

1 TIMOTHY T. TRUJILLO, Esq. SBN198894  
 2 GARY P. DAMBACHER, Esq. SBN 92141  
 3 JOSEPH L. WRIGHT, Esq. SBN 239838  
 4 BRANDON M. KILIAN, Esq. SBN 273846  
 5 **DAMBACHER, TRUJILLO & WRIGHT,**  
 6 **A PROFESSIONAL LAW CORPORATION**  
 7 32 North Washington Street  
 8 Sonora, California 95370  
 9 (209) 533-1883  
 10 (209) 533-3844 FAX  
 11 Attorneys for Plaintiff

(SPACE BELOW FOR FILE STAMP ONLY)

**FILED**

SEP 18 2012

Superior Court of California  
 County of Tuolumne

By:  Clerk

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
 11 **COUNTY OF TUOLUMNE**

|   |   |
|---|---|
| <p>13 ODD FELLOWS SIERRA RECREATION<br/>         14 ASSOCIATION, a California corporation,<br/>         15 Plaintiff,<br/>         16 vs.<br/>         17 ODD FELLOWS SIERRA HOMEOWNERS'<br/>         18 ASSOCIATION, a California non-profit<br/>         19 corporation; and DOES 1 through 500, inclusive,<br/>         20 Defendants.</p> | <p>Case No.: CV57297<br/> <b>JUDGMENT AFTER PROVE-UP HEARING</b><br/>         Dept: 3<br/>         Judge: Hon. Donald Segerstrom<br/>         Hearing Date: July 13, 2012</p> |
|---|---|

21  
 22  
 23 This matter came on regularly for a prove-up hearing on July 13, 2012, at 9:30 a.m., before the  
 24 Honorable Donald Segerstrom, Judge, presiding. Del Wallis, President of Plaintiff ODD FELLOWS  
 25 SIERRA RECREATION ASSOCIATION ("Plaintiff"), was personally present with Plaintiff's attorney  
 26 Timothy T. Trujillo, Esq. of Dambacher, Trujillo & Wright, A Professional Law Corporation. The  
 27 Court heard evidence both oral and documentary.  
 28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**I. Plaintiff's Complaint**

Plaintiff asserted the following causes of action against Defendant ODD FELLOWS SIERRA HOMEOWNERS' ASSOCIATION ("Defendant") in its complaint filed on February 23, 2012:

- 1) Breach of Contract-Water Use Agreement;
- 2) Breach of Implied Covenant of Good Faith and Fair Dealing-Water Use Agreement;
- 3) Breach of Contract-License Agreement;
- 4) Breach of Implied Covenant of Good Faith and Fair Dealing-License Agreement;
- 5) Breach of Oral Contact-Other Agreements;
- 6) Breach of Implied Covenant of Good Faith and Fair Dealing-Other Agreements;
- 7) Common Counts-Account Stated;
- 8) Common Counts-Open Account; and
- 9) Declaratory Relief.

**II. Factual Findings by Court**

The Court makes the following factual findings:

**A. The Park.**

- 1) Plaintiff is the legal owner of certain real property within certain subdivisions in Tuolumne County, California known as I.O.O.F. Odd Fellows Sierra Camp Subdivision No. 1 and I.O.O.F. Odd Fellows Sierra Camp Subdivision No. 2 (collectively, the "Park"), including, without limitation, the real property on which the following improvements are located: (i) roads/streets, (ii) wells for the supply of water; (iii) recreation hall, and (iv) lake, picnic area, baseball field and playground.
- 2) The Park consists of 364 separate lots owned by third parties as set forth in the original maps recorded for I.O.O.F. Odd Fellows Sierra Camp Subdivision No. 1 and I.O.O.F. Odd Fellows Sierra Camp Subdivision No. 2. Plaintiff is also the owner of one lot within the Park. Plaintiff is also the legal owner of certain real property adjacent to the Park.
- 3) Plaintiff owns the wells, water distribution system and water storage system that provide water to the lot owners of the Park.

1 4) Plaintiff also owns the streets and roads within the Park.  
2

3 **B. The Water Agreement.**

- 4 1) On or around October 12, 1986, Plaintiff and Defendant entered into that certain Water  
5 Use Agreement (the "Water Agreement"), pursuant to which, among other things,  
6 Plaintiff agreed to provide water to Defendant on a wholesale basis provided that  
7 Defendant pay for all expenses associated with the provision of such water.  
8 2) The initial annual fee for the provision of water as set forth in the Water Agreement was  
9 \$37,500.00.  
10 3) After 1986, the annual fee for the provision of water increased from year to year as  
11 permitted by the Water Agreement  
12 4) The annual fee for the provision of water pursuant to the Water Agreement was to be paid  
13 in advance.  
14 5) Between October 1986 and May 2011, Defendant paid all fees due pursuant to the Water  
15 Agreement.  
16 6) Plaintiff did not make any profit on the provision of water to the Defendant pursuant to  
17 the Water Agreement.  
18 7) The Water Agreement contains an attorneys' fee provision.  
19 8) The term of the Water Agreement was set to expire by its own terms on October 11,  
20 2011.  
21

