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5 SUPERIOR COURT OF CALIFORNIA, COUNTY OF TUOLUMNE

6
7 Sierra Park Services, Inc.,) No: SC19409
8 Plaintiff,)
9 vs.) AMENDMENT 1 TO REVISION 15 OF
10 Michael and Tresa Ford,) DEFENDANTS' TRIAL BRIEF
11 Defendants.)
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PREFACE

Amendment 1 to the Defendants' Trial Brief Revision 15 is presented to address statements made by the Plaintiff on October 28, 2016. The section herein titled "Civil Code 845 Does Not Apply" amends, supersedes and replaces the like named section in the Defendants' Trial Brief Revision 15 filed with the court on October 25, 2016. Exhibit AR-1 has been added to support Amendment 1. All other sections of the Defendants' Trial Brief Revision 15 and all Exhibits filed with the court on October 25, 2016 remain intact and should be used from that filing.

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8 **II. STATEMENT OF THE AMENDED FACTS.**

9 **Civil Code 845 Does Not Apply**

10 The Plaintiff, Sierra Park Services (SPS), incorporated in 2013 and did not indicate it
11 would bill for services based on Civil Code 845. Prior to this Small Claims case the Plaintiff did
12 not notify or indicate to the Defendant in anyway, through meetings, publications or
13 communications, that the Plaintiff would be demanding payments based on Civil Code 845. It
14 was only after filing this Small Claims case did the Plaintiff claim it could demand payments
15 from non-shareholder parcel owner’s based on Civil Code 845 (Exhibit AN).

16 (See www.varvayanis.com/sp/newsletters and www.varvayanis.com/sp/Annual_Meetings).

17 On October 28, 2016, in a related case (SC19417) witnessed in the presence of
18 Commissioner Phillip A. Pimentel, the Plaintiff stated they could demand payments from non-
19 shareholder parcel owners’ for road maintenance based on Civil Code 845. Note: The
20 Defendants’ Trial Brief was served to the Plaintiff on October 25, 2016.

21 The Plaintiff is not the owner of any easement in the nature of a private right-of-way or
22 of any land to which any such easement is attached. The easement, if any, is owned by more
23 than one person (the parcel owner’s) and is attached to parcels of land under different ownership.
24 No agreement exists between the Plaintiff and the non-shareholder parcel owner’s.

1 As documented in the State of California, Division of Real Estate, Final Subdivision
2 Public Report dated 5-21-1959, I.O.O.F. Odd-Fellows Sierra Camp subdivision consists of 365
3 parcels. There are also approximately 15 parcels outside the boundaries of the subdivision for a
4 total of approximately 380 parcels. These parcel owners utilize the roads for ingress and egress.
5 All 380-parcel owners are required to pay their proportionate costs for road maintenance and
6 snow removal as per Civil Code 845. (Exhibit J)

7 For the Plaintiff to consider using Civil Code 845 for road maintenance all of the
8 approximate 380-parcel owners within the community, both shareholders and non-shareholders
9 alike, should receive the same information regarding road maintenance and have an equal voice
10 in voting rights, voting weight, and selection of vendors regarding road maintenance and road
11 maintenance decisions. However, the Plaintiff's by-laws limit voting on all matters to only its
12 shareholders (Exhibit AH - Bylaws of the Plaintiff – May 26, 2013, page 12, Section 11. Voting
13 Rights: Cumulative Voting). For any election or decision where the outcome will affect all of
14 the approximate 380-parcel owners, all parcel owners should be included in the election or
15 decision.

16 The Plaintiff sought payment for road maintenance from all parcel owners through the
17 years 2013/2014, 2014-2015 and 2015/2016 even though non-shareholder parcel owners had no
18 voting rights on road maintenance or road maintenance decisions. The number of shareholders
19 and election results for road maintenance and non-road maintenance items were as follow:

20 ○ 2013/2014

- 21 ■ The plaintiff claimed there were 51 Shareholders (Exhibit AR-1 –
22 Plaintiff's May 2013 Newsletter (June 2013) – Page 2, Paragraph 2)
23 which represented less than a majority of the approximate 380 parcel
24 owners. The non-shareholder parcel owners were not represented.

