

CITATION –TRC 99 and 106

THE STATE OF TEXAS

COUNTY OF DENTON

CAUSE NO. 22-7967-431


TO: Windsong Ranch Community Association Inc., Agent for Service, CCMC 7800 Dallas Parkway, Suite 450, Plano, TX 75024 (or wherever he/she may be found).

Notice to defendant: You have been sued. You may employ an attorney. If you, or your attorney, do not file a written answer with the clerk who issued this citation by 10:00 a.m. on the first Monday following the expiration of twenty days after you were served this citation and petition, a default judgment may be taken against you. In addition to filing a written answer with the clerk, you may also be required to make initial disclosures to the other parties of this suit. These disclosures generally must be made no later than 30 days after you file your answer with the clerk. Find out more at TexasLawHelp.org.

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| Court: | 431st Judicial District Court 1450 E. McKinney, 4th Floor, Denton, TX 76209 |
| Cause No.: | 22-7967-431 |
| Date of Filing: | September 20, 2022 |
| Document: | Plaintiff's Original Petition |
| Parties in Suit: | Carl Johnson; Patricia Johnson; Bearfoot Companies, LLC; Windsong Ranch Community Association, Inc. |
| Clerk: | David Trantham, District Clerk, 1450 E. McKinney, Suite 1200, Denton, TX 76209 |
| Party or Party's Attorney: | Steven Poock P.O. Box 984 Sugar land, Texas 77487 |

Issued under my hand and seal of this said court on this the 22nd day of September, 2022.

David Trantham, District Clerk
Denton, Denton County, Texas

BY:  _____, Deputy
Rebecca Moss

Service Return

Came to hand on the _____ day of _____, 20____, at _____ m., and executed on the _____ day of _____, 20____, at _____ M by delivering to the within named _____ in person a true copy of this citation, with attached copy(ies) of the Plaintiff's Original Petition, at _____.

Service Fee: \$ _____ Sheriff/Constable
_____ County, Texas

Service ID No. _____ Deputy/Authorized Person

VERIFICATION

On this day personally appeared _____ known to me to be the person whose name is subscribed on the foregoing instrument and who has stated: upon penalty of perjury, I attest that the foregoing instrument has been executed by me in this cause pursuant to the Texas Rules of Civil Procedure. I am over the age of eighteen years and I am not a party to or interested in the outcome of this suit, and have been authorized by the Denton County Courts to serve process.

Subscribed and sworn to before me on this the _____ day of _____, 20____
_____ Notary Public

No. 22-7967-431

**CARL JOHNSON and
PATRICIA JOHNSON**

v.

**WINDSONG RANCH COMMUNITY
ASSOCIATION, INC.
and BEARFOOT COMPANIES, LLC**

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IN THE DISTRICT COURT

OF DENTON COUNTY, TEXAS

_____ JUDICIAL DISTRICT

PLAINTIFFS' ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

Carl Johnson and Patricia Johnson (“Plaintiff” whether one or more) complain of Windsong Ranch Community Association, Inc. (the “HOA”) and Bearfoot Companies, LLC, (collectively “Defendant” whether one or more), and for cause of action show:

Introduction

1. Subsequent to a financial settlement in a prior lawsuit, Bearfoot and the HOA intentionally targeted Plaintiffs with retaliatory and discriminatory conduct in violation of Plaintiffs’ statutory rights and in breach of restrictive covenant.

Discovery Plan

2. Plaintiffs affirmatively plead Discovery plan controlled by Rule 190.3 (Level 2).

Claim for Relief

3. Plaintiffs affirmatively plead for monetary relief over \$250,000 but not more than \$1,000,000, and non-monetary relief.

Parties

4. Plaintiffs, Carl Johnson and Patricia Johnson, are individuals residing in Denton County, Texas.

5. Defendant, Bearfoot Companies, LLC, is a Texas entity whose agent for service, Chad Avery, may be served with process at Bearfoot Companies, LLC, 2425 N. Central Expressway, Ste. 200, Richardson, TX 75080.

6. Defendant, Windsong Ranch Community Association, Inc., is a Texas entity whose agent for service, CCMC, may be served with process by certified mail at 7800 Dallas Parkway, Suite 450, Plano, TX 75024.

