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10 SUPERIOR COURT OF CALIFORNIA

11 COUNTY OF SONOMA

12 JOSEPH ROMANO, individually and as
trustee of the JOSEPH AND PIXIE ROMANO
13 LIVING TRUST,

14 Plaintiff,

15 v.

16 FAIRWAY VIEW ESTATES
HOMEOWNERS ASSOCIATION; NANCY
17 MILLS PIPGRAS, an individual; JOSH
GRIGG, an individual; HENRY LONGORIA,
18 an individual; STANLEY CLARK, an
individual; JAMES WYCKOFF, an individual;
19 DAVID WACHTER, an individual, DON
MCMILLAN, an individual, JACKIE
20 MCMILLAN, an individual, WINSTON
BULL, an individual, SANDY NELSON, an
21 individual and DOES 11-20, inclusive,

22 Defendants.

Case No: SCV-262714

(Unlimited Jurisdiction)

FIRST AMENDED 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**

Action Filed: June 29, 2018

Trial Date: August 23, 2019

23 Plaintiff Joseph Romano ("Plaintiff"), individually and as Trustee of the Joseph
24 and Pixie Romano Living Trust, asserts the following First Amended Complaint
25 against Defendants Fairway View Estates Homeowners Association ("HOA"), and
26 certain current and former board members: Nancy Mills Pipgras ("Pipgras"), Josh
27 Grigg ("Grigg"), Henry Longoria ("Longoria"), Stanley Clark ("Clark"), James
28 Wyckoff ("Wyckoff"), David Wachter ("Wachter"), Don McMillan ("D. McMillan"),

Jackie McMillan, (“J. McMillan”), Winston Bull (“Bull”), and Sandy Nelson (“Nelson”) (jointly referred to herein as “Board Members”), and DOES 11-20 (all collectively referred to herein as “Defendants”):

THE PARTIES

1. At all times relevant to this action, Plaintiff has been a resident of Santa Rosa, California, located in Sonoma County. Plaintiff is trustee of the Joseph and Pixie Romano Living Trust, dated October 5, 2011. At all relevant times, Plaintiff, including as trustee, has owned and possessed the real property located at 4723 Muirfield Court, Santa Rosa, California 95405, APN Nos. 147-420-068-000 and 147-420-069-000.

2. The HOA 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. The HOA 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, upon discovering the true name of Defendants served herein as DOES 1-10, amends his complaint by substituting the names: Pipgras, Grigg, Longoria, Clark, Wyckoff, Wachter, D. McMillan, J. McMillan, Bull and Nelson, in place of DOES 1-10 of the complaint.

4. Pipgras is an individual who resides at 4722 Golf View Court, Santa Rosa, California, inside Fairway View Estates. Pipgras has been a member of the Board of Directors of the Fairway View Estates common interest development (“Board of Directors”) at relevant times as the facts alleged herein from at least 2015 through 2019 and contributed to the wrongful conduct alleged herein.

5. Grigg is an individual who resides at 4769 Woodview Drive, Santa Rosa, California, inside Fairway View Estates. Grigg was on the Board of Directors and the

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1 Architectural Control Committee at relevant times as the facts alleged herein from at
2 least 2015 through 2018 and contributed to the wrongful conduct alleged herein.

3 6. Longoria is an individual who resides at 3545 Golf View Court, Santa
4 Rosa, California, inside Fairway View Estates. Longoria was on the Board of
5 Directors at relevant times as the facts alleged herein from at least 2018 through 2019
6 and contributed to the wrongful conduct alleged herein.

7 7. Clark is an individual who resides at 4724 Tee View Court, Santa Rosa,
8 California, inside Fairway View Estates. Clark was on the Board of Directors and has
9 also served on the Architectural Control Committee at relevant times as the facts
10 alleged herein from at least 2018 through 2019 and contributed to the wrongful
11 conduct alleged herein.

12 8. Wyckoff is an individual who resides at 4727 Golf View Court, Santa
13 Rosa, California, inside Fairway View Estates. Wyckoff was on the Board of Directors
14 and has also served on the Architectural Control Committee at relevant times as the
15 facts alleged herein from at least 2015 through 2019 and contributed to the wrongful
16 conduct alleged herein.

