

**FILED**

FEB 17 2015

Superior Court of California  
County of Tuolumne

By: \_\_\_\_\_ Clerk

*Mers Sullivan*

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Attorney for Defendants

FREDDIE GLEN COLEMAN aka FRED COLEMAN and BARBARA ANN COLEMAN,  
Trustees of the FREDDIE COLEMAN & BARBARA ANN COLEMAN TRUST; LARRY  
GIACOMINO; DEANNA G. MOONEY, Trustee of the DEANNA G. MOONEY TRUST;  
STEVEN P. WALLACE, Trustee of the STEVEN P. WALLACE TRUST; JOSEPH M.  
NELSON, JR., Trustee of the JOSEPH M. NELSON, JR. TRUST; JOSEPH F. SCHULTZ  
and KARIN V. TRUST, Trustees of the JOSEPH F. and KARIN V. SCHULTZ TRUST;  
LARRY LEE VAUGHN and KARIN LOUANNE VAUGHN

**SUPERIOR COURT OF CALIFORNIA**

**IN AND FOR THE COUNTY OF TUOLUMNE**

**ODD FELLOWS SIERRA RECREATION)  
ASSOCIATION, a California  
corporation,**

**Plaintiff,**

**vs.**

**CHARLES P. VARVAYANIS and  
PATRICIA JONES; FREDDIE GLEN  
COLEMAN aka FRED COLEMAN and  
BARBARA ANN COLEMAN, Trustees  
of the FREDDIE COLEMAN &  
BARBARA ANN COLEMAN TRUST;  
JEWEL RUTH DARGITZ; LARRY LEE  
VAUGHN and KARIN LOUANNE  
VAUGHN: STEVEN P. WALLACE,  
Trustee of the STEVEN P. WALLACE**

**Case No. CV 58100**

**MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF MOTION  
FOR LEAVE TO FILE CROSS-  
COMPLAINT; DECLARATION OF  
NICHOLAS D. YONANO, ESQ.  
YONANO, ESQ. IN SUPPORT THEREOF**

**Hearing Date: March 13, 2015  
Hearing Time: 1:15 p.m.  
Dept.: 2**

**Trial Date: April 22, 2015  
M.S.C. Date: February 17, 2015**

1 TRUST; RUDY ALDAMA, GLENN )  
DALZEL, CHRISTINE FOREMAN, JUAN )  
2 TOVAR, and MAE TOVAR; HAROLD )  
BABB and MARY BABB; PHILIP )  
3 BARTHMAN, SUSAN BOLT- )  
BARTHMAN, RICHARD QUINN, and )  
4 CHRISTINE QUINN; JOSEPH G. )  
BONJEAN and GLORIA BONJEAN; )  
5 PATRICIA L. BREMICKER, Trustee of )  
6 the PATRICIA L. BREMICKER TRUST )  
ERIC CANALES aka ERIC K. )  
7 CANALES and CATHERINE CANALES;) )  
8 GREGORY J. COLLINS, SR., and )  
HEIDI M. COLLINS; JOSE ANGEL )  
9 GARCIA and DEBORAH L. GARCIA; )  
LARRY V. GIACOMINO and JILL S. )  
10 FORESTER; LOUIE J. KAZAS and )  
CLEO KAZAS, Trustees of the LOUIE )  
11 J. & CLEO KAZAS TRUST; MILDRED )  
KERN; ONITA POMBO and DOROTHY )  
12 K. LEIGHTON; GERALD W. JOHNSTON )  
STEVEN G. JOHNSTON and SHARON )  
13 LORENZ; DEANNA G. MOONEY, )  
14 Trustee of the DEANNA G. MOONEY )  
TRUST; JOSEPH M. NELSON, JR., )  
15 Trustee of the JOSEPH M. NELSON, )  
16 JR., TRUST; MICHAEL J. PERRY and )  
KATHERINE M. PERRY; WILLIAM D. )  
17 PIECH and CLARE THOMPSON, )  
Trustees of the WILLIAM D. PIECH and )  
18 CLARE THOMPSON TRUST; TIMOTHY )  
19 J. PLAZA and DARANN P. PLAZA; )  
BETTY L. SALOMON, Trustee of the )  
20 BETTY L. SALOMON TRUST; JOSEPH )  
F. SCHULTZ and KARIN V. SCHULTZ, )  
21 Trustees of the JOSEPH F. & KARIN V. )  
SCHULTZ TRUST; SCOTT R. THOMAS )  
22 and BRANDI L. THOMAS; JOHN DAVID )  
WEITZEL and NANCY ANNE WEITZEL, )  
23 Trustees of the JOHN DAVID WEITZEL )  
24 and NANCY ANNE WEITZEL TRUST; )  
and Does 1 through 30, inclusive, )  
25 )  
26 )

**Defendants**

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 Defendants FREDDIE GLEN COLEMAN aka FRED COLEMAN and BARBARA  
3 ANN COLEMAN, Trustees of the FREDDIE COLEMAN & BARBARA ANN COLEMAN  
4 TRUST; LARRY GIACOMINO; DEANNA G. MOONEY, Trustee of the DEANNA G.  
5 MOONEY TRUST; STEVEN P. WALLACE, Trustee of the STEVEN P. WALLACE TRUST;  
6 JOSEPH M. NELSON, JR., Trustee of the JOSEPH M. NELSON, JR. TRUST; JOSEPH F.  
7 SCHULTZ and KARIN V. TRUST, Trustees of the JOSEPH F. and KARIN V. SCHULTZ  
8 TRUST; LARRY LEE VAUGHN and KARIN LOUANNE VAUGHN (hereinafter  
9 “defendants”) bring this motion to the Court for leave to file a cross-complaint in this action.  
10 Attached hereto and incorporated herein is the Declaration of Nicholas D. Yonano, Esq.  
11 (“Yonano Declaration”). This motion is made pursuant to California Rules of Court, Rules  
12 3.1110 et seq. and California Code of Civil Procedure Sections 426.50 and 428.50©.  
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15 Defendants have been represented since case inception by Scott Ward, Esq.  
16 Defendants recently substituted Nicholas D. Yonano, Esq. as their attorney of record. The  
17 change in counsel was necessitated by a breakdown in the attorney-client relationship  
18 between Mr. Ward and the defendants, specifically related to communications lines  
19 between attorney and clients as well as general case strategy and the lack of progress  
20 toward discovery.  
21

22 Defendants understand that the Court granted defendants’ prior motion for leave to  
23 file a cross-complaint, yet this approved pleading was not filed by prior counsel.  
24 Defendants maintain that this development occurred primarily due to an attorney-client  
25 misunderstanding of the direction of this case and what needed to be done to resolve a  
26 core issue of which entity should be providing essential and non-essential services to  
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1 defendants' properties in the past as well as in the future.

2 Defendants also understand that the Court-approved cross-complaint was limited to  
3 a declaratory relief cause of action, and did not adequately address the underlying  
4 relationship dispute between the parties and proposed co-defendants. It is defendants'  
5 desire to have this matter either settled or tried once the proper pleadings are in place and  
6 the facts underlying the core issue in this case are properly discovered.

