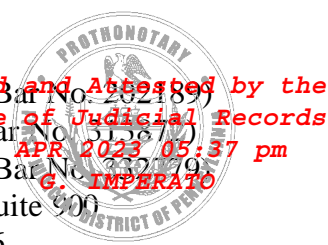


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RAMONA MONIQUE BELL,
6071 Chester Avenue
Philadelphia, PA 19142

RODNEY BELL,
6071 Chester Avenue
Philadelphia, PA 19142

MARCELINE DIX,
6061 Chester Avenue
Philadelphia, PA 19142

Plaintiffs,

v.

MOHAMMED AL-KHATIB a/k/a
MIKE MOHJAN
1830 S. Edgewood Street
Philadelphia, PA 19142

ERROL WHITE d/b/a WHITE'S
AUTOBODY AND MECHANIC,
1830 S. Edgewood Street
Philadelphia, PA 19142

WEST YORK LLC
5400 Eadom Street
Philadelphia, PA 19137

Defendants.

PHILADELPHIA COUNTY
COURT OF COMMON PLEAS

CIVIL DIVISION

No: _____

JURY TRIAL DEMANDED

COMPLAINT - CIVIL ACTION

NOTICE TO DEFEND

You have been sued in Court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Complaint and Notice are served, by entering a written appearance personally or by attorney and filing in writing with the Court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the Court without further notice for any money claimed in the Complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

Philadelphia Bar Association Lawyer
Referral and Information Service
1101 Market Street, 11th Floor
Philadelphia, Pennsylvania 19107-2911
Telephone: (215) 238-6333

AVISO

Lo(a) han demandado a usted en la corte. Si usted quiere defenderse de estas demandas expuestas en las páginas siguientes, usted tiene veinte (20) días de plazo al partir de la fecha de la demanda y la notificación. Hace falta asentar una comparecencia escrita o en persona o con un abogado y entregar a la corte en forma escrita sus defensas o sus objeciones a las demandas en contra de su persona. Sea avisado que si usted no se defiende, la corte tomará medidas y puede continuar la demanda en contra suya sin previo aviso o notificación. Además, la corte puede decidir a favor del demandante y requiere que usted cumpla con todas las provisiones de esta demanda. Usted puede perder dinero o sus propiedades u otros derechos importantes para usted.

LLEVE ESTA DEMANDA A UN ABOGADO INMEDIATAMENTE. SI NO TIENE ABOGADO O SI NO TIENE EL DINERO SUFICIENTEMENTE DE PAGAR TAL SERVICIO, VAYA EN PERSONA O LLAME POR TELÉFONO A LA OFICINA CUYA DIRECCIÓN SE ENCUENTRA ESCRITA ABAJO PARA AVERIGUAR DONDE SE PUEDE CONSEGUIR ASISTENCIA LEGAL.

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COMPLAINT - CIVIL ACTION

Plaintiffs Ramona Monique Bell (“Ms. Bell”), Rodney Bell (“Mr. Bell”), and Marceline Dix (“Ms. Dix”) (collectively “Plaintiffs”) bring this action against Errol White d/b/a White’s Autobody and Mechanical (“White’s Autobody”), Mohammed Al-Khatib a/k/a Mike Mohjan (“Mr. Al-Khatib”), and West York LLC (collectively “Defendants”) for the common law claims of private nuisance, public nuisance, trespass, and material interference with a shared easement, and allege and state as follows:

INTRODUCTION

1. Defendants own or operate a sprawling nuisance auto body shop in the middle of a residential neighborhood in Southwest Philadelphia, located at 1830 South Edgewood Street, Philadelphia, PA 19142 (the “property”).

2. Plaintiffs are the immediate neighbors of the property. Only a shared alleyway separates White’s Autobody and Plaintiffs’ homes (the “shared alleyway”).

3. Defendants work on cars day and night. Their auto bodywork, repairs, and broken down cars spill over into the shared alleyway, the streets, and the sidewalks. The work is noisy and disruptive, and sends noxious fumes wafting into Plaintiffs’ homes. Defendants litter the shared alleyway, the surrounding neighborhood, and even Plaintiffs’ backyards with trash, old tires, oil cans and other debris, inevitably attracting vermin and creating a fire hazard.¹

¹ Auto body shops in Philadelphia frequently make the news with stories of fires, toxic fumes, and dangerous conditions for nearby residents. For example, in November 2021 a massive tire fire in Southwest Philadelphia blanketed the city with thick black smoke for miles. *See* Ellie Rushing, *What we know about the junkyard fire in Southwest Philly*, THE PHILADELPHIA INQUIRER (Nov. 10, 2021), <https://www.inquirer.com/news/junkyard-fire-update-philadelphia-air-quality-20211110.html>. And this past September, a junkyard fire in North Philadelphia led the city’s Department of Public Health to warn residents to stay inside because of air quality concerns. *See* Anthony R. Wood, *North Philadelphia junkyard fire knocks out rail service and spurs air-quality alert*, THE

4. Defendants' leasing and operation of White's Autobody has significantly disturbed Plaintiffs' and their families' daily lives. Their conduct violates City of Philadelphia ("the City") regulations and impacts Plaintiffs', their families' and their neighbors' well-being and safety, and their right to the peaceful enjoyment of their homes.

5. Plaintiffs and other community members have voiced a range of grievances to Defendants over the years, as well as to various oversight agencies. Plaintiffs have filed numerous 311 complaints and called their local elected officials and police precinct. Their efforts have led to the documentation of nearly sixty Philadelphia Department of Licenses & Inspections ("L&I") violations regarding the property since 2007.

6. And although Defendants could abate their nuisance conduct and at times do temporarily alter their behavior in response to such notices of violations, the nuisance conduct inevitably resumes at unpredictable times and in various manners.

7. Plaintiffs have no option but to gain relief through the instant action.

JURISDICTION AND VENUE

8. This Court has jurisdiction pursuant to 42 Pa.C.S. § 931(a).

9. Venue is proper pursuant to Pa.R.C.P. No. 2179(a) because the events giving rise to Plaintiffs' cause of action took place in Philadelphia County and Defendants regularly conduct business in Philadelphia County.

PARTIES

Plaintiffs

10. Plaintiff Ramona Monique Bell, née Munford, age 55, owns her home at 6071 Chester Avenue, Philadelphia, PA 19142, where she has lived for over twenty years.

