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December 6, 2021

VIA E-MAIL [ELLEN@PACASO.COM](mailto:ELLEN@PACASO.COM)

Ellen Haberle  
Director, Government & Industry Relations  
Pacaso.com  
2021 Fillmore St. Suite 183  
San Francisco, CA 94115

Re: Pacaso's Operations within the City of Palm Springs, California

Dear Ms. Haberle:

As you know, this law firm serves as City Attorney for the City of Palm Springs, California. In that capacity, we are writing to advise Pacaso.com that Pacaso's current operations within the City are unlawful and must cease immediately.

While I appreciate your recent efforts to meet with City officials and present Pacaso's position as to why the City's timeshare ordinance does not apply to Pacaso, as set forth more fully below, such a position is not legally tenable.

Pacaso is a company that holds itself out as a new way to own a second home. According to Pacaso's website (<https://www.pacaso.com/learn>), accessed earlier this year, Pacaso operates as follows:

"Co-ownership with Pacaso is the best way to buy and own a great second home. From buying to closing here's how Pacaso works. First, tell us a little about yourself and what you are looking for in a second home. Then, start shopping. If a listing currently on Pacaso is not a fit, find one you love on any real estate site and share it with us. If the home is a match for Pacaso, we will partner with you to purchase up to half of the property in a private and professionally managed LLC uniquely designed for co-ownership. This LLC is referred to as the Pacaso Home LLC. On behalf of Pacaso, we line up financing for the LLC and close quickly. In parallel Pacaso remarkets remaining ownerships shares in the home to interested buyers. Buyers can purchase their desired amount of ownership from one-eighth



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Ellen Haberle  
December 6, 2021  
Page 2

to one-half of the whole home. We enable qualified buyers to access funds in the LLC and finance up to half of their purchase. The financing relationship is directly between the LLC and the buyer. Pacaso signs closing paperwork on behalf of the LLC. In parallel buyer signs the LLC owner operating agreement to complete their purchase. Ownership is recorded in the owner's schedule section of the owner operating agreement. Following closing the collective owners own 100% ownership interest in the LLC. We transform the home with modern interior design and address any necessary repairs. Owners use the mobile app to book stays 2 days to 24 months in advance. Scheduling is easy and equitable based on the number of shares owned. From there we take care of everything, overseeing local property management, bill pay and platform technology, all from the mobile app. Owners simply show up, relax and enjoy their Pacaso."

The maximum length of a stay is based on shares owned. Owners of one share can enjoy a stay anywhere from 2 to 14 nights. A stay with a duration of 2-7 nights counts as one general stay, while a stay with a duration of 8-14 nights counts as 2 general stays. Owners of two shares have the option to book stays up to 28 nights.

Pacaso asserts that the properties that they sell and manage are not timeshares. According to Pacaso, a Pacaso home is no different from any other single family residence. Pacaso further asserts that Pacaso co-owners agree to several restrictions to help ensure that their use promotes the public interest, safety and comfort. For example, Pacaso states that there is a maximum of eight co-owners for any home, with only one family using the property at a time; co-owners are prohibited from having large events or parties that exceed the maximum occupancy of the home; co-owners must adhere to a 9pm to 7am quiet hour policy; co-owners are prohibited from renting the home; and Pacaso encouraged homeowners to avoid parking on the street unless absolutely necessary. However, Pacaso does not provide any documentation or explanation of how these rules are enforced. The stays are reserved on an app, and while each co-owner is prohibited from renting the home as a short-term rental, they are permitted to allow other guests to stay there during their allotted days.

According to Pacaso, as of September, one single-family residence within Palm Springs has been fully sold, and Pacaso was marketing four others within the City.

**City of Palm Springs Timeshare Ordinance**

The City of Palm Springs regulates where timeshares can be located within the City and taxes occupancy of timeshares. Specifically, under the City's zoning ordinance, a timeshare



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Ellen Haberle  
December 6, 2021  
Page 3

project is allowed only in those zoning districts where a hotel use would be permitted (i.e., R-3, R-4, R-4VP, C-B-D, C-1, C-1AA and C-2 zones, and G-R-5 and R-2 zones when fronting on a major or secondary thoroughfare). (Palm Springs Zoning Code, § 93.23.11(B).) Indeed, such uses are not allowed by right, but instead require a conditional use permit. Notably, timeshares are not permitted in single-family zones.

The City's Zoning Ordinance defines a "timeshare" as follows:

"...a "time-share project" is one in which time-share rights or entitlement to use or occupy any real property or portion thereof has been divided as defined in Section 3.24.020(7) of the Palm Springs Municipal Code into twelve (12) or more time periods of such rights or entitlement." (PSZC, § 93.23.11(A).)