7 The proposed cross-complaint, attached to the Yonano Declaration, includes causes  
8 of action that address the true nature of the relationship between the parties, as well as  
9 newly formed entities that are essentially designed to replace plaintiff as a service provider  
10 for the neighborhood where defendants reside. These include, a cause of action for quiet  
11 title related to road ownership and maintenance, a cause of action for nuisance and for a  
12 permanent injunction (depending on status of ownership), a cause of action for accounting,  
13 and four causes of action for orders of the Court declaring the rights and obligations of the  
14 parties with respect to the services and amenities provided to their subdivision and the  
15 assessments imposed.

16 To the extent the Court finds that the cross-complaint against these proposed cross-  
17 defendants is "permissive", defendants submit that leave may be granted in the interests of  
18 justice at any time during the course of action. California Code of Civil Procedure Section  
19 428.50©. Should the Court determine that these causes of action are "compulsory", the  
20 Court must grant leave unless the defendants are acting in bad faith. California Code of  
21 Civil Procedure Section 426.50.

22 Defendants submit that their position thus far, in light of the breakdown in  
23 communication with and subsequent change in counsel, does not constitute bad faith on  
24 any of their parts. A "strong showing of bad faith [must] be made" to support a denial of a  
25 right to file a compulsory cross-complaint. Foot's Transfer & Storage Co. v. Superior Court,  
26 114 Cal.App.3d 897, 902, 171 Cal.Rptr.1 (1980); see also Silver Organizations Ltd. et al vs.  
27

1 Frank, 217 Cal.App.3d 94, 100, 101, 265 Cal.Rptr. 681 (1990). "It is preferable that the  
2 parties have their day in court." Foot's, *supra* at 904.

3 Defendants submit that the granting of this motion will not result in any prejudice to  
4 the parties or witnesses. It is well within the interest of the entire community involved here,  
5 and especially the entity or entities that propose to be providing services and amenities to  
6 the community, that the proper structure is reviewed and determined by a court of law for  
7 all to abide by. This can only be accomplished by placing not just a collection of one  
8 annual assessment before this Court, but by placing all of the foundational issues in front of  
9 the Court as well.

10 Defendants prepared and filed this motion and the proposed cross-complaint as  
11 soon as reasonably practical upon Mr. Yonano's involvement as attorney of record for  
12 defendants. Defendants believe that in weighing all the factors in this case, the filing of the  
13 proposed cross-complaint would best serve the interests of justice and allow the parties to  
14 properly address the issues between them.

15 Whether the proposed cross-defendants, or any of them, have the right to provide  
16 and charge for, or to continue to have the right to provide and charge for, services and  
17 amenities to the subdivision, is not properly addressed in the complaint on file. Nor is the  
18 issue of whether the form and procedure for imposing the assessments valid, before this  
19 Court. Defendants seek a meaningful forum to address the fundamental question of what  
20 obligations they, as landowners, have toward this or other unnamed entities, now and into  
21 the future.

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1 In light of the foregoing, defendants respectfully request that the Court permit  
2 defendants leave to file the proposed cross-complaint attached to the Yonano Declaration.  
3

4 Dated: February \_\_\_\_, 2015

YONANO LAW OFFICES, P.C.

5  
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7 \_\_\_\_\_  
8 Nicholas D. Yonano, Esq.  
9 Attorney for Defendants  
10 FREDDIE GLEN COLEMAN aka FRED  
11 COLEMAN and BARBARA ANN  
12 COLEMAN, Trustees of the FREDDIE  
13 COLEMAN & BARBARA ANN COLEMAN  
14 TRUST; LARRY GIACOMINO; DEANNA G.  
15 MOONEY, Trustee of the DEANNA G.  
16 MOONEY TRUST; STEVEN P. WALLACE,  
17 Trustee of the STEVEN P. WALLACE  
18 TRUST; JOSEPH M. NELSON, JR.,  
19 Trustee of the JOSEPH M. NELSON, JR.  
20 TRUST; JOSEPH F. SCHULTZ and KARIN  
21 V. TRUST, Trustees of the JOSEPH F. and  
22 KARIN V. SCHULTZ TRUST; LARRY LEE  
23 VAUGHN and KARIN LOUANNE VAUGHN  
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**DECLARATION OF NICHOLAS D. YONANO, ESQ.**  
**IN SUPPORT OF MOTION FOR LEAVE TO FILE CROSS-COMPLAINT**

I, Nicholas D. Yonano, hereby declare:

1. I am the attorney at law duly admitted to practice before all of the courts of the State of California and the attorney of record herein for defendants FREDDIE GLEN COLEMAN aka FRED COLEMAN and BARBARA ANN COLEMAN, Trustees of the FREDDIE COLEMAN & BARBARA ANN COLEMAN TRUST; LARRY GIACOMINO; DEANNA G. MOONEY, Trustee of the DEANNA G. MOONEY TRUST; STEVEN P. WALLACE, Trustee of the STEVEN P. WALLACE TRUST; JOSEPH M. NELSON, JR., Trustee of the JOSEPH M. NELSON, JR. TRUST; JOSEPH F. SCHULTZ and KARIN V. TRUST, Trustees of the JOSEPH F. and KARIN V. SCHULTZ TRUST; LARRY LEE VAUGHN and KARIN LOUANNE VAUGHN. If called upon, I can and will testify to the following from personal knowledge, except where stated upon information and belief.

2. This Declaration is made in support of defendants' motion for leave to file the proposed cross-complaint attached as Exhibit A, which is incorporated herein. I have informed Mr. Timothy Trujillo, counsel for plaintiff, that we will be making this request of the Court.

3. This motion stems from my clients' interest in addressing the relationship of the plaintiff and the other proposed cross-defendants with respect to the provision of services to their subdivision. From what I now know of this case, the history involves much

1 more than whether a landowner should pay an invoice for services and amenities. It goes  
2 much deeper, and as far back as 1975.

3           4.       I believe there is good cause to grant this motion for leave to file the cross-  
4 complaint, and further believe that the ends of justice can only be served by permitting the  
5 parties to address the underlying issues involving this subdivision before this Court. I do  
6 not believe that there has been any form of bad faith on the part of any of the proposed  
7 cross-complainants, as the timing of the filing of this motion, as well as the decision to not  
8 file the prior approved cross-complaint, was a result of a miscommunication and  
9 misunderstanding between proposed cross-complainants and their prior counsel. This  
10 confusion was somewhat understandable given the large number of parties/clients who live  
11 in different areas, and the complexity of the underlying issues involving their dispute with  
12 plaintiff and other entities or persons.

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14  
15           5.       This motion was prepared and filed as soon as possible after our office was  
16 substituted in as counsel for the defendants named above. I do not believe that the  
17 granting of this motion will cause prejudice to any of the parties named in the cross-  
18 complaint, and certainly believe that it will be beneficial to all involved to seek a final  
19 determination of their rights and obligations with respect to their subdivision. I believe that  
20 this proposed cross-complaint addresses the relationship of the parties with respect to  
21 services provided to their property and is the best means to achieve justice in this matter.

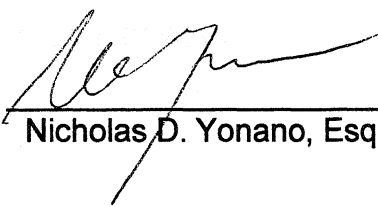
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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 16<sup>th</sup> day of February 2015, at El Dorado Hills, El Dorado County, California.

  
\_\_\_\_\_  
Nicholas D. Yonano, Esq.

