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4 **IN THE CIRCUIT COURT FOR THE STATE OF OREGON**  
5 **IN THE COUNTY OF KLAMATH**

6 DON RICARD, an individual and )  
7 REUBEN GARCIA, an individual )

8 Plaintiffs, )

9 vs. )

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

18 Defendants. )

Case No.: 18CV25995

**PLAINTIFF'S FOURTH AMENDED  
COMPLAINT FOR DISCRIMINATION,  
INTENTIONAL INFLECTION OF  
EMOTIONAL DISTRESS AND  
INJUNCTIVE RELIEF**

**(\$998,000).**

**Not Subject To Mandatory Arbitration**

**Fee Authority ORS 21.160(1)(c)**

19 Plaintiffs alleges as follows:

- 20 1. At all times material hereto, Plaintiff, Don Ricard is a disabled, retired construction worker  
21 who purchased a parcel of property within the boundaries of Klamath Falls Forest Estates  
22 Home Owners Association ("KFFEHOA") boundaries. Plaintiff, Reuben Garcia is a person  
23 on Social Security Disability. Plaintiff, Don Ricard, lives in a fifth wheel vehicle. In  
24 addition he has a small cabin located on the property. Plaintiff, Reuben Garcia, has applied  
25 for permits to construct a house on a parcel of property within Klamath Falls Forest Estates,  
26 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 board members have affirmed Mr. Vaughan's statements. Water  
3 is one of life's essential elements. As set forth in Plaintiff's First Claim for Relief, the board  
4 members have unlawfully discriminated against Plaintiff Ricard by denying him access to  
5 water available for the community. This action reflects an intention to cause Mr. Ricard to  
6 leave his home by denying him water, thus causing him severe emotional distress.

7 31. Members of the board have made statements to Mr. Ricard that he had "better watch his  
8 back". "People up in that area end up dead." "He just needs to go find somewhere else to  
9 live." Defendant, Cynthia Wilson and her relatives have pointed firearms in Mr. Ricard's  
10 direction as evidenced by their green targeting lasers flashing across Mr. Ricard while he is  
11 on his own property. These lasers have come from Defendant Wilson's property. These  
12 statements and actions were done after one of Mr. Ricard's neighbor was murdered. Such  
13 statements and actions and their timing are made with the intent of causing Mr. Ricard severe  
14 emotional distress trying to make Mr. Ricard leave the area and stop his efforts to obtain a  
15 water key.

16 32. Board Member, Cynthia Wilson filed a stalking order against Mr. Ricard. Each of the Board  
17 members attended the court hearing in support of Cynthia Wilson. The attendance of each  
18 board member indicates that each of the Board members were supporting the stalking order.  
19 The court, at hearing, found the stalking order did not meet the requirements for a stalking  
20 order. This cost Mr. Ricard both in time and expense in defending against the stalking order.

21 33. Such statements and actions reflect intentional infliction of emotional distress.

22 34. Defendants should know such statements are intended to cause emotional distress.

23 35. Said actions and statements have caused Plaintiff damages by causing him severe emotional  
24 distress. Since each of the Board members have expressed support for the actions of  
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1 individual board members, each one of them are guilty of the action. Plaintiff Ricard is  
2 entitled to recover his damages.

3 36. Defendant, James Vaughn, filed a falsified stalking order against Plaintiff, Reuben Garcia for  
4 the purposes of harassing him.

5 37. Defendant, Sam Marquez, has filed a falsified assault charge against Plaintiff, Reuben  
6 Garcia, for which Mr. Garcia was arrested.

7 38. The other board members were aware of the actions of Mr. Vaughn and Mr. Marquez and  
8 supported such actions even though they were false. Thus, each of the board members are  
9 guilty and their support evidenced an intent to cause Mr. Garcia severe emotional distress.

10 39. Mr. Garcia had to hire an attorney and incurred a great deal of expense and effort in  
11 defending against the falsified reports.

12 40. The stalking order and the charges filed against Mr. Garcia were dismissed as there was  
13 insufficient evidence to sustain the charges.

14 41. A reasonable person would recognize the statements are outrageous in the extreme.

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

21 43. Defendants intended their actions to cause Mr. Garcia severe emotional distress.

22 44. Plaintiff Reuben Garcia is entitled to damages and his costs and disbursements.

23 45. Plaintiffs have suffered great emotional damages in an amount to be proved at trial not to  
24 exceed \$499,000 (\$249,500 each) as a result of such actions and such statements, plus  
25 reasonable costs and disbursements.  
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**PLAINTIFF'S THIRD CLAIM FOR RELIEF  
(INJUNCTION)**

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3 46. Plaintiffs have suffered irreparable harm being denied one of life's essentials, access to  
4 water. The denial of access to water is brought about because of Defendants' discrimination  
5 and intentional infliction of emotional distress which denial goes against the legal bylaws of  
6 the KFFEHOA. The harm is not easily quantifiable in monetary damages.

7 47. Continued denial of access to water in violation of the legal bylaws of the KFFEHOA will  
8 cause Plaintiffs additional irreparable harm.

9 48. The only way to eliminate the harm being caused plaintiff in the future is to enjoin  
10 Defendant, KFFEHOA board from continuing to deny Plaintiffs' access to the water  
11 available to members of the KFFEHOA.

12 WHEREFORE, Plaintiffs pray for:

- 13 1. On the first claim for relief, judgment in favor of Plaintiffs in an amount not to exceed  
14 \$490,000.00 (\$250,000.00 for Don Ricard and \$240,000.00 for Reuben Garcia) plus  
15 costs, disbursements and reasonable attorney fees.
- 16 2. On Plaintiffs' second claim for relief, judgment in the amount of \$499,000.00  
17 (\$249,500.00 each) plus costs and disbursements.
- 18 3. On Plaintiff's third claim for relief, an injunction, enjoining Defendant, KFFEHOA board  
19 from denying access to the community well for each Plaintiff so long as Plaintiffs pay the  
20 annual assessment fees.
- 21 4. Awarding such other relief as the court may determine is equitable.

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1 Respectfully submitted this 4<sup>th</sup> day of November, 2019

2 /s/ Michael W. Franell

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