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September 2, 2022

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***Re: Camp Bay Road - Cease & Desist Letter***

Preston:

As you are abundantly aware, this firm represents M3 ID Camp Bay, LLC (“M3 ID”) with respect to the various issues surrounding the vacation/abandonment of Camp Bay Road (“Road”), as sought through the *Petition to Vacate Public Right-Of-Way (Idaho Code Title 40)* filed on its behalf on or about February 2, 2021 (“Vacation Petition”). Notwithstanding our respective efforts concerning the ongoing petition for judicial review, I am writing to you here due to the Arns’ persistent practice of making fundamentally flawed and inflammatory public comment concerning M3 ID, its legal ownership of the lands surrounding Camp Bay Road, and its rights to construct the Road and to develop its surrounding property in accordance with approved plans and specifications from the County. As addressed herein, these comments go well beyond any semblance of reasonable or even passionate advocacy therefore requiring immediate legal action, beyond of course your clients’ prompt retraction of the same (occurring no later than Monday, October 3, 2022, through their physical removal and/or through a formal retraction where necessary) and immediate cessation of such conduct moving forward. Accordingly, and without waiving M3 ID’s rights respective to their prior comment/action, please consider this letter as formal notice concerning the same under Idaho law, including but not limited to Idaho Code § 6-712, and our final attempt to resolve these issues prior to filing suit.

While M3 ID admires and supports *earnest* grass-root campaigns *genuinely* seeking to protect and/or advocate vested public rights, your clients have evidently chosen to pursue a path of misrepresenting the operative facts and the applicable law to the public at large (or, at the least, to withhold highly material aspects of the same). Such conduct, along with their unabashed

disparagement of the company and its principals, has severely damaged M3 ID in a manner clearly actionable and recoverable under Idaho law. Such conduct has necessitated this letter, which to provide some color is the first cease and desist letter issued on behalf of M3 ID and/or any affiliate entity in over forty (40) years of business.

Given its ongoing availability to all, and the interest of time, we will not go about chronicling each and every instance of actionable public comment offered by your clients to date through this letter. However, M3 ID wishes to stress that this letter was rendered unavoidably necessary through your clients' recent postings on [www.50Feet.net](http://www.50Feet.net) suggesting that M3 ID is part of a "conspiracy to steal public property" (a sentiment similarly shared during their recent interview on KRFY):

We think that M3 may try to pull the "rope-a-dope" and the county will agree to it. It smacks of a "conspiracy to steal public property!"

Moreover, again through their recent postings on [www.50Feet.net](http://www.50Feet.net), your clients have alleged (along with a selectively truncated version of the underlying video) that Mrs. Arn and her friend were being "screamed at" and were "verbally attacked" by "Bill Brownlee (green shirt, head of M3)" amongst others.

**Video #1 – Witness footage**



It is important to know how this whole event started. My wife, Jennifer and her friend were QUIETLY SITTING on the beach, clearly within the 50 feet, when 3 adult males zoomed up on a side-by-side, screaming at the women that they were trespassing and they had to leave or be arrested! Jennifer(sun hat) called me asking me to come down because there was a problem. It took me about 10 minutes to get to the beach. During that time, my wife and her friend had to endure being verbally attacked by these 3 men, Bill Brownlee (green shirt, head of M3), Eric Skinner (red shirt, realtor) and Jim Frank (grey shirt, South Camp Bay resident).

At the risk of belaboring the obvious, Mr. Brownlee and M3 ID view these categorically false allegations as being highly objectionable as they unquestionably impugn their honesty, integrity, virtue and reputation and have accordingly exposed the same to public hatred, contempt, and ridicule and continue to significantly interfere with M3 ID's business endeavors. Under well-established Idaho law, such comments are therefore actionable on several grounds, including but not limited to express and implied/implicated defamation. *See, e.g., Verity v. USA Today*, 164 Idaho 832, 436 P.3d 653 (2019); *Clark v. The Spokesman-Review*, 144 Idaho 427, 163 P.3d 216, 219 (2007); *Irish v. Hall*, 163 Idaho 603, 416 P.3d 975 (2018); IDJI 4.82.