**EXHIBIT A**

**PROPOSED CROSS-COMPLAINT**

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1 Nicholas D. Yonano, CSB #157277  
2 YONANO LAW OFFICES, P.C.  
3 4944 Windplay Drive, Suite 119  
4 El Dorado Hills, CA 95762  
5 (916) 817-4422  
6 (916) 817-4433 facsimile  
7 [nick@yonanolaw.com](mailto:nick@yonanolaw.com)

8 Attorney for Defendants and Cross-Complainants  
9 FREDDIE GLEN COLEMAN aka FRED COLEMAN and BARBARA ANN COLEMAN,  
10 Trustees of the FREDDIE COLEMAN & BARBARA ANN COLEMAN TRUST; LARRY  
11 GIACOMINO; DEANNA G. MOONEY, Trustee of the DEANNA G. MOONEY TRUST;  
12 STEVEN P. WALLACE, Trustee of the STEVEN P. WALLACE TRUST; JOSEPH M.  
13 NELSON, JR., Trustee of the JOSEPH M. NELSON, JR. TRUST; JOSEPH F.  
14 SCHULTZ and KARIN V. TRUST, Trustees of the JOSEPH F. and KARIN V.  
15 SCHULTZ TRUST; LARRY LEE VAUGHN and KARIN LOUANNE VAUGHN

11 SUPERIOR COURT OF CALIFORNIA  
12 IN AND FOR THE COUNTY OF TUOLUMNE

14 ODD FELLOWS SIERRA RECREATION)  
15 ASSOCIATION, a California )  
16 corporation, )

17 Plaintiff, )

20 vs. )

23 CHARLES P. VARVAYANIS and )  
24 PATRICIA JONES; FREDDIE GLEN )  
25 COLEMAN aka FRED COLEMAN and )  
26 BARBARA ANN COLEMAN, Trustees )  
27 of the FREDDIE COLEMAN & )  
28 BARBARA ANN COLEMAN TRUST; )  
JEWEL RUTH DARGITZ; LARRY LEE )  
VAUGHN and KARIN LOUANNE )

Case No. CVL 58100

[PROPOSED] VERIFIED  
CROSS-COMPLAINT FOR:

- 1. Action to Declare Assessments Invalid and Of No Effect
- 2. Action to Declare Form of Assessments Invalid and Of No Effect
- 3. Quiet Title
- 4. Permanent Injunction
- 5. Abatement of Nuisance
- 6. Accounting
- 7. Action to Determine Obligations of Landowners
- 8. Declaratory Relief

Trial Date: April 22, 2015  
M.S.C. Date: February 17, 2015

1 VAUGHN: STEVEN P. WALLACE, )  
Trustee of the STEVEN P. WALLACE )  
2 TRUST; RUDY ALDAMA, GLENN )  
DALZEL, CHRISTINE FOREMAN, JUAN )  
3 TOVAR, and MAE TOVAR; HAROLD )  
4 BABB and MARY BABB; PHILIP )  
BARTHMAN, SUSAN BOLT- )  
5 BARTHMAN, RICHARD QUINN, and )  
CHRISTINE QUINN; JOSEPH G. )  
6 BONJEAN and GLORIA BONJEAN; )  
7 PATRICIA L. BREMICKER, Trustee of )  
the PATRICIA L. BREMICKER TRUST )  
8 ERIC CANALES aka ERIC K. )  
CANALES and CATHERINE CANALES;) )  
9 GREGORY J. COLLINS, SR., and )  
HEIDI M. COLLINS; JOSE ANGEL )  
10 GARCIA and DEBORAH L. GARCIA; )  
LARRY V. GIACOMINO and JILL S. )  
11 FORESTER; LOUIE J. KAZAS and )  
12 CLEO KAZAS, Trustees of the LOUIE )  
J. & CLEO KAZAS TRUST; MILDRED )  
13 KERN; ONITA POMBO and DOROTHY )  
K. LEIGHTON; GERALD W. JOHNSTON )  
14 STEVEN G. JOHNSTON and SHARON )  
LORENZ; DEANNA G. MOONEY, )  
15 Trustee of the DEANNA G. MOONEY )  
TRUST; JOSEPH M. NELSON, JR., )  
16 Trustee of the JOSEPH M. NELSON, )  
17 JR., TRUST; MICHAEL J. PERRY and )  
KATHERINE M. PERRY; WILLIAM D. )  
18 PIECH and CLARE THOMPSON, )  
Trustees of the WILLIAM D. PIECH and )  
19 CLARE THOMPSON TRUST; TIMOTHY )  
20 J. PLAZA and DARANN P. PLAZA; )  
BETTY L. SALOMON, Trustee of the )  
21 BETTY L. SALOMON TRUST; JOSEPH )  
F. SCHULTZ and KARIN V. SCHULTZ, )  
22 Trustees of the JOSEPH F. & KARIN V. )  
SCHULTZ TRUST; SCOTT R. THOMAS )  
23 and BRANDI L. THOMAS; JOHN DAVID )  
WEITZEL and NANCY ANNE WEITZEL, )  
24 Trustees of the JOHN DAVID WEITZEL )  
and NANCY ANNE WEITZEL TRUST; )  
25 and Does 1 through 30, inclusive, )  
26 )  
27 Defendants. )  
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**FREDDIE GLEN COLEMAN aka FRED  
COLEMAN and BARBARA ANN  
COLEMAN, Trustees of the FREDDIE  
COLEMAN & BARBARA ANN  
COLEMAN TRUST; LARRY  
GIACOMINO; DEANNA G. MOONEY,  
Trustee of the DEANNA G. MOONEY  
TRUST; STEVEN P. WALLACE,  
Trustee of the STEVEN P. WALLACE  
TRUST; JOSEPH M. NELSON, JR.,  
Trustee of the JOSEPH M. NELSON,  
JR. TRUST; JOSEPH F. SCHULTZ and  
KARIN V. TRUST, Trustees of the  
JOSEPH F. and KARIN V. SCHULTZ  
TRUST; LARRY LEE VAUGHN and  
KARIN LOUANNE VAUGHN,**

**Cross-Complainants,**

**vs.**

**ODD FELLOWS SIERRA  
RECREATION ASSOCIATION, INC., a  
California corporation; SIERRA PARK  
WATER COMPANY, INC., a California  
corporation; SIERRA PARK  
SERVICES, INC., a  
California corporation; and  
ROES 1-25, inclusive,**

**Cross-Defendants.**

20 Cross-complainants FREDDIE GLEN COLEMAN aka FRED COLEMAN and  
21 BARBARA ANN COLEMAN, Trustees of the FREDDIE COLEMAN & BARBARA ANN  
22 COLEMAN TRUST; LARRY GIACOMINO; DEANNA G. MOONEY, Trustee of the  
23 DEANNA G. MOONEY TRUST; STEVEN P. WALLACE, Trustee of the STEVEN P.  
24 WALLACE TRUST; JOSEPH M. NELSON, JR., Trustee of the JOSEPH M. NELSON,  
25 JR. TRUST; JOSEPH F. SCHULTZ and KARIN V. TRUST, Trustees of the JOSEPH  
26 F. and KARIN V. SCHULTZ TRUST; LARRY LEE VAUGHN and KARIN LOUANNE  
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1 VAUGHN (hereinafter "cross-complainants") and file this cross-complaint against  
2 cross-defendants ODD FELLOWS SIERRA RECREATION ASSOCIATION, INC.,  
3 SIERRA PARK WATER COMPANY, INC., SIERRA PARK SERVICES, INC.,  
4 (hereinafter collectively "cross-defendants"), and allege as follows:

