documents consulted in the preparation of, or which are requested to be identified in, Petitioner's responses to Registrant's First Set of Interrogatories to Petitioner.

RESPONSE:

AvalonBay objects to Document Request No. 26 as overly broad and unduly burdensome to the extent it seeks “all documents” consulted in preparation of Petitioner’s responses to Registrant’s interrogatories, whether or not such documents had any relevance to the response, and “all documents” the Registrant “requested” that Petitioner identify in those response, regardless of Petitioner’s legitimate objections to identifying such documents. Further, AvalonBay objects to this request to the extent that it seeks information protected by the attorney-client privilege and the attorney work product doctrine.

Subject to, and without waiver of, the foregoing objections, AvalonBay responds that it will produce non-privileged documents in its possession, custody or control responsive to the request on a rolling basis, with production expected to be completed by May 13, 2016.

REQUEST NO. 27:

All documents relating to any document retention policy of Petitioner or the destruction of documents by Petitioner at any time.

RESPONSE:

AvalonBay objects to Document Request No. 27 as overly broad and unduly burdensome to the extent it seeks “all documents” relating to any document retention policy or Petitioner’s destruction of documents at “any time.” This request fails to specify a date range or other reasonable limitation on the scope of documents sought. As such, AvalonBay interprets this request as seeking its document retention policies that cover documents relating to the marks at issue in this proceeding.

AvalonBay also objects to this request to the extent it seeks the production of documents in a format not maintained by AvalonBay in the ordinary course of business, and so would

require the creation of documents, and to the extent that it seeks information protected by the attorney-client privilege and the attorney work product doctrine.

Subject to, and without waiver of, the foregoing objections, AvalonBay responds that it will produce non-privileged documents in its possession, custody or control responsive to the request on a rolling basis, with production expected to be completed by May 13, 2016.

Dated: April 4, 2016

Respectfully submitted,

By: Meredith Williams

Meredith L. Williams
JONES DAY
3161 Michelson Drive, Suite 800
Irvine, CA 92612
Telephone: (949) 553-7529
Facsimile: (949) 553-7539
Email: mwilliams@jonesday.com

*Attorneys for Petitioner
AvalonBay Communities, Inc.*

CERTIFICATE OF SERVICE

It is hereby certified that a copy of the foregoing document entitled Petitioner's Responses and Objections to Registrant's First Set of Requests for Production of Documents and Things has been served upon Registrant by mailing said copy this 4th day of April, 2016, via First Class Mail, postage prepaid to:

LEE J. EULGEN

NEAL, GERBER & EISENBERG LLP

2 N. LASALLE ST., SUITE 1700

CHICAGO, IL 60602

Dated: April 4, 2016

Respectfully submitted,

By: Meredith Williams

Meredith L. Williams
JONES DAY

Telephone: (949) 553-7529

Facsimile: (949) 553-7539

Email: mwilliams@jonesday.com

Attorneys for AvalonBay Communities, Inc.

Exhibit C

May 2, 2016

VIA EMAIL AND U.S. MAIL

Brett Sokol
Jones Day
555 S Flower St
Los Angeles, CA 90071

**Re: *AvalonBay Communities, Inc. v. Avalon IP Holding Co.*;
Cancellation No. 92062400**

Dear Brett:

We write on behalf of Avalon IP Holding Co., LLC (“Avalon IP”) to address the deficiencies in Petitioner’s Responses to Registrant’s First Set of Requests for Admissions, Requests for Documents, and Interrogatories.

Responses to Requests for Admission

Request No. 1: Admit that Petitioner is unaware of any consumer confusion between Registrant’s AVALON mark and Petitioner’s AVALON marks.

Request No. 2: Admit that Petitioner is unaware of any consumer confusion between Registrant and Petitioner.

Your client indicated that “after making reasonable inquiry” it was “without sufficient knowledge or information sufficient to admit or deny the allegation in this request.” This response is nonsensical in the context of your client’s own awareness. Please provide amended responses.

Responses to Requests for Production

Request No. 2: Documents sufficient to identify:

(a) all products and services offered by Petitioner under each of the AVALON marks asserted in the Petition for Cancellation;

(b) the manner in which Petitioner uses or intends to use each of the AVALON mark asserted in the Petition for Cancellation;

(c) the geographic scope of Petitioner’s efforts to market any product or services under each of the AVALON marks asserted in the Petition for Cancellation;

Brett Sokol
May 2, 2016
Page 2

(d) the geographic scope in which Petitioner sells or otherwise provides any product or service under each of the AVALON marks asserted in the Petition for Cancellation;

(e) the date on which Petitioner first marketed or offered to provide any product or service under each of the AVALON marks asserted in the Petition for Cancellation;

(f) the date on which Petitioner first sold or provided any product or service under each of the AVALON marks asserted in the Petition for Cancellation in: (i) intrastate commerce in the United States; (ii) interstate commerce in the United States; and (iii) foreign commerce (if applicable).