17 9. Wachter is an individual who resides at 4723 Golf View Court, Santa
18 Rosa, California, inside Fairway View Estates. Wachter was on the Board of Directors
19 at relevant times as the facts alleged herein from at least 2015 through 2019 and
20 contributed to the wrongful conduct alleged herein.

21 10. Don McMillan is an individual who resides at 4731 Woodview Drive,
22 Santa Rosa, California, inside Fairway View Estates. D. McMillan was on the Board
23 of Directors at relevant times as the facts alleged herein, from at least 2018 through
24 2019 and contributed to the wrongful conduct alleged herein.

25 11. Jackie McMillan is an individual who resides at 4731 Woodview Drive,
26 Santa Rosa, California, inside Fairway View Estates. J. McMillan was on the Board of
27 Directors at relevant times as the facts alleged herein, from at least 2015 through 2016
28 and contributed to the wrongful conduct alleged herein.

1 12. Winston Bull is an individual who resides at 4771 Woodview Drive,
2 Santa Rosa, California, inside Fairway View Estates. Bull was on the Board of
3 Directors at relevant times as the facts alleged herein, from at least 2015 through 2017
4 and contributed to the wrongful conduct alleged herein.

5 13. Sandy Nelson is an individual who resides at 4715 Tee View Court, Santa
6 Rosa, California, inside Fairway View Estates. Nelson was on the Board of Directors
7 at relevant times as the facts alleged herein, from at least 2015 through 2016 and
8 contributed to the wrongful conduct alleged herein.

9 14. Plaintiff does not know the true names and capacities, whether
10 individual, corporate, partnership, joint venture, or otherwise, of defendants Doe 11
11 through 20, inclusive. Plaintiff therefore sues them by such fictitious names. Plaintiff
12 is informed and believes that each of these Doe Defendants is responsible in some
13 manner for the acts and damages alleged herein, including through an agency and/or
14 conspiracy relationship, and Plaintiff will amend this First Amended Complaint to
15 allege the true names and capacities of Defendants sued herein as DOES 11 through
16 20, inclusive, when ascertained, together with appropriate charging allegations.

17 **JURISDICTION AND VENUE**

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

21 **BACKGROUND**

22 16. Plaintiff is a second-generation military veteran. He served this country
23 honorably in the Vietnam War and was decorated accordingly. He is an honorably
24 retired Deputy Sheriff from the Sonoma County Sheriff's Office. Plaintiff is the
25 founder and operator of Generator Joe, Inc., a small business specializing in
26 manufacturing industrial and home generators.

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1 17. Plaintiff moved to Fairway View Estates in 2010. His address is and, at
2 all relevant times, has been 4723 Muirfield Court, Santa Rosa, California 95405. He
3 lives there with his wife, Pixie Romano.

4 18. The HOA is the homeowners association that manages Fairway View
5 Estates, which includes Plaintiff's property at 4723 Muirfield Court. It is governed by
6 a board of directors (the "Board").

7 19. For years, the HOA and its Board Members have sought to block Plaintiff
8 from exercising his lawful property rights. At every turn, the Defendants have
9 threatened Plaintiff and other property owners with fines, penalties, and other adverse
10 actions for exercising those rights.

11 20. For years, Plaintiff has tried to avoid litigation and to resolve his
12 concerns informally and amicably with Defendants. But his efforts have been met with
13 further threats and intimidation.

14 21. Plaintiff tried to petition the HOA to change its ways and better serve the
15 interests of the property owners at Fairway View Estates. Plaintiff began organizing
16 with other residents in 2018. For example, he has created a website to share and
17 discuss information with them. The Defendants have attempted to crush this lawful
18 activity too.

19 22. With his and his neighbors' property rights under assault by the HOA,
20 Plaintiff offered to participate in mediation with the HOA in May 2018. Plaintiff
21 sought a global, mutually-agreed-upon resolution of all the outstanding issues without
22 litigation. However, the HOA refused to participate.

