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IN THE CIRCUIT COURT FOR THE STATE OF OREGON
IN THE COUNTY OF KLAMATH

DON RICARD, an individual and
REUBEN GARCIA, an individual

Plaintiffs,

vs.
KLAMATH FALLS FOREST ESTATES
HOMEOWNERS' ASSOCIATION, INC.
("KFFEHOA") an Oregon mutual benefit
corporation and JAMES VAUGHAN,
MICHELLE VAUGHAN, ERIC GORITZ,
SAM MARQUEZ, and CYNTHIA WILSON as
individuals and as members of the KFFEHOA
Board of Directors

Defendants.

) Case No.: 18CV25995
)
) **PLAINTIFF'S FIFTH AMENDED**
) **COMPLAINT FOR DISCRIMINATION,**
) **INTENTIONAL INFLICTION OF**
) **EMOTIONAL DISTRESS AND**
) **INJUNCTIVE RELIEF**
) **(\$998,000).**
) **Not Subject To Mandatory Arbitration**
) **Fee Authority ORS 21.160(1)(c)**

Plaintiffs alleges as follows:

1. At all times material hereto, Plaintiff, Don Ricard is a disabled, retired construction worker who purchased a parcel of property within the boundaries of Klamath Falls Forest Estates Home Owners Association ("KFFEHOA") boundaries. Plaintiff, Reuben Garcia is a person on Social Security Disability. Plaintiff, Don Ricard, lives in a fifth wheel vehicle. In addition he has a small cabin located on the property. Plaintiff, Reuben Garcia, has applied for permits to construct a house on a parcel of property within Klamath Falls Forest Estates, Unit 1, but, has not yet obtained an occupancy permit.

- 1 2. At all times material hereto, Defendants have been members of the board of directors of the
2 Klamath Falls Forest Estates Home Owners Association (KFFEHOA).
- 3 3. At all times material hereto, KFFEHOA is acting as the successor in interests to the Klamath
4 Recreational Association, and the Klamath Road Association Inc.

5 **FIRST CLAIM FOR RELIEF – DISCRIMINATION IN VIOLATION OF**
6 **ORS 659A.421(2)(c).**

- 7 4. The Klamath Recreation Association was created to provide mutual benefit to the owners of
8 property within Klamath Falls Forest Estates.
- 9 5. It is difficult for property owners to acquire water in the area as the average cost to drill a
10 new well currently exceeds \$50,000.00 and there is a significant chance the well will not
11 produce any water.
- 12 6. One of the benefits the Klamath Recreation Association offered, was they own at least two
13 parcels that contain a community well. Property owners in the Klamath Forest Estates have
14 the ability to acquire a water key to obtain water from the community well. The benefit was
15 originally available to any property owner owning property within the Klamath Falls Forest
16 Estates, Unit 1 boundaries.
- 17 7. Approximately August 1992, the Klamath Recreation Association changed its name to the
18 Klamath Road Association, Inc. Then in approximately June 2005, the Klamath Road
19 Association, Inc., changed its name to the Klamath Falls Forest Estates Home Owners
20 Association (KFFEHOA).
- 21 8. Since it first began providing water from the community well, the benefit was offered to any
22 property owner within the Klamath Falls Forest Estates Unit #1 boundaries upon application
23 and providing the yearly annual maintenance assessment for the well.
- 24 9. The 2008, bylaws of the KFFEHOA provide in relevant part, " 5.8(d) **Limitations of Use.**
25 Access to the well and water therefrom shall be provided: (i) Exclusively to owners of
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1 Klamath Falls Forest Estates, Unit 1;" Therefore, the water continued to be offered to any
2 owner of the Klamath Falls Forest Estates, Unit 1 pursuant to the bylaws, so long as the
3 property owner was current in their payment of the assessments.

4 10. Plaintiff, Don Ricard, requested access to the community well after he purchased his property
5 in Klamath Falls Forest Estates, Unit 1. He was told by David Pierson, who was a board
6 member at that time, that he could not have access, that all of the water keys were out. The
7 other board members confirmed this statement.

8 11. Plaintiff, Reuben Garcia, had been a member of the board of directors. While he was serving
9 on the Board, he had a water key. After he got off the board, his water key was taken from
10 him.

11 12. After Plaintiff, Don Ricard, had requested access, other property owners came in and they
12 were granted use of water keys, giving them access to the community well. Board member,
13 Cynthia Wilson was one of those, even though Cynthia Wilson lives in a house that does not
14 have occupancy permits.

