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**IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA**

MARTIN PLADGEMAN, an individual,
Plaintiff,

vs.

ONE HUNDRED HILLS
HOMEOWNERS ASSOCIATION; an
Arizona Non-Profit Corporation;
Defendants.

No. CV2019-010615

**SETTLEMENT CONFERENCE
MEMORANDUM**

(Assigned to the Honorable Teresa Sanders)

Defendant One Hundred Hills Homeowner's Association (hereinafter the "HOA") respectfully submits the following Settlement Conference Memorandum in an effort to assist with issues pertinent to the Mediation on Monday, June 22, 2020.

I. BACKGROUND FACTS

On the evening of April 26, perhaps spilling over to the very early morning of April 27, 2019, a number of vehicles and teenagers - - without permission - - entered into the HOA property and congregated at the Pladgeman residence. Mr. Pladgeman was married to his second wife Jacqueline and his third child of that marriage, Christy (16) invited a number of her friends and acquaintances over to the home that evening. The estimated number of invitees was approximately 40, although many more that appeared. Mr. Pladgeman was out of town on business that evening.

Christy had invited friends and school acquaintances to her home previously, approximately 3 – 4 prior times. Mr. Pladgeman was generally aware when these events occurred and indicated that typically the young high school students would gather at his pool

1 house. He was not aware of any prior complaints of noise or disturbances in connection with
2 those three or four prior gatherings.

3 On this particular night, a list of 40 approved friends had been provided to the guard
4 house, but at some point beginning around 10:00 p.m., numbers of other students began
5 entering the development. The attached Incident Report indicates that many other students
6 inappropriately and impermissibly gained entry to the HOA and congregated in and around
7 the area of the Pladgeman home. **(Exhibit A)** The disturbance was such that police were
8 called. Mr. Pladgeman claimed in his deposition that his wife was not aware of the level of
9 disturbances and was not aware the police were called.

10 Following Mr. Pladgeman's return to his home the next day, he learned from his former
11 wife of the disturbance; he spoke with the security guard who informed him of the information
12 in the Incident Report; and claims this was the first he heard of it.

13 About four days later, on May 2, 2019, Mr. Pladgeman received a letter from the
14 property manager outlining various problems including the noise disturbance, the complaints,
15 etc., and advised him of a \$500 assessed fine that had been imposed against him and
16 automatically withdrawn from his account. **(Exhibit B)**

17 Mr. Pladgeman responded by letter dated May 7, 2019 asking questions about the
18 alleged prior complaints and previous disturbance by high school students. He also took issue
19 with the assessment of the \$500 fine when no one had spoken with him and he never had an
20 opportunity to address and contest the validity of any complaints or that fine. He wrote a more
21 formalized letter by certified mail and insisted on appearing before the Board and appealing
22 the assessment. The property manager indicated that it was not necessary for him to appear;
23 he could rely upon the contents of his letter; but Mr. Pladgeman preferred to personally appear.
24 He and his lawyer appeared on May 28 and addressed the Board. He told the Board the
25 imposition of the fine was inappropriate; there had been no first or second occurrence of
26 disturbance or nuisance; he certainly had never been advised of other problems or
27 disturbances. The Board agreed with him, voted unanimously to rescind the fine, and \$500
28 was immediately returned to Mr. Pladegman's account.

1 This should have been the end of the event. Unfortunately, Mr. Pladgeman took the
2 regretful step of filing a lawsuit against the Board seeking declaratory relief and apparently
3 money damages, although he acknowledged in his deposition that he has no money damages.
4 It is his view that the fine policy violates various statutory requirements and he also contends
5 that he was entitled to some sort of written acknowledgment of the Board's mistake.

6 Lastly, Mr. Pladgeman wants all of his attorney's fees, including those incurred after
7 the Board rescinded the fine and acknowledged its mistake.

8 In contrast to information in the Incident Report, the HOA acknowledges that this event
9 was apparently the first instance where complaints were made. As soon as this information
10 was conveyed to the HOA Board, the Board acknowledge this error immediately and acted to
11 rescind the \$500 fine.

12 Accordingly to Plaintiff, there are three unresolved areas in this conflict:

13 (1) Is Mr. Pladgeman entitled to a written apology?

14 (2) Is Mr. Pladgeman entitled to force the Board to revise its Fine Policy?

15 (3) To what extent is Mr. Pladgeman entitled to recover all his attorney's fees?

16 17 **II. MISCELLANEOUS MATTERS AND SUGGESTIONS FOR A** 18 **POTENTIAL RESOLUTION**

19 With regard to issue (1), if Mr. Pladgeman is willing to extend a written apology to
20 fellow Association owners for the disturbance caused by his daughters and her friends, the
21 Board will provide to Mr. Pladgeman a written letter of apology with respect to the wrongful
22 imposition of the fine.