PHILADELPHIA INQUIRER (Sept. 27, 2022), <https://www.inquirer.com/news/philadelphia/north-philadelphia-junkyard-fire-pollution-20220927.html>.

11. Plaintiff Rodney Bell, age 54, resides with his wife Plaintiff Ms. Bell, at 6071 Chester Avenue, Philadelphia, PA 19142, where he has lived for approximately eleven years.

12. Plaintiff Marceline Dix, age 36, owns her home at 6061 Chester Avenue, Philadelphia, PA 19142, where she has lived her entire life and currently resides with her two minor children.

Defendants

13. Upon information and belief, Defendant White's Autobody and Mechanic is a motor vehicle maintenance repair shop located at 1830 South Edgewood Street, Philadelphia, PA 19142.

14. Upon information and belief, Defendant Errol White owns and operates White's Autobody.

15. Upon information and belief, Defendant Mohammed Al-Khatib owned the property located at 1830 South Edgewood Street, Philadelphia, PA 19142 until July 2022 and leased the property to Defendants Errol White and White's Autobody. Upon information and belief, Mike Mohjan is a fictitious name for Defendant Mohammed Al-Khatib.

16. Upon information and belief, Defendant West York LLC purchased the property located at 1830 South Edgewood Street, Philadelphia, PA 19142 in July 2022, after which the nuisance conduct resumed with West York LLC's knowledge and permission.

17. At all relevant times, Defendant owners of the property maintained control over the use of the property.

18. At all relevant times, Defendants acted by and through their authorized agents, servants and/or employees acting within the course and scope of their employment with Defendants.

STATEMENT OF FACTS

Plaintiffs' Neighborhood and Geographic Relation to Defendants

19. Plaintiffs live on the 6000 block of Chester Avenue in a residential neighborhood of Southwest Philadelphia.

20. Directly behind Plaintiffs' homes is an alleyway regarding which they have rights under an easement.

21. On the other side of that alleyway is the property owned and occupied by Defendants. As shown in Image 1, the length of the property runs behind the entire Northwest side of the 6000 block of Chester Avenue, where about twenty-six row homes are separated from the property by the shared alleyway.

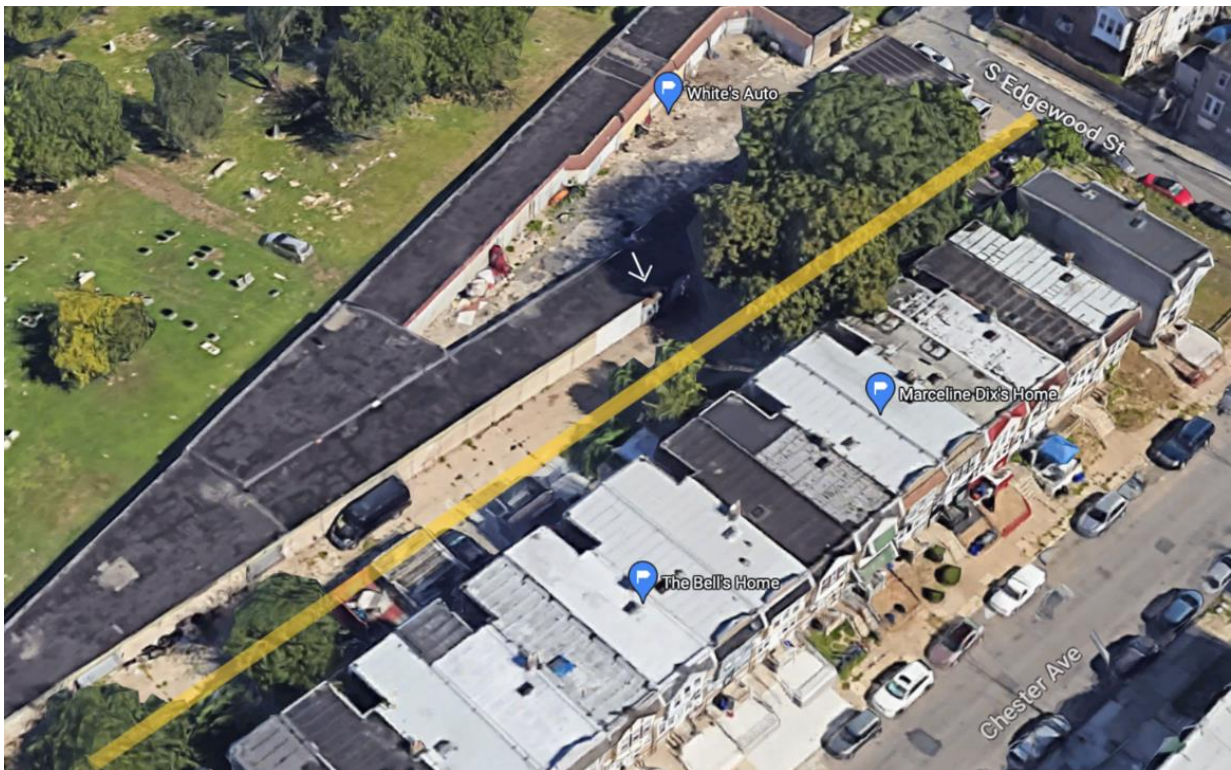


Image 1: Google Maps image of the Bell and Dix residences in relation to White's Autobody and the shared alleyway. Accessed Feb. 23, 2023.