Your client objected to these requests as overly broad and unduly burdensome on the grounds that it did not specify a date range or other reasonable limitation, and indicated that your client would provide non-privileged documents responsive only to subparts (a) and (f)(ii). However, this Request is specifically limited to those documents *sufficient to identify* the requested information, all of which is highly relevant to the scope of your client's asserted rights. Accordingly, please provide an amended response and documents responsive to all subparts.

Request No. 7: All documents that disclose, describe, constitute or otherwise relate to:

(a) whether Petitioner has conducted or caused to be conducted a search, investigation or other inquiry, including any trademark search in the United States Patent and Trademark Office, concerning whether any marks similar to any of the AVALON marks asserted in the Petition for Cancellation had been or were being used by other parties, or whether other parties had applied for or received registrations for such designations;

(b) the decision by Petitioner to apply for registration of each of the AVALON marks asserted in the Petition for Cancellation, including but not limited to all documents related to any discussions concerning such decision; and

(c) all documents filed with either the United States Patent and Trademark Office or any state's trademark office concerning any attempted registration by Petitioner of any of the AVALON marks asserted in the Petition for Cancellation.

Your client objected to these requests as overly broad and unduly burdensome on the grounds that it seeks all documents that relate to any inquiry your client ever made concerning use of the marks at issue in this proceeding by other parties or to any decision by your client to apply for registration of those marks, and did not specify a date range. This does not constitute an overburdensome request in this instance. Your client has asserted a broad range of marks

Brett Sokol
May 2, 2016
Page 3

covering numerous goods and services against Avalon IP's registration, and inquiry into its searches and investigations regarding those marks are highly relevant to the scope of its rights. Please provide an amended response and documents relevant to sections (a) and (b).

Your client also objected on the grounds that the Request seeks information protected by the attorney client privilege and work product doctrine. Please provide a privilege log of all documents being withheld on the grounds of privilege.

Request No. 8: All documents that disclose, describe, constitute or otherwise relate to:

- (a) statements or reports concerning the quality or perceived standards of quality of any products or services offered by Petitioner under any of the AVALON marks asserted in the Petition for Cancellation;
- (b) any litigation involving any products or services offered or to be offered by Petitioner under any of the AVALON marks asserted in the Petition for Cancellation; and
- (c) any complaints concerning any products or services offered at any time by Petitioner.

Your client objected to this Request on the grounds that it is vague and ambiguous, seeks irrelevant information, and is overly burdensome given that it "sweeps in hundreds of thousands of documents from hundreds of lawsuits that may 'involve' an Avalon property—such as landlord-tenant, personal injury, or employment-related litigation—but have no connection to Petitioner's use of its trademarks or any fact that could be relevant to this cancellation proceeding." On the contrary, however, these facts are highly relevant to the instant proceedings. Specifically, the Petition for Cancellation alleges that your client will be damaged any misimpression that Avalon IP's services are sponsored or approved by Petitioner, or that it is affiliated with Petitioner. If your client's reputation is already so tarnished by its own poor quality services, as evidenced by the "hundreds" of complaints it has received, this belies any claim of damage.

Nonetheless, in light of your client's representations regarding the volume of these documents, we can agree to limit this Request to seek only: (a) documents constituting statements or reports concerning the quality or perceived standards of quality of any products or services offered by Petitioner under any of the AVALON marks asserted in the Petition for Cancellation; (b) documents sufficient to identify any litigation involving any products or services offered or to be offered by Petitioner under any of the AVALON marks asserted in the Petition for Cancellation; and (c) documents sufficient to identify any complaints concerning any products or services offered at any time by Petitioner. Please provide an amended response and responsive documents.

Brett Sokol
May 2, 2016
Page 4

Request No. 17: All documents related to third-party uses of the term AVALON in connection with real estate services, including but not limited to real estate management, leasing, rental, or providing information regarding the same.

Request No. 18: All documents related to third-party uses of the term AVALON in connection with hotel or resort services.

Request No. 19: All documents related to third-party uses of the term AVALON in connection with printed guides, newsletters, journals, or magazines.

