

HARRY C. NEEL, MICHAEL) IN THE COURT OF COMMON PLEAS OF
 JENKINS, and LEE CAVANAUGH) SOMERSET COUNTY, PENNSYLVANIA
 Individually and Derivatively on)
 Behalf of THE STONYCREEK)
 VALLEY DEVELOPMENT) No. 275 CIVIL 2019
 CORPORATION,)
 Plaintiffs,)
)
 vs.)
)
 DANIEL DIVELY, and THE)
 STONYCREEK VALLEY)
 DEVELOPMENT CORPORATION,)
 Defendants.)

FOR RECORD
 2020 MAR 19 PM 3:03
 ANNE CAVANAUGH
 PROTHONOTARY
 SOMERSET PA

NOTICE

TO: HARRY C. NEEL, MICHAEL JENKINS, and LEE CAVANAUGH, Plaintiffs:

You have been sued in Court. If you wish to defend against the claims set forth in the following pages, you must take action within TWENTY (20) DAYS after this Complaint and Notice are served, by entering a written appearance personally or by attorney and filing in writing with the Court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the Court without further notice for any money claimed in the Complaint or for any other claim or relief requested by the Plaintiff and/or Defendant. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

Southwestern Pennsylvania Legal Services
 218 North Kimberly Avenue, Suite 101
 Somerset, Pennsylvania 15501
 (814) 443-4615

Certified to be true and
 correct copy of the original
 Document on file in
 this office.

[Signature]
 Prothonotary

HARRY C. NEEL, MICHAEL)	IN THE COURT OF COMMON PLEAS OF
JENKINS, and LEE CAVANAUGH)	SOMERSET COUNTY, PENNSYLVANIA
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Behalf of THE STONYCREEK)	
VALLEY DEVELOPMENT)	No. 275 CIVIL 2019
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Plaintiffs,)	
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vs.)	
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DANIEL DIVELY, and THE)	
STONYCREEK VALLEY)	
DEVELOPMENT CORPORATION,))	
Defendants.)	

**ANSWER TO COMPLAINT AND NEW MATTER
AND DEFENDANT DANIEL DIVELY'S
COUNTERCLAIMS AGAINST PLAINTIFFS**

TO THE HONORABLE, THE JUDGES OF SAID COURT:

AND NOW comes the Defendant, DANIEL DIVELY, by and through his attorney, David T. Leake, Esq., hereby answers the Complaint of Plaintiffs and asserts New Matter, his Affirmative Defenses, and asserts counter claims as follows:

1. Admitted in part, denied in part. It is admitted that Harry C. Neel is an adult individual. Defendant is without knowledge or information sufficient to form a belief as to the truth of whether Harry C. Neel resides as so alleged. It is specifically denied that Harry C. Neel owns any shares in the Stonycreek Valley Development Corporation (hereinafter "SVDC") as the corporation does not currently have shareholders.

2. Admitted in part, denied in part. It is admitted that Michael W. Jenkins is an adult individual. Defendant is without knowledge or information sufficient to form a belief as to the truth of whether Michael W. Jenkins resides as so alleged. It is specifically denied

that Michael W. Jenkins owns any shares in the SVDC as the corporation does not currently have shareholders.

3. Admitted in part, denied in part. It is admitted that Lee E. Cavanaugh is an adult individual. Defendant is without knowledge or information sufficient to form a belief as to the truth of whether Lee E. Cavanaugh resides as so alleged. It is specifically denied that Lee E. Cavanaugh owns any shares in the SVDC as the corporation does not currently have shareholders.

4. Denied. It is denied that the SVDC currently has shareholders.

5. Admitted.

6. Admitted in part, denied in part. It is Admitted that the SVDC is a Pennsylvania Non-Profit Cooperative Corporation. It is denied that the alleged address is the principal place of business of said corporation.

7. Denied. Said paragraph asserts a conclusion of law to which no responsive pleading is required, to the extent warranted said response is a strict denial.

8. Denied. Said paragraph asserts a conclusion of law to which no responsive pleading is required, to the extent warranted said response is a strict denial.

9. Denied. Said paragraph asserts a conclusion of law to which no responsive pleading is required, to the extent warranted said response is a strict denial.

10. Admitted.

11. Denied. Defendant is without sufficient knowledge or information to form a belief as to the truth of the matter asserted, and, as such, said averment is specifically denied in its entirety.

12. Denied. Defendant is without sufficient knowledge or information to form a belief as to the truth of the matter asserted, and, as such, said averment is specifically denied in its entirety.

13. Denied. Defendant is without sufficient knowledge or information to form a belief as to the truth of the matter asserted, and, as such, said averment is specifically denied in its entirety. Further, Defendant asserts said averment is an opinion of the Plaintiffs and as such, Defendant is unable to have knowledge or information to form a belief as to the origin of said averment to warrant response.

14. Denied. Defendant is without sufficient knowledge or information to form a belief as to the truth of the matter asserted, and, as such, said averment is specifically denied in its entirety. Further, Defendant asserts said averment is an opinion of the Plaintiffs and as such, Defendant is unable to have knowledge or information to form a belief as to the origin of said averment to warrant response.

15. Denied. Said paragraph is a conclusion of law to which no response is necessary and, as such, all of the averments alleged in Paragraph 15 are specifically denied in their entirety. In the fullest extent applicable to Plaintiffs' Paragraph 15, as applicable to Defendant Dively, the memorandum opinion of February 26, 2020, by the Honorable Scott P. Bittner struck and dismissed all allegations of self-dealing asserted against Defendant Dively.

16. Admitted in part, denied in part. It is admitted that the Plaintiffs have initiated a baseless, frivolous, lawsuit against Defendant Dively and that this lawsuit was brought by three individuals wishing to assert their authority. It is denied that the suit has any merit or has anything to do with the good of the Lake Stonycreek community.

17. Denied. Said paragraph is a conclusion of law to which no response is necessary and, as such, all of the averments alleged in Paragraph 17 are specifically denied in their entirety.

18. Denied. It is specifically denied that there are any shareholders of the SVDC, there are only lot owners.

19. Denied. Defendant Dively, individually, is without information or knowledge sufficient to form a belief as to the truth of the averments contained in Paragraph 19. As such, these averments are specifically denied in their entirety. Further, Defendant Dively, neither has the information nor authority to speak on behalf of the SVDC.

20. Denied. Defendant Dively, individually, is without information or knowledge sufficient to form a belief as to the truth of the averments contained in Paragraph 20. As such, these averments are specifically denied in their entirety. Further, Defendant Dively, neither has the information nor authority to speak on behalf of the SVDC.

21. Denied. Defendant Dively, individually, is without information or knowledge sufficient to form a belief as to the truth of the averments contained in Paragraph 21. As such, these averments are specifically denied in their entirety. Further, Defendant Dively, neither has the information nor authority to speak on behalf of the SVDC.

22. Denied. Defendant Dively, individually, is without information or knowledge sufficient to form a belief as to the truth of the averments contained in Paragraph 22. As such, these averments are specifically denied in their entirety. Further, Defendant Dively, neither has the information nor authority to speak on behalf of the SVDC.

23. Denied. Defendant Dively, individually, is without information or knowledge sufficient to form a belief as to the truth of the averments contained in Paragraph 23. As such, these averments are specifically denied in their entirety. Further, Defendant Dively, neither has the information nor authority to speak on behalf of the SVDC.

24. Denied. Defendant Dively, individually, is without information or knowledge sufficient to form a belief as to the truth of the averments contained in Paragraph 24. As such, these averments are specifically denied in their entirety. Further, Defendant Dively, neither has the information nor authority to speak on behalf of the SVDC.

