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14 McKINLEY, SELINE KARAKAYA, AND
15 CHRISTOPHER LEE

16 SUPERIOR COURT OF THE STATE OF CALIFORNIA
17 COUNTY OF SAN BERNARDINO

18 VERTICAL WEB VENTURES, INC.,
19 JACKIE McKINLEY, SELINE
20 KARAKAYA, AND CHRISTOPHER
21 LEE,

22 Plaintiffs,

23 v.

24 ARROWHEAD LAKE ASSOCIATION,
25 GARY CLIFFORD, ROBERT
26 MATTISON, ALAN B. KAITZ, BRIAN
27 C. HALL, ERAN HESSLER, ANTHONY
28 O'KEEFE, CHRISTOPHER WILSON,
and DOES 1 to 10,

Defendant.

CASE NO. CIVSB2120604

**NOTICE OF ENTRY OF ORDER
GRANTING PLAINTIFFS' MOTION FOR
PRELIMINARY INJUNCTION**

Judge: Hon. Gilbert Ochoa
Date: January 19, 2022
Time: 9:00 a.m.
Dept.: S24

Action Filed: July 28, 2021

To All Parties and Their Attorneys of Record:

PLEASE TAKE NOTICE that on January 19, 2022, the Motion for Preliminary Injunction of Plaintiffs Vertical Web Ventures, Inc., Jackie McKinley, Seline Karakaya, and Christopher Lee ("Motion") came on for hearing in Department S24 of the above-entitled Court. The Court considered the filings in support of and in opposition to the Motion, as well as oral argument thereon, and **ordered** as follows:

1 Plaintiffs' Motion for Preliminary Injunction is **GRANTED** in part, and Defendant
2 Arrowhead Lake Association ("ALA") is enjoined from:

- 3 1. Enforcing Article II, Section C of the ALA's Bylaws or any other regulation
4 prohibiting Arrowhead Woods' vacation guests and lessees from accessing the Lake
5 and the Reserve Strips; and
- 6 2. Restricting Arrowhead Woods property owners, their guests and their lessees who
7 are not members of the ALA from accessing the Reserve Strips and the Lake.

8
9 Pursuant to Code of Civil Procedure § 529, Plaintiffs shall post a \$100,000.00 bond. The
10 Preliminary Injunction shall become effective upon the securing of the bond, and shall remain in
11 full force and effect until the earlier of the following occurs: (a) a final judgment is ordered in this
12 action; or (b) further Court order following a noticed motion or stipulation by the parties.

13 A true and correct copy of the Court's Order and Ruling are attached hereto as **Exhibits**
14 **"A" and "B"** respectively.

15
16 Dated: January 31, 2022

ARENT FOX LLP

17
18 By: 

19 JOHN P. ZAIMES
20 SARA T. SCHNEIDER
21 JASON M. YANG

22 Attorneys for Plaintiffs
23 VERTICAL WEB VENTURES, INC., JACKIE
24 McKINLEY, SELINE KARAKAYA, AND
25 CHRISTOPHER LEE
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27
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EXHIBIT A

FILED
SUPERIOR COURT
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

JAN 21 2022

BY Jennifer Medina
JENNIFER MEDINA, DEPUTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN BERNARDINO

VERTICAL WEB VENTURES, INC.,
JACKIE MCKINLEY, SELINE
KARAKAYA, AND CHRISTOPHER
LEE,

Plaintiffs,

v.

ARROWHEAD LAKE ASSOCIATION,
GARY CLIFFORD, ROBERT
MATTISON, ALAN B. KAITZ, BRIAN
C. HALL, ERAN HEISSLER, ANTHONY
O'KEEFE, CHRISTOPHER WILSON, and
DOES 1 to 10,

Defendants.

CASE NO. CIVSB2120604

**~~PROPOSED~~ ORDER GRANTING
PLAINTIFFS' MOTION FOR
PRELIMINARY INJUNCTION**

*[Filed Concurrently with Notice of Motion and
Motion; Request for Judicial Notice,
Declarations of Selene Karakaya and Doug
Miller]*

Date: ~~December 8, 2021~~ 1/19/22
Time: 9:00 a.m.
Dept.: ~~S-25~~ S24

Action Filed: July 28, 2021

On December 8, 2021, the Court presided over Plaintiffs' Motion for Preliminary Injunction (the "Motion"). The Court, having considered the moving, opposition, and reply papers, and having heard the argument of Counsel, having reviewed the papers and files on record herein, and good cause appearing therefore, hereby GRANTS the Motion.

