

<p>DISTRICT COURT, DOUGLAS COUNTY, COLORADO 4000 Justice Way Ste. 2009 Castle Rock, CO 80109</p> <hr/> <p><b>Plaintiffs:</b> MARK GOODMAN, individual and as Trustee of the Mark Goodman Revocable Trust; RICHARD CAMPBELL; DONNA CAMPBELL; WILLIAM B. FORNIA; and MATTHEW TROYER,</p> <p>v.</p> <p><b>Defendants:</b> THE CITY OF LONE TREE, a home rule municipality; and SOUTH SUBURBAN PARK AND RECREATION DISTRICT d/b/a SOUTH SUBURBAN PARKS AND RECREATION, a quasi-municipal corporation.</p> <hr/> <p><b>Attorney for Plaintiffs:</b> Tessa F. Carberry, Reg. No. 54066 HUSCH BLACKWELL LLP 1801 Wewatta Street, Suite 1000 Denver, CO 80202 Tel: 303-749-7200 Fax: 303-749-7272 E-mail: <a href="mailto:Tessa.Carberry@huschblackwell.com">Tessa.Carberry@huschblackwell.com</a></p>	<p>DATE FILED: June 27, 2024 2:47 PM FILING ID: B4469CB58D82C CASE NUMBER: 2024CV30595</p> <p style="text-align: center;"><b>▲ COURT USE ONLY ▲</b></p> <hr/> <p>Case No.</p> <p>Division:</p>
<p><b>VERIFIED COMPLAINT</b></p>	

Plaintiffs, by counsel, hereby submit this Verified Complaint against Defendants as follows:

**I. NATURE OF THE ACTION**

1. Noise levels at The City of Lone Tree Recreational Center pickleball courts exceed all reasonable standards set for Colorado state and local laws and deprive Plaintiffs and their neighbors from quiet enjoyment of their homes and outdoor spaces.

2. Despite these unbearable conditions experienced by dozens of residents, Defendants refuse to close the courts.

3. While other communities throughout the region have closed pickleball operations due to excessive noise, Defendants reject all science-based sound data and merely installed ineffective fencing and landscaping around the courts which fails to address the noise levels.

4. Meanwhile, the nuisance level noise rages on daily with the pickleball striking the paddles **every two seconds up to thirteen (13) plus hours a day**. No resident in this community should live under these conditions.

5. Defendants created this dangerous condition, and Defendants knowingly ignore the unlawful noise levels created by their actions.

6. Defendants pickleball courts are a dangerous condition harmful to the public's health, safety, and welfare as well as Plaintiffs' enjoyment of their properties by repeated invasion of sound.

7. For the past seven plus months, Plaintiffs have demanded closure of the courts to resolve the noise level issues. Despite these efforts, Defendants have failed to bring the courts into compliance.

8. Judicial intervention is necessary to enjoin Defendants operation of the pickleball courts given the consistent refusal by Defendants to close the courts.

9. Plaintiffs bring this suit to protect the public's right to live free of unlawful nuisances, to prevent injury to the public at large, and to regain the use and enjoyment of their private properties.

## II. PARTIES, VENUE, AND JURISDICTION

10. Defendant The City of Lone Tree ("City") is a Colorado home rule municipality located in Douglas County.

11. The City owns property located at 10249 RidgeGate Circle, Lone Tree, Colorado 80124 ("Property").

12. Defendant South Suburban Park and Recreation District doing business as South Suburban Parks and Recreation ("District") is a Colorado quasi-municipal corporation operating in Douglas County.

13. The District operates pickleball courts at the Property ("Courts"). The Courts consist of six permanent-net pickleball courts with push-button-operated lights to be used at night.

14. Plaintiff Mark Goodman, as trustee of the Mark Goodman Revocable Trust, is an owner and a resident at 9705 Mirabella Pt., Lone Tree, Colorado 80124.

