

FILED

NOV - 9 2016



FILE STAMP CANCELLED

Superior Court of California
County of Tuolumne

By: *[Signature]* Clerk

1 Mark Cole
2 1242 Chadwick Court
3 Modesto, CA 95350
4 Telephone: (209) 579-2269 / (209) 586-4926 (Cabin)
5 E-mail: adamscole@sbcglobal.net

6 SUPERIOR COURT OF CALIFORNIA, COUNTY OF TUOLUMNE

7) No: SC19415
8)
9) DEFENDANTS' TRIAL BRIEF
10)
11) DATE: December 2, 2016
12) TIME: 10:30 a.m.
13) DEPT: 4
14) JUDGE: Honorable Kevin M. Seibert
15)
16)
17)
18)
19)
20)
21)
22)
23)
24)
25)

26 **TABLE OF CONTENTS**

27 I. INTRODUCTION..... 3
28 II. STATEMENT OF THE FACTS..... 4
29 Defendants..... 4
30 History..... 4
31 OFSRA – Articles of Incorporation – January 19, 1949..... 5
32 Purchase 5
33 Subdivision Development 5
34 OFSRA CC&Rs – March 3, 1950 6
35 Subdivision Large Parcel Re-Subdivided to Create More Sellable Parcels..... 6
36 The Defendants' Property 8
37 OFSRA CC&Rs – 1975 8
38 OFSHA CC&Rs – December 31, 1984 8

1	OFSRA re-stated Articles of Incorporation – October 10, 1986.....	9
2	OFSHA Articles of Incorporation – October 10, 1986.....	9
3	OFSRA Declaration Relating to the Roads and Streets - May 5, 1996.....	10
4	OFSHA CC&Rs Recorded on Additional Properties.....	10
5	OFSHA Attempts to Become Active – May 29, 2011.....	10
6	Previous Assessments Were Voluntary.....	12
7	Plaintiff Incorporates – March 25, 2013.....	12
8	The Subdivision Does Not Include the Meadows.....	13
9	Plaintiff’s Expenses from Maintaining and Operating OFSRA’s Properties.....	13
10	Plaintiff Profits.....	16
11	Service Providers.....	17
12	Sierra Park Water Company Incorporates – March 25, 2013.....	17
13	Sierra Park Water Company re-stated Articles of Incorporation – May 28, 2013.....	17
14	California Public Utilities Commission (CPUC).....	17
15	Common Board Members – Plaintiff and Sierra Park Water Company, Inc.....	18
16	Dishonesty and Rate Gouging – Sierra Park Water Company, Inc. and OFSRA.....	18
17	Dishonesty and Illegal Activity – Plaintiff.....	18
18	Subdivision and Surrounding Parcel Counts and Subdivision Road Usage.....	19
19	Plaintiff Demanded Payments.....	20
20	Plaintiff Budget.....	21
21	Construction and Maintenance and Other Things Prior to the Plaintiff.....	21
22	Plaintiff’s Actions to Exert its Will Over Non-Shareholders.....	21
23	Plaintiff Claims the Payments Demanded are Assessments.....	22
24	Plaintiff Demands Payments in Violation of its Bylaws.....	22
25	Civil Code 845 Does Not Apply.....	22

1 Plaintiff Maintaining OFSRA Owned Roads Not Part of the Subdivision.....23

2 Plaintiff Maintaining Additional Road Not Part of the Subdivision23

3 Plaintiff Provides Enrichment to OFSRA Without Contact.....24

4 Ownership of the Roads in Odd Fellows Sierra Camp Subdivision.....24

5 State of California Division of Real Estate.....25

6 Pierson v. Bradfield, 43 Cal. App. 2d 51925

7 Safwenberg v. Marquez, 50 Cal. App. 3d 30225

8 Opinion – Attorney General Bill Lockyer July 14, 2005 (AG 04-809).....27

9 California Land Surveyors Association.....27

10 Road Ownership Conclusion.....29

11

12 III. CONCLUSION.29

13 IV. PRAYER FOR RELIEF.....30

14 V. INDEX OF EXHIBITS.....30

15 VI. ACKNOWLEDGEMENT.34

16 VII. VERIFICATION.34

17

18 **I. INTRODUCTION.**

19 From 1950 to May 26, 2013, Odd Fellows Sierra Recreation Association, Inc. (OFSRA)

20 allowed all subdivision parcel owners and some nearby parcel owners to illegally participate in

21 OFSRA meetings and discuss and vote on all matters related to OFSRA construction,

22 maintenance and other things including but not limited to the roads but excluding the timber. On

23 May 26, 2013, the Plaintiff proclaimed it was the service company and discussion and voting

24 was now limited to only its shareholders.

25

1 The Plaintiff claims it has performed services, of its choice, on items it does not own,
2 have title, easement or contract to, including but not limited to road maintenance.

3 A portion of the Plaintiff's expenses are incurred from maintaining and operating
4 portions of Odd Fellow Sierra Recreation Association, Inc.'s properties, improvements and
5 facilities. The Plaintiff incorporates those expense in the payments demanded from the
6 Defendants.

7 The Plaintiff fraudulently and/or mistakenly claims it is the sole provider of services to
8 the Subdivision.

9 The Defendants have no say in the activities or decisions of the Plaintiff. The Plaintiff
10 did not inquire if the Defendants desired services or if the Defendants would authorize services.
11 The Defendants did not request or authorize services from the Plaintiff. The Defendants have no
12 contract or affiliation with the Plaintiff.

13 The Plaintiff realizes profits from receiving payments.

14 The Plaintiff fraudulently and/or mistakenly claims the Defendants owe payments to the
15 Plaintiff.

17 **II. STATEMENT OF THE FACTS.**

18 **Defendants**

19 Marjorie Cole is deceased. Mark Cole, Edward R. Cole and Michael L. Cole are the sons
20 of Edward E. Cole and Marjorie Cole. Mark Cole, Edward R. Cole and Michael L. Cole are
21 listed on the title of the property with Edward E. Cole. With Commissioner Philip A. Pimentel's
22 permission, Mark Cole spoke on behalf all at the September 9, 2016 appearance. Commissioner
23 Philip A. Pimentel stated all listed on title must be served before this case can proceed.

24 **History**

1 1948 – Alvin Fay of Sonora, CA, was a service station owner on Sonora-Mono State
2 Highway (Highway 108) in Tuolumne County and member of the International Order of Odd
3 Fellows (I.O.O.F.) Lodge 10 in Sonora, CA. Alvin became aware of a certain tract of land,
4 containing 740 acres, embracing what at one time was a portion of the old Wheeler Ranch,
5 together with adjoining parcel, on Sonora-Mono State Highway in Tuolumne County. Alvin
6 contacted I.O.O.F. lodges in Calaveras, Stanislaus, San Joaquin and Tuolumne Counties and
7 proposed the possibility of forming a committee to inaugurate an Odd Fellows Recreation area in
8 the Sierra.

9 November 28, 1948 – Delegates from the aforementioned lodges met at Sylvan Lodge on
10 Sonora-Mono State Highway in Tuolumne County to inspect the tract of land and discuss the
11 possibility of forming a committee to inaugurate an Odd Fellows Recreation area in the Sierra.
12 Election of officers of such an organization was completed and the committee was formed
13 (Exhibit A – Committee Minutes).

14 **OFSRA – Articles of Incorporation – January 19, 1949**

15 January 19, 1949 – OFSRA came into existence as a Section 501(c)(12) non-profit
16 California Corporation, Entity Number: C0233544, operating as a Home Owners’ Association
17 (Exhibit B – Articles of Incorporation Endorsed and Filed at the Office of the Secretary of State
18 of the State of California).

19 **Purchase**

20 February 11, 1949 – OFSRA purchased the said tract of land from Evelyn M. Hawley, a
21 single woman and recorded the transaction in Volume 37 at Page 420, Official Records of
22 Tuolumne County (Exhibit C).