IT IS HEREBY ORDERED that Defendant Arrowhead Lake Association ("ALA") is enjoined from:

1. Enforcing Article II, Section C of the ALA's Bylaws or any other regulation prohibiting Arrowhead Woods' vacation guests and lessees from accessing the Lake

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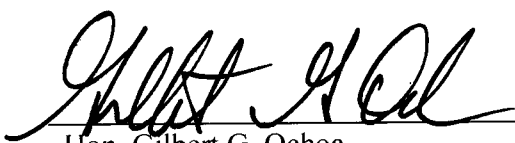
- and the Reserve Strips as permitted by paragraph 3 of the '64 Agreement;
- 2. Restricting Arrowhead Woods property owners, their guests and their lessees who are not members of the ALA from accessing the Reserve Strips and the Lake as permitted by paragraph 3 of the '64 Agreement;
- 3. Enforcing rules that violate paragraph 3 of the '64 Agreement by unreasonably and arbitrarily limiting the number of RFID cards issued to Arrowhead Woods property owners;
- 4. Enforcing rules that violate paragraph 3 of the '64 Agreement by unreasonably requiring Arrowhead Woods property owners to register their guests by name;
- 5. Permitting ALA enforcement officers to stop and demand that Arrowhead Woods property owners, their lessees, and their guests provide identification; and
- 6. Erecting any new fences or gates restricting access to the Lake and the Reserve Strips.

IT IS FURTHER ORDERED that Defendant ALA remove all new fences, gates, and radio frequency identification ("RFID") access sensors installed in 2020 and 2021 ~~and 2022~~ **\$100,000.00**

Pursuant to Code of Civil Procedure § 529, Plaintiffs shall post a ~~\$5,000~~ **\$100,000.00** bond. The Preliminary Injunction shall become effective ^{upon securing bond.} immediately. This Preliminary Injunction shall remain in full force and effect until the earlier of the following occurs: (i) a final judgment is ordered in this action; or (ii) further Court order following a noticed motion or stipulation by the parties.

IT IS SO ORDERED.

Dated: 1-21-22 2021



Hon. Gilbert G. Ochoa
Judge of the Superior Court

PROOF OF SERVICE

I am a citizen of the United States. My business address is Arent Fox LLP, 555 West Fifth Street, 48th Floor, Los Angeles, California 90013-1065. I am employed in the County of Los Angeles where this service occurs. I am over the age of 18 years, and not a party to the within cause.

On the date set forth below, according to ordinary business practice, I served the foregoing document(s) described as:

[PROPOSED] ORDER GRANTING PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

(BY E-MAIL) On this date, I will personally transmitted the foregoing document(s) via my electronic service address (katryn.smith@arentfox.com) to the e-mail address(es) of the person(s) on the attached service list.

(BY MAIL) I am readily familiar with my employer's business practice for collection and processing of correspondence for mailing with the U.S. Postal Service, and that practice is that correspondence is deposited with the U.S. Postal Service the same day as the day of collection in the ordinary course of business. On this date, I placed the document(s) in envelopes addressed to the person(s) on the attached service list and sealed and placed the envelopes for collection and mailing following ordinary business practices.

(BY PERSONAL SERVICE) On this date, I delivered by hand envelope(s) containing the document(s) to the persons(s) on the attached service list.

(BY OVERNIGHT DELIVERY) On this date, I placed the documents in envelope(s) addressed to the person(s) on the attached service list, and caused those envelopes to be delivered to an overnight delivery carrier, with delivery fees provided for, for next-business-day delivery to whom it is to be served.

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

Executed on November 8, 2021 at Garden Grove, California.



Katryn Smith

Vertical Web Ventures, Inc., et al. vs. Arrowhead Lake Association, et al.
CIVSB2120604

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EXHIBIT B

TENTATIVE RULINGS FOR January 19, 2022
Department S24 - Judge Gilbert G. Ochoa

This court follows California Rules of Court, rule 3.1308(a)(1) for tentative rulings. (See San Bernardino Superior Court Local Emergency Rule 8.) Tentative rulings for each law & motion will be posted on the internet (<https://www.sb-court.org>) by 3:00 p.m. on the court day immediately before the hearing.

