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**TO: Michael Montag**

**FAX #: 503.598.7758**

**COMPANY: Vial, Fotheringham, LLP**

**FROM: Michael W. Franell,  
Attorney at Law**

**DATE: August 28, 2019**

**RE: Plaintiff's Motion for Leave to File 3<sup>rd</sup> Amended Complaint and proposed order**

Number of pages including this cover page: 9

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Comments:

Mr. Montag: Attached please find the third amended complaint which I filed today.

8/28/2019 10:31 AM  
18CV25995

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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 THIRD 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.

- 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.

**FIRST CLAIM FOR RELIEF – DISCRIMINATION IN VIOLATION OF  
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

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 being one of those, even though Cynthia Wilson lives in a house that does  
14 not have occupancy permits.

15 13. Plaintiff again offered to James Vaughan, the money the board had set to obtain a water key  
16 and he was told that he was not a legal resident they had changed the bylaws to provide only  
17 legal residents could obtain water keys. Again, the remaining board members affirmed this  
18 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.  
26

- 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 for any changes that affects the membership  
4 cannot be taken without a meeting of the membership to provide approval.
- 5 18. Plaintiff, Don Ricard, resides within Klamath Falls Forest Estates Unit 1 and 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.  
8 However, in March 2019, Mr. Ricard applied for and received a permit to allow him to install  
9 a septic system on his property. In spite of this, Defendant Board members have still refused  
10 to provide Mr. Ricard 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.
- 26

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 Mr.  
4 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. Because of the actions of the other board members, Mr. Ricard believes they  
 3 support James Vaughan in his statement to Mr. Ricard.

4 31. Members of the board have made statements to Mr. Ricard that he had "better watch his  
 5 back". "People up in that area end up dead." "He just needs to go find somewhere else to  
 6 live." Such statements are made with the intent of causing Mr. Ricard enough emotional  
 7 distress that he will leave and stop his efforts to obtain a water key.

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

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

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

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

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

17 37. Mr. Garcia has had to hire an attorney and has incurred a great deal of expense and effort in  
 18 defending against the falsified reports.

19 38. A reasonable person would recognize the statements are outrageous in the extreme.

20 39. Plaintiffs have suffered great emotional damages in an amount to be proved at trial not to  
 21 exceed \$499,000 (\$249,500 each) as a result of the statements, plus reasonable costs and  
 22 disbursements.

23 **PLAINTIFF'S THIRD CLAIM FOR RELIEF**  
 24 **(INJUNCTION)**

1 40. Plaintiffs have suffered irreparable harm because of Defendants' discrimination and  
 2 intentional infliction of emotional distress. The harm is not easily quantifiable in monetary  
 3 damages.

4 41. Continued discrimination against Plaintiffs will cause Plaintiffs additional irreparable harm.

5 42. The only way to eliminate the harm being caused plaintiff in the future is the enjoin  
 6 Defendants from continuing to deny Plaintiffs access to the water available to members of  
 7 the KFFEHOA.

8 WHEREFORE, Plaintiffs pray for:

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

18  
 19  
 20 Respectfully submitted this 6<sup>th</sup> day of December, 2018

21 /s/ Michael W. Franell

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PLAINTIFF'S SECOND AMENDED COMPLAINT

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