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# SUPERIOR COURT, SONOMA COUNTY, CALIFORNIA

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| JOSEPH ROMANO, Plaintiff, vs.FAIRWAY VIEW ESTATES HOMEOWNERS ASSOCIATION; and DOES 1-20, inclusive, Defendants. |  | Case No. **COMPLAINT FOR:**1. **Breach of Fiduciary Duty**
2. **Breach of Contract**
3. **Breach of Equitable Servitude**
4. **Nuisance**
5. **Negligence**
6. **Declaratory Relief**
7. **Injunctive Relief**

[UNLIMITED CIVIL]**Jury Trial Demanded**  |
|  |  |  |

 Plaintiff Joseph Romano (“Plaintiff”) makes the following allegations against Defendant Fairway View Estates Homeowners Association (“Defendant”):

**THE PARTIES**

1. At all times relevant to this action, Plaintiff has been a resident of Santa Rosa, California, located in Sonoma County.
2. Defendant is a non-profit corporation formed in 1981 to manage a common interest development under the Davis-Stirling Common Interest Development Act. Its corporate address is 101 Golf Course Drive, Suite 200, Rohnert Park, California 94928. Defendant manages the planned development located in Santa Rosa, California, called Fairway View Estates. It manages Fairway View Estates with the assistance of Grapevine Property Services, LLC.
3. Plaintiff does not know the true names and capacities, whether individual, corporate, partnership, joint venture, or otherwise, of Defendants Doe One through Twenty, inclusive. Plaintiff therefore sues them by such fictitious names. Plaintiff is informed and believes that each of these Doe defendants is responsible in some manner for the acts and damages alleged herein, including through an agency and/or conspiracy relationship, and Plaintiff will amend this Complaint to allege the true names and capacities of defendants sued herein as DOES 1 through 20, inclusive, when ascertained, together with appropriate charging allegations.

**JURISDICTION AND VENUE**

1. This Court has jurisdiction over the subject matter of this case pursuant to California Code of Civil Procedure section 410.10. Venue is proper in this Court pursuant to Code of Civil Procedure section 395.

**BACKGROUND**

1. Plaintiff is a second-generation military veteran. He served this country honorably in the Vietnam War and was decorated accordingly. He is an honorably retired Deputy Sheriff from the Sonoma County Sheriff’s Office. Plaintiff is the founder and operator of Generator Joe, Inc., a small business specializing in manufacturing industrial and home generators.
2. Plaintiff moved to Fairway View Estates in 2010. His address is and, at all relevant times, has been 4723 Muirfield Court, Santa Rosa, California 95405. He lives there with his wife, Pixie Romano.
3. Defendant is the homeowners association that manages Fairway View Estates, which includes Plaintiff’s property at 4723 Muirfield Court. It is governed by a board of directors (the “Board”).
4. For years, Defendant has sought to block Plaintiff from exercising his lawful property rights. At every turn, Defendant has threatened Plaintiff and other property owners with fines, penalties, and other adverse actions for exercising those rights.
5. For years, Plaintiff has tried to avoid litigation and to resolve his concerns informally and amicably with Defendant. But his efforts have been met with further threats and intimidation.
6. To try to petition Defendant to change its ways and better serve the interests of the property owners at Fairway View Estates, Plaintiff began organizing with other residents in 2018. For example, he has created a website to share and discuss information with them. Defendant has attempted to crush this lawful activity too.
7. With his and his neighbors’ property rights under assault by Defendant, Plaintiff offered to participate in mediation with Defendant in May 2018. Plaintiff sought a global, mutually-agreed-upon resolution of all the outstanding issues without litigation. However, Defendant refused to participate.
8. On the same day Defendant refused to participate in mediation, Defendant notified Plaintiff that it would be imposing a nearly $10,000 unlawful penalty on two of these issues that Plaintiff sought to mediate. Left with no choice to protect himself and the other residents at Fairway View Estates, Plaintiff brings this lawsuit.

**THE COVENANTS**

1. Fairway View Estates is governed by the First Restated Declaration of Covenants, Conditions, and Restrictions of Fairway View Estates (the “Covenants”). The Covenants were last revised in January 2016.
2. The Covenants reference and incorporate the Architectural Control Guidelines, which specify rules related to construction occurring in Fairway View Estates.
3. A true and correct copy of the current Covenants and Architectural Control Guidelines are attached as **Exhibit 1**.