If you do not have internet access or if you experience difficulty with the posted tentative ruling, you may obtain the tentative ruling by calling the Administrative Assistant. You may appear in person at the hearing but personal appearance is not required and remote appearance by CourtCall is preferred during the Pandemic. (See www.sbcourt.org/general-information/remote-access)

If you wish to submit on the ruling, call the Court and your appearance is not necessary. If both sides do not appear, the tentative will simply become the ruling. If any party submits on the tentative, the Court will not alter the tentative and it will become the ruling. If one party wants to argue, Court will hear argument but will not change the tentative. If the Court does decide to modify tentative after argument, then a further hearing for oral argument will be reset for both parties to be heard at the same time by the Court.

UNLESS OTHERWISE NOTED, THE PREVAILING PARTY IS TO GIVE NOTICE OF THE RULING.

CIVSB2120604
VERTICAL WEB VENTURES, INC., et al.

vs.

ARROWHEAD LAKE ASSOCIATION, et al.

FILED
SUPERIOR COURT
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

JAN 19 2022

BY Jennifer Medina
JENNIFER MEDINA, DEPUTY

Motion: **Preliminary Injunction**

Movant: Plaintiffs Vertical Web Ventures, Inc., Jacki McKinley, Seline Karakaya, and Christopher Lee

Respondent: Defendants Arrowhead Lake Association, Gary Clifford, Robert Mattison, Alan B. Kaitz, Brian C. Hall, Eran Heissler, Anthony O'Keefe, and Christopher Wilson

DISCUSSION

Statement of the Law

Code of Civil Procedure section 527, subdivision (a) allows for the issuance of preliminary injunctions at any time before judgment upon a verified complaint or upon affidavits that show

satisfactorily that sufficient ground exists. Nevertheless, a preliminary injunction is a drastic and extraordinary remedy that should not be granted unless the movant, by a clear showing, carries the burden of persuasion. (*Mazurek v. Armstrong* (1997) 520 U.S. 968, 972.)

A preliminary injunction is appropriate if irreparable harm will result to the applicant if the injunction is denied. (Code Civ. Proc., §526, subd. (a)(2).) The issuance of a preliminary injunction rests within the sound discretion of the trial court. (*IT Corp. v. County of Imperial* (1983) 35 Cal.3d 63, 69; *Continental Baking Co. v. Katz* (1968) 68 Cal.2d 512, 527.) That discretion, however, should be exercised in favor of the party most likely to be injured. (*McCoy v. Matich* (1954) 128 Cal.App.2d 50, 52.) The purpose of a preliminary injunction is to preserve the status quo until a final determination following a trial. (*Scaringe v. J.C.C. Enterprises, Inc.* (1988) 205 Cal.App.3d 1536, 1542, overruled in part and on other grounds, *Citizens for Covenant Compliance v. Anderson* (1995) 12 Cal.4th 345, 353.)

Typically, the court considers two factors: (1) the reasonable probability that the movant will prevail on the merits at trial, and (2) whether the harm to the movant from the refusal to grant preliminary injunction outweighs the harm to the respondent from the imposition of the preliminary injunction. (*IT Corp. v. County of Imperial, supra*, 35 Cal.3d at pp. 69-70.) The latter factor involves consideration of the inadequacy of the other remedies, the degree of irreparable harm, and the necessity of preserving the status quo. (*14859 Moorpark Homeowner's Assn. v. VRT Corp.* (1998) 63 Cal.App.4th 1396, 1402.)

Judicial Notice¹

Plaintiffs request judicial notice of (1) pleadings filed in this litigation, (2) the recorded 1964 Settlement Agreement (Exh. A), (3) ALA's Articles of Incorporation [Exh. B], and (4) definitions of lessee, lease, and houseguest from Merriam Webster & Cambridge Dictionaries (Exhs. C-D). The Court grants judicial notice of each per Evidence Code section 452, subdivisions (c), (d), and (h).