25. Denied. Defendant Dively, individually, is without information or knowledge sufficient to form a belief as to the truth of the averments contained in Paragraph 25. As such, these averments are specifically denied in their entirety. Further, Defendant Dively, neither has the information nor authority to speak on behalf of the SVDC.

26. Denied. Defendant Dively, individually, is without information or knowledge sufficient to form a belief as to the truth of the averments contained in Paragraph 26. As such, these averments are specifically denied in their entirety. Further, Defendant Dively, neither has the information nor authority to speak on behalf of the SVDC.

27. Admitted.

28. Denied. Defendant is without sufficient knowledge or information to form a belief as to the truth of the matter asserted, and, as such, said averment is specifically denied in its entirety.

29. Admitted.

30. Admitted.

31. Denied. To the contrary, Dirt Bottom Excavating, Inc. has never charged a fee for weed removal or dredging of Lake Stonycreek.

32. Admitted in part, denied in part. It is admitted that Defendant Dively proudly serves a volunteer firefighter. It is denied that Defendant Dively is a certified municipal police officer.

33. Denied. Defendant Dively has only ever volunteered as a “safety patrol volunteer” for Lake Stonycreek.

34. Denied. Said paragraph is a conclusion of law to which no response is necessary and, as such, all of the averments alleged in Paragraph 34 are specifically denied in their entirety. In the fullest extent applicable to Plaintiffs’ Paragraph 34, as applicable to Defendant Dively, the memorandum opinion of February 26, 2020, by the Honorable Scott P. Bittner struck and dismissed all allegations of self-dealing asserted against Defendant Dively.

35. Denied. Said paragraph is a conclusion of law to which no response is necessary and, as such, all of the averments alleged in Paragraph 35 are specifically denied in their entirety. In the fullest extent applicable to Plaintiffs’ Paragraph 35, as applicable to Defendant Dively, the memorandum opinion of February 26, 2020, by the Honorable Scott P. Bittner struck and dismissed all allegations of self-dealing asserted against Defendant Dively.

36. Denied. Said paragraph is a conclusion of law to which no response is necessary and, as such, all of the averments alleged in Paragraph 36 are specifically denied in their entirety. In the fullest extent applicable to Plaintiffs’ Paragraph 36, as applicable to Defendant Dively, the memorandum opinion of February 26, 2020, by the Honorable Scott P. Bittner struck and dismissed all allegations of self-dealing asserted against Defendant Dively.

37. Denied. Said paragraph is a conclusion of law to which no response is necessary and, as such, all of the averments alleged in Paragraph 37 are specifically denied in their entirety. In the fullest extent applicable to Plaintiffs’ Paragraph 37, as applicable to Defendant Dively, the memorandum opinion of February 26, 2020, by the Honorable Scott P. Bittner struck and dismissed all allegations of self-dealing asserted against Defendant Dively.

38. Denied. Said paragraph is a conclusion of law to which no response is necessary and, as such, all of the averments alleged in Paragraph 38 are specifically denied in their entirety. In the fullest extent applicable to Plaintiffs' Paragraph 38, as applicable to Defendant Dively, the memorandum opinion of February 26, 2020, by the Honorable Scott P. Bittner struck and dismissed all allegations of self-dealing asserted against Defendant Dively.

39. Denied. Said paragraph is a conclusion of law to which no response is necessary and, as such, all of the averments alleged in Paragraph 39 are specifically denied in their entirety. In the fullest extent applicable to Plaintiffs' Paragraph 39, as applicable to Defendant Dively, the memorandum opinion of February 26, 2020, by the Honorable Scott P. Bittner struck and dismissed all allegations of self-dealing asserted against Defendant Dively.

40. Denied. Said paragraph is a conclusion of law to which no response is necessary and, as such, all of the averments alleged in Paragraph 40 are specifically denied in their entirety. In the fullest extent applicable to Plaintiffs' Paragraph 40, as applicable to Defendant Dively, the memorandum opinion of February 26, 2020, by the Honorable Scott P. Bittner struck and dismissed all allegations of self-dealing asserted against Defendant Dively.

41. Denied. Said paragraph is a conclusion of law to which no response is necessary and, as such, all of the averments alleged in Paragraph 41 are specifically denied in their entirety. In the fullest extent applicable to Plaintiffs' Paragraph 41, as applicable to Defendant Dively, the memorandum opinion of February 26, 2020, by the Honorable Scott P. Bittner struck and dismissed all allegations of self-dealing asserted against Defendant Dively.

42. Denied. Said paragraph is a conclusion of law to which no response is necessary and, as such, all of the averments alleged in Paragraph 42 are specifically denied in their entirety. In the fullest extent applicable to Plaintiffs' Paragraph 42, as applicable to

Defendant Dively, the memorandum opinion of February 26, 2020, by the Honorable Scott P. Bittner struck and dismissed all allegations of self-dealing asserted against Defendant Dively.

43. Denied. Said paragraph is a conclusion of law to which no response is necessary and, as such, all of the averments alleged in Paragraph 43 are specifically denied in their entirety. In the fullest extent applicable to Plaintiffs' Paragraph 43, as applicable to Defendant Dively, the memorandum opinion of February 26, 2020, by the Honorable Scott P. Bittner struck and dismissed all allegations of self-dealing asserted against Defendant Dively.

44. Denied. Said paragraph is a conclusion of law to which no response is necessary and, as such, all of the averments alleged in Paragraph 44 are specifically denied in their entirety. In the fullest extent applicable to Plaintiffs' Paragraph 44, as applicable to Defendant Dively, the memorandum opinion of February 26, 2020, by the Honorable Scott P. Bittner struck and dismissed all allegations of self-dealing asserted against Defendant Dively.

45. Denied. Said paragraph is a conclusion of law to which no response is necessary and, as such, all of the averments alleged in Paragraph 45 are specifically denied in their entirety.

46. Denied. Defendant Dively, individually, is without information or knowledge sufficient to form a belief as to the truth of the averments contained in Paragraph 46. As such, these averments are specifically denied in their entirety. Further, Defendant Dively, neither has the information nor authority to speak on behalf of the SVDC.

47. Denied. Said paragraph is a conclusion of law to which no response is necessary and, as such, all of the averments alleged in Paragraph 47 are specifically denied in their entirety.

48. Denied. Defendant Dively, individually, is without information or knowledge sufficient to form a belief as to the truth of the averments contained in Paragraph 48. As such, these averments are specifically denied in their entirety. Further, Defendant Dively, neither has the information nor authority to speak on behalf of the SVDC.

49. Denied. Defendant Dively, individually, is without information or knowledge sufficient to form a belief as to the truth of the averments contained in Paragraph 49. As such, these averments are specifically denied in their entirety. Further, Defendant Dively, neither has the information nor authority to speak on behalf of the SVDC.

50. Denied. Defendant Dively, individually, is without information or knowledge sufficient to form a belief as to the truth of the averments contained in Paragraph 50. As such, these averments are specifically denied in their entirety. Further, Defendant Dively, neither has the information nor authority to speak on behalf of the SVDC.

51. Denied. Defendant Dively, individually, is without information or knowledge sufficient to form a belief as to the truth of the averments contained in Paragraph 51. As such, these averments are specifically denied in their entirety. Further, Defendant Dively, neither has the information nor authority to speak on behalf of the SVDC.

52. Denied. Defendant Dively, individually, is without information or knowledge sufficient to form a belief as to the truth of the averments contained in Paragraph 52. As such, these averments are specifically denied in their entirety. Further, Defendant Dively, neither has the information nor authority to speak on behalf of the SVDC.

53. Denied. Defendant Dively, individually, is without information or knowledge sufficient to form a belief as to the truth of the averments contained in Paragraph 53. As such, these averments are specifically denied in their entirety. Further, Defendant Dively, neither has the information nor authority to speak on behalf of the SVDC.