**DEFENDANT TRIES TO CRUSH PLAINTIFF’S EFFORTS TO ORGANIZE WITH OTHER PROPERTY OWNERS**

1. Plaintiff has long been an outspoken advocate for Fairway View Estates property owners against Defendant’s excesses. For example, in 2016, Plaintiff flew an American flag over his property. Defendant demanded that he take it down, claiming that flying the flag violated the Covenants. It only relented once Plaintiff notified Defendant of the Freedom to Display the American Flag Act of 2005, which expressly allowed for Plaintiff’s display.
2. In 2014, Defendant advised Plaintiff by letter to remove political signs from his property lawfully posted on the entry and exit gates of his home. It threatened legal action if he did not comply immediately. Plaintiff objected and notified Defendant that their demand violated City and State laws citing appropriate laws governing signs. Only then did Defendant leave Plaintiff alone about the signs.
3. This advocacy has made him a target. In April 2018, Plaintiff created a website for Fairway View Estates residents who are members of the Fairway View Estates homeowners association. Its title is “Fairway View Estates HOA Rehabilitation Team Website.” The purpose of the website is to allow a forum for residents to conveniently communicate with one another and to share information. Anyone who visits the website may view public or otherwise plainly non-sensitive documents relating to Defendant, such as bylaws, the Covenants, maps, and Board meeting agendas and minutes. To access any potentially sensitive information, one must be a resident who has received an invitation from Plaintiff. He or she must create a login and password, and use this login and password to access the information.
4. Starting in early May 2018, Plaintiff began to receive menacing emails from Defendant. For example, an email from Defendant on May 3, 2018 stated that “[s]hould the Association incur damages form improper publication of Association information or the misleading website, it may be required to take action to protect itself and its members.” Defendant also sent a letter on May 10, 2018, again demanding that Plaintiff not post any homeowners association documents on the website. It threatened to “seek redress for damages from you.”
5. As part of his efforts to organize with other property owners, Plaintiff asked Defendant to provide the email addresses of other Fairway View Estates residents from its records. Defendant has refused to provide them, even though Defendant uses email to communicate with residents.
6. To further stifle Plaintiff’s organizational efforts, Defendant notified all homeowner association members in a mailing that Plaintiff was “confrontational” and “combative.” Defendant indicated to residents in other communications that Plaintiff would be “disruptive” at Board meetings, and would “incite others.”
7. Beginning in April 2018, Plaintiff also began holding board meetings at the offices of Grapevine Property Services in Rohnert Park. This is approximately 10 miles from Fairway View Estates, despite the Covenants stating that all meetings must be “in close proximity” to the subdivision. (Paragraph 6(d).) This dissuades residents from attending, especially given that board meetings are typically held at 7:00 p.m., requiring travel during the tail-end of rush hour.
8. Defendant also discouraged Residents from participation in meetings by instituting meeting rules which: (a) only allow residents to speak for three minutes at the beginning of meetings; (b) prohibit residents from asking questions of the Board; and (c) bars residents from viewing documents being voted on by the Board.

**DEFENDANT SELECTIVELY ENFORCES THE COVENANTS**

1. Defendant does not consistently enforce the Covenants. Instead, it selectively enforces them against Plaintiff.
2. For example, around September 2018, the property owner at 4729 Muirfield Court planted non-native bushes in the common area and built a fence around them in violation of the Covenants. Defendant initially promised Plaintiff that a letter would be sent to the property owner demanding that he remove the bushes and fence, and later confirmed that the letter had in fact been sent. However, in a letter to Plaintiff dated May 10, 2018, Defendant, through Grapevine Property Services, changed its position. It explained that the bushes are “California natives,” that the bushes and fence provide a barrier to cars, and that Defendant otherwise “see[s] no problem with the fencing.” But the Covenants do not provide any exception on these grounds.
3. Defendant consistently fails to enforce the Covenants against other property owners as well. For example, Plaintiff is aware of several residents whose lawns extend into the common area in violation of the Covenants. There also are residents with basketball hoops visible from the street in violation of the Covenants. There are residents with paint and other repairs that need to be fixed under the terms of the Covenants. There are residents who have landscaped, built on, or otherwise developed portions of common areas and easements adjacent to their homes in violation of the covenants. There is a resident who leaves trash cans visible from the street and neighboring properties. Defendant, however, takes no action based on these violations. Instead, it threatens Plaintiff.

**DEFENDANT FAILS TO ABATE A DESTRUCTIVE WEED**

1. In the common area on the south and west side of Plaintiff’s property, an invasive weed has grown out of control.
2. The weed has crossed onto Plaintiff’s property and caused damage to Plaintiff’s landscaping and has increased Plaintiff’s maintenance costs abating the weeds.
3. Plaintiff discussed the weed problem with Defendant—specifically, current Board President Nancy Pipgras—in approximately 2016. Ms. Pipgras agreed to abate the weed. In connection with these conversations, Plaintiff even gave Ms. Pipgras, at her request, the name of the herbicide that would be effective in controlling the weed.
4. Despite this agreement, Defendant has not abated the weed. Plaintiff’s property continues to be harmed from the weed.

**DEFENDANT OVERCHARGES PLAINTIFF FOR ANNUAL FEES**

1. Defendant charges residents at Fairway View Estates Homeowners Association an annual assessment to fund its operations. The assessment is based on each resident’s ownership of a lot. Specifically, residents must pay $750.00 for each lot.
2. When Plaintiff bought his property, it consisted of two lots. The lots are identified as Lot Nos. 49 and 50 in the Covenants.
3. In 2011, Plaintiff merged the two lots into one. As part of this process, Plaintiff got approval from the City of Santa Rosa and recorded the newly merged lot with the County of Sonoma. As a matter of law, since 2011, Plaintiff therefore has had one lot.
4. Despite Plaintiff legally only having one lot, Defendant has continued to impose an annual assessment for two lots. Plaintiff is charged $1,500 a year, instead of $750. When Plaintiff complained to Defendant, it insisted he must pay.