23 **Subdivision Development**

1 June 15, 1949 – The I.O.O.F. Odd Fellows Sierra Camp Subdivision No. 1 Subdivision
2 Map was approved by the Board of Supervisors of Tuolumne County, State of California
3 (Exhibit D – Subdivision Map).

4 June 26, 1949 – OFSRA began selling lots (parcels), illegally (Exhibit E – June 22, 1949
5 OFSRA Minutes, Item 6) in anticipation of the State of California, Division of Real Estate
6 issuing the Subdivision Public Report (Exhibit F – Letter from Attorney, July 13, 1949, Page 2).

7 March 3, 1950 – I.O.O.F. Odd Fellows Sierra Camp Subdivision No. 1 Subdivision Map
8 was certified by OFSRA and the map was recorded in Volume 10 of Maps, at Page 44, Official
9 Records of Tuolumne County (Exhibit D).

10 **OFSRA CC&Rs – March 3, 1950**

11 March 3, 1950 – OFSRA drafted CC&Rs (Exhibit G) and with the cooperation of its
12 membership, recorded the CC&Rs in the chain of title for all of the properties in the proposed
13 subdivision in Volume 45 at Page 197, Official Records of Tuolumne County. The CC&Rs
14 incorporated a 25-year sunset clause, automatically terminating the CC&Rs in 1975 (Exhibit G,
15 Item 13).

16 **Subdivision Large Parcel Re-Subdivided to Create More Sellable Parcels**

17 March 31, 1950 – The State of California, Division of Real Estate issues the Subdivision
18 Public Report on I.O.O.F. Odd Fellows Sierra Camp Subdivision No. 1 (Exhibit H)

19 April 15, 1950 – OFSRA certifies the State of California, Division of Real Estate
20 Subdivision Public Report on I.O.O.F. Odd Fellows Sierra Camp Subdivision No. 1 (Exhibit H).
21 The Subdivision Report, Paragraph 6 (ROADS), clearly states “Roads in this subdivision are
22 private roads and are to be maintained by the lot purchasers. Present improvements are included
23 in the purchase price of the lots.” No easements, recorded or otherwise, are associated with the
24 roads within the subdivision. OFSRA did not to retain title to the land the roads are built on, as
25 evidenced by the Subdivision Map (Exhibit D) and the lack of their existence in the tax records

1 of Tuolumne County both past and present. There is no title to the roads, there is no APN
2 associated with the roads and the Tuolumne County GIS system lists the roads with an identifier
3 number only as a place holder (Exhibit I – I.O.O.F. Odd Fellows Sierra Camp Subdivision,
4 Tuolumne County GIS Database, October 16, 2012) and (Exhibit J – I.O.O.F. Odd Fellows
5 Sierra Camp Subdivision, Tuolumne County GIS Database – 20131002 – October 2, 2013). As a
6 result, Civil Code 831 (Exhibit K) prevails. The contrary is not shown in any valid document.
7 The roads are collectively owned by the subdivision lot owners.

8 April 1, 1959 – The I.O.O.F. Odd Fellows Sierra Camp Subdivision No. 2 Subdivision
9 Map (Exhibit L) was approved by the Board of Supervisors of Tuolumne County, State of
10 California.

11 April 27, 1959 – The I.O.O.F. Odd Fellows Sierra Camp Subdivision No. 2 Subdivision
12 Map was recorded in Volume 14 of Maps, at Page 99, Official Records of Tuolumne County
13 (Exhibit L).

14 May 21, 1959 – OFSRA added 8 additional lots to the subdivision (Exhibit M –
15 Amended Final Subdivision Report). The Amended Final Subdivision Report, Paragraph 8
16 (ROADS), clearly states “Roads in this subdivision are private roads and are to be maintained by
17 the lot purchasers. Present improvements are included in the purchase price of the lots.” The
18 subdivision was comprised of 365 parcels (lots) (Exhibit M, Amended Final Subdivision Report,
19 Paragraph 4 (LOCATION)), I.O.O.F. Odd Fellows Sierra Camp Subdivision No. 1 Subdivision
20 Map (Exhibit D) and I.O.O.F. Odd Fellows Sierra Camp Subdivision No. 2 Subdivision Map
21 (Exhibit L), the roads and one common property known as APN: 031-052-16, located South of
22 and adjacent to parcels Lot 001 in Block 3 and Lot 032 in Block 3 of I.O.O.F. Odd Fellows Sierra
23 Camp Subdivision No, 1, according to the Official Map thereof, filed in the Office of the County
24 Recorder, Tuolumne County, California on March 8, 1950 in Volume 10 of Maps, at Page 44
25 (Exhibit D). The existence and significance of the aforementioned common property is largely

1 misunderstood or unknown by the current Board of Directors (BOD) of the Plaintiff, OFSRA
2 Sierra Park Water Company, Inc. OFSRA failed to transfer the common property to Odd
3 Fellows Sierra Homeowners' Association, Inc. (OFSHA) when it relinquished its homeowners'
4 association status and created OFSHA.

5 NOTE TO THE READER: Use care not to confuse OFSHA with OFSRA.

6 **The Defendants' Property**

7 The Defendants' parcel is APN: 031-101-06, 22141 Sarah Circle, Long Barn, CA
8 95335, Lot 023 in Block 09 of I.O.O.F. Odd Fellows Sierra Camp Subdivision No, 1, according to
9 the Official Map thereof, filed in the Office of the County Recorder, Tuolumne County,
10 California on March 8, 1950 in Volume 10 of Maps, at Page 44 (Exhibit D).

11 The Defendants are the un-disputed owners of the Defendants' parcel.

12 **OFSRA CC&Rs – 1975**

13 1975 – OFSRA drafted new CC&Rs (Exhibit N), however the CC&Rs were recorded to
14 none (zero) of the lots in the subdivision.

15 **OFSHA CC&Rs – December 31, 1984**

16 December 31, 1984 – OFSHA, at the time an un-incorporated organization, drafted
17 CC&Rs (Exhibit O).

18 CC&Rs can only be recorded against a parcel with the authorization of the current owner
19 of the parcel.

20 January 3, 1985 – OFSRA recorded the OFSHA CC&Rs in the chain of title of a non-
21 existent lot in Volume 771 at Page 659, Official Records of Tuolumne County (Exhibit O).

22 None of the 365 subdivision lots, including the Defendants' parcel, recorded the CC&Rs in their
23 chains of title at that time. The said CC&Rs were wrongfully recorded in the Defendants' parcel
24 chain of title having been recorded by OFSRA to the benefit of OFSHA while neither OFSRA
25 nor OFSHA held title to or possessed any power whatsoever over the Defendants' parcel and

1 authorization was not provided by the parcel owner. Had authorization been provided by the
2 parcel owner, it would have been in writing and attached to CC&Rs as one of the recorded
3 pages, which it was not.

4 February 12, 1985 – OFSRA re-recorded the OFSHA CC&Rs in the chain of title of one
5 of the lots it owned in the subdivision, recorded in Volume 775 at Page 79, Official Records of
6 Tuolumne County (Exhibit P). None of the other 364 subdivision lots, including the Defendants’
7 parcel, recorded the CC&Rs in their chains of title at that time. The said CC&Rs was wrongfully
8 recorded in Defendants’ parcel chain of title having been recorded by OFSRA to the benefit of
9 OFSHA while neither OFSRA nor OFSHA held title to or possessed any power whatsoever over
10 the Defendants’ parcel and authorization was not provided by the parcel owner. Had
11 authorization been provided by the parcel owner, it would have been in writing and attached to
12 CC&Rs as one of the recorded pages, which it was not.