Request No. 20: All documents related to third-party uses of the term AVALON in connection with construction or real estate development.

Request No. 21: All documents related to third-party uses of the term AVALON in connection with online information services.

Request No. 22: All documents related to third-party uses of the term AVALON in connection with recreational or exercise facilities.

Request No. 23: All documents related to third-party uses of the term AVALON in connection with online social networking.

Your client objected to these Requests as overly broad on the basis that they would "include duplicative documents, documents where the burden of production outweighs any marginal relevance, and documents that are not relevant to any claim or defense of the parties." Your client also objected on the grounds that these Requests did not specify a date limitation, and that they requested documents available through public sources.

As you know, relevance is not the operative standard for discovery. Rather, documents are discoverable to the extent that they are relevant or likely to lead to the discovery of relevant information. Moreover, the documents sought in these Requests are highly relevant to Avalon IP's affirmative defenses, which assert, among other things, that "Petitioner has long tolerated third parties' use of AVALON marks in connection with a wide variety of services, including services for which it claims to have registered trademarks." Given that Avalon IP's estoppel claim is premised on Petitioner's tolerating such third party use over time, discovery over a long period is appropriate. However, we can agree to limit these Requests to seek only documents created or obtained since the application to register Avalon IP's AVALON mark was filed, namely, since October 29, 2008. Your client's objection on the grounds that some documents related to third-party uses of the term AVALON may be publicly available does not absolve it of the responsibility to provide whatever documents it does have in its possession, custody, and control. Please provide amended responses and responsive documents.

NEAL, GERBER & EISENBERG LLP

Brett Sokol
May 2, 2016
Page 5

Request No. 23: All documents referring or relating to Petitioner's intent to offer, plans to offer, or consideration of offering vacation rentals or other short-term leasing arrangements.

Your client objected to these Requests as irrelevant, overly broad and unduly burdensome, and on the basis of the attorney client privilege and work product doctrine. As noted above, relevance is not the operative standard for discovery. Rather, documents are discoverable to the extent that they are relevant or likely to lead to the discovery of relevant information. Regardless, however, these documents are highly relevant to the relatedness of the parties' services, as well as to the issue of priority. Please provide amended responses, responsive documents, and a privilege log.

Sincerely,

A handwritten signature in black ink, appearing to read "Lee J. Eulgen", followed by a horizontal line extending to the right.

Lee J. Eulgen

LJE:kdn

cc: Anna Raimer, Esq.
Kate Dennis Nye, Esq.

Exhibit D

JONES DAY

717 TEXAS • SUITE 3300 • HOUSTON, TEXAS 77002.2712
TELEPHONE: +1.832.239.3939 • FACSIMILE: +1.832.239.3600

DIRECT NUMBER: (832) 239-3786
AERAIMER@JONESDAY.COM

May 24, 2016

VIA EMAIL (LEULGEN@NGELAW.COM)

Lee J. Eulgen
Neal, Gerber & Eisenberg LLP
2 N. LaSalle St., Suite 1700
Chicago, IL 60602

Re: *AvalonBay Communities, Inc. v. Avalon IP Holding Co., LLC,*
Cancellation No. 92062400

Dear Mr. Eulgen:

We are in receipt of your letter dated May 2, 2016, on behalf of Avalon IP Holding Co. LLC (“Avalon IP”) regarding AvalonBay Communities, Inc. (“AvalonBay’s”) Responses to Avalon IP’s First Set of Interrogatories, First Set of Requests for Admission, and First Set of Requests for Production of Documents.

I. Responses to Requests for Admission

Avalon IP’s Request for Admission Nos. 1 and 2 asked AvalonBay to admit that it is unaware of consumer confusion between Registrant and Petitioner and their marks. AvalonBay responded that it is without knowledge or information sufficient to either admit or deny these allegations because the Definitions provided by Avalon IP defined Petitioner as not only AvalonBay, but as AvalonBay “as well as its affiliates, subsidiaries, divisions, officers, directors, employees, licenses [sic], agents and assignees.” Although AvalonBay made a reasonable inquiry into the knowledge of its own corporation, it is not feasible (and certainly not proportional to the needs of this case) to probe the knowledge of each and every one of its “affiliates” and “licenses [sic].” As such, AvalonBay can amend its responses to admit (1) that AvalonBay Communities, Inc. is currently unaware of any consumer confusion between Registrant’s AVALON mark and AvalonBay’s marks, and (2) that AvalonBay Communities, Inc. is currently unaware of any consumer confusion between Registrant and AvalonBay, but beyond that, AvalonBay stands by its current responses.