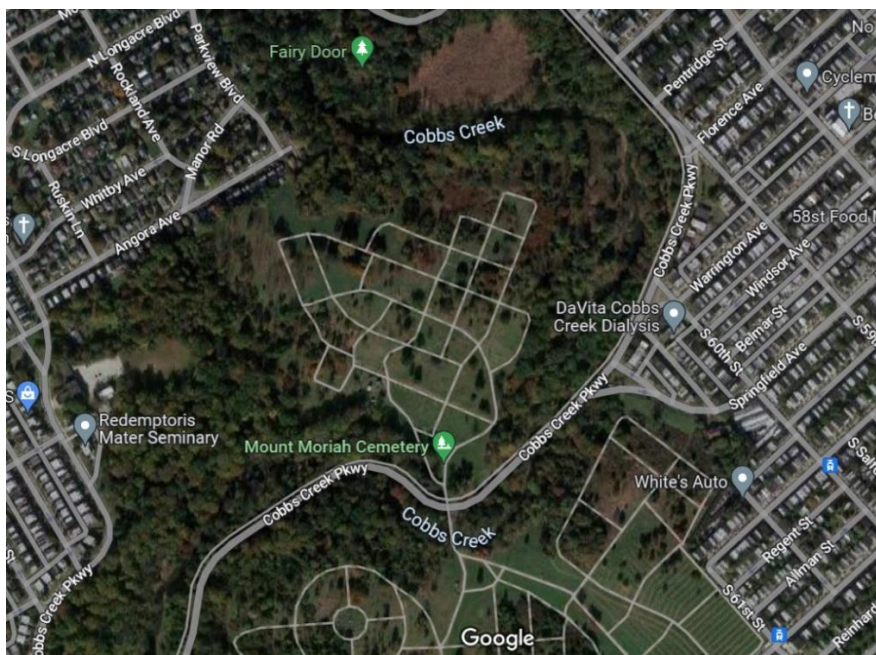


Image 2: Google Maps image of the neighborhood surrounding White's Autobody (bottom right corner of image) in relation to Mount Moriah and Cobbs Creek Park. Accessed Feb. 22, 2023.

22. Approximately 1000 feet from White's Autobody, runs Cobbs Creek, the centerpiece of Cobbs Creek Park, which is the largest park in West Philadelphia and serves important environmental, recreational, educational, and community enrichment functions for the residents of Southwest Philadelphia. In warm weather months, Plaintiffs Mr. and Ms. Bell enjoy walks to Cobbs Creek Park, but to get there they first must pass all the cars and mess surrounding White' Autobody, or else walk out of their way to avoid the property.

23. Between Cobbs Creek Park and Defendants' property—indeed, just on the other side of the Northwest exterior wall of Defendants' property—is the Mount Moriah Historic Cemetery and Arboretum. With graves dating back to the 1700s, Mount Moriah has been identified by Preservation Pennsylvania as one of the most endangered historic properties in the State.²

² Mount Moriah Cemetery Naval Plot and Soldiers' Lot, NATIONAL PARK SERVICE,



Image 3: A protected tree shading a family grave plot in Mt. Moriah Historic Cemetery & Arboretum (photograph), Mount Moriah Historic Cemetery & Arboretum (accessed Feb. 22, 2023), <https://friendsofmountmoriahcemetery.org/support/>.



Image 4: The historic headstones, statues, and trees of Mount Moriah Historic Cemetery and Arboretum have long coexisted with the surrounding residential neighborhood (photograph), Mount Moriah Historic Cemetery & Arboretum (accessed Feb. 22, 2023), <https://friendsofmountmoriahcemetery.org/visit/>.

https://www.nps.gov/nr/travel/national_cemeteries/pennsylvania/Mount_Moriah_Cemetery_Naval_Plot_and_Soldiers_Lot.html#:~:text=While%20these%20areas%20are%20maintained%2C%20the%20remainder%20of,the%20most%20endangered%20historic%20places%20in%20the%20state (accessed February 26, 2023).

24. On the other side of White's Autobody, densely populated row homes characterize Plaintiffs' Southwest Philadelphia residential community. Along with homes, the neighborhood contains elementary schools, places of worship and other community uses.



Image 5: Google Maps “Street View” looking Southwest down Chester Ave., just west of South Edgewood. Plaintiffs’ properties are visible on the right side. Accessed Feb. 24, 2023.

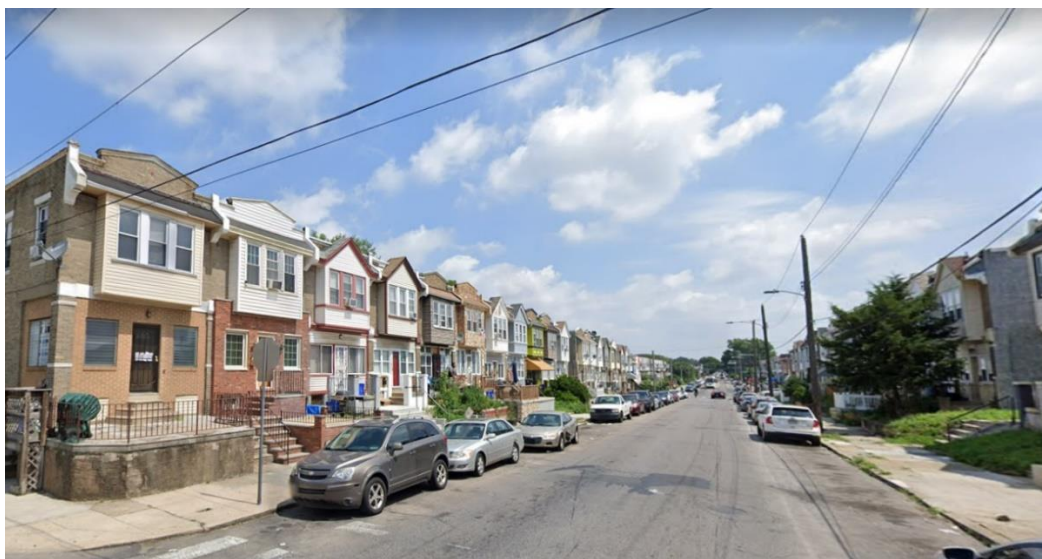


Image 6: Google Maps “Street View” looking Northeast down Chester Ave. from the intersection of Chester Ave. and South Edgewood. Accessed Feb. 24, 2023.

25. The Pennsylvania Department of Environmental Protection designates the neighborhood an “environmental justice area,” with over 99 percent of the population in this particular census tract identifying as minority and at least 32 percent of the population living below the poverty line.³

26. This area is zoned Residential Multi-Family 1, limiting what commercial and industrial uses can be performed there so that residents’ rights to peaceful enjoyment of their property will be protected against interference by such commercial and industrial activities without exception—or, regarding some such activities, at least without proper permits.

27. Despite the neighborhood’s residential character and zoning, White’s Autobody operates directly behind Plaintiffs’ homes.

28. Deeds for the property and Plaintiffs’ homes reflect that the middle line of the width of the nineteen feet wide alleyway divides Plaintiffs’ and Defendants’ properties.