**DEFENDANT UNLAWFULLY OBSTRUCTS CONSTRUCTION**

1. In 2013, Mr. Romano submitted construction plans for his property to Defendant. The plans primarily involve constructing a game room and garages.
2. Defendant approved these plans in August 2013 and Plaintiff began preliminary construction activities. Plaintiff also worked diligently to obtain all necessary permits, zoning adjustments, and other required approvals from the City of Santa Rosa building officials. Despite his diligence, Plaintiff did not and could not receive all required city approvals until early 2018, after intensive negotiation with the City.
3. In reliance on Defendant’s August 2013 approval of his plans, Plaintiff spent tens of thousands of dollars obtaining necessary permits. Plaintiff also commissioned an engineering study at considerable expense that determined: (a) none of the structures would be easily visible from the road; (b) none of the structures would be easily visible by neighbors from any vantage point; and (c) the closest neighbor on the southwest side of the property is more than 3,000 feet away and the neighbors in the other directions are more than 2,000 feet away.
4. Plaintiff later made modifications to the plans and submitted revisions on December 18, 2017. The revised plans were authorized by the same building permits and approvals as the original plans. Defendant rejected the revised plan on February 10, 2018. The stated basis for the rejection was that the construction was not entirely within the building envelope. However, in relevant part, the boundaries of the buildings were the same as in the plans Defendant approved in August 2013, and authorized by the same permits. Defendant agreed in connection with the August 2013 plans, moreover, that the building envelope was to be determined by the City of Santa Rosa. Inexplicably, Defendant has claimed to have lost all documents relating to Plaintiff’s August 2013 plans.
5. On March 14, 2018, Defendant’s counsel Barbara Zimmerman sent a cease-and-desist letter to Plaintiff, threatening Plaintiff with legal action for his construction activities. Defendant asserted that there was no approval for such construction.
6. On March 29, 2018, Plaintiff submitted additional modifications to the plans approved in August 2013. Again, in relevant part, the boundaries of the buildings were the same as the plans Defendant approved. But Defendant once against claimed that the plans must be rejected because the construction was not entirely within the building envelope. Defendant also incorrectly claimed that various information required by the Covenants and Architectural Control Guidelines was missing.
7. On April 19, 2018, Plaintiff met with Board President Nancy Pipgras, Grapevine Property Services manager T.J. Johnson, and Defendant’s counsel Barbara Zimmerman, and walked them through the submitted maps and plans. Plaintiff showed them specifically where to find such information. Nevertheless, Plaintiff erroneously continued to claim that required information was missing.

**DEFENDANT FAILS TO MAINTAIN THE COMMON AREA, CAUSING FLOODING**

1. Plaintiff and four of his neighbors share an easement over a road adjoining their property. On either side of the road is the common area.
2. There is a storm drain on the road. It connects to a culvert—a pipe—that runs underneath the road. The culvert ends on the other side of the road. At that spot, the land gently slopes downward toward a creek. Water is supposed to flow into the drain, through the culvert, and down the land into the creek.
3. This, however, is not what happens. For years, Defendant has allowed rainwater to flood the common area at the outflow of the culvert. When it rains, a pool of water forms a swamp there. The swamp has harmed the surrounding oak trees and created a nesting grounds for mosquitos. Because the land has become oversaturated with water, it has collapsed into the culvert, filling the culvert with dirt and debris. This has blocked the culvert and prevented the drain from working.
4. As a result of the blocked culvert and ineffective drainage, during the rainy season, the road itself has flooded, damaging the road. In 2016, Plaintiff and his neighbors paid approximately $30,000 to repave the road. Due to the flooding, cracks have appeared on the road.
5. About 200 feet up the road from the outflow of the culvert and on the same side—roughly between the two gates of Plaintiff’s property—is another part of the common area that sheds rain water and harmfully diverts it onto the road. Plaintiff has explained to Defendant that this problem could be solved by minor construction work involving sloping this portion of the common area away from the road. Defendant, however, has denied that there is any problem and refuses to take action.
6. In March 2016 and February 2017, Plaintiff sent communications to Defendant describing the flooding issue. In the February 2017 communication, which was faxed to Defendant, Plaintiff explained the flooding in detail, informed Defendant of what he believed to be the only viable solution—digging a trench at the outflow of the culvert—and stated that “[w]e will do what we can to drain the pond and get the water flowing.” Plaintiff never received any response. Nor has Defendant ever taken any actions to remedy such issues.
7. Desperate to protect his property during a rainy winter, in early-March 2018, Plaintiff dug a trench from the outflow of the culvert. The goal was to allow water to better flow from the culvert to the creek below, thereby reducing the amount of flooding and stopping the damage to the road.
8. On March 14, 2018, Defendant’s counsel Barbara Zimmerman sent a cease-and-desist letter to Plaintiff, threatening Plaintiff with legal action for building the trench. Defendant scheduled a disciplinary hearing for June 4, 2018.
9. On April 19, 2018, Plaintiff met with Board President Nancy Pipgras, Grapevine Property Services manager T.J. Johnson, and Defendant’s counsel Barbara Zimmerman concerning the trench and flooding issues. The parties reached an agreement as to a reasonable settlement proposal that the full board could vote to approve or disapprove. After the meeting, Defendant sought to change the agreement by adding new material terms. After Plaintiff objected to Defendant reneging on their agreement about what was going to be put to the Board, Plaintiff was informed that the Board voted on the agreement, but rejected it.
10. On May 10, 2018, as part of his efforts to reach a mutually-satisfactory agreement with Defendant, Plaintiff offered to fill in the trench. The following day, Defendant rejected this offer and threatened to call the police should Plaintiff try to do so.
11. On June 4, 2018, Defendant held the disciplinary hearing on the trench. Plaintiff attended with counsel. Plaintiff reiterated his willingness to resolve the trench and flooding issues in accordance with the parties’ April 19, 2018 agreement. Plaintiff also reiterated his wish to avoid litigation and to resolve the matter amicably. The Board declined to ask any questions, comment, or discuss the matter with Plaintiff and his counsel.
12. In tactic recognition of the legitimacy of Plaintiff’s grievances and Defendant’s failure to properly maintain the common area, the Board has agreed to build a “V-ditch” drainage system on the location of the trench.
13. Unfortunately, this is not enough. The culvert remains blocked and the Defendant has refused to flush or otherwise maintain it, despite its duty to do so. Defendant also has refused to address the other portion of the common area causing the flooding. Defendant also has not maintained the road itself, despite its duty to do so.