13 **OFSRA re-stated Articles of Incorporation – October 10, 1986**

14 October 10, 1986 – OFSRA re-stated its Articles of Incorporation and converted from a
15 non-profit California Corporation to a for-profit California Corporation, relinquishing its Home
16 Owners’ Association status (Exhibit Q – Articles of Incorporation Endorsed and Filed at the
17 Office of the Secretary of State of the State of California).

18 **OFSHA Articles of Incorporation – October 10, 1986**

19 October 10, 1986 – Odd Fellow Sierra Homeowners’ Association, Inc. (OFSHA) came
20 into existence as a Section 501(c)(12) Non-profit Mutual Benefit California Corporation, Entity
21 Number: C1544100, operating as a Home Owners’ Association (Exhibit R – Articles of
22 Incorporation Endorsed and Filed at the Office of the Secretary of State of the State of
23 California).

24 OFSHA was a sham, holding only a dozen or so BOD meetings between 1986 and 2007
25 (see www.varvayanis.com/sp/newsletters) with OFSRA appointing the OFSRA BOD as the

1 OFSHA BOD members and having filed no tax returns since 1992 (see
2 www.varvayanis.com/sp/finance scroll to Taxes).

3 **OFSRA Declaration Relating to the Roads and Streets - May 5, 1996**

4 May 5, 1996 – In an effort to resolve a perceived access problem identified during a
5 failed attempt to add seven lots to the subdivision, OFRSA drafted the “Declaration Relating to
6 the Roads and Streets” (the Declaration), recorded in Book 1391 at Page 0719, Official Records
7 of Tuolumne County (Exhibit S). The Declaration is defective where OFSRA was not a “non-
8 profit Mutual benefit corporation” as it claimed and OFSRA was not “the owner of the streets
9 and roadways...” as it claimed. The Declaration was wrongfully recorded in the Defendants’
10 parcel chain of title having been recorded by OFSRA to the benefit of OFSRA while OFSRA did
11 not hold title to or possess any power whatsoever over the Defendants’ parcel and authorization
12 was not provided by the parcel owner. Had authorization been provided by the parcel owner, it
13 would have been in writing and attached to CC&Rs as one of the recorded pages, which it was
14 not. The Declaration is not a CC&R even though it may be categorized as one in the Tuolumne
15 County Recorder Electronic Information Systems due to the lack of a more appropriate category
16 only.

17 **OFSHA CC&Rs Recorded on Additional Properties**

18 2011 – Five additional properties recorded the OFSHA December 31, 1984 version of the
19 CC&Rs against their parcels. The Defendants’ parcel was not one of them.

20 **OFSHA Attempts to Become Active – May 29, 2011**

21 May 29, 2011 – For the first time, OFSRA allowed an election for OFSHA BOD
22 members. Previously, OFSRA ran the OFSHA annual meetings and disallowed all attempts to
23 hold the election for OFSHA BOD stating the OFSRA BOD is the OFSHA BOD. The newly
24 formed OFSHA Board of Directors included Bill Ordwein. Bill Ordwein was an existing
25 member of the OFSRA Board of Directors at that time. Bill Ordwein made attempts to

1 sabotaging OFSHA business and disclosed confidential OFSHA information to OFSRA
2 including the details of confidential meetings with OFSHA's attorney regarding OFSRA. Note:
3 Bill Ordwein is currently a member of the Plaintiff's BOD. OFSHA faced fierce opposition to
4 operating as a stand-alone entity from OFSRA with OFSRA constantly interfering with OFSHA
5 business and filing a lawsuit against OFSHA and 500 Does in Superior Court of California,
6 Tuolumne County, CV57297 on February 23, 2012.

7 May 27, 2012 – OFSHA became defunct (Exhibit T – Secretary of State of the State of
8 California Business Entity Detail) due to the inability of OFSHA to conduct its business as result
9 of OFSRA tampering. OFSHA became defunct without a named successor when the last of its
10 active BOD member's resigned (Exhibit U - Resignation letters). No subsequent meetings
11 occurred. The one inactive BOD member resigned on September 11, 2012 (Exhibit V –
12 Resignation letter) with no OFSHA initiated activity occurring thereafter.

13 Since OFSHA was defunct, OFSHA did not appear to defend itself in CV57297. One of
14 the Doe's attempted to defend himself and OFSHA, however OFSRA subsequently dismissed
15 the Doe and the Doe could not testify. As a result of no defense, OFSHA lost by default.

16 In an effort to discourage OFSHA from reforming at the upcoming annual meetings,
17 Yvonne Peter, then a member of the Plaintiff's BOD, and Gloria Harvey, then the president of
18 the OFSRA BOD that initiated the OFSHA BOD election, filed a class action lawsuit against
19 OFSHA and its Board Members except Bill Ordwein. 75% of the Boards of Directors members
20 of OFSRA, the Plaintiff and Sierra Park Water company plus some regular members of OFSRA,
21 the Plaintiff. and Sierra Park Water, Inc. joined the suit, totaling 54 participants out of about 300
22 eligible to participate (Exhibit W – Preliminary Statement of Interest in Class Certification –
23 Note: Two parties are counted twice each). The lawsuit was filed against OFSHA and its prior
24 BOD except Bill Ordwein in Superior Court of California, Tuolumne County, CV58108 on
25 March 27, 2013.

1 CV58108 ended with a Judgement and order on motions to strike and demurrers to
2 second amended complaint in favor of the Defendant (Exhibit X) on July 31, 2014. **Please**
3 **review Exhibit X.**

4 **Previous Assessments Were Voluntary**

5 Assessments were voluntary according to the CV58108 order on motions to strike and
6 demurrers to second amended complaint issued by Honorable Donald Segerstrom on August 14,
7 2014. (Exhibit X, Pages 7, 15, 16, 18 & 19). **Please review Exhibit X.**

8 **Plaintiff Incorporates – March 25, 2013**

9 March 25, 2013 – The Plaintiff came into existence (Exhibit Y – Secretary of State of the
10 State of California Business Entity Detail) as an investor owned, for-profit California
11 Corporation, Entity Number: C3556146, operating as a self-proclaimed service company. The
12 Plaintiff is NOT a non-profit California Corporation. The Plaintiff's Rules and Regulation apply
13 only to its Shareholders and those it holds contracts with. The Plaintiff claims there are currently
14 about 180 Shareholders and zero contract holders.

15 The Defendants are not shareholders or members of the Plaintiff.

16 The Defendants do not have any contract with the Plaintiff.

17 The Defendants have not requested any services from the Plaintiff.

18 The Defendants have no say in the activities or decisions of the Plaintiff.

19 The Plaintiff has no affiliation with the subdivision.

20 The Plaintiff is a 501(c) for-profit corporation.

21 The Plaintiff is not a Home Owners' Association. (Exhibit Z – e-mail from the Plaintiff's
22 Secretary, Wanda Lenhardt (1212panhead@prodigy.net) sent to Realtor Suzanne Simpson,
23 license # 01012112 at Coldwell Banker Twain Harte Realty (209) 586-5200 ext. 888 (Phone)
24 (209) 606-4729 (Cell), Suzanne@SuzanneSimpson.com – June 10, 2015).

25 The Plaintiff can levy assessments or dues only against its members and shareholders.

1 The Plaintiff owns no real property.

2 The Plaintiff owns no easements to real property.

3 The Plaintiff owns no facilities.

4 At its October 8, 2016 OFSRA Shareholders' meeting, OFSRA claimed it has no
5 Contracts with the Plaintiff (available in the form of an audio recording upon request).

6 **The Subdivision Does Not Include the Meadows**

7 The subdivision is approximately 102 acres (Exhibit M, Amended Final Subdivision
8 Report, Paragraph 4 (LOCATION)) and clarified in (Exhibit F – Letter from Attorney, July 13,
9 1949, Page 1, Paragraph 3 & Page 4, Paragraph 1). The subdivision does not include the
10 meadows.