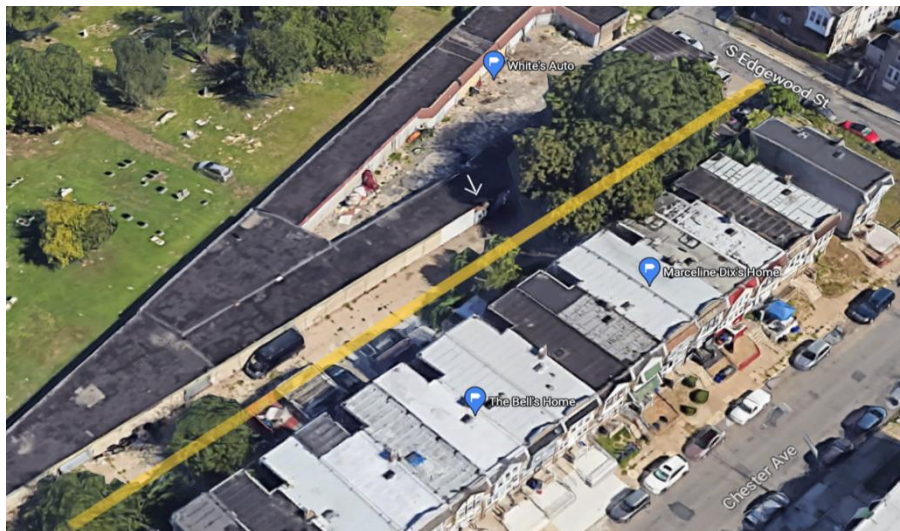


Image 1: Google Maps image showing the shared alleyway between Plaintiffs’ homes and the property. Accessed Feb. 23, 2023.

³ The Pennsylvania Department of Environmental Protection defines an “environmental justice area” as “any census tract where 20 percent or more individuals live at or below the federal poverty line, and/or 30 percent or more of the population identifies as a non-white minority” *PA Environmental Justice Areas*, PADEP.GOV, dep.pa.gov/PublicParticipation/OfficeofEnvironmentalJustice/Pages/PA-Environmental-Justice-Areas.aspx (last visited Apr. 13, 2023).



Image 7: Google Maps “Street View” image looking Northwest down South Edgewood toward the L-shaped intersection with Trinity Street, showing Defendants’ property and the opening of the shared alleyway dominated by Defendants’ operations and illegal vehicle storage, taken July 2021.



Image 8: Google Maps “Street View” image looking Southwest near the intersection of South Edgewood and Trinity Street, toward Defendants’ property, and showing the opening of the shared alleyway, taken July 2021.

29. There is an entrance to the property on South Edgewood Street.

30. While that South Edgewood Street entrance is the official entrance for the property, upon information and belief the most frequently used entrance to Defendant White’s Autobody is an improvised offshoot of the shared alleyway. This side alleyway entrance appears to have been constructed by removing a large portion of the property’s exterior concrete wall and installing a retractable garage door (the “side entrance”) midway

down the alleyway, directly behind Ms. Dix's backyard. *See Image 9, below. See also supra Image 1, where an arrow superimposed upon the image shows the location of the side entrance to Defendant's repair garage along the side of the shared alleyway. Upon information and belief, the side entrance was constructed in or around 2014.*



Image 9: Photograph of side entrance taken by Plaintiff Rodney Bell on or around February 21, 2022.

31. Defendant Mike Mohjan admitted even back in June 2019 that White's Autobody parks and works on cars in the shared alleyway in violation of their lease, *see Ex. A - Lease Submitted as Exhibit in 2019 Landlord-Tenant Action*. But the numbers of individuals and cars associated with Defendants that can be found in the shared alleyway behind Plaintiffs' homes and throughout the neighborhood have significantly increased over time. As of March 2023, on any given day there are as many as 15-20 inoperable cars belonging to or otherwise associated with Defendants occupying the shared alleyway and on Edgewood Street. On some days the cars are double parked and worked on in the shared alleyway, preventing driving access to Plaintiffs' homes. *See infra Image 10*. On other days, the parked cars block only one side of the shared alleyway nearest to the property. And still

other days, the cars are removed entirely.

32. Even though Defendants control this nuisance behavior and could abate it, the conduct continues at intermittent and unpredictable times.

33. Upon information and belief, Defendants routinely instruct customers and tow trucks to deposit cars (many of which are inoperable) in the shared alleyway and on Edgewood Street. In doing so, they obstruct the alleyway for extended periods of time, rendering it completely inaccessible for use by Plaintiffs and other residents, and the delivery, utility, emergency and other vehicles that may need to access Plaintiffs' and their neighbors' homes.

34. In addition to crowding or blocking the shared alleyway, at various times Defendants unlawfully abandon cars on Chester Avenue and South Edgewood Street in spaces clearly designated for residential parking. Cars obstruct sidewalks and the curb on the corner of Chester Avenue and South Edgewood Street, creating dangerous conditions for drivers and pedestrians. Residents, including Plaintiffs, are forced to park their cars several blocks away from their houses and walk home.

The Property's Ownership and White's Autobody Operations

35. Upon information and belief, Defendant Errol White has leased the property from Defendants Mohammed Al-Khatib a/k/a Mike Mohjan and West York LLC since 2014.

36. Defendants or their employees conduct motor vehicle work on automobiles that appear to be damaged, lack registration stickers and license plates, and contain other forms of disrepair.

37. The only active business license for White's Autobody is a Motor Vehicle

Repair/Retail Mobile Dispensing license (License Type 3311).⁴ This is the license obtained for, amongst other things, tire storage and parking lots. There are numerous limitations on the kind of permitted work under this license, including prohibitions on spray painting or using any part of the street or sidewalk for the parking or storing of motor vehicles.⁵

38. Defendants are frequently cited for various violations of the Philadelphia Code.

39. Just since 2007, Defendants have failed forty-three L&I inspections, resulting in fifty-eight notices of violations. Examples of violations for which Defendants have been cited in connection with the property include unlawful use of repair garages or motor fuel; improper storage of fire extinguishers; hazardous electrical systems; unlawful disposal of oily waste; combustible storage violations; failure to keep the exterior of the property clean, safe, sanitary and free from any accumulation of rubbish or garbage; and illegal use of the sidewalk or street for non-emergency motor vehicle repair. This last type of violation is particularly harmful to Plaintiffs because Defendants utilize the shared alleyway, public streets, sidewalks and vacant lots to repair vehicles, thus bringing the nuisance behavior even closer to Plaintiffs' homes.