**DEFENDANT THREATENS TO REMOVE PLAINTIFF’S DRAINAGE PIPES**

1. More than three years ago, as part of Plaintiff’s general efforts to mitigate the flooding problem arising from the common area, Plaintiff placed small drainage pipes alongside his road, pressed against the curb.
2. Defendant never complained about these pipes for more than three years. Suddenly, in early-May 2018, Plaintiff claimed that they violate the Covenants because they constitute an unauthorized modification or addition to the common area. This area, however, is not the common area.
3. On May 2, 2018, Defendant suggested in a letter that this issue would be resolved if Plaintiff were to “bury the drainage and irrigation lines he installed in the Common Area adjacent to his lot . . .” Plaintiff did exactly that. He buried the pipes and, placed small head-sized rocks atop the dirt covering them to hold them in place.
4. Defendant, however, changed its mind. On June 18, 2018, Defendant demanded by letter that Plaintiff remove the pipes altogether and remove the rocks, backed again by the threat of involuntary removal, penalties, and legal action. In the same letter, Defendant demanded that Plaintiff remove a few circles of small stones around trees near the curb.
5. Defendant has also claimed that, in the same area, there is water flowing from Plaintiff’s property. In its June 15, 2018 letter, Defendant states that “Mr. Romano must take action to stop the substantial run-off from his property,” and again implies legal action if he does not comply with this demand. Defendant has never identified any harm from this alleged runoff or explained why such runoff violates the Covenants.

**DEFENDANT REFUSES MEDIATION**

1. On May 16, 2018, in an effort to avoid litigation and amicably resolve the various disputes between the parties, Plaintiff sent a letter to Defendant formally requesting alternative dispute resolution under Civil Code section 5925 *et seq*. In the letter, Plaintiff identified each of the issues discussed in this Complaint and asked that the parties participate in mediation at Defendant’s “soonest availability.”
2. On June 15, 2018, Defendant wrote to Plaintiff declining his request to participate in mediation.
3. Pursuant to Civil Code section 5950, Plaintiff has concurrently filed with this Complaint a certificate stating that Defendant declined alternative dispute resolution and, regardless, alternative dispute resolution is not required.

**DEFENDANT IMPOSES UNLAWFUL PENALTIES ON PLAINTIFF**

1. On June 15, 2018, Defendant notified Plaintiff by letter of the results of the June 4, 2018 disciplinary hearing concerning the trench.
2. The letter states that Defendant is imposing a $250.00 fine on Plaintiff, as well as $9,257.50 in attorneys’ fees and costs “related to obtaining Mr. Romano’s compliance with the common area damages and the architectural application.” The letter further states that “[a]ll future attorneys’ fees and costs related to the common area damages and architectural application will be added as additional sums.” The letter also suggests that Defendant will seek attorney’s fees and costs “incurred in regards to his website and rehabilitation committee, his document demands, and his communications to other members.”
3. By “architectural application,” Defendant is referring to Plaintiff’s construction plans described in Paragraphs 35 to 41. These construction plans, however, were not part of the June 4, 2018 disciplinary hearing. Nor have they been part of any other hearing.
4. Plaintiff has never provided any documentation or evidence substantiating the amount of attorneys’ fees and costs.