¹ "Judicial notice is the recognition and acceptance by the court, for use by the trier of fact or by the court, of the existence of a matter of law or fact that is relevant to an issue in the action without requiring formal proof of the matter." (*Kilroy v. State of California* (2004) 119 Cal.App.4th 140, 145.)

Individual Defendants request judicial notice of various provisions of the County of San Bernardino (“County”) Municipal Code. The Court denies in that the provisions were enacted in 2007 thereby they have no bearing on the meaning and understanding of contractual language in 1964.

Defendant ALA requests judicial notice of (a) pleadings herein, (b) County Ordinances 14.0203 and 84.01.06(c) (Exhs. 2-3), (c) Plaintiff Karakaya’s and McKinley’s Grant Deeds (Exhs. 4 & 6), and (d) recorded CC&Rs on Karakaya’s and McKinley’s properties (Exhs. 5 &7). The Court grants judicial notice of pleadings herein, and recorded Grant Deeds (Exhs. 4 & 6) per Evidence Code section 452, subdivision (c) and (d), but denies judicial notice of the County Ordinances as passed after the 64 Agreement, and the CC&Rs recordings because Exhibit 5 is illegible and as to both because irrelevant to the inquiry (not at issue is any real property restrictions placed on Karakaya and McKinley’s properties).

Plaintiffs with their Reply request judicial notice of San Bernardino County Ordinance Code section 82.04.040, 82.05.040, 810.01.210(bb), and 810.01.100(y) [Exhs. E-H]. The Court denies the request for judicial notice as unnecessary and irrelevant to the inquiry herein.

Analysis

A preliminary injunction issues under either a verified complaint or affidavits predicated upon a cause within a complaint. (Code Civ. Proc., §527, subd. (a).) Injunctive relief is a remedy that is afforded when related to a cause of action in a complaint that provides for such relief. (*Shell Oil Co. v. Richter* (1942) 52 Cal.App.2d 164, 168.) A cause of action must exist before injunctive relief may be granted, and where the complaint fails to state a cause of action that would afford injunctive relief, no preliminary injunction can be granted. (*Major v. Miraverde Homeowners Assn* (1992) 7 Cal.App.4th 618, 623.)

Here, Plaintiffs plead nuisance, declaratory relief, and easement interference that could afford injunctive relief. Additionally, they allege a breach of contract, i.e., the 1964 Settlement Agreement (“64 Agreement”). The 64 Agreement provides that any breach of the 64 Agreement can be prevented by an injunction if sought by at least 3 owners of Arrowhead Woods’ property. (Pls’ RJN, Exh. A [p. 3, ¶4].)

Now, the individual Defendants argue Plaintiffs fail to establish they are owners in Arrowhead Woods. However, Miller attests that he is the owner of Plaintiff Vertical, and Vertical owns property in Arrowhead Woods since November 2017. (Miller Decl. at ¶2.) Similarly, Karakaya attests to owning property in Arrowhead Woods since 2018. (Karakaya Decl. at ¶2.) Her statement is verified by ALA's RJN of her Grant Deed. (Def. ALA RJN, Exh. 4.) Lastly, the ALA's RJN includes McKinley's Grant Deed showing she is also an owner in the Arrowhead Woods area. (Def ALA RJN, Exh. 6.) There appears to be 3 owners.

Likelihood of Prevailing. The issue under this motion is whether Plaintiffs can show a likelihood that they can establish that various actions by the ALA and/or individual Defendants amount to breaches of the 64 Agreement.

In relevant part here, the 64 Agreement was entered into between the Arrowhead Woods Property Owners Association, and Lake Arrowhead Development Co. and Arrowhead Mutual Services Co. Nonetheless, the 64 Agreement is binding on all successors, lessees, and assigns of the parties. (Pls' RJN, Exh. A [p.1, preamble, p. 10, ¶15].) The purpose of the 64 Agreement was to determine and establish certain rights in the plaintiffs and the property owners of lands in Arrowhead Woods in the reserve strips, reserve strip additions, and the Lake. (Pls' RJN, Exh. A [p. 1, preamble].) Based on that, the 64 Agreement states:

Development Co. and Service Co. hereby grant without warranty express or implied to all owners of lots in Arrowhead Woods which at any time heretofore have been owned by Service Co., Development Co., Los Angeles Turf Club, Inc., Arrowhead Lake Corporation or Arrowhead Lake Company, and to the successors and assigns of such owners, and subject to all recorded conditions, restrictions and reservations, the following non-exclusive rights, easements and servitudes in, over, upon and with respect to the reserve strips and reserve strips additions, and the Lake, viz:

(a) The right for themselves, their lessees and house guests to use the strips for private park and reasonable recreational purposes, and for ingress and egress by foot travel, but not for commercial or business purposes;

(c) The right for themselves, their lessees and house guests to use the Lake for reasonable recreational purposes, including but not limited to boating, fishing, swimming and bathing, but not for business or commercial purposes, and subject to the rights

expressed in paragraph 6 of this instrument,² and the right in Development Co. and Service Co or either of them to promulgate and enforce reasonable regulations designed to promote the safety, health, comfort, and convenience of persons in or upon the Lake or in the vicinity thereof with respect to the conduct of such activities.

(Pls' RJN, Exh. A (pp. 2-3, ¶3].)

The ALA purchased the Lake and surrounding area in 1975. (Mattison Decl. at ¶5.) It was formed with the specific purpose to “provide nonprofit recreational facilities and activities on and around Lake Arrowhead, exclusively for the use and enjoyment of the owners of the real property in Arrowhead Woods, their families, and guests.” (Pls' RJN, Exh. B (¶A).] But the ALA does not own or control the real properties within Arrowhead Woods. (Mattison Decl. at ¶13.)

Short-Term Renters. In 2020, the ALA amended its Bylaws to preclude access to the ALAs' property (Lake and Reserve Strip) by short-term renters, i.e., those who rent a home within Arrowhead Wood for 30 days or less. (Karakaya Decl. at ¶¶11-13.) The question, *is that permissible under the 64 Agreement?*

As quoted above, the 64 Agreement provided access to the Lake and Reserve Strip by Arrowhead Wood owners, their lessees, and their houseguests. Does a lessee include a short-term renter? Plaintiffs contend it does. Defendants contend short-term renters are akin to hotel guests and are not, and reference that the County treats short-term renters as transients. But, the issue is not how the County defines short-term renters for purposes of regulating and licensing owners whose homes are used for short-term rentals. The issue is the construction and meaning of lessee within the 64 Agreement at the time of the contract. (Civ. Code, §1636.)

Under ordinary meaning, lessee means a person who has an agreement that allows the use of a house for a period in exchange for a payment. (Merriam-Webster Online Dictionary, www.merriam-webster.com/dictionary/lessee.) A lease is a contract by which one conveys real estate, equipment, or

² Paragraph 6 of the 64 Agreement provides for the owner of the Lake to charge a reasonable fee for permitting piers and docks to be located and kept on the strips or Lake, and a reasonable fee for licensing boats to be used on the Lake and for rental slips.

facilities for a specified term and a specified rent. (Merriam-Webster Online Dictionary, www.merriam-webster.com/dictionary/lease.)

Based on the above definitions, a short-renter is a lessee.

Now, case law makes a distinction between tenant and lodger. “A ‘tenant’ has exclusive legal possession of premises and is responsible for their care and condition. A ‘lodger’ has only the right to use the premises, subject to the landlord’s retention of control and right of access to them. To make one a tenant, as respects an owner’s liability for injuries sustained by occupant on the premises, he must have exclusive possession and control. [Citation.] When premises are under the direct control and supervision of the owner and rooms are furnished and attended to by him, he or his servants retaining the keys to them, a person renting such a room is a lodger and not a tenant. [Citation.]” (*Stowe v. Fritzie Hotels, Inc.* (1955) 44 Cal.2d 416, 421.)

Under *Stowe*, if the owner of the home had the right to access the house while the short-term renter was present or came in daily (like with a hotel) to clean up and make the beds, then the renter is a lodger. But if the owner loses the right to access and control the home while the short-term renter is present and the short-term renter is responsible for the daily care of the home while in rent, then the short-term renter is a tenant.

Applying that here, a short-term renter would fall under as a tenant versus a lodger. The short-term renter obtains exclusive access to the home during the short-term stay with all obligations to maintain the premises during that stay. The short-term lessees here are not lodgers at a bed and breakfast within the Arrowhead Woods.