1 ▪ No election was held. The Plaintiff's Annual Meeting Minutes were not
2 distributed – May 26, 2013

3 (Exhibit AR-1 – Plaintiff's May 2013 Newsletter (June 2013) – Page 2,
4 Org. Meeting Questions from Floor).

5 ○ 2014/2015

6 ▪ There were 179 Shareholders as per Exhibit AQ - Plaintiff's Annual
7 Meeting Minutes – May 25, 2014, Page 2, Paragraph 3, which represents
8 less than a majority of the approximate 380 parcel owners

9 ▪ Shareholder election results for Road Maintenance and budget were 102
10 votes for and 1 vote against (Exhibit AQ - Plaintiff's Annual Meeting
11 Minutes – May 25, 2014, Page 4)

12 ▪ Non-shareholder parcel owners were not represented.

13 ○ 2015/2016

14 ▪ There were 187 Shareholders as per Exhibit AR - Plaintiff's Annual
15 Meeting Minutes – May 24, 2015, Page 3, Paragraph 1, which represents
16 greater than a majority of the approximate 380 parcel owners.

17 ▪ Election results for Road Maintenance and budget were 91 Shareholders in
18 favor and 2 against as per Exhibit AR - Plaintiff's Annual Meeting
19 Minutes – May 24, 2015, Page 3, and Election of BOD. Non-shareholder
20 parcel owners were not represented.

21 ▪ 91 yes votes represent less than a majority of the approximate 380 parcel
22 owners.

1 Should the Plaintiff demand payments from the Defendant who is a non-shareholder
2 parcel owner using Civil Code 845, the Plaintiff must qualify, perform the steps necessary and
3 conform to the provisions of Civil Code 845 to demand payments.

- 4 ○ The Plaintiff did not indicate nor did the Plaintiff notify the Defendant, who is a
5 non-shareholder parcel owner, that the Plaintiff was or would be demanding
6 payments under Civil Code 845.
- 7 ○ The Plaintiff is not the owner of any easement in the nature of a private right-of-
8 way or of any land to which any such easement is attached.
- 9 ○ No agreement exists between the Plaintiff and the non-shareholder parcel owners.
- 10 ○ The Plaintiff has not generated or published any schedule of how the Plaintiff
11 proposes costs would be shared by each non-shareholder parcel owner.
- 12 ○ The Plaintiff demands payment for late fees at a rate of \$25. Per month that are
13 not provided by Civil Code 845. These fees are at a rate so high that they are
14 usury.
- 15 ○ At the first court appearance, the Plaintiff supplied a copy of the Budget &
16 Assessments to the Defendant for 2013/2014 to 2015/2016 (Exhibit AA). Each
17 annual period included line item category level costs not associated with
18 maintaining any easement in the nature of a private right-of-way or of any land to
19 which any such easement is attached, including but not limited to, Refuse
20 Collection and Disposal, Pine Needle Collection, Maintain Common Areas and
21 General Administration. Demanding Payments for these costs are not provided
22 by Civil Code 845. Note: The Plaintiff does not hold a Franchise Agreement
23 with Tuolumne County for providing Refuse Collection and Disposal service but
24 claims it provides such services.