15. Plaintiffs Richard and Donna Campbell are the owners and the residents at 10455 Montecito Dr., Lone Tree, Colorado 80124.

16. Plaintiff William B. Forna is an owner and a resident at 9765 Mirabella Pt., Lone Tree, Colorado 80124.

17. Plaintiff Matthew Troyer is an owner and a resident living at 10451 Montecito Dr., Lone Tree, Colorado 80124.

18. Plaintiffs all reside adjacent to the Courts in the Montecito at RidgeGate Community (the “Community”).

19. Venue is proper in this Court as the public and private nuisances continue in this County.

20. The Court also has jurisdiction over Defendants because the Defendants are located within this County.

21. Plaintiffs have complied with the notice requirements of C.R.S. § 24-10-109 by sending written notice of the claims asserted herein to Defendants. Specifically, Plaintiffs provided written notice to the District and the City via letters dated November 21, 2023, and December 3, 2023, respectively.

### **III. RELEVANT FACTS AND BACKGROUND**

#### ***The Courts***

22. The City owns the Courts.

23. The District operates the Courts.

24. The Courts are open from 8:00 am to 9:00 pm, seven days a week.

25. The Courts are used for “drop-in” play and sometimes the District hosts programming and tournaments at the Courts.

26. As many as twenty-four (24) players at a time play pickleball on the Courts.

27. The pickleball play continues throughout the day for hours, and sometimes continuously over thirteen (13) hours a day.

### ***The Noise Levels from the Courts***

28. Pickleball noise strikes on a paddle are considered impulsive noises which exceed state and local maximum noise levels. This is common knowledge.

29. Before pickleball courts are installed by any property owner, sound studies are performed and noise abatement measures are implemented, *e.g.* courts are frequently fully enclosed in a bubble or inside a building.

30. Cities and recreational entities conduct sound studies for the creation of pickleball courts and place pickleball courts away from residential areas.

31. The residents of the Community expressed their strong objection to the placement of the Courts at this dangerously close location to homes.

32. Defendants refused to implement sound protections to address the Community's complaints.

33. Defendants, at one time, suggested Defendants would conduct a sound study related to the Courts.

34. Defendants never conducted a sound study related to the Courts.

35. Instead, Plaintiffs had to incur out of pocket costs to conduct sound studies.

36. Plaintiffs then presented these science-based sound studies to Defendants.

37. The noise level data presented to Defendants in these studies was undeniable -- Defendants' Courts create dangerously high levels of noise exceeding permissible noise levels by over ten (10) to fifteen (15) decibels ("dBA").

### ***Courts' Noise Exceeds Maximum State Permissible Noise Levels***

38. The Colorado state legislature has enacted legislation commonly referred to as the "Colorado Noise Statute" codified at Colorado Revised Statutes Title 25 Article 12 – Noise Abatement ("Colorado Noise Abatement Statute").

39. The Colorado Noise Abatement Statute defines daytime as 7 a.m. to 7 p.m.

40. Plaintiffs' properties are all in residential zoning areas of the City.

41. For a residentially zoned area (like the Plaintiffs' properties), the Colorado Noise Abatement Statute dictates the maximum permissible daytime noise level is 55 dBA and nighttime level is 50 dBA.

42. For “periodic, impulsive, or shrill noises” such as pickleball strikes, the Colorado Noise Abatement Statute dictates the maximum permissible daytime level is 50 dBA and nighttime level is 45 dBA.

43. The sound study performed in the Community reflects the average maximum noise level due to pickleball strikes on the Defendants’ Courts is **62.1 dBA – more than 15 dBAs over the nighttime level and more than 12 dBAs over the daytime level.**

***Courts’ Noise is a Defined Public Nuisance and Criminal per Defendant’s City Code***

44. Article 1 of Chapter 7 of the City’s Code states in pertinent part:

Sec. 7-1-50 – Public Nuisance defined.