54. Denied. Said paragraph is a conclusion of law to which no response is necessary and, as such, all of the averments alleged in Paragraph 54 are specifically denied in their entirety.

55. Denied. Defendant is without sufficient knowledge or information to form a belief as to the truth of the matter asserted, and, as such, said averment is specifically denied in its entirety.

56. Denied. Defendant Dively, individually, is without information or knowledge sufficient to form a belief as to the truth of the averments contained in Paragraph 56. As such, these averments are specifically denied in their entirety. Further, Defendant Dively, neither has the information nor authority to speak on behalf of the SVDC.

57. Denied. Said paragraph is a conclusion of law to which no response is necessary and, as such, all of the averments alleged in Paragraph 57 are specifically denied in their entirety. Further, Defendant Dively, neither has the information nor authority to speak on behalf of the SVDC.

58. Denied. Defendant Dively, individually, is without information or knowledge sufficient to form a belief as to the truth of the averments contained in Paragraph 58. As such, these averments are specifically denied in their entirety. Further, Defendant Dively, neither has the information nor authority to speak on behalf of the SVDC.

59. Denied. Defendant is without sufficient knowledge or information to form a belief as to the truth of the matter asserted, and, as such, said averment is specifically denied in its entirety. By way of further denial, Paragraph 59 refers to “at its outset” in reference to the SVDC and Defendant is unsure whether the time frame refers to the time of incorporation (over 50 years ago), which is outside the scope of the knowledge of Defendant Dively and well outside his time volunteering as a member of the Board of Directors.

60. Denied. Defendant is without sufficient knowledge or information to form a belief as to the truth of the matter asserted, and, as such, said averment is specifically denied in its entirety.

61. Denied. To the contrary, the SVDC does not have shareholders, but instead lot owners.

62. Denied. Defendant is without sufficient knowledge or information to form a belief as to the truth of the matter asserted, and, as such, said averment is specifically denied in its entirety. Further, Defendant Dively, neither has the information nor authority to speak on behalf of the SVDC.

63. Denied. Defendant is without sufficient knowledge or information to form a belief as to the truth of the matter asserted, and, as such, said averment is specifically denied in its entirety. Further, Defendant Dively, neither has the information nor authority to speak on behalf of the SVDC.

64. Denied. Defendant is without sufficient knowledge or information to form a belief as to the truth of the matter asserted, and, as such, said averment is specifically denied in its entirety. Further, Defendant Dively, neither has the information nor authority to speak on behalf of the SVDC.

65. Denied. Defendant is without sufficient knowledge or information to form a belief as to the truth of the matter asserted, and, as such, said averment is specifically denied in its entirety. Further, Defendant Dively, neither has the information nor authority to speak on behalf of the SVDC.

66. Denied. Defendant is without sufficient knowledge or information to form a belief as to the truth of the matter asserted, and, as such, said averment is specifically denied in its entirety. Further, Defendant Dively, neither has the information nor authority to speak on behalf of the SVDC.

67. Denied. Defendant is without sufficient knowledge or information to form a belief as to the truth of the matter asserted, and, as such, said averment is specifically denied in its entirety. Further, Defendant Dively, neither has the information nor authority to speak on behalf of the SVDC.

68. Denied. Defendant is without sufficient knowledge or information to form a belief as to the truth of the matter asserted, and, as such, said averment is specifically denied in its entirety. Further, Defendant Dively, neither has the information nor authority to speak on behalf of the SVDC.

69. Denied. Defendant is without sufficient knowledge or information to form a belief as to the truth of the matter asserted, and, as such, said averment is specifically denied in its entirety. Further, Defendant Dively, neither has the information nor authority to speak on behalf of the SVDC.

70. Denied. Defendant is without sufficient knowledge or information to form a belief as to the truth of the matter asserted, and, as such, said averment is specifically denied in its entirety. Further, Defendant Dively, neither has the information nor authority to speak on behalf of the SVDC.

71. Denied. Defendant is without sufficient knowledge or information to form a belief as to the truth of the matter asserted, and, as such, said averment is specifically denied in its entirety. Further, Defendant Dively, neither has the information nor authority to speak on behalf of the SVDC.

72. Denied. Defendant is without sufficient knowledge or information to form a belief as to the truth of the matter asserted, and, as such, said averment is specifically denied in its entirety. Further, Defendant Dively, neither has the information nor authority to speak on behalf of the SVDC.

73. Denied. Defendant is without sufficient knowledge or information to form a belief as to the truth of the matter asserted, and, as such, said averment is specifically denied in its entirety. Further, Defendant Dively, neither has the information nor authority to speak on behalf of the SVDC.

74. Denied. Defendant is without sufficient knowledge or information to form a belief as to the truth of the matter asserted, and, as such, said averment is specifically denied in its entirety. Further, Defendant Dively, neither has the information nor authority to speak on behalf of the SVDC.

75. Denied. Defendant is without sufficient knowledge or information to form a belief as to the truth of the matter asserted, and, as such, said averment is specifically denied in its entirety. Further, Defendant Dively, neither has the information nor authority to speak on behalf of the SVDC.

76. Denied. Defendant is without sufficient knowledge or information to form a belief as to the truth of the matter asserted, and, as such, said averment is specifically denied in its entirety. Further, Defendant Dively, neither has the information nor authority to speak on behalf of the SVDC.

77. Denied. Defendant is without sufficient knowledge or information to form a belief as to the truth of the matter asserted, and, as such, said averment is specifically denied in its entirety. Further, Defendant Dively, neither has the information nor authority to speak on behalf of the SVDC.

78. Denied. Defendant is without sufficient knowledge or information to form a belief as to the truth of the matter asserted, and, as such, said averment is specifically denied in its entirety. Further, Defendant Dively, neither has the information nor authority to speak on behalf of the SVDC.

79. Denied. Defendant is without sufficient knowledge or information to form a belief as to the truth of the matter asserted, and, as such, said averment is specifically denied in its entirety. Further, Defendant Dively, neither has the information nor authority to speak on behalf of the SVDC.

80. Denied. Defendant is without sufficient knowledge or information to form a belief as to the truth of the matter asserted, and, as such, said averment is specifically denied in its entirety. Further, Defendant Dively, neither has the information nor authority to speak on behalf of the SVDC.

81. Denied. Defendant is without sufficient knowledge or information to form a belief as to the truth of the matter asserted, and, as such, said averment is specifically denied in its entirety. Further, Defendant Dively, neither has the information nor authority to speak on behalf of the SVDC.

82. Denied. Defendant is without sufficient knowledge or information to form a belief as to the truth of the matter asserted, and, as such, said averment is specifically denied in its entirety. Further, Defendant Dively, neither has the information nor authority to speak on behalf of the SVDC.

83. Denied. Defendant is without sufficient knowledge or information to form a belief as to the truth of the matter asserted, and, as such, said averment is specifically denied in its entirety. Further, Defendant Dively, neither has the information nor authority to speak on behalf of the SVDC.

84. Denied. Defendant is without sufficient knowledge or information to form a belief as to the truth of the matter asserted, and, as such, said averment is specifically denied in its entirety. Further, Defendant Dively, neither has the information nor authority to speak on behalf of the SVDC.

85. Denied. Defendant is without sufficient knowledge or information to form a belief as to the truth of the matter asserted, and, as such, said averment is specifically denied in its entirety. Further, Defendant Dively, neither has the information nor authority to speak on behalf of the SVDC.

86. Denied. Defendant is without sufficient knowledge or information to form a belief as to the truth of the matter asserted, and, as such, said averment is specifically denied in its entirety. Further, Defendant Dively, neither has the information nor authority to speak on behalf of the SVDC.