11 **Plaintiff's Expenses from Maintaining and Operating OFSRA's Properties**

12 A large portion of the Plaintiff's expenses are incurred maintaining and operating
13 OFSRA's properties, improvements, facilities and equipment that are not a portion of the
14 subdivision, including but not limited to:

- 15 • APN 031-010-02 (51.02 Acre Lower Meadow)
 - 16 ○ Shop (Converted Fire House)
 - 17 ■ Propane heater
 - 18 ○ Shop Concrete Parking Lot
 - 19 ■ 24" x 80' Culvert Pipe
 - 20 ○ Fuel Tanks
 - 21 ○ Fuel Pumps
 - 22 ○ Apple Orchard
 - 23 ■ Apple trees
 - 24 ■ Irrigation system
 - 25 ■ Etc.
 - Pond
 - Levees
 - Dam
 - Valves
 - Piping
 - Valve house
 - Beach and sand
 - Docks
 - Pond side Bridge
 - Sunshade
 - Picnic Tables
 - Benches

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

- Trash Bins
- Signage
- Bar-b-que
- Etc.
- 2 Manually operated gates
- 3 Chain gates
- Pond Parking Lot
- Lighting - Pond Parking Lot
- Fence
- East Pedestrian Bridge
- West Pedestrian Bridge
- Pine Needle Dump
 - Pine Needle storage area
 - Signage
 - Chain gate
 - Truck loading ramp
 - Etc.
- Signage
- Etc.
- APN 031-010-11 (20.00 Acer Upper Meadow)
 - Playground
 - Benches
 - Swing set
 - Slides
 - Basketball court and equipment
 - Baseball field and Backstop
 - Horse shoe pit
 - Bar-b-que
 - Sink
 - Serving table
 - Picnic tables
 - Water fountain
 - Flag pole
 - Lighting
 - Storage building
 - Irrigation system
 - Etc.
 - Playground Parking Lot
 - Lodge
 - Kitchen
 - Stove
 - Refrigerator
 - Sink
 - Cabinets
 - Serving Stations
 - Pots
 - Pans
 - Etc.
 - Office
 - Desk
 - Chairs

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

- File cabinets
- Etc.
- Meeting hall
 - Tables
 - Chairs
 - Flags
 - Propane heater
 - Etc.
- Board Room
 - Tables
 - Chairs
 - Safe
 - Other office equipment
 - Propane heater
 - Etc.
- Deck
 - Furniture
 - Ramp
 - Etc.
- Bathrooms
- Etc.
- Lodge Parking Lot
- Dog Park
- Corporation Yard
 - Large building
 - Fence
 - 2 Manually operated gates
 - Paved driveway
 - Etc.
- Sand Shed
- Road (Lower portion of Ruth)
- Material Storage Yard
- Refuge Collection Structure
- Refuge collection structure parking lot
- 1 Manually operated gate
- Lighting
 - Lodge Parking Lot
 - Sand Shed
 - Refuge Collection Structure Area
- Etc.
- APN 027-010-39 (30.26 Acers – North of Subdivision)
 - Mechanized Gate
 - 2 Gates
 - 2 Gate operators
 - 4 in-pavement loops (for loop detectors)
 - Gate house
 - Access system
 - Key pad/controller
 - Card key reader
 - Emergency service access device
 - TUD access device

- Remote control receiver and antenna
 - Wiring for telephone line and telephone line
 - Etc.
 - Surveillance system
 - 4 Cameras
 - DVR
 - Pole and Mounts
 - Etc.
 - Fence pole line
 - Free standing electrical entrance structure
 - Underground conduit
 - Electrical Systems
 - Lighting
 - Signage
 - Etc.
- Road
 - Wheeler Road
- Etc.
- APN 031-010-20 (101.80 Acers – East of Subdivision)
 - 5 Manually operated gates
 - Road
 - North/East end of David/Goliath
 - Etc.
- APN 031-010-26 (73.13 Acers – South West of Subdivision)
 - 2 Manually operated gates
 - Etc.
- Miscellaneous
 - Signage
 - Dump truck
 - Snow Plow for dump truck
 - Tire Chains for dump truck
 - Sander for dump truck
 - 48 KVA 3-Phase Diesel Generator
 - 4 KW 120/240 V Gasoline Portable Honda Generator
 - Gasoline driven water pump, intake and discharge hoses
 - Electric Jack Hammer
 - Cutting/Welding Torches
 - Arc Welder
 - Drill Press
 - Chop Saw
 - Work Benches
 - 3 Chain tongs (Wrenches)
 - Backhoe
 - Tire for Backhoe
 - Tractor (for mowing)
 - Mower attachment for tractor
 - Etc.

Plaintiff Profits

1 The plaintiff claims profits are integrated into its budgets (Exhibit AA – Plaintiff’s
2 Budgets 2013-2014, 2014-2015 & 2015-2016, Page1, Line 21) and realizes those profits by
3 collecting payments.

4 **Service Providers**

5 A very large number of service providers other than the Plaintiff are continuously used
6 throughout the subdivision.

7 **Sierra Park Water Company Incorporates – March 25, 2013**

8 March 25, 2013 – Sierra Park Water Company, Inc. came into existence (Exhibit AB –
9 Secretary of State of the State of California Business Entity Detail) as an investor owned, for-
10 profit California Corporation, Entity Number: C3556147, operating as a self-proclaimed water
11 company. Sierra Park Water Company, Inc. is NOT a non-profit California Corporation. Sierra
12 Park Water Company, Inc. claims there are currently about 180 Shareholders and zero contract
13 holders.

14 **Sierra Park Water Company re-stated Articles of Incorporation – May 28, 2013**

15 May 28, 2013 – Sierra Park Water Company, Inc. re-stated its Articles of Incorporation
16 filed then at the Office of the Secretary of State of the State of California (Exhibit AC).

17 Sierra Park Water Company, Inc. has no affiliation with the subdivision.

18 The Defendants are not shareholders or members of Sierra Park Water Company, Inc.

19 The Defendants do not have any contract with Sierra Park Water Company, Inc.

20 **California Public Utilities Commission (CPUC)**

21 Sierra Park Water Company, Inc. passed its first major hurdle to becoming a California
22 Public Utilities Commission (CPUC) Regulated Utility on January 28, 2016 in CPUC Decision
23 16-01-047 (Exhibit AD).

24 April 4, 2016 – Sierra Park Water Company, Inc. submitted its Tier 1 letter to the CPUC
25 (Exhibit AE). After modifications in response to protests filed with the CPUC, the Sierra Park

1 Water Company, Inc. Tier 1 letter was approved on June 1, 2016 (Exhibit AF) and the WTD 440
2 Tariff Book was created (Exhibit AG), retroactive to April 4, 2016.

3 Sierra Park Water Company, Inc. will become a fully authorized CPUC Regulated Utility
4 when it meets the requirements put forth in CPUC Decision 16-01-047 (Exhibit AD) and Tier 1
5 letter (Exhibit AF) and Sierra Park Water Company, Inc. and Odd Fellows Recreation
6 Association, Inc. submits its Tier 2 letter and the CPUC subsequently approves it.

7 The Sierra Park Water Company, Inc. Rules and Regulations including Rates and Fees
8 are defined in the WTD 440 Tariff Book (Exhibit AG), also published on Sierra Park Water
9 Company, Inc.'s website at www.sierraparkwater.com

10 **Common Board Members – Plaintiff and Sierra Park Water Company, Inc.**

11 Three of the five members of the Plaintiff's BOD simultaneously serve on the Sierra Park
12 Water Company, Inc. BOD (Exhibit AI – Plaintiff's Newsletter, August 2016, Top of Page 1)
13 and (Exhibit AJ – Sierra Park Water Company, Inc. Newsletter, August 2016, Top of Page 1).

