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FILED
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Superior Court of California
County of Tuolumne
By: *Heather Day* Clerk

5 SUPERIOR COURT OF CALIFORNIA, COUNTY OF TUOLUMNE
6

7 Sierra Park Services, Inc.,) No: SC19415
8 Plaintiff,)
9 vs.) AMENDMENT 1 TO REVISION 16 OF
10 Edward E. Cole, Mark Cole, Edward R. Cole) DEFENDANTS' TRIAL BRIEF
11 and Michael L. Cole,)
12 Defendants.)
DATE: December 2, 2016
TIME: 10:30 a.m.
DEPT: 4
JUDGE: Honorable Kevin M. Seibert

13 **PREFACE**

14 Amendment 1 to the Defendants' Trial Brief Revision 16 is presented to address:

- 15 1) A declaration served by the Plaintiff dated November 4, 2016. The section herein
16 titled "Civil Code 845 Does Not Apply" amends, supersedes and replaces the like
17 named section in the Defendants' Trial Brief Revision 16 filed with the court.
18 2) The Compiled Financial Statements of OFSRA distributed on November 6, 2016.
19 The section herein titled "Plaintiff Provides Enrichment to OFSRA Without Contact"
20 amends, supersedes and replaces the like named section in the Defendants' Trial Brief
21 Revision 16 filed with the court.

22 Exhibits AR-1 and AR-2 have been added to support Amendment 1.

23 All other sections of the Defendants' Trial Brief Revision 16 and all Exhibits filed with
24 the court remain intact and should be used from that filing.
25

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

10 **Civil Code 845 Does Not Apply**

11 It was never indicated, since the Plaintiff’s inception in 2013 that the Plaintiff would be
12 billing for services based on Civil Code 845.

13 Only after filing this Small Claims case has the Plaintiff begun claiming that they could
14 demand payments from non-shareholder parcel owners based on Civil Code 845 (Exhibit AN).
15 However, prior to this Small Claims case, the Plaintiff did not notify the Defendant nor did they
16 indicate in anyway, including any of the prior meetings, publications or communications that
17 they would be demanding payments based on Civil Code 845. (See
18 www.varvayanis.com/sp/newsletters and www.varvayanis.com/sp/Annual_Meetings).

19 On October 28, 2016, in a related case (SC19417) in the presence of Commissioner
20 Phillip A. Pimentel, the plaintiff stated they could demand payments from non-shareholder
21 parcel owners for *road maintenance* based on Civil Code 845 (Italics used for emphasis). Note:
22 The Defendants’ Trial Brief for another related case (SC19409) was served to the Plaintiff on
23 October 25, 2016.

24 The Plaintiff is not the owner of any easement in the nature of a private right-of-way or
25 of any land to which any such easement is attached.

1 The easement, if any, is owned by more than one person and is attached to parcels of land
2 under different ownership or, more specifically, the parcel owners.

3 No agreement exists between the Plaintiff and the non-shareholder parcel owners. The
4 Plaintiff has not generated or published any schedule of how the Plaintiff proposes costs shall be
5 shared proportionately by each non-shareholder parcel owner.

6 There are 363 parcel owners that use the roads as broken down and documented in the
7 sections titled "Subdivision and Surrounding Parcel Counts and Subdivision Road Usage" and
8 "Plaintiff Maintaining Additional Road Not Part of the Subdivision". From the 363 parcels,
9 there are 350 Subdivision Lot Owners, 8 parcels owned by OFSRA that are not part of the
10 subdivision, two that are private party owned parcels and not part of the subdivision, One owned
11 by Tuolumne Utility District (TUD), and two additional private party parcels owned by Joseph
12 Freitas and Gladys E. Freitas and Floellen W. Smith.

13 For the Plaintiff to consider using Civil Code 845 for road maintenance, all 363 parcel
14 owners should have equal access of all types, including but not limited to, information, voting
15 rights, voting weight, selection of representatives, managers, projects, vendors, etc. regarding
16 road maintenance and road maintenance decisions.