1 ○ The Plaintiff’s Budget & Assessments for 2013/2014 (Exhibit AA – Pages 2 and
2 3). Section “1 - Maintain and Repair Roads” include costs not associated with
3 maintaining any easement in the nature of a private right-of-way or of any land to
4 which any such easement is attached, including but not limited to:

- 5 ▪ 1.11 – Insurance: The Plaintiff has placed the entire insurance burden on
6 the roads while a great portion if not all of the cost may be attributed to the
7 pond and other operations not related to the roads, including but not
8 limited to Directors and Officers Insurance.
- 9 ▪ 1.15 – Franchise Tax: The Plaintiff has placed the entire Franchise Tax
10 burden on the roads and not shared the cost with Refuse Collection and
11 Disposal, Pine Needle Collection and Maintain Common Areas and
12 General Administration.
- 13 ▪ 1.16 – Property Taxes: The roads are not taxed by Tuolumne County or
14 any other agency.
- 15 ▪ 1.17 – Taxes and Licenses: These costs are undefined.
- 16 ▪ 1.18 – Accounting: The Plaintiff has placed the entire Accounting burden
17 on the roads and not shared the cost with Refuse Collection and Disposal,
18 Pine Needle Collection and Maintain Common Areas and General
19 Administration.
- 20 ▪ 1.19 – Credit Card Charges: These costs are undefined.
- 21 ▪ 1.20 – Professional Services Consulting: These costs are undefined.
- 22 ▪ 1.21 – Legal Consulting: These costs are undefined.
- 23 ▪ 1.22 – Health & Safety (Porta-Poties): These are related to the Common
24 Areas, which include the Pond and Playground, for recreational purposes.
- 25

- 1 ▪ 1.23 – Contingency (Merge lots, etc.): The Plaintiff has placed the entire
2 Contingency burden on the roads and not shared the cost with Refuse
3 Collection and Disposal, Pine Needle Collection and Maintain Common
4 Areas and General Administration.
- 5 ▪ 1.24 – One time setup new org. (actg, bank, utilities, etc.): This cost
6 belongs exclusively to the shareholders and must be disqualified as a
7 result.
- 8 ▪ 1.25 – Member Communications: This cost belongs exclusively to the
9 shareholders.
- 10 ▪ 1.23 –Road Equipment Maintenance: The Plaintiff has placed the entire
11 Road Equipment Maintenance burden on the roads and not shared the cost
12 with Refuse Collection and Disposal, Pine Needle Collection and Maintain
13 Common Areas where the Plaintiff uses the same equipment for more than
14 Maintaining Roads and Snow Removal. (This item number is used twice
15 in the Plaintiff’s Budget)
- 16 ▪ 1.24– Road Equipment Reserves: The Plaintiff has placed the entire Road
17 Equipment Reserves burden on the roads and not shared the cost with
18 Refuse Collection and Disposal, Pine Needle Collection and Maintain
19 Common Areas where the Plaintiff uses the same equipment for more than
20 Maintaining Roads and Snow Removal. (This item number is used twice
21 in the Plaintiff’s Budget)
- 22 ▪ 1.25– Roads Fuel: The Plaintiff has placed the entire Roads Fuel burden
23 on the roads and not shared the cost with Refuse Collection and Disposal,
24 Pine Needle Collection and Maintain Common Areas where the Plaintiff
25

1 uses the same equipment for more than Maintaining Roads and Snow
2 Removal. (This item number is used twice in the Plaintiff's Budget)

- 3 ▪ 1.26 – Road Supplies: These costs are undefined.
- 4 ○ The Plaintiff's Budget & Assessments for 2014/2015 (Exhibit AA – Page 4).
5 Section "2 - Maintain and Repair Roads" include costs not associated with
6 maintaining any easement in the nature of a private right-of-way or of any land to
7 which any such easement is attached, including but not limited to:
 - 8 ▪ 2.11 – Insurance: The Plaintiff has placed the entire insurance burden on
9 the roads while a great portion if not all of the cost may be attributed to the
10 pond and other operations not related to the roads including but not limited
11 to Directors and Officers Insurance.
 - 12 ▪ 2.13 – Property Taxes: The roads are not taxed by Tuolumne County or
13 any other agency.
 - 14 ▪ 2.14 – Taxes and Licenses: These costs are undefined.
 - 15 ▪ 2.15 – Accounting: The Plaintiff has placed the entire Accounting burden
16 on the roads and not shared the cost with Refuse Collection and Disposal,
17 Pine Needle Collection and Maintain Common Areas and General
18 Administration.
 - 19 ▪ 2.16 – Credit Card Charges: These costs are undefined.
 - 20 ▪ 2.17 – Professional Services Consulting: These costs are undefined.
 - 21 ▪ 2.18 – Legal Consulting: These costs are undefined.
 - 22 ▪ 2.19 – Health & Safety (Porta-Poties): These are related to the Common
23 Areas, which include the Pond and Playground, for recreational purposes.
 - 24 ▪ 2.20 – Contingency (Merge lots, etc.): The Plaintiff has placed the entire
25 Contingency burden on the roads and not shared the cost with Refuse