23 23. On the same day the HOA refused to participate in mediation, the HOA
24 notified Plaintiff that it would be imposing a nearly \$10,000 unlawful penalty on two
25 of these issues that Plaintiff sought to mediate. Left with no choice to protect himself
26 and the other residents at Fairway View Estates, Plaintiff brings this lawsuit.

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1 **THE COVENANTS**

2 24. Fairway View Estates is governed by the First Restated Declaration of
3 Covenants, Conditions, and Restrictions of Fairway View Estates (the “Covenants”).
4 The Covenants were last revised in January 2016.

5 25. The Covenants reference and incorporate the Architectural Control
6 Guidelines, which specify rules related to construction occurring in Fairway View
7 Estates.

8 26. A true and correct copy of the current Covenants and Architectural
9 Control Guidelines is attached as **Exhibit 1**.

10 **DEFENDANTS TRY TO CRUSH PLAINTIFF’S EFFORTS TO ORGANIZE**

11 **WITH OTHER PROPERTY OWNERS**

12 27. Plaintiff has long been an outspoken advocate for Fairway View Estates
13 property owners against the HOA’s excesses. For example, in 2016, Plaintiff flew an
14 American flag over his property. Defendants demanded that he take it down, claiming
15 that flying the flag violated the Covenants. Defendants only relented once Plaintiff
16 notified it of the Freedom to Display the American Flag Act of 2005, which expressly
17 allowed for Plaintiff’s display.

18 28. In 2014, the HOA demanded by letter that Plaintiff remove political signs
19 from his property lawfully posted on the entry and exit gates of his home. Plaintiff
20 objected and notified the HOA that its demand violated City and State laws. Only then
21 did the HOA leave Plaintiff alone about the signs.

22 29. This advocacy has made him a target. In April 2018, Plaintiff created a
23 website for Fairway View Estates residents who are members of the Fairway View
24 Estates Homeowners Association. Its title is “Fairway View Estates HOA
25 Rehabilitation Team Website.” The purpose of the website is to allow a forum for
26 residents to conveniently communicate with one another and to share information.
27 Anyone who visits the website may view public or otherwise plainly non-sensitive
28 documents relating to the HOA, such as bylaws, the Covenants, maps, and Board

1 meeting agendas and minutes. To access any potentially sensitive information, one
2 must be a resident who has received an invitation from Plaintiff. He or she must create
3 a login and password and use this login and password to access the information.

4 30. Starting in early May 2018, Plaintiff began to receive menacing
5 communications from Defendants. A May 3, 2018 email and May 20, 2018 letter from
6 the HOA conveyed that Plaintiff must stop posting homeowners association documents
7 on the website and, if not, he may face consequences.

8 31. As part of his efforts to organize with other property owners, Plaintiff
9 asked the HOA to provide the email addresses of other Fairway View Estates residents
10 from its records. Defendants have refused to provide them, even though the HOA uses
11 email to communicate with residents.

12 32. To further stifle Plaintiff's organizational efforts, Defendants notified all
13 homeowner association members in a mailing that Plaintiff was "confrontational" and
14 "combative." Defendants indicated to residents in other communications that Plaintiff
15 would be "disruptive" at board meetings and would "incite others."

16 33. Beginning in April 2018, Defendants also began holding board meetings
17 at the offices of Grapevine Property Services in Rohnert Park. This is approximately
18 10 miles from Fairway View Estates, despite the Covenants stating that all meetings
19 must be "in close proximity" to the subdivision. (Paragraph 6(d).) This dissuades
20 residents from attending, especially given that board meetings are typically held at
21 7:00 p.m., requiring travel during the tail-end of rush hour.

22 34. In 2018, Defendants also discouraged residents from participating in
23 meetings by instituting meeting rules which: (a) only allow residents to speak for three
24 minutes at the beginning of meetings; (b) prohibit residents from asking questions of
25 the Board; and (c) bar residents from viewing documents being voted on by the Board.

26 35. In October 2018, Defendants announced Plaintiff's voting rights were
27 suspended due to the fact that Plaintiff had filed a lawsuit disputing the legality of fines
28 imposed on his property. Defendants also announced Plaintiff and his wife were

ineligible to run for or hold office as a Board Member due to this litigation. These pronouncements were in direct violation of the Bylaws and Covenants which require notice, hearing and opportunity to address the Board before such rights are taken away.

