

NORTH CAROLINA  
DURHAM COUNTY

FILED IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
FILE NO.: 13 CVS 1807

2013 FEB 11 PM 4: 20

DR. ASHLEY MERRITT, JOLENE UNLAND,  
DARREN UNLAND, WILLIAM NICOTRA,  
CHRISTOPHER PERONTO, PATRICE  
PERONTO, SHEA PROSPERO, GREGORY  
PROSPERO, ALEIDA ALVAREZ, as well as  
all those similarly situated,  
Plaintiffs,

v.

NEW HOPE CHURCH, by and through its  
Registered Agent and Pastor, Benji Kelley,  
Defendants.

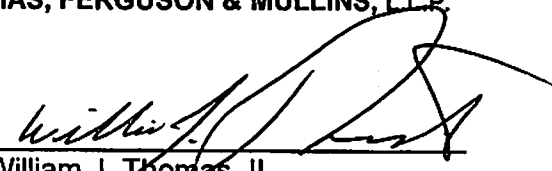
NOTICE OF HEARING

PLEASE TAKE NOTICE that the undersigned will bring pursuant to Rule 34 of the North Carolina Rules of Civil Procedure Defendant's Motion for Inspection on for hearing before the Court on February 18, 2013 at 10:00 a.m. in Courtroom 7A, 510 S. Dillard Street, Durham, NC 27701, or as soon thereafter as the Court can hear it.

This the 11<sup>th</sup> day of February, 2013.

THOMAS, FERGUSON & MULLINS, L.L.P.

BY:

  
William J. Thomas, II  
119 East Main Street  
Durham, NC 27701  
(919) 682-5648

NORTH CAROLINA  
DURHAM COUNTY

FILED IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
2013 FEB 11 PM 4:26 NO.: 13 CVS 1807

DR. ASHLEY MERRITT, JOLENE UNLAND,  
DARREN UNLAND, WILLIAM NICOTRA,  
CHRISTOPHER PERONTO, PATRICE  
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PROSPERO, ALEIDA ALVAREZ, as well as  
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vs.

NEWHOPE CHURCH, by and through its  
Registered Agent and Pastor, Benji Kelley,  
Defendant.

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DURHAM COUNTY, N.C.  
(BM)

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**MOTION TO INSPECT PLAINTIFFS' HOMES PURSUANT TO RULE 34**

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NOW COMES the Defendant, by and through counsel, requesting that this Court order that Plaintiffs submit to an inspection of the two homes closest to newhope church pursuant to Rule 34 of the North Carolina Rules of Civil Procedure.

1. In their Complaint, Plaintiffs allege that "Newhope pumps throbbing bass, thumping percussion, physical vibrations, and contemporary church music into the Neighbors' home." Plaintiffs' Complaint ¶ 19; see also Plaintiffs' Complaint ¶ 97.
2. It is essential that the Defendant, in preparation for the preliminary injunction hearing and for trial, be allowed to inspect the premises at issue and to perform testing on the sound levels.
3. Rule 34(a) explicitly allows for this kind of inspection by "permit[ting] entry upon designated land or other property in the possession or control of the party upon whom the request is served for the purpose of inspection and measuring, surveying,

photographing, testing, or sampling the property or any designated object or operation thereon."

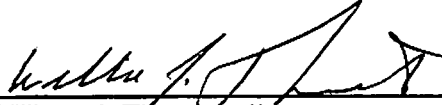
4. Defendant wishes to perform various sound tests at the home of Mr. Gregory Prospero and Ms. Shea Prospero, 240 South Bend Drive, and the home of Mr. William Nicotra and Ms. Aleida Alvarez, 4 Eastcrest Court, which are the two homes closest in distance to newhope church.
5. These sound tests are not only necessary for the Defendant in responding to the allegations made by the Plaintiffs, but they will also be helpful to the trier of fact in that they will provide objective, measurable standards that can be quantified by the fact-finder.
6. Defendant requests that Plaintiffs' counsel or his designee be present throughout the inspection of the two Plaintiffs' homes.
7. Defendant requests the inspection take place on a Sunday during worship services at a time that is convenient for Plaintiffs and their counsel. Defendant estimates that the proposed inspection and testing should not last more than 30 minutes per house.
8. Under Rule 34(b), Defendant also requests that this Court order that Plaintiffs respond in 10 days. Pursuant to the rule, Plaintiffs are granted 30 days to respond in writing. However, the rule goes on to state that a "court may allow a shorter or longer time." Defendant requests that Plaintiffs be given 10 days since further hearings are imminent, and the requested inspection and testing is essential to Defendant's case.

WHEREFORE, Defendant asks that this Court grant Defendant's Motion to Inspect Plaintiffs' Homes Pursuant to Rule 34.

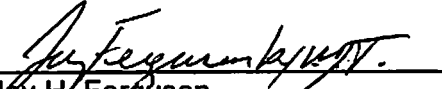
Respectfully submitted this the 11<sup>th</sup> day of February, 2013.

**THOMAS, FERGUSON & MULLINS, L.L.P.**

By:

  
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William J. Thomas, II  
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NC State Bar Number: 16624

**CERTIFICATE OF SERVICE**

This is to certify that the undersigned have on this date served the enclosed Motion and Notice of Hearing upon all other parties to this cause by facsimile and first class mail, postage prepaid, properly addressed to:

David McKenzie  
Donna Ray Berkelhammer  
c/o Sands Anderson PC  
4101 Lake Boone Trl Ste 100  
Raleigh, North Carolina 27607  
Facsimile: (919)706-4205

David O. Lewis  
Bryant, Lewis & Lindsley, P.A.  
P.O. Box 341  
Durham NC 27702  
Facsimile: (919) 688-6343

This the 11<sup>th</sup> day of February, 2013.

**THOMAS, FERGUSON & MULLINS, J.L.P.**

BY: 

William J. Thomas, II  
Attorney for Defendant  
119 East Main Street  
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