

FILED

Chris Daniel
District Clerk

APR 23 2018

Pg-12

Time: _____
Harris County, Texas

By _____
Deputy

CAUSE NO. 2016-85669

THERESA CAVIN, INDIVIDUALLY AND §
AS NEXT FRIEND OF AUSTIN §
ZACHARY QUINTANILLA, JEFFREY §
TREVINO, JOHN "JACK" HART, JR., §
MARCUS GREENSPAN, NICOLA §
DAVIES, RICARDO PARRA, ZACHARY §
LEVITT, HEIDI LANDEN-GREENE, and §
LINDA LONGORIA VARGAS, §
INDIVIDUALLY AND COLLECTIVELY §
AS CLASS REPRESENTATIVES §
Plaintiffs, §

v. §

WHITE OAK EVENTS, LLC, d/b/a WHITE §
OAK MUSIC HALL, WHITE OAK §
ENTERTAINMENT, LLC, d/b/a WHITE §
OAK MUSIC HALL, and WOIH §
PARTNERS LLC, §
Defendants. §

IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

11TH JUDICIAL DISTRICT

CONSENT JUDGMENT

On this the ___ day of April 2018, this cause was heard. Theresa Cavin, Individually, and as Next Friend of Austin Quintanilla, Jeffrey Trevino, John "Jack" Hart, Jr., Marcus Greenspan, Nicola Davies, Ricardo Parra, Zachary Levitt, Heidi Landen-Greene, and Linda Longoria Vargas are the Plaintiffs, and White Oak Events, LLC (d/b/a Raven Tower), White Oak Entertainment, LLC (d/b/a White Oak Music Hall), WOIH Partners, LLC, (collectively, "the WOMH Defendants") are the Defendants in this cause.

The parties appeared by and through their respective attorneys of record and announced to the Court that all matters of fact and things in controversy between them have been fully and finally compromised, agreed to and/or settled.

WHEREAS, the WOMH Defendants operate a multi-venue live music complex, referred to under the trade names “White Oak Music Hall” and “Raven Tower,” and Plaintiffs are individuals who reside in the neighborhoods surrounding said music complex.

WHEREAS, Plaintiffs have asserted causes of action against the WOMH Defendants for Private Nuisance, Public and Common Nuisance, Nuisance *Per Se*, and Intentional Interference with Property Rights arising out of amplified sound and bass emanating from White Oak Music Hall and/or Raven Tower (the “Litigated Sound Claims”).

WHEREAS, by entering into this Consent Judgment, the WOMH Defendants admit no wrongdoing whatsoever and maintain they are not liable for the Plaintiffs’ Litigated Sound Claims. This Consent Judgment does not constitute any evidence or admission of any kind regarding any issues set forth herein, nor does it acknowledge that the WOMH Defendants have engaged in any unlawful activity. The WOMH Defendants do not admit the truth of any alleged facts or conclusions set forth in Plaintiffs’ Original Petition or any amended pleadings pertaining to this matter.

WHEREAS, by entering into this Consent Judgment, Plaintiffs do not admit that they lacked a probable right of recovery or that their Litigated Sound Claims are without merit.

WHEREAS, this Consent Judgment reflects the mutual consent and agreement of all parties to this matter and is not a concession of any liability arising from this cause.

I. STIPULATIONS

The parties agree to entry of this Consent Judgment and stipulate to the following for purposes of entry and enforcement of this Judgment:

