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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 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 peron 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 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.
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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.
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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
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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.
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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.

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11 Respectfully submitted this 6th day of December, 2018

12 /s/ Michael W. Franell

13 _____
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