Venue

7. Venue is proper in Denton County because a substantial portion of the conduct complained of occurred in said County or Defendant has offices in said county.

Jurisdiction

8. The Court has jurisdiction over defendants because defendants are Texas entities. The Court has jurisdiction over the controversy because this is a claim over which this Court has jurisdiction, and the damages are within the jurisdictional limits of the Court.

Exhaustion of Administrative Remedies

9. Plaintiff exhausted all remedies available pursuant to statute and/or Restrictive Covenants. Plaintiff invoked further remedies, none of which were made available to Plaintiff by Defendant.

Background

10. Plaintiff purchased a home across from the pool area. This pool, called the Crystal Lagoon, is actually a five-acre complex with three sandy beaches that can hold 3000 visitors at a time. It includes a playground, two huge grilling areas, two outdoor showers, water fountains (so every child has ready access to water), a volleyball court, two launching docks, rental shack for kayaks, restrooms, shaded seating areas, lounge chairs, etc. The idea was that the Plaintiff family could enjoy the Crystal Lagoon on a daily basis, in a location that was safe and secure. The pool and related facilities were a big part of the Johnsons' family life, and a major reason they purchased the home. Plaintiff and family used the facilities year-round, and the children would even do some academic work there. Now, the Johnsons can rarely go to the Lagoon without being accosted by a pool monitor or manager telling the Johnsons they are being watched, and requiring the Johnsons to comply with "rules" with which no other resident is required to comply. The Johnsons suffer humiliation on a near-daily basis, and fear for their safety, in a place that was intended to be their "safe place". The trust the Johnsons placed in the pool managers was violated by their intentional and aggressive conduct in targeting the Johnsons.

11. Bearfoot, the pool management company, is under the direction of the HOA. The targeting of the Johnsons by Bearfoot is precipitated, controlled, and encouraged by the HOA.

**Selective Targeting of, and
Retaliation Against, the Johnsons**

12. Previously, the parties hereto were involved in a lawsuit that ended with a financial settlement. After the lawsuit and settlement, and in retaliation for such, Defendant HOA (or particular persons on the Board of the HOA who act on behalf of the HOA) and Bearfoot engaged in conduct intentionally targeting the Johnsons. The Johnsons were treated differently than other residents within the HOA. Targeting of a resident is a violation of statute and a violation of restrictive covenant, entitling Plaintiff to a claim for attorney fees. The conduct complained of includes but is not limited to the following:

- The HOA allowed other residents to use the clubhouse for deposition. When the Johnsons requested the same courtesy, they were denied.
- HOA and Bearfoot instructed pool and Lagoon monitors (i.e. lifeguards) to specifically target the Johnsons regarding conduct for which other residents are allowed to engage in.

- The HOA levied a fine¹ against the Johnsons for an alleged infraction of a supposed pool rule that has never been enforced. Plaintiffs allege that never in the history of this HOA has a resident been fined for an alleged pool rule violation. Plaintiffs further allege that the violation of a minor pool rule is not a basis for an HOA fine that can result in a lien of one's homestead.
- That the HOA fined the Johnsons for an act that every other resident on every weekend engages in routinely is intentionally discriminatory and targeted conduct. Dozens of residents on any particular weekend have drinks in the pool and Lagoon. Pool monitors routinely walk by residents with drinks in the pool, and pool monitors routinely float by residents in the pool with drinks, without challenging such conduct. For years the rule has not been enforced except against the Johnsons, who are called out of the pool and then fined for the same conduct.
- The HOA repeatedly ignores requests from counsel that their conduct targeting the Johnsons cease.
- No resident has been sent a warning letter, much less fined, for the conduct Plaintiff allegedly engaged in.
- Intentional factual misrepresentations were made to Plaintiff's counsel regarding Plaintiff in an attempt to portray Plaintiff in a false light. For example, the

¹ Although the fine was "suspended", it was not reversed, it can still be "reinstated" (apparently for an indefinite period of time), and Carl Johnson is still negatively impacted by the "suspension" which can be used in further actions or simply "reinstated". Additionally, although the fine was suspended, the attorney fee charge was not suspended or refunded.

undersigned was informed by the HOA that another resident had to intervene to defend a pool monitor from Patricia Johnson. This is a factual misrepresentation. In fact, another owner (Amy Hanson) confronted Patricia Johnson, taunted her, squared off to fight, and “cat called” to get Patricia Johnson to come her way (impliedly to fight) which Patricia Johnson ignored. Amy Hanson also yelled that the Johnsons are engaged in the sex trafficking of their children. This was an attack on the Johnsons, it was threatening, it was embarrassing, it was highly prejudicial, it was defamatory, and it was heard by multiple residents and pool attendees. Plaintiffs have made multiple reports to the HOA regarding the conduct, including to Robert Harvey, but the reports and complaints are ignored as no one from the HOA responds to these complaints.