- a. The Court has jurisdiction over the subject matter of this action.
- b. The Court has jurisdiction over the WOMH Defendants in this matter.
- c. Venue is proper in Harris County, Texas.
- d. This Consent Judgment is non-appealable. The parties, however, retain the right to appeal any post-judgment orders entered by the Court to enforce this Consent Judgment as permitted by Texas law.
- e. All parties acknowledge notice of this Consent Judgment and acceptance of the same.
- f. All parties have consented to entry of this Consent Judgment, without trial or adjudication of any issue of fact or law to avoid the burden, expense and uncertainty of continued litigation.
- g. This Consent Judgment is binding on the WOMH Defendants and the Plaintiffs.
- h. The obligations of the WOMH Defendants are joint and several. In the event of insolvency of any WOMH Defendant(s), the remaining WOMH Defendants remain jointly and severally responsible, subject to this Consent Judgment.
- i. This Consent Judgment disposes of all of the Plaintiffs' Litigated Sound Claims.
- j. The term "Professional-Caliber Show" as used herein is defined as a performance whose technical and production requirements are commensurate with generally accepted industry standards associated with a performance venue capable of supporting more than 1,500 attendees.

k. The temporal scope of a single Professional-Caliber Show shall be defined as up to four (4) hours in duration, commencing at the time the first public performance begins on the Lawn on a given day and ending when the final performer concludes their public performance, provided that, should the duration of a public performance extend beyond four hours, the public performance period after the 4-hour mark shall constitute another discrete Professional-Caliber Show.

II. SCHEDULING

IT IS ORDERED that beginning January 1, 2018, the WOMH Defendants may hold a maximum of forty (40) Professional-Caliber Shows each calendar year at or on the outdoor performance space currently referred to as “the Lawn at White Oak Music Hall,” (on the Lawn).

Of these 40 Professional-Caliber Shows, the WOMH Defendants may hold a maximum of twenty (20) Professional-Caliber Shows on days when public school is regularly scheduled for the following calendar day.

In determining when public school is scheduled for purposes of compliance with this judgment, reference shall be made to the Houston Independent School District (“HISD”) regular session academic calendar (make-up, summer, and special dates excluded), as such calendar exists six (6) calendar months prior to the date of the applicable Professional-Caliber Show. For example, for a Professional-Caliber Show scheduled for June 1, 2019, reference shall be made to the HISD regular session academic calendar (make-up, summer, and special dates excluded) as it existed on January 1, 2019.

IT IS FURTHER ORDERED that the WOMH Defendants shall terminate electronically amplified sound required to be monitored under this Consent Judgment that originates from Professional-Caliber Shows on the Lawn by no later than 9:30 p.m. for such shows taking place

the evening before regular session STAAR testing (or equivalent state required testing) dates for grades 3-8. In determining when STAAR grades 3-8 testing is scheduled for purposes of compliance with this Consent Judgment, reference shall be made to the HISD testing calendar (make-up and re-test dates excluded), as such calendar exists six (6) calendar months prior to the date of the applicable Professional-Caliber Show. For example, for a Professional-Caliber Show scheduled for June 1, 2019, reference shall be made to the HISD testing calendar (make-up and re-test dates excluded) as it existed on January 1, 2019.

III. SOUND MONITORING

IT IS ORDERED that the WOMH Defendants shall monitor each Professional-Caliber Show on the Lawn in accordance with the following procedures and requirements:

- (1) The WOMH Defendants shall deploy professional-quality Class 1/Type 1 sound monitoring equipment capable of monitoring: (i) A-weighted sound levels (*i.e.*, dB(A)), and (ii) unweighted sound levels (*i.e.*, dB) at or within the 63 Hz octave band for the duration of each Professional-Caliber Show held on the Lawn.
- (2) The location of the sound monitoring equipment shall be at the Lawn's Front of House ("FOH") location, which shall be located approximately eighty (80) feet from the front and center of the outdoor stage.
- (3) The sound monitoring equipment described above shall be subject to annual inspection by a qualified sound expert of Plaintiffs' choice.
- (4) During all Professional-Caliber Shows held on the Lawn, the sound monitoring equipment will record sound data to a website or data file, with such data provided by the WOMH Defendants to Plaintiffs, their legal counsel, and/or their qualified sound expert in real time or as soon as technically capable by the

monitoring equipment, and in no event no later than 48-hours after the conclusion of the Professional-Caliber Show, notwithstanding *bona fide* technical problems beyond the reasonable control of the WOMH Defendants, of which the WOMH Defendants shall alert the Plaintiffs as soon as practicable.

