

Cause No. 2019-83587

PATRICIA BIRD, KRISTIN BIRD,
JENNIFER BLACK, CAROLYN
KENNEY, LUIS MICHELI, and
ELIZABETH URQUIOLA.

Plaintiffs,

v.

TURKEY LEG HUT & CO. LLC,
d/b/a TURKEY LEG HUT, NAKIA
PRICE, and LYNDELL PRICE

Defendants.

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IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

152nd JUDICIAL DISTRICT

**DEFENDANTS' EMERGENCY MOTION TO DISSOLVE THE TEMPORARY
RESTRAINING ORDER OR INCREASE THE BOND**

Defendants Turkey Leg Hut, Nakia Price, and Lyndell Price (together, the “Turkey Leg Hut”) move to dissolve the temporary restraining order signed on November 20, 2019, or in the alternative, to increase the bond securing the order to \$500,000. *See* Tab 1 (Temporary Restraining Order). Emails from Plaintiffs’ own planning committee reveal that the true genesis for the lawsuit is *not* smoke or noise, but rather the desire to eliminate a popular and busy restaurant from Plaintiffs’ neighborhood. Tab 2 (10/5/19 email from Matthew Trail to plaintiffs’ committee). Therefore, the Turkey Leg Hut further requests the Court visit the site in person so it can evaluate whether there is a true health concern at play, rather than simply relying on affidavits, none of which state that they are made on personal knowledge.

Plaintiffs have been planning this lawsuit for months, admitting as early as October 5 that “[t]he ultimate goal of this litigation is obviously for the TLH to be somewhere else and not on our corner, but that cannot be the stated goal.” Tab 2. Nevertheless, Plaintiffs provided Turkey Leg Hut’s Dallas-based outside general counsel a scant ninety minutes of notice before seeking an

order that would have forced the popular turkey restaurant to cease operations one week before Thanksgiving. While Turkey Leg Hut was able to persuade the Court not to shut it down altogether, it is losing thousands of dollars of revenue a day (and incalculable good will) due to an unverified TRO secured with a \$500 bond.

Turkey Leg Hut moves to dissolve the TRO for the following reasons:

- The TRO was based on a legally insufficient lawyer’s verification that was not made upon personal knowledge;
- The plaintiffs inexplicably waited more than two years to seek a TRO that ostensibly was so urgent it could not wait two additional weeks for a fully noticed hearing, but instead sought to shut down a turkey restaurant the week before Thanksgiving;
- The \$500 bond bears no relationship to the actual, anticipated damages caused by the order, which significantly reduced production capacity for a restaurant that frequently sells out 100% of the turkey legs it prepares;
- The TRO, which limits smoking operations that had been ongoing for over two years, did not return the parties to the status quo but rather imposed new and arbitrary restrictions on an ongoing business; and
- Plaintiffs failed to identify any irreparable injury to real or personal property.

I. The TRO was impermissibly based on counsel’s verification and not made upon personal knowledge.

Rule 682 requires that any writ of injunction, including a temporary restraining order, be based on a verified petition. Tex. R. Civ. Pro. 682; *In re MetroPCS Comms., Inc.*, 391 S.W.3d 329, 337 (Tex. App.—Dallas 2013, no pet.); *Williams v. Bagley*, 875 S.W.2d 808, 810 (Tex. App.—Beaumont 1994, no writ). And the verification is legally insufficient unless it is based on personal knowledge. *Id.*

Here, the application was verified by Plaintiffs’ counsel, Cris Feldman, in his capacity as counsel and without averring that it was made on personal knowledge. Pet. at p. 30. Such a verification is legally insufficient to support a temporary injunction. *Williams*, 875 S.W.2d at 810–

11.¹ As the *Williams* court noted, given that TROs are typically issued ex parte and can “seriously curtail and defeat as well as thwart another person’s lawful ability to engage in legal conduct ... the necessity of a proper affidavit is of paramount importance.” 875 S.W.2d at 810. The *Williams* court held that the trial court abused its discretion by issuing a TRO that was only verified by the party’s attorney and not based on personal knowledge. *Id.* at 811–12. This reason alone is enough basis to dissolve the TRO at issue here.