40. As one example, Defendants were cited for violating Philadelphia Code 9-207 because the alleyway was being used for motor vehicle repair and "vehicles in multiple situations found in [the alleyway]. [*sic*] must be removed, this area is not zoned for storage of vehicles or parking." See **Exhibit B** - Initial Notice of Violation and Order, L&I Case Number 690975, June 18, 2019.

⁴ See *Retail Motor Fuel Dispenser License/Vehicle Repair Shop License*, BUSINESS.PHILA.GOV, <https://business.phila.gov/retail-motor-fuel-dispenser-license/> (last visited Jan. 30, 2023).

⁵ See *License Application, Automobile, etc.*, BUSINESS.PHILA.GOV, <https://business.phila.gov/media/81-896-Motor-Fuel-DispenserVehicle-RepairAuto-WreckingTire-StorageParking-LotGarage.pdf> (last visited Feb. 21, 2023).

41. In response, Defendant Mohammed Al-Khatib filed appeal number 38063, and after a hearing before the Philadelphia Board of Licenses and Inspections Review (“BLIR”) in January 2020, in which Plaintiffs Ms. Dix and Ms. Bell testified in person, the BLIR upheld the finding of a violation committed by Defendants.

42. However, much to Plaintiffs’ frustration, Defendants continued their unlawful conduct.

43. While there are occasionally short periods during which Defendants refrain from certain aspects of their unlawful nuisance conduct, the unlawful conduct invariably resumes. For example, when the property transferred ownership in August 2022, most or all of the nuisance conduct stopped for a short period. However, it was not long before the unlawful conduct resumed, without warning, and tow trucks began dumping cars in the alleyway and on the street once again. And Defendants occasionally remove cars from the shared alleyway overnight or do not operate on a Sunday. But, a recent photograph taken by Plaintiff Mr. Bell in February 2023 depicts cars double-parked in the shared alleyway, with the hood raised on one of the cars. (Defendants are not permitted to store or work on vehicles in the shared alleyway.) The photograph further reveals that no other vehicles could pass by. *See Image 10.*

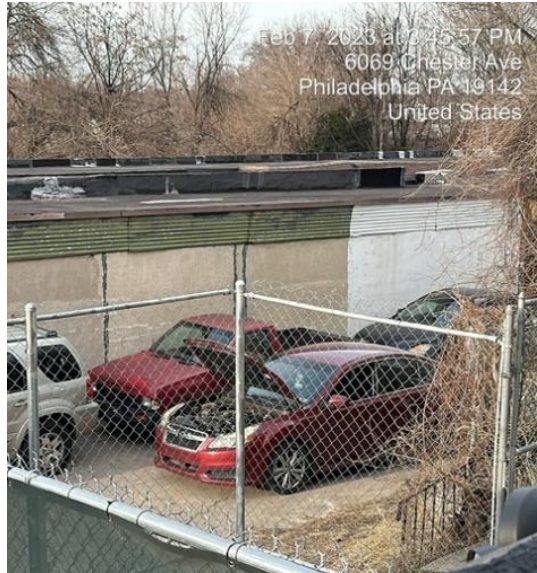


Image 10: Defendants unlawfully double-park cars, perform auto bodywork and block the shared alleyway. Picture taken by Plaintiff Mr. Bell, February 7, 2023.

44. Upon information and belief, Defendants also violate other local ordinances, including but not limited to: (a) parking vehicles on public streets without valid license plates and/or certificates of inspection;⁶ (b) parking vehicles in prohibited places such as on the sidewalk or near a fire hydrant;⁷ and (c) engaging in “behavior that significantly interferes with the health, safety and welfare of the community, including, but not limited to . . . (i) owning operating or conducting a vehicle chop shop . . . (i) [leaving] vehicles parked on sidewalk; [and] (k) [using] off street parking spaces . . . for . . . storage of inoperable vehicles”⁸

⁶ See PHILA., PA., CODE § 12-2405(d)-(e).

⁷ See *id.* § 12-913.

⁸ See *id.* § 9-4401(3)(i)-(k).

Defendants' Ownership of the Property and Operation of White's Autobody Has Harmed and Continues to Harm Plaintiffs and Constitutes a Nuisance

45. Defendants regularly leave large trash items, debris, and other potentially harmful waste in the neighborhood. Despite repeated requests from Plaintiffs and other residents, Defendants pile trash in the areas immediately surrounding Plaintiffs' homes. *See images 11-12, examples of trash and debris scattered throughout the neighborhood.*



Image 11: Photograph of trash and debris in the shared alleyway taken on or around May 31, 2019, by Plaintiff Rodney Bell.



Image 12: July 3, 2022, photograph of trash in shared alleyway taken by Rodney Bell.

46. In some instances, Defendants leave obviously inoperable vehicles in the shared alleyway or on Chester Avenue for several weeks, months or even years.

47. The inoperable vehicles attract other trash and debris in the alleyway in plain view of Plaintiffs' backyards. *See Image 13.*



Image 13: An inoperable vehicle in abandoned lot on shared alleyway, taken by Plaintiff Rodney Bell on or around May 31, 2019.

48. Defendants' ownership and operation of the property and White's Autobody has taken a toll on Plaintiffs' everyday lives in pervasive ways.

49. Defendants perform vehicle repair work in the shared alleyway including revving engines and banging on car parts to, for example, manually change tires.

50. Plaintiffs often hear loud music and see social gatherings at the property very late at night and throughout the weekend, especially in the summer months. Defendants have made no attempt to be respectful of the residential nature of the neighborhood.

51. The disruptive presence of White's Autobody has also increased foot traffic beyond the entrance and exit to the business. Plaintiffs often see and hear strangers walking in the shared alleyway behind Plaintiffs' homes. These individuals sometimes peer directly into Plaintiffs' homes.

52. Noxious fumes from spray paint, oil cans and other materials waft into Plaintiffs' yards and homes.

53. As a result, Plaintiffs do not open their windows except in rare circumstances.

54. The odors, noises, and disruptive inconveniences resulting from Defendants' conduct are of a degree and kind different from those associated with ordinary activities in residential neighborhoods in Philadelphia.