22 **C. The License Agreement.**

- 23 1) On or around October 12, 1986, Plaintiff and Defendant also entered into that certain  
24 License Agreement (the "License Agreement"), pursuant to which, among other things,  
25 Plaintiff agreed to permit Defendant to use the streets and roads owned by Plaintiff within  
26 the Park for access purposes and agreed maintain such streets and roads provided that  
27 Defendant pay for all expenses associated therewith as a license fee.  
28

- 1           2)     The license fee pursuant to the License Agreement was initially to be paid in arrears.
- 2                     However, in 1986, the License Agreement was subsequently modified by the parties so
- 3                     that Defendant would pay in advance for the estimated cost of the expenses incurred by
- 4                     Plaintiff pursuant to the License Agreement.
- 5           3)     Between October 1986 and May 2011, Defendant paid all fees due pursuant to the
- 6                     License Agreement.
- 7           4)     Plaintiff did not make any profit on the provision of services to the Defendant pursuant to
- 8                     the License Agreement.
- 9           5)     The term of the License Agreement was set to expire by its own terms on October 11,
- 10                    2011.

11  
12 **D.     The Other Agreements.**

- 13           1)     Between October 12, 1986 and May 31, 2011, Plaintiff and Defendant also entered into
- 14                     various other agreements pursuant to which, among other things, Plaintiff agreed to
- 15                     provide the following services or improve and provide use of certain areas of the Park:
- 16                     access gate maintenance and repair; pine needle disposal; improvement and use (and
- 17                     maintenance (and repair as applicable)) of lake, recreation hall, picnic area, baseball field,
- 18                     playground, and other similar types of areas on the Park; maintenance and repair of
- 19                     vehicles used in connection with the foregoing; services of an onsite caretaker to assist in
- 20                     providing the aforementioned services; and certain other services (the "Other
- 21                     Agreements"). The Water Agreement, License Agreement and Other Agreements may
- 22                     hereinafter collectively be referred to as the "Subject Agreements".
- 23           2)     Defendant agreed to pay, in advance, for the estimated cost of providing the forgoing
- 24                     pursuant to the Other Agreements at the same time as the annual fee due pursuant to the
- 25                     Water Agreement.
- 26           3)     Between October 1986 and May 2011, Defendant paid all fees due pursuant to the Other
- 27                     Agreements.
- 28

1 4) Plaintiff did not make any profit on the provision of services to Defendant pursuant to the  
2 Other Agreements.

3 5) The parties agreed that the term of the Other Agreements would expire upon expiration of  
4 the Water Agreement and License Agreement.  
5

6 **E. Determination and Payment of Annuals Fees Due Pursuant to Subject Agreements between**  
7 **October 12, 1986 and May 31, 2011.**

8 1) During each May between October 12, 1986 and May 31, 2011, Plaintiff, at its annual  
9 meeting of shareholders, would determine, based on the previous fiscal year's costs, the  
10 estimated cost of the services to be provided by Plaintiff to Defendant pursuant to the  
11 Subject Agreements for the upcoming fiscal period of June 1 through May 31 (the  
12 "Annual Fee(s)").

13 2) Plaintiff would then promptly inform Defendant of the Annual Fee for the fiscal period of  
14 June 1 through May 31. Defendant would then divide such Annual Fee by the number of  
15 lots in the Park (based on the subdivision maps originally recorded for the Park) and  
16 invoice each lot owner of the Park for their prorata share of such Annual Fee (on a per lot  
17 basis).

18 3) Between October 12, 1986 and May 30, 2011, the lot owners of the Park paid no further  
19 amounts to Defendant other than their prorata share of the Annual Fees.

20 4) Between October 12, 1986 and May 31, 2011, Defendant promptly paid the Annual Fees  
21 due to Plaintiff.

22 5) Between October 12, 1986 and May 31, 2011, the Annual Fees paid by Defendant were  
23 less than the expenses incurred by Plaintiff in providing the services to Defendant  
24 pursuant to the Subject Agreements.  
25  
26  
27  
28

1 **F. Determination and Partial Payment of Annual Fee Due Pursuant to Subject Agreements**  
2 **between June 1, 2011 and May 31, 2012.**