While the plaintiffs have today filed a new verification that attempts to cure this fatal problem, the new verification fails for two reasons. First, the original TRO was still improperly granted and should be dissolved. Second, the new verification, while not signed by a lawyer, *still* does not aver that it is based on personal knowledge. The reason for this seems clear. The emails circulated amongst the plaintiffs’ committee at the beginning of October demonstrate that the *real* motivation behind the lawsuit is eliminating from the neighborhood a successful business that draws large crowds, not any genuine concern about smoke or odor. *See* Tab 2. The emails further demonstrate that the complaints in the petition about inadequate parking are false. Whereas the petition alleges that the “Turkey Leg Hut has also failed to plan for basic logistics such as customer parking for its patrons,” Pet. ¶ 45, the emails reveal that the planning committee sought to *prevent* the Turkey Leg Hut from *adding* parking (presumably to further the goal of harming TLH’s business):

¹ Additionally, although the unsworn declaration claims to be made under Tex. Civ. Prac. & Rem. Code § 131.001, it is not in the prescribed form. *See* TEX. CIV. PRAC. & REM. CODE § 131.001 (requiring unsworn declaration to be made in a form including date of birth and address).

The ultimate goal of this litigation is obviously for the TLH to be somewhere else and not on our corner, but that cannot be the stated goal. So we also need to think of injunction relief that we can ask for such as,

cook off site or build the sort of filter that no one would ever know you are cooking

no music past 9 p.m.

no use of bass or subwoofers at all

signs up telling their patrons to keep the noise down

no parking lot

if no parking lot is not possible then I was thinking that they have to provide an officer there to keep the peace (hopefully we can just stop the lot)

some sort of monitoring system for both noise and smoke that will result in them being fined if they go over.

Tab 2. These emails make clear that the purpose of the requested injunction is not the protection of public health, but the harassment of the Turkey Leg Hut until it moves “somewhere else and not on our corner.” The TRO must be dissolved.

II. Plaintiffs’ two-year delay is inexcusable and demonstrates that a TRO is unnecessary.

The Turkey Leg Hut has been in its current location since mid-2017. Pet. ¶ 23. While its business has thrived and grown over the years, the Turkey Leg Hut reached its current smoking capacity in 2018 and has had steady sales and operations throughout 2019. Tab 3. In other words, there has been no sudden increase in a nuisance; whatever smoke, noise, or other alleged harms TLH creates have been consistent throughout 2019. And Plaintiffs have clearly been planning this lawsuit for months. *See* Tab 2 (emails dated October 2 and 5 referring to a late-September litigation planning meeting). Yet despite more than ten months of steady operations by TLH and two months of planning by Plaintiffs, Plaintiffs represented to the Court that they could *not* wait two more weeks for a fully noticed temporary-injunction hearing. Instead, with less than two hours’ notice to TLH’s Dallas-based general counsel, Plaintiffs asked for a TRO against a turkey restaurant the week before Thanksgiving.

In a situation such as this, courts will deny a *temporary injunction*, not just a TRO. *Landry's Seafood Inn & Oyster Bar-Kemah, Inc. v. Wiggins*, 919 S.W.2d 924, 927–28 (Tex. App.—Houston [14th Dist.] 1996, no writ) (temporary injunction properly denied when party delayed eight months); *Foxwood Homeowners Ass'n v. Ricles*, 673 S.W.2d 376, 379 (Tex. App.—Houston [1st Dist.] 1984, writ ref'd n.r.e.) (same, after nine-month delay).

What's more, injunctive relief is equitable, and the Plaintiffs have come to the Court not just with laches, but with unclean hands. *See id.* Not only did Plaintiffs lie behind the log until the most damaging possible moment to seek a TRO, but their planning emails, which demonstrate an intent to destroy the Turkey Leg Hut's business in order to eliminate a busy and popular restaurant from "our corner," put the lie to Plaintiffs' claim that they are only trying to protect public health. *See* Tab 2. As discussed above, while complaining to the Court that TLH has inadequate parking, Plaintiffs' planning committee has been working to oppose TLH's efforts to add more parking lots. This Court should not reward Plaintiffs for their inequitable conduct by upholding a damaging, unverified, and unsecured TRO.

