COURT OF CHANCERY
OF THE
STATE OF DELAWARE

MEGHAN A. ADAMS
Judge[1]

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October 29, 2026

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Re: ***Aldercrest Health-Edmonds, LLC et al. v. Salt Creek Beach, LLC et al.***
C.A. No. 2026-0861-MAA

Dear Counsel,

This case presents an unusual situation where a party, after acknowledging receipt of discovery requests, agreeing to produce discovery, and directing its attorneys to enter their appearance, now argues it was not properly served with the discovery requests and therefore is not obligated to respond to them. The Court will not countenance such gamesmanship.

[1] Sitting as a Vice Chancellor of the Court of Chancery of the State of Delaware by designation of the Chief Justice of the Supreme Court of Delaware pursuant to In re Designation of Actions Filed Pursuant to In re: DESIGNATION OF THE HONORABLE MEGHAN A. ADAMS under Del. Const. art. IV § 13(2) dated May 21, 2026.

In this action, Plaintiffs filed their Complaint in the Court of Chancery on July 1, 2026.[2] On July 14, Plaintiffs filed discovery requests on the docket.[3] Plaintiffs served the discovery the next day, July 15, 2026, via Certified Mail return receipt requested, but did not file the return of service until September 10, 2026.[4] On July 22 or 23, Plaintiffs' and Defendants' counsel had a telephone conversation wherein they discussed the outstanding discovery, memorialized in an email dated July 24, 2026.[5] On August 7, Defendants removed this action to the District of Delaware.[6] On September 10, the action was remanded, voluntarily, back to the Court of Chancery.[7]

Responses to the discovery requests were due on August 31, 2026.[8] This fact was acknowledged by Defendants' counsel by email on August 26, whereby Defense counsel requested an extension to respond to the outstanding discovery until September 11.[9] Plaintiffs' counsel did not agree to the extension.[10] Nonetheless, Defense counsel took it upon themselves to take the extension – and more. In the

[2] D.I. 1.
[3] D.I. 4-6.
[4] D.I. 16.
[5] D.I. 17 at Exhibit 1. During oral argument, Plaintiffs' counsel represented that they did not see the need to file the return of service because of the discussions between counsel where Defendants indicated they had received the discovery requests.
[6] D.I. 10.
[7] D.I. 13-15.
[8] When discovery requests are served with the complaint, the deadline to respond is 45 (rather than 30) days. Ct. Ch. R. 33(b)(3); Ct. Ch. R. 34(b); Ct. Ch. R. 36(a).
[9] D.I. 17 Ex. 5.
[10] D.I. 17 Ex. 6.

opposition to the Motion, Defendants' counsel represented that "Defendants will serve their discovery responses and objections on or before the October 28, 2026[] hearing on Plaintiffs' Motion."[11] Defendants again missed their self-imposed deadline, as discovery responses were not filed until *after* the hearing on the instant motion to compel.[12]

Defense counsel argues the discovery was never served because even though the discovery requests were sent by certified mail, a green "return receipt" card with a signature was never returned.[13] Thus, Defendants argue, service of the discovery requests essentially never occurred. This counterfactual argument is rejected.

Defendants cite no case law supporting their position, and do not attempt to refute contrary caselaw cited by Plaintiffs regarding service. In *Applied Bank v. JHL Brighton Design and Décor Center, LLC*, the Superior Court of Delaware deemed service perfected pursuant to the procedures mandated by 10 *Del. C.* § 3104 and Superior Court Civil Rule 4(f) in circumstances nearly identical to those here.[14] In *Applied Bank*, plaintiff "presented a certified mail receipt, evidencing that the Writ for service was mailed to Defendant's last known address."[15] While "no executed

[11] D.I. 24 at ¶11.
[12] D.I. 29.
[13] Defendants previously argued, in correspondence, that the removal of the action to Federal Court tolled their response time. D.I. 17 Ex. 9. Defendants have dropped this argument in their opposition to the instant motion to compel.
[14] 2018 WL 501473 (Del. Super. Jan. 17, 2018).
[15] *Id*. at *1.

green card was received, the service package was not returned."[16] The court continued: "[t]he USPS Tracking document states that the package was sent to Defendant's address on March 21, 2017" and "counsel for Plaintiff informed the Court that the parties had communicated for the purpose of resolving the litigation, evidencing that Defendant had actual knowledge of the lawsuit."[17]

The Court personally reviewed the USPS tracking using the USPS website, and the USPS tracking indicates that each of the packages were served on July 20, 2026 in Rocklin, CA.[18] Plaintiffs' counsel also provided signed green cards indicating receipt on July 20, 2026 with a signature of "D. Funk."[19] Defendants' counsel also acknowledged the outstanding discovery requests in phone calls and emails with Plaintiffs' counsel on or about July 22 or 23.[20]

Counsel for Defendants were in regular communication with Plaintiffs' counsel and were unequivocally aware of the instant litigation and the pending discovery requests. Defendants' counsel proposed an extended due date for the