17 For any election or decision were the outcome may affect all of the 363 parcel owners, all
18 of 363 parcel owners should be included in the election or decision. Since the Plaintiff's by-laws
19 limit voting on all matters to only it's shareholders (Exhibit AH - Bylaws of the Plaintiff – May
20 26, 2013, page 12, Section 11. Voting Rights; Cumulative Voting.) and since the Plaintiff seeks
21 payment for road maintenance from non-shareholder parcel owners for 2013/2014, 2014/2015
22 and 2015/2016 and since the plaintiff did not provide the non-shareholder parcel owners equal
23 access, including information, voting rights, voting weight, selection of representatives,
24 managers, projects, vendors regarding road maintenance and road maintenance decisions, then
25 for any election or decision were the outcome may affect all of the 363 parcel owners, a vote

1 declining the matter should be automatically counted for each and every non-shareholder parcel
2 owner yielding effective election results, otherwise only the shareholders alone should bear any
3 and all costs.

4 The number of shareholders, election results and effective election results (shareholder
5 plus non-shareholders) for road maintenance (voted on as the entire budget including non-road
6 maintenance items) were:

7 ○ 2013/2014

- 8 ■ The Plaintiff claims there were 51 Shareholders (Exhibit AR-1 –
9 Plaintiff's May 2013 Newsletter (June 2013) – Page 2, Paragraph 2).
- 10 ■ 51 Shareholders represents less than a simple majority of the 363 parcel
11 owners.
- 12 ■ Shareholder election results for Roads Maintenance and budget = 0 (zero)
13 votes for and 0 (zero) vote against because no election was held (Exhibit
14 AR-1 – Plaintiff's May 2013 Newsletter (June 2013) – Page 2, Org.
15 Meeting Questions from Floor). The Plaintiff's Annual Meeting Minutes
16 were not distributed – May 26, 2013.
- 17 ■ Since no election was held, the non-shareholder parcel owners were not
18 represented.
- 19 ■ Effective election results for Roads Maintenance and budget = 0 (zero)
20 votes for and 312 (0 + 363 - 51) votes against.

21 ○ 2014/2015

- 22 ■ The Plaintiff claims there were 179 Shareholders (Exhibit AQ - Plaintiff's
23 Annual Meeting Minutes – May 25, 2014, Page 2, Paragraph 3).
- 24 ■ 179 represents less than a simple majority of the 363 parcel owners.

- 1 ▪ Shareholder election results for Roads Maintenance and budget = 102
- 2 votes for and 1 vote against (Exhibit AQ - Plaintiff's Annual Meeting
- 3 Minutes – May 25, 2014, Page 4).
- 4 ▪ 102 for (yes) votes represents less than a simple majority of the 363 parcel
- 5 owners.
- 6 ▪ Effective election results for Roads Maintenance and budget = 102 votes
- 7 for and 185 (1 + 363 - 181) votes against.
- 8 ○ 2015/2016
- 9 ▪ The Plaintiff claims there were 187 Shareholders (Exhibit AR - Plaintiff's
- 10 Annual Meeting Minutes – May 24, 2015, Page 3, Paragraph 1).
- 11 ▪ 187 represents greater than a simple majority of the 363 parcel owners.
- 12 ▪ Shareholder election results for Roads Maintenance and budget = 91 in
- 13 favor 2 against (Exhibit AR - Plaintiff's Annual Meeting Minutes – May
- 14 24, 2015, Page 3, Election of BOD).
- 15 ▪ 91 for (yes) votes represents less than a simple majority of the 363 parcel
- 16 owners.
- 17 ▪ Effective election results for Maintenance and budget = 91 votes for and
- 18 177 (2 + 363 - 187) votes against.

19 Even if the Plaintiff had desired to demand payments using Civil Code 845, the Plaintiff
20 does not qualify, has failed to perform the steps necessary and has not conformed with the
21 provisions of Civil Code 845 to demand payments using Civil Code 845:

- 22 ○ The Plaintiff never indicated or notified the non-shareholder parcel owners it was
- 23 or would be demanding payments using Civil Code 845.
- 24 ○ The Plaintiff is not the owner of any easement in the nature of a private right-of-
- 25 way, or of any land to which any such easement is attached.