5  
6 **STATEMENT OF FACTS**

7 1. Cross-complainants are each named defendants in this action and are  
8 residents of the State of California. Cross-complainants are property owners in the  
9 subdivision known as I.O.O.F. Odd Fellows Sierra Camp Subdivision No.1 and No.2  
10 (hereinafter "subdivision"), whether as an individual and/or as settlor of an inter vivos  
11 trust. As such, cross-complainants are included herein in what is referred to herein as  
12 "lot owners", or lot owners within the subdivision. Cross-complainants are end users  
13 of some of the services and amenities provided by cross-defendant ODD FELLOWS  
14 SIERRA RECREATION ASSOCIATION, INC., and do not offer or sell any of said  
15 services or amenities to other users.  
16

17 2. Cross-defendant ODD FELLOWS SIERRA RECREATION  
18 ASSOCIATION, INC. (hereinafter "cross-defendant RECREATION ASSOCIATION") is  
19 a corporation registered to do business in the State of California, and is the named  
20 plaintiff in this action by virtue of a complaint filed by it against cross-complainants.  
21 Though initially formed as a nonprofit mutual benefit corporation in 1949, cross-  
22 defendant RECREATION ASSOCIATION apparently converted to a for-profit entity in  
23 1986.  
24

25 2. Cross-defendant SIERRA PARK WATER COMPANY, INC. (hereinafter  
26 "cross-defendant SIERRA PARK WATER ") is a California corporation registered to do  
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1 business in the State of California. Cross-defendant SIERRA PARK WATER is  
2 currently providing water service to the subdivision ---- and cross-complainants  
3 contend that cross-defendant SIERRA PARK WATER is slated by cross-defendant  
4 RECREATION ASSOCIATION to take over ownership and control of the water system  
5 described herein.

6  
7 3. Cross-defendant SIERRA PARK SERVICES, INC. (hereinafter "cross-  
8 defendant SIERRA PARK SERVICES") is a California corporation registered to do  
9 business in the State of California. Cross-defendant SIERRA PARK SERVICES will  
10 soon be providing services other than water delivery to lot owners, including cross-  
11 complainants, unless and until it is prohibited by this Court. Cross-complainants  
12 contend that cross-defendant SIERRA PARK SERVICES is slated by cross-defendant  
13 RECREATION ASSOCIATION to take over ownership and control of seventy acres of  
14 property inside the boundary of the subdivision that is currently owned by cross-  
15 defendant RECREATION ASSOCIATION though this property is not legally a part of  
16 the subdivision as owned by lot owners.

17  
18 4. Cross-complainants are ignorant of the true names and capacities of  
19 cross-defendants sued herein as ROES 1 - 25, inclusive, and therefore sue these  
20 cross-defendants by such fictitious names. Cross-complainants will amend this  
21 complaint to allege their true names and capacities when ascertained. Cross-  
22 complainants are informed and believe and thereon allege that each of the fictitiously  
23 named cross-defendants is responsible in some manner for the occurrences herein  
24 alleged, and that cross-complainants' damages as herein alleged were proximately  
25 caused by their conduct.  
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1           5.       Cross-defendants, and each of them, are agents and employees of their  
2 co-cross-defendants and in doing the things hereafter alleged were acting in the scope  
3 and course of their agency and with permission and consent of their co-cross-  
4 defendants.

5  
6           6.       The subdivision consists of approximately 365 lots, including lots owned  
7 by cross-complainants and two lots owned by cross-defendant RECREATION  
8 ASSOCIATION. One lot owned by the latter is improved with what is known as a  
9 caretaker's cabin, intended for residence by a live-in caretaker employed by cross-  
10 defendant RECREATION ASSOCIATION. The other lot owned by cross-defendant  
11 RECREATION ASSOCIATION is unimproved. Cross-complainants believe that the  
12 caretaker employee is hired to maintain the property belonging to cross-defendant  
13 RECREATION ASSOCIATION, including both real and personal property. At times  
14 this employee performs work on the subdivision roads that are described herein.  
15

16           7.       Cross-complainants understand that cross-defendant RECREATION  
17 ASSOCIATION also owns real property surrounding the subdivision, including over  
18 420 acres of timberland, and approximately seventy acres of property not legally part  
19 of the subdivision owned by lot owners and improved with structures or facilities for a  
20 lodge hall/recreation hall, baseball diamond, picnic area, small pond, and a water  
21 system. The timberland owned by cross-defendant RECREATION ASSOCIATION is  
22 utilized by the same for harvesting timber and selling it at a profit that apparently is not  
23 passed to lot owners. The water system owned by cross-defendant RECREATION  
24 ASSOCIATION and/or cross-defendant SIERRA PARK WATER consists of several  
25 wells, a water storage system, and a water distribution system (hereinafter "water  
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1 system"). Cross-defendant RECREATION ASSOCIATION also maintains that it has  
2 full ownership of the roads within the subdivision.

3 8. Cross-defendant RECREATION ASSOCIATION'S real property contains  
4 a lodge hall/recreation hall, picnic area, baseball diamond, and small pond (hereinafter  
5 "amenities"), including the structures thereupon. The use of these amenities is  
6 available for use by lot owners within the subdivision, including cross-complainants,  
7 provided certain requirements are met, including the payment of an assessment to  
8 cross-defendant RECREATION ASSOCIATION and in some cases, a user fee for the  
9 applicable amenity. Through 1986, this assessment could be recovered by the  
10 homeowners' association formed by cross-defendant RECREATION ASSOCIATION,  
11 but there was only one member of this homeowners' association, cross-defendant  
12 RECREATION ASSOCIATION. Further, cross-defendant RECREATION  
13 ASSOCIATION was only permitted by law to collect an assessment, or any form of  
14 assessment, from their shareholders, which did not necessarily include all lot owners.  
15 Cross-defendant RECREATION ASSOCIATION never paid an assessment until 2013,  
16 when it had then proceeded to form two new corporations, cross-defendant SIERRA  
17 PARK WATER and SIERRA PARK SERVICES.

18 9. The water system provides regular water delivery to the homes and  
19 structures in the subdivision and the approximately seventy acres of property owned  
20 by cross-defendant RECREATION ASSOCIATION within the area of the subdivision.  
21 Cross-defendant RECREATION ASSOCIATION applied to form a community services  
22 district in October 2012 and the shareholders of cross-defendant RECREATION  
23 ASSOCIATION approved the transfer of the water system to this community services  
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1 district, yet the formation of this district was thereafter disbanded and never  
2 completed. The water system has been operated by cross-defendant SIERRA PARK  
3 WATER since approximately June 2013. There is a pending proceeding before the  
4 California Public Utilities Commission (Case No. C-1203017) regarding water service  
5 to the subdivision, and there is an interim CPUC order requiring water service to be  
6 “unbundled” from other services and accounted for by its provider. This proceeding  
7 may result in the water system being transferred to cross-defendant SIERRA PARK  
8 WATER pursuant to its application for a Certificate of Public Convenience and  
9 Necessity to Operate a Public Utility Water System.