- The HOA threatened to file a lawsuit against the Johnsons for the alleged violation of a pool rule that has never been enforced.
- The HOA and Bearfoot treat the Johnsons as no other resident is treated.
- The Johnsons are the only two people in the entire neighborhood of thousands of residents that are not allowed to have a drink in the Lagoon. Instead, the Johnsons are fined for the same conduct other residents routinely engage in under the watchful eye of the monitors.
- Standard HOA violations letters are normally sent by the Community Standards Coordinator. For the Johnsons, the same letters are sent by attorneys charging attorney fees to the Plaintiff.

- The facts will show that Defendant knew all along that the fine was a ruse and a charade, but insisted on a fine and an in-person appeal hearing.

**Targeting/Retaliation through Statutory Violations
and
Violation of Restrictive Covenants**

- The HOA set a date for an appeal hearing for the parties to appear via zoom. Realizing that Plaintiffs' counsel is from out of town, the HOA canceled the zoom appearance and made the appearance in-person. This was done in an effort to make the process as financially difficult for the Johnsons as possible.
- A mandatory *in-person* hearing for an appeal that requires Plaintiff's counsel to make an 9-hour drive for a short hearing is an example of another HOA rule that applies to no one but Plaintiff.
- The requirement that the appeal hearing be held within 30 days was ignored by the HOA.
- The HOA informed Plaintiff that he was not entitled to appeal to the Board of Directors. On information and belief, he is the only resident within the HOA who has not been so entitled.
- Knowing (or suspecting) that the allegations supporting the fine are spurious, the HOA refuses to provide evidence to allow Plaintiff to defend himself at the appeal hearing.
- The requirement that Carl Johnson be notified by certified mail has been ignored.

- The statutory requirement that Carl Johnson be given a prior notice before a fine is levied has been ignored.
 - The HOA refuses to identify, despite requests, which of the many and varied accusations Plaintiff is having to defend.
 - The HOA refuses to respond to letters from Plaintiff's attorney.
 - The HOA refuses to provide, despite requests, the names of pool monitors who know the allegations are spurious.
 - The HOA refuses to provide, despite requests, pool video which show the allegations are spurious.
 - The HOA is in violation of statutory requirements by levying a fine which was not preceded by a prior warning letter.
 - The documents provided by the HOA specifically contradict the allegations in the violation letter, but a fine was levied nonetheless.
 - Normally, a standards committee member personally views the violation and sends a notice letter. But for Plaintiff, the violation is based on an anonymous hearsay statement from an unknown person who was not at the hearing, and whose report includes spurious facts, misidentifies persons involved, and is contradicted by pool video.
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- The HOA specifically informed the Johnsons they had no statutory appeal hearing available to them.
 - The HOA unilaterally changed hearing dates without prior notice or agreement.

- For Plaintiff, the HOA refused to hold a zoom hearing.
- The HOA fine against Plaintiff for \$100 is a violation of statute and a breach of the restrictive covenants.
- The HOA, through its counsel, removed all residents including potential witnesses during the appeal hearing. At the same time, the HOA allowed Robert Harvey to attend the hearing. Robert Harvey is not a board member, is not a resident, was not a witness, and provided no testimony. The HOA fabricated rules as they went, which rules were applied to Carl Johnson and not the HOA.
- Defendant, by claiming to be able to “reinstate” a fine retroactively for unknown and unstated reasons and for an indefinite period of time, is a breach of the restrictive covenants, and is applied to Carl Johnson only.

Waiver and Abandonment

13. To the extent the HOA or Bearfoot claims or asserts there exists a pool “rule” that no drinks are allowed in the Lagoon, such a “rule” has been waived by years of abandonment and non-enforcement despite dozens of residents being in the Lagoon on a daily basis with drinks.

