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7 SUPERIOR COURT OF CALIFORNIA, COUNTY OF TUOLUMNE

8) No.: SC 18552
9)
10) **PLAINTIFFS' TRIAL BRIEF**
11)
12) **DATE: July 19, 2012**
13) **TIME: 8:30 a.m.**
14) **Dept: 5**
15) **JUDGE: Honorable Kim Knowles**
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7 CHARLES P. VARVAYANIS,
8 PATRICIA T. JONES,
9 Plaintiffs,
10 vs.
11 ODD FELLOWS SIERRA HOMEOWNERS
12 ASSOCIATION, INC.,
13 Defendant

14 **I. INTRODUCTION.**

15 As the pertinent chronology and admissible evidence before the court will establish, the
16 request before this Court does fulfill the Plaintiffs' burden of providing the preponderance of
17 evidence need for crediting the Plaintiffs' fraudulently billed annual assessments and late fees for
18 two parcels that did not exist, and overcharged late fees on two existing parcels.

19 The admissible evidence will establish Odd Fellows Sierra Homeowners' Association,
20 Inc. (OFSHA) lacked the authority or power to bill and collect assessments and late fees for the
21 two parcels that did not exist, and overcharged late fees on two existing parcels.

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23 **II. PERTINENT CHRONOLOGY.**

24 **Date** **Event**
25 2/27/1950 Original CC&R recorded (see **Exhibit A** attached hereto).

1 2/27/1975 Original CC&R expired without automatic extensions.
2 8/29/1986 New CC&R recorded against Lot 21.067 only (see **Exhibit B** attached hereto).
3 9/2/1999 Plaintiffs purchase Lot 09.006.
4 9/21/1999 Plaintiffs purchase Lot 09.007.
5 2/8/2004 Plaintiffs merge Lots 09.006 & 09.007 forming Parcel 7 PM 45-63.
6 1/7/2007 Plaintiffs purchase Lot 09.014.
7 5/31/2007 Plaintiffs merge Parcel 7 PM 45-63 & Lot 09.014 forming Parcel 7-A PM 50-25.
8 4/18/2011 CC&R recorded against Parcel 7-A PM 50-25 only and Lot 24.041. (see **Exhibits**
9 C & D attached hereto).

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11 **III. CHRONOLOGY OF IMPROPER ASSESSMENTS AND LATE FEES.**

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<u>Date/Period</u>	<u>Amount</u>	<u>Event</u>
13 2011-2012	\$225.00	Billed as Late fee for Lot 9.006
14 2011-2012	\$225.00	Billed as Late fee for Lot 9.014
15 2011-2012	\$77.10	Billed as Late fee for Lot 24.041
16 2011-2012	\$91.21	Billed as Late fee for Lot 9.007 (7-A PM 50-25)
17 2011-2012	\$830.00	Billed as Assessment for Lot 9.006
18 2011-2012	\$830.00	Billed as Assessment for Lot 9.014
19 Total	\$2,278.31	

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22 **IV. BASIS FOR LIABILITY AND DAMAGES.**

23 With the knowledge we acquired on our own, as set fourth in the above chronologies, we
24 challenged OFSHA regarding their assessment practices based on the following:

- 25 • We own a total of two lots that qualify for recording CC&Rs against.

- 1 • We recorded CC&Rs against a total of two lots.
- 2 • We were fraudulently invoiced for lots that no longer existed.
- 3 • We were fraudulently charged late fees for lots that no longer existed.
- 4 • We were fraudulently charged late fees in excess of that allowed by the CC&R.
- 5 • All of this fraud arises from the fact OFSHA lacked the authority and power to create
- 6 obligations on parcels that do not exist and without CC&Rs or charge late fees greater
- 7 than defined in the CC&R.

8

9 **IV. CONCLUSION.**

10 Whereas the Defendant does not have the authority or power to bill and collect

11 assessments and late fees for the two parcels that do not exist and without CC&Rs, nor charge

12 late fees greater than defined in the CC&R, the Plaintiffs' should be awarded credit for the

13 fraudulently billed assessments and late fees for the two parcels that do not exist and late fees

14 greater than defined in the CC&R and awarded court related fees and costs.

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16 DATED: July 12, 2012

Respectfully submitted,

17 *Charles P. Varvayanis*

18 By: Pat Jones

19 Charles Varvayanis

20 Patricia T. Jones

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