55. Despite Defendants' knowledge that their behavior inhibits Plaintiffs' peaceful and quiet enjoyment of their homes, despite Defendants' ability to control and abate the nuisance conduct, and despite Plaintiffs' countless attempts to notify Defendants by speaking with them directly, calling 311, contacting other City agencies, complaining to local elected officials, and even testifying at hearings about Defendants' actions, Defendants' conduct continues to be unreasonably disruptive.

56. Defendants could take reasonable steps to operate White's Autobody in compliance with Plaintiffs' rights and local ordinances by improving operations to reduce noise, smell, vermin and trash—for example, by only performing work on motor vehicles consistent with Defendants' active license and within the boundaries of the property.

57. Defendants' behavior, including but not limited to that detailed herein, causes a nuisance and harms Plaintiffs in many ways, such as but not limited to the following:

Ramona Monique Bell and Rodney Bell

58. Plaintiffs Ramona Monique Bell and Rodney Bell have personally witnessed the decline of their neighborhood due to the disorderly, illegal, dangerous, and unsanitary activities taking place at the property. Defendants' operation of White's Autobody has significantly disrupted their daily lives and impacted the well-being, safety, and comfort of

Ms. Bell and Mr. Bell, who live only 19 feet away.

59. Ms. Bell has been a resident of 6071 Chester Avenue for over twenty years—since 1997. Her family moved to the neighborhood when she was thirteen years old. Ms. Bell eventually inherited the home from her family on April 2, 2012, and Mr. Bell moved in around the same time. Ms. Bell and Mr. Bell have observed and felt the impact of Defendants’ various activities at White’s Autobody on their daily lives and have seen its disruptive and degrading effects on the neighborhood.

60. Defendants often obstruct the shared alleyway, rendering it completely inaccessible for the Bells or any delivery, utility, or emergency vehicles that may need to gain access. Image 12, *supra*, shows the alleyway on February 7, 2023, completely blocked by a combination of a car on which Defendants and/or their employees were unlawfully doing repairs and a row of cars being unlawfully stored in the alleyway by Defendants.

61. The Bells frequently see and hear employees working on cars in the shared alleyway and on Chester Avenue from early in the morning until late at night, from approximately 8:00 am to 10:00 pm. Defendants’ apparent customers and employees congregate in the shared alleyway and have at times peered directly into the Bells’ home. This has made them feel unsafe not just in the alleyway, but even inside their home, and deters them from using their backyard freely.

62. Additionally, the Bells sometimes awake at night to parties so loud the music vibrates the walls of their home—not just in the warmer months, but even in the winter, and even on weeknights, such as a loud party that occurred during the week of February 6th, 2023.

63. The Bells installed a new concrete porch in their backyard in the summer of 2021. Almost immediately after this home improvement, Defendants’ employee smashed into the

porch while attempting to turn a vehicle around. As a result, the Bells paid to have bollards installed around their backyard to minimize further damage from occurring.

64. They also paid to install a new fence covered in mesh in the summer of 2022, limiting visibility into—and out of—their yard.

65. Additionally, the Bells installed “No Parking” signs on the fence to discourage illegal vehicle repair activity in the shared alleyway behind their home.

66. Despite these significant deterrence measures, the Bells are unable to enjoy their backyard due to excessive noise and odors. This past July 2022, while in their backyard, Mr. and Ms. Bell were able to smell spray paint fumes emanating from Defendants’ property.

67. Excessive banging and disruptive noises coming from the property greatly interfere with Ms. Bell’s ability to work from home. As a result, she was forced to purchase headphones to limit her ability to hear the constant racket of distracting and intrusive noises coming from the property.

68. Mr. and Ms. Bell find their home surrounded by trash, oil containers, oil stains, tires, auto parts, debris and waste discarded by Defendants. And Defendants or their employees have ignored repeated requests to pick up their trash. Calls to 311 to report the buildup have been largely fruitless in mitigating the problem.

69. Defendants or their employees have even discarded car parts, such as multiple windshields, in the Bells’ yard.

70. At times, the number of cars deposited by Defendants in residential spots on Chester Avenue has been so great that there is no place left on the street for Mr. and Ms. Bell to park, despite numerous requests from residents for Defendants to move the cars. On

occasion the Bells have witnessed Defendants or their employees hold parking spots on Chester Avenue to secure a spot for a tow truck to deposit a car.

71. Defendants' conduct gives the Bells a sense of worthlessness about where they live. They no longer enjoy the comforts of their residential neighborhood, where they once slept with their windows open on quiet summer nights.

72. The Bells have voiced their grievances to Defendants as well as to City agencies, such as the L&I Department. Ms. Bell even testified at the aforementioned BLIR appeal regarding illegal autobody work in the alleyway.

Marceline Dix

73. The side entrance to White's Autobody, used by vehicles and employees as the primary entrance and exit, is located at a point on the shared alleyway directly behind Ms. Dix's home.

74. From her kitchen window, Ms. Dix can see Defendants and their employees perform illegal spray painting on automobiles in the alleyway. Fumes from the spray paint enter her house, even with the windows closed, and exacerbate her son's asthma. Ms. Dix therefore must always keep her windows closed, and so in warm months must rely on air conditioning (resulting in increased utility costs).

75. Loud noises from banging, talking, shouting, music, and tow trucks disrupt the household's daily activities, such as her children's online learning for school during the pandemic and Ms. Dix's quiet enjoyment of her home.

76. Defendants' and their employees' nighttime parties (like the recent party on a weeknight in early February 2023, mentioned earlier) cause Ms. Dix and her children to wake at all hours of the night because of loud music, laughing, screaming and individuals

who come and go from the parties.

77. Tow trucks drop off inoperable cars. This conduct occasionally subsides and then resumes. In the spring of 2022, approximately four to five times per week Ms. Dix would see tow trucks idle for thirty minutes or longer at all hours of the day and late into the night, causing oil stains, noise from idling, car traffic, honking and fumes, in addition to blocking access to the alleyway for deliveries and emergency vehicles. The inoperable vehicles deposited by those trucks would remain for months at a time, in many cases taking over residential parking spaces and using them as long-term storage, causing neighborhood blight.

78. Ms. Dix fears that emergency vehicles will be unable to reach her property because Defendants' vehicles will block their access, causing her anxiety.