The Factual Basis for the Fine was Fabricated

14. The allegations contained hereinabove are hereby incorporated by reference for all purposes. The basis for the fine was fabricated. The purpose of the fabricated basis was to target Plaintiff in retaliation for prior conduct.

Wrongful Fine

15. The allegations contained hereinabove are hereby incorporated by reference for all purposes. Plaintiff was wrongfully fined. The statutory procedures and restrictive covenants meant to protect residents were ignored and violated. In addition, the alleged facts supporting the fine are false.

Wrongful Charge for Attorney Fees

16. The allegations contained hereinabove are hereby incorporated by reference for all purposes. Plaintiff was wrongfully charged attorney fees in violation of statutory procedures and restrictive covenants.

Sec. 209.008(b). An owner is not liable for attorney's fees incurred by the association relating to a matter described by the notice under Section 209.006 if the attorney's fees are incurred before the conclusion of the hearing under Section 209.007

Attorney Fees as Damages

17. The allegations contained hereinabove are hereby incorporated by reference for all purposes. The HOA has intentionally engaged in conduct with the specific intent that it cause the Johnsons to incur attorney fees, or that it cause the Johnsons to incur increased attorney fees. This includes but is not limited to canceling a zoom hearing and requiring an in-person hearing specifically for the purpose of requiring the Johnsons' out-of-town attorney to travel to the hearing. When Defendant canceled the Zoom hearing and required the hearing be in-person, Defendant knew that counsel would have an nine-hour drive for a short hearing. The HOA intentionally

engaged in conduct with the specific intent that it cause the Johnsons harm and to incur attorney fees. The HOA has engaged in other conduct also with the specific intent that it cause the Johnsons harm and to incur attorney fees by, *inter alia*, specifically targeting the Johnsons in retaliation, applying non-existent rules to the Johnsons (and only the Johnsons), and applying waived and abandoned rules to the Johnsons (and only to the Johnsons). The conduct alleged herein also supports Plaintiffs' claims for breach of fiduciary duty.

**Violation of Statutory Process
and
Breach of Restrictive Covenant**

18. The allegations contained hereinabove are hereby incorporated by reference for all purposes.

19. Deed restrictions, restrictive covenants, and statutory law require that Plaintiffs are extended certain procedural rights. These were violated by the HOA. Moreover, the enforcement of non-rules (or abandoned rules) against the Johnsons, discriminatory conduct, retaliatory conduct, and conduct intentionally and specifically targeting the Johnsons are further such violations. The conduct described herein also supports Plaintiffs' claims for breach of fiduciary duty.

Attorney Fees Pursuant to Statute

20. The allegations contained hereinabove are hereby incorporated by reference for all purposes.

21. In multiple ways and on multiple dates, Defendant's conduct has been in breach of a restrictive covenant.

22. Plaintiffs seek attorney fees pursuant to the Texas Property Code as the prevailing party in a breach of restrictive covenant action.

Sec. 5.006. ATTORNEY'S FEES IN BREACH OF RESTRICTIVE COVENANT ACTION. (a) In an action based on breach of a restrictive covenant pertaining to real property, the court shall allow to a prevailing party who asserted the action reasonable attorney's fees in addition to the party's costs and claim.

23. Defendant's conduct in breach of a restrictive covenant include, but is not limited to, the following:

- Defendant took the position, and informed Plaintiff, that he is not entitled to an appeal hearing, in breach of a restrictive covenant.
- Defendant's \$100 fine is a breach of a restrictive covenant.
- Fining Plaintiff for the first notice is a breach of a restrictive covenant.
- Engaging an attorney for Plaintiff's first notice is a breach of a restrictive covenant.
- Charging attorney fees to Plaintiff is a breach of a restrictive covenant.
- Targeting and retaliating against Plaintiff due to prior litigation and a prior settlement is a breach of a restrictive covenant.
- Selectively fining Plaintiff for an act that is not enforced against any other resident is a breach of a restrictive covenant.
- Arbitrary, capricious, or discriminatory treatment of Plaintiff is a breach of a restrictive covenant.
- Breach of the implied covenant of quiet enjoyment is a breach of a restrictive covenant.
- Harassment of Plaintiff is a breach of a restrictive covenant.
- Interference with quiet enjoyment is a breach of a restrictive covenant.
- The requirement that notice be sent to Plaintiff by certified mail was ignored and is a breach of a restrictive covenant.
- The requirement that Plaintiff be given a prior notice before a fine is levied has been ignored and is breach of a restrictive covenant.

