# 1 2 3 SOFT LIGHTS, 4 Plaintiff, 5 vs. 6 NEIGHBOR, 7 Defendant 8 NOW COME the

A CALIFORNIA COUNTY

### SMALL CLAIMS COURT

Case No.:	

COMPLAINT FOR NUISANCE

NOW COME the Plaintiff to state as follows:

### I. Introduction

"Neighbor" owns or controls a property in the HOA, located in Placer County.

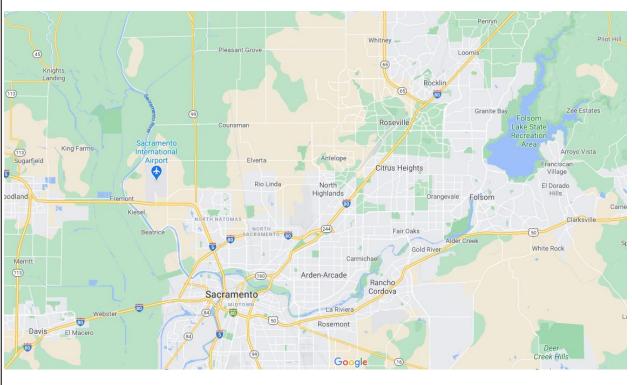


Figure 1

The Development was approved by The County in 2002. At the time of approval, the area was a rural area with farms, ranches, and natural spaces. To protect the rural character of COMPLAINT FOR NUISANCE - 1

the area, the county required that the developer commit to ensuring that the community was designated as darkness protected as shown in this excerpt from the California County Conditions of Approval. (Exhibit 1)

DD) Prohibition against night lighting within all common area lots (except Night lighting within the golf course parking lot, driving range, and clubhouse, and the Villas (condominiums) shall be limited to poles no taller than 10' and/or bollard-type lighting in circulation areas.

Figure 2 - Conditions of Approval

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The developer codified these requirements into the CC&Rs of the HOA.

Defendant shines light onto the property of Plaintiff and leaves these lights turned on all night, which interrupts the rights of Plaintiff to undamaged sleep and comfortable enjoyment of Plaintiff's property. As caretaker of the property, Plaintiff also has the duty to protect the biological systems that live on Plaintiff's property and Neighbor's nuisance lights are an impediment to this protection.

Plaintiff submitted numerous requests to the HOA to enforce Section 6.23 of the CC&Rs, but the HOA refuses to act. Plaintiff also submitted multiple written requests to Defendant to properly shield the lights to prevent light trespass and to turn off the lights at night when not in immediate use. Defendant has refused to respond or act. For these reasons and additional reasons described herein, Neighbor has created an illegal nuisance.

Plaintiff now sues for monetary damages due to illegal nuisance.

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II. Parties

Defendant **Neighbor** is located at an address in California. 22

Plaintiff **Soft Lights** is an advocacy group with a member who is impacted by the nuisance light controlled by Neighbor. III. Jurisdiction and Venue A California County Superior Court, Small Claims Division is the proper jurisdiction and venue for this case because the location of Defendant's property is in A California County. **IV. Statement of Facts Exterior Lights On All Night** A. Neighbor turns on the exterior lights at dusk and leaves them on all night. The lights are unshielded and the direct rays of the light trespass beyond property boundaries and onto the property of Plaintiff, including into the Plaintiff's bedroom window. Figure 3 is a photo of Neighbor's property at 4am. COMPLAINT FOR NUISANCE - 3

Figure 3 – Lights from Neighbor Property at 4am

Figure 4 shows a photo of the photons from Neighbor's lights entering the window of Plaintiff.

Figure 4 - Reflection of Light in Plaintiff's Window

### В. **Courtesy and Cease and Desist Letters**

Plaintiff sent a courtesy letter to Neighbor via postal mail requesting that the lights be shielded and turned off when not in immediate use (Exhibit 2). As there was no response, Plaintiff sent a Cease and Desist letter demanding that the lights be shielded and turned off when not in use (Exhibit 3). Again, Neighbor failed to respond or act.

Figure 5 shows an example of a shielded light that prevents light trespass onto neighboring properties. This is the type of luminaire that is required by the HOA CC&Rs.



Figure 5 - Shielded Light

# C. Private Impact

Neighbor turns on the exterior lights each night and leaves them on the entire night. The lights are unshielded, so the direct rays of the light trespass beyond property boundaries and onto the property of Plaintiff.

First, Plaintiff dislikes having artificial light shined into Plaintiff's eyes and is emotionally harmed by unwanted artificial light that Plaintiff does not consent to.

Second, the artificial light enters in the bedroom window of Plaintiff. As the research shows, even tiny amounts of artificial light suppress melatonin production, which in turn causes diseases such as prostate cancer and mood disorders. Plaintiff has been forced to sleep in a different bedroom away from the light, rendering the bedroom on the street unusable.