DEFENDANTS SELECTIVELY ENFORCE THE COVENANTS

36. Defendants do not consistently enforce the Covenants. Instead, they selectively arbitrarily enforce them against Plaintiff and in favor of individual Board members and other owners.

37. 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. Defendants 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, Defendants, through Grapevine Property Services (“GPS”), changed their position. The letter explained that the bushes are “California natives,” that the bushes and fence provide a barrier to cars, and that the HOA otherwise “see[s] no problem with the fencing.” But the Covenants do not provide any exception on these grounds.

38. Another example of unfair and arbitrary enforcement is that Defendants have repeatedly acted to stop Plaintiff’s proposed construction on his property because they assert the proposed buildings are too close to Plaintiff’s property line, based on the setback requirements found in the subdivision’s final map.

39. The HOA had previously approved the building design in 2013, but in 2017, Defendants began selectively enforcing this rule against Plaintiff.

40. Plaintiff disputes the legal basis for Defendants’ reliance on the subdivision’s final map setbacks rather than local zoning ordinances and has provided his legal support for that position on multiple occasions to the Defendants.

41. Defendants consistently fail to enforce the Covenants, including this purported issue regarding setback requirements, against other property owners and

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2 Board Members have used their power on the Board to benefit other owners and
3 themselves in violation of their reasonable care and fiduciary duties, including:

- 4 a. Pipgras' pool and surrounding patio were built beyond the subdivision
5 setback guidelines. Pipgras has continually worked to penalize Plaintiff
6 and ultimately disrupt his proposed improvements based on the argument
7 that they violate the Covenants when she herself, has permanent
8 improvements that violate the same purported rules.
- 9 b. Pipgras' neighbor at 4726 Golf View Court also has a permanent
10 improvement consisting of a large pool built beyond the subdivision
11 setback guidelines. This improvement is in full view from Pipgras'
12 property and is a violation of the same purported rules Pipgras seeks to
13 enforce against Plaintiff.
- 14 c. Longoria's patio and surrounding improvements were built beyond the
15 subdivision setback guidelines. Longoria has continually worked to
16 penalize Plaintiff and ultimately disrupt his proposed improvements based
17 on the argument that they violate the Covenants when he himself, has
18 permanent improvements that violate the same purported rules.
- 19 d. Wachter's addition to his home was built beyond the subdivision setback
20 guidelines. Wachter has continually worked to penalize Plaintiff and
21 ultimately disrupt his proposed improvements based on the argument that
22 they violate the Covenants when he himself, has permanent improvements
23 that violate the same purported rules.
- 24 e. Clark has several garden structures built beyond the subdivision setback
25 guidelines and has extended the lawn in his backyard at least twenty feet
26 into the common area. Since 2005, Clark waters the lawn and oak trees in
27 the common area despite complaints from his neighbors. Clark has
28 continually worked to penalize Plaintiff and ultimately disrupt his

proposed improvements based on the argument that they violate the Covenants when he himself, has permanent improvements that violate the same purported rules.

f. Clark's neighbor at 4718 Tee View Court has a permanent improvement in the form of a basketball hoop in his front yard, in full view of Clark's front door which is in violation of the Covenants. Since 2005, this neighbor has also extended his back yard into the common area, waters the lawn and oak trees in the common area despite complaints from his neighbors. Board meeting minutes acknowledge Clark knew of these improvements which are a violation of the same purported rules asserted against Plaintiff.

g. Grigg's addition to his home, solar panels, raised garden beds and other improvements were built beyond the subdivision setback guidelines. Grigg has continually worked to penalize Plaintiff and ultimately disrupt his proposed improvements based on the argument that they violate the Covenants when he himself, has permanent improvements that violate the same purported rules.

h. Bull's pool and surrounding patio were built beyond the subdivision setback guidelines. Bull has continually worked to penalize Plaintiff and ultimately disrupt his proposed improvements based on the argument that they violate the Covenants when he himself, has permanent improvements that violate the same purported rules.