- Assessing attorney fees against Plaintiff before the appeal hearing is concluded is wrongful.
- Defendant charging attorney fees to Plaintiff is wrongful, is in violation of the Texas Property Code, and is in violation of restrictive covenants.

Causes of Action

24. The allegations contained hereinabove are hereby incorporated by reference for all purposes. Plaintiffs sue for the following causes of action:

- Breach of Fiduciary Duty.
- Negligence.
- Breach of Covenant.
- Violations of Statutory Process.
- Violations of Property Code.
- Intrusion on Seclusion.
- Breach of Covenant of Quiet Enjoyment.
- Declaratory Judgment.
- Injunctive Relief.

25. Plaintiffs further seek attorney fees for the each such cause of action.

Arbitrary and Discriminatory Enforcement

26. Defendants' exercise of discretionary authority in enforcing restrictive covenants against the homeowner was arbitrary, capricious, or discriminatory, and therefore unreasonable in violation of section 202.004(a) of the Property Code. Defendants breached the duty of fair dealing vis-à-vis the homeowners by, among other acts, retaliating against the homeowners for prior litigation and by engaging in arbitrary and retaliatory conduct.

27. Defendants' conduct, as described above, resulted in Plaintiffs' damages including but not limited to an interference with their right of quiet enjoyment of their property and amenities, mental anguish, and loss of use of amenities. The conduct described herein is a violation of statute and breach of restrictive covenant entitling Plaintiff to attorney fees.

Intrusion on Seclusion

28. The allegations contained hereinabove are hereby incorporated by reference for all purposes.

29. Defendant intentionally intruded, physically or otherwise, upon Plaintiff's solitude, seclusion, or private affairs or concerns, and such intrusion would be highly offensive to a reasonable person.

30. Plaintiffs sue for intrusion on seclusion by reason of Defendants' conduct as described herein.

Harassment

31. The allegations contained hereinabove are hereby incorporated by reference for all purposes.

32. Defendants have engaged in harassment of Plaintiffs, both quid pro quo harassment and hostile environment harassment, in violation of HUD and FHA regulations.

**The Appeal Hearing was a Farce,
Was Closed to Residents and all Witnesses,
and Was not in Accordance with Texas Law**

33. The appeal hearing was a farce, was closed to residents and witnesses, and was not in accordance with Texas law.

34. Plaintiff was initially denied an appeal hearing, and was informed by Defendant he was not entitled to a hearing. Because the fine creates a lien and is due immediately, Plaintiff paid the fine under protest with all rights reserved. Defendant then “allowed” a hearing. However, Defendant’s counsel, calling himself the “hearing officer”, created a hostile environment, and unilaterally removed all residents from the hearing room (including potential witnesses). Defendant, through counsel, made unreasonable demands, and when those unilateral demands were not met, threatened Plaintiff with canceling their appeal hearing and re-scheduling (for which Defendant has no statutory authority). Defendant’s counsel even lunged at Patricia Johnson making an attempt to either snatch her device or peck at her private screen. Defendant created this hostile environment in secret so no resident could observe. Defendant then made no attempt at settlement, made no offer to settle, and proposed no solution to any issue at hand.

35. The same parties that fined Plaintiff (i.e. board members with counsel) is the same group to which Plaintiff was required to make his appeal. In essence, the appeal was a farce, made to the same group who find Plaintiff, and with only one board member attending.

36. No witness provided any insight into the events under consideration, as all witnesses had been removed. No evidence was presented by Defendant other than a short statement from an unnamed person who was not a witness to the events, and may have been told what to write by Defendant. The statement had the facts wrong, the identify of persons wrong, and the date wrong. The statement claims to be about events taking place on July 15, but the hearing was regarding events taking place July 16. The statement claims that Carl Johnson was with Patricia Johnson at the time of the events, when, in fact, Patricia Johnson was with another resident at the time of the events, and Carl Johnson was not present. The statement claims that Carl Johnson was in the pool with a drink and used foul language, when in fact Carl Johnson was not at the pool at the time. In fact, the deck was stacked against Plaintiffs, and due to the lack of process and bias of the hearing member Plaintiffs did not receive the appeal hearing contemplated by statute.