87. Denied. Defendant is without sufficient knowledge or information to form a belief as to the truth of the matter asserted, and, as such, said averment is specifically denied in its entirety. Further, Defendant Dively, neither has the information nor authority to speak on behalf of the SVDC.

88. Denied. Defendant is without sufficient knowledge or information to form a belief as to the truth of the matter asserted, and, as such, said averment is specifically denied in its entirety. Further, Defendant Dively, neither has the information nor authority to speak on behalf of the SVDC.

89. Denied. Defendant is without sufficient knowledge or information to form a belief as to the truth of the matter asserted, and, as such, said averment is specifically denied in its entirety. Further, Defendant Dively, neither has the information nor authority to speak on behalf of the SVDC.

90. Denied. Defendant is without sufficient knowledge or information to form a belief as to the truth of the matter asserted, and, as such, said averment is specifically denied in its entirety. Further, Defendant Dively, neither has the information nor authority to speak on behalf of the SVDC.

91. Denied. Defendant is without sufficient knowledge or information to form a belief as to the truth of the matter asserted, and, as such, said averment is specifically denied in its entirety. Further, Defendant Dively, neither has the information nor authority to speak on behalf of the SVDC.

92. Denied. Defendant is without sufficient knowledge or information to form a belief as to the truth of the matter asserted, and, as such, said averment is specifically denied in its entirety. Further, Defendant Dively, neither has the information nor authority to speak on behalf of the SVDC.

93. Denied. Defendant is without sufficient knowledge or information to form a belief as to the truth of the matter asserted, and, as such, said averment is specifically denied in its entirety. Further, Defendant Dively, neither has the information nor authority to speak on behalf of the SVDC.

94. Denied. Defendant is without sufficient knowledge or information to form a belief as to the truth of the matter asserted, and, as such, said averment is specifically denied in its entirety. Further, Defendant Dively, neither has the information nor authority to speak on behalf of the SVDC.

95. Denied. Defendant is without sufficient knowledge or information to form a belief as to the truth of the matter asserted, and, as such, said averment is specifically denied in its entirety. Further, Defendant Dively, neither has the information nor authority to speak on behalf of the SVDC.

96. Denied. Defendant is without sufficient knowledge or information to form a belief as to the truth of the matter asserted, and, as such, said averment is specifically denied in its entirety. Further, Defendant Dively, neither has the information nor authority to speak on behalf of the SVDC.

97. Denied. Defendant is without sufficient knowledge or information to form a belief as to the truth of the matter asserted, and, as such, said averment is specifically denied in its entirety. Further, Defendant Dively, neither has the information nor authority to speak on behalf of the SVDC.

98. Denied. Defendant is without sufficient knowledge or information to form a belief as to the truth of the matter asserted, and, as such, said averment is specifically denied in its entirety. Further, Defendant Dively, neither has the information nor authority to speak on behalf of the SVDC.

99. Denied. Defendant is without sufficient knowledge or information to form a belief as to the truth of the matter asserted, and, as such, said averment is specifically denied in its entirety. Further, Defendant Dively, neither has the information nor authority to speak on behalf of the SVDC.

100. Denied. Defendant is without sufficient knowledge or information to form a belief as to the truth of the matter asserted, and, as such, said averment is specifically denied in its entirety. Further, Defendant Dively, neither has the information nor authority to speak on behalf of the SVDC.

101. Denied. Defendant is without sufficient knowledge or information to form a belief as to the truth of the matter asserted, and, as such, said averment is specifically denied in its entirety. Further, Defendant Dively, neither has the information nor authority to speak on behalf of the SVDC.

102. Denied. Defendant is without sufficient knowledge or information to form a belief as to the truth of the matter asserted, and, as such, said averment is specifically denied in its entirety. Further, Defendant Dively, neither has the information nor authority to speak on behalf of the SVDC.

103. Denied. Defendant is without sufficient knowledge or information to form a belief as to the truth of the matter asserted, and, as such, said averment is specifically denied in its entirety. Further, Defendant Dively, neither has the information nor authority to speak on behalf of the SVDC.

104. Denied. Defendant is without sufficient knowledge or information to form a belief as to the truth of the matter asserted, and, as such, said averment is specifically denied in its entirety. Further, Defendant Dively, neither has the information nor authority to speak on behalf of the SVDC.

105. Denied. Defendant is without sufficient knowledge or information to form a belief as to the truth of the matter asserted, and, as such, said averment is specifically denied in its entirety. Further, Defendant Dively, neither has the information nor authority to speak on behalf of the SVDC.

106. Denied. Defendant is without sufficient knowledge or information to form a belief as to the truth of the matter asserted, and, as such, said averment is specifically denied in its entirety. Further, Defendant Dively, neither has the information nor authority to speak on behalf of the SVDC.

107. Denied. Defendant is without sufficient knowledge or information to form a belief as to the truth of the matter asserted, and, as such, said averment is specifically denied in its entirety. Further, Defendant Dively, neither has the information nor authority to speak on behalf of the SVDC.

108. Denied. Defendant is without sufficient knowledge or information to form a belief as to the truth of the matter asserted, and, as such, said averment is specifically denied in its entirety. Further, Defendant Dively, neither has the information nor authority to speak on behalf of the SVDC.

109. Denied. Defendant is without sufficient knowledge or information to form a belief as to the truth of the matter asserted, and, as such, said averment is specifically denied in its entirety. Further, Defendant Dively, neither has the information nor authority to speak on behalf of the SVDC.

110. Denied. Defendant is without sufficient knowledge or information to form a belief as to the truth of the matter asserted, and, as such, said averment is specifically denied in its entirety. Further, Defendant Dively, neither has the information nor authority to speak on behalf of the SVDC.

111. Paragraph 111 is an incorporation paragraph to which no response is warranted. To any extent that a responsive pleading is required, the averments of paragraph 111 are specifically denied in their entirety.

112. Denied. Said paragraph is a conclusion of law to which no response is necessary and, as such, all of the averments alleged in Paragraph 112 are specifically denied in their entirety.

113. Denied. Said paragraph is a conclusion of law to which no response is necessary and, as such, all of the averments alleged in Paragraph 113 are specifically denied in their entirety.

114. Denied. Said paragraph is a conclusion of law to which no response is necessary and, as such, all of the averments alleged in Paragraph 114 are specifically denied in their entirety.

115. Denied. Said paragraph is a conclusion of law to which no response is necessary and, as such, all of the averments alleged in Paragraph 115 are specifically denied in their entirety.

116. Denied. Defendant Dively has never breached his fiduciary duties to the SVDC. To the contrary, Dively has donated extensive time and served the SVDC to the tune of services that would value well over \$50,000.00 without Dively receiving compensation of the same from the SVDC.

117. Denied. To the contrary, any services which Dively ever provided the SVDC for monetary compensation were far below the fair market value. In as much as Plaintiff avers Dively manipulated the “bidding process” the SVDC protocols for bids were always followed and Dively abstained from voting to accept any such bid in which he had also bid. In addition to providing service below fair market value, well over \$50,000.00 less than the fair market value, Dively additionally performed many free services at zero cost to the SVDC.

118. Denied. To the contrary, Dively dutifully served the SVDC providing countless hours of volunteer service at no cost to the SVDC. The SVDC in turn received well over \$50,000.00 in free services as a result of Dively’s charitable work and volunteering that otherwise would have been expended by the SVDC.

119. Denied. Said paragraph is a conclusion of law to which no response is necessary and, as such, all of the averments alleged in Paragraph 119 are specifically denied in their entirety. Additionally, Defendant Dively has provided the SVDC well over \$50,000.00 in free services as a result of Dively’s charitable work and volunteering that otherwise would have been expended by the SVDC.

