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

DON RICARD, an individual and
REUBEN GARCIA, an individual,

Plaintiffs,

v.

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

Defendants.

Case No. 18CV25995

**DEFENDANTS' ORCP 21 MOTIONS
AGAINST PLAINTIFFS' SECOND
AMENDED COMPLAINT**

I. UTCR 5.010 CERTIFICATION

Defendants' counsel certifies that prior to filing these motions he conferred in good faith with Plaintiffs' counsel regarding the issues raised herein. The parties were unable to resolve the issues without the Court's assistance.

1 **II. MOTIONS**

2 **Motion 1:** Pursuant to ORCP 21A(8), Defendants move the Court for an order
3 dismissing Plaintiffs' Second Amended Complaint in its entirety.

4 **Motion 2:** In the alternative to Motion 1, pursuant to ORCP 21D Defendants move the
5 Court for an order making Plaintiffs' allegations more definite and certain.

6 **Motion 3:** Pursuant to ORCP 21E, Defendants move the Court for an order striking
7 frivolous and irrelevant allegations from Plaintiff's Second Amended Complaint.

8 **III. BACKGROUND**

9 Plaintiffs Don Ricard and Reuben Garcia have sued the Klamath Falls Forest Estates
10 Homeowners Association ("KFFEHOA") and five members of its Board of Directors in both their
11 corporate and individual capacities. The Second Amended Complaint contains claims for
12 discrimination, intentional infliction of emotional distress, and an injunction. Each claim is alleged
13 by both plaintiffs and against all defendants. Because the Second Amended Complaint does not
14 contain sufficiently specific allegations, it should be dismissed or, in the alternative, made more
15 definite and certain with irrelevant allegations stricken.

16 **IV. POINTS & AUTHORITIES**

17 **A. Motion 1. The Court should dismiss Plaintiffs' Second Amended Complaint**
18 **because it does not contain sufficient allegations against each Defendant.**

19 Pursuant to ORCP 21A(8), Defendants move the Court for an order dismissing Plaintiffs'
20 Second Amended Complaint because they have not stated ultimate facts sufficient to support their
21 claims against each Defendant. In order to state a claim for relief, a party must provide a "plain
22 and concise statement of the ultimate facts constituting a claim for relief without unnecessary
23 repetition." ORCP 18A. Naturally, this standard applies to each defendant against whom a
25 plaintiff seeks relief. Plaintiffs' Second Amended Complaint falls well short of this standard and
26 should be dismissed.

27 Plaintiff's Second Amended Complaint includes three claims for relief. Ostensibly, each
28 claim for relief is against each of the six named defendants. That means that for the five defendants

1 named individually and as directors of KFFEHOA, each claim is against each of them in both
2 capacities. In addition, each of the three claims is made by each of the two plaintiffs. So, in order
3 to be viable, each of the three claims must contain allegations from each plaintiff as to each element
4 of the claim – as to each defendant in each of their capacities.

5 As pleaded, Plaintiffs’ claims do not contain such allegations. For example, Plaintiffs
6 repeatedly allege that “Defendants,” the “board of directors,” or “members of the board” took
7 certain actions and made certain statements. Such broad allegations are not sufficient to support
8 claims against the Association *and* five individuals in both their corporate and individual
9 capacities. Two of the five named individuals, Michelle Vaughan and Eric Goritz, are listed in the
10 case caption but are not even mentioned within the body of the Second Amended Complaint.
11 Importantly, Plaintiffs make no allegations that evidence a theory that would make any defendant
12 liable for another’s conduct, or which would make an individual defendant liable for KFFEHOA’s
13 corporate conduct, or which would make an individual both liable personally and as a director of
14 KFFEHOA. Thus, Plaintiffs’ failure to plead facts as to each element of each claim against each
15 defendant is fatal to their claims, and the Second Amended Complaint should be dismissed.

16 **B. The Court should order Plaintiffs to make their Second Amended Complaint more**
17 **definite and certain.**

18 If the Court declines to dismiss the Second Amended Complaint, it should instead order
19 Plaintiffs to make it more definite and certain in the specific respects identified below. ORCP 21D
20 permits the Court to require Plaintiffs to amend their Second Amended Complaint because the
21 precise nature of the claims against each defendant contained therein is not apparent.

22 1. The Court should require Plaintiffs, in each of their claims, to specifically allege
23 the actions taken by each named Defendant, and in what capacity those actions were taken.

25 2. In numerous instances throughout the Second Amended Complaint, Plaintiffs use
26 “plaintiff” in its singular form without specifying which plaintiff the allegation refers to. In each
27 instance, Plaintiffs should clarify which plaintiff the allegation pertains to.

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DON RICARD, an individual and
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KLAMATH FALLS FOREST ESTATES
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individuals and as members of the KFFEHOA
Board of Directors

Defendants.

) Case No.: 18CV25995

) **PLAINTIFF'S 2ND AMENDED**
) **COMPLAINT FOR DISCRIMINATION,**
) **INTENTIONAL INFLICTION OF**
) **EMOTIONAL DISTRESS AND**
) **INJUNCTIVE RELIEF**

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

) **Not Subject To Mandatory Arbitration**

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.

PLAINTIFF'S SECOND AMENDED COMPLAINT

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- 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
26

PLAINTIFF'S SECOND AMENDED COMPLAINT

Page 2

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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 that he could not have
6 access, that all of the water keys were out.)

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

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

14 13. Plaintiff again offered to James Vaughan, the money the board had set to obtain a water key
15 and he was told that he was not a legal resident they had changed the bylaws to provide only
16 legal residents could obtain water keys.