15 13. Plaintiff, Don Ricard, again offered to James Vaughan, the money the board had set to obtain
16 a water key and Don Ricard was told "he was not a legal resident. The Board had changed
17 the bylaws to provide only legal residents could obtain water keys." Again, the remaining
18 board members affirmed this position.

19 14. The Board of directors, adopted new bylaws in 2013, without informing all of the property
20 owners of the proposed changes and without a meeting of the membership to approve the
21 changes. Therefore, the new bylaws are null and void.

22 15. The changes made by the 2013 Bylaws materially affect a key membership privilege, the
23 privilege to obtain a water key.

24 16. The changes made now require in order to receive a water key, the member, must be a legal
25 resident, with a legal residence and a legal address within the Klamath Forest Estates Unit 1.
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1 The changes were made by the board at board meeting. However, there is no indication that
2 the changes were submitted to the membership for a membership vote.

3 17. The 2008 Amended Bylaws specified that any changes that affect the membership cannot be
4 made without a meeting of the membership to provide approval.

5 18. Plaintiff, Don Ricard, resides within Klamath Falls Forest Estates Unit 1 and he has a legal
6 address indicating his residence within Klamath Falls Forest Estates Unit 1. However,
7 Plaintiff, Don Ricard, has not obtained an occupancy permit to occupy his structures. He has
8 however, applied for and received a permit to allow him to install a septic system on his
9 property. In spite of this, Defendant Board members have still refused to provide Mr. Ricard
10 a water key.

11 19. After Plaintiff, Don Ricard, was told he had to be a legal resident, water keys were provided
12 to others who also did not have building permits for their residential structures, one such
13 person, being board member Cynthia Wilson.

14 20. Plaintiff, Don Ricard, was told by Defendant James Vaughan, the chairman of the
15 KFFEHOA Board that he would never obtain a water key. The members of the Board have
16 made comments about Plaintiff being a disabled old contractor. Plaintiff, Don Ricard,
17 believes the denial of his ability to receive water from the community well is because he is
18 retired and disabled, thus, discriminating against the Plaintiff in violation of ORS 659A.421.

19 21. Plaintiff, Reuben Garcia, has applied for and obtained building permits to construct his
20 residence within the Klamath Falls Forest Estates Unit 1. After obtaining his permits, he was
21 serving on the Board of Directors. However, he is on Social Security disability due to a
22 disabling medical condition. Due to Mr. Garcia's disability, the board has indicated that he
23 should not have a water key.

24 22. Defendants on April 29, 2018, assaulted Mr. Garcia, slamming him to the ground, hitting him
25 and kicking him.

1 23. Dennis Gibbs, the Road Commissioner for Klamath Falls Forest Estates Unit No. 1, on June
2 24, 2018, hit Mr. Garcia's walking cane out from under him. He stated to Mr. Garcia that
3 "you are faking your disability." The Defendants were aware of the discrimination against
4 Mr. Garcia and they applauded it.

5 24. Plaintiff, Don Ricard, has attempted alternative dispute resolution with the Board of
6 Directors and was unable to obtain satisfactory results.

7 25. Because Defendants have denied Plaintiffs access to the community well to obtain water,
8 Plaintiff, Don Ricard, has had to drive more than 30 miles, one way, three to four times per
9 week since Plaintiff purchased the property within Klamath Falls Forest Estates Unit One in
10 order to obtain water. This has cost him significant time and money. Plaintiff, Don Ricard,
11 estimates his damages to be approximately \$50,000.00. Plaintiff, Reuben Garcia, is in a
12 similar situation and estimates it will cost him similar amounts.

13 26. Plaintiff Reuben Garcia has suffered harm because of the actions of Defendants in an amount
14 to be proved at trial, but not to exceed \$40,000.00.

15 27. Defendant's denial to Plaintiffs of access to one of the essential's of life, water, because of
16 their disabilities has caused Plaintiffs a great deal of inconvenience and emotional distress.
17 Therefore, Plaintiffs have been harmed in amount to be proved at trial, but estimated not to
18 exceed \$400,000.00 (\$200,000.00 each).

19 28. In addition to damages, Plaintiffs are entitled to costs and disbursements and reasonable
20 attorney fees pursuant to ORS 659A.885.

