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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. SCHULTZ, 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. CV 58100

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)
3 DALZEL, CHRISTINE FOREMAN, JUAN)
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;)
11 LARRY V. GIACOMINO and JILL S.)
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)
24 WEITZEL and NANCY ANNE WEITZEL,))
Trustees of the JOHN DAVID WEITZEL)
25 and NANCY ANNE WEITZEL TRUST;)
and Does 1 through 30, inclusive,)
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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. SCHULTZ, 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.

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Cross-complainants 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. SCHULTZ, Trustees of the
JOSEPH F. and KARIN V. SCHULTZ TRUST; LARRY LEE VAUGHN and KARIN

1 LOUANNE VAUGHN (hereinafter “cross-complainants”) and file this cross-complaint
2 against cross-defendants ODD FELLOWS SIERRA RECREATION ASSOCIATION,
3 INC., SIERRA PARK WATER COMPANY, INC., SIERRA PARK SERVICES, INC.,
4 (hereinafter collectively “cross-defendants”), and allege as follows:
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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.
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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.
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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.

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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.

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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.

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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.
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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.
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21 9. The water system provides regular water delivery to the homes and
22 structures in the subdivision and the approximately seventy acres of property owned
23 by cross-defendant RECREATION ASSOCIATION within the area of the subdivision.
24 Cross-defendant RECREATION ASSOCIATION applied to form a community services
25 district in October 2012 and the shareholders of cross-defendant RECREATION
26 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.
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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.
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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.
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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.

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.
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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.
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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.
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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.

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

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
14 **Second Cause of Action**

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

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

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

- 22 a) the Assessments are based on expenses that are not verified and are
23 bundled, without any form of itemization between services and amenities; some of
24 these expenses can be attributed directly to sole property of cross-defendants which is
25 of no benefit to the lot owners who are being assessed to pay for its upkeep;
26

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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56. Cross-complainants contend that any Assessment, whether in the past, present, or contemplated future, by any of the cross-defendants, is an invalid assessment and is of no force and effect, for the reasons stated herein.

57. Cross-complainants request that this Court review and determine that cross-complainants are not obligated to honor or pay present and future Assessments as described, and an order declaring that cross-complainants are not obligated to honor further obligations imposed by cross-defendants with respect to Assessments as described herein. Further, cross-complainants request an order of this Court declaring that the Assessments as currently formulated and imposed are invalid and of no force and effect, and should be prohibited and permanently enjoined.

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

**Eighth Cause of Action
(Declaratory Relief)**

58. Cross-complainants incorporate paragraphs 1 through 57 herein by reference and further allege:

59. An actual controversy has arisen and now exists between cross-complainants and cross-defendants regarding their respective rights and duties in that cross-complainants contend that cross-defendants do not have the authority to force cross-complainants to pay for certain services and amenities, do not have authority to assess lot owners for services and amenities, do not own the subdivision roads and/or do not have the right to interfere with the lot owners' use and enjoyment of the subdivision roads, whether through ownership or easement, and do not have the authority to force lot owners, including cross-complainants to attend meetings and vote

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
13 3. For costs of suit and attorneys' fees incurred as authorized by statute; and
14
15 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;
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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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1 2. For an order quieting title to the roads in the subdivision in favor of cross-
2 complainants as against all adverse claims of cross-defendants, and a permanent
3 injunction prohibiting cross-defendants and their agents and successors from
4 interfering with cross-complainants' use and enjoyment of said roads.
5

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

7 4. For such other and further relief as this Court may deem just and proper.
8

9 ON THE FOURTH CAUSE OF ACTION:

10 1. For general damages in an amount to be determined at trial;
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12 2. For an order of this Court requiring cross-defendants, and each of them, to
13 abate the nuisance of an automatic gate obstructing and interfering with cross-
14 complainants' use and enjoyment of the subdivision roads;

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

16 4. For such other and further relief as this Court may deem just and proper.
17

18 ON THE FIFTH CAUSE OF ACTION:

19 1. For general damages in an amount to be proven at trial;
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21 2. Upon a trial on this matter, for an order of this Court that cross-defendants, and
22 each of them, and their agents and employees be permanently enjoined from
23 interfering with cross-complainants' use and enjoyment of its ownership and/or
24 easement for the subdivision roads;

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

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3 ON THE SIXTH CAUSE OF ACTION:

4 1. For an order of the Court that an account be taken of all the expenses claimed
5 by cross-defendant RECREATION ASSOCIATION in furtherance of cross-defendant
6 RECREATION ASSOCIATION'S proposed Assessments in the last ten years, and all
7 the money received by and paid to cross-defendant RECREATION ASSOCIATION;

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

10

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

12

13 ON THE SEVENTH CAUSE OF ACTION:

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15 1. For a declaration of this Court that the obligations of cross-complainants do not
16 include the payment of Assessments as imposed by cross-defendants, or any of them;

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

19

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

21

22 ON THE EIGHTH CAUSE OF ACTION:

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24 1. For a declaration of this Court that the Assessments are invalid and of no force
25 and effect, and that cross-defendants are no longer permitted to impose Assessments
26 upon cross-complainants under the present form and conditions of such Assessments,
27 and that cross-defendants are prohibited from obstructing or interfering with cross-
28 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: _____, 2016

YONANO LAW OFFICES, P.C.

By: _____

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 Attorney for Cross-Complainants
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