- 1 ○ No agreement exists between the Plaintiff and the non-shareholder parcel owners.
- 2 ○ The Plaintiff has not generated or published any schedule of how the Plaintiff
- 3 proposes cost shall be shared proportionately to the use made by each non-
- 4 shareholder parcel owner.
- 5 ○ The Plaintiff has demanded payments for late fees at a rate of \$25 per month that
- 6 are not provided by Civil Code 845. In addition, these so called late fees are at a
- 7 rate so high that they are usury.
- 8 ○ The Plaintiff has included profit for maintaining any easement in the nature of a
- 9 private right-of-way, or of any land to which any such easement is attached. Civil
- 10 Code 845 provides only for costs.
- 11 ○ At the first court appearance, the Plaintiff supplied a copy of its budgets to the
- 12 Defendants for 2013/2014, 2014/2015 and 2015/2016 (Exhibit AA). Each annual
- 13 period includes line item category level costs not associated with maintaining any
- 14 easement in the nature of a private right-of-way, or of any land to which any such
- 15 easement is attached, including but not limited to: Refuse Collection and
- 16 Disposal, Pine Needle Collection, Maintain Common Areas and General
- 17 Administration and must be disqualified as a result. Demanding Payments for
- 18 these costs are not provided by Civil Code 845. Note: The Plaintiff does not hold
- 19 a Franchise Agreement with Tuolumne County for providing Refuse Collection
- 20 and Disposal service but claims it provides such services. The Plaintiff may be
- 21 operating illegally as a result.
- 22 ○ The Plaintiff's budget for 2013/2014 (Exhibit AA – Pages 2 and 3). Section “1 -
- 23 Maintain and Repair Roads” include costs not associated with maintaining any
- 24 easement in the nature of a private right-of-way, or of any land to which any such
- 25 easement is attached, including but not limited to:

- 1 ▪ 1.11 “Insurance” – The Plaintiff has placed the entire insurance burden on
2 the roads while a great portion if not all of the cost may be attributed to the
3 pond and other operations and operating expenses not related to the roads
4 including but not limited to Refuse Collection and Disposal, Pine Needle
5 Collection, Maintain Common Areas, General Administration and
6 Directors and Officers Insurance.
- 7 ▪ 1.15 “Franchise Tax” – The Plaintiff has placed the entire Franchise Tax
8 burden on the roads and not shared the cost with Refuse Collection and
9 Disposal, Pine Needle Collection and Maintain Common Areas and
10 General Administration.
- 11 ▪ 1.16 “Property Taxes” – The roads are not taxed by Tuolumne County or
12 any other agency.
- 13 ▪ 1.17 “Taxes and Licenses” – These costs are undefined and must be
14 disqualified as a result.
- 15 ▪ 1.18 “Accounting” – The Plaintiff has placed the entire Accounting
16 burden on the roads and not shared the cost with Refuse Collection and
17 Disposal, Pine Needle Collection and Maintain Common Areas and
18 General Administration.
- 19 ▪ 1.19 “Credit Card Charges” – These costs are undefined and must be
20 disqualified as a result.
- 21 ▪ 1.20 “Professional Services Consulting” – These costs are undefined and
22 must be disqualified as a result.
- 23 ▪ 1.21 “Legal Consulting” – These costs are undefined and must be
24 disqualified as a result.
- 25