Moreover, general review of the Arns' comments via [www.50Feet.net](http://www.50Feet.net), social media, and through the "press" (including their numerous interviews on "The Voice of North Idaho" and on KRFY 88.5 FM), show a clear desire to litigate the Vacation Petition through the court of public opinion. While this strategy is itself generally questionable given ongoing civil litigation seeking to resolve the precise issue(s) at bar, and the expectation that such formal proceedings would therefore be treated with a modicum of respect by at least the parties directly involved, M3 ID is particularly troubled by the Arns' actions in this regard as they have consistently demonstrated a clear indifference towards the veracity of their comments concerning the legalities at issue (i.e., public access and the ownership of the underlying lands) and M3 ID's associated conduct. While even a single example in this regard is objectionable and ultimately unacceptable, the critical mass of such false public comment to date conveys the unmistakable impression that your clients are purposefully seeking to misinform the public and to deliberately harm M3 ID as a result – which has unquestionably already occurred to a material degree. Cornerstone to this is the (*incorrect*) notion that Camp Bay Road provides direct public access to Lake Pend Oreille as a technical matter, that this issue has been resolved as a formal matter, and that the people of Bonner County would be effectively ceding such land/access in the event the Vacation Petition is approved - sentiments reflected, only in part, through the following public comments attributable to the Arns:

[www.50feet.net](http://www.50feet.net):

Camp Bay Road is a county-owned and maintained road which ends at the high water mark of Lake Pend Oreille, giving the public access to the lake. This road bisects a very large development underway.

To Bonner County, it would seem your rights are worth nothing, because in April 2021, the County gave away this extremely valuable public lake access to support this private lakefront development.

The land owner (James Green) and the development company (M3 Idaho) petitioned the county to abandon 2550 feet (2.93 acres) of camp bay road which is a public road terminating at the high water mark of Lake Pend Oreille. This abandonment would give away a public road and deny the public access to the lake. This request by the developer was needed in order for their large gated development to unfold as planned and advertised.

On Feb.16th at 1:30 pm in the big meeting room on the first floor of the county offices another hearing before the Commissioners took place. In that hearing, the Commissioners heard very clear evidence that the public right of way ends at artificial high water mark and most likely ordinary high water, which would make the land below the water, the public's. The Commissioner's agreed to give the road back to the public, with the caveat that they didn't know where the road ended or if it provide public access to the lake. They stated they wanted a judge to decide that. So everyone waited for another judicial review to be filed.

Remember, we started this whole thing with a public road that ends at the waters of Lake Pend Oreille, with 50-foot width of public lake access, no more and no less. Some of you may want to keep the current public road location and access to 50 feet of waterfront in the center of Camp Bay. That is perfectly reasonable.

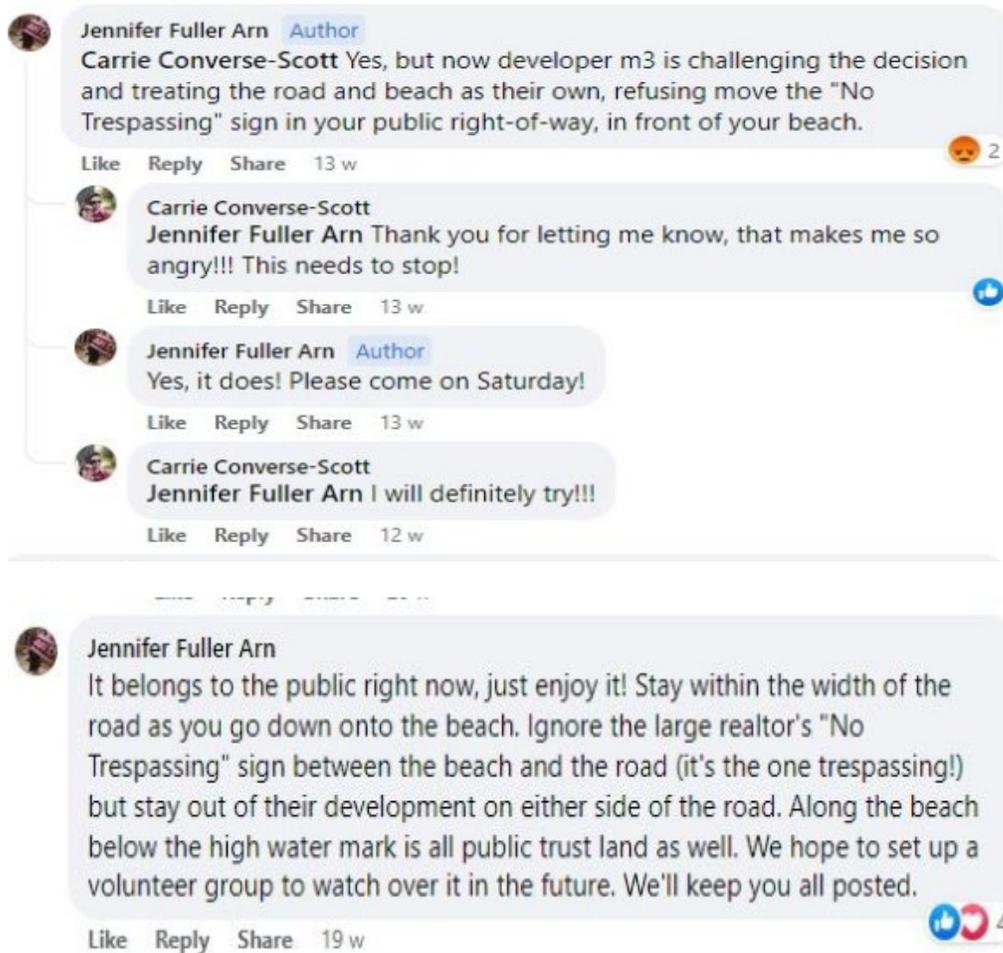
As you are watching the below videos, remember, YOU own the 50 foot wide road and beach with access to the lake RIGHT NOW, not m3!! Are you willing to give it up for a dirt walking trail (over 1 mile round trip) down to a shady corner of the bay, wedged in behind their massive dock system, accessible only to the abled-bodied and open at the pleasure of M3? I know how I feel!!!