14 **Dishonesty and Rate Gouging – Sierra Park Water Company, Inc. and OFSRA**

15 Sierra Park Water Company, Inc. and OFSRA have a history of dishonesty by providing
16 misleading, inaccurate and unfounded information as documented by the CPUC (Exhibit AD,
17 page 32, (page 31 of Decision)) and of inappropriate and unfounded rates and fees causing the
18 CPUC to order substantial refunds from both corporations (Exhibit AD, page 37, (page 36 of
19 Decision), Ordering Paragraph 3).

20 **Dishonesty and Illegal Activity – Plaintiff**

21 Beyond the causes of dishonesty and illegal operation brought forth throughout this brief,
22 other causes exist:

23 Cause 1 – Conflict of Interest – The plaintiff is in violation of its own bylaws, Section 13,
24 Conflict of Interest Policy (Exhibit AH, Page 5, Section 13, Conflict of Interest Policy), having
25 three of its BOD members (Exhibit AI – Plaintiff's Newsletter, August 2016, Top of Page 1) also

1 sitting on the Sierra Park Water Company, Inc. BOD (Exhibit AJ – Sierra Park Water Company,
2 Inc. Newsletter, August 2016, Top of Page 1) and not abstaining from conflicting matters.

3 Example: The allocation of the caretaker’s hours split between the Plaintiff and Sierra Park
4 Water Company has been in question in CUPC Case 12-03-017, however the three BOD
5 members’ serving on both BODs have not abstained from ongoing matters involving the
6 documentation of the distribution and allocation of the caretaker’s hours past and present.

7 Cause 2 – T. M. Lechner departed the Plaintiff’s BOD on May 29, 2016 (Exhibit AK -
8 Plaintiff’s Annual Meeting Minutes – May 29, 2016, Page 3, Election of Board of Directors).

9 The Plaintiff’s Claim and ORDER to Go to Small Claims Court, SC-100, contains an
10 evidence page (Exhibit AL, Page 7) that absolutely identifies T. M. Lechner’s position as the
11 “Small Claims Court Advisory Director”. Note: Since the available copy of the evidence page
12 is obscured, the evidence page from a related case is also presented (Exhibit AL-1, Page 7). The
13 Plaintiff’s Bylaws define Advisory Directors: “The Board of Directors from time to time may
14 elect one (1) or more persons to be advisory directors, who shall not by such appointment be
15 members of the Board of Directors.” (Exhibit AH, Page 6, Section 18, Advisory Directors.). T.
16 M. Lechner taking part in filing the small claims action is in violation of Code of Civil
17 procedure, Section 116.540 (a) and 116.540 (b) (Exhibit AM, Page 1).

18 **Subdivision and Surrounding Parcel Counts and Subdivision Road Usage**

19 Between May 21, 1959 and present, 15 subdivision lots were merged with adjacent lots,
20 reducing the total subdivision lot count to 350. All 350 subdivision lots use the subdivision
21 roads for ingress and egress.

22 OFSRA owns one lot in the subdivision, APN: 031-064-10, 25418 Wheeler Road, Long
23 Barn, CA 95335, Lot 067 in Block 21 of I.O.O.F. Odd Fellows Sierra Camp Subdivision No, 1,
24 according to the Official Map thereof, filed in the Office of the County Recorder, Tuolumne
25 County, California on March 8, 1950 in Volume 10 of Maps, at Page 44 (Exhibit D).

1 OFSRA owns parcels that are not part of the subdivision; APN: 027-010-35, 027-010-
2 39, 027-050-12, 031-010-02, 031-010-11, 031-010-20, 031-010-26 and 031-050-16. All of
3 OFSRA's parcels use the subdivision roads for ingress and egress. The subdivision roads are
4 light duty being particularly thin as opposed to county roads. Starting since the Plaintiff
5 proclaimed it was in charge of road maintenance, OFSRA began using the subdivision roads for
6 heavy logging operations, exposing the roads to a disproportionately high level of load and
7 associated wear as compared the other subdivision roads users. Prior to the Plaintiff proclaiming
8 it was in charge of road maintenance, OFSRA mandated all logging operations use the logging
9 roads available around the entire perimeter of the subdivision.

10 Two private parties own parcels that are not part of the subdivision; APN: 031-010-25
11 and 031-091-23. Both private party parcels use the subdivision roads for ingress and egress.

12 While the ownership of the subdivision common property APN: 031-052-16 may be
13 debatable, the subdivision common property uses the subdivision roads for ingress and egress.

14 Tuolumne Utility District (TUD) owns a parcel that is not part of the subdivision; APN:
15 027-050-06. TUD's parcel use the subdivision roads for ingress and egress.

16 **Plaintiff Demanded Payments**

17 According to the Plaintiff, the Plaintiff has demanded payments from OFSRA for only
18 one lot in the subdivision, APN: 031-064-10, 25418 Wheeler Road, Long Barn, CA 95335, Lot
19 067 in Block 21 of I.O.O.F. Odd Fellows Sierra Camp Subdivision No, 1, according to the
20 Official Map thereof, filed in the Office of the County Recorder, Tuolumne County, California
21 on March 8, 1950 in Volume 10 of Maps, at Page 44 (Exhibit D).

22 The Plaintiff claims it has not demanded payments for OFSRA's parcels that are not part of
23 the subdivision but use subdivision roads; APN: 027-010-35, 027-010-39, 027-050-12, 031-010-
24 02, 031-010-11, 031-010-20, 031-010-26 and 031-050-16.

1 The Plaintiff claims it has demanded payments from the two private party owned parcels
2 that are not part of the subdivision; APN: 031-010-25 and 031-091-23.

3 It is not known if the Plaintiff has demanded payments from Tuolumne Utility District
4 (TUD) owned parcel that is not part of the subdivision; APN: 027-050-06.

5 **Plaintiff Budget**

6 The plaintiff budgets (Exhibit AA – Plaintiff’s Budgets 2013-2014, 2014-2015 & 2015-
7 2016, Page1, Line 22 divided by Line 24) indicate the Plaintiff budgets were calculated intending
8 to demand payments from a certain number of parcels; 360 for 2013-2014, 359 for 2014-2015
9 and 359 for 2015-2016.

10 Correlation cannot be achieved between number of parcels using the subdivision roads
11 for ingress and egress and the Plaintiff’s budgeted number of parcels to demand payments from.

12 The number of parcels the Plaintiff actually demanded payment from is not known,
13 however the Plaintiff claims it is in excess of 350.

14 **Construction and Maintenance and Other Things Prior to the Plaintiff**

15 Up to May 26, 2013, OFSRA, in violation of its own bylaws, allowed all subdivision
16 parcel owners and some nearby parcel owners to illegally participate in OFSRA meetings and
17 discuss and vote on all matters related to OFSRA construction, maintenance and other things
18 including but not limited to the roads but excluding the timber (Exhibit AO – Bylaws of OFSRA
19 – December 1, 1984, page 5, Section 9., Voting.) and (Exhibit AP – OFSRA and OFSHA Annual
20 Meeting Notice and Proxy Statement – May 2007).

21 On May 26, 2013, at the Plaintiff’s first Annual meeting, the Plaintiff proclaimed it was
22 the service provider for the subdivision, including but not limited to the roads. It also announced
23 it had limited voting to only its shareholders.

24 **Plaintiff’s Actions to Exert its Will Over Non-Shareholders**

1 The number of parcels owners that are subdivision road users and Plaintiff non-
2 shareholders exceeds 180.

3 The Plaintiff limits voting, on all matters, to its shareholders (Exhibit AH - Bylaws of the
4 Plaintiff – May 26, 2013, page 12, Section 11. Voting Rights; Cumulative Voting.).

5 The Plaintiff has proclaimed the results of its elections including assessments and rules
6 and regulations are binding to both shareholders and non-shareholders.