- 1 ▪ 1.22 “Health & Safety (Porta-Poties)” – These are related to the so called
2 “Common Areas” and more specifically the Pond and Playground for
3 recreational purposes and must be disqualified as a result.
- 4 ▪ 1.23 “Contingency (Merge lots, etc.)” – The Plaintiff has placed the entire
5 Contingency burden on the roads and not shared the cost with Refuse
6 Collection and Disposal, Pine Needle Collection and Maintain Common
7 Areas and General Administration.
- 8 ▪ 1.24 “One time setup new org. (actg, bank, utilities, etc.)” – This cost
9 belongs exclusively to the shareholders and must be disqualified as a
10 result).
- 11 ▪ 1.25 “Member Communications” – Only shareholders receive
12 communications. This cost belongs exclusively to the shareholders and
13 must be disqualified as a result.
- 14 ▪ 1.23 (This item number is used twice in the Plaintiff’s Budget) – “Road
15 Equipment Maintenance” – The Plaintiff has placed the entire Road
16 Equipment Maintenance burden on the roads and not shared the cost with
17 Refuse Collection and Disposal, Pine Needle Collection and Maintain
18 Common Areas where the Plaintiff uses the same equipment as much or
19 more than Maintaining Roads and Snow Removal.
- 20 ▪ 1.24 (This item number is used twice in the Plaintiff’s Budget) “Road
21 Equipment Reserves” – The Plaintiff has placed the entire Road
22 Equipment Reserves burden on the roads and not shared the cost with
23 Refuse Collection and Disposal, Pine Needle Collection and Maintain
24 Common Areas where the Plaintiff uses the same equipment as much or
25 more than Maintaining Roads and Snow Removal.

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- 1.25 (This item number is used twice in the Plaintiff’s Budget) “Roads Fuel” – The Plaintiff has placed the entire Roads Fuel burden on the roads and not shared the cost with Refuse Collection and Disposal, Pine Needle Collection and Maintain Common Areas where the Plaintiff uses the same equipment as much or more than Maintaining Roads and Snow Removal.
 - 1.26 “Road Supplies” – These costs are undefined and must be disqualified as a result.
- The Plaintiff’s budget for 2014/2015 (Exhibit AA – Page 4). Section “2 - Maintain and Repair Roads” include costs not associated with maintaining any easement in the nature of a private right-of-way, or of any land to which any such easement is attached, including but not limited to:
- 2.11 “Insurance” – The Plaintiff has placed the entire insurance burden on the roads while a great portion if not all of the cost may be attributed to the pond and other operations and operating expenses not related to the roads including but not limited to Refuse Collection and Disposal, Pine Needle Collection, Maintain Common Areas, General Administration and Directors and Officers Insurance.
 - 2.13 “Property Taxes” – The roads are not taxed by Tuolumne County or any other agency.
 - 2.14 “Taxes and Licenses” – These costs are undefined and must be disqualified as a result).
 - 2.14 “Accounting” – The Plaintiff has placed the entire Accounting burden on the roads and not shared the cost with Refuse Collection and Disposal, Pine Needle Collection and Maintain Common Areas and General Administration.

- 1 ▪ 2.16 “Credit Card Charges” – These costs are undefined and must be
2 disqualified as a result.
- 3 ▪ 2.17 “Professional Services Consulting” – These costs are undefined and
4 must be disqualified as a result.
- 5 ▪ 2.18 “Legal Consulting” – These costs are undefined and must be
6 disqualified as a result.
- 7 ▪ 2.19 “Health & Safety (Porta-Poties)” – These are related to the so called
8 “Common Areas” and more specifically the Pond and Playground for
9 recreational purposes and must be disqualified as a result.
- 10 ▪ 2.20 “Contingency (Merge lots, etc.)” – The Plaintiff has placed the entire
11 Contingency burden on the roads and not shared the cost with Refuse
12 Collection and Disposal, Pine Needle Collection and Maintain Common
13 Areas and General Administration.
- 14 ▪ 2.22 “Member Communications” – Only shareholders receive
15 communications. This cost belongs exclusively to the shareholders and
16 must be disqualified as a result.
- 17 ▪ 2.24 (This item number is used twice in the Plaintiff’s Budget) “Road
18 Equipment Reserves” – The Plaintiff has placed the entire Road
19 Equipment Reserves burden on the roads and not shared the cost with
20 Refuse Collection and Disposal, Pine Needle Collection and Maintain
21 Common Areas where the Plaintiff uses the same equipment as much or
22 more than Maintaining Roads and Snow Removal.
- 23 ▪ 2.25 (This item number is used twice in the Plaintiff’s Budget) “Roads
24 Fuel” – The Plaintiff has placed the entire Roads Fuel burden on the roads
25 and not shared the cost with Refuse Collection and Disposal, Pine Needle

1 Collection and Maintain Common Areas where the Plaintiff uses the same
2 equipment as much or more than Maintaining Roads and Snow Removal.