42. Defendants have also permitted other owners to extend their yards 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 in front of their properties and easements adjacent to their homes in violation of the Covenants. There are many residents who leave trash cans

1 visible from the street and neighboring properties in violation of the Covenants.
2 Defendants, however, take no action based on these violations. Instead, they violate
3 their fiduciary duties to all residents by unfairly harassing Plaintiff for purported
4 Covenant violations.

5 **THE HOA FAILS TO ABATE A DESTRUCTIVE WEED**

6 43. In the common area on the south and west side of Plaintiff's property, an
7 invasive weed has grown out of control.

8 44. The weed has crossed onto Plaintiff's property in the front, rear and sides
9 and caused damage to Plaintiff's landscaping and has increased Plaintiff's maintenance
10 costs abating the weed.

11 45. Plaintiff discussed the weed problem with the HOA—specifically,
12 current Board President Nancy Pipgras—in approximately 2016. Pipgras agreed to
13 abate the weed. In connection with these conversations, Plaintiff even gave Pipgras, at
14 her request, the name of the herbicide that would be effective in controlling the weed.

15 46. Despite this agreement, the HOA has not abated the weed. Plaintiff's
16 property continues to be harmed from the weed and the square footage continues to
17 multiply rapidly.

18 **THE HOA OVERCHARGES PLAINTIFF FOR ANNUAL FEES**

19 47. The HOA charges residents at Fairway View Estates Homeowners
20 Association an annual assessment to fund its operations. The assessment is based on
21 each resident's ownership of a lot. Specifically, residents must pay \$750.00 for each
22 lot.

23 48. When Plaintiff bought his property, it consisted of two lots. The lots are
24 identified as Lot Nos. 49 and 50 in the Covenants.

25 49. In 2011, Plaintiff merged the two lots into one. As part of this process,
26 Plaintiff got approval from the City of Santa Rosa and recorded the newly merged lot
27 with the County of Sonoma. As a matter of law, since 2011, Plaintiff therefore has had
28 one lot.

1 50. Despite Plaintiff legally only having one lot, the HOA has continued to
2 impose an annual assessment for two lots. Plaintiff is charged \$1,500 a year, instead of
3 \$750. When Plaintiff complained to the HOA, it insisted he must pay.

4 **DEFENDANTS UNLAWFULLY OBSTRUCTS CONSTRUCTION**

5 51. In 2013, Mr. Romano submitted construction plans for his property to the
6 HOA. The plans primarily involve constructing a game room and garages.

7 52. The HOA approved these plans on August 18, 2013 and Plaintiff began
8 preliminary construction activities. The plans showed the building beyond the
9 subdivisions' final map setback requirements. Plaintiff and the HOA agreed that the
10 setbacks would be dictated by the City of Santa Rosa. Plaintiff worked diligently to
11 obtain all necessary permits, zoning adjustments, and other required approvals from
12 the City of Santa Rosa building officials. Despite his diligence, Plaintiff did not and
13 could not receive all required city approvals until late 2017, after intensive negotiation
14 with the City.

15 53. In reliance on the HOA's August 18, 2013 approval of his plans, Plaintiff
16 spent tens of thousands of dollars obtaining necessary permit reviews, additional soil
17 studies, modifying construction plans, and adding to engineering plans. Plaintiff also
18 commissioned an environmental study at considerable expense that determined: (a)
19 none of the structures would be easily visible from the public road; (b) the main
20 garage structures would be visible by neighbors from Plaintiffs and neighbors private
21 road but the smaller garage and game room were not visible from any vantage point;
22 and (c) the closest neighbor on the southwest side of the property is more than 3,000
23 feet away and the neighbors in the other directions are more than 2,000 feet away.

24 54. The City of Santa Rosa issued three building permits on November 26,
25 2017 permitting the construction of two garages and the game room.

26 55. In compliance with Defendants' request for updated plans, Plaintiff
27 submitted revisions on December 20, 2017. These plans are referred to as Submission
28 #1. The revised plans were authorized by the same building permits and approvals as

1 the original plans. Defendants rejected the revised plan on February 1, 2018. The
2 stated basis for the rejection was that the construction was not entirely within the
3 building setback (building envelope), meaning the setback from the property line
4 required under the subdivision final map. However, in relevant part, the boundaries of
5 the buildings were the same as in the plans the HOA approved on August 18, 2013, and
6 authorized by the same permits.