1 Collection and Disposal, Pine Needle Collection and Maintain Common
2 Areas and General Administration.

- 3 ■ 2.22 – Member Communications: Only shareholders receive
4 communications. This cost belongs exclusively to the shareholders.
- 5 ■ 2.24 Road Equipment Reserves: The Plaintiff has placed the entire Road
6 Equipment Reserves burden on the roads and not shared the cost with
7 Refuse Collection and Disposal, Pine Needle Collection and Maintain
8 Common Areas where the Plaintiff uses the same equipment for more than
9 Maintaining Roads and Snow Removal. (This item number is used twice
10 in the Plaintiff’s Budget)
- 11 ■ 2.25 Roads Fuel: The Plaintiff has placed the entire Roads Fuel burden on
12 the roads and not shared the cost with Refuse Collection and Disposal,
13 Pine Needle Collection and Maintain Common Areas where the Plaintiff
14 uses the same equipment for more than Maintaining Roads and Snow
15 Removal. (This item number is used twice in the Plaintiff’s Budget)
- 16 ■ 2.26 – Road Supplies: These costs are undefined.
- 17 ○ The Plaintiff’s proposed Budget & Assessments for 2015/2016 (Exhibit AA –
18 Pages 5 and 6). Section “1 - Maintain and Repair Roads” include costs not
19 associated with maintaining any easement in the nature of a private right-of-way
20 or of any land to which any such easement is attached, including but not limited
21 to:
 - 22 ■ 1.11 – Insurance: The Plaintiff has placed the entire insurance burden on
23 the roads while a great portion if not all of the cost may be attributed to the
24 pond and other operations not related to the roads, including but not
25 limited to Directors and Officers Insurance.

- 1 ▪ 1.12 – Property Taxes: The roads are not taxed by Tuolumne County or
2 any other agency.
- 3 ▪ 1.13 – Taxes and Licenses: These costs are undefined.
- 4 ▪ 1.14 – Accounting: The Plaintiff has placed the entire Accounting burden
5 on the roads and not shared the cost with Refuse Collection and Disposal,
6 Pine Needle Collection and Maintain Common Areas and General
7 Administration.
- 8 ▪ 1.15 Credit Card Charges: These costs are undefined.
- 9 ▪ 1.16 – Professional Services Consulting: These costs are undefined.
- 10 ▪ 1.17 – Legal Consulting: These costs are undefined.
- 11 ▪ 1.18 – Member Communications: Only shareholders receive
12 communications. This cost belongs exclusively to the shareholders.
- 13 ▪ 2.24- Road Equipment Maintenance: The Plaintiff has placed the entire
14 Road Equipment Maintenance burden on the roads and not shared the cost
15 with Refuse Collection and Disposal, Pine Needle Collection and Maintain
16 Common Areas where the Plaintiff uses the same equipment for more than
17 Maintaining Roads and Snow Removal. (This item number is used twice
18 in the Plaintiff's Budget)
- 19 ▪ 2.25 – Road Equipment Reserves (the Plaintiff has placed the entire Road
20 Equipment Reserves burden on the roads and not shared the cost with
21 Refuse Collection and Disposal, Pine Needle Collection and Maintain
22 Common Areas where the Plaintiff uses the same equipment as much or
23 more than Maintaining Roads and Snow Removal).
- 24 ▪ 2.26 – Roads Fuel: The Plaintiff has placed the entire Roads Fuel burden
25 on the roads and not shared the cost with Refuse Collection and Disposal

1 and Pine Needle Collection where the Plaintiff uses the same equipment
2 for more than Maintaining Roads and Snow Removal.