- (5) This sound monitoring data shall be displayed in such a way as to allow the parties to determine whether Section IV is complied with during each Professional-Caliber Show on the Lawn.

IV. SOUND-LEVEL LIMITATIONS

WHEREAS, Plaintiffs and the WOMH Defendants, with the intent to reach compromise and balance the interests of both Plaintiffs and the WOMH Defendants, have agreed on the following sound level limitations for Professional-Caliber Shows held on or at the Lawn.

IT IS ORDERED that the WOMH Defendants shall abide by the following sound limitations:

- (1) At any Professional-Caliber Show held on or at the Lawn, electronically amplified sound shall not cause more than ten (10) readings, measuring at or above 101 A-weighted decibels (*i.e.*, dB(A)) for all frequencies at 1-minute L_{Aeq} . Measurements shall be taken at FOH.
- (2) At any Professional-Caliber Show held on or at the Lawn, electronically amplified sound shall not cause more than ten (10) readings, measuring at or above 105 unweighted decibels (*i.e.*, dB) in the 63 Hz octave band at 1-minute L_{eq} . Measurements shall be taken at FOH.

IT IS FURTHER ORDERED that the violation of limitations (1) or (2) above shall constitute a "Sound Infraction," provided that, under no circumstances, shall more than one (1)

Sound Infraction be assessed per Professional-Caliber Show. For example, the exceedance of both the 101 dB(A) standard and the 105 dB standard during a single Professional-Caliber Show, or multiple exceedances of a single standard, or some combination of both thereof, during a single Professional-Caliber Show, would yield no more than one (1) Sound Infraction.

The number of Sound Infractions shall be reset to zero on January 1st of each new calendar year.

IT IS FURTHER ORDERED that any Plaintiff, individually, or for the behalf of other Plaintiffs, shall notify the WOMH Defendants of any alleged Sound Infraction as defined above by e-mailing notice to Johnny So at johnny@whiteoakmusicall.com (or another email address specified by the WOMH Defendants) or by sending written notice via certified mail, return receipt requested, within fourteen (14) calendar days of a Professional-Caliber Show that generates a Sound Infraction. If the Plaintiff(s) do not send notice of an alleged Sound Infraction within this timeframe, the Sound Infraction shall be deemed waived by the Plaintiffs and cannot form the basis for enforcement under this judgment and shall not count toward the number of annual Sound Infractions that restarts on January 1st of each new calendar year.

V. ENFORCEMENT

IT IS ORDERED that, effective January 1, 2018, the Plaintiffs' exclusive remedy for the first three Sound Infractions per calendar year are the following monetary penalties:

- \$5,000 for the first Sound Infraction in a calendar year, commencing on January 1 of each year;
- \$5,000 for the second Sound Infraction in a calendar year, commencing on January 1 of each year; and

- \$7,500 for a third Sound Infraction in a calendar year, commencing on January 1 of each year.

Upon the fourth Sound Infraction occurring in a calendar year, Plaintiffs may elect to receive \$10,000 payable by the WOMH Defendants to the Plaintiffs or, in the exclusive alternative, apply to this Court for further orders necessary to secure compliance with the sound-level limitations described above. *See, e.g.*, TEX. R. CIV. P. 308; TEX. R. CIV. P. 692; TEX. GOV'T CODE § 21.001.

Upon the fifth or subsequent Sound Infractions occurring in a single calendar year commencing on January 1 of each year, Plaintiffs may elect to receive \$15,000 payable by the WOMH Defendants to the Plaintiffs for each additional Sound Infraction or, in the exclusive alternative, apply to this Court for further orders necessary to secure compliance with sound-level limitations described above. *See, e.g.*, TEX. R. CIV. P. 308; TEX. R. CIV. P. 692; TEX. GOV'T CODE § 21.001.

WOMH Defendants shall pay the aforementioned sums to Plaintiffs through their counsel within fourteen (14) business days of receiving notice of an alleged Sound Infraction.