II. Responses to Requests for Production of Documents

Avalon IP notes some of AvalonBay’s objections to Request for Production Nos. 2 and 7 in its letter, but does not address AvalonBay’s objection that “AvalonBay has provided responses and documents that establish AvalonBay’s valid and continuous use of the AVALON marks

since the date of first use and its priority of use,” such that Avalon IP’s requests for these additional documents are “irrelevant” and “unreasonably cumulative,” and such that “the burden of production outweighs the probative value of the information sought.” For example, the geographic scope of services sold under the marks is irrelevant given AvalonBay has presumptive nationwide rights in its AVALON marks. Similarly, AvalonBay’s decision to apply for the registration of its AVALON marks is irrelevant given AvalonBay has priority with respect to the use and filing of applications for its marks. In view of AvalonBay’s objections, Avalon IP’s claim that the documents requested are “highly relevant to the scope of” AvalonBay’s “asserted rights” is incorrect. AvalonBay thus stands by its responses and objections to Request No. 2 subparts (b), (c), (d), (e), and (f)(i) & (iii) and Request No. 7 subparts (a) and (b), unless Avalon IP can articulate the relevance of the requested documents to this proceeding and why such information is not cumulative. Further, AvalonBay has produced documents sufficient to identify the requested information from Request No. 2 subparts (a) and (f)(ii) and Request No. 7 subpart (c).

Next, Avalon IP again demands further responses but does not respond to AvalonBay’s objections to Request for Production No. 8, including that the phrase “perceived standards of quality of any products or services offered by Petitioner” in subsection (a) is vague and ambiguous. As to subsections (b) and (c), Avalon IP insists that the wide array of documents requested is “highly relevant to the instant proceedings” because litigation and “complaints” relating to AvalonBay’s products or services would somehow undermine AvalonBay’s allegations that it will be damaged by confusion with Avalon IP. Contrary to Avalon IP’s tenuous assertion: “There is no requirement that actual damage be pleaded and proved in order to establish standing or to prevail in an opposition or cancellation proceeding.” (Trademark Trial and Appeal Board Manual of Procedure § 303.03.) Furthermore, complaints such as whether a tenant’s toilet was clogged in 2009 certainly have no bearing on this proceeding.

Moreover, AvalonBay objected that Avalon IP’s request seeks documents that are not proportional to the needs of the case and are, in any event, equally available to Avalon IP through public sources as they are available to AvalonBay. In asserting that AvalonBay has received “hundreds” of complaints, Avalon IP misstates and fundamentally misunderstands AvalonBay’s response, which was that this request seeks documents from “hundreds of lawsuits that may ‘involv[e]’ an Avalon property—such as landlord-tenant, personal injury, or employment-related litigation—but have no connection to Petitioner’s use of its trademarks or any fact that could be relevant to this cancellation proceeding.” Because Avalon IP’s proposed limitations do not resolve Avalon Bay’s objections, AvalonBay stands by its responses and objections. To the extent Avalon IP believes that any such documents are relevant to its case, Avalon IP should articulate their relevance or procure them from publicly available documents.

As to Document Request Nos. 17 through 23, your letter claims that “relevance is not the operative standard for discovery” and that “documents are discoverable to the extent that they are

Lee J. Eulgen
May 24, 2016
Page 3

relevant or likely to lead to the discovery of relevant information.” With this apparent admission that these requests from Avalon IP seek documents that are not “relevant,” Avalon IP paraphrases a standard incorrectly used to define the scope of discovery, as clarified by the 2015 amendments to Rule 26 of the Federal Rules of Civil Procedure, effective December 1, 2015. Advisory Committee Notes: 2015 Amendment (“The former provision for discovery of relevant but inadmissible information that appears ‘reasonably calculated to lead to the discovery of admissible evidence’ is also deleted. The phrase has been used by some, incorrectly, to define the scope of discovery.”) The current scope of discovery is, rather, documents that are “relevant to any party’s claim or defense *and proportional to the needs of the case.*” Fed. R. Civ. P. 26(b) (emphasis added). AvalonBay’s objections to the burdensomeness of producing these third party documents, which are equally available to Avalon IP, stand.