The following are considered public nuisances:

(1) All offenses known to the common law of the land and the state statutes as nuisances;

(8) The existence of any of the following conditions on property or improvements: (c) maintenance so out of harmony or conformity with the maintenance standards of adjacent property or improvements as to cause diminution of the enjoyment, use or property values of such adjacent property or improvements.

45. Section 7-1-50 (1) is met by the Courts’ noise levels being defined as a nuisance by the Colorado Noise Abatement Statute described above and codified at C.R.S. 25-12-103.

46. Section 7-1-50 (8) is met by the diminishment of Plaintiffs’ enjoyment of their residential uses adjacent to the Courts and Plaintiffs’ property values being negatively impacted.

47. Section 10-4-80 of the City’s municipal code also states:

“It is unlawful to make, continue or cause to be made or continued any sound, which results in unreasonable noise; and no person shall knowingly permit such noise upon any premises owned or possessed by such person or under such person’s control”

48. The City defines “unreasonable noise” as “any sound which annoys or disturbs a reasonable person of normal sensitivities; or endangers or injures the safety or health of humans or animals; or endangers or injures personal or real property; and is the subject of a complaint made by any person.” City Code § 10-1-10.

49. The Courts’ noise is an unreasonable noise as defined by the City Code.

50. Section 10-4-80 of the City's criminal code makes it illegal for Defendants to make unreasonable noises upon any premises owned or under a person's control. Defendants are in violation of the City's criminal code.

51. Notwithstanding all these local restrictions, Defendants ignore them and continue to maintain the dangerous conditions of the Courts in Plaintiffs' residential area.

***Courts' Noise is a Nuisance Under Colorado Common Law***

52. Colorado common law requires Defendants' conduct to prevent unreasonable interference with the use and enjoyment of Plaintiffs' property.

53. Defendants' Courts produce impulsive or shrill pickleball strikes hitting on average 62.1 dBA every two seconds from 8 a.m. to 9 p.m. daily seven (7) days a week.

54. Noise levels like these from Defendants' Courts are so substantial that they are offensive to any reasonable person in the Community.

***Defendants' Knowledge and Intentional Disregard Unlawful***

55. Plaintiffs, along with twenty-one (21) other neighbors, sent a letter to the City and the District requesting the Courts close down until Defendants installed appropriate and effective mitigation of the Courts' dangerous conditions.

56. Residents of the Community have been complaining to Defendants for months.

57. Numerous complaints have been made to the Defendants.

58. Despite these complaints, Defendants refuse to shut down the dangerous condition of these Courts.

***Plaintiffs' unique injuries***

59. The Campbells purchased their home for the sunset views from their patio; however, they now have little to no use of their outdoor space due to the untenable noise from Defendants' Courts.

60. The Campbells incurred costs in an attempt to remediate this issue by installing a fountain and speakers on their deck, even at times wearing headsets while outside. None of these methods worked. The noise from the Courts is so intrusive that the Campbells can hear it while inside of their home.

61. Mr. Troyer's loss of enjoyment of his property is similar. Mr. Troyer has completely lost use of his back porch.

62. Mr. Fornia also bought his property to enjoy the views from his deck and patio; however, he has no use of the space given the Courts' unlawful noise. The noise also interferes with Mr. Fornia's ability to work in his home, even with the doors and windows closed.

63. Finally, Mr. Goodman purchased his home paying a premium for the property as the open space to the west of his home would not be developed and for the spectacular views. Like the other Plaintiffs, his deck area, outdoor space, scenic views, and quiet nature of the home can no longer be enjoyed.

64. For all Plaintiffs, the Courts create unlawful noise levels that cause stress – again every two seconds at unlawful noise levels, hours each day – every day.

65. Defendants' Courts constitute a dangerous condition adjacent to residential properties.

66. Plaintiffs hear the noise outside and inside with closed doors and windows.

67. The constant loud pickleball strikes are offensive, cause stress, and devalue their property.

68. Plaintiffs have consulted with real estate experts who have confirmed the properties will be hard to sell given the obnoxious levels of constant noise coming from Defendants' courts.