III. The \$500 bond bears no relationship to the actual, anticipated damages caused by the TRO and is grossly inadequate to protect the defendants' interests.

The bond for a TRO protects the defendant from the damage that may be caused by an ex parte order. *See* Tex. R. Civ. Pro. 684. The Turkey Leg Hut's phenomenal success is based on its high-quality, slow-smoked turkey legs. Social media posts and online reviews frequently mention guests traveling from around the country to try the famous TLH turkey legs:

Turkey Leg Hut

4830 Almeda Rd suite a/b, Houston, TX

 Write a review

4.3  4,338 reviews 

Sort by: Most relevant 

- All
- crawfish 118
- alfredo 106
- dirty rice 71
- funnel cake 49
- +6

 **Bri Nichols**
Local Guide · 149 reviews · 1,130 photos

 a month ago

I traveled from Boston to Houston specifically for this restaurant and I truly had a phenomenal time. I must say, it pays to make a reservation! The food was delicious... It broke all the rules and brought the meaning of Cajun to a whole ... [More](#)



 10

 **Airick Johnson**
Local Guide · 58 reviews · 90 photos

 2 weeks ago

Came all the way from Oklahoma City, arrived around 12:45pm on a Wednesday. There was only a 5 minute wait. We ordered entrees and it seems everything arrived within 10 minutes. The food was fresh, hot, and tasty as ever. We ordered a Mega Patron Margarita as well. Everything was perfect!



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The current bond of \$500 bears no relationship to the damages the Turkey Leg Hut faces. This TRO threatens the Turkey Leg Hut's ability to meet customer demand, both in quantity and quality. *See* Tab 3 (Price declaration). Patrons who travel into the state, or who wait for hours,

for a chance to try a succulent fresh-smoked turkey leg, are likely to find that the stock is sold out before they reach the front of the line. The loss to the Turkey Leg Hut's revenue and goodwill is immeasurable.

On average, the Turkey Leg Hut sells \$33,000 or more in turkey legs daily. Tab 3. As the restaurant's name implies, turkey legs are the backbone of the business. If the Court does not dissolve the injunction, the Turkey Leg Hut requests an increase of the \$500 bond to \$500,000 to protect the business from the harm it faces. *See Franklin Sav. Ass'n v. Reese*, 756 S.W.2d 14, 16 (Tex. App.—Austin 1988, no writ) (\$10,000 bond was abuse of discretion when lender could not develop mortgaged property during the pendency of the injunction and unpaid interest was accruing at the rate of about \$300,000 per month); *GTE Mobilnet of South Texas Ltd. Partnership v. Cellular Max, Inc.*, 123 S.W.3d 801 (Tex. App.—Beaumont 2003, pet. dismissed) (\$1,000 bond was abuse of discretion where defendant estimated \$912,000 in damages for wrongful injunction).

IV. The TRO impermissibly imposed new and arbitrary punitive restrictions on the Turkey Leg Hut rather than returning the parties to the status quo, and must be dissolved.

“The purpose of a TRO is to preserve the status quo,” which the Texas Supreme Court has “defined as ‘the last, actual, peaceable, non-contested status which preceded the pending controversy.’” *In re Newton*, 146 S.W.3d 648, 651 (Tex. 2004) (quoting *Janus Films, Inc. v. City of Fort Worth*, 163 Tex. 616, 617, 358 S.W.2d 589 (1962)). In general, the “status quo” to be upheld is the lawful status of a company prior to the commencement of a lawsuit. *Transp. Co. of Texas v. Robertson Transports, Inc.*, 261 S.W.2d 549, 554 (Tex. 1953) is instructive on this point. In that case, the respondent, a chemical carrier, sought a certificate authorizing it to transport certain chemicals in bulk. *Id.* After the Commissioner granted respondent a certificate to transport bulk chemicals, petitioner sought a temporary restraining order enjoining respondent from that activity. Under these circumstances, the Texas Supreme Court held that “[t]he status quo in this

case was the status of the controversy as it existed prior to the entry of the Commissioner’s order.”
Id.