**FIRST CAUSE OF ACTION**

**(Breach of Fiduciary Duty)**

1. Plaintiff re-alleges and incorporates each and every allegation contained in this Complaint, as though set forth in full herein.
2. **Duty:** As a homeowners association, Defendant owes a fiduciary duty to its members, including Plaintiff. Accordingly, Defendant must act as a fiduciary toward Plaintiff and other members with the utmost good faith, due care, and fair dealing, including by only acting in their best interests.
3. **Breach:** Defendant has breached its duty to Plaintiff and other members, including, but limited to, by:
	1. Attempting to stop Plaintiff’s lawful organizational efforts with other members and stop the dissemination of association documents among members.
	2. Refusing to provide the email addresses of other members from its records, despite Plaintiff’s right to them under Civil Code section 5200 *et seq*.
	3. Refusing to abate a destructive weed in the common area that has harmed Plaintiff’s property and increased his maintenance costs.
	4. Refusing to adequately maintain the common area, including the storm drain and culvert, by Plaintiff’s road, causing and exacerbating flooding and damaging the road.
	5. Levying an excessive annual assessment against Plaintiff based on his alleged ownership of two lots, when as a matter of law he only owns one lot.
	6. Unreasonably and in bad faith blocking Plaintiff’s construction plans.
	7. Violating the Covenants and Architectural Control Guidelines.
	8. Selectively enforcing the covenants against Plaintiff, and ignoring other members’ violations.
	9. Issuing an excessive and unlawful penalty against Plaintiff in connection with the June 4, 2018 disciplinary hearing, including by charging Plaintiff for attorney’s fees on matters not at issue in the hearing.
	10. Threatening the destruction of Plaintiff’s property, including the drainage pipes and rocks placed next to Plaintiff’s road.
	11. Moving Board meetings to Rohnert Park, approximately 10 miles from Fairway View Estates.
	12. Limiting residents to speaking for only three minutes at the beginning of Board meetings.
4. **Harm**: Plaintiff has been harmed by Defendant’s breach of its fiduciary duty, including, but not limited to, as follows:
	1. Plaintiff has been impeded in his ability to organize with other residents and share and discuss association documents with them.
	2. Plaintiff has been denied email addresses and other contact information to which he is entitled.
	3. Plaintiff’s landscaping has been destroyed and his maintenance costs increased by an invasive weed in the common area.
	4. Plaintiff’s road has been damaged by flooding. Plaintiff also was forced to dig a trench, which cost substantial time and money.
	5. Plaintiff has been overcharged $750.00 a year for his annual assessment for multiple years.
	6. Plaintiff’s construction plans have been needlessly delayed, causing his construction costs to increase and impairing the use and enjoyment of his property.
	7. Because Defendant has failed to address other members’ Covenant violations, parts of the common area and Development have been despoiled and Plaintiff has been subjected to various nuisances.
	8. Plaintiff has been subjected to an excessive and unlawful penalty, some of the basis for which was not subject to a required disciplinary hearing.
	9. Plaintiff’s property has been threatened with harm or removal.
	10. Plaintiff and other residents have been subjected to inconvenience and travel costs associated with driving to Board meetings in Rohnert Park.
	11. Unreasonably allowing residents to speak only for three minutes at the beginning of Board meetings, which curtails their right to raise issues with Defendant.
5. **Causation**: The harm described in Paragraph 70, among other paragraphs, flows directly from Plaintiff’s breach of fiduciary duty described herein.
6. Through its communications with Plaintiff and otherwise, Defendant had knowledge of the consequences of its actions and omissions, and their adverse effects on Plaintiff’s rights and property, but continued in its conduct nevertheless. Defendant also has also performed such actions and omissions to punish Plaintiff for his lawful organizational activities and other lawful efforts protesting misconduct by Defendant. Therefore, Defendant has acted with malice, fraud, and/or oppression.