79. Trash, including unlawfully discarded oil canisters, tires and other debris, attracts mice, raccoons and other rodents to Ms. Dix's home. This condition is so severe that in 2017 Ms. Dix paid to have a protective lining installed around her house and to have an exterminator remove raccoons from her roof.

80. Defendants' and their employees leave tires, car parts and other trash in her backyard and on the concrete stairs she shares with her neighbor that provide egress/ingress from her house to the alleyway. Defendants and their employees have even parked cars in her backyard and discarded car seats and other car parts in her yard.

81. Ms. Dix purchased a fence to clearly separate her backyard from, the alleyway in order to prevent Defendants from parking cars on her property. Unfortunately, Defendants damaged the fence shortly thereafter.

82. Ms. Dix has refrained from making other upgrades to her backyard space

because she fears those improvements will likewise be damaged by Defendants' operations.

83. Defendants' and their employees' actions also keep Ms. Dix from the full use of her backyard. She does not spend time outside or grow edible plants and flowers because Defendants' work in the alleyway and on the property makes her yard unpleasantly loud and stink of chemicals and oil, and because she worries that breathing the toxic spray paint fumes or exposure to the oil and other chemicals that contaminate her yard and the alleyway as a result of Defendants' activities will harm her and her children's health. As noted earlier, she is especially concerned about how frequent and long-term exposure to Defendants' spray paint fumes will affect her young son's asthma and respiratory health as a whole.

84. More generally, Ms. Dix fears for her children's safety in her yard and the immediate neighborhood. She worries that Defendants and their employees or guests may physically harm her children through their auto-related activities or otherwise. As a result, she takes her kids outside of the neighborhood to play.

85. Ms. Dix also fears for her own safety. Dumped inoperable cars left on public streets for months at a time cause Ms. Dix to park far from her house and walk long distances with her children to get home, in a neighborhood that sees increasing gun violence.

86. Ms. Dix has tried numerous avenues to curtail Defendants' nuisance and trespassory behavior, including by speaking directly to Defendants' and their employees, calling 311, the police and the fire marshal, and testifying against Defendants in L&I proceedings.

Economic Harm

87. Plaintiffs have suffered economic harm as a result of Defendants' failure to own and operate the property in a reasonable manner, including but not limited to the

following:

88. Examples of economic harm suffered by the Bells: (i) purchase of fans, headphones, white noise machines and other noise mitigating equipment; (ii) increased utility bills from constantly running air conditioners in order to keep windows closed to prevent noises and odors from entering their home; (iii) cost of installing a fence, mesh, “no parking” sign, and bollards to guard property from damage and intrusion caused by autobody work in the alleyway; (iv) costs relating to not being able to use the alleyway to access their home; (v) costs relating to repair or replacement of, or decreased value and lost use related to, the physical harm Defendants’ conduct has caused to the Bells’ property, including but not limited to physical harm to their concrete porch and to the grass and other plant life on their property; (vi) the market value decrease of their real estate caused by Defendants’ conduct; (vii) the Bells’ interim lost use and enjoyment of their property caused by Defendants’ conduct; and (viii) their personal annoyance, inconvenience, and discomfort caused by Defendants’ conduct.

89. Examples of economic harm suffered by Ms. Dix: (i) cost of installing a liner and other protective measures around residential property to prevent raccoons, mice and other rodents from entering; (ii) paying for extermination of proliferation of vermin; (iii) increased utility bills from constantly running air conditioners in order to keep windows closed to prevent noises and odors from entering her home; (iv) cost of installing a fence to guard property from damage and intrusion caused by autobody work in the alleyway; (v) costs relating to her and her children not being able to use the alleyway to access their home; (vi) costs relating to repair or replacement of, or decreased value and lost use related to, the physical harm Defendants’ unlawful conduct has caused to Ms. Dix’s property, including

but not limited to physical harm to her backyard fence and to the grass and other plant life on her property; (vii) the market value decrease of her real estate caused by Defendants' conduct; (viii) her and her family's interim lost use and enjoyment of their property caused by Defendants' conduct; and (ix) her and her family's personal annoyance, inconvenience, and discomfort caused by Defendants' conduct.

FIRST CAUSE OF ACTION

Private Nuisance

90. Plaintiffs incorporate all of the allegations in the preceding paragraphs.

91. Defendants' ownership of the property and operation of White's Autobody causes excessive noise, noxious odors, toxic emissions from dangerous chemical sprays, attracts raccoons, rodents and vermin, blocks traffic, encroaches on common public spaces, and creates trash piles, discarded debris, oil spills staining the ground, loss of privacy, a hostile environment, fire hazards, and dangerous conditions.

92. The excessive noise, noxious odors, toxic emissions, dangerous chemical sprays, raccoons, rodents and vermin, blocked traffic, encroached upon common public spaces, trash piles, discarded debris, oil spills, loss of privacy, hostile environment, fire hazards, and dangerous conditions significantly interfere with Plaintiffs' use and enjoyment of their property.

93. Such interference is a direct result of Defendants' ownership of the property and operation of White's Autobody.

94. Defendants' actions in causing said interference are intentional and unreasonable, or negligent and abnormally reckless or dangerous.

95. Defendants know or should know that their actions cause or lead to

excessive noise, noxious odors, toxic emissions from dangerous chemical sprays, raccoons, rodents and vermin, blocked traffic, encroached upon public spaces, trash piles, discarded debris, oil spills, loss of privacy, a hostile environment, fire hazards, and dangerous conditions that are offensive and harmful to Plaintiffs.

96. Defendants' actions are unreasonable because they can take reasonable steps to mitigate the impacts on Plaintiffs. Defendants' actions are otherwise negligent and abnormally reckless or dangerous because they should know their impact on Plaintiffs.

97. Defendants have actual notice of the nuisance through direct communication from Plaintiffs, many issuances of citations by the City for violations, and visits from police officers and other agencies, and although Defendants have had a reasonable opportunity to abate the nuisance, they have failed to do so.

98. Defendants' conduct constitutes a private nuisance because it has been and will continue to be the proximate cause of damages to Plaintiffs.

99. As a result, Plaintiffs are entitled to injunctive relief requiring Defendants to abate the nuisance, and compensatory damages for, among other things, physical harm to Plaintiffs, their families, and/or property, interim lost use, and/or financial harm caused by the private nuisance, in an amount to be determined at trial.

