

DISTRICT COURT, GRAND COUNTY, COLORADO Court Address: Grand County Combined Courts 307 Moffat Ave Hot Sulphur Springs, CO 80451 Telephone No.: (970) 725-3357	DATE FILED: March 10, 2023 3:37 PM FILING ID: 657307B5E28D8 CASE NUMBER: 2021CV30008
Plaintiff: GRANBY RANCH METROPOLITAN DISTRICT, a quasi-municipal corporation and political subdivision of the State of Colorado, v. Defendants: HEADWATERS METROPOLITAN DISTRICT, a quasi-municipal corporation and political subdivision of the State of Colorado; GRAY JAY VENTURES, LLC.; GRANBY PRENTICE, LLC; and GR TERRA, LLC.	<p style="text-align: center;">▲COURT USE ONLY▲</p> Case No.: 2021CV030008 Div.: 1
ATTORNEYS FOR PLAINTIFFS: David K. TeSelle, Reg. No. 29648 Brian K. Matise, Reg. No. 33755 Erica N. Garcia, Reg. No. 56450 Burg Simpson Eldredge Hersh & Jardine, P.C. 40 Inverness Drive East Englewood, Colorado 80112 Telephone: (303) 792-5595 Facsimile: (303) 708-0527 E-Mail: dteselle@burgsimpson.com E-Mail: bmatise@burgsimpson.com E-Mail: egarcia@burgsimpson.com	
<p style="text-align: center;">PLAINTIFF’S RESPONSE IN OPPOSITION TO MOTION TO QUASH PLAINTIFF’S SUBPOENA TO JULIE KRUEGER OR FOR A PROTECTIVE ORDER</p>	

Plaintiff, Granby Ranch Metropolitan District (“GRMD”), by and through its attorneys, Burg Simpson Eldredge Hersh & Jardine, P.C., respectfully submits this Response in Opposition to the Motion to Quash Plaintiff’s Subpoena to Julie Krueger or for a Protective Order (“Motion to Quash”), and states as follows:

PLAINTIFF’S ADDITIONAL RELEVANT FACTS

1. Some of the key issues in this case include: a) the circumstances and intent of the parties in entering into the Lease Purchase Agreement, the Amenity Fee Agreement, and the Joint

Resolution Imposing Amenity Fees in 2005; b) the intent of Headwaters and GRMD in entering into the 2016 service plan amendments and the 2016 amended Granby IGA; c) whether the Subordination, Non-disturbance and Attornment Agreement was executed; and d) the collection, accounting, and use of the Amenity Fees collected by Headwaters and transmitted to Granby Realty Holdings.

2. Ms. Krueger served on both the Headwaters and GRMD board of directors from December 9, 2003 to April 18, 2007. She then served on the Headwaters board from February 2009 to February 2, 2017 and on the GRMD board again from February 18, 2009 to January 25, 2017. *See Exhibit A to Motion to Quash.*
3. Throughout her service on GRMD and Headwaters' board, Ms. Krueger signed several documents which are at the heart of the dispute in this matter. These documents include:
 - a. The December 9, 2003 IGA between Town of Granby and SolVista Metropolitan District No. 1 and SolVista Metropolitan District No. 2, wherein Ms. Krueger signed on behalf of both Metropolitan Districts;
 - b. The original Lease Purchase Agreement dated June 1, 2005, wherein Ms. Krueger signed on behalf of Headwaters;
 - c. The June 1, 2005 Amenity Fee Agreement, wherein Ms. Krueger signed on behalf of Headwaters;
 - d. The May 26, 2005 Joint Resolution to Establish an Amenity Fee, wherein Ms. Krueger signed on behalf of both Headwaters and GRMD; and
 - e. The June 1, 2006 District Facilities Construction and Service Agreement, wherein Ms. Krueger signed on behalf of both Headwaters and GRMD.

4. GRMD deposed former GRMD and Headwaters board member, Lance Badger, on January 6, 2023. Mr. Badger indicated that Ms. Krueger held multiple roles during her service on both boards but could not recall details concerning the specifics of her roles. Lance Badger Deposition, 71:18-72:3 (Ms. Krueger served as CFO for Granby Realty Holdings or Granby Ranch Amenities), 117:11-17 (Ms. Krueger served as a consultant to GRH), 118:24-119:15 (Ms. Krueger had spoken with insurance companies about insurance coverage for the amenities fund, Mr. Badger could not recall whether the insurance coverage was ever provided), 166:20-168:1 (Ms. Krueger managed the amenity fee fund).
5. GRMD also deposed former GRMD and Headwaters board member, Kyle Harris, on January 11, 2023. Mr. Harris also indicated that Ms. Krueger held multiple roles during her service on both boards but could not recall details. Kyle Harris Deposition, 67:8-68:2 (Ms. Krueger reviewed procedure for collection of fees; Harris could not recall whether process was implemented); 141:6-143:1 (Ms. Krueger would've handled processing the amenity fees and would know what they were used for).
6. The corporate representative of Granby Prentice, LLC and Gray Jay, LLC, Mr. Phil Russick, testified at his deposition that he spoke with Mr. Krueger about the facts of this case after the 2020 foreclosure and that she provided him a partially signed copy of the Subordination, Non-disturbance and Attorney Agreement. Mr. Russick testified that neither Granby Prentice, LLC nor Gray Jay, LLC had their own copy of this document, nor a fully executed copy.
7. GRMD served a subpoena for deposition on Ms. Krueger on February 17, 2023, setting the deposition on February 27, 2023, to take place in Jefferson County where Ms. Kreuger resides, in accordance with C.R.C.P. 45.