21 **PLAINTIFF'S SECOND CLAIM FOR RELIEF**
22 **(Intentional Infliction of Emotional Distress)**

23 29. Plaintiffs incorporate by reference the events that are stated in paragraphs 1 through 27.

24 30. Plaintiff, Don Ricard, continued to seek to obtain a water key to be able to access water at the
25 community well. Upon his continued attempts, one day, he asked James Vaughan what it
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1 would take for him to be able to get a water key. Mr. Vaughan told him that he would never
2 get a water key. The other individual defendants have affirmed Mr. Vaughan's statements.
3 Water is one of life's essential elements. As set forth in Plaintiff's First Claim for Relief, the
4 board members both individually and corporately have unlawfully discriminated against
5 Plaintiff Ricard by denying him access to water available for the community.

6 31. The Board of Directors, both individually and corporately, have no legal right to deny a
7 property owner who is willing to pay the annual assessment access to water.

8 32. By denying Mr. Ricard access to water in violation of the legal bylaws of the KFFEHOA, the
9 Board of Directors, individually and corporately, have caused Mr. Ricard to have to drive 30
10 miles each way to purchase water. Additionally, Mr. Ricard had to drive all the way to
11 Klamath Falls in order to be able to obtain showers at the truck stop. The Board of Directors,
12 individually and corporately, intended to cause Mr. Ricard to vacate his property through
13 denying him access to water. This action, without legal basis, is causing Mr. Ricard extreme
14 emotional distress. Plaintiff estimates the damage that he has suffered from the emotional
15 distress to be \$49,500.00 due to Defendants denying him access to water.

16 33. In addition, Sam Marquez and James Vaughn have both made statements to Mr. Ricard that
17 he had "better watch his back". James Vaughn has made the statement to Mr. Ricard that
18 "People up in that area end up dead." One of Mr. Ricard's neighbors was murdered in 2015,
19 adding impact to Mr. Vaughn's statements. Michelle Vaughn has made the statement
20 regarding Mr. Ricard "He just needs to go find somewhere else to live."

21 34. Each of the defendants set forth in paragraph 33 were making statements intending to cause
22 Mr. Ricard emotional distress in an attempt to drive him off his property. This has caused
23 Mr. Ricard severe emotional distress and damages at trial not to exceed \$100,000.00.

24 35. Defendant, Cynthia Wilson and her relatives have pointed firearms in Mr. Ricard's direction
25 as evidenced by their green targeting lasers flashing across Mr. Ricard while he is on his own
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1 property. These lasers have come from the direction of Defendant Wilson's property.
2 Cynthia Wilson and her family members have shot their guns across Mr. Ricard's property.
3 Mr. Ricard has heard bullets as they came across his property from the direction of Cynthia
4 Wilson's property. These actions have been done with the intent of causing Mr. Ricard
5 severe emotional distress, trying to make Mr. Ricard leave the area and stop his efforts to
6 obtain a water key.

7 36. Board Member, Cynthia Wilson filed a stalking order against Mr. Ricard without legal basis
8 to do so. Each of the individual defendants attended the court hearing in support of Cynthia
9 Wilson. The attendance of each defendant indicates that each defendant was supporting the
10 stalking order. The court, at hearing, found the stalking order did not meet the legal
11 requirements for a stalking order. This cost Mr. Ricard both in time and expense in
12 defending against the stalking order. The stalking order was filed to harass Mr. Ricard and
13 cause him emotional distress.

14 37. Such statements and actions reflect intentional infliction of emotional distress by each of the
15 individual defendants.

16 38. Said actions and statements have caused Plaintiff damages by causing him severe emotional
17 distress not to exceed \$100,000.00.

18 39. Since each of the Board members have expressed support for the actions of individual board
19 members, in supporting said actions, each one of the board members are co-conspirators and
20 thus guilty of said actions and statements. The Board members, are jointly and severally
21 liable for the damages Mr. Ricard has suffered.

22 40. Plaintiff Ricard is entitled to recover his damages in the amount of \$249,500.00.

23 41. Defendant, James Vaughn, filed a falsified stalking order against Plaintiff, Reuben Garcia for
24 the purposes of harassing him.

1 42. Defendant, Sam Marquez, filed a falsified assault charge against Plaintiff, Reuben Garcia, for
2 which Mr. Garcia was arrested.