7 The election results for road maintenance (the entire budget) were: The numbers are
8 unavailable for 2013/2014 (Plaintiff’s Annual Meeting Minutes were not distributed – May 26,
9 2013), 102 votes for and 1 vote against for 2014/2015 (Exhibit AQ - Plaintiff’s Annual Meeting
10 Minutes – May 25, 2014, Page 4) and 91 in favor 2 against for 2015/2016 (Exhibit AR -
11 Plaintiff’s Annual Meeting Minutes – May, 24, 2015, Page 3, Election of BOD)

12 **Plaintiff Claims the Payments Demanded are Assessments**

13 The budget documentation presented by the Plaintiff indicate the payments demanded are
14 assessments (Exhibit AA – Plaintiff’s Budgets 2013-2014, 2014-2015 & 2015-2016, Page1,
15 Lines 1, 24, 30 and 37).

16 **Plaintiff Demands Payments in Violation of its Bylaws**

17 The Plaintiff demands assessments/payments in violation of its Bylaws. The Plaintiff’s
18 bylaws only specify levying assessments upon the outstanding shares of the corporation (Exhibit
19 AH - Bylaws of the Plaintiff – May 26, 2013, page 14, Section 16. Assessability of Shares.)

20 **Civil Code 845 Does Not Apply**

21 Since the onset of this Small Claims case, the Plaintiff has argued with the Defendant it
22 may be able to demand payments for road maintenance from non-shareholders for its services
23 based Civil Code 845 (Exhibit AN), however the Plaintiff never indicated it is demanding
24 payments based on Civil Code 845 in any of its prior meetings or publications (see
25 www.varvayanis.com/sp/newsletters and www.varvayanis.com/sp/Annual_Meetings)

1 The Plaintiff is not the owner of any easement in the nature of a private right-of-way, or
2 of any land to which any such easement is attached.

3 The easement, if any, is owned by more than one person, is attached to parcels of land
4 under different ownership or more specifically the parcel owners that are subdivision road users.

5 No agreement exists between the Plaintiff and non-shareholders.

6 The Plaintiff has not generated or published any schedule of how the Plaintiff proposes
7 cost shall be shared proportionately to the use made by each parcel owner.

8 **Plaintiff Maintaining OFSRA Owned Roads Not Part of the Subdivision**

9 The Plaintiff has been maintaining two axillary paved road segments not part of the
10 subdivision and on parcels owned by OFSRA that interconnect subdivision roads. These roads
11 segments are not integral to the subdivision and not required for ingress or egress by any of the
12 subdivision lot owners, except for OFSRA's logging operations. These roads are not part of the
13 subdivision and do not appear on the Subdivision Maps. These roads are best described as the
14 end of David Drive interconnecting with Goliath and the lower portion of Ruth Lane, about a
15 half mile of road combined.

16 Reiterating: At its October 8, 2016 OFSRA Shareholders' meeting, OFSRA claimed it
17 has no Contracts with the Plaintiff (available in the form of an audio recording upon request).

18 **Plaintiff Maintaining Additional Road Not Part of the Subdivision**

19 The Plaintiff has been maintaining an additional road, Wheeler Road, portions of which
20 cross land owned by Caltrans (About 1/32 mile), USDA U.S. Forest Service (about 1/4 mile),
21 Joseph Freitas and Gladys E. Freitas (about 1/16 mile), Floellen W. Smith (about 1/16 mile) and
22 OFSRA (about 1/16 Mile). Wheeler Road is best described as the main ingress and egress from
23 the subdivision to Highway 108 and is used for ingress and egress by OFSRA's logging
24 operations, the parcels not part of the subdivision using the subdivision roads, Joseph Freitas and
25 Gladys E. Freitas, Floellen W. Smith, TUD, Sierra Park Water Company, Inc., the Plaintiff and

1 the subdivision parcels owners. Wheeler road is not part of the subdivision and does not appear
2 on the Subdivision Maps.

3 **Plaintiff Provides Enrichment to OFSRA Without Contact**

4 In addition to the items mentioned earlier in the section titled "Plaintiff's Expenses from
5 Maintaining and Operating OFSRA's Properties", the plaintiff without contract has replaced an
6 OFSRA owned pedestrian bridge that failed prior to the Plaintiff proclaiming it was the service
7 provider for the subdivision. This was voted on by the Plaintiff's members and payments have
8 been demanded from all subdivision road users specifically for the pedestrian bridge repair over
9 two years \$50 per parcel for 2014/2015 and \$160 per parcel for 2015/2016. The election results
10 for bridge replacement were: The election result was not published for 2014/2015 (Exhibit AQ -
11 Plaintiff's Annual Meeting Minutes – May 25, 2014, Page 4, paragraphs 2 and 3) and 80 in favor
12 and 13 against for 2015/2016 (Exhibit AR - Plaintiff's Annual Meeting Minutes – May, 24,
13 2015, Page 3, Paragraph 2)

14 **Ownership of the Roads in Odd Fellows Sierra Camp Subdivision**

15 A question has arisen concerning who actually owns the roads in the subdivision. For
16 years it had been assumed by the lot owners that the developer of the subdivision, OFSRA,
17 owned the roads. That is what the OFSRA told everyone and they conducted themselves as the
18 owners. Now, the OFSRA is continuing to act as though they own the roads and have the right
19 to turn them over to the Plaintiff. Based on the information recently acquired about road
20 ownership and state law, the legal owners of the roads in the subdivision appears to be the lot
21 owners. Below, you will find information from the Subdivision Public Report on I.O.O.F. Odd
22 Fellows Sierra Camp Subdivision No. 1, two California court cases, an opinion by Attorney
23 General Bill Lockyer, and a forum by the California Land Surveyors Association that indicates
24 that the lot owners own the roads in the subdivision, not OFSRA as they have maintained for
25 years.

1 **State of California Division of Real Estate**

2 In the Subdivision Public Report on I.O.O.F. Odd Fellows Sierra Camp Subdivision No.
3 1, issued by the State of California Division of Real Estate in 1950, it states: “Roads in the
4 subdivision are private roads and are to be maintained by the lot purchasers. Present
5 improvements are included in the purchase price of the lots.” (Exhibit H, Page 1, Roads).

6 **Pierson v. Bradfield, 43 Cal. App. 2d 519**

7 In the California case Pierson v. Bradfield, March 18, 1941 (Exhibit AS), the Court took
8 a look at the size of the parcel in question to help determine if the lot in question went to the
9 center of the roadway or not. The court found that based on the acreage of the property in
10 question in order to arrive at the correct size, as stated in the deed for the property, the property
11 boundary had to extend to the center of the roadway. In the report to the Division of Real Estate
12 mentioned above, the size of the subdivision is listed as approximately 102.24 acres (Exhibit H,
13 Page 1, Size). In doing the math, the only way the current subdivision with 365 lots averaging
14 75 feet by 100 feet (Exhibit H, Page 1, Size) will reach over 100 acres is if the six miles of roads
15 are added in. Just based on the total acreage of the lots and roads in the subdivision, it is obvious
16 that the roads are owned by the lot owners. The court case discussed below makes this
17 ownership clear.

18 **Safwenberg v. Marquez, 50 Cal. App. 3d 302**

19 The decision in Safwenberg v. Marquez, July 31, 1975 (Exhibit AT), addresses
20 ownership of roads. The case involved ownership of the property in an abandoned road. In a
21 previous trial concerning this matter the trial court admitted extrinsic evidence tending to show
22 an intention of the parties that the deeds not include the street area adjacent to the lots. The
23 Court of Appeal reversed the decision, holding that, in view of the provision of Civ. Code 1112,
24 a transfer of land adjacent to a highway passes title “to soil of the highway in front to the center
25 thereof, unless a different intent appears from the grant.