69. Specifically, the dangerous conditions of the Courts have caused unreasonable noise to emanate through Plaintiffs' homes injuring them every single day the Courts are in operation.

### **COUNT I**

#### **(Public Nuisance against Defendants – Preliminary and Permanent Injunctive Relief; C.R.S. § 25-12-104)**

70. Plaintiffs incorporate by reference the preceding allegations as if fully set forth herein.

71. C.R.S. § 25-12-104 allows any resident of the state to “maintain an action in equity in the district court of the judicial district in which the alleged nuisance exists to abate and prevent such nuisance and to perpetually enjoin the person conducting or maintaining the same and the owner, lessee, or agent of the building or place in or upon which such nuisance exists from directly or indirectly maintaining or permitting such nuisance.”

72. Plaintiffs bring this suit to protect a public right and to prevent future potential injury to their residents and the public at large.

73. The Courts constitute a public nuisance as defined in C.R.S. § 25-12-103 in that noise levels emanating from the Courts is in excess of statutory limits for nearby residential zone properties and the City's own code.

74. Plaintiffs' Sound Report establishes the Courts constitute a public nuisance as defined in C.R.S. § 25-12-103.

75. Plaintiffs bring this suit to protect a public good, namely, the ability of Plaintiffs and other residents of the Community to enjoy the quiet use of their homes and avoid negative health impacts caused by unreasonable exposure to noise.

76. Defendants are causing a continuing public nuisance by permitting and encouraging activity on the Courts resulting in the noise nuisance.

77. Defendants are directly causing and contributing to an unreasonable injury to Plaintiffs and Community residents caused by noise pollution that unreasonably harms Plaintiffs and the Community residents.

78. Defendants have the lawful authority to abate this nuisance.

79. Defendants' decision to permit pickleball to continue at the Courts constitutes a continuing public nuisance because such operations—which materially increase each year—are a substantial and unreasonable annoyance, inconvenience, interference, or injury to Plaintiffs and Community residents.

80. Defendants' decision to permit pickleball to continue at the Courts constitutes a continuing public nuisance because such operations—which materially increase each year—are an unlawful and unreasonable invasion of Plaintiffs' and Community residents' interest in the use and enjoyment of their respective properties.

81. Defendants' decision to permit pickleball to continue at the Courts constitutes a continuing public nuisance because such operations—which materially increase each year—violate the City's Code (*see, e.g.*, City Code § 7-1-50).

82. All of the above actions constitute an intentional, knowing, and substantial invasion of Plaintiffs' and Community residents' interest in the use and enjoyment of their property.

83. Plaintiffs are entitled to preliminary and permanent injunctive relief because there is no other remedy at law that will address this public nuisance and irreparable harm will result if injunctive relief is not granted.



**COUNT II**

**(Private Nuisance against both Defendants – Preliminary and Permanent Injunctive Relief)**

84. Plaintiffs incorporate by reference the preceding allegations as if fully set forth herein.

85. Defendants’ decision to permit pickleball to continue at the Courts constitutes a continuing private nuisance because such operations—which materially increase each year—violate the City’s Code (*see, e.g.*, City Code § 10-4-80).

86. The noise from the Courts is unreasonable and constitutes a private nuisance depriving Plaintiffs of the enjoyment of their property.

87. The commission of a private nuisance was and remains within the control and direction of Defendants, acting jointly and severally.

88. Plaintiffs have sustained general damages resulting from Defendants’ continuing nuisance that include, but are not limited to, diminution in market value and loss of entire portions of their properties.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs respectfully request that this Court:

- A. Declare that the Defendants’ Courts are a public and private nuisance and shutdown the Courts;
- B. Enjoin Defendants from operation of the Courts without enclosing the Courts within a soundproof structure;
- C. Award Plaintiffs their attorneys’ fees and costs as permitted by law given Defendants intentional refusal to follow state and local law; and
- D. Grant such other relief to Plaintiffs’ that is just and proper.