SECOND CAUSE OF ACTION

Public Nuisance

100. Plaintiffs incorporate all of the allegations in the preceding paragraphs.

101. Defendants' ownership of the property and operation of White's Autobody causes excessive noise, noxious odors, toxic emissions, dangerous chemical sprays, attracts

raccoons, rodents and vermin, blocks traffic, encroaches on common public spaces, and creates trash piles, discarded debris, oil spills staining the ground, loss of privacy, a hostile environment, fire hazards, and dangerous conditions.

102. The excessive noise, noxious odors, toxic emissions, dangerous chemical sprays, raccoons, rodents and vermin, blocked traffic, encroached upon common public spaces, trash piles, discarded debris, oil spills, loss of privacy, hostile environment, fire hazards, and dangerous conditions significantly and unreasonably interfere with and cause damage to the public in their collective rights common to all, including but not limited to using public streets and sidewalks to travel to and from work, school and prayer, breathing clean air, and public peace, comfort and convenience.

103. Defendants' actions are also unreasonable in that they violate local law.

104. Plaintiffs have experienced a harm special and apart from the general public because the property and Defendants' operations pose a daily threat to Plaintiffs due to their proximity to the property.

105. Defendants' actions constitute a public nuisance.

106. Defendants have actual notice of the nuisance through direct communication from Plaintiffs, many issuances of citations by the City for violations, and visits from police officers and other agencies, and although Defendants have had a reasonable opportunity to abate the nuisance, they have failed to do so.

107. Defendants' conduct has proximately caused and will continue to cause Plaintiffs' damages.

108. As a result, Plaintiffs are entitled to injunctive relief requiring Defendants to abate the nuisance, and compensatory damages for, among other things, physical harm to

Plaintiffs, their families, and/or property, interim loss use, and/or financial harm caused by the public nuisance, in an amount to be determined at trial.

THIRD CAUSE OF ACTION

Trespass

109. Plaintiffs incorporate all of the allegations in the preceding paragraphs.

110. Defendants have intentionally intruded upon Plaintiffs' property without permission or privilege. Defendants have discarded and continue to discard trash, tires and other debris in Ms. Dix's backyard. Defendants also have discarded and continue to discard trash, including two vehicle windshields, in the Bells' backyard. Plaintiffs have been and/or continue to be harmed by this behavior because it kills Ms. Dix's grass and requires all Plaintiffs to expend time and energy to clean the mess.

111. Similarly, Defendants have intentionally intruded upon Plaintiffs' property without permission or privilege by spray painting and causing spray paint particles to enter upon Plaintiffs' property, forcing them to keep their windows closed almost all the time so as to minimize their exposure to and inhalation of the spray paint particles, and seriously aggravating the asthma of Ms. Dix's young son.

112. Plaintiffs own their homes and maintain the exclusive right to use their property without interference from others.

113. Defendants' conduct constitutes trespass, and has caused and will continue to cause damage to Plaintiffs.

114. As a result, Plaintiffs are entitled to injunctive relief requiring that Defendants cease the trespassory conduct, and compensatory damages for, among other things, physical harm to Plaintiffs, their families, and/or property, interim lost use, and/or any financial harm

caused by the trespass, in an amount to be determined at trial.

FOURTH CAUSE OF ACTION

Material Interference with Shared Easement

115. Plaintiffs incorporate all of the allegations in the preceding paragraphs.

116. Owner Defendants' deed to 1830 S. Edgewood Street stipulates "free and common use, right, liberty, and privilege of the said Nineteen feet wide driveway as and for a passageway and driveway at all times hereafter, forever." See **Exhibit C**.

117. Owner Plaintiff Monique Bell's deed to 6071 Chester Avenue states "TOGETHER with the free and common use, right, liberty and privilege of the aforesaid driveway as and for a driveway and passageway at all times hereafter, forever, in common with the owners, tenants and occupiers of the other lots of ground bounding thereon and entitled to the use thereof." See **Exhibit D**.

118. Owner Plaintiff Marceline Dix's deed to 6061 Chester Avenue states "TOGETHER with the free and common use, right, liberty and privilege of the aforesaid driveway as and for a passageway and watercourse at all times hereafter forever." See **Exhibit E**.

119. In all instances, said driveway (a/k/a the aforementioned shared alleyway) is a certain nineteen feet wide alley leading Northeast to South Edgewood Street that runs parallel between Defendants' property and the row of townhouses including Plaintiffs' homes.

120. The shared alleyway is subject to a shared easement for use as a driveway and passageway.

121. Defendants have altered the character of and/or materially interfered with Plaintiffs' use and enjoyment of the shared alleyway without Plaintiffs' consent.

122. Furthermore, Plaintiffs have suffered damages as a consequence of Defendants' unlawful interference with Plaintiffs' rights to use and enjoy the alleyway and will continue to suffer such damages until the interference stops, including but not limited to damages such as physical harm to Plaintiffs' property resulting from Defendants' unlawful use of the alleyway, the value of Plaintiffs' interim lost use of the alleyway and their yards, and costs that have been and/or will be incurred by Plaintiffs in an effort to enjoy the same ability to access and use their homes and/or the alleyway as they would have but for Defendants' unlawful interference with Plaintiffs' rights under the easement.

123. As a result, Plaintiffs are entitled to injunctive relief requiring that Defendants cease the material interference, and compensatory damages for, among other things, physical harm to Plaintiffs, their families, and/or property, interim lost use, and/or financial harm caused by the material interference, in an amount to be determined at trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Honorable Court enter judgment in their favor and against Defendants, including:

- (a) A declaratory judgment that Defendants' actions stated herein have constituted and will continue to constitute a private nuisance, public nuisance, trespass and material interference with a shared easement;
- (b) An injunction ordering Defendants and their agents to abate the nuisance caused by their leasing and operation of White's Autobody, prohibiting actions that cause or contribute to a private nuisance, public nuisance, trespass, and material interference with a shared easement and mandating that Defendants and their agents comply with applicable laws, regulations and licensing conditions;
- (c) An award of compensatory—or, if not, then nominal—money damages, as well as punitive damages, in an amount to be determined at trial; and
- (d) An award of such other and further legal and equitable relief as this Honorable Court deems just and appropriate.

Dated: April 25, 2023

/s/ Timothy L. Kelly

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