Further, Texas courts have articulated a principle that a TRO should not restrict controversial activity unless “the acts sought to be enjoined violate an expressed law.” *City of San Antonio v. Vakey*, 123 S.W.3d 497, 502 (Tex. App.—San Antonio 2003, no pet.); *see also In re Newton*, 146 S.W.3d 648, 651 (Tex. 2004). Here, the Turkey Leg Hut has been operating *lawfully* at its current location for over two years and has operated lawfully at all levels of meat-smoking production prior to Plaintiffs’ TRO application. While Plaintiffs falsely allege in their petition that the restaurant’s cooking activities constitute illegal activity, such allegation cannot justify limiting the Turkey Leg Hut’s meat-smoking hours, as the TRO does. Under Texas law, “conduct [should not] be adjudicated illegal based merely on pleadings and a brief, non-evidentiary TRO hearing when substantial rights are involved” (*In re Newton*, 146 S.W.3d 648, 651 (Tex. 2004)), as constitutes the circumstances here. Based on the principles articulated in *In re Newton*, *Transp. Co. of Texas*, and *Vakey*, that the status quo is the lawful status of the company prior to the TRO application, and only unlawful activity should be enjoined by a TRO, the Order, which arbitrarily and detrimentally restricts the Turkey Leg Hut’s time to operate its meat smokers, does not restore the status quo or satisfy the purpose of the TRO. It must be dissolved.

V. Plaintiffs failed to identify any irreparable injury to real or personal property.

A temporary restraining order may only be granted upon a showing of probable, imminent, and irreparable injury. TEX. R. CIV. P. 680; *Butnaru v. Ford Motor Co.*, 84 S.W.3d 198, 204 (Tex. 2002). An injury is only irreparable if money damages would be insufficient. *Cardinal Health Staffing Network, Inc. v. Bowen*, 106 S.W.3d 230, 235 (Tex. App.—Houston [1st Dist.] 2003, no pet.) (en banc) (“To establish an irreparable injury, the applicant must show that it cannot be

‘adequately compensated in damages or the damages cannot be measured by any certain pecuniary standard.’”) (quoting *Butnaru*, 84 S.W.3d at 204).

Plaintiffs claim that their request for a TRO is based on Section 65.011(5) of the Civil Practice and Remedies Code and therefore they do not need to show the lack of an adequate remedy at law. Pet. at pp. 25–26. But Section 65.011(5) does not eliminate the requirement that the plaintiffs show they have no adequate remedy at law. *Cardinal Health*, 106 S.W.3d at 234 n.2 (“The Supreme Court has construed subsections (1) and (5) [of TEX. CIV. PRAC. & REM. CODE § 65.011] to include the equitable requirement of irreparable injury and inadequate legal remedy) (citing *Storey v. Cent. Hide & Rendering Co.*, 226 S.W.2d 615, 619 (Tex. 1950)).

To the extent Plaintiffs argue that an alleged health threat is the basis of their TRO, such a threat would not constitute harm to “real or personal property,” as subsection 65.011(5) requires. And to the extent plaintiffs rely on the existence of an alleged nuisance to support the TRO, the plaintiffs cannot explain why they waited over two years to address the alleged nuisance. As discussed above, Plaintiffs’ two-year delay negates the immediacy of a threat that can justify the issuance of a TRO without proper notice and a full hearing.

Plaintiffs have failed to allege why they lack an adequate remedy at law. Barring that showing, award of a TRO was inappropriate, and the TRO should be vacated.

VI. The Court should visit the Turkey Leg Hut and assess the “nuisance” itself.

The Turkey Leg Hut is troubled by the unverified allegations in the petition. After reading Plaintiffs’ claims that short-duration exposure to the open air outside of their homes results in streaming eyes and burning throats, one might well wonder why it is that TLH patrons readily wait hours in the open air for an opportunity to dine at the restaurant (where much of the seating is additionally located outdoors). If this Court is hesitant to dissolve the TRO, the Turkey Leg Hut urges the Court to visit the restaurant, a short drive from downtown Houston, with a representative

from each party in attendance, and determine for itself whether the restaurant's surroundings are truly as unbearable as Plaintiffs claim.