**SECOND CAUSE OF ACTION**

**(Breach of Contract)**

1. Plaintiff re-alleges and incorporates each and every allegation contained in this Complaint, as though set forth in full herein.
2. **Contract**: All lots within Fairway View Estates are subject to the Covenants and Architectural Control Guidelines. These documents set forth a binding legal agreement between Defendant and residents. This agreement was entered into between Plaintiff and Defendant when Plaintiff’s purchased of his property at Fairway View Estates.
3. **Breach**: The Covenants and Architectural Control Guidelines set forth specific rules governing the relationship between Plaintiff and Defendant. Plaintiff has broken these rules, including, but not limited to, as follows:
	1. The Covenants state that Defendant shall have the duty to “manage, operate, maintain, repair, landscape, care for and preserve the Common Area and the Common Facilities,” and must do so “For the benefit of the Lots and the Owners.” (Paragraph 9.) Similarly, Defendant must “repair and replace the Common Facilities.” (*Id*.) Defendant must also “keep all access ways, roadways, and appurtenances thereto on the subdivided property in a state of good condition and repair, consistent with the standard of quality of said roadways and appurtenances upon original installation. All such repairs shall be made at the expense of the Association.” (Paragraph 30.) Defendant has failed to do so, including by: (a) refusing to abate a destructive weed in the common area that has harmed Plaintiff’s property and increased his maintenance costs; (b) refusing to maintain the common area by Plaintiff’s road, including the storm drain and culvert, in such a way as to prevent flooding on the road. Plaintiff also has not maintained the road itself.
	2. The Covenants specify that the annual assessment levied against the residents “shall be allocated among, assessed against, and charged to each Owner according to the ratio of the number of Lots within the Development owned by the assessed Owner to the total number of Lots subject to Assessments so that each Lot bears an equal share of the total Regular Assessment.” (Paragraph 14(b)(iii).) Since 2011, as a matter of law, Plaintiff has owned one lot. However, the Association has charged him an annual assessment based on ownership of two lots.
	3. The Covenants specify no disciplinary action may be imposed against an owner unless it complies with Paragraph 15 of the Covenants. (Paragraphs 14(d), 15(f)(i), 15(f)(iv)(E).) Defendant did not comply with Paragraph 15 of the Covenants, but nevertheless imposed nearly $10,000 in penalties on Plaintiff, including a $250.00 fine and $9,257.50 in attorneys’ fees and costs. For example, Plaintiff was not given the opportunity at his June 4, 2018 disciplinary proceeding to “present or question witnesses” or “present evidence,” as required by the Covenants. (Paragraph 15(v).) To the contrary, in advance of the hearing, on May 23, 2018, Defendant’s counsel notified Plaintiff’s counsel that “[t]his is not a hearing in a court of law, so there is no third-party testimony.” And Defendant suggested to Plaintiff before and at the start of the proceeding that Plaintiff may only make a statement. As another example, the Paragraph 15 of the Covenants requires that Plaintiff be notified of the subject matter of the hearing. The subject matter of the June 4, 2018 proceeding was Plaintiff’s digging of a trench and installation of drainage pipes beside his road. Defendant confirmed as much in writing before the hearing. Nevertheless, based on the June 4, 2018 proceeding, Defendant imposed attorney’s fees for Plaintiff’s “architectural application,” and suggested it would continue to do so as they accrue in the future. The “architectural application” issue was not addressed—and never was supposed to be addressed—at the June 4, 2018 proceeding.
	4. The Covenants state that Defendant may only seek “reasonable attorneys’ fees” in connection with disciplinary proceedings. (*See*, *e.g.*, Paragraphs 14(d)(i)(B), 15(c)). The attorney’s fees imposed on Plaintiff in connection with the June 4, 2018 hearing are unreasonable because they are facially excessive and disproportionate, and include amounts unrelated to the subject matter of the hearing.
	5. Paragraph 17 of the Covenants, as well as the Architectural Control Guidelines, prescribe rules regarding construction on residents’ properties and the process of obtaining approval for such construction. Plaintiff has violated various rules therein, including by arbitrarily, unreasonably, and in bad faith claiming that Plaintiff’s construction applications are incomplete and/or defective, and wrongfully blocking Plaintiff’s construction. This includes Defendant’s assertions that Plaintiff’s plans violate the applicable building envelope.
	6. The Covenants proscribe fixed basketball hoops that can be seen from the street or adjacent properties. (Paragraph 28(j).) They also proscribe portable basketball hoops that can be seen from the street or adjacent properties, if such hoops are not removed at night. (Paragraph 28(j).) Plaintiff is aware of residents who violate these rules, but Defendant does nothing to stop it.
	7. The Covenants require the buildings and structures on residents’ properties be “adequately painted” and otherwise maintained in such a way as to not “despoil[] the appearance of the Development.” (Paragraphs 13, 28(q).) Each resident must also “maintain and repair his Residence and his Lot, keeping the same in good condition.” (Paragraph 13.) Plaintiff is aware of neighbors with paint and other repairs that need to be fixed, but Defendant does nothing to stop it.
	8. The Covenants state that “No hardscape, landscape, personal property, fixtures, refuse, signs, or other items shall be placed on, altered, or removed from the Common Area by anyone other than the Association in connection with its maintenance obligations.” (Paragraph 28(c).) They also state that “[n]o fences, hedges used for screening, walls, or screens shall be erected on any Lot unless first approved by the Architectural Committee.” (Paragraph 28(h).) Plaintiff is aware of neighbors who have landscaped, built on, or otherwise developed portions of the common area, but Defendant does nothing to stop it.
	9. The Covenants state that “[a]ll garbage and trash containers shall be maintained so as to not be visible from any neighboring property or the street . . . except to make the same available for collection and then only the shortest time reasonably necessary to effect such collection.” (Paragraph 28(d).) Plaintiff is aware of a neighbor whose trashcans remain visible outside of collection times.
	10. The Covenants state that meetings “shall be held within the Fairway View Estates Subdivision or in close proximity thereto as established by the Board of Directors.” (Paragraph 6(d).) Defendant, however, has been holding meetings approximately 10 miles from Fairway View Estates, requiring substantial travel time for residents.
4. **Harm**: Plaintiff has been harmed by Defendant’s breach of its contract, including, but not limited to, as follows:
	1. Plaintiff’s landscaping has been destroyed and his maintenance costs increased by an invasive weed in the common area.
	2. Plaintiff’s road has been damaged by flooding. Plaintiff also was forced to dig a trench, which cost substantial time and money.
	3. Plaintiff has been overcharged $750.00 a year for his annual assessment for multiple years.
	4. Plaintiff’s construction plans have been needlessly delayed, causing his construction costs to increase and impairing the use and enjoyment of his property.
	5. Because Defendant has failed to address other members’ Covenant violations, parts of the common area and Development have been despoiled and Plaintiff has been subjected to various nuisances.
	6. Plaintiff has been subjected to an excessive and unlawful penalty, some of the basis for which was not subject to a required disciplinary hearing.
	7. Plaintiff’s property has been threatened with harm or removal.
	8. Plaintiff and other residents have been subjected to inconvenience and travel costs associated with driving to Board meetings in Rohnert Park.
5. **Causation**: The harm described in Paragraph 76, among other paragraphs, flows directly from Plaintiff’s breach of contract described herein.
6. Defendant’s obligation to obey the Covenants was not conditioned on Plaintiff’s performance and/or Plaintiff performed as required under the Covenants.
7. The Covenants expressly provide that, if “the Association declines to take action in any instance [of a violation of the Covenants], any Owner shall have such rights of enforcement as exist by virtue of section 5975 of the California Civil Code or otherwise by law.” (Paragraph 15(f).)

**THIRD CAUSE OF ACTION**

**(Breach of Equitable Servitude)**

1. Plaintiff re-alleges and incorporates each and every allegation contained in this Complaint, as though set forth in full herein.
2. **Equitable Servitude**: The preamble to the Covenants state that, “[a]s so amended and restated, the easements, restrictions, reservations, liens, charges, covenants, and conditions set forth herein shall constitute enforceable equitable servitudes and covenants that run with the real property hereinbefore described and shall be binding on all parties or acquiring any right, title, or interest therein . . . and shall insure to the benefit of each Owner thereof.” Civil Code section 5975(a) similarly states that the “covenants and restrictions in the declaration shall be enforceable equitable servitudes, unless unreasonable, and shall inure to the benefit of and bind all owners of separate interests in the development.” Therefore, the Covenants and Architectural Control Guidelines are an equitable servitude binding Plaintiff and Defendant.
3. **Breach**: Defendant has breached the equitable servitude for the reasons set forth in Paragraph 75 (regarding Breach of Contract), among other paragraphs.
4. **Harm**: Plaintiff has been harmed by Defendant’s breach of equitable servitude for the reasons set forth in Paragraph 76 (regarding Breach of Contract), among other paragraphs.
5. **Causation**: Defendant’s breach of equitable servitude has harmed Plaintiff for the reasons set forth in Paragraph 77 (regarding Breach of Contract), among other paragraphs.
6. Defendant’s obligation to obey the Covenants was not conditioned on Plaintiff’s performance and/or Plaintiff performed as required under the Covenants.
7. The Covenants expressly provide that, if “the Association declines to take action in any instance [of a violation of the Covenants], any Owner shall have such rights of enforcement as exist by virtue of section 5975 of the California Civil Code or otherwise by law.” (Paragraph 15(f).)

