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**COMMONWEALTH OF KENTUCKY
CAMPBELL COUNTY CIRCUIT COURT**

**DIVISION _____
CASE NO. _____**

**BRITTANY EVANS
TREY EVANS
28-4 Woodland Hills
Southgate, KY 41071**

PLAINTIFFS

On behalf of themselves and others similarly situated

v.

**SANITATION DISTRICT ONE
1045 Eaton Drive
Fort Wright, KY 41017**

DEFENDANT

**SERVE: Adam Chaney
1045 Eaton Drive
Fort Wright, KY 41017
(Serve via Certified Mail)**

CLASS ACTION COMPLAINT AND JURY DEMAND

COME NOW the Plaintiffs, Brittany Evans and Trey Evans, on their behalf and on behalf of others similarly situated and state their Class Action Complaint as follows:

NATURE OF ACTION

1. Plaintiffs bring this Class Action on behalf of themselves, and all others similarly situated, pursuant to Ky. R. Civ. P. 23.01 and 23.02. The Plaintiffs bring this action on behalf of individuals who are property owners and/or residents, or otherwise have possessory interests in real estate located at the Woodland Hills Condominium Complex located in Southgate Kentucky on or about January 1, 2024, through the present, and who have incurred damages as a result of acts and/or omissions of the Defendants as more thoroughly described herein.
2. Plaintiffs seek injunctive and compensatory relief on their behalf and on the behalf of others similarly situated against the Defendants named herein.

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PARTIES

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3. The Plaintiffs Brittany and Trey Evans, at all times pertinent hereto are owners and residents of condominium units located in the Woodland Hills Condominium Complex located in Southgate Kentucky. They bring this action on their own behalf, and on behalf of the class of others similarly situated, as alleged hereinunder.
4. The Defendant is Sanitation District No. 1 (hereinafter "SD1") SD1 is a Sanitation District organized under K.R.S. Chapter 2220, capable of suing and being sued, located at 1045 Eaton Drive, Fort Wright, Kentucky 41017.

JURISDICTION AND VENUE

5. The Plaintiffs are all residents of Campbell County, and the Commonwealth Kentucky. All events complained of herein occurred within Campbell County, in the Commonwealth of Kentucky. The amount complained of is in excess of the minimum jurisdictional amount of this Court. Therefore, jurisdiction is proper in the Commonwealth of Kentucky, and venue is proper in Circuit Court of Campbell County, Kentucky.

FACTS

6. The Plaintiffs have a possessory interest in condominiums located at the Woodland Hills subdivision in Southgate, Kentucky.
7. Upon information and belief, the Defendants have undertaken a project known as "*Phase II of the Licking River Siphon Conveyance Upsizing Project*" adjacent to the Plaintiffs' properties.
8. As part of the referenced project, the Defendants have commenced excavation and other earth moving activities adjacent to the Plaintiffs' property.
9. The Defendants conducted said excavation and other earth moving activities in a negligent and improper manner, inconsistent with industry standards.
10. As a result of the referenced excavation and earth moving activities, the Defendants have removed and/or destroyed the lateral and subjacent support to the Plaintiffs' real property. Specifically, the Defendants have removed the lateral and subjacent support to all and/or portions of the Woodland Hills condominium complex, including property owned and/or occupied by the Plaintiffs.
11. On or about July 26, 2024, the Plaintiffs were notified that the Defendant's removal of lateral and subjacent support resulted in an active, ongoing landslide beneath the Woodland Hills condominium complex, including property owned

and/or occupied by the Plaintiffs. The Plaintiffs were notified that immediate evacuation was recommended.

12. As a direct and proximate cause of the Defendant's excavation and other earth moving activities, and removal of the lateral and subjacent support to the Plaintiffs' property, the Plaintiffs have incurred and continue to incur damages.
13. These damages include damages to their condominiums, the loss of the value of their condominiums, the cost of relocation and moving personal belongings, ongoing payment of homeowner's association dues, mortgage payments, tax and insurance payments, lost opportunity in the form of refinancing and purchasing other properties, loss of the use and enjoyment of their property, lost wages, medical bills, generalized fear anxiety as well as pain and suffering, and other damages yet to be determined.