1 In this case the Appeal Court said that the trial court erred in admitting extrinsic evidence
2 on the intent of the parties to the conveyances, where the deeds described the property only by
3 lot and block number according to a recorded map, and where there were no ambiguities in the
4 deeds or in the map. Once again the court cited Civ. Code, 1112, title to the center of a highway
5 adjacent to property transferred passes to the grantee “unless a different intent appears from the
6 grant.”

7 The Court continued with its decision in the case. It said that the purchaser of a lot
8 abutting on a street owns one-half of the adjacent street in fee in addition to the lot measurement
9 as a matter of law unless the grant manifests a different intent, and where there is nothing
10 ambiguous or uncertain in the terms of the deed, extrinsic evidence cannot be admitted to add to,
11 detract from or vary its terms.

12 The Appeal Court cited the case *Anderson v. Citizens Sav. etc. Co.* (1921) 185 Cal. 386,
13 393-396 in that the court held in *Anderson* that the purchaser received a fee interest in one-half
14 the street as part of the lot. (Fee Interest is defined as the absolute, legal possession and
15 ownership of land, property, or rights, including mineral rights. A fee interest can be sold {in its
16 entirety or in part} or passed on to heirs or successors.)

17 In *Anderson* the court also held that the rule should be the same even if there is no public
18 street, provided the conveyance describes the lot as bounded by a street. A street is then created
19 between the grantor and grantee.

20 The policy behind the law is to avoid ownership in land in strips and gores attaching
21 underlying fees of streets, both active and abandoned, to the adjoining lots.

22 In this case, *Safwenberg v. Marquez* (Exhibit AT), the Appeal Court ruled that the lot on
23 the map does not mean that it is the measurement of the lot conveyed. This points out that the lot
24 shown on the map is one thing but under the law the boundaries of the lot extend to the center of
25 the road or street.

1 **Opinion – Attorney General Bill Lockyer July 14, 2005 (AG 04-809)**

2 In an opinion AG 04-809 given by Bill Lockyer, Attorney General for the State of
3 California on July 14, 2005 (Exhibit AU), he says that Civil Code 831 enacted in 1872 provides:
4 “An owner of land bounded by a road or street is presumed to own to the center of the way, but
5 the contrary may be shown.” Civil Code section 1112, enacted in 1872 states: “A transfer of
6 land, bounded by a highway, passes the title of the person whose estate is transferred to the soil
7 of the highway in front to the center thereof, unless a different intent appears from the grant.”

8 The Opinion of the Attorney General also says, “the primary rule to be applied in
9 California continues to be that the intention of the parties governs as to whether the conveyance
10 is of an easement or fee title. No presumption is to be applied if the words of the deed are clear.
11 It is when the language is ambiguous that a statutory presumption controls.” Since the deeds for
12 the lots in Sierra Park do not address the question of street ownership, the statutes granting
13 ownership to the center of the street must apply.

14 **California Land Surveyors Association**

15 In a forum by the California Land Surveyors Association discussing the topic, “Who
16 owns the land under the roads in a California subdivision” (Exhibit AV), items were discussed
17 that apply to Sierra Camp. For example, it was pointed out that unless there are specific words
18 on the map conveying full fee title to the local agency (OFSRA) no fee interest is transferred.
19 Another point brought up points out that it must be assumed that the original owner of the
20 subdivision (OFSRA) did not intend to keep fee ownership of the strips of land running through
21 the subdivision unless they intended to create toll roads throughout the subdivision. It is pointed
22 out that the fee ownership must remain with the owner of the land abutting the street. The
23 ownership lines would run along the extensions of the sidelines to the centerline of the street or
24 radially on curves. For the original owner (OFSRA) to retain fee interest in the roadbed doesn’t
25 make sense (Exhibit AV, Pages 1 and 2).

1 One item discussed really seems to apply to Sierra Park. It was brought out that there are
2 a number of old maps from '10's, '20's, and '30's that show the Lots and Blocks as being
3 distinct from the street. There is often very little language on the face of the map as to the
4 interest in the streets. It was really a question concerning the status of these streets that was put
5 to the Attorney General (Bill Lockyer July 14, 2005). However, AG 04-809 (the Opinion by
6 Attorney General Lockyer mentioned earlier) extends to all roadways, regardless of map date
7 (Exhibit AU, Page 4).

8 Another person in the forum points out that the courts have affirmed that the adjacent
9 owners do in fact own to the centerline of the street. The California Civil Code is the authority
10 relied upon in most of the cases such as Sections 831 and 1112. In addition, the Code of Civil
11 Procedure, Section 2077, subdivision 4 states "The following are the rules for construing the
12 descriptive part of a conveyance of real property, when the construction is doubtful and there are
13 no other sufficient circumstances to determine it: ...4. When a road, or a stream of water not
14 navigable, is the boundary, the rights of the grantor to the middle of the road or the thread of the
15 stream are included in the conveyance, except where the road or thread of the stream is held
16 under another title." These presumptions of law are not recent statutes; they have been cited in
17 statutes since the late 1800's.

18 Often there is not a clear intention for grantors to retain an interest in the right of way.
19 Most deeds are silent. In *Darling v. Devere*, 124 Cal. App. 259 the court states: "...had it been
20 the intention of the grantor herein...it would have been so easy to have so stated in plain and
21 simple language that it must be inferred from the terms actually employed that such was not the
22 intent of the grantor...".

23 Additionally, in *Neff v. Ernst*, 48 Cal 2d 628, May 31, 1957 (Exhibit AW), the court
24 states "It is the general rule that it will be presumed that where property is sold by reference to a
25

1 recorded map the grantee takes to the center of the street or streets shown on the map as
2 bounding the property...” (Exhibit AW, Page 4).

3 **Road Ownership Conclusion**

4 Now we seem to have a dilemma. The law and court decisions clearly indicates that the
5 roads in the subdivision belong to the lot owners. The property line is actually out to the center
6 of the road in front of the lots. The OFSRA has claimed ownership for years. OFSRA cannot
7 give away something that it does not legally own.

8 9 **III. CONCLUSION.**

10 The Plaintiff does not own, have title, easement or contract to the roads in the
11 subdivision.

12 The Plaintiff is not the sole provider of services to the subdivision.

13 The Defendants are not shareholders of the Plaintiff.

14 The Plaintiff is not a Homeowners’ Association.

15 No valid or influencing CC&Rs are recorded in the chain of title of the Defendants’
16 parcel.

17 No contract or other affiliation exists between the Defendants’ parcel nor the Defendants
18 and the Plaintiff.

19 A portion of the Plaintiff’s expenses are incurred from maintaining and operating
20 portions of OFSRA properties, improvements and facilities. The Plaintiff incorporates those
21 expenses in the payments demanded from the Defendants.

22 The Plaintiff profits from claiming it has performed services, of its choice, on items it
23 does own, not have title, easement or contract to, including but not limited to road maintenance.