3 43. All of the other individual defendants were aware of the actions of Mr. Vaughn and Mr.
4 Marquez and supported such actions even though they were false. Thus, each of the
5 individual defendants are co-conspirators and their support evidenced an intent to cause Mr.
6 Garcia severe emotional distress and should be jointly and severally liable for Mr. Garcia's
7 damages.

8 44. Mr. Garcia had to hire an attorney and incurred a great deal of expense and effort in
9 defending against the falsified reports.

10 45. The stalking order and the charges filed against Mr. Garcia were dismissed as there was not
11 enough evidence to sustain the charges.

12 46. A reasonable person would recognize the false statements and charges are outrageous in the
13 extreme.

14 47. Plaintiff Reuben Garcia suffered great economic and noneconomic damages. Mr. Garcia is a
15 single parent as his wife has passed away. His children are now afraid of law enforcement
16 officials as they had to watch their father be unjustly arrested. Mr. Garcia is disabled and
17 receiving disability payments and yet he had to pay substantial sums to defend against such
18 charges. This has caused Mr. Garcia to not have resources he needs to provide for his family
19 and has caused Mr. Garcia severe emotional distress.

20 48. The arrest and subsequent stalking order case caused Mr. Garcia and his daughters extreme
21 emotional distress in an amount to be proved at trial not to exceed \$200,000.00.

22 49. Defendants, acting as the Board of Directors, have told Mr. Garcia that he is no longer
23 eligible to possess a water key.

24 50. Denying Mr. Garcia and his daughters access to the community well is with the intention of
25 driving Mr. Garcia and his daughters off of their property.
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1 51. The expression of ineligibility to possess a water key was after the Board of Directors found
2 out that Mr. Garcia is disabled.

3 52. The denial of access to water is intended to cause Mr. Garcia and his daughters undue
4 hardship and severe emotional distress.

5 53. Plaintiff Reuben Garcia is entitled to damages against the Board of Directors, individually
6 and corporately, for their intention to cause his severe emotional distress in the denial of
7 water in an amount to be proved at trial not to exceed \$49,500.00 and his costs and
8 disbursements.

9 54. Defendants are jointly and severally liable for Mr. Garcia's damages.

10 55. Plaintiff Garcia is entitled to recover his damages for emotional distress in the total amount
11 of \$249,500.

12 56. Plaintiffs have suffered great emotional damages in an amount to be proved at trial not to
13 exceed \$499,000 (\$249,500 each) as a result of such actions and such statements, plus
14 reasonable costs and disbursements.

15 **PLAINTIFF'S THIRD CLAIM FOR RELIEF**
16 **(INJUNCTION)**

17 57. The last legal bylaws of the KFFEHOA indicate that water is available to property owners
18 within the borders of the KFFEHOA upon payment of the annual assessment.

19 58. Plaintiffs have both offered to pay the annual assessment needed to obtain a water key in
20 order to be able to access the community well.

21 59. Plaintiffs have suffered irreparable harm being denied one of life's essentials, access to water.
22 The denial of access to water is brought about because of Defendants' discrimination and
23 intentional infliction of emotional distress which denial goes against the legal bylaws of the
24 KFFEHOA. The harm is not easily quantifiable in monetary damages.
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1 60. Continued denial of access to water in violation of the legal bylaws of the KFFEHOA will
2 cause Plaintiffs additional irreparable harm.

3 61. The only way to eliminate the harm being caused Plaintiffs in the future is to enjoin
4 Defendant, KFFEHOA Board of Directors, from continuing to deny Plaintiffs' access to the
5 water available to members of the KFFEHOA.

6 WHEREFORE, Plaintiffs pray for:

- 7 1. On the first claim for relief, judgment in favor of Plaintiffs in an amount not to exceed
8 \$490,000.00 (\$250,000.00 for Don Ricard and \$240,000.00 for Reuben Garcia) plus
9 costs, disbursements and reasonable attorney fees.
- 10 2. On Plaintiffs' second claim for relief, judgment in the amount of \$499,000.00
11 (\$249,500.00 each) plus costs and disbursements.
- 12 3. On Plaintiff's third claim for relief, an injunction, enjoining Defendant, KFFEHOA board
13 from denying access to the community well for each Plaintiff so long as Plaintiffs pay the
14 annual assessment fees.
- 15 4. Awarding such other relief as the court may determine is equitable.

16
17 Respectfully submitted this 29th Day of January, 2020

18 /s/ Michael W. Franell

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