- 3 ▪ 2.27 – Road Supplies: These costs are undefined.
- 4 ○ The Plaintiff’s Budget & Assessments for 2014/2015 and 2015/2016 (Exhibit AA
5 – Pages 4 through 6) include additional costs not associated with maintaining any
6 easement in the nature of a private right-of-way or of any land to which any such
7 easement is attached, including but not limited to:
 - 8 ▪ 2014/2015 – Special Reserves to replace Bridge (Exhibit AA – Page 4,
9 below lined item 6.1 Recreation) This is a pedestrian bridge located on
10 the south side of the lake on OFSRA property and is not associated with or
11 near any easement in the nature of a private right-of-way or of any land to
12 which any such easement is attached.
 - 13 ▪ 2015/2016 – Bridge Replacement Project - (Exhibit AA – Page 6, Bottom
14 of page). The Plaintiff’s 2015/2016 Budget & Assessments shows an
15 additional \$160.00 per lot assessment for this line item. (Exhibit AR -
16 Plaintiff’s Annual Meeting Minutes – May, 24, 2015, Page 3, Election of
17 Board of Directors) This is a second and separate pedestrian bridge
18 located on OFSRA property that is not associated with or near any
19 easement in the nature of a private right-of-way or of any land to which
20 any such easement is attached.
- 21 ○ A notable portion of the Plaintiffs demand for payments from non-shareholder
22 parcel owners include costs for snow plowing. The cost presented for
23 snowplowing was set without outside bidding from local contractors.
- 24 ○ The Plaintiff has demanded payments for late fees at a rate of \$25. per month that
25 should not be collected under Civil Code 845.

- 1 o No agreement exists between the Plaintiff and the Defendant, who is a non-
2 shareholder parcel owner.

3 At the OFSRA Shareholders Meeting held October 8, 2016, OFSRA claimed it had not
4 transferred any assets to the Plaintiff and had no contract with the Plaintiff. (This information is
5 available in the form of an audio recording upon request).

6 The Plaintiff has maintained OFSRA property and has replaced an OFSRA owned south
7 pedestrian bridge prior to the Plaintiff proclaiming it was the service provider for the
8 subdivision.

9
10 **V. INDEX OF ADDED EXHIBITS.**

11 Exhibit AR-1 – Plaintiff’s May 2013 Newsletter – June 2013

12 Exhibit AR-2- OFSRA Compiled Financial Statements- May 31, 2016

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14 **VI. ACKNOWLEDGEMENT.**

15 The Brief and Amendment 1 to Revision 15 of Defendants’ Trial Brief is the result of a
16 collaborative effort between parties currently being sued by the Plaintiff in Small Claims Court
17 including two past OFSRA Presidents, Charles Varvayanis and Fred Coleman; one past OFSRA
18 Vice President, Steve Wallace; one past OFSHA BOD member, Larry Vaughn; and an external
19 party familiar with the Plaintiff and the subdivision. A portion of the information used in the
20 Brief and Amendment 1 to Revision 15 of the Defendants’ Trial Brief was learned from two
21 additional past OFSRA Presidents, several additional past OFSRA and OFSHA BOD members
22 and greater than twenty past and present parcel owners in the subdivision.

1 **VII. VERIFICATION.**

2 We are the Defendants in the above matter. The statements in the foregoing document
3 are true to the best of our knowledge.
4

5 DATED: November 9, 2016

Respectfully submitted,

7 By: _____
8 Michael P. Ford
9 Tresa A. Ford
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