If Plaintiffs believe a Sound Infraction occurred and, as prescribed above, elect to receive a monetary penalty, but the WOMH Defendants, based on a *bona fide* and reasonable belief, dispute that an alleged Sound Infraction occurred, the WOMH Defendants may seek a ruling from the Court and bear the burden of establishing, by a preponderance of the evidence, that no Sound Infraction occurred.

If Plaintiffs believe a fourth or greater Sound Infraction occurred and, as prescribed above, elect to apply to this Court for further orders necessary to secure compliance with the

sound-level limitations described above, the Plaintiffs bear the burden of establishing, by a preponderance of the evidence, that the Sound Infraction occurred.

IT IS FURTHER ORDERED that the sound monitoring equipment located at the FOH described in Section III shall be the sole, exclusive equipment on which the Parties and Court shall rely for determining what decibel levels existed at the FOH location during a Professional-Caliber Show.

IT IS FURTHER ORDERED that this Court retains jurisdiction to enforce this Consent Judgment.

Violations of this Consent Judgment are subject to sanctions pursuant to the Court's inherent powers; contempt; the award of reasonable and necessary attorney's fees; or other relief as the Court deems just, appropriate or necessary.

The parties are responsible for their own respective expert fees and court costs that may be incurred in any proceeding under the terms of this Consent Judgment.

VI. DURATION OF CONSENT JUDGMENT

IT IS ORDERED that when any named Plaintiff ceases to permanently occupy a property situated within the radius depicted in **Exhibit A**, that particular Plaintiff may no longer seek enforcement of this Consent Judgment.

VII. MODIFICATION OF CONSENT JUDGMENT

IT IS ORDERED that beginning no earlier than January 1, 2019, and continuing thereafter, once per calendar year, the WOMH Defendants may seek to modify this final injunctive order to accommodate changed circumstances. The Court orders, and Plaintiffs have contractually agreed, that Plaintiffs shall not seek to decrease the dB or dB(A) levels below the levels described in Section IV above for any reason, including based on changed circumstances

or conditions. This shall in no way impair the rights of Plaintiffs to otherwise enforce the Consent Judgment.

VIII. MISCELLANEOUS

IT IS ORDERED that all Temporary Injunctions previously ordered in this action are hereby superseded by this Consent Judgment and are dissolved in all respects.

IT IF FURTHER ORDERED that the WOMH Defendants shall not represent to the public that this Consent Judgment constitutes approval by Plaintiffs or this Court of any of Defendants' actions or business activities.

Likewise, it is ORDERED that Plaintiffs shall not represent to the public that this Consent Judgment constitutes the Court's disapproval of any of the WOMH Defendants' actions, business activities or a finding of liability.

Nothing in this Consent Judgment excuses the WOMH Defendants' obligation to comply with applicable municipal, county, or state law.

This Consent Judgment does not preclude the Parties from participating in any subsequent arbitration or judicial proceeding to enforce terms of the Confidential Settlement Agreement or in any criminal proceeding.

All other costs of court expended or incurred in this cause shall be borne by the party incurring same.

This is a final judgment which is intended to and hereby disposes of all claims and parties asserted in this cause, and from which no appeal shall be taken.

All relief not expressly granted herein is denied.

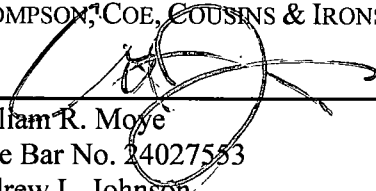
SIGNED on April 23, 2018.


PRESIDING JUDGE

THE UNDERSIGNED, WHO HAVE THE AUTHORITY TO CONSENT AND SIGN ON BEHALF OF THE PARTIES IN THIS ACTION, HEREBY CONSENT TO THE FORM AND CONTENTS OF THE FOREGOING CONSENT JUDGMENT AND TO ITS ENTRY.

Respectfully submitted,

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EXHIBIT A