VII. Conclusion

The TRO application was invalid for lack of a proper verification, and the TRO should be dissolved on that basis alone. The TRO is further defective because of the Plaintiffs' inexcusable delay, the lack of a sufficient bond, the TRO's failure to return the parties to any cognizable status quo, and the plaintiffs' failure to allege irreparable harm and no adequate remedy at law. For all of these reasons, TLH asks the Court to dissolve the TRO or, in the alternative, to increase the bond to \$500,000.

Date: November 25, 2019

Respectfully submitted,

**AHMAD, ZAVITSANOS, ANAIPAKOS,
ALAVI & MENSING P.C.**

/s/ John Zavitsanos

John Zavitsanos
State Bar No. 22251650
Jane Robinson
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ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF CONFERENCE

I certify that I have conferred with Cris Feldman, counsel for the plaintiffs, regarding the relief requested in this Motion and he is opposed.

/s/ Kelsi Stayart White
Kelsi Stayart White

CERTIFICATE OF SERVICE

I hereby certify that on November 25, 2019, a true and correct copy of the above and foregoing document was served electronically through the electronic filing manager to all counsel of record in accordance with Texas Rules of Civil Procedure 21 and 21a as follows:

Cris Feldman
George W. Vie III
Feldman & Feldman, P.C.
3355 West Alabama, Suite 1220
Houston, Texas 77098
Telephone: 713-986-9471
Fax: 713-986-9472
Cris.feldman@feldman.law
George.vie@feldman.law

ATTORNEYS FOR PLAINTIFFS

/s/ Kelsi Stayart White
Kelsi Stayart White

1. Defendants are operating and continue to operate the Turkey Leg Hut so as to produce smoke and odor that presents health hazards to Applicants and other neighbors to the properties at 4830 and 4902 Almeda Road. Further, the Defendants' operation of the Turkey Leg Hut involves presently illegal and unpermitted operations posing a risk of harm to the public, including unenclosed outdoor food preparation areas and use of smokers.

2. Applicants have pleaded that Defendants' actions violate Houston, Texas, Municipal Code § 20-19, Tex. Civ. Prac. & Rem. Code §§ 125.0015(a) and (a)(24), constitute a nuisance per se, private nuisance, common nuisance, and have resulted in trespasses onto Applicants' properties.

3. Having presented evidence sufficient to raise a bona fide issue as to Applicants' right to ultimate relief, Applicants have established a probable right to the relief sought against Defendants for the allegations pertaining to the creation of smoke and odors and the illegal use of unenclosed outdoor food preparation areas, including smokers.

4. Having sought a temporary restraining order under Tex. Civ. Prac. & Rem. Code § 65.011(5), Applicants need not establish a probable, imminent, and irreparable injury. Nevertheless, if the relief requested is not granted, Applicants will suffer further imminent harm and irreparable injury and will have no adequate remedy at law.

5. This temporary restraining order will serve the public interest. The harm to Applicants if this Application is not granted outweighs any potential harm to Defendants by the issuance of the temporary restraining order.

Accordingly, the Court GRANTS the Plaintiffs' Application for Temporary Restraining Order and makes the following order under Tex. R. Civ. P. 683:

Defendants Turkey Leg Hut & Company, LLC d/b/a "Turkey Leg Hut," Nakia Price, and Lyndell Price and Defendants' members, agents, employees, successors, assigns, attorneys, and any person acting in concert or participation with them who receives actual notice of this Order by personal service or otherwise are PROHIBITED AND ENJOINED from:

- i. Producing smoke and ^{pollution} odor at the 4830 and 4902 Alameda Road locations ~~until the Court conducts a full trial on the merits.~~ *from the hours of 8:00pm and 6:00am daily.*
- ~~ii. Outdoor food preparation and the use of the smokers at the Defendant's business premises so long as such operations do not conform with the requirements of the City of Houston Ordinances regulating food establishments.~~

IT IS FURTHER ORDERED that Applicants shall execute and file with the clerk of this Court a bond, or cash deposit in lieu of bond, in the amount stated below in conformity with Rule 684 of the Texas Rules of Civil Procedure, payable to Defendants and conditioned that Plaintiffs will abide by the decision which may be made in the cause and that Plaintiffs will pay all sums of money and costs that may be adjudged against them if the Temporary Restraining Order shall be dissolved in whole or in part.