**FOURTH CAUSE OF ACTION**

**(Nuisance)**

1. Plaintiff re-alleges and incorporates each and every allegation contained in this Complaint, as though set forth in full herein.
2. Paragraph 15(b) of the Covenants states that “the result of every act or omission whereby any covenant contained in this Declaration including, without limitation, Article 13 (Owner’s Obligation to Maintain) and Article 28 (Use of Lots and the Common Area), is violated in whole or in part is hereby declared to be a nuisance, and every remedy against nuisance, either public or private, shall be applicable against every such act or omission.”
3. For the reasons set forth in Paragraph 75, among other paragraphs, Defendant has violated myriad provisions of the Covenants by its acts and/or omissions. Paragraph 15(b) of the Covenants declares all such violations to be a nuisance.
4. For the reasons set forth in Paragraph 76, among other paragraphs, these acts and/or omissions have obstructed or harmed Plaintiff’s free use of his property and interfered with the comfortable enjoyment of such property.
5. Through its communications with Plaintiff and otherwise, Defendant had knowledge of the consequences of its actions and omissions, and their adverse effects on Plaintiff’s rights and property, but continued in its conduct nevertheless. Defendant also has also performed such actions and omissions to punish Plaintiff for his lawful organizational activities and other lawful efforts protesting misconduct by Defendant. Therefore, Defendant has acted with malice, fraud, and/or oppression.

**FIFTH CAUSE OF ACTION**

**(Negligence)**

1. Plaintiff re-alleges and incorporates each and every allegation contained in this Complaint, as though set forth in fully herein.
2. **Duty**: Defendant, including its Board members, owe a duty to Plaintiff as a homeowner and resident to exercise reasonable care and refrain from engaging in acts or omissions that cause injury to Plaintiff and his property.
3. **Breach**: Defendant has breached this duty by not exercising reasonable care, including by:
	1. Refusing to abate a destructive weed in the common area that has harmed Plaintiff’s property and increased his maintenance costs.
	2. Refusing to maintain the common area by Plaintiff’s road, including the storm drain and culvert, in such a way as to prevent flooding on the road.
4. Defendant has known about or should have known about the destructive weed and flooding, but nevertheless failed to act in such a way as to prevent them.
5. **Harm**: Because of Defendant’s conduct, Plaintiff’s landscaping has been destroyed and his maintenance costs increased by the weed. Plaintiff’s road has been damaged by flooding. Plaintiff also was forced to dig a trench to mitigate the flooding, which cost substantial time and money. Defendant’s conduct also has caused Plaintiff emotional distress.
6. **Causation**: Defendant’s failure to exercise care is what caused the harm described in Paragraph 96, among other paragraphs.

**SIXTH CAUSE OF ACTION**

**(Declaratory Relief)**

1. Plaintiff re-alleges and incorporates each and every allegation contained in this Complaint, as though set forth in full herein.
2. A bona fide dispute exists between Plaintiff and Defendant as to various issues, including the following:
	1. Defendant has attempted to stop Plaintiff’s lawful organizational efforts with other members and stop the dissemination of association documents among members.
	2. Defendant has refused to provide the email addresses of other members from its records, despite Plaintiff’s right to them under Civil Code section 5200 *et seq*.
	3. Defendant has refused to abate a destructive weed in the common area that has harmed Plaintiff’s property and increased his maintenance costs.
	4. Defendant has refused to maintain the common area, including the storm drain and culvert, by Plaintiff’s road, causing and exacerbating flooding and damaging the road.
	5. Defendant has levied an excessive annual assessment against Plaintiff based on his alleged ownership of two lots, when as a matter of law he only owns one lot.
	6. Defendant has unreasonably and in bad faith blocked Plaintiff’s construction plans.
	7. Defendant has violated the Covenants and Architectural Control Guidelines.
	8. Defendant has enforcing the covenants against Plaintiff, and ignoring other members’ violations.
	9. Defendant has imposed an excessive and unlawful penalty against Plaintiff in connection with the June 4, 2018 disciplinary hearing, including by charging Plaintiff for attorney’s fees on matters not at issue in the hearing.
	10. Defendant has threatened the destruction of Plaintiff’s property, including the drainage pipes and rocks placed next to Plaintiff’s road.
	11. Defendant has subjected Plaintiff and other residents to inconvenience and travel costs associated with driving to Board meetings in Rohnert Park, rather than in a convenient location.
	12. Defendant has limited residents’ speaking time to three minutes at the start of each Board meeting.
3. Plaintiff has raised all such issues with Defendant, but Defendant refused to cease its harmful acts and omissions. Plaintiff thereby has been harmed or is at risk of immanent harm.
4. It is necessary that the Court determine the rights and obligations of the respective parties.