Third, the artificial light disturbs the inhabitants of Plaintiff's yard such as insects, birds, and plants. Again, as the research shows, the artificial light harms all these inhabitants. Plaintiff has a duty to protect the inhabitants of the surrounding environment from artificial light.

## D. Safety and Security

A study of streetlights in England concluded, "There was no evidence from the overall estimates for an association between the aggregate count of crime and switch off." Another study in Houston, Texas concluded, "The positive relationship between streetlights and crime is contrary to the protective role of lighting that has been suggested previously."

According to data pulled from the 2017 Open City Crime Data, more than half of all crimes occur during the day.<sup>3</sup> A common theory is that darkness is a contributor to crime, and that adding artificial light to eliminate the darkness will reduce crime. However, since more crime occurs during the day, this common theory falls apart and the act of adding artificial light may increase crime due to the extra light. The reality is that crimes happen at different times of the 24-hour cycle and is not increased by how much darkness is at the location.

https://www.ncbi.nlm.nih.gov/books/NBK316511/

 $https://kinder.rice.edu/sites/default/files/documents/Kinder\%20Streetlights\%20and\%20Crime\%20report.pdf\\ ^{3} https://www.thesleepjudge.com/crimes-that-happen-while-you-sleep/COMPLAINT FOR NUISANCE - 7$ 

### E. Human Health

The circadian rhythm is fundamental for human health. The most important environmental time cue for the circadian system is light, with the effects mediated primarily by the photopigment melanopsin. Exposure to light at night suppresses production of the sleep-

 $^4$  https://www.thesleepjudge.com/crimes-that-happen-while-you-sleep/ COMPLAINT FOR NUISANCE -  $8\,$ 

promoting hormone melatonin and causes circadian disruption, which is associated with a range of poor health outcomes, including disrupted sleep. <sup>5</sup>

The health problems caused by even small amounts of artificial light range from cancer to mood disorders. The light pollution from Neighbor's artificial light is therefore contributing to Plaintiff's risk of developing cancer.<sup>6</sup> In addition, artificial light has been shown to greatly increase Plaintiff's risk of developing mood or anxiety disorders.<sup>7</sup>

### F. Cost to Eliminate the Nuisance

The cost to eliminate the nuisance lighting is negligible. The solution is to turn the lights off when not in use. Turning off the lights would reduce energy costs, reduce light pollution, and reduce maintenance costs. As the research studies have shown, there would be no loss of security from turning off the lights.

### V. Causes of Action

Cause One: CC&Rs

Section 6.23 of the HOA CC&Rs states that exterior lights must be both adequately and properly shielded. Neighbor's lights have no shielding, in violation of Section 623. In addition, exterior lighting used for security purposes must not be illuminated for extended periods of time. Neighbor's lights are on for 10-12 hours per night, in violation of Section 6.23.

<sup>&</sup>lt;sup>5</sup> https://www.nature.com/articles/s41598-020-75622-4

<sup>&</sup>lt;sup>6</sup> https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3002207/

<sup>&</sup>lt;sup>7</sup> https://jamanetwork.com/journals/jamapsychiatry/article-abstract/2767698 COMPLAINT FOR NUISANCE - 9

## Section 6.23. Exterior Lighting Requirements.

(a) Exterior Lighting On Lots. No Owner shall remove, damage or disable any exterior light, regardless of where located, which is connected to the Association's electric service. All lights installed on the exterior of a Residence or on a Lot shall be adequately and properly shielded from other Residences and the streets , such that direct rays from the light source are directed downward and do not cross property lines. Owners may not install mercury vapor, metal halide or halogen type exterior lighting (except low voltage); incandescent, high pressure sodium or low-voltage lighting is preferred. In order to preserve the rural character of the area surrounding the development, security lighting installed on Lots shall be of the type triggered by movement, heat, sound or radio waves and shall not be illuminated for extended periods of time (i.e. dusk to dawn).

# **Cause Two: Illegal Nuisance**

California Civil Code Division 4, Part 3, Title 1, Section 3479 states, "Anything which is injurious to health, including, but not limited to, the illegal sale of controlled substances, or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, or river, bay, stream, canal, or basin, or any public park, square, street, or highway, is a nuisance."

Private nuisance liability depends on some sort of conduct by the defendant that either directly and unreasonably interferes with the plaintiff's property or creates a condition that does so. (Lussier v. San Lorenzo Valley Water Dist. (1988) 206 Cal.App.3d 92, 100 [253 Cal.Rptr. 470].)