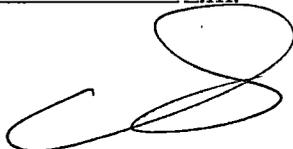
The clerk shall, when so requested by Applicants and after they have filed the bond described above, issue a writ of temporary restraining order in conformity with the law and the terms of this Order.

IT IS FURTHER ORDERED that, unless extended by agreement of the parties or changed by further order of this Court, this Order becomes effective only at such time as Applicants file with the clerk of this Court a bond in the amount of ~~\$100.00~~ \$500.00.

IT IS FURTHER ORDERED that Plaintiffs' Application for a Temporary Injunction will be heard before the Court on December 6, 2019 at 1:30 pm.

IT IS FURTHER ORDERED that this Order expires no later than fourteen days after issuance or when amended by order of this Court, whichever occurs first.

Signed on November 20, 2019 at 11:31 A.m.



Honorable Cory Foster
Judge, 269th District Court

This Order Expires on December 4, 2019.



----- Forwarded message -----

From: **Matthew Trail** <matthewtrail@gmail.com>
Date: Sat, Oct 5, 2019 at 10:49 PM
Subject: Fwd: TLH ***Please Read***
To: <Anashassan@gmail.com>

Hey Hassan,

Below are two emails that explain what we are doing.

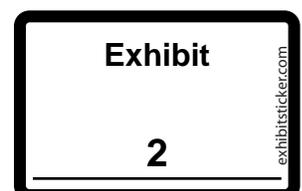
Let me know if you have any questions or are interested in joining us.

----- Forwarded message -----

From: **Matthew Trail** <matthewtrail@gmail.com>
Date: Sat, Oct 5, 2019, 2:04 PM
Subject: Re: TLH ***Please Read***
To: Josh King <joshua.king1228@gmail.com>
Cc: Carolyn Kenney <carolynpk@gmail.com>, Rita Jou <ritajou@gmail.com>, Christopher Leung <chriskleung@gmail.com>, Cynda Hutto <cyndahutto@gmail.com>, Luis Michieli <luimich@yahoo.com>, Zuzana Michieli <zuzanamichieli@gmail.com>, Hugo Urquiola <hjub@hotmail.com>, Elizabeth Gilbert <egilbert06@gmail.com>, Brittani Flowers <brittani.flowers@gmail.com>, Alma Garcia <almanora.garcia@gmail.com>, <sepuls59@gmail.com>, <james.puls@gmail.com>, Charles Houston <chouston06@hotmail.com>, J. Francis <jichang79@gmail.com>, Srikanth annavarapu <srikanthsrik@gmail.com>

Update regarding our meeting with Cris Feldman.

Chris's thinks we have a good case going forward on the nuisance issues such as smoke and noise and the city's non enforcement.



He is going to research if there are permit/deed restriction ways that we can prevent the parking lot, but he says that does not fold as neatly into the nuisance complaint as the other issues. Still it will be part of the overall nuisance complaint and if we are successful, we might be able to stop it altogether.

The best idea from yesterday is the Cris is going to create a special mini neighborhood organization to bring the suit. This is good news for us, because it means none of us have to bring the suit in our own names. We will essentially all just be members of this organization that "decided" to sue. It should shield us somewhat from individual discovery requests and makes litigation a lot simpler for Cris' firm.

We need a name for the organization, so feel free to suggest. "Greater Rosedale Protection Association", "Almeda Quality of Life" "The Justice Society of Tomorrow" :) I don't know yet.