120. Denied. Said paragraph is a conclusion of law to which no response is necessary and, as such, all of the averments alleged in Paragraph 119 are specifically denied in their entirety. Additionally, Defendant Dively has provided the SVDC well over \$50,000.00 in free services as a result of Dively’s charitable work and volunteering that otherwise would have been expended by the SVDC.

121. Denied. Defendant is without sufficient knowledge or information to form a belief as to the truth of the matter asserted, and, as such, said averment is specifically denied in its entirety. Further, Defendant Dively, neither has the information nor authority to speak on behalf of the SVDC.

122. Denied. Defendant is without sufficient knowledge or information to form a belief as to the truth of the matter asserted, and, as such, said averment is specifically denied in its entirety. Further, Defendant Dively, neither has the information nor authority to speak on behalf of the SVDC.

123. Denied. Defendant is without sufficient knowledge or information to form a belief as to the truth of the matter asserted, and, as such, said averment is specifically denied in its entirety. Further, Defendant Dively, neither has the information nor authority to speak on behalf of the SVDC.

124. Denied. Defendant is without sufficient knowledge or information to form a belief as to the truth of the matter asserted, and, as such, said averment is specifically denied in its entirety. Further, Defendant Dively, neither has the information nor authority to speak on behalf of the SVDC.

125. Denied. To the contrary, any services which Dively ever provided the SVDC for monetary compensation were far below the fair market value. In addition to providing service below fair market value, well over \$50,000.00 less than the fair market value, Dively additionally performed many free services at zero cost to the SVDC.

126. Paragraph 126 is an incorporation paragraph to which no response is warranted. To any extent that a responsive pleading is required, the averments of paragraph 126 are specifically denied in their entirety.

127. Denied. Said paragraph is a conclusion of law to which no response is necessary and, as such, all of the averments alleged in Paragraph 127 are specifically denied in their

entirety. In the fullest extent applicable to Plaintiffs' Paragraph 127, as applicable to Defendant Dively, the memorandum opinion of February 26, 2020, by the Honorable Scott P. Bittner struck and dismissed all allegations of self-dealing asserted against Defendant Dively as alleged in Plaintiff's Amended Complaint Count II.

128. Denied. Said paragraph is a conclusion of law to which no response is necessary and, as such, all of the averments alleged in Paragraph 128 are specifically denied in their entirety. In the fullest extent applicable to Plaintiffs' Paragraph 128, as applicable to Defendant Dively, the memorandum opinion of February 26, 2020, by the Honorable Scott P. Bittner struck and dismissed all allegations of self-dealing asserted against Defendant Dively as alleged in Plaintiff's Amended Complaint Count II.

129. Denied. Said paragraph is a conclusion of law to which no response is necessary and, as such, all of the averments alleged in Paragraph 129 are specifically denied in their entirety. In the fullest extent applicable to Plaintiffs' Paragraph 129, as applicable to Defendant Dively, the memorandum opinion of February 26, 2020, by the Honorable Scott P. Bittner struck and dismissed all allegations of self-dealing asserted against Defendant Dively as alleged in Plaintiff's Amended Complaint Count II.

130. Denied. Said paragraph is a conclusion of law to which no response is necessary and, as such, all of the averments alleged in Paragraph 130 are specifically denied in their entirety. In the fullest extent applicable to Plaintiffs' Paragraph 130, as applicable to Defendant Dively, the memorandum opinion of February 26, 2020, by the Honorable Scott P. Bittner struck and dismissed all allegations of self-dealing asserted against Defendant Dively as alleged in Plaintiff's Amended Complaint Count II.

131. Denied. Said paragraph is a conclusion of law to which no response is necessary and, as such, all of the averments alleged in Paragraph 131 are specifically denied in their entirety. In the fullest extent applicable to Plaintiffs' Paragraph 131, as applicable to Defendant Dively, the memorandum opinion of February 26, 2020, by the Honorable

Scott P. Bittner struck and dismissed all allegations of self-dealing asserted against Defendant Dively as alleged in Plaintiff's Amended Complaint Count II.

132. Denied. Said paragraph is a conclusion of law to which no response is necessary and, as such, all of the averments alleged in Paragraph 132 are specifically denied in their entirety. In the fullest extent applicable to Plaintiffs' Paragraph 132, as applicable to Defendant Dively, the memorandum opinion of February 26, 2020, by the Honorable Scott P. Bittner struck and dismissed all allegations of self-dealing asserted against Defendant Dively as alleged in Plaintiff's Amended Complaint Count II.

133. Denied. Said paragraph is a conclusion of law to which no response is necessary and, as such, all of the averments alleged in Paragraph 133 are specifically denied in their entirety. In the fullest extent applicable to Plaintiffs' Paragraph 133, as applicable to Defendant Dively, the memorandum opinion of February 26, 2020, by the Honorable Scott P. Bittner struck and dismissed all allegations of self-dealing asserted against Defendant Dively as alleged in Plaintiff's Amended Complaint Count II.

134. Denied. Said paragraph is a conclusion of law to which no response is necessary and, as such, all of the averments alleged in Paragraph 134 are specifically denied in their entirety. In the fullest extent applicable to Plaintiffs' Paragraph 134, as applicable to Defendant Dively, the memorandum opinion of February 26, 2020, by the Honorable Scott P. Bittner struck and dismissed all allegations of self-dealing asserted against Defendant Dively as alleged in Plaintiff's Amended Complaint Count II.

135. Denied. Said paragraph is a conclusion of law to which no response is necessary and, as such, all of the averments alleged in Paragraph 135 are specifically denied in their entirety. In the fullest extent applicable to Plaintiffs' Paragraph 135, as applicable to Defendant Dively, the memorandum opinion of February 26, 2020, by the Honorable Scott P. Bittner struck and dismissed all allegations of self-dealing asserted against Defendant Dively as alleged in Plaintiff's Amended Complaint Count II.

136. Denied. Said paragraph is a conclusion of law to which no response is necessary and, as such, all of the averments alleged in Paragraph 136 are specifically denied in their entirety. In the fullest extent applicable to Plaintiffs' Paragraph 136, as applicable to Defendant Dively, the memorandum opinion of February 26, 2020, by the Honorable Scott P. Bittner struck and dismissed all allegations of self-dealing asserted against Defendant Dively as alleged in Plaintiff's Amended Complaint Count II.

137. Denied. Said paragraph is a conclusion of law to which no response is necessary and, as such, all of the averments alleged in Paragraph 137 are specifically denied in their entirety. In the fullest extent applicable to Plaintiffs' Paragraph 137, as applicable to Defendant Dively, the memorandum opinion of February 26, 2020, by the Honorable Scott P. Bittner struck and dismissed all allegations of self-dealing asserted against Defendant Dively as alleged in Plaintiff's Amended Complaint Count II.

138. Denied. Said paragraph is a conclusion of law to which no response is necessary and, as such, all of the averments alleged in Paragraph 138 are specifically denied in their entirety. In the fullest extent applicable to Plaintiffs' Paragraph 138, as applicable to Defendant Dively, the memorandum opinion of February 26, 2020, by the Honorable Scott P. Bittner struck and dismissed all allegations of self-dealing asserted against Defendant Dively as alleged in Plaintiff's Amended Complaint Count II.

139. Denied. Said paragraph is a conclusion of law to which no response is necessary and, as such, all of the averments alleged in Paragraph 139 are specifically denied in their entirety. In the fullest extent applicable to Plaintiffs' Paragraph 139, as applicable to Defendant Dively, the memorandum opinion of February 26, 2020, by the Honorable Scott P. Bittner struck and dismissed all allegations of self-dealing asserted against Defendant Dively as alleged in Plaintiff's Amended Complaint Count II.