- 3 ■ 2.26 “Road Supplies” – These costs are undefined and must be
4 disqualified as a result.
- 5 ○ The Plaintiff’s budget for 2015/2016 (Exhibit AA – Pages 5 and 6). Section “1 -
6 Maintain and Repair Roads” include costs not associated with maintaining any
7 easement in the nature of a private right-of-way, or of any land to which any such
8 easement is attached, including but not limited to:
 - 9 ■ 1.11 “Insurance” – The Plaintiff has placed the entire insurance burden on
10 the roads while a great portion if not all of the cost may be attributed to the
11 pond and other operations and operating expenses not related to the roads
12 including but not limited to Refuse Collection and Disposal, Pine Needle
13 Collection, Maintain Common Areas, General Administration and
14 Directors and Officers Insurance.
 - 15 ■ 1.12 “Property Taxes” – The roads are not taxed by Tuolumne County or
16 any other agency.
 - 17 ■ 1.13 “Taxes and Licenses” – These costs are undefined and must be
18 disqualified as a result.
 - 19 ■ 1.14 “Accounting” – The Plaintiff has placed the entire Accounting
20 burden on the roads and not shared the cost with Refuse Collection and
21 Disposal, Pine Needle Collection and Maintain Common Areas and
22 General Administration.
 - 23 ■ 1.15 “Credit Card Charges” – These costs are undefined and must be
24 disqualified as a result.

- 1 ▪ 1.16 “Professional Services Consulting” – These costs are undefined and
2 must be disqualified as a result.
- 3 ▪ 1.17 “Legal Consulting” – These costs are undefined and must be
4 disqualified as a result.
- 5 ▪ 1.18 “Member Communications” – Only shareholders receive
6 communications. This cost belongs exclusively to the shareholders and
7 must be disqualified as a result.
- 8 ▪ 2.24 “Road Equipment Maintenance” – The Plaintiff has placed the entire
9 Road Equipment Maintenance burden on the roads and not shared the cost
10 with Refuse Collection and Disposal, Pine Needle Collection and Maintain
11 Common Areas where the Plaintiff uses the same equipment as much or
12 more than Maintaining Roads and Snow Removal.
- 13 ▪ 2.25 “Road Equipment Reserves” – The Plaintiff has placed the entire
14 Road Equipment Reserves 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 as much or
17 more than Maintaining Roads and Snow Removal.
- 18 ▪ 2.26 “Roads Fuel” – The Plaintiff has placed the entire Roads Fuel burden
19 on the roads and not shared the cost with Refuse Collection and Disposal
20 and Pine Needle Collection where the Plaintiff uses the same equipment as
21 much or more than Maintaining Roads and Snow Removal.
- 22 ▪ 2.27 “Road Supplies” – These costs are undefined and must be
23 disqualified as a result.
- 24 ○ The Plaintiff’s budget for 2014/2015 and 2015/2016 (Exhibit AA – Pages 4
25 through 6). Include additional costs not associated with maintaining any

1 easement in the nature of a private right-of-way, or of any land to which any such
2 easement is attached, including but not limited to:

3 ▪ 2014/2015 “Special Reserves to replace Bridge” (Exhibit AA – Page 4,
4 Bottom of page). Note: This is a pedestrian bridge not associated with or
5 near any easement in the nature of a private right-of-way, or of any land to
6 which any such easement is attached.

7 ▪ 2015/2016 “BRIDGE REPLACEMENT PROJECT” (Exhibit AA – Page
8 6, Bottom of page). The Plaintiff’s 2015/2016 budget shows \$50 for this
9 line item with a total billing of \$640, however the Plaintiff billed \$160 for
10 the BRIDGE REPLACEMENT PROJECT with a total billing of \$750
11 (Exhibit AR - Plaintiff’s Annual Meeting Minutes – May 24, 2015, Page
12 3, Election of Board of Directors). Note: This is a pedestrian bridge not
13 associated with or near any easement in the nature of a private right-of-
14 way, or of any land to which any such easement is attached.