7 56. The HOA had agreed in connection with the August 2013 plans,
8 moreover that the building setback was to be determined by the City of Santa Rosa.
9 Inexplicably, Defendants now claim to have lost all documents relating to Plaintiff's
10 August 2013 plans and willfully ignore the copy of the formerly approved plans
11 provided by Plaintiff.

12 57. On March 14, 2018, Defendants sent a letter to Plaintiff demanding that
13 he stop construction activities, asserting that there was no approval for such
14 construction.

15 58. On March 29, 2018, in compliance with the HOA's request, Plaintiff
16 submitted additional information relating to the plans approved in August 2013. These
17 plans are referred to as Submission #2.

18 59. Submission #2 of the plans was rejected by Defendants again on April
19 17, 2018 even though in relevant part, the boundaries of the buildings were the same as
20 the plans the HOA approved in August 2013. But Defendants once again claimed that
21 the plans must be rejected because the construction was not entirely within the
22 subdivision map building envelope. Defendants also incorrectly claimed that various
23 items required by the Covenants and Architectural Control Guidelines was missing.

24 60. On May 2, 2018, Plaintiff met with Board President Nancy Pipgras,
25 Grapevine Property Services Manager T.J. Johnson, and Defendant's counsel Barbara
26 Zimmerman, and walked them through the submitted maps and plans. Plaintiff
27 showed them specifically where to find such information they claimed was missing.

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1 Nevertheless, Defendants erroneously continued to claim that required information
2 was missing and maintained their rejection of plan Submission #2

3 61. On October 18, 2018, Plaintiff submitted plans which are referred to as
4 Submission #3. These plans were rejected by Defendants again on October 20, 2018,
5 stating that the plans would not be reviewed because the plans lacked a topographical
6 map required by the Architectural Committee Guidelines. The plans had a
7 topographical map as the first page, which was the same map used on Submission #2.
8 This highlights the unreasonable and/or unqualified nature of Defendants' rejections of
9 Plaintiff's plans.

10 62. On November 16, 2018, Plaintiff submitted plans referred to as
11 Submission #4. These plans were rejected by Defendants again on November 20,
12 2018, stating that the plans would not be reviewed or approved for any reason.
13 Defendants waived certain requirements that had been demanded in the past and added
14 several other requirements that had never been required before. Many of the
15 requirements that Defendants sought are beyond the authority and expertise of
16 Defendants and are legally governed by City land use ordinances, building codes,
17 public safety codes and other State laws. Defendants' attorney stated "Due to the
18 holidays and family matters, the full Fairway View Estates Homeowners Association
19 Architectural Control Committee (the "ACC") has not been able to meet on the issue
20 of completeness of the application of Mr. Romano" and "We (HOA) raise this solely
21 for the purpose of providing your client the opportunity to avoid the expense of
22 completing an application that is not likely to be approved."

23 63. On November 20, 2018 Plaintiff submitted plans referred to as
24 Submission #5. These plans were rejected by Defendants again on December 10, 2018
25 stating that, "The CC&Rs do not contain any language allowing improvements outside
26 the building envelope as shown on the map...".

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Defendants 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 have Defendants taken sufficient actions to remedy such issues.

70. 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.

71. On March 14, 2018, Defendants sent a letter to Plaintiff stating that he would face a disciplinary hearing for building the trench.

72. On April 19, 2018, Plaintiff met with Board President Nancy Pipgras, Grapevine Property Services Manager T.J. Johnson, and the HOA’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, Defendants sought to change the agreement by adding new material terms. After Plaintiff objected to Defendants 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.

73. On May 10, 2018, as part of his efforts to reach a mutually-satisfactory agreement with Defendants, Plaintiff offered to fill in the trench. The following day, Defendants rejected this offer and threatened to call the police should Plaintiff try to do so.

74. On June 4, 2018, Defendants 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. Defendants declined to ask any questions, comment, or discuss the