11           10. The roads within the subdivision and leading to and from the homes  
12 within the subdivision, including residences owned by cross-complainants, is subject to  
13 obstruction by locked gates and an automatic gate that was installed on Wheeler Road  
14 in or around 1997 by cross-defendant RECREATION ASSOCIATION. This automatic  
15 gate was recently relocated to a location near the entrance to the subdivision, and can  
16 be opened by lot owners or any other person who either has a remote or knows the  
17 current code. Cross-defendant RECREATION ASSOCIATION maintains this  
18 automatic gate and charges lot owners for the maintenance of this gate by bundling  
19 the charge with other services and amenities.

22           11. It is alleged that the roads within the subdivision are owned by the lot  
23 owners, including cross-complainants. These roads were offered for dedication to the  
24 County of Tuolumne in 1950 and 1959 but were not accepted. Cross-complainants  
25 have paid and continue to pay property taxes on the property constituting the road, to  
26 the center of the road from each respective property.

1           12. To the extent it is determined that they do not have ownership of the  
2 roads within the subdivision, the lot owners, including cross-complainants, hold and  
3 have a non-exclusive easement for ingress and egress to their property and within the  
4 subdivision, to the burden of the servient tenement. Under California law, that non-  
5 exclusive easement cannot be obstructed or interfered with by third parties or the  
6 servient tenement. The installation of the automated gate, without the express  
7 permission of cross-complainants, constitutes an illegal obstruction and interference  
8 with said easement, and interferes with the use and enjoyment of the easement by  
9 cross-complainants. The imposition of charges related to the expense of maintaining  
10 the easement, including the gates if determined to be legal and appropriate, can only  
11 be administered pursuant to California law, including Civil Code Section 845.  
12

13  
14           13. There was a Declaration of Covenants, Conditions, and Restrictions in  
15 place for the subdivision until the expiration of the same in 1975. Subsequent to the  
16 expiration of said Declaration of Covenants, Conditions, and Restrictions, cross-  
17 defendant RECREATION ASSOCIATION discussed and then took steps,  
18 approximately eleven years later, to implement a new declaration of covenants,  
19 conditions, and restrictions (hereinafter generally "CC&Rs"), including drafting CC&Rs  
20 and offering them for recording by the various individual lot owners. The proposed  
21 CC&Rs did not bind those signing them to cross-defendant RECREATION  
22 ASSOCIATION, but instead to the newly-proposed homeowners' association,  
23 described in paragraph 16 of this cross-complaint. Up until approximately early 2011,  
24 only one lot had CC&Rs recorded against it,--the lot owned by cross-defendant  
25 RECREATION ASSOCIATION and improved by the caretaker/employee's cabin.  
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1           14.    The bylaws require that CC&Rs be recorded against a lot for that owner  
2 to be a regular member, or shareholder. Further, the bylaws permitted a regular  
3 member, with recorded CC&Rs, to appoint a nominee for voting, but required that  
4 nominee to reside on the respective property burdened by the CC&Rs. At no time did  
5 cross-defendant RECREATION ASSOCIATION appoint its caretaker/employee, or any  
6 other person then residing in the caretaker's cabin, to be its nominee to serve on the  
7 homeowners' association board of directors from 1986 - 2011.  
8

9           15.    Cross-defendant RECREATION ASSOCIATION appointed an individual  
10 named Del Wallis to serve as its nominee. Cross-defendant RECREATION  
11 ASSOCIATION approved two classes of members, general members and regular  
12 members. The shareholders in this corporation were considered regular members,  
13 and non-shareholders were considered general members. The latter included cross-  
14 complainants and many other lot owners. The corporation permitted all members to  
15 vote on its budget, including assessments to lot owners, but only regular members to  
16 vote on directorships and other business of the corporation.  
17

18           16.    In or around 1986, cross-defendant RECREATION ASSOCIATION took  
19 steps to form what it termed a homeowners' association, and called it the Odd Fellows  
20 Sierra Homeowners Association (hereinafter "homeowners' association"). Formed as  
21 a nonprofit mutual benefit corporation, this entity served the purpose of providing one  
22 customer for cross-defendant RECREATION ASSOCIATION to provide water to, thus  
23 avoiding, in the latter's mind, a need for CPUC regulatory oversight of its water  
24 activities. The plan was to have the sole customer, the homeowners' association, then  
25 provide the water, and other services, to the lot owners. This continued from 1986 to  
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1 2012, when the homeowners' association was disbanded and cross-defendant  
2 RECREATION ASSOCIATION proceeded to then service and bill lot owners directly,  
3 which was illegal since the homeowners' association was selling to non-members  
4 without CPUC regulatory oversight. The plan essentially "worked" for cross-defendant  
5 RECREATION ASSOCIATION for many years since it misled lot owners into paying  
6 this assessment. At present, the homeowners' association no longer exists as an  
7 active entity with the Secretary of State or Franchise Tax Board. During most of its  
8 existence, it is alleged that the only member of the homeowners' association was  
9 cross-defendant RECREATION ASSOCIATION.  
10

11 17. The bylaws of cross-defendant RECREATION ASSOCIATION further  
12 provided that the board of directors for the recreation association would also serve as  
13 the board of directors for the homeowners' association, based on the fact that cross-  
14 defendant RECREATION ASSOCIATION owned the only property in the subdivision  
15 with CC&Rs. Between October 1986 and May 2011, the officers and directors of the  
16 homeowners' association were the same as the officers and directors of cross-  
17 defendant RECREATION ASSOCIATION, even though the bylaws of the  
18 homeowners' association required a nine-member board and each representative had  
19 to live on property with CC&Rs recorded against it. Moreover, the board of cross-  
20 defendant RECREATION ASSOCIATION was elected only by a portion of the lot  
21 owners, those persons who were dues-paying members.  
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24 18. Between the years of 1986 and 2012, cross-defendant RECREATION  
25 ASSOCIATION purported to provide services and amenities to the lot owners,  
26 including cross-complainants, and to assess the lot owners pursuant to a vote on the  
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1 assessment by its shareholders and a small minority of the non-shareholder lot  
2 owners. The assessment for the unverified expense of these services and amenities  
3 was approved each year by a vote of cross-defendant RECREATION ASSOCIATION  
4 shareholders and a small minority of non-shareholder lot owners attending the  
5 shareholder meeting as non-members of cross-defendant RECREATION  
6 ASSOCIATION. What cross-defendant RECREATION ASSOCIATION terms as a  
7 notice was provided annually to lot owners through a newsletter to lot owners. Cross-  
8 complainants were among the lot owners who routinely received this invitation to  
9 attend and vote on the upcoming budget and assessment. Most of cross-complainants  
10 and a majority of lot owners were not shareholders of cross-defendant RECREATION  
11 ASSOCIATION and did not have CC&Rs recorded against their property.

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14 19. When it was incorporated in 1986, the homeowners' association  
15 purportedly executed two separate agreements with cross-defendant RECREATION  
16 ASSOCIATION—a Water Use Agreement, for the provision of water indirectly to lot  
17 owners through the homeowners' association, and a License Agreement, for a license  
18 to use the roads and property of cross-defendant RECREATION ASSOCIATION.  
19 Both were signed by Del Wallis, a board member for both entities. It is alleged herein  
20 that, though both have expired, each and both were illegal and void for failure to be  
21 properly executed. In fact, each was executed by an entity with only one member,  
22 with questionable existence, and by questionable means.