23 With respect to item (2), Mr. Pladgeman provided an itemized statement from his
24 attorney concerning how the Fine Policy violates Arizona law. That was sent to the HOA's
25 personal counsel Mr. Mark Sahl of the firm of Carpenter, Hazelwood who responded and
26 indicated a couple of changes that could be made, but certainly not the wholesale changes
27 demanded by Plaintiff's attorney. The HOA is willing to implement its attorney's changes.
28

1 Finally, with respect to item (3) dealing with attorney's fees, this is a somewhat
2 complicated issue. The insurance policy under which this action is being defended does not
3 provide coverage for attorney's fees, a policy coverage position that has been disclosed to all
4 parties. Accordingly, there is no coverage for this claim for fees.

5 The HOA is willing to consider reimbursing Mr. Pladgeman for the amount of
6 attorney's fees incurred between the events on April 26 and the time of the Board Meeting on
7 May 28 where the Board acknowledged the error and rescinded the fine, but any attorney's
8 fees incurred after that were completely unnecessary. It was neither prudent nor rational for
9 Mr. Pladgeman to pursue a lawsuit against the Board when the Board had already
10 acknowledged its error and had already returned his money. Accordingly, any attorney's fees
11 incurred after May 28, 2019, were superfluous, unnecessary, and instigated to satisfy Mr.
12 Pladgeman's spleen, not for any legitimate legal remedy. The Board is willing to consider
13 paying those fees incurred by Mr. Pladgeman up to a level of \$2,500 prior to May 28, 2019,
14 but not any thereafter. There is no obligation, legal or otherwise, to subsidize Mr. Pladgeman's
15 anger management when in fact it was his daughter whose activities were at the root of the
16 problem.

17 **III. HISTORY OF SETTLEMENT NEGOTIATIONS**

18 Counsel for Mr. Pladgeman and counsel for the HOA have had numerous exchanges in
19 an effort to try and resolve the claims. The HOA has agreed that it will adjust its Fine Policy
20 consistent with the recommendation of its private counsel, which were in response to the
21 Pladegman attorney's various demands. Secondly, the HOA will agree that it will provide a
22 written apology to Mr. Pladgeman if he provides a written apology to the HOA Board and to
23 the HOA members.

24 The sticking point is with respect to the attorney's fees. The HOA has specifically
25 asked Mr. Pladgeman to reveal the amount of attorney's fees he incurred between the night of
26 April 26 and when the Board rescinded the fine and acknowledged its mistake on May 28,
27 2019. He has refused. Mr. Pladgeman's attorney is aware of the absence of coverage for
28 payment of attorney's fees. Accordingly, the irony of any such payment is that some

1 percentage portion of that will come out of Mr. Pladgeman's monthly assessments. The longer
2 this case persists, the greater the amount of money the HOA may have to pay. This just makes
3 no sense.

4 The HOA will appear and participate in good faith. We are anxious to get the matter
5 resolved with one of our homeowner members. There is no point to the continued pursuit of
6 this claim. The President of the Board, Mr. Steve Kistler, will appear with full settlement
7 authority which has been provided to him by a resolution signed by other Board members. In
8 addition, the Farmers Claims Representative, Mr. Redmond Walsh, will be available by phone.
9 In light of the virus, Farmers has a company-wide policy that its employees will not personally
10 attend hearings, trials, or settlement conferences face to face, but he will appear and participate
11 by phone. As indicated above, the Defendant is willing to subsidize Plaintiff's attorney's
12 fees issue up to the amount of \$2,500.

13 RESPECTFULLY SUBMITTED this 16th day of June, 2020

14 JARDINE, BAKER, HICKMAN
15 & HOUSTON, P.L.L.C.

16 By

17 Bradley R. Jardine
18 3300 N. Central Avenue, Suite 2600
19 Phoenix, Arizona 85012
20 Attorneys for Defendants

21 ORIGINAL emailed this
22 16th day of June, 2020 to:

23 Charles Wirken
24 cwirken@gustlaw.com
25 Settlement Conference Judge Pro Tem

26 Degnan Law, PLLC
27 David Degnan
28 Mark W. Horne
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Attorneys for Plaintiff

By

Gracy & Raymond

EXHIBIT A



INCIDENT REPORT

684-19-4

GATE/ACCT.# 684 DATE 4/27/19 INCIDENT REPORT # 190405
GATE NAME One Hundred Hills PAGE 1 OF 2
REPORT BY S/O A. R. Keen SHIFT HOURS 0600-1400
RESIDENT NAME Martin Pladgeman LOT # ---
RESIDENT ADDRESS 16022 N. 2113th way
HOME TELEPHONE 623-516-0029 WORK TELEPHONE 602-377-7859
REASON FOR REPORT Party situation - excessive noise - gate running
DATE OCCURRED 4/26/19 TIME OF INCIDENT After 1000hrs
DATE REPORTED 4/26/19 TIME REPORTED 0918 4/27/19
POLICE OFFICER NAME Scottsdale Police BADGE # ---
FIRE DEPT. NAME --- BADGE # ---
POLICE/FIRE DEPT. D. R. NUMBER ---
PERSON/S INVOLVED as listed below
VEHICLE INVOLVED DESCRIBE ---