Additionally, the 64 Agreement does not limit the term of any lease. This would support the 64 Agreement contemplates any person who is allowed exclusive use of Arrowhead Woods’ property for any period, regardless of how short that period may be, is a lessee.

Defendants also contend the use by short-term renters equates to a business or commercial use that is precluded by the 64 Agreement. However, the fact a business or commercial transaction may exist between the Arrowhead Woods’ property owner and the short-term renter in the transaction to rent the

property that does not equate to the renter using the Lake or Reserve Strip in a commercial or business transaction.

Because of the above, *Plaintiffs have a likelihood of establishing the preclusion by the ALA and Individual Defendants of short-term renters from use of the Lake and Reserve Strip is a breach of the 64 Agreement.*

Non-ALA Members. The ALA is of the position that, unless a member, no access is allowed of its property even if an owner of an Arrowhead Woods property. (Karakaya Decl. at ¶¶17-20; Mattison Decl. at ¶20.) The reason offered is because the ALA can only enforce its safety rules, Bylaws, and governing documents against members. (Mattison Decl. at ¶20.)

The offered reason *may be reasonable* but is counter to the language of the 64 Agreement. Again, the 64 Agreement provides all Arrowhead Woods' owners, their lessees, and their guests with the right to access and use, for recreational purposes, the Lake and Reserve Strip. Nothing in such language indicates or requires the owner must first be a member of the organization holding title to the Lake and Reserve Strip.

Defendants point to the 64 Agreement provides the Lake and Reserve Strip owner may promulgate and enforce reasonable regulations to promote the health, safety, comfort, and convenience of persons in or upon the Lake or vicinity thereof with respect to the conduct of such activities. *But merely because the ALA can promulgate rules and regulations is not going to equate to the right to exclude a person who otherwise has the contractual right of access.*

To be clear, the fact a non-ALA member but an Arrowhead Woods' owner, guest, or lessee is entitled to access the Lake and Reserve Strip does not mean they would be entitled to store a boat on the Lake, or use a boat on the Lake, or engage in illegal, business, or commercial activities in the area. It merely means the Arrowhead Woods' owners, guests, and lessees can access the Lake, trails, and beaches for recreational purposes.

Thus, Plaintiffs have a likelihood of prevailing on the 64 Agreement violated by the Defendants by precluding non-ALA members but Arrowhead Woods' owners, guests, and lessees from accessing the Lake and Reserve Strip.

RFID Cards. Plaintiffs contend the 64 Agreement is violated by the ALA arbitrarily limiting the number of RFID cards to 2. But as just discussed, the ALA and Individual Defendants (as Board Members and GM) have the right to promulgate reasonable rules and regulations to promote safety, health, comfort, and convenience. Lake Arrowhead is a private Lake so the ALA has the right to have rules and regulations to ensure only persons with the right of access obtain access. Merely because Plaintiffs do not like that there are only 2 RFIDs cards issued does not make such a violation of the 64 Agreement.

Register Guests. Plaintiffs next seek to enjoin the ALA from requiring Arrowhead Woods' owners from registering their guests because such invades their privacy interest. Yet other than arguing a privacy interest would be violated, Plaintiffs offer no analysis of how disclosing one's identity so can have access to the ALA's property constitutes an invasion of privacy. Again, the 64 Agreement allows the ALA to promulgate reasonable rules. Nothing offered by Plaintiffs establishes registering guests is an unreasonable rule thereby violating the 64 Agreement.

Enforcement Personnel. Plaintiffs seek to preclude ALA enforcement personnel from stopping Arrowhead Woods' property owners, guests, and lessees and demanding they show identification. However, Plaintiffs fail to demonstrate how enforcement personnel ensuring the Lake and Reserve Strip are being only accessed by those with a right of access equates to violating the 64 Agreement. Plaintiffs argue that enforcement personnel engage in discriminatory behavior when questioning users of the property, which Defendants deny. But engaging in discriminatory behavior may support monetary damage to those discriminated against but it has no bearing on whether the 64 Agreement was violated. Furthermore, Plaintiffs give innuendoes of issues and some discriminatory-based posts on social media but nothing concrete that the ALA is engaging systematically in such

behavior. Thus, a likelihood of prevailing on the ground 64 Agreement violated by using enforcement personnel is not established.