23  
24 20. The CC&Rs that were recorded against the real property of the lot  
25 owners expired in 1975. Those CC&Rs contained language approving an assessment  
26 to lot owners of the subdivision, which at the time was a valid equitable servitude. At  
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1 no time have new or different CC&Rs been recorded against many of the lot owners'  
2 real property, including the real property of cross-complainants; by 2011 there were  
3 approximately ten properties with CC&Rs recorded, including the caretaker's cabin lot.  
4 Since 1975, none of the real property owned by cross-complainants has been  
5 burdened by equitable servitudes in the form of CC&Rs, requiring them to be on notice  
6 by cross-defendant RECREATION ASSOCIATION or obligating them to pay  
7 assessments approved by cross-defendants and the homeowners' association.  
8

9 21. Since it became evident that the homeowners' association was not  
10 adding members, since few if any lot owners were willing to have CC&Rs recorded  
11 against their property in favor of this entity, cross-defendant RECREATION  
12 ASSOCIATION acting as the homeowners' association decided in May 2011 to have  
13 all lot owners in the subdivision become members of the homeowners' association  
14 regardless of CC&Rs. There was no consent given by the lot owners, nor were there  
15 payments approved or made by lot owners or membership cards issued to lot owners  
16 who did not pay for the membership. There was no form of a sign-up list made  
17 available to for those lot owners desiring to become members of the homeowners'  
18 association.  
19  
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21 22. In December 2011, the shareholders of cross-defendant RECREATION  
22 ASSOCIATION voted to allow the Water Use Agreement and License Agreement to  
23 expire, as of January 2012. At this point, cross-defendant RECREATION  
24 ASSOCIATION decided to "bypass" the homeowners' association that it had formed,  
25 and to directly bill lot owners for water service.  
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1           23. On or around May 27, 2012, seven of the eight remaining board  
2 members of the homeowners' association, upon concluding that they were probably  
3 not legal members of the homeowners' association, resigned from this board.

4           24. On or around May 27, 2012, and on the same date that the board  
5 members of the homeowners' association resigned, cross-defendant RECREATION  
6 ASSOCIATION at its annual meeting, approved an assessment for its services and  
7 amenities to the subdivision. The amount of the assessment was \$1,024.00  
8 (hereinafter "12-13 assessment") per lot owned by lot owners other than cross-  
9 defendant RECREATION ASSOCIATION, based on a budget of \$372,736.00 for  
10 services and amenities (for fiscal period between June 1, 2012 and May 31, 2013).  
11 This 12-13 assessment was voted upon and "approved" by the vote of its shareholders  
12 along with the vote of non-members of this private, for-profit corporation. Further, this  
13 12-13 assessment did not separate or itemize services and amenities, and provided a  
14 limited explanation to the assessed property owner as to how the figure was arrived at  
15 for each service and/or amenity. Further, there was no breakdown of the expenses  
16 attributed to the assessment for the timberland acreage owned by cross-defendant  
17 RECREATION ASSOCIATION for its own private use and profit.

18           25. Most lot owners, including cross-complaints, rarely if ever utilize the  
19 amenities. In fact, cross-complainants maintain and allege that the amenities are in  
20 general disrepair or are of low quality, and further, that each of the amenities fails to  
21 contribute to the property value of the subdivision lots but actually diminishes the  
22 property value of the subdivision lots.  
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1           26.    The 12-13 assessment was approved by some of the lot owners with a  
2 majority of those voting being lot owners who were shareholders of cross-defendant  
3 RECREATION ASSOCIATION. The vote on the 12-13 assessment was conducted  
4 pursuant to an invitation sent to all lot owners in a newsletter. The 12-13 assessment  
5 was not approved by a vote, whether majority or otherwise, of the lot owners with  
6 CC&Rs recorded against their property which contained a provision for assessment.  
7

8           27.    Cross-complainants believe that future assessments will continue in the  
9 same or similar manner as the 2013 assessment, though either or all of the cross-  
10 defendants, unless and until it is prohibited and enjoined by this Court. Moreover,  
11 cross-complainants contend and allege that the services and amenities will be  
12 provided in large part by cross-defendant SIERRA PARK WATER and SIERRA PARK  
13 SERVICES, as these entities were recently formed by principals of cross-defendant  
14 RECREATION ASSOCIATION for these purposes.  
15

16           28.    During 2012-2013, the services of the caretaker, or cross-defendant  
17 RECREATION ASSOCIATION'S employee, included the repair, upkeep, and  
18 maintenance of property within the boundary of the subdivision, including property  
19 owned by cross-defendant RECREATION ASSOCIATION for the use and benefit of lot  
20 owners and separately, for the use and benefit of only the cross-defendant  
21 RECREATION ASSOCIATION. Yet, the salary and pay for this paid employee of  
22 cross-defendant RECREATION ASSOCIATION was included in the bundled charge  
23 and assessment to the lot owners, including cross-complainants. Moreover, the  
24 equipment that was and is used to provide services and amenities to the subdivision is  
25 claimed to be owned by cross-defendant RECREATION ASSOCIATION yet the full  
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1 cost of purchasing, maintaining and repairing this equipment is allegedly charged to  
2 the lot owners, including cross-complainants.

3 WHEREFORE, cross-complainants pray judgment against cross-defendants as  
4 hereinafter set forth.

5  
6 **First Cause of Action**  
7 **(Action to Declare Assessments Invalid and Of No Effect)**

8 29. Cross-complainants incorporate paragraphs 1 through 28 herein by  
9 reference and further allege:

10 30. Cross-defendant RECREATION ASSOCIATION has assessed cross-  
11 complainants with an annual assessment based on its unverified expenses in  
12 providing services and amenities to the subdivision, including lot owners (hereinafter  
13 "Assessments"). These expenses include a) the salary for its employee in maintaining  
14 property and equipment belonging solely to cross-defendant RECREATION  
15 ASSOCIATION and providing no benefit, pecuniary or otherwise, to cross-  
16 complainants; b) the cost of maintaining property and equipment belonging solely to  
17 cross-defendant RECREATION ASSOCIATION and providing no benefit, pecuniary or  
18 otherwise, to cross-complainants. Though the expenses remain unverified, cross-  
19 complainants do know and contend that a portion of the expenses are attributed each  
20 year to absolutely no benefit of cross-complainants.

21  
22 31. Moreover, the assessment is approved and enforced despite the lack of  
23 any equitable servitude or other type of covenant running with each cross-  
24 complainant's real property. There are no valid CC&Rs nor is there a valid, existing  
25 contract with lot owners, that allows cross-defendants to assess lot owners, whether  
26 presently, in the past, or in the foreseeable future. Further, the Assessment is and will  
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1 be promulgated and approved, both presently and in the future, by a private  
2 corporation that is not subject to the requirements of the Davis-Sterling Common  
3 Interest Development Act, and which is not properly authorized to assess lot owners  
4 who do not fall within a defined common interest development.

5 32. Any assessment, whether in the past, present, or contemplated future,  
6 by any of the cross-defendants, is an invalid assessment and is of no force and effect.  
7

8 33. Cross-complaints request an order of the Court that the Assessments  
9 are invalid and of no force and effect for the reasons stated herein, and order that this  
10 further Assessments be prohibited and permanently enjoined.