The M3 deed that Bill Brownlee is describing in Video #1 is a public document, Instrument #986554, which you can read yourself from the Bonner County website. If you do, pay special attention to Exhibit B, pages 22-23. Also, keep in mind this deed was executed while the road vacation was already under litigation. M3/Bill Brownlee may very well own deep down into the lake bed on either SIDE of the road, but NOT within the 50 feet width from the end of the road. Only if the road is abandoned/vacated would he own the littoral rights within the road area from the beach down to the 2051' elevation.

Jennifer Arn, Facebook, June 22, 2022:

And to all you silly nay-sayers (you know who you are) reread the Court's November 15, 2021 Order—if you need a copy, I can get one for you. Camp Bay Road DOES provide public access to the lake. The 50-foot public right-of-way does not infringe on private property rights in any way. The decision is supported by the US and Idaho Constitutions, and is definitely not communism.

50 feet? All this fight over 50 feet? Yes, sad but true. If you've been paying attention, you've seen this happen all around the lake, the loss of public access to our greatest treasure, Lake Pend Oreille. As the population of Northern Idaho continues to grow this becomes even more critical. No one is asking to be given anything, just to keep what little is left, because when it's gone, it's gone forever!



In this case, the “silly nay-sayers” - as referenced by Mrs. Arn - are the ones who are correct. Even a cursory review of the *Memorandum Decision and Order on Petition for Review*, as dated November 15, 2021 (“Order”), reveals that it in no way stands for the proposition that Camp Bay Road provides legal public access to Lake Pend Oreille as an absolute matter of law. Rather, through the same, the Court is merely speaking to the Staff Report’s conclusions in terms of the general state of current law, namely that the “State of Idaho owns, in trust for the public, title to the bed of navigable waters below the OHWM as it existed on July 3, 1890, when Idaho became a state.” *City of Coeur d’Alene v. Mackin (In re Ownership of Sanders Beach)*, 143 Idaho 443, 147 P.3d 75 (2006) (**emphasis added**). At the risk of belaboring the obvious, had the issue of public access to Lake Pend Oreille through Camp Bay Road been resolved through the Order, the Court surely would have dismissed M3 ID’s instant petition for judicial review on such grounds – *which, of course, it has not*. Moreover, the Arns’ “interpretation” in this regard also contradicts the Press Release issued by the Sheriff Daryl Wheeler and Prosecuting Attorney Louis Marshall on May 16, 2022, acknowledging that such public access was - from the Arns’ perspective – at best unsettled:

To Whom It May Concern:

Bonner County has become aware of a proposed gathering at the end of Camp Bay Road, which may occur sometime within the next month. There is currently pending litigation between Bonner County and neighboring landowners to determine what right, if any, the public has to access Lake Pend Oreille at that location. Given the uncertain terminus point of Camp Bay Road, the County can neither permit nor prohibit a public gathering at that location, as its authority to do so has not been adjudicated by the court. However, that uncertainty only relates to the 50-foot-wide strip of land beginning at the current endpoint of the road and extending to the water's edge. All other adjacent property, including the exposed lakebed on either side of that disputed strip, is private. As such, Bonner County strongly encourages the public to respect the property rights of adjacent neighbors and will enforce relevant trespassing and/or vandalism statutes, if forced to do so.