140. Denied. Said paragraph is a conclusion of law to which no response is necessary and, as such, all of the averments alleged in Paragraph 140 are specifically denied in their entirety. In the fullest extent applicable to Plaintiffs' Paragraph 140, as applicable to

Defendant Dively, the memorandum opinion of February 26, 2020, by the Honorable Scott P. Bittner struck and dismissed all allegations of self-dealing asserted against Defendant Dively as alleged in Plaintiff's Amended Complaint Count II.

141. Paragraph 141 is an incorporation paragraph to which no response is warranted. To any extent that a responsive pleading is required, the averments of paragraph 141 are specifically denied in their entirety.

142. Denied. Said paragraph is a conclusion of law to which no response is necessary and, as such, all of the averments alleged in Paragraph 142 are specifically denied in their entirety.

143. Denied. Defendant Dively, individually, is without information or knowledge sufficient to form a belief as to the truth of the averments contained in Paragraph 143. As such, these averments are specifically denied in their entirety. Further, Defendant Dively, neither has the information nor authority to speak on behalf of the SVDC.

144. Denied. Defendant Dively, individually, is without information or knowledge sufficient to form a belief as to the truth of the averments contained in Paragraph 144. As such, these averments are specifically denied in their entirety. Further, Defendant Dively, neither has the information nor authority to speak on behalf of the SVDC.

145. Denied. Defendant Dively, individually, is without information or knowledge sufficient to form a belief as to the truth of the averments contained in Paragraph 145. As such, these averments are specifically denied in their entirety. Further, Defendant Dively, neither has the information nor authority to speak on behalf of the SVDC.

146. Denied. Defendant Dively, individually, is without information or knowledge sufficient to form a belief as to the truth of the averments contained in Paragraph 146. As such, these averments are specifically denied in their entirety. Further, Defendant Dively, neither has the information nor authority to speak on behalf of the SVDC.

147. Denied. Said paragraph is a conclusion of law to which no response is necessary and, as such, all of the averments alleged in Paragraph 147 are specifically denied in their entirety.

148. Denied. Said paragraph is a conclusion of law to which no response is necessary and, as such, all of the averments alleged in Paragraph 148 are specifically denied in their entirety.

149. Denied. Said paragraph is a conclusion of law to which no response is necessary and, as such, all of the averments alleged in Paragraph 149 are specifically denied in their entirety.

150. Denied. Said paragraph is a conclusion of law to which no response is necessary and, as such, all of the averments alleged in Paragraph 150 are specifically denied in their entirety.

151. Denied. Said paragraph is a conclusion of law to which no response is necessary and, as such, all of the averments alleged in Paragraph 151 are specifically denied in their entirety.

152. Denied. Said paragraph is a conclusion of law to which no response is necessary and, as such, all of the averments alleged in Paragraph 152 are specifically denied in their entirety.

153. Denied. Said paragraph is a conclusion of law to which no response is necessary and, as such, all of the averments alleged in Paragraph 153 are specifically denied in their entirety.

154. Denied. Said paragraph is a conclusion of law to which no response is necessary and, as such, all of the averments alleged in Paragraph 154 are specifically denied in their entirety.

AS TO THE ALLEGATIONS CONCERNING THE PRAYER FOR RELIEF

155. Defendant Dively denies the allegations contained in paragraph 1 of Plaintiffs' Prayer for Relief and contends that Plaintiffs are not entitled to any relief sought therein.

156. Defendant Dively denies the allegations contained in paragraph 1a of Plaintiffs' Prayer for Relief and contends that Plaintiffs are not entitled to any relief sought therein.

157. Defendant Dively denies the allegations contained in paragraph 1b of Plaintiffs' Prayer for Relief and contends that Plaintiffs are not entitled to any relief sought therein.

158. Defendant Dively denies the allegations contained in paragraph 1c of Plaintiffs' Prayer for Relief and contends that Plaintiffs are not entitled to any relief sought therein.

159. Defendant Dively denies the allegations contained in paragraph 1d of Plaintiffs' Prayer for Relief and contends that Plaintiffs are not entitled to any relief sought therein.

160. Defendant Dively denies the allegations contained in paragraph 1e of Plaintiffs' Prayer for Relief and contends that Plaintiffs are not entitled to any relief sought therein.

161. Defendant Dively denies the allegations contained in paragraph 2 of Plaintiffs' Prayer for Relief and contends that Plaintiffs are not entitled to any relief sought therein.

162. Defendant Dively denies the allegations contained in paragraph 3 of Plaintiffs' Prayer for Relief and contends that Plaintiffs are not entitled to any relief sought therein.

163. Defendant Dively denies the allegations contained in paragraph 4 of Plaintiffs' Prayer for Relief and contends that Plaintiffs are not entitled to any relief sought therein.

164. Defendant Dively denies the allegations contained in paragraph 5 of Plaintiffs' Prayer for Relief and contends that Plaintiffs are not entitled to any relief sought therein.

165. Defendant Dively denies the allegations contained in paragraph 6 of Plaintiffs' Prayer for Relief and contends that Plaintiffs are not entitled to any relief sought therein.

166. Defendant Dively denies the allegations contained in paragraph 7 of Plaintiffs' Prayer for Relief and contends that Plaintiffs are not entitled to any relief sought therein.

167. Defendant Dively denies the allegations contained in paragraph 8 of Plaintiffs' Prayer for Relief and contends that Plaintiffs are not entitled to any relief sought therein.

NEW MATTER

FIRST AFFIRMATIVE DEFENSE

(Failure to State a Claim for Relief)

168. Plaintiffs have failed to state a claim upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

(Unclean Hands)

169. Plaintiffs claims are barred by the doctrine of unclean hands.

THIRD AFFIRMATIVE DEFENSE

(First Amendment)

170. Plaintiffs claims are barred to the extent that Defendant Dively's actions and speech are protected by the First Amendment of the Constitution of the United States of America.

FOURTH AFFIRMATIVE DEFENSE

**(Act 170, 15 Pa.C.S.A. §101-9507 –
Corporations and Unincorporated Associations)**

171. Plaintiffs claims are barred to the extent not authorized or in compliance with the laws of Pennsylvania as found at Act 170 of the Pennsylvania Legislature, Title 15 Pa.C.S.A. §101-9507.

ADDITIONAL DEFENSES

172. Defendant Dively reserves the right to supplement and/or amend this answer, including through addition of further affirmative defenses, based upon the course of discovery and future proceedings in this action.

COUNTERCLAIMS

Comes now, the Defendant and Counterclaimaint, Daniel Dively, and counterclaims against the Plaintiffs, Harry C. Neel, Michael Jenkins, and Lee Cavanaugh, as follows:

STATEMENT OF THE FACTS

173. Defendant, Daniel Dively, (hereinafter “Dively”) is an adult individual who volunteers extensively in Somersct County, Pennsylvania, and for the Commonwealth of Pennsylvania as a whole.

174. Dively has served, in a voluntary capacity, as a volunteer firefighter in the Shanksville Volunteer Fire Department for the past 31 years.

175. Dively is currently the Assistant Chief of the Shanksville Volunteer Fire Department.

176. Dively is a certified emergency medical technician.

177. Dively is a public safety diver for the Commonwealth of Pennsylvania and is regularly contacted to provide scuba diving services for a multitude of Pennsylvania agencies, including the Pennsylvania State Police.

178. Dively is a Special Deputy with the Somerset County Sheriff's Office

179. Dively serves as a member of the Somerset County Sheriff's Tactical Search and Rescue Team 400 as a security detail to assist in searching for and rescuing individuals who are lost or missing.

180. Among other services which Dively proudly provides Somerset County, our commonwealth, and our Country, Dively was a Flight '93 first responder during the September 11, 2001, terrorist attacks.