11 WHEREFORE, cross-complainants pray judgment against seller cross-  
12 defendants as hereinafter set forth.

13 **Second Cause of Action**

14 **(Action to Declare That Form of Imposing Assessments Renders**  
15 **Assessments Invalid and Of No Effect)**

16 34. Cross-complainants incorporate paragraphs 1 through 33 herein by  
17 reference and further allege:

18 35. Cross-complainants allege that the form of the assessment, including the  
19 procedure by which the assessment each year is approved and actually assessed,  
20 renders the Assessments invalid, in that:

21 a) the Assessments are based on expenses that are not verified and are  
22 bundled, without any form of itemization between services and amenities; some of  
23 these expenses can be attributed directly to sole property of cross-defendants which is  
24 of no benefit to the lot owners who are being assessed to pay for its upkeep;  
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1                   b) the Assessments are approved by a vote of non-shareholders to a  
2 private corporation that does not exclude property owners who are not shareholders.  
3 Therefore, the Assessments are approved through a procedure that permits non-  
4 property owners to bind property owners;

5                   c) the Assessments are approved pursuant to notice provided by a  
6 private, for-profit corporation on a newsletter directed to shareholders and non-  
7 shareholders.  
8

9           36. Any assessment, whether in the past, present, or contemplated future,  
10 by any of the cross-defendants, is an invalid assessment and is of no force and effect.

11           37. Cross-complaints request an order of the Court that the form and  
12 procedure for approving the Assessment and thereafter assessing cross-complainants  
13 with the Assessments renders the Assessments invalid and of no force and effect, and  
14 order that this form and procedure be prohibited and permanently enjoined.  
15

16           WHEREFORE, cross-complainants pray for judgment against cross-defendants  
17 as hereinafter set forth.

18                                                           **Third Cause of Action**  
19                                                           **(Quiet Title)**

20           38. Cross-complainants incorporate paragraphs 1 through 37 herein by  
21 reference and further allege:

22           39. Cross-complainants allege that each and all of them, and any lot owners  
23 within the subdivision, own the roads within the subdivision, to the extent that each lot  
24 owner owns his or her property to the center of the road abutting their respective  
25 property.  
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1 40. Cross-defendants and their successors claim ownership in the  
2 subdivision roads, which claimed interest is adverse to plaintiff.

3 41. Cross-complainants seek to quiet title against all adverse claims of  
4 cross-defendants. The adverse claims are without any right whatsoever, and cross-  
5 complainants seek an order of this Court quieting title and confirming ownership in the  
6 subdivision roads in the cross-complainants and all lot owners in the subdivision.  
7

8 WHEREFORE, cross-complainants pray judgment against cross-defendants as  
9 hereinafter set forth.

10 **Fourth Cause of Action**  
11 **(Abatement of Nuisance)**

12 42. Cross-complainants incorporate paragraphs 1 through 41 herein by  
13 reference and further allege:

14 43. As a result of cross-defendant RECREATION ASSOCIATION'S actions in  
15 constructing an automatic gate across the road leading in to the subdivision, cross-  
16 defendant RECREATION ASSOCIATION has created and maintains a nuisance, both  
17 public and private, to the detriment of cross-complainants and all lot owners.  
18

19 44. The acts of defendant have diminished the value of cross-complainants'  
20 real property, causing damages to cross-complainants in an amount to be determined  
21 at trial. Moreover, the loss and enjoyment of the use of their real property has caused  
22 general damages to cross-complainants in the form of inconvenience. Cross-  
23 complainants request an order of this Court that cross-defendants take any and all  
24 steps to abate the nuisance.  
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1               WHEREFORE, cross-complainants pray for judgment against cross-defendants  
2 as hereinafter set forth.

3                                                   **Fifth Cause of Action**  
4                                                   **(Permanent Injunction)**

5               45. Cross-complainants incorporate paragraphs 1 through 44 herein by  
6 reference and further allege:

7               46. To the extent it is determined that ownership of the subdivision roads lies  
8 with cross-defendant RECREATION ASSOCIATION, cross-complainants contend that  
9 the automatic gate obstructed across the road leading into the subdivision, interferes  
10 with cross-complainants' use and enjoyment of their easement for access and use of  
11 the subdivision roads.  
12

13              47. Cross-defendant RECREATION ASSOCIATION claims an interest in  
14 the easement, which interest is adverse to cross-complainants, in that cross-  
15 defendant RECREATION ASSOCIATION maintains that it is allowed to construct an  
16 obstruction on the road and therefore interfere with the easement.  
17

18              48. Cross-complainants seek a Court order and judgment to enforce cross-  
19 complainants' right and easement in the subdivision roads.  
20

21              49. The adverse claims of cross-defendant RECREATION ASSOCIATION  
22 are without any right whatever in the claimed easement, in that cross-complainants and  
23 all lot owners own the non-exclusive easement for ingress and egress across the  
24 subdivision roads. Accordingly, cross-defendants have no right, title, estate, lien, or  
25 interest whatsoever in the easement adverse to cross-complainants' right, title, estate,  
26 lien, and interest.  
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28

1           50.    Cross-complainants seek an order of this Court permanently enjoining  
2 cross-defendants from interfering with cross-complainants' non-exclusive easement  
3 across subdivision roads. The wrongful conduct of cross-defendants, unless  
4 restrained and enjoined by an order of the Court, will cause great and irreparable  
5 harm to cross-complainants and other lot owners in that the obstruction will continue as  
6 as a nuisance to lot owners in attempting to come and go from their subdivision.  
7 Cross-complainants have no adequate remedy at law for the injuries and  
8 inconvenience which cross-complainants have suffered and will continue to suffer in  
9 the future unless cross-defendants' wrongful conduct is restrained and enjoined,  
10 because it is and will be impossible for cross-complainants to determine the precise  
11 amount of damage, and no amount of money can restore the convenience and  
12 enjoyment which cross-complainants are being denied.  
13

14                 WHEREFORE, cross-complainants pray for judgment against cross-defendants  
15 as hereinafter set forth.  
16

17                                                 **Sixth Cause of Action**  
18                                                 **(Accounting)**

19           51.    Cross-complainants incorporate paragraphs 1 through 50 herein by  
20 reference and further allege:

21           52.    Cross-complainants are informed and believe, and on that basis allege,  
22 that an accounting is necessary in order to determine the details of cross-defendant  
23 RECREATION ASSOCIATION'S expenses and profits with respect to the property of  
24 cross-defendant RECREATION ASSOCIATION and the incurred expenses of cross-  
25 defendant RECREATION ASSOCIATION.  
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1           53. That an account be taken of all the expenses claimed by cross-  
2 defendant RECREATION ASSOCIATION in furtherance of cross-defendant  
3 RECREATION ASSOCIATION'S proposed Assessments in the last ten years, and all  
4 the money received by and paid to cross-defendant RECREATION ASSOCIATION.