Fences & Gates. Lastly, Plaintiffs seek to enjoin the Defendants from erecting new fences and an order for the fences, gates, and RFID sensors installed in 2020 and 2021 to be removed. The problem here is Plaintiffs offer no facts and evidence that installing gates, fences, and RFIDs sensors constitute a violation of the 64 Agreement. Precluding Arrowhead Woods' owners, guests, and lessees from having the necessary equipment to access the gates may be a violation but the erecting of means to protect the ALA's private property is not demonstrated.

Therefore, Plaintiffs establish a likelihood of prevailing that the 64 Agreement was breached by the ALA and/or Individual Defendants when they precluded short-term lessees from accessing and using the Lake and Reserve Strip, and non-ALA members who are Arrowhead Woods' property owners, guests, and lessees from accessing and using the Lake and Reserve Strip.

Relevant Harm. Plaintiffs argue their relevant harm is the loss of the use and enjoyment of the Lake and trails for themselves and their guests and lessees. The breaches further infringe on their properties' value. (Miller Decl. at ¶¶8-10; Karakaya Decl. at ¶21.) Irreparable harm can arise when a home's value is diminished or substantial loss occurs in the enjoyment of the home. (*Clear Lake Riviera Community Assn. v. Cramer* (2010) 182 Cal.App.4th 459, 473.) Also, irreparable harm may be demonstrated by an act "which is a serious change of, or is destructive to, the property it affects, either physically or in the character in which it has been held and enjoyed." (*Grey v. Webb* (1979) 97 Cal.App.3d 232, 238.)

Defendant ALA argues the relevant harm weighs in its balance because it operates on a budget primarily funded by members paying their ALA dues. (Mattison Dec. at ¶8.) Yet Defendant offers no evidence that by enjoining it from precluding those with a contractual right of access to the Lake and Reserve Strip means its income will decrease. The Court is not enjoining it from collecting dues or regulating boat slips and usage of boats on the Lake.

In weighing precluding those who have a contractual right of access and use against a potentially affected budget, the harm weighs in Plaintiffs' favor.

Defendant ALA also contended that by imposing the requested injunction, the character of the Lake is changed from private to public. But allowing those with the contractual right of access is not rendering the Lake open to the public. It remains that the Lake is only accessible by the Arrowhead Woods' property owners, guests, and lessees.

Overall, the harm weighs in Plaintiffs' favor.

Bond. An undertaking/bond (Code of Civ. Proc., §529) or cash deposit in lieu thereof (Code of Civ. Proc., §995.710) is generally required. The purpose of the bond is to cover any damages that the defendant may sustain because of the injunction if it is finally decided that the plaintiff was not entitled to the injunction. (Code of Civ. Proc., §529.) The trial court is to estimate the harmful effect the injunction is likely to have on the restrained party and set the undertaking at that sum. (*Abba Rubber Co. v. Seaquist* (1991) 235 Cal.App.3d 1, 14.) The estimation is left in the trial court's sound discretion. (*Ibid.*)

Without any explanation for where the figure comes from, Defendant ALA indicates a \$1 Million bond should be required. One Million seems excessive, especially when nothing is offered justifying it. No other party addresses the bond issue. This is a problem.

Thus, the Court will discuss with the parties a **reasonable bond** required associated with the injunction to be issued.

Upon determining a reasonable bond that is paid within 10-days of the Order, the Court will grant Plaintiffs' Motion for Preliminary Injunction on prohibiting Defendants ALA, Clifford, Mattison, Kaitz, Hall, Heissler, O'Keefe, and Wilson from precluding short-term renters access and use of the Lake and its shoreline, and Arrowhead Woods' property owners, lessees, and guests who are non-members of the ALA from access and use of the Lake and its shoreline as discussed above.