DETAILS OF INCIDENT WHO WHAT WHEN WHERE HOW ACTION YOU TOOK
PRINT IN BLACK INK

After 1000hrs - 4/26/19 - This morning, 4/27/19, I received multiple reports of after-hours activity at our entrance on the part of teenagers attempting to gain access to the complex AFTER our officer Mike Kapas went off duty at 10:00 PM. - As follows -

- (1) 1005 hrs - Multiple vehicles were observed by residents as waiting to attempt entry through the entrance gate by following a resident. The result of these attempts was that the gate ARM prevented them from entering.
- (2) 1007-1009 hrs - Multiple teenagers were observed entering the complex on foot.
- (3) 1015 hrs - Multiple vehicles with teenagers in them were observed entering the complex at a high rate of speed through the EXIT gate after a resident exited the complex. These teens were observed racing past the resident and entering through the exit gate before it closed.
- (4) Scottsdale Police were called by someone and multiple Police vehicles entered the complex.

continued on Page 2

SECURITY OFFICERS SIGNATURE A. R. Keen

SUPERVISOR SIGNATURE A. R. Keen

ORIGINAL COPY TO ACCOUNT

(USE CONTINUATION SHEET IF NEEDED)



INCIDENT CONTINUATION SHEET

684-19-4

GATE/ACCT# 684 DATE 4/27/19 INCIDENT REPORT# 190405
GATE NAME One Hundred Hills PAGE 2 OF 2
REPORT BY S/O A. R. Keen
NATURE OF REPORT Party Situation - Excessive Noise - gate running

CONTINUE WITH INCIDENT REPORT

There was no definitive testimony about what the Police did or did not do but we did have a Police presence in our community.

This is the SECOND event of this nature regarding a Notre Dame celebrations party being held at our near Resident Pladgemans home. For the second time this party was out-of-hand with residents complaining about excessive noise and multiple vehicles parked on both sides of the street. For the second time we had teenagers who were attempting to and even succeeding at gaining entrance to the complex for our officer went off-duty.

I've included with this report the complete list of guests that were given access to this party at the Pladgemans. We have a concensus at the guardhouse that something needs to be done about this situation involving these parties at the Pladgemans. It's not so very long ago that we had this exact same situation with a tenant in our complex by the name of Picollo.

We will not take action from the guardhouse as this was an after-hours circumstance. We will leave it to leadership to take the action that is deemed necessary. This report is simply to make leadership aware of this Pladgeman situation.
END

SECURITY OFFICER SIGNATURE

A. R. Keen

SUPERVISOR SIGNATURE

(USE CONTINUATION SHEET IF NEEDED)

EXHIBIT B

One Hundred Hills Homeowners Association
c/o FirstService Residential (Scottsdale)
9000 East Prima Center Parkway Suite 300
Scottsdale, AZ 85258



May 2, 2019

MARTIN PLADGEMAN / JACQUELINE ANN PLADGEMAN
16022 N 113TH WAY
SCOTTSDALE AZ 85255 USA

RE: One Hundred Hills Homeowners Association - Fine
16022 N 113th Way Scottsdale AZ 85255 / Account #: 443003-0040-02

Dear Martin Pladgeman,
Pursuant to the fine and violation policy of the One Hundred Hills Homeowners Association and in conjunction with our previous efforts to obtain your compliance with the Covenants, Conditions and Restrictions (CC&R's) and Rules and Regulations you agreed to follow.
This letter will serve to inform you that a \$500.00 fine has been levied against you.

Continued failure to comply will lead to additional fines and/or legal actions from the Association. Our recent inspection confirms that you are still not in compliance of the following violation:

Violation Type: Nuisance - Excessive Noise
First Inspection Date: Friday, April 26, 2019
Last Inspection Date: Friday, April 26, 2019
Compliance Date: Friday, April 26, 2019

Comments: The guards reported complaints about multiple teens entering the gate on foot after hours, multiple cars travelling at a high rate of speed through the community and excessive noise coming from your property in which the police were called. This was also noted as not the first time this has happened.
Please include this fine amount in your next assessment payment. You have the right to appeal this penalty in person by requesting to be placed on the agenda at the next board meeting or by submitting a written appeal to the Board of Directors in care of FirstService Residential. Please notify your Community Manager if you wish to be placed on the agenda for a hearing at the next Board of Directors meeting date. Failure to resolve this issue through the hearing process will result in subsequent fines in accordance with the Association's fine policy and potential legal action. Fines are enforced pursuant to the Association's governing documents and Arizona law. You have the option to petition for an administrative hearing on this matter in the Arizona Department of Real Estate pursuant to ARS Section 32-2199.01. We are available to assist you Monday through Friday between the hours of 08:00 AM and 05:00 PM.

Sincerely,

Jonathan Tuttle
Community Manager
jonathan.tuttle@fsresidential.com
Ph: 480-551-4300
Fax: 480-551-6000