Finally, Avalon IP’s Request for Production No. 25 (incorrectly listed in your letter as Request No. 23) sought documents referring or relating to AvalonBay’s “intent to offer, plans to offer, or consideration of offering vacation rentals or other short-term leasing arrangements.” While Avalon IP claims that such documents are “highly relevant to the relatedness of the parties’ services, as well as to the issue of priority,” AvalonBay stands by its objection that such information is not relevant to these inquiries under the relevant likelihood of confusion test.

Further, based on a search consistent with the objections to the scope of the requested discovery in this letter and the objections set forth in the responses, AvalonBay is not presently withholding any documents on the basis of privilege. AvalonBay, however, reserves all of its rights.

We believe that the above discussion and the additional documents that will be produced shortly sufficiently respond to Avalon IP’s concerns without need for supplemental responses. If not, we are available to discuss any further questions or concerns you may have.

Very truly yours,



Anna E. Raimer

Exhibit E

Palumbo, Luci M.

From: Nye, Katherine Dennis
Sent: Thursday, June 09, 2016 8:04 PM
To: 'Anna E Raimer'
Cc: Brent D Sokol; Eulgen, Lee J.; 'Casa Real Estate_ Limited Partnership and _ US_CXL_ AvalonBay Communities_ Inc_ v_ Avalon IP Holdings _027755_6002_ _Correspondence _027755_6002_'
Subject: AVALON Cancellation Matter

Anna:

Can you please let us know a time in the next few days you're available to confer via phone regarding your client's position regarding the issues in the attached letters?

So that the call can be most productive, the specific issues we'd like to discuss are:

- Amended responses to Requests for Admission 1 and 2
- The requests related to the geographic scope of services sold under AvalonBay's asserted marks
- How AvalonBay maintains records regarding complaints or litigation related to its properties
- The requests related to third-party uses of the term AVALON
- The requests related to AvalonBay's intent to or consideration of offering vacation rentals or other short-term leasing arrangements

We are widely available tomorrow, as well as Monday- Wednesday of next week, June 13-15. Please let us know your earliest availability.

Best regards,
Kate



NEAL • GERBER • EISENBERG
thirty years of trusted partnerships

Katherine Dennis Nye

Associate

Neal, Gerber & Eisenberg LLP

p: 312.827.1455 | f: 312.980.0811 | e: knye@ngelaw.com

Two North LaSalle Street, Suite 1700, Chicago, IL 60602 | ngelaw.com

Please consider the environment before printing this email.

Confidentiality Notice: This communication is confidential and may contain privileged information. If you have received it in error, please notify the sender by reply e-mail and immediately delete it and any attachments without copying or further transmitting the same.

Exhibit F

Palumbo, Luci M.

From: Nye, Katherine Dennis
Sent: Wednesday, June 15, 2016 4:01 PM
To: Anna E Raimer
Cc: Brent D Sokol; Eulgen, Lee J.
Subject: AVALON Cancellation Matter

Anna:

Confirming our call yesterday, you agreed to discuss a 60 day (or longer) extension of all deadlines (including the expert disclosure deadline) with your client. As you know, both parties have raised discovery concerns, and no depositions have yet been noticed. With witnesses' and counsel's summer travel schedules, we anticipate it will not be possible to complete discovery before Labor Day.

On a related note, we committed to discuss an accelerated case resolution with our client. You proposed resolution on essentially summary judgment briefing, and we will get back to you on that score.

In the meantime, you committed to providing amended responses to Requests for Admission Nos. 1 and 2 as outlined in your May 24, 2016 letter. You also committed to confirm whether the community list previously provided is a complete list of where your client's AVALON or AVALONBAY branded properties are located, to confirm whether the demand letters produced are sufficient to identify all third party uses of AVALON of which your client is aware, and to confer with your client regarding whether there are documents regarding its intent to offer (or consideration of offering) vacation rentals or other short-term leasing arrangements. With regard to consumer complaints, you indicated that your client does not maintain a central repository, but you were unable to provide additional particularity around how those records may be maintained, or whether there are charts or summaries available.

We look forward to hearing from you promptly, but in any event, by June 22, 2016 regarding the open issues outlined above.

Best regards,
Kate



Katherine Dennis Nye

Associate

Neal, Gerber & Eisenberg LLP

p: 312.827.1455 | f: 312.980.0811 | e: knye@ngelaw.com

Two North LaSalle Street, Suite 1700, Chicago, IL 60602 | ngelaw.com

Please consider the environment before printing this email.

Confidentiality Notice: This communication is confidential and may contain privileged information. If you have received it in error, please notify the sender by reply e-mail and immediately delete it and any attachments without copying or further transmitting the same.