CLASS ACTION ALLEGATIONS

14. Plaintiffs allege the following prerequisites to a class action pursuant to the Kentucky Rules of Civil Procedure.
15. The Plaintiffs have a good faith belief that there are others similarly situated that have incurred damages due to the acts and/or omissions of the Defendants cited herein. Undersigned counsel represents that he has been contacted by at least twenty individuals who are similarly situated and have incurred damage as a result of the acts and or omissions of the Defendants as complained of hereinabove.
16. The class is so numerous that joinder of all members is impracticable.
17. There are questions of law or fact common to the class, including but not limited to questions of the standard of care provided to the putative class members and whether or not that standard was below the required standard as established under the law of the Commonwealth of Kentucky.
18. The claims or defenses of the representative parties are typical of the claims or defenses of the class.
19. The representative parties will fairly and adequately protect the interests of the class.
20. Undersigned Counsel possesses the requisite understanding of the law and issues involved and will adequately represent the interests of the class.
21. The prosecution of separate actions by or against individual members of the class

would create a risk of inconsistent or varying adjudications with respect to individual members of the class, which would establish incompatible standards of conduct for the party opposing the class.

- 22. Adjudications with respect to individual members of the class which would as a practical matter be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests.
- 23. Questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

NOW THEREFORE, the Plaintiffs state the following claims for relief:

**COUNT ONE
NEGLIGENCE / NEGLIGENCE PER SE**

- 24. Each of the preceding paragraphs are incorporated as if written fully herein.
- 25. At all times pertinent hereto the Defendants owed a standard of care to the Plaintiffs to conduct earth moving activities and excavation in a reasonably safe manner.
- 26. The Defendants breached that duty.
- 27. The damages incurred by the Plaintiffs as a result of the Defendants acts and or omissions would not have occurred but for the Defendant’s breach of said duty.
- 28. As a proximate result of the negligence of the Defendants, Plaintiff’s incurred damages complained of herein.

**COUNT TWO
STRICT LIABILITY
FAILURE TO PROVIDE LATERAL AND SUBJACENT SUPPORT**

- 29. Each of the preceding paragraphs are incorporated as if written fully herein.
- 30. At all times pertinent hereto the Defendants had a duty to provide lateral and subjacent support to neighboring properties, including the Plaintiffs’ property.
- 31. The Defendants breached this duty through their earth moving and excavation activities.
- 32. The Defendants are liable for all damages incurred by the Plaintiffs on the theory

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of strict liability, without regard to whether or not they exercised reasonable care or diligence in their operations.

33. As a proximate result thereof the Defendants, Plaintiff's have incurred damages complained of herein.

COUNT THREE TRESPASS

34. Each of the preceding paragraphs are incorporated as if written fully herein.
35. At all times pertinent hereto the Defendants had a duty to provide lateral and subjacent support to neighboring properties, including the Plaintiffs' property.
36. At all times pertinent hereto the Defendants also owed a standard of care to the Plaintiffs to conduct earth moving activities and excavation in a reasonably safe manner.
37. The Defendants breached these duties.
38. As a result of the aforementioned breach, and Defendant caused a hazard to enter upon the lands of the Plaintiffs, causing harm to the Plaintiffs' land.
39. As a proximate result thereof the Defendants, Plaintiffs incurred damages complained of herein.

PRAYER FOR RELIEF

NOW THEREFORE, the Plaintiffs ask for the following relief:

- a. For an Order certifying a Class Action pursuant to the applicable Kentucky Rules of Civil Procedure.
- b. For immediate and temporary relief including relocation expenses, financial assistance, mortgage and homeowner's association fees, and any other temporary relief as requested by the Plaintiffs.
- c. For an award of damages for the loss of the fair market value of the real estate, the loss of the use of their property, the loss of the enjoyment of life, pain, suffering, mental anguish, relocation fees, and any other damages which the Plaintiffs may incur as a result of the Defendants acts and or omissions as described herein.
- d. For a trial on the merits of the case.
- e. For a Judgment in excess of the Jurisdictional limits of the Court.
- f. For damages as compensation for physical injuries, medical expenses, pain and suffering, and loss of consortium.

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- g. For punitive damages as may be deemed appropriate. 84992
- h. For any and all other damages to which the members of the class are otherwise entitled.

Further the Plaintiff demands a trial by Jury.

Respectfully submitted,

/s/ Paul J. Dickman

PAUL J. DICKMAN

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Presiding Judge: HON. JULIE REINHARDT WARD (617222)

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