**PLAINTIFFS DEMAND A JURY TRIAL ON ALL CLAIMS SO TRIABLE.**

Respectfully submitted this 27<sup>th</sup> day of June, 2024.

HUSCH BLACKWELL LLP

By: /s/ Tessa F. Carberry  
Tessa F. Carberry, Reg. No. 54066

*Attorneys for Plaintiffs*

**VERIFICATION**

I, Donna Campbell, being first duly sworn upon her oath, hereby verify in accordance with Colorado law and certify that I have read the foregoing Complaint and that I have personal knowledge of the facts set forth therein; and that the facts contained herein are true to the best of my knowledge, information and belief.

  
\_\_\_\_\_  
Donna Campbell

STATE OF Colorado            )  
  ) ss.  
COUNTY OF Douglas        )

Subscribed and sworn to under oath before me on this 21 day of June, 2024.

  
\_\_\_\_\_  
Notary Public

My commission expires: July 24th 2027

SARAH ROWLEY NOTARY PUBLIC STATE OF COLORADO NOTARY ID 20234027945 MY COMMISSION EXPIRES JULY 24, 2027
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**VERIFICATION**

I, William B. Fornia, being first duly sworn upon his oath, hereby verify in accordance with Colorado law and certify that I have read the foregoing Complaint and that I have personal knowledge of the facts set forth therein; and that the facts contained herein are true to the best of my knowledge, information and belief.

William b Fornia  
Signed on 2024/06/21 14:59:51 -8:00

William B. Fornia

STATE OF WISCONSIN            )  
  ) ss.  
COUNTY OF MILWAUKEE        )

Subscribed and sworn to under oath before me on this 21<sup>st</sup> day of June, 2024.

\_\_\_\_\_  
Notary Public

My commission expires: 3/19/2025

*P. Sewell*  
Signed on 2024/06/21 14:59:51 -8:00

**Peter F. Sewell**  
Notary Public - State of Wisconsin  
My Commission Expires Mar 19, 2025  
DocVerify

Notary Stamp 2024/06/21 14:59:51 PST      407E63F43E88

Notarial act performed by audio-visual communication

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**VERIFICATION**

I, Richard Campbell, being first duly sworn upon his oath, hereby verify in accordance with Colorado law and certify that I have read the foregoing Complaint and that I have personal knowledge of the facts set forth therein; and that the facts contained herein are true to the best of my knowledge, information and belief.

*Richard Campbell*

Richard Campbell

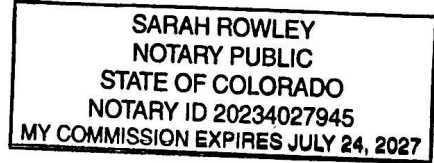
STATE OF Colorado )  
 ) ss.  
COUNTY OF Douglas )

Subscribed and sworn to under oath before me on this 21 day of June, 2024.

*Sarah Rowley*

Notary Public

My commission expires: July 24th 2027



**VERIFICATION**

I, Matthew Troyer, being first duly sworn upon his oath, hereby verify in accordance with Colorado law and certify that I have read the foregoing Complaint and that I have personal knowledge of the facts set forth therein; and that the facts contained herein are true to the best of my knowledge, information and belief.

**Matt Troyer**  
Signed on 2024/06/27 07:48:11 -8:00

Matthew Troyer

STATE OF WISCONSIN )  
 ) ss.  
 COUNTY OF MILWAUKEE )

Subscribed and sworn to under oath before me on this 27<sup>th</sup> day of June, 2024.

Notary Public

My commission expires: 3/19/2025

**Peter F. Sewell**  
Signed on 2024/06/27 07:48:11 -8:00



Notarial act performed by audio-visual communication

714E6CCF-9401-4BD8-85F6-A505225557D2 --- 2024/06/27 06:12:50 -8:00 --- Remote Notary