Section 3.24.020(7) defines timeshares, for purposes of taxation. It defines a "timeshare" as

"occupancy related to the situation wherein a purchaser receives the right or entitlement in perpetuity, for life, or for a term of years or other extended term, to the recurrent, exclusive use or occupancy of a lot, parcel, unit, room(s), hotel or portion thereof, or segment of real property, annually or on some other seasonable or periodic basis, for a period of time that has been or will be allotted from the use or occupancy periods into which the time-share project which is involved has been divided. The said right or entitlement to occupancy may attach in advance to a specific lot, parcel, unit, room(s), or portion of a hotel, or segment of real property, or may involve designation or selection of the same at a future time or times."

Despite Pacaso's assertions to the contrary, Pacaso's business model meets the City's Ordinance's definition of a "timeshare". The City's definition, broken down into its constituent parts, applies to Pacaso.

Specifically, Pacaso's business model fits the following definition: "wherein a purchaser receives the right in perpetuity... or other extended term, to the recurrent, exclusive use or occupancy of a lot ... annually or on some other ... periodic basis, for a period of time that has been or will be allotted from the use or occupancy periods into which the time-share project which is involved has been divided."

Here, purchasers of a Pacaso LLC receive the right, in perpetuity or some other period defined in the LLC agreement, to the recurrent and exclusive use of the lot on which the residence



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VIA E-MAIL ELLEN@PACASO.COM

Ellen Haberle  
December 6, 2021  
Page 4

is located. The right to such use is on some periodic basis, for a period of time that is allotted under the LLC agreement.

Thus, by its terms, the City's ordinance applies to a use such as Pacaso's. As such, Pacaso's operations are not permitted in single family-zones within the City of Palm Springs, California.

In addition to the City's Zoning Ordinance, the City's business license ordinance requires any party that is transacting any business within the City to first procure a business license and pay the applicable business license tax. (Palm Springs Municipal Code, § 3.48.010.) Pacaso does not possess a City business license, nor has it paid any business license tax to the City. As a result, Pacaso's operations within the City also are in conflict with the City's business license ordinance.

Finally, several significant policy reasons justify the City's prohibition against timeshares in single-family zones. As the City's Housing Element of the General Plan states,

“Palm Springs considers housing affordability to be a critical issue. The inability to afford housing leads to a number of undesirable situations, including the doubling up of families in a single home, overextension of a household's financial resources, premature deterioration of housing due to the high number of occupants, situations where children and seniors cannot afford to live near other family members because of the lack of affordable housing options, and in more extreme cases, homelessness.” (City of Palm Springs General Plan, Housing Element, p. 3-19, (2014-2019).)

For every house that Pacaso sells to one of its limited liability corporations, to be used as a second, vacation home, that house becomes unavailable to a buyer or renter who could live there full time. This necessarily reduces the amount of housing stock that is available for full time residents in the City. The reduction in housing stock, in turn, feeds the affordability crisis, making the remaining houses within the City more costly.

Pacaso may claim that it only purchases and sells “luxury” homes, and therefore does not impact the availability of affordable housing. However, basic laws of supply and demand dictate that every home that is made unavailable to a full time resident, whether “luxury” or not, necessarily reduces the supply of homes, and therefore reduces the affordability of housing in the City.

One of the policies of the City's Housing Elements is to “protect established single-family residential neighborhoods from the transition, intensification, and encroachment of uses that



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Ellen Haberle  
December 6, 2021  
Page 5

detract and/or change the character of the neighborhood.” (Housing Element, HS1.8, p. 3-63.) Pacaso portrays its business model as “the modern way to buy and own a second home”. However, Pacaso’s “modern way” involves up to eight (8) investors and their guests rotating occupancy throughout the year. Although the LLC investors are not technically “renters”, neighbors can expect the property to have many of the secondary impacts of vacation rentals, which are currently prohibited in many Coachella Valley cities and heavily regulated in Palm Springs. For example, house cleaners will have to come to the home in between each stay, and the home can turn over multiple times in a week. To a neighbor, that impact is very much the same as if the occupants were short-term vacation renters. In addition, the “co-owners” of the limited liability company really have no connection with one another, other than their investment in the company. All of this necessarily changes the character of a neighborhood, in contravention of the City’s stated policy of preserving the single-family residential character of its neighborhoods.

Another Housing Element policy is to “preserve the supply of affordable rental housing in the community, including mobile home parks, publicly subsidized rental housing, and special needs housing.” (Housing Element, HS2.9, p. 3-68.) As stated above, Pacaso’s business model removes single-family homes from the housing market for individuals or families who wish to reside in Palm Springs and therefore reduces the supply of affordable rental housing for those individuals or families.

Therefore, Pacaso’s current operations within the City are unlawful and must cease immediately.

Should you have any questions, please do not hesitate to contact me.

Sincerely,

Jeffrey S. Ballinger  
of BEST BEST & KRIEGER LLP  
City Attorney  
City of Palm Springs



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VIA E-MAIL ELLEN@PACASO.COM

Ellen Haberle  
December 6, 2021  
Page 6

cc: Hon. Mayor and Councilmembers  
Justin Clifton, City Manager  
Teresa Gallavan, Asst. City Manager  
Flinn Fagg, Development Services Director