**SEVENTH CAUSE OF ACTION**

**(Injunctive Relief)**

1. Plaintiff re-alleges and incorporates each and every allegation contained in this Complaint, as though set forth in full herein.
2. The Covenants state that “Except for the non-payment of any assessment, it is hereby expressly declared and agreed that the remedy at law to recover damages for the breach, default or violation of any of the covenants, conditions, restrictions, limitations, reservations, grants of easements, rights, rights-of-way, liens, charges or equitable servitude contained in this Declaration is inadequate and that the failure of any Owner, tenant, occupant or user of any Lot, Residence, or any portion of the Common Area or Common Facilities, to comply with any provision of the Governing Documents may be enjoined by appropriate legal proceedings instituted by any Owner.” (Paragraph 31.)
3. As described in this Complaint, Defendant has violated various provisions of the Covenants, and Paragraph 31 of the Covenants states that this entitles Plaintiff to injunctive relief. Defendant’s unlawful acts and omissions have harmed or threaten to immanently harm Plaintiff. Such acts and omissions violate Plaintiff’s rights.
4. Unless Defendant is enjoined from continuing its course of conduct, Plaintiff will suffer harm, including harm that is irreparable or for which there is no adequate remedy at law or for which the financial value is hard to quantify, such as loss of use and enjoyment of his property, loss of his ability to organize with other residents, and loss of ability to participate fully in Board meetings. Therefore, Plaintiff seeks injunctive relief, as expressly authorized by sections 526 and 731 of the Code of Civil Procedure. Such relief includes “positive” injunctive relief requiring Defendant to take affirmative acts.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays for judgment against Defendant as follows:

1. **ON FIRST CAUSE OF ACTION (BREACH OF FIDUCIARY DUTY)**
2. For actual, compensatory, incidental, and consequential damages in an amount to be proven at trial, and in any event, in excess of the jurisdictional limits of this Court.
3. Punitive and/or exemplary damages.
4. **ON SECOND CAUSE OF ACTION (BREACH OF CONTRACT)**
	* 1. For general, actual, compensatory, incidental, and consequential damages in an amount to be proven at trial, and in any event, in excess of the jurisdictional limits of this Court.
5. **ON THIRD CAUSE OF ACTION (BREACH OF EQUITABLE SERVITUDE)**
6. For general, actual, compensatory, incidental, and consequential damages in an amount to be proven at trial, and in any event, in excess of the jurisdictional limits of this Court.
7. For injunctive relief prohibiting Defendant, including its Board, agents, servants, and employees, and all persons acting under, in concert with, or for it, from engaging in the unlawful actions and omissions described in this Complaint. Such relief includes “positive” injunctive relief requiring Defendant to take affirmative acts.
8. **ON FOURTH CAUSE OF ACTION (NUISANCE)**
9. For general, actual, compensatory, incidental, and consequential damages in an amount to be proven at trial, and in any event, in excess of the jurisdictional limits of this Court.
10. Punitive and/or exemplary damages.
11. **ON FIFTH CAUSE OF ACTION (NEGLIGENCE)**
12. For general, actual, compensatory, incidental, and consequential damages in an amount to be proven at trial, and in any event, in excess of the jurisdictional limits of this Court.
13. Non-economic damages, including to compensate Plaintiff for emotional distress, pain and suffering, and loss of pleasure and enjoyment of life.
14. **ON SIXTH CAUSE OF ACTION (DECLARATORY RELIEF)**
	* 1. For declaratory relief as to the issues described in this Complaint, including, but not limited to, that: (1) Plaintiff may post online and otherwise disseminate homeowners association documents in connection with his organizational efforts with other residents; (2) Defendant has an obligation to provide member email addresses to Plaintiff pursuant to Civil Code section 5200 *et seq*; (3) Defendant must abate the destructive weed in the common area; (4) Defendant must maintain the common area by the road next to Plaintiff’s property in such a way as prevent flooding, as well as maintain the storm drain, culvert, and road itself; (5) Defendant may only charge Plaintiff an annual assessment for one lot; (6) Plaintiff may commence construction on his property according to submitted plans and issued building permits; (7) Plaintiff must take appropriate measures to remedy the Covenant violations of other residents described herein and any such other violations discovered by Plaintiff or Defendant; (8) the penalty Defendant imposed on Plaintiff in connection with the June 4, 2018 disciplinary hearing is null, void, and unenforceable; (9) Defendant may not remove the drainage pipes and rocks Plaintiff placed alongside the road by his property; (10) Board meetings may not be held at the offices of Grapevine Property Services in Rohnert Park and instead must be held at a location in close proximity to Fairway View Estates; and (11) residents be allowed to speak longer than three minutes at the start of each Board meeting.
15. **ON SEVENTH CAUSE OF ACTION (INJUNCTIVE RELIEF)**
16. For injunctive relief prohibiting Defendant, including its Board, agents, servants, and employees, and all persons acting under, in concert with, or for it, from engaging in the unlawful actions and omissions described in this Complaint. Such relief includes “positive” injunctive relief requiring Defendant to take affirmative acts.
17. **ON ALL CAUSES OF ACTION**
18. For reasonable costs and attorney’s fees incurred in bringing and prosecuting this suit pursuant to Paragraph 15(c) of the Covenants and as otherwise provided for by law.
19. For statutory penalties as provided for by law, including under Civil Code section 5235.
20. For pre-judgment and post-judgment interest.
21. For such other and further relief as the Court deems just and proper, including equitable relief.

**DEMAND FOR JURY TRIAL**

 Plaintiff hereby demands a jury trial as to all issues or claims for which a jury trial is allowed.

ANDERSON ZEIGLER

A Professional Corporation

Date: By

Daniel J. Wilson

Attorneys for Plaintiff Joseph Romano