Sincerely,



Daryl Wheeler  
Sheriff



Louis Marshall  
Prosecuting Attorney

Based upon their statements to date, it is apparent that the Arns either fail to appreciate or have decided to entirely disregard your presumed counsel concerning **Idaho law and its clear position that “public access” to such lakes does not begin at some colloquial and amorphous “high water mark” but at a technical “ordinary” or “natural” high water mark at the time of Idaho’s Statehood – which, respective to Lake Pend Oreille, has been judicially recognized as being at 2051 ft. above sea level.** As you know, neither conclusion insulates them from potential liability as addressed herein particularly since throughout the course of the Vacation Petition and related legal proceedings, your clients (and, frankly, anyone opposing the Vacation Petition) have failed to provide even a scintilla of authority/evidence contradicting such legal and factual realities (such as those expressly set forth in the historical records here). To this end, your direct representation of the Arns throughout the course of related proceedings militates against any compelling argument that they simply have a mistaken understanding of the same. Rather, the clear implication is that they are offering such comment to the public with complete indifference or, alternatively, purposeful disregard of the applicable facts and pertinent law for the apparent purpose of enflaming public opinion and generating heightened public pressure on the Bonner County Board of County Commissioners – all, purposefully, to damage M3 ID. The apparent strategy of agitating public reaction against M3 ID regardless of the actual facts at issue is itself exemplified by your clients’ unabashed misrepresentation of M3 ID’s position at the recent August 10<sup>th</sup> hearing:

I wish we had more news but that’s it. Oh, except that m3 asked that there be NO public input when the county hears everything again. More later after we get the chance to digest all of this.

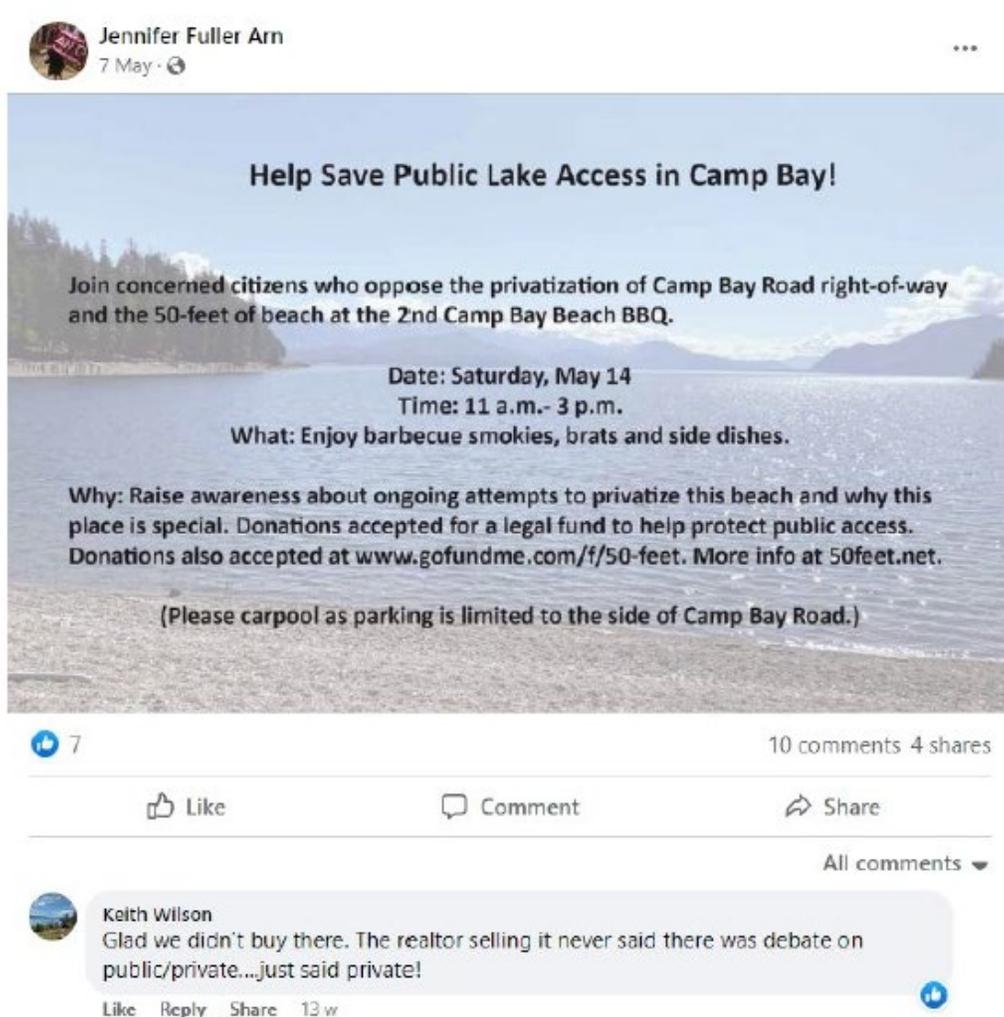
As you should well appreciate given your personal attendance at the same, your clients' claims that M3 ID "asked that there will be NO public input" is materially false given the critical factual component they elected to omit. To be clear, it was the Arns - through their *Response to M3's Motion for Order Permitting Presentation of Evidence or, in the Alternative, Remand* - who attempted to curtail public comment by expressly requesting preclusion of testimony concerning the "terminus point of the road":