15 ○ In addition to the points above, a notable portion of the Plaintiff’s demand for
16 payments from non-shareholder parcel owners include costs for snow plowing.
17 The Plaintiff presented costs for snow plowing are magnitudes higher than what
18 outside contractors’ charge for similar snowplowing. Not charging competitive
19 pricing for snow plowing or not putting snow plowing out for competitive bid
20 places an unfair burden on non-shareholder parcel owners and provides unjust
21 enrichment to the Plaintiff and its shareholders.

22 **Plaintiff Provides Enrichment to OFSRA Without Contact**

23 On November 6, 2016 OFSRA distributed its Compiled Financial Statements dated May
24 31, 2016 (Exhibit AR-2). The Compiled Financial Statements report “*The Association consists*
25 *of approximately 400 acres of timberlands located in Long Barn, California. Within the*

1 *boundaries of the Association exists a gated 365 lot subdivision and various park amenities. The*
2 *purpose of the Association is to operate and maintain the common property of the Association,*
3 *specifically the water system, garbage, and roads” (Exhibit AR-2, Page 6, NOTE 1 - NATURE*
4 *OF ACTIVITIES AND SIGNIFICANT ACCOUNTING POLICIES, A. NATURE OF*
5 *ACTIVITIES, Paragraph 2).*

6 At its October 8, 2016 OFSRA Shareholders’ meeting, OFSRA claimed it has no
7 Contracts with the Plaintiff (available in the form of an audio recording upon request).

8 The Plaintiff without contact with OFSRA has maintained OFSRA property as
9 documented in the sections titled “Plaintiff’s Expenses from Maintaining and Operating
10 OFSRA’s Properties” and “Plaintiff Maintaining OFSRA Owned Roads Not Part of the
11 Subdivision” and has replaced an OFSRA owned pedestrian bridge that failed prior to the
12 Plaintiff proclaiming it was the service provider for the subdivision. The pedestrian bridge was
13 voted on by the Plaintiff’s shareholders and payments have been demanded from all parcel
14 owners specifically for the pedestrian bridge repair over two years; \$50 per parcel for 2014/2015
15 and \$160 per parcel for 2015/2016. The election results for the pedestrian bridge replacement
16 were: The election result was not published for 2014/2015 (Exhibit AQ - Plaintiff’s Annual
17 Meeting Minutes – May 25, 2014, Page 4, paragraphs 2 and 3) and 80 in favor and 13 against for
18 2015/2016 (Exhibit AR - Plaintiff’s Annual Meeting Minutes – May 24, 2015, Page 3, Election
19 of Board of Directors).

20
21 **V. INDEX OF ADDED EXHIBITS.**

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

23 Exhibit AR-2 – OFSRA Compiled Financial Statements – May 31, 2016
24

25 **VI. ACKNOWLEDGEMENT.**



1 The Brief and Amendment 1 to Revision 16 of Defendants' Trial Brief is the result of a
2 collaborative effort between parties currently being sued by the Plaintiff in Small Claims Court,
3 two past OFSRA Presidents (Charles Varvayanis and Fred Coleman), one past OFSRA Vice
4 President (Steve Wallace), one past OFSHA BOD member Larry Vaughn) and an external party
5 familiar with the Plaintiff and the subdivision. A portion of the information used in the Brief and
6 Amendment 1 to Revision 16 of Defendants' Trial Brief was learned from two additional past
7 OFSRA Presidents, several additional past OFSRA and OFSHA BOD members and greater than
8 twenty past and present parcel owners in the subdivision.

9
10 **VII. VERIFICATION.**

11 We are the Defendants in the above matter; the statements in the foregoing document are
12 true of our knowledge.

13
14 DATED: November 7, 2016

Respectfully submitted,

15
16 
17 

18 By: 

19 Mark Cole
20 Edward E. Cole
21 Edward R. Cole
22 Michael L. Cole
23
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