Interference with Quiet Enjoyment

37. Defendants, by their conduct described herein, have breached the implied covenant of quiet enjoyment that Plaintiffs possess either directly or as a third-party beneficiary. In the alternative, Plaintiffs' statutory and constitutional right to quiet enjoyment of their property and the amenities thereto has been violated by Defendants.

Exemplary Damages

38. The actions of Defendants and their managers and vice-principals, described above, were willful and constitute malice, as that term is defined by law. Texas law allows for the imposition of exemplary damages based on said conduct. Accordingly, Plaintiffs request that exemplary damages be awarded against Defendants in an amount within the jurisdictional limits of the Court.

Vice Principal

39. At all times relevant hereto, each person complained of herein was a vice principal vis-à-vis Defendant with the authority to direct activities of Defendant, and therefore Defendant should be held liable for exemplary damages based on the vice-principal's malicious and/or intentional conduct. Further, Defendant was reckless in employing said vice-principal, an unfit agent, and therefore is liable for exemplary damages assessed for the conduct of the unfit agent.

Conditions Precedent

40. All conditions precedent to the causes of action herein alleged have been performed or have occurred, and all required notices have been sent.

Injunctive Relief

41. Upon trial on the merits, this Court should restrain Defendants from harassing, targeting, and retaliating against Plaintiffs, and restrain Defendants from

otherwise interfering with Plaintiffs' right to enjoy their property and the amenities thereto. Plaintiffs further seek reimbursement of attorney fees charged in violation of the Texas Property Code.

Declaratory Judgment

42. Plaintiffs request that the Court make a declaratory judgment that Carl Johnson did not engage in the conduct, purportedly in violation of the restrictive covenant, upon which the fine was levied. Plaintiffs further request that the Court make a declaratory judgment that the fine cannot be "reinstated" as threatened due to the fact that the conduct did not occur and statutory requirements were not met. Plaintiffs further request that the Court make a declaratory judgment that Defendant's charge of attorney fees is in violation of the Texas Property Code.

43. Plaintiffs seek reimbursement of costs and reasonable and necessary attorney fees pursuant to the Texas Uniform Declaratory Judgments Act, Tex.Civ.Prac.&Rem. Code § 37.009.

Special Damages

44. Plaintiffs purchased a home across from the pool area. This local neighborhood pool, called the Crystal Lagoon, is actually a five-acre complex with three sandy beaches that can hold 3000 visitors at a time. It includes a playground, two huge grilling areas, two outdoor showers, water fountains (so every child has ready access to water), a volleyball court, two launching docks, rental shack for kayaks, restrooms, shaded seating areas, lounge chairs, etc.

45. The idea was that Plaintiffs' family and minor children could play in and around the Crystal Lagoon on a daily basis, in a location that was safe and secure. The pool and related facilities were a big part of the Plaintiffs' life, and a major reason they purchased the home. The family used the facilities year-round, and their children would even do some academic work there. Since the harassing, aggressive, and confrontational actions of Defendant, Plaintiffs rarely use the pool facilities, and only do so when the children can be closely guarded by a family member. Plaintiffs suffer humiliation on a daily basis due to the intentional and aggressive acts against the family. The joy Plaintiffs had in purchasing a home with a clear view of the pool where the family could play and they could gather on a daily basis has been destroyed by Defendants' wrongful acts.

CLAIM FOR RELIEF

WHEREFORE, Plaintiffs request that Defendant be cited to appear and answer, and that on final trial Plaintiff have judgment for damages against Defendant as follows:

1. General damages in an amount within the jurisdictional limits of the Court.
2. Prejudgment interest as provided by law.
3. Special damages.
4. Loss of use damages.

5. Mental Anguish damages.
6. Damages for interference with Plaintiff's quiet enjoyment.
7. Damages for wrongful fine.

8. Damages for wrongful charge of attorney fees.
9. Attorney fees.
10. Post judgment interest as provided by law from the date of judgment until paid.
11. Costs of court.
12. Such other and further relief to which Plaintiff may be justly entitled.

Respectfully Submitted,

/s/ Steven Poock

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