181. Dively has well over 2,000 hours, combined, expended in certified training that includes but is not limited to: emergency medical technician training and certification, fire fighter II training and certification, public safety diving and certification, rescue technician training and certification, rope rescue training and certification, hazmat training and certification, structural fire training and certification, confined space rescue training and certification, Act 120 Police Academy Certification and certification, and six years of past employment in law enforcement.

182. Dively currently runs operations at Dirt Bottom Excavating, Inc.

183. Dively currently volunteers as a member of the Board of Directors of the Stonycreek Valley Development Corporation ("SVDC").

184. In addition to volunteering as a member of the Board of Directors, Dively has volunteered countless hours of service to the Lake Stonycreek/SVDC community, including but not limited to plowing roads and driveways, scuba diving to maintain the

dam and other parts of the lake, grass mowing, stump removal, safety patrol, rip rapping of shoreline, land clearance, construction of buildings pads, and road repair.

185. Dively regularly and consistently has volunteered his employer's heavy equipment to assist in maintenance of Lake Stonycreek, SVDC properties, and the community as a whole.

186. By Dively volunteering his heavy equipment or machinery, as well as labor, Lake Stonycreek, SVDC properties, and the community as a whole gained pecuniary benefit at no cost to them the likes of which would cost in labor and materials in excess of \$50,000.00.

187. Dively has never charged the SVDC for volunteer services or requested payment for the same.

188. Dively has performed work for the SVDC when bids were requested by the SVDC.

189. When a job arose among which the SVDC sought bids, Dively abstained from voting on approval of any of said bids.

190. In the event Dively was awarded a job upon which bids were submitted to the SVDC, Dively performed work for well under the fair market value.

191. To date, Dively by performing work well under the fair market value, has saved the SVDC well over \$50,000.00.

192. Dively performs or performed said services because he seeks and sought to give back to the SVDC and the Lake Stonycreek community, choosing to volunteer his time, machinery, and manpower not for financial gain, but to maintain and better the community.

193. On April 17, 2019, Plaintiffs, by and through their legal counsel, filed the initial civil complaint against the present Defendants initiating this civil action.

194. On May 21, 2019, Plaintiffs, by and through their legal counsel, filed a motion for special and preliminary injunction.

195. Said motion for special and preliminary injunction (hereinafter "motion"), alleged that SVDC was a nonprofit corporation with approximately 7,800 shares.

196. Said motion additionally aimed to prevent a vote of the SVDC on amending the SVDC by-laws to eliminate cumulative voting for members of the Board of Directors and to eliminate shares all together in favor of a lot ownership system.

197. The SVDC's proposed amendment additionally was to, upon approval of the amendment, provide a time from June 1, 2019 to December 31, 2019, wherein shareholders could request a buyback of their shares to receive all money expended for said shares, i.e. \$10/share, to transition to the lot owner based voting system.

198. The motion sought to enjoin the Board of Directors and all **then** shareholders from voting at the annual meeting of May 24, 2019, to eliminate the cumulative shareholder voting, shareholder system, and instead proceed forward with a lot owner based system of one lot per vote.

199. The Court of Common Pleas of Somerset County, Honorable Scott Bittner, did not grant said motion for special and preliminary injunction.

200. The May 24, 2019, vote of the **then** shareholders of the SVDC proceeded at the annual meeting and said vote passed, ending the shareholder based/cumulative voting system of the SVDC in favor of a one lot per vote system and eliminating shareholders altogether in favor of "lot owners".

201. The May 24, 2019, vote, as part of the SVDC by-law amendment, additionally provided all shareholders a procedure to submit requests to SVDC to buyback all shares from June 1, 2019, to December 31, 2019, at full acquisition value of \$10.00 per share.

202. With the buyback provision of the SVDC, in effect, any potential shareholder would receive a full refund of any purchase price of shares in the SVDC.

203. Plaintiffs, Harry C. Neel, Michael W. Jenkins, and Lee E. Cavanaugh, opposed the amendment from stockholders to low ownership being the basis of voting.

204. Prior to the members of the SVDC, and the **then** shareholder's vote at the annual SVDC meeting on May 24, 2019, the Plaintiffs, Harry C. Neel, Michael W. Jenkins, and Lee E. Cavanaugh, sought to acquire more shares to effect a takeover of the voting majority of the SVDC.

205. Prior to the annual SVDC meeting of May 24, 2019, Plaintiffs, Harry C. Neel, Michael W. Jenkins, and Lee E. Cavanaugh, failed to acquire enough shares to control a voting majority, under a cumulative voting system, to effectively control the voting power of the SVDC.

206. Prior to and at the annual SVDC meeting of May 24, 2019, Plaintiffs, Harry C. Neel, Michael W. Jenkins, and Lee E. Cavanaugh, even without personal ownership of the **then** voting majority of shares and with cumulative voting, failed to gain enough votes from other shareholders in the SVDC to vote "no" to the proposed amendment of the SVDC by-laws to amend to one lot per vote, end shareholdership, and end cumulative voting.

207. In effect, the one lot per vote amendment to the SVDC by laws preserved the democratic process of the SVDC as now all members of the SVDC community who own

land get a 1 vote per lot versus the alternative cumulative voting where 1 lot owner could buy all outstanding shares and control the SVDC as he or she pleases.

208. Plaintiffs, Harry C. Neel, Michael W. Jenkins, and Lee E. Cavanaugh, sought to control the voting majority of the SVDC to their own personal benefit and at the expense of the other members of the SVDC.

209. The SVDC by laws are currently afford one lot owner one vote on matters concerning SVDC, particularly its election of its Board of Directors.

210. The SVDC by laws do not currently have a shareholder based system, particularly with cumulative voting, for its Board of Directors.

211. Plaintiffs, Harry C. Neel, Michael W. Jenkins, and Lee E. Cavanaugh, did or elected not to request the SVDC buyback of their shares at \$10 per share.

212. Plaintiffs, Harry C. Neel, Michael W. Jenkins, and Lee E. Cavanaugh, have accused Defendant Dively of criminal activity by publication in their Complaint, and via numerous publications to the members of the SVDC and Lake Stonycreek Community.

COUNTERCLAIMS

COUNT 1:

LIBEL

213. Paragraphs 1 through 212, inclusive, are incorporated herein as though fully set forth at length.

214. Plaintiffs, via this present lawsuit's complaint and emails published information stating Defendant, Daniel Dively, was committing criminal acts, engaging in self-dealing, and was utilizing the SVDC for personal profit or advantage.

215. The Plaintiffs, in their Complaint and numerous email communications published to approximately one hundred and thirty (130) individuals of the SVDC and Lake Stonycreek community, published material falsehoods that stated Defendant, Daniel Dively, was engaged in criminal activity, engaging in self-dealing, and was utilizing the SVDC for personal profit or advantage.

216. Said publications of the Plaintiffs, their Complaint and numerous email communications published to approximately one hundred and thirty (130) individuals of the SVDC and Lake Stonycreek community, refer to Defendant Daniel Dively specifically by name throughout, were made concerning Defendant Daniel Dively, and were so understood by those who read the written communications.

217. The entirety of the Plaintiffs' written statements regarding Defendant, Daniel Dively's alleged criminal behavior, engaging in self-dealing, and utilization of the SVDC for personal profit or advantage are false as pertain to Defendant, Daniel Dively.

218. The written communications of the Plaintiffs, including their Complaint and the emails so published, are libelous on their face. These written communications have clearly exposed Defendant, Daniel Dively, to hatred, contempt, ridicule and obloquy because these published written communications were false and have effected Dively's public reputation as well as his business reputation.