Here, Neighbor's actions meet the test for a private nuisance. Defendant's actions of turning on the lights all night and allowing them to shine into Plaintiff's window and onto Plaintiff's yard, directly and unreasonably interferes with right to sleep or enjoy darkness. For biological systems that reside in Plaintiff's yard, the lights interfere with their right to live without the harmful effects of artificial light pollution.

The following case law references offer supporting evidence for this claim of illegal nuisance.

- "... liability for nuisance does not require proof of damage to the plaintiff's property; proof of interference with the plaintiff's use and enjoyment of that property is sufficient." (San Diego Gas & Electric Co. v. Superior Court (1996) 13 Cal.4th 893, 937 [55 Cal.Rptr.2d 724, 920 P.2d 669].)
- "[T]he essence of a private nuisance is its interference with the use and enjoyment of land. The activity in issue must 'disturb or prevent the comfortable enjoyment of property,' such as smoke from an asphalt mixing plant, noise and odors from the operation of a refreshment stand, or the noise and vibration of machinery." (Oliver v. AT&T Wireless Services (1999) 76 Cal.App.4th 521, 534 [90 Cal.Rptr.2d 491], internal citations omitted.)
- "A nuisance is an interference with the interest in the private use and enjoyment of the land and does not require interference with the possession." (McBride v. Smith (2018) 18 Cal.App.5th 1160, 1178 [227 Cal.Rptr.3d 390].)

### VI. Standing to Sue

California Civil Code, Part 3, Title 3, Section 3501 states, "The remedies against a private nuisance are 1) A civil action; or, 2) Abatement"

California Civil Code, Part 3, Title 1, Section 3484 states, "The abatement of a nuisance does not prejudice the right of any person to recover damages for its past existence."

### VII. Possible Arguments by Defendant

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- 1) Argument: The unshielded exterior lights are part of the original house. This is a reasonable point, but this argument does not nullify Section 6.23 of CC&Rs that requires that all outdoor lights be shielded to prevent light trespass. This argument also does not nullify the requirement that the exterior lights be turned off when not in direct use.
- 2) Argument: The lights are not 'security' lights and therefore can be left on all night.

  The only possible purpose for leaving the lights on all night is for providing a perception of security. Therefore, these lights are 'security' lights and may not remain on all night.

  Eliminating the light will also increase security. In addition, the lights still constitute a nuisance when they are left on all night.
- 3) Argument: The direct rays of the light do not cross property boundaries. This is false. Since there is no shielding, the direct rays cross property boundaries and pollute Plaintiff's property.
- 4) Argument: The light is not a nuisance. This is false. As shown in the research, artificial light causes numerous health problems, and Plaintiff is annoyed and harmed by this light. Biological systems expect darkness at night and artificial light pollution is a hazard and a nuisance.

### **VIII. Relief Requested**

Plaintiff has proved all the following.

 That Neighbor has violated the HOA CC&Rs because Neighbor uses unshielded lights that allow light to trespass beyond property boundaries and because Neighbor leaves the nights on all night.

- 2. That Plaintiff attempted to resolve the issue via the HOA board and that the HOA board refused to enforce Section 6.23 of the CC&Rs and therefore Plaintiff's only recourse is to sue.
- 3. That Neighbor owns or controls the external lights on Neighbor's property
- 4. That Neighbor, by acting or failing to act, created a condition or permitted a condition to exist that:
  - i) was harmful to health because the artificial light suppresses melatonin which leads to disease.
  - ii) was indecent or offensive to the senses because of the glare from the light
  - iii) was an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property because the artificial lights disturb Plaintiff's sleep.
- 5. That Neighbor's conduct in turning on the lights each night for the entire duration of the light was intentional and unreasonably interferes with Plaintiff's right to use of Plaintiff's property. The intent required is only to do the act that interferes, not an intent to cause harm. (Lussier, supra, 206 Cal. App. 3d at pp. 100, 106; see Rest. 2d Torts, § 822.)
- 6. That this condition substantially interfered with Plaintiff's use or enjoyment of Plaintiff's land by forcing Plaintiff to abandon the bedroom along the street.
- 7. That an ordinary person would be reasonably annoyed or disturbed by having artificial light shined into their bedroom window.
- 8. That plaintiff did not consent to Neighbor's conduct

1	9. That plaintiff suffered harm in the form of sleep disturbance and the diseases that arise
2	from sleep disturbance.
3	10. That Neighbor's conduct was a substantial factor in causing Plaintiff's harm of sleep
4	disturbance.
5	11. That the seriousness of the harm outweighs the public benefit of Neighbor's conduct
6	as there is no public benefit to this light pollution.
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8	Therefore, plaintiff requests the following relief:
9	a. Damages of \$10,000
10	b. Court costs
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12	day of Month, year.
13	
14	Mark Baker, Soft Lights
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