24 The Plaintiff fraudulently and/or mistakenly claims the Defendants owe payments to the
25 Plaintiff.

1
2 **IV. PRAYER FOR RELIEF.**

3 WHEREFORE, Defendants pray for judgment against Plaintiff as follows:

- 4 1. The Plaintiff's demand for payments from the Defendants be denied.
5 2. For all court costs of suit incurred by Defendants including copy costs; and
6 3. For such other and further relief as this court may deem just and proper.
7

8 **V. INDEX OF EXHIBITS.**

9 Exhibit A – OFSRA minutes – November 28, 1948

10 Exhibit B – Odd Fellows Sierra Recreation Association, Inc. - Articles of Incorporation –
11 January 19, 1949

12 Exhibit C – OFSRA indenture to Evelyn M. Hawley – February 11, 1949

13 Exhibit D – Subdivision Map - I.O.O.F. Odd Fellow Sierra Camp Subdivision 1 – March
14 8, 1950

15 Exhibit E – OFSRA minutes – July 13, 1949

16 Exhibit F – Letter from Attorney George H. Ackley – July, 13, 1949

17 Exhibit G – Declaration of Restrictions I.O.O.F. Odd Fellow Sierra Camp Subdivision 1
18 – February 17, 1950

19 Exhibit H – Division of Real Estate – Subdivision Public Report on I.O.O.F. Odd Fellows
20 Sierra Camp Subdivision No. 1 – March 31, 1950

21 Exhibit I – Tuolumne County GIS MAP – Odd Fellow Sierra Camp Subdivision –
22 October 12, 2012

23 Exhibit J – I.O.O.F. Odd Fellows Sierra Camp Subdivision, Tuolumne County GIS
24 Database – 20131002 – October 2, 2013 (Note: This Exhibit is also available
25 at www.varvayanis.com)

1 Exhibit K – California Civil Code (CIV) 831 (Enacted 1872.) – as of October 9, 2016

2 Exhibit L – Subdivision Map - I.O.O.F. Odd Fellow Sierra Camp Subdivision 1 – April 7,
3 1959

4 Exhibit M – Division of Real Estate – Amended Final Subdivision Public Report on
5 I.O.O.F. Odd Fellows Sierra Camp Subdivision No. 1 – May 21, 1959

6 Exhibit N – Declaration of Covenants, Conditions and Restrictions Effecting that
7 Property Known as I.O.O.F. Odd Fellow Sierra Camp Subdivisions 1 & 2" –
8 1975

9 Exhibit O – Declaration of Covenants, Conditions and Restrictions (in favor of Odd
10 Fellows Sierra Homeowners' Association, Inc.) – Recorded by Odd Fellows
11 Sierra Recreation Association, Inc. – January 3, 1985

12 Exhibit P – Declaration of Covenants, Conditions and Restrictions (in favor of Odd
13 Fellows Sierra Homeowners' Association, Inc.) – Re-recorded by Odd
14 Fellows Sierra Recreation Association, Inc. – February 12, 1985

15 Exhibit Q – Odd Fellows Sierra Recreation Association, Inc. – Restated Articles of
16 Incorporation – October 10, 1986

17 Exhibit R – Odd Fellows Sierra Homeowners' Association, Inc. – Articles of
18 Incorporation – October 10, 1986

19 Exhibit S – Declaration Relating to the Roads and Streets Located in and Appurtenant to
20 the I.O.O.F Odd Fellows Sierra Camp Subdivision #1, and Subdivision #2 –
21 May 9, 1996

22 Exhibit T – California Secretary of State – Business Entity Detail – Odd Fellows Sierra
23 Homeowners' Association, Inc. – September 27, 2016

24 Exhibit U – Odd Fellows Sierra Homeowners' Association, Inc. – BOD Resignations –
25 May 2016

1 Exhibit V – Odd Fellows Sierra Homeowners’ Association, Inc. – BOD Member Jesse R.
2 Worsham Resignation – September 10, 2016

3 Exhibit W– Preliminary Statement of Interest in Class Certification for Superior Court of
4 California, Tuolumne County, CV58108 (Note: Two parties are listed twice
5 each) – March 2013

6 Exhibit X – CV58108 – Judgement and Order on motions to strike and demurrers to
7 second amended complaint – August 20, 2014

8 Exhibit Y – California Secretary of State – Business Entity Detail – Plaintiff – April 30,
9 2015

10 Exhibit Z – e-mail, Plaintiff is not a Home, Owners’ Association – From the Plaintiff’s
11 Secretary, Wanda Lenhardt (1212panhead@prodigy.net) sent to Realtor
12 Suzanne Simpson, license # 01012112 at Coldwell Banker Twain Harte
13 Realty (209) 586-5200 ext. 888 (Phone) (209) 606-4729 (Cell),
14 Suzanne@SuzanneSimpson.com – June 10, 2015

15 Exhibit AA – Plaintiff’s Budgets 2013-2014, 2014, 2016 & 2015-2016

16 Exhibit AB – California Secretary of State – Business Entity Detail – Sierra Park Water
17 Company, Inc. – April 30, 2015

18 Exhibit AC – Certificate of Restatement of the Articles of Incorporation of Sierra Park
19 Water Company, Inc. – May 28, 2013

20 Exhibit AD – California Public Utilities Commission – Decision Resolving a Complaint
21 and Authorizing a Certificate of Public Convenience and Necessity as
22 Modified – Decision 16-01-047 – January 28, 2016

23 Exhibit AE – Sierra Park Water Company, Inc. - Tier 1 letter to the California Public
24 Utilities Commission – April 4, 2016
25

1 Exhibit AF – California Public Utilities Commission – Disposition of Sierra Park Water
2 Company Advice Letter Number 1 – June 1, 2016

3 Exhibit AG – Sierra Park Water Company, Inc. – WTD 400 – Tariff Book – April 4,
4 2016

5 Exhibit AH – Bylaws of the Plaintiff – May 26, 2013

6 Exhibit AI – Plaintiff Newsletter – Volume 4.1 – August 2016

7 Exhibit AJ – Sierra Park Water Company, Inc. Newsletter – Volume 4.1 – August 2016

8 Exhibit AL – Plaintiff's Claim and ORDER to Go to Small Claims Court – SC-100 – July
9 6, 2016

10 Exhibit AL-1 – Robbie and Denise Bettencourt – SC19412 – Plaintiff's Claim and
11 ORDER to Go to Small Claims Court – SC-100 – July 7, 2016

12 Exhibit AK – Plaintiff's Annual Meeting Minutes – May 29, 2016

13 Exhibit AM – CODE OF CIVIL PROCEDURE - SECTION 116.510-116.570 as of
14 October 13, 2016

15 Exhibit AN – California Civil Code (CIV) 845 (Enacted 1872.) – as of October 9, 2016

16 Exhibit AO – Bylaws of OFSRA – December 1, 1984

17 Exhibit AP – OFSRA and OFSHA Annual Meeting Notice and Proxy Statement – May
18 2007

19 Exhibit AQ – Plaintiff's Annual Meeting Minutes – May 25, 2014

20 Exhibit AR – Plaintiff's Annual Meeting Minutes – May, 24, 2015

21 Exhibit AS – Pierson v. Bradfield, 43 Cal. App. 2d 519 – March 18, 1941

22 Exhibit AT – Safwenberg v. Marquez, 50 Cal. App. 3d 302 – July 31,
23 1975

24 Exhibit AU – Opinion AG 04-809– Attorney General Bill Lockyer – July 14, 2005
25

1 Exhibit AV – California Land Surveyors Association – Discussion – Who owns the land
2 under the roads in a California subdivision – July 14, 2005

3 Exhibit AW – Neff v. Ernst, 48 Cal 2d 628 – May 31, 1957

4
5 **VI. ACKNOWLEDGEMENT.**

6 This Brief is the result of a collaborative effort between parties currently being sued by
7 the Plaintiff in Small Claims Court, two past OFSRA Presidents (Charles Varvayanis and Fred
8 Coleman), one past OFSRA Vice President (Steve Wallace), one past OFSHA BOD member
9 Larry Vaughn) and an external party familiar with the Plaintiff and the subdivision. A portion of
10 the information used in the Brief was learned from two additional past OFSRA Presidents,
11 several additional past OFSRA and OFSHA BOD members and greater than twenty past and
12 present parcel owners in the subdivision.

13
14 **VII. VERIFICATION.**

15 We are the Defendants in the above matter; the statements in the foregoing document are
16 true of our knowledge.

17
18 DATED: October 25, 2016

Respectfully submitted,

Mark Cole
Ed R Cole
M L Cole

19
20
21
22
23 By: *Edward E Cole*

24 Mark Cole
25 Edward E. Cole
Edward R. Cole
Michael L. Cole