219. As a direct and proximate result of the above-described publications, Defendant Daniel Dively has suffered loss of his reputation, shame, mortification, and injury in an amount in excess of \$50,000.00, with strict proof thereof to be established at time of trial.

220. The above-described written communications so published were not privileged because it was published by Plaintiffs, private individuals, with malice, hatred, and ill will toward Defendant, Daniel Dively, and with the specific intent to injure him. Because of the Plaintiffs' malice in publishing said falsehoods, Defendant, Daniel Dively, seeks punitive damages in an amount appropriate and consistent with the actual damages proved at time of trial.

WHEREFORE, Defendant, Daniel Dively, respectfully requests your Honorable Court grant judgment against the Plaintiffs, jointly or severally, in an amount in excess of \$50,000.00 in addition to punitive damages.

COUNT II:

INTENTIONAL INTERFERENCE WITH BUSINESS CONTRACTS

221. Paragraphs 1 through 220, inclusive, are incorporated herein as though fully set forth at length.

222. Defendant, Daniel Dively, had valid contracts or oral agreements to perform certain work, for members of the Shanksville and Lake Stonycreek or SVDC communities.

223. Defendant, Daniel Dively, with said contracts or agreements, had reasonable expectations to enter into future contracts with additional individuals from the Shanksville and Lake Stonycreek or SVDC communities.

224. Plaintiffs, had full knowledge of Defendant, Daniel Dively's, contracts or agreements with certain individuals to perform services in the Shanksville and Lake Stonycreek or SVDC communities.

225. Plaintiffs, had full knowledge of Defendant, Daniel Dively's, reasonable expectations to acquire future contracts with additional individuals in the Shanksville and Lake Stonycreek or SVDC communities.

226. Plaintiffs, intentionally induced certain individuals to breach their contracts or oral agreements with Defendant, Daniel Dively, and/or to refuse to enter future contracts with Defendant, Daniel Dively.

227. The Plaintiffs had and have no lawful justification for said tortious interference with Defendant, Daniel Dively's, contracts.

228. As a direct and proximate result of said intentional tortious interference with Defendant's business contracts, Defendant, Daniel Dively, has suffered and will continue to suffer damages due to the intentional actions of the Plaintiffs.

229. Defendant, Daniel Dively, has suffered and will continue to suffer irreparable harm due to Plaintiffs' intentional tortious interference with Defendant's current contracts and/or agreements and to the reasonably expected future contracts of Defendant with individuals of the Shanksville and Lake Stonycreek or SVDC communities.

WHEREFORE, Defendant, Daniel Dively, respectfully requests your Honorable Court grant judgment against the Plaintiffs, jointly or severally, in an amount in excess of \$50,000.00.

COUNT III:

WRONGFUL USE OF CIVIL PROCEEDINGS,

DEFENDANT, DANIEL DIVELY, DEMANDS RELIEF

PURSUANT TO THE "DRAGONETTI ACT" 42 Pa.C.S.A §8351, et. seq.

230. Paragraphs 1 through 229, inclusive, are incorporated herein as though fully set forth at length.

231. Plaintiffs, Harry C. Neel, Michael Jenkins, and Lee Cavanaugh, by and through their legal counsel have procured, initiated, or continued civil proceedings against Defendant, Daniel Dively, with improper purpose such as to harass or to cause unnecessary expenses of litigation.

232. Plaintiffs Harry C. Neel, Michael Jenkins, and Lee Cavanaugh, by and through their legal counsel, have initiated suit against Defendant, Daniel Dively, on false pretenses and lies all resulting from a non-friendly relationship.

233. Plaintiffs Harry C. Neel, Michael Jenkins, and Lee Cavanaugh, by and through their legal counsel, have initiated suit against Defendant, Daniel Dively, for his role in supporting the SVDC's change from a shareholder based cumulative voting system to a one lot one vote based voting system for decisions regarding the SVDC and its governance.

234. Plaintiffs Harry C. Neel, Michael Jenkins, and Lee Cavanaugh, by and through their legal counsel, have initiated suit against Defendant, Daniel Dively, for only one reason his role in preventing the Plaintiffs from effectively using their shares of stock to cumulatively vote to "pack" the Board of Directors of the SVDC in their favor indefinitely.

235. Said failures of the Plaintiffs does not give rise to any claim(s) against the individual Defendant, Daniel Dively, as the amendment of the SVDC by laws is a direct and proximate result of the SVDC's annual membership vote and not related to any one individual.

236. As per the Defendant individually, Plaintiffs have failed to state any claim, or for that matter any discoverable claim, for which your Honorable Court could grant Plaintiffs relief against Defendant, Daniel Dively, pursuant to Pennsylvania Law.

237. Plaintiffs suit against the Defendant, Daniel Dively, particularly allegations of “self dealing” in Count II of Plaintiffs’ Complaint, have been struck and dismissed by the memorandum opinion of February 26, 2020, by the Honorable Scott P. Bittner.

238. Plaintiffs, Plaintiffs Harry C. Neel, Michael Jenkins, and Lee Cavanaugh, by and through their legal counsel, have procured, initiated, and continued to pursue civil proceedings against Defendant, Daniel Dively, in a grossly negligent manner where no such claims are viable and thereby no relief is available against Defendant as an individual.

239. Plaintiffs, Plaintiffs Harry C. Neel, Michael Jenkins, and Lee Cavanaugh, by and through their legal counsel, have procured, initiated, and continued to pursue civil proceedings against Defendant, Daniel Dively, without probable cause and primarily for a purpose other than that of securing proper discovery, joinder of parties, or adjudication of the claim upon which these proceedings are based.

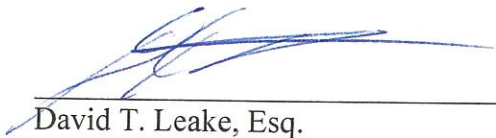
240. Plaintiffs Harry C. Neel, Michael Jenkins, and Lee Cavanaugh, by and through their legal counsel, have initiated a frivolous lawsuit for the sole purpose of harming the Defendant, Daniel Dively’s, reputation, financial standing, to otherwise harass, annoy, or cause Defendant to incur unnecessary costs of litigation.

241. As a direct and proximate result of Plaintiffs procuring, initiating, and continuing the present frivolous civil proceedings against the Defendant, Daniel Dively, the Defendant has incurred harm to his reputation and expenses and costs to defend himself including reasonable attorney’s fees.

242. Upon successful termination of all of Plaintiffs’ claims against the Defendant, Daniel Dively, an adult individual, Defendant requests this court award the damages as set forth in 42 Pa.C.S.A. §8353, including punitive damages.

WHEREFORE, Defendant, Daniel Dively, respectfully requests your Honorable Court grant judgment against the Plaintiffs, jointly or severally, in an amount in excess of \$50,000.00 and in addition to enter judgment against Plaintiffs awarding Defendant punitive damages, counsel fees, and costs associated with suit pursuant to the Dragonetti Act as set forth at 42 Pa.C.S.A §8351, et. seq..

Respectfully submitted,



David T. Leake, Esq.
Attorney for Defendant
130 West Main Street
Somerset, PA 15501
(814) 445-6946
Supreme Court I.D. # 319455

**Verification Pursuant to
42 Pa. C.S.A. §102 and Pa. R.Civ.P. 76**

I, the undersigned, do hereby state that I, Daniel Dively, am the Defendant in the foregoing cause of action. I verify that the statements contained in the foregoing Answer and New Matter and Counterclaims are true and correct to the best of my knowledge, information and belief. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S. §4904, relating to unsworn falsification to authorities.

3-19-20

Date



DANIEL DIVELY

CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

Submitted by: DAVID T LEAKE, ESQ

Signature: 

Name: DAVID T LEAKE, ESQ

Attorney No. (if applicable): 319455