This organization will sue on our behalf and we all would just be its members. The money that you contribute would just be towards your membership and you would not have to say that you are directly funding a lawsuit. **This does not mean complete anonymity.** Your name as a member would still be out there. It just means the litigation does not have to be in our individual names.

We are thinking that Josh and I would be managers and someone else would be the president. I am going to invite the MPNA to join as well (and also ask them for money if they have any).

Cris is committed to keeping our costs to a temporary injunction to \$20,000. We will know by that point what sort of defense they will have and what sort of success we are having.

It is still very important that you all join organization and contribute to the lawsuit. We still need to raise the money. The organization is still just us working together.

We need to collect money from everyone. No one is demanding a specific amount, but please contribute what you can. Let Josh or me know when we can come by and pick up checks. Everything will be held in a trust account by Cris' firm. Please make the checks out to Feldman and Feldman PC.

The next big thing is record keeping. Cris asked that from now on we take video of anything that looks like nuisance. If you are out and you see a loud car or motorcycle, take video. People peeing on your fence, video. Drunk folks staggering back, video. Smoke billowing through the neighborhood, video. Loud music, video. I know most of us might have thought about avoiding our homes next Sunday for the street party, but he said take video of that

especially. All nuisance in whatever form, we need to video from now on.

The ultimate goal of this litigation is obviously for the TLH to be somewhere else and not on our corner, but that cannot be the stated goal. So we also need to think of injunction relief that we can ask for such as,

cook off site or build the sort of filter that no one would ever know you are cooking
no music past 9 p.m.

no use of bass or subwoofers at all

signs up telling their patrons to keep the noise down

no parking lot

if no parking lot is not possible then I was thinking that they have to provide an officer there to keep the peace (hopefully we can just stop the lot)

some sort of monitoring system for both noise and smoke that will result in them being fined if they go over.

If you all have other suggestions, please give them to us.

Josh and I are going to be doing some public records request to various city departments regarding the TLH in the next few days per Cris' instructions. He thinks once a lawsuit is filed that the city might not be as forthcoming.

I think that covers everything. Please let us know if you have any questions.

On Wed, Oct 2, 2019 at 9:49 PM Josh King <joshua.king1228@gmail.com> wrote:

Hi Everybody,

This is confidential and I would kindly ask you not to distribute.

Thanks for coming by for those of you who were able to make it on Sunday. I won't repeat all the specifics in the email but give me a ring or email me if you want more detail or have specific concerns.

Summary

- 6 households on Arbor / Rosedale have agreed to be named and fund formal action (e.g. filing for injunction) against TLH
- Five more households on this email have expressed an interest (or Matthew and I thought would be interested) in joining
- We are paying a lawyer to take a deep dive and advise us on best course of action- should take \$20,000 to get us through injunction hearing
- Matthew Trail and I have agreed to head this up on day to day and disseminate the information

Matthew and I have spoke with Cris Feldman repeatedly (White Oak Music Hall case) over the last few months and think he is our guy for this

- There is a fine line between “enough” people to where it means something and “too many” people in a case to where it becomes more costly. 10 to 15 households should be sufficient

Next Steps

1. Matthew and I need to know if you are in and initial financial support
2. Cris will need to dig in to the facts and support to figure out best angle but generally nuisance will be pursued with efforts to address specific concerns which vary depending on where you live
3. **To engage Cris Feldman, we need to give Cris \$20,000.** He said we could get started with \$10,000 retainer but the general feeling of those already in is we would like to see some financial commitment from the outset from all interested parties. **Suggested initial commitment is \$1,000 to \$2,000**
4. Talk to people in households unaccounted for and see their interest

Fees

- The residents of the HOA I live in (4 households) have all committed above the suggested initial commitment
- After we get through injunction Cris and us will reassess whether there is contingency angle for him or devise a more discrete fee schedule if we choose to move forward
- Cris has cautioned me that, these cases take many turns and to make a serious long-term run at TLH, it could cost up to \$50,000 over 12 to 18 months. It starts with seeing what we can get done initially
- I view it as a relatively cheap (I know \$2k isn't cheap) option to see if we can enact some change

Households Unaccounted for:

- 1822 Rosedale – I know the tenant a little and will try to talk to owner
- 1802 Arbor – I have been talking to its developer about joining us but I don't know if this will happen
- 1809 Rosedale
- 1816 Arbor
- 1820 Arbor
- New townhomes at NE corner of Chenevert and Rosedale
- Any others...behind the proposed parking lot on Wichita?