- 3 1) On May 29, 2011, Plaintiff's shareholders approved a budget of \$302,120.00 for the  
4 services to be provided by Plaintiff to Defendant pursuant to the Subject Agreements for  
5 the fiscal period of June 1, 2011 to May 31, 2012. The budget approved by Plaintiff for  
6 the fiscal period of June 1, 2011 to May 31, 2012 was comparable to Plaintiff's budget  
7 for the services provided by Plaintiff to Defendant pursuant to the Subject Agreements  
8 for the previous 2010-2011 fiscal year (adjusted for inflation and increased expenses).
- 9 2) Plaintiff informed Defendant of the Annual Fee due for the fiscal period of June 1, 2011  
10 through May 31, 2012 (the "2011-12 Annual Fee") and thereafter, Defendant invoiced  
11 each lot owner of the Park for their prorata share of the 2011-12 Annual Fee (or \$830 per  
12 subdivision lot).
- 13 3) On or about July 31, 2011, Defendant paid Plaintiff \$50,000.00 as a partial payment for  
14 the 2011-12 Annual Fee. Defendant made no further payments to Plaintiff for the period  
15 of June 1, 2011 to September 15, 2011.
- 16 4) On September 15, 2011, Plaintiff invoiced Defendant for the services being provided and  
17 to be provided to Defendant pursuant to the Subject Agreements between June 1, 2011  
18 and May 31, 2012 (the "Subject Invoice").
- 19 5) On or about October 4, 2011, Defendant paid Plaintiff \$19,350.00 as a further partial  
20 payment for the 2011-12 Annual Fee.
- 21 6) After October 4, 2011, Defendant indicated to Plaintiff that it would not pay the balance  
22 due on the Subject Invoice despite the fact that Defendant had billed each lot owner of  
23 the Park (364 lots) an amount designed to collect the total amount due by Defendant to  
24 Plaintiff pursuant to the Subject Invoice (\$302,120.00).
- 25 7) In June 2012, after filing the complaint in this matter, Defendant paid \$19,000.00 to  
26 Plaintiff as a further partial payment for the 2011-12 Annual Fee.
- 27  
28

1  
2 **II. Legal Findings and Orders by Court**

3 The Court makes the following legal findings and orders:

4 **A. 1<sup>st</sup>, 3<sup>rd</sup> and 5<sup>th</sup> Causes of Action.**

5 As to the first (Breach of Contract-Water Use Agreement), third (Breach of Contract-License  
6 Agreement), and fifth (Breach of Contract-Other Agreements) causes of action, the Court finds as  
7 follows:

- 8 1) The Subject Agreements, as modified, were a valid and binding obligation of Plaintiff  
9 and Defendant.  
10 2) Defendant breached each of the Subject Agreements by failing to pay the amounts due  
11 pursuant thereto.  
12 3) The aforesaid breaches by Defendant were without justification or excuse.  
13 4) Plaintiff has performed all of the covenants and conditions on its part to be performed  
14 under the Subject Agreements, express or implied, except for those covenants and  
15 conditions excused by Defendant's breaches thereof,  
16 5) As a proximate result of Defendant's breaches of the Subject Agreements, Plaintiff has  
17 suffered damages in the amount of **\$213,770.00**.  
18 6) The Water Agreement contain an attorneys' fee clause and Plaintiff has been required to  
19 retain the services of an attorney to prosecute its complaint and is therefore is awarded its  
20 attorneys' fees and costs.  
21

22  
23 **B. 2<sup>nd</sup>, 4<sup>th</sup> and 6<sup>th</sup> Causes of Action.**

24 As to the second (Breach of Implied Covenant of Good Faith and Fair Dealing -Water Use  
25 Agreement), fourth (Breach of Implied Covenant of Good Faith and Fair Dealing -License Agreement),  
26 and sixth (Breach of Implied Covenant of Good Faith and Fair Dealing-Other Agreements) causes of  
27 action, the Court finds as follows:

- 28 1) In entering into the Subject Agreements, Defendant owed Plaintiff a duty of good faith  
and fair dealing.

1 2) Defendant breached the covenants of good faith and fair dealing in the Subject  
2 Agreements.

3 3) As a direct, proximate and foreseeable result of Defendant's breaches of the covenant of  
4 good faith and fair dealing, Plaintiff has been damages in the amount of \$213,770.00.

5 **C. 7<sup>th</sup> and 8<sup>th</sup> Causes of Action.**

6 Given the legal findings of the court in II(A) and II(B) above, the court dismisses the seventh  
7 (Common Accounts-Account Stated) and eighth (Common Accounts-Open Account) causes of action.

8 **D. 9<sup>th</sup> Cause of Action.**

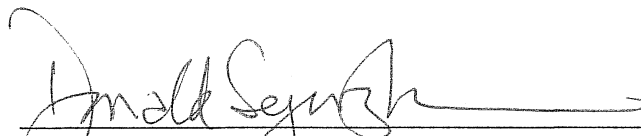
9 The court declined to make any orders on the ninth (Declaratory Relief) cause of action.

10 **E. Other Orders by Court.**

11 1) The court orders Plaintiff's counsel to retain the original exhibits introduced at the prove-  
12 up hearing until July 9, 2013.

13 2) Plaintiff's attorneys' fees and costs shall be awarded based on its Memorandum of Costs  
14 to be filed with this judgment.

15  
16 WITNESS, the Honorable Donald Segerstrom, Judge of this Court, and my hand and seal of this  
17 court, this 17<sup>th</sup> day of September, 2012.

18  
19   
20 Donald Segerstrom  
21 JUDGE OF THE SUPERIOR COURT  
22  
23  
24  
25  
26  
27  
28