Rulings

(1) GRANT in part and DENY in part Plaintiffs Vertical, McKinley, Karakaya, and Lee's Preliminary Injunction and ENJOIN Defendants ALA, Clifford, Mattison, Kaitz, Hall, Heissler, O'Keefe,

and Wilson from (a) precluding short-term lessees within Arrowhead Woods' property from accessing the Lake and surrounding shoreline area and (b) precluding Arrowhead Woods' property owners, whether ALA members or not, and their lessees and guests from accessing the Lake and surrounding shoreline area;

(2) ORDER Plaintiffs Vertical, McKinley, Karakaya, and Lee to post a reasonable bond within 10 days of the Order;

(3) GRANT Plaintiffs' request for judicial notice filed on November 8, 2021, but DENY Plaintiffs' request for judicial notice filed on December 1, 2021;

(4) DENY Defendants Clifford, Mattison, Kaitz, Hall, Heissler, O'Keefe, and Wilson's request for judicial notice;

(5) GRANT Defendant ALA's request for judicial notice of the pleadings and Exhibits 4 and 6, but DENY Defendant ALA's request for judicial notice of Exhibits 2-3, 5, and 7;

(6) Movant to give Notice and provide Order.

Addendum to ruling:

Objections

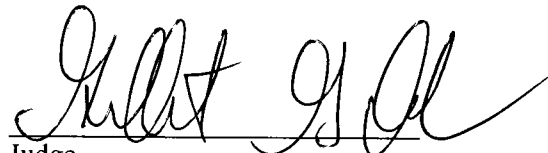
Individual Defendants and Defendant ALA separately filed evidentiary objections to Plaintiffs' evidence. After oral argument, the Court has granted respondents request to add these rulings to the Court's final ruling on the Preliminary Injunction. Therefore the Court rules as follows:

SUSTAIN objections #2, 7-11, 14-15, 31, 34-35, 44, and 68 by the Individual Defendants, but **OVERRULE** all other objections by the Individual Defendants; and **SUSTAIN** objections to Karakaya's Decl. at ¶¶3 and 7-10 and Miller's Decl. at ¶3, 3rd sentence, and ¶7, and but **OVERRULE** all other objections by Defendant ALA.

With their Reply, Plaintiffs filed evidentiary objections to Keefe, Mattison, Garrison, Hall, and Shaw's Declarations filed by Individual Defendants and/or ALA. Rulings:

SUSTAIN objections (a) #1-5 to Keefe's Decl., (b) #1, 8, 11-13, 18, & 21 to Mattison's Decl., (c) #1 to Garrison's Amended Decl., (d) #7 to Hall's Decl., and (e) #1-7 to Shaw's Decl. But **OVERRULE** objections (a) #2-7, 9-10, 14-17, & 19-20 to Mattison's Decl., (b) #2-3 to Garrison's Amended Decl., and (c) #1-6 to Hall's Decl.

Dated- JAN 19 2022


Judge
GILBERT G. OCHOA

3 **PROOF OF SERVICE**

4 I am a citizen of the United States. My business address is Arent Fox LLP, 555 West Fifth
5 Street, 48th Floor, Los Angeles, California 90013-1065. I am employed in the County of Los
6 Angeles where this service occurs. I am over the age of 18 years, and not a party to the within
7 cause.

8 On the date set forth below, according to ordinary business practice, I served the foregoing
9 document(s) described as:

10 **NOTICE OF ENTRY OF ORDER GRANTING PLAINTIFFS' MOTION FOR**
11 **PRELIMINARY INJUNCTION**

12 (BY E-MAIL) On this date, I personally transmitted the foregoing document(s)
13 via my electronic service address (katryn.smith@arentfox.com) to the e-mail
14 address(es) of the person(s) on the attached service list.

15 (BY MAIL) I am readily familiar with my employer's business practice for
16 collection and processing of correspondence for mailing with the U.S. Postal
17 Service, and that practice is that correspondence is deposited with the U.S. Postal
18 Service the same day as the day of collection in the ordinary course of business.
19 On this date, I placed the document(s) in envelopes addressed to the person(s) on
20 the attached service list and sealed and placed the envelopes for collection and
21 mailing following ordinary business practices.

22 (BY PERSONAL SERVICE) On this date, I delivered by hand envelope(s)
23 containing the document(s) to the persons(s) on the attached service list.

24 (BY OVERNIGHT DELIVERY) On this date, I placed the documents in
25 envelope(s) addressed to the person(s) on the attached service list, and caused
26 those envelopes to be delivered to an overnight delivery carrier, with delivery
27 fees provided for, for next-business-day delivery to whom it is to be served.

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

Executed on January 31, 2022 at Garden Grove, California.

24 

Katryn Smith

3 **SERVICE LIST**

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