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

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

22 16. The changes made now require in order to receive a water key, the member, in order to
23 receive a water key must be a legal resident, with a legal residence and a legal address within
24 the Klamath Forest Estates Unit 1. The changes were made by the board at board meeting.

1 However, there is no indication that the changes were submitted to the membership for a
2 membership vote.

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

5 18. While the Plaintiff, Don Ricard, resides within Klamath Falls Forest Estates Unit 1 and has a
6 legal address indicating his residence within Klamath Falls Forest Estates Unit 1, Plaintiff
7 does not have a building permit to locate his RV on his property.

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

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

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

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

23 23. Dennis Gibbs, the Road Commissioner for Klamath Falls Forest Estates Unit No. 1, on June
24 24, 2018, hit Mr. Garcia's walking cane out from under him. He stated to Mr. Garcia that
25 you are faking your disability.
26

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

3 25. Because Defendants have denied Plaintiffs access to the community well to obtain water,
4 Plaintiff, Don Ricard, has had to drive more than 30 miles, one way, three to four times per
5 week since Plaintiff purchased the property within Klamath Falls Forest Estates Unit One in
6 order to obtain water. This has cost him significant time and money. Plaintiff, Don Ricard,
7 estimates his damages to be approximately \$50,000.00.

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

10 27. Defendant's denial to Plaintiffs of access to one of the essential's of life, water because of
11 their disabilities has caused Plaintiffs a great deal of inconvenience and emotional distress.
12 Therefore, Plaintiffs have been harmed in amount to be proved at trial, but estimated not to
13 exceed-\$400,000.00.

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

16 **PLAINTIFF'S SECOND CLAIM FOR RELIEF**
17 **(Intentional Infliction of Emotional Distress)**

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

19 30. Plaintiff, Don Ricard, continued to seek to obtain a water key to be able to access water at the
20 community well. Upon his continued attempts, one day, he asked James Vaughan what it
21 would take for him to be able to get a water key. Mr. Vaughan told him that he would never
22 get a water key.

23 31. Members of the board have made statements to Mr. Ricard that he had "better watch his
24 back". "People up in that area end up dead." "He just needs to go find somewhere else to
25 _____

1 live.” Such statements are made with the intent of causing Mr. Ricard enough emotional
2 distress that he will leave and stop his efforts to obtain a water key.

3 32. Board Member, Cynthia Wilson filed a stalking order against Mr. Ricard. The court, at
4 hearing, found the stalking order did not meet the requirements for a stalking order. This
5 cost Mr. Ricard both in time and expense in defending against the stalking order.

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

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

8 35. Defendant, James Vaughn, filed a falsified stalking order against Plaintiff, Reuben Garcia for
9 the purposes of harassing him.

10 36. Defendant, Sam Marquez, has filed a falsified assault charge against Plaintiff, Reuben
11 Garcia.

12 37. A reasonable person would recognize the statements are outrageous in the extreme.

13 38. After filing this lawsuit, one of the board members filed a stalking order against Plaintiff.
14 The stalking order had no statutory authority, but, it cost Plaintiff money to have to defend
15 against the stalking order.

16 39. Plaintiff has suffered great emotional damages in an amount to be proved at trial not to
17 exceed \$499,000 as a result of the statements, plus reasonable costs and disbursements.

18 **PLAINTIFF'S THIRD CLAIM FOR RELIEF**
19 **(INJUNCTION)**

20 40. Plaintiff has suffered irreparable harm because of Defendants' discrimination and intentional
21 infliction of emotional distress. The harm is not easily quantifiable in monetary damages.

22 41. Continued discrimination against Plaintiff will cause Plaintiff additional irreparable harm.

23 42. The only way to eliminate the harm being caused plaintiff in the future is the enjoin
24 Defendants from continuing to deny Plaintiff access to the water available to members of the
25 KFFEHOA.
26

1 WHEREFORE, Plaintiffs prays for:

- 2 1. On the first claim for relief, judgment in favor of Plaintiffs in an amount not to exceed
3 \$499,000.00 plus costs, disbursements and reasonable attorney fees.
- 4 2. On Plaintiffs' second claim for relief, judgment in the amount of \$499,000.00 plus costs
5 and disbursements.
- 6 3. On Plaintiff's third claim for relief, an injunction, prohibiting Defendants from denying
7 access to the community well for so long as Plaintiff pays the annual assessment fees.
- 8 4. Awarding such other relief as the court may determine is equitable.
- 9
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11

Respectfully submitted this 6th day of December, 2018

/s/ Michael W. Franell

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PLAINTIFF'S SECOND AMENDED COMPLAINT

Page 7

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CERTIFICATE OF SERVICE

I hereby certify that on the below date, I served a true and correct copy of the below stated document on the below stated persons, using the below stated method of service.

- Mail** by first-class mail, postage prepaid to the last known address of the persons identified below;
- Fax** by facsimile transmission to the last known facsimile of the persons identified below;
- E-Mail** by electronic mail to the last known e-mail address of the persons identified below, and if sent by electronic mail only, under agreement pursuant to ORCP 9.
- E-Service** by electronic transmission of a notice of filing by the Odyssey File and Serve system to the service contact e-mail address of a party who has consented to electronic service under UTCR 21.100.

<i>Name/Address</i>	<i>Relationship</i>	<i>Manner of Service</i>
Michael W. Franell 724 S. Central Ave., Ste. 113 Medford, OR 97501 mike@franelllaw.com	<i>Attorneys for Plaintiffs</i>	Mail E-Mail

Documents:

DEFENDANTS' ORCP 21 MOTIONS AGAINST PLAINTIFFS' SECOND AMENDED COMPLAINT

Dated this 8th day of July, 2019.

VIAL FOTHERINGHAM LLP

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