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[16] *Id*.
[17] *Id*. (internal footnote omitted).
[18] While Cardiff Beach, LLC and Wailea Beach, LLC tracking numbers included in the Return of Service were erroneous, Plaintiffs have now provided the green cards for each of the entities that were returned to Plaintiffs' counsel. D.I. 25 Ex. 1 to Supplemental Declaration of Kosman.
[19] D.I. 25, Ex. 1 to Supplemental Declaration of Kosman. Defendants' counsel also scolded Plaintiffs' for not providing the green cards until the Reply. This is nonsensical because Defendants have known that discovery was outstanding since July (*See* D.I. 17 Ex. 9 at 4) and, as discussed, a green card return is not required to perfect service.
[20] D.I. 17 Ex. 1 (Defendants' counsel not contradicting an email summarizing a phone call which notes the pending discovery requests and stating, "I anticipate that discovery will be illuminating.").

discovery requests (September 11).[21] When that date passed (even though Plaintiffs' counsel did not consent to it), and Plaintiffs' counsel followed up, Defense counsel then raised a new theory: the discovery responses were not served properly and thus they were not yet due.[22]

The Court rejects this litigation-driven theory and finds that, consistent with Delaware caselaw, that the discovery requests were served properly alongside the Complaint.[23] Giving Defendants the benefit of the doubt, because the certified mail containing the discovery requests was not delivered until July 20, the discovery responses were due September 3, 2026.[24] Almost a month-and-a-half has passed since that due date.

Next, the Court determines the appropriate sanction. In their response, Defendants do not attempt to respond to Plaintiffs' argument regarding the remedy for non-response, instead focusing on the "lack of service" argument, thus waiving any objection.[25] During oral argument, Defendants' counsel continued to argue the

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[21] D.I. 17 Ex. 5.
[22] D.I. 25 Ex. 1 to Supplemental Declaration of Sasse.
[23] Although the Complaint and discovery requests were served at separate times, the Complaint was served in the same manner as the discovery requests: by Certified Mail. D.I. 7. At no point did Defendants object to the manner of service of the Complaint as improper.
[24] The Court also rejects Defendants' argument regarding the purported failure to meet-and-confer. Best practices indicate that Delaware counsel should be present on a telephone call (the Court of Chancery Guidelines suggest that "Parties *should* meet and confer before bringing discovery disputes to the Court's attention.). Unlike the Superior Court CCLD Rules, the Court of Chancery rules do not mandate such a requirement. In any event, as evidenced by the multiple emails attached to the Motion, the parties did meet and confer prior to the filing of the Motion.
[25] *Murphy v. State*, 632 A.2d 1150, 1152 (Del. 1993) ("The failure to raise a legal issue in the text of the opening brief generally constitutes a waiver of that claim" (internal citation and footnote

Defendants have still not been properly served, purportedly excusing Defendants' need to respond.

The Court finds the following remedy is appropriate:

1. Defendants shall produce all responsive documents in their possession, custody, or control within thirty (30) days of today's date, without raising any objection other than the assertion of privilege, or risk further sanctions;[26]
2. If Defendants have not already done so, Defendants shall provide complete written response to Plaintiffs' interrogatories within seven (7) days of the Court's order, without raising any objection other than the assertion of privilege, or risk further sanctions;
3. In the interests of trying this case on the merits, the Court will not deem Plaintiffs' Requests for Admission admitted for all purposes, but orders complete written responses within seven (7) days, without raising any objection other than the assertion of privilege, or risk further sanctions;[27]

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omitted)); see also *Emerald P'rs v. Berlin*, 726 A.2d 1215, 1224 (Del. 1999) ("Issues not briefed are deemed waived." (citing *Murphy*, 632 A.2d at 1152)).

[26] *See In re Delaware Public Schools Litig.*, 317 A.3d 251, 268 (Del. Ch. 2024) ("A party that fails to assert a proper, timely objection to a discovery request risks waiver of its objections.") (cleaned up); *Bocock v. Innovate Corp.*, 2023 WL 8453525, at *3 (Del. Ch. Dec. 6, 2023) (same). The Defendants' conduct is even more egregious than that of the plaintiffs in *Bocock*. In *Bocock*, the plaintiffs included "seven pages of General Objections…[that] did not come close to satisfying the Court of Chancery Rules." *Id.* at *3. There, the court found that all objections to the discovery were waived but declined to declare privilege had been waived. *Id*. at *4. The same remedy is appropriate here.

[27] *Delaware Public Schools*, 317 A.3d at 268 n.51 (citing James Wm. Moore et al., *Moore's Federal Practice* § 36.11[5][c] (2024) (discussing identical federal rule and stating "[a]lthough Rule 36 does not contain a specific waiver provisions, as to Rules 33 and 34, courts have concluded that an objection to a request for admission not first raised in a timely objection are waived, unless the

4. Plaintiffs are awarded their reasonable attorneys' fees and costs. Absent agreement by the parties on such fees (which the Court encourages), the parties shall submit the appropriate submissions pursuant to Court of Chancery Rule 88 within fourteen (14) days.

IT IS SO ORDERED.

Sincerely,

/s/ Meghan A. Adams

Meghan A. Adams, Judge

cc: All Counsel via File and Serve

objecting party can show good cause for the failure."). No good cause has been demonstrated here. Nor could there be when Defendants recognized the need to respond to discovery, requested an extension, then did an about-face in making an argument regarding service.