5           WHEREFORE, cross-complainants pray for judgment against cross-defendants  
6 as hereinafter set forth.

7  
8                               **Seventh Cause of Action**  
9                               **(Action to Determine Obligations of Landowners)**

10           54. Cross-complainants incorporate paragraphs 1 through 53 herein by  
11 reference and further allege:

12           55. As lot owners within the subdivision, cross-complainants are subject to  
13 continuing annual assessments from cross-defendants, and each of them, for services  
14 and amenities which:

- 15           a) are proposed and assessed by a private, for-profit corporation with no authority  
16           to assess;
- 17           b) approved by non-shareholders of a private corporation;
- 18           c) are not offered to them as owners in a common interest development;
- 19           d) are not authorized by an equitable servitude recorded against their property;
- 20           e) are not authorized pursuant to a contract;
- 21           f) are not supported by verified costs and expenses;
- 22           g) are bundled without the ability to opt out of amenities;
- 23           h) are commingled with costs and expenses benefitting only the private  
24           corporation and its property.
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1 on assessments without being shareholders of a private corporation which they do not  
2 benefit from; and, cross-defendants maintain the converse, that cross-defendant  
3 RECREATION ASSOCIATION and its successor are permitted to maintain all services  
4 and amenities in the subdivision and assess lot owners for its unverified, bundled  
5 expenses, and to interfere with cross-complainants' access on subdivision roads, and  
6 to require assess lot owners for services and amenities, including services and  
7 amenities which solely benefit cross-defendants.  
8

9 60. Cross-complainants request that this Court find in favor of cross-  
10 complainants and provide declaratory relief in those issues addressed in this cause of  
11 action.

12 61. As a result of cross-defendants' actions, cross-complainants have  
13 suffered damages according to proof, and seek declaratory relief that cross-  
14 defendants' unilateral obstruction and interference of the subdivision road has  
15 damaged cross-complainants.  
16

17 WHEREFORE, cross-complainants pray for judgment against cross-defendants  
18 as hereinafter set forth.

19 62. Under Code of Civil Procedure Section 1021.5, attorneys' fees is  
20 appropriate here since cross-complainants have filed this complaint to pursue an  
21 important right affecting the public interest and public at-large. Should cross-  
22 complainants prevail, this action will benefit a large class of persons, namely all  
23 present and future lot owners in the subdivision. Cross-complainants allege on  
24 information and belief that the costs and fees in this action will be significant and that it  
25 would be unfair to require them to bear it, particularly since it is cross-defendants that  
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1 have made legal action necessary. Therefore, cross-complainants request that this  
2 Court award cross-complainants attorneys' fees incurred in the prosecution and  
3 defense of this action, including all causes of action.

4 WHEREFORE, cross-complainants pray for judgment against cross-  
5 defendants, and each of them, as hereinafter set forth.

6  
7 ON THE FIRST CAUSE OF ACTION:

- 8 1. For general damages in an amount to be determined at trial;
- 9  
10 2. For a declaration of this Court that the Assessments described herein as imposed  
11 by cross-defendants is invalid and of no force and effect;
- 12 3. For costs of suit and attorneys' fees incurred as authorized by statute; and
- 13  
14 4. For such other and further relief as this Court may deem just and proper.

15 ON THE SECOND CAUSE OF ACTION:

- 16 1. For general damages in an amount to be determined at trial;
- 17  
18 2. For a declaration of this Court that the form and procedure for imposing the  
19 Assessments described herein renders the Assessments invalid and of no force and  
20 effect;
- 21  
22 3. For costs of suit and attorneys' fees incurred as authorized by statute; and
- 23  
24 4. For such other and further relief as this Court may deem just and proper.

25 ON THE THIRD CAUSE OF ACTION:

- 26 1. For general damages in an amount to be proven at trial;
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2. For an order quieting title to the roads in the subdivision in favor of cross-complainants as against all adverse claims of cross-defendants, and a permanent injunction prohibiting cross-defendants and their agents and successors from interfering with cross-complainants' use and enjoyment of said roads.

3. For costs of suit and attorneys' fees incurred as authorized by statute; and

4. For such other and further relief as this Court may deem just and proper.

ON THE FOURTH CAUSE OF ACTION:

1. For general damages in an amount to be determined at trial;

2. For an order of this Court requiring cross-defendants, and each of them, to abate the nuisance of an automatic gate obstructing and interfering with cross-complainants' use and enjoyment of the subdivision roads;

3. For costs of suit and attorneys' fees incurred as authorized by statute; and

4. For such other and further relief as this Court may deem just and proper.

ON THE FIFTH CAUSE OF ACTION:

1. For general damages in an amount to be proven at trial;

2. Upon a trial on this matter, for an order of this Court that cross-defendants, and each of them, and their agents and employees be permanently enjoined from interfering with cross-complainants' use and enjoyment of its ownership and/or easement for the subdivision roads;

3. For costs of suit and attorneys' fees incurred as authorized by statute; and

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4. For such other and further relief as this Court may deem just and proper.

**ON THE SIXTH CAUSE OF ACTION:**

1. For an order of the Court that an account be taken of all the expenses claimed by cross-defendant RECREATION ASSOCIATION in furtherance of cross-defendant RECREATION ASSOCIATION'S proposed Assessments in the last ten years, and all the money received by and paid to cross-defendant RECREATION ASSOCIATION;
2. For costs of suit and attorneys' fees incurred as authorized by statute; and
3. For such other and further relief as this Court may deem just and proper.

**ON THE SEVENTH CAUSE OF ACTION:**

1. For a declaration of this Court that the obligations of cross-complainants do not include the payment of Assessments as imposed by cross-defendants, or any of them;
2. For costs of suit and attorneys' fees incurred as authorized by statute; and
3. For such other and further relief as this Court may deem just and proper.

**ON THE EIGHTH CAUSE OF ACTION:**

1. For a declaration of this Court that the Assessments are invalid and of no force and effect, and that cross-defendants are no longer permitted to impose Assessments upon cross-complainants under the present form and conditions of such Assessments, and that cross-defendants are prohibited from obstructing or interfering with cross-complainants' use of subdivision roads by the use of an automatic gate, and that cross-complainants' are the owners of the subdivision roads;

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- 2. For costs of suit and attorneys' fees incurred as authorized by statute; and
- 3. For such other and further relief as this Court may deem just and proper.

ON ALL CAUSES OF ACTION:

- 1. For general damages in an amount to be proven at trial;
- 2. For costs of suit and attorneys' fees incurred as authorized by statute; and
- 3. For such other and further relief as this Court may deem just and proper.

Dated: \_\_\_\_\_, 2015

YONANO LAW OFFICES, P.C.

By: \_\_\_\_\_  
 Nicholas D. Yonano, Esq.  
 Attorney for Cross-Complainants  
 FREDDIE GLEN COLEMANaka FRED  
 COLEMAN and BARBARA ANN  
 COLEMAN, Trustees of the  
 FREDDIE COLEMAN & BARBARA  
 ANN COLEMAN TRUST; LARRY  
 GIACOMINO; DEANNA G. MOONEY,  
 Trustee of the DEANNA G.  
 MOONEY TRUST; STEVEN P.  
 WALLACE, Trustee of the STEVEN P.  
 WALLACE TRUST; JOSEPH M.  
 NELSON, JR., Trustee of the JOSEPH  
 M. NELSON, JR. TRUST; JOSEPH F.  
 SCHULTZ and KARIN V. TRUST,  
 Trustees of the JOSEPH F. and  
 KARIN V. SCHULTZ TRUST; LARRY  
 LEE VAUGHN and KARIN LOUANNE  
 VAUGHN

VERIFICATION

I, the undersigned, am a citizen of the United States and a resident of the State of California, have read the foregoing Verified Cross-Complaint and declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct to the best of my belief and knowledge.

Date: \_\_\_\_\_, 2015 \_\_\_\_\_

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