8. On February 23, 2023, 6 days after Ms. Kruger was served and just 4 days before the deposition date, counsel for Ms. Krueger contacted the undersigned counsel for GRMD to confer regarding Ms. Krueger's health conditions.
9. Later that day, counsel for GRMD conferred with Ms. Krueger's counsel, indicating she would make any necessary efforts to accommodate Ms. Krueger during the deposition, including conducting the deposition over Zoom, changing the location of the deposition to Ms. Krueger's home, and agreeing to a time limit for the deposition. *See Exhibit A.*
10. Despite GRMD's efforts to accommodate Ms. Krueger, the Motion to Quash was filed on February 24, 2023.

LEGAL STANDARD

Colorado's rules of civil procedure allow for discovery of "any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or the claim or defense of any other party. *Hawkins v. Dist. Ct.*, 638 P.2d 1372, 1375 (Colo. 1982) (quoting C.R.C.P. 26(b)(1)). Discovery's rules are to be "construed liberally to effectuate the full extent of their truth-seeking purpose . . . [and] in close cases, the balance must be struck in favor of allowing discovery." *Id.* (quoting *Cameron v. Dist. Ct.*, 565 P.2d 925 (1977) (emphasis added)). Thus, "the party opposing discovery bears the burden of showing 'good cause' that he is entitled to a protective order" *Id.*

ARGUMENT

Ms. Krueger's testimony is vital to GRMD's claims and defenses, which pertain to several agreements to which Ms. Krueger was the sole signatory. This testimony is not cumulative, as indicated above, there are details which none of the other former GRMD and Headwaters board members could recall, or they were not involved in, which Ms. Krueger was. These former GRMD

and Headwaters Board members all point to Ms. Krueger as being the person who would know. She previously spoke with the corporate representative of the Gray Jay and Granby Prentice defendants and provided him with a copy of an important missing agreement. GRMD expects that Ms. Krueger will provide extremely useful testimony as to the intent of the parties when entering the original 2005 LPA, the intent of the parties in the 2016 service plan and IGA modifications, the process of collecting the amenities fees, and her direct dealings with and consultation for GRH – an entity which is now defunct and whose representative (Marise Cipriani) apparently has moved to Sao Paolo, Brazil and could not be located for deposition.

GRMD is not insensitive to Ms. Krueger's health conditions, however GRMD's need for her testimony heavily outweighs any burden to Ms. Krueger. The location proposed for Ms. Kreuger's deposition is just 5 miles from her residence, alleviating travel concerns. But even so, GRMD has also proposed to eliminate any need for Ms. Krueger to travel outside the comfort of her own home by either conducting the deposition at her home, or hosting her deposition via Zoom. A deposition at her home or by Zoom would allow for Ms. Krueger to situate herself however is most comfortable for her, such as with her feet up or even in bed if necessary, to mitigate any discomfort. *See* Motion to Quash, p. 5 ¶¶10,13. GRMD has also proposed to limit Ms. Krueger's deposition to an amount of time amenable to both parties, and can arrange for multiple breaks so that Ms. Krueger is not confined to sit for any more time than is comfortable for her.

In support of her Motion to Quash, Ms. Krueger cites *Lynne v. Coldiron*, 2021 WL 7161555, at *5 (Larimer Dist. Ct. Oct. 26, 2021) – a case which is easily distinguishable from this matter. In *Lynne*, the plaintiff served subpoenas to attend and produce documents on three third-party city officials and the District Attorney. *Id.* at *1. The Court quashed the subpoenas because

the plaintiff failed to properly serve one party and sought testimony which was entirely irrelevant to her claims. *Id.* at *4. The court determined the testimony sought from the District Attorney was irrelevant due to his lack of personal knowledge on the subject of plaintiff's request. *Id.* at *6. Additionally, plaintiff's subpoena was found to be solely intended to harass the District Attorney, because he was not an employee of the entity plaintiff brought suit against, and therefore was not a relevant witness. *Id.* The facts of Lynne are wholly different to this case, where Ms. Krueger possesses direct, personal knowledge concerning the entry of several agreements, processes for collecting amenities fees, and interaction with GRH. Ms. Krueger, as a past board member of both GRMD and Headwaters, is a relevant witness to GRMD's claims which concern events that took place during her tenure. GRMD's subpoena is not intended to harass or cause undue burden, and GRMD has attempted to provide accommodation which will alleviate any discomfort to Ms. Krueger.

CONCLUSION

WHEREFORE, GRMD respectfully requests that this Court **deny** the Motion to Quash Plaintiff's Subpoena to Julie Krueger or for a Protective Order.

Respectfully submitted this 10th day of March 2023.

**BURG SIMPSON
ELDREDGE HERSH & JARDINE, P.C.**

(Original signature on file)

/s/ Erica N. Garcia
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Attorneys for Granby Ranch Metropolitan District

CERTIFICATE OF SERVICE

I hereby certify that on the 10th day of March 2023, a true and correct copy of the foregoing **PLAINTIFF'S RESPONSE IN OPPOSITION TO MOTION TO QUASH PLAINTIFF'S SUBPOENA TO JULIE KRUEGER OR FOR A PROTECTIVE ORDER** was filed and served via Colorado Courts E-Filing on all Counsel of Record.

/s/ Emily A. Coop

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