preserving the public's procedural rights. If this Court chooses to order that additional information, i.e. M3's proposal of a walking path, be presented to the commissioners, the Arns request that the scope of such a hearing be limited to consideration of the proposal of a walking path. The hearing and modifications of any findings and decisions should not include additional issues, like the terminus point of the road.

(Id. at p. 2.) This request by your clients was clearly a strategic move as to preclude introduction of well-established and highly salient historical evidence (and comment concerning the same) establishing that Camp Bay Road terminates before reaching Lake Pend Oreille's pre-dam "ordinary" high-water elevation of 2,051 ft. above sea level and that public access therefore does not exist as a matter of law (pursuant to *Sanders Beach*). Undersigned counsel expressly raised concerns in this regard and accordingly requested that all public comment be permitted in the event the Court found that further hearing was necessary. While counsel did reiterate its prior briefing in that neither Idaho Code § 40-208(5) nor I.A.R. 13.3 expressly require for a further public hearing, and the belief that direct action by the Bonner County Board of County Commissioners would mitigate against further procedural error feasibly arising from another public hearing, it was M3 ID rather than the Arns who championed for a full public hearing that was unrestricted in terms of substance. We stand by this position and remain dismayed by your clients' practice of ignoring these critical points when addressing the issue of alleged public access through their public comment and affirmatively campaigning for such critical points to be kept outside the consideration of the Board and the people of Bonner County. Of course, such facts and the reality that it is the Arns who are attempting to restrict public testimony would be problematic to their public campaign of disparaging M3 ID.

Accordingly, under such facts and in light of your clients' additional postings/comments/etc. not individually addressed herein (although, publicly available online) and in the event your clients fail to retract such comment and to cease from engaging in similar future conduct, please be aware that M3 ID is prepared to file suit under several causes of actions, including but not limited to the aforementioned (i.e., express and implied/implicated defamation), slander of title, and intentional interference with a prospective economic advantage/contract. *See, e.g., Cantwell v. City of Boise*, 146 Idaho 127 (2008), *citing Highland Enters., Inc. v. Barker*, 133 Idaho 330, 338, 986 P.2d 996, 1004 (1999); *Idaho First National Bank v. Bliss Valley Foods*, 121 Idaho 266 (1991); *Matheson v. Harris*, 98 Idaho 758 (1977).

While I appreciate your candor in conveying to me the difficulties you have had in explaining the applicable “law” involved here to the Arns and your associated frustration with their practice of disregarding your counsel, please bear in mind that such issues will not preclude or in any way delay M3 ID in bringing immediate action against them for the conduct referenced herein or related hereto. Your clients’ flagrant disregard for the historical records here (including the viewers reports precisely locating each call/station of Camp Bay Road at the time of its creation) and applicable law (including *Swanson v. United States*, 789 F.2d 1368, 1369 (1986) & *In re Sanders Beach*, 143 Idaho 443, 453 (2006)) in making the public comment referenced herein has severely damaged the reputation of M3 ID and its principals and has adversely impacted their dealings, thus exposing the Arns to substantial potential liability through civil suit. In the event the gravity of these points and this cease-and-desist letter are somehow missed, the following posts – initially from Mrs. Arn *personally advertising* the second Camp Bay BBQ under the auspices of “protect[ing] public access,” with a response from a self-purported prospective purchaser of one of M3 ID’s adjacent lots – do well in succinctly demonstrating the type of gross inaccuracies presented by your clients in subverting public opinion and the detrimental ramifications of the same – conduct, again, critically interfering with and damaging M3 ID’s business, as to which M3 ID is poised to redress through immediate litigation:



Accordingly, despite your prior difficulties, I maintain some hope that you will be able to effectively communicate to them the points raised in this letter and that they will fashion their future conduct accordingly so as to mitigate the incurrence of further liability and ensuing damages, such as those deriving from Arn's tortious interference with M3 ID's business similar to that expressed by Mr. Wilson.

In light of the issues raised herein, please allow this letter to serve as a **litigation hold** on all information and/or materials (including but not limited to any documents or electronically-stored information, such as e-mails, voicemails, texts, social media, etc.) over which you, your firm, and/or the Arns maintain any level of control in any way pertaining to M3 ID and/or its representatives (including but not limited to Mr. Bill Brownlee), Camp Bay Road generally, and the Vacation Petition specifically, including but not limited to any communications with:

- Any individual(s) through any website and/or any form of social media, including but not limited to Facebook, [www.50Feet.net](http://www.50Feet.net), and [www.GoFundMe.com](http://www.GoFundMe.com)
- Project 7B and/or any members or affiliates thereof
- Bonner County, a political subdivision of the State of Idaho either directly or through any official(s), employee(s), member(s), affiliate(s) thereof, including but not limited to any current or elected official waiting to take office
- Any person affiliated with Sandpoint Law P.C., including but not limited to Toby McLaughlin and Alison Dunbar
- Any newspaper(s), radio station(s), podcast(s), and/or any individuals affiliated therewith, including but not limited to the Bonner County Daily Bee ([bonnercountydailybee.com](http://bonnercountydailybee.com)), the Spokesman-Review ([spokesman.com](http://spokesman.com)), the Sandpoint Rader ([sandpointreader.com](http://sandpointreader.com)), the Voice of North Idaho ([thevoicenorthidaho.podbean.com](http://thevoicenorthidaho.podbean.com)), KRFY.org, KRFY 88.5 FM, Daniel Radford, Annisa Keith, Caroline Lobsinger, Lyndsie Kiebert-Carey, James Hanlon, and Bill Litsinger.
- Any person contributing to the Arns' GoFundMe<sup>1</sup> page, which includes at the time of writing the following (beyond those specifically referenced below): Susan Bistline; Richard Price; Cynthia Buse; Sharon Frazier; Kari Welch; Shelby Covey; Lee Ann Nelson; Matt Smart; Jan Reuter; Al Reuter; Holly Pennington; Toby McNeal; Keith Bansemer; Steve Mulawka; Don Crea; Mary Jo Knowles; Jean Gerth; Carrie Logan; Christine Smart; Jasen Jahn; Aran Borgman; Dean Cannon; Megan Foster; David Lockhart; Tom Tillisch; Jim Corcoran; Joanne Stebbins; Grace Bauer; Bill Collier; Brian Anthony; Luke Fitzpatrick; Glenn Giovannoni.
- Kristina Kingsland
- Susan Drumheller
- Carol Curtis
- Daniel Shlaferman

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<sup>1</sup> As available at: [https://www.gofundme.com/f/50-feet?utm\\_source=widget&utm\\_medium=referral&utm\\_campaign=p\\_cp+share-sheet](https://www.gofundme.com/f/50-feet?utm_source=widget&utm_medium=referral&utm_campaign=p_cp+share-sheet)

- Jonna Plante
- Judy York
- Gary Green
- Dwight Randy Green
- Kathy Lefor
- Megan Elizabeth Green
- Doug Gunter
- Monica Gunter
- Alischia Greene Jackson

On behalf of M3 ID, we appreciate your time and anticipated courtesies in addressing these issues, effectuating the removal of such referenced content by Monday, October 3, 2022, and ensuring that the Arns immediately cease and desist from such actionable conduct moving forward. We remain available to discuss these and associated points to the extent necessary.

Yours very truly,

*Rick Haruthunian, Esq.*