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5 SUPERIOR COURT OF CALIFORNIA, COUNTY OF TUOLUMNE

6
7 CHARLES P. VARVAYANIS,) No.: SC 18586
PATRICIA T. JONES,)
8) **PLAINTIFFS' TRIAL BRIEF**
Plaintiffs,)
9) DATE: August 23, 2012
vs.) TIME: 8:30 a.m.
10) Dept: 5
ODD FELLOWS SIERRA RECREATION) JUDGE: Honorable Kim Knowles
11 ASSOCIATION, INC.,)
12 Defendant)

13
14 **I. INTRODUCTION.**

15 As the pertinent chronology and admissible evidence before the court will establish, the
16 request before this Court does prove, by providing the preponderance of evidence, that justice
17 requires defendants to reactivate and replace or reimburse Plaintiffs for gate entry devices
18 deactivated by Odd Fellows Sierra Recreation Association, Inc. (OFSRA).

19 The admissible evidence will also establish the gate entry devices were grandfathered and
20 not eligible for deactivation.

21
22 **II. PERTINENT CHRONOLOGY.**

<u>Date</u>	<u>Event</u>
23 9/2/1999	Plaintiffs purchase Lot 09.006 with 4 associated gate entry devices.
24 9/21/1999	Plaintiffs purchase Lot 09.007 with 4 associated gate entry devices.

1 1999-2007 Plaintiffs purchase 10 gate entry devices from Defendant.

2 8/22/2006 Defendant adds the Gate Policy to the Rules and Regulations (see **Exhibit A**
3 attached hereto).

4 1/16/2007 Plaintiffs purchase Lot 09.014 with 5 associated gate entry devices.

5 3/27/2007 The current revision of Defendant's Rules and Regulations was created and
6 distributed to homeowners on 4/27/2007 and 8/16/2008 (see **Exhibit B** attached
7 hereto).

8 5/21/2007 Gate operator Doris Selman informs member Teri Kleinen "It was approved for
9 property to owners to buy larger number of cards". Teri had 11 devices.

10 1/25/2008 Plaintiffs purchase 6 gate entry devices from Defendant.

11 7/1/2009 Plaintiffs purchase Lot 24.041 with 2 associated gate entry devices.

12 5/12/2012 Defendant announces new gate entry cards can be obtained to replace old gate
13 entry cards for \$10.00 each and requested anyone having six or more entry
14 devices to explain which kind of entry devices they have and the reason why they
15 have more than six (see **Exhibit C** attached hereto).

16 5/15/2012 Defendant e-mails Plaintiff asking "Can you provide an explanation why you
17 need so many gate devices and, when they were purchased?"

18 5/15/2012 Plaintiffs responds to Defendant's request.

19 5/31/2012 Plaintiffs turns over 12 old gate entry cards and \$120.00 to Defendant to obtain
20 12 new replacement gate entry cards.

21 6/17/2012 Defendant first states Board approval is required to obtain any more than 6 gate
22 openers per lot (see **Exhibit D** attached hereto).

23 6/17/2012 Defendant informs Plaintiffs they must select 9 gate entry devices for
24 deactivation and returns the 12 old gate entry cards and the \$120.00.

25 6/17/2012 Plaintiffs turn over 5 old gate entry cards and \$50.00 to Defendant for
replacement by 5 new gate entry cards and protests the deactivation of 9 gate
entry devices.

1 6/27/2012 Defendant processes Plaintiffs' request for replacement cards and deactivates 9
2 of the Plaintiffs gate entry devices.

3 **III. BASIS FOR LIABILITY AND DAMAGES.**

4 As a result of defendant's admittedly wrongful gate entry device practices, as set fourth
5 in the above chronologies, this action seeks recovery from Defendant's unjust gate entry device
6 practices based on the following:

- 7 • The Gate Policy is silent in regard to number of gate entry devices per lot.
- 8 • Defendant allowed the purchase and accumulation of unlimited gate entry devices.
- 9 • Per the requirements of Plaintiff's May 12, 2012 BOD meeting, Plaintiff responded to
10 Defendant as to which kind of entry devices they have and the reason why they have
11 more than six.
- 12 • Plaintiffs' request to obtain 12 replacement gate entry devices is within the "Board
13 approval is required to obtain any more than 6 gate openers per lot" criteria.
- 14 • The request to obtain replacement gate entry devices was prior to the June statement that
15 Board approval is required to obtain any more than 6 gate openers per lot.

16
17 **IV. CONCLUSION.**

18 Whereas the Rules and Regulations do not limit the number of gate entry devices and the
19 number of replacement devices requested is within the "obtain 6 gate openers per lot" criteria,
20 the existing devices should be grandfathered, reactivated and replaced or Plaintiffs reimbursed
21 current value for deactivated devices, and the Plaintiffs should be awarded fees and costs.

22 DATED: August 22, 2012

Respectfully submitted,

23 *Charles P. Varvayanis*
24 By: Pat Jones
25 Charles Varvayanis
Patricia T. Jones