Friendly reminder that every text / email related to TLH is going to be discoverable.

Thanks,

Josh
214 240 7689

Cause No. 2019-83587

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JENNIFER BLACK, CAROLYN
KENNEY, LUIS MICHIELI, and
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TURKEY LEG HUT & CO. LLC,
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PRICE, and LYNDELL PRICE

Defendants.

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IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

152nd JUDICIAL DISTRICT

DECLARATION OF NAKIA PRICE

1. My name is Nakia Price. My date of birth is February 24, 1980, and my address is 4830 Almeda Rd., Houston, Texas 77004. The facts stated within this declaration are true and correct and within my personal knowledge.

2. I am one of the Defendants named in this above-captioned lawsuit brought by Plaintiffs Patricia Bird, Kristin Bird, Jennifer Black, Carolyn Kenney, Luis Michieli, and Elizabeth Urquiola. I also am the operating owner of the Defendant Turkey Leg Hut & Co. LLC, d/b/a Turkey Leg Hut (“Turkey Leg Hut”). Turkey Leg Hut is a small but successful family-run business. We employ over 150 people, and many of our family members work at the restaurant.

3. The Turkey Leg Hut sells on average between 25,000 and 30,000 turkey legs a week. We have seven smokers, which includes three competition smokers that hold 500 turkey legs and four other smokers that hold 300 turkey legs. We typically smoke turkey legs for up to 14 hours. We smoke turkey legs on a rolling basis to meet demand. Prior to the entry of the temporary restraining order on November 20, 2019, we began smoking turkey legs around 3 AM and finished around 11 PM or midnight, resulting in about 20 hours of cooking per day. Even with this cooking schedule, the Turkey Leg Hut frequently sells out of turkey legs prepared for that day.

4. Our turkey leg sales have been generally consistent each month of 2019, within about a 10% margin. Our revenue from January to June 2019 for turkey leg sales was \$6.5 million, and we estimate we will end the year at about \$12-15 million in revenue from turkey leg sales. We have not seen a material increase in turkey leg sales at any point in 2019; instead, our sales, and therefore our production, have generally held steady. At the low end, our turkey leg sales revenues average out to around \$33,000 per day in 2019 using the projected \$12 million in revenues we will have this year.

5. With the temporary restraining order in place, we have lost the ability to cook the turkey legs for at least 6 hours a day. We can no longer smoke turkey legs from 3 AM to 6 AM or from 8 PM to 11 PM or midnight, like we used to. This is a 30% reduction in our cooking hours from before the temporary restraining order.

6. Because the temporary restraining order has only been in place for 5 days so far, we are still realizing and identifying the different ways that its restrictions are harming and will continue to harm our business. But we are already suffering harm because of the 30% reduction in our available cooking time. The current \$500 bond does not protect us from that harm. Because we often sell out of turkey legs, our revenues are often tied to how many turkey legs we can prepare each day. The 30% reduction in available cooking time means that the maximum number of turkey legs we can prepare and smoke in one day is now lower than it used to be. This situation means that over the next 14 days before the current temporary injunction hearing setting, we are presented with the real harm of having to choose between maintaining our sales, and therefore revenue, and maintaining the quality of our product, a unique product we developed as a family and have become popular for because of its high quality.

7. If the temporary injunction hearing was moved to a date beyond 14 days from today, Turkey Leg Hut would continue to suffer harm on an ongoing basis and would seek to increase the bond as necessary to address those losses. Because we are still identifying the different ways in which this TRO is harming our business, we may identify additional injuries over time, particularly if we are under the constraints of this TRO for longer than the next 14 days.

I declare under penalty of perjury that the foregoing is true and correct.



Nakia Price

Executed in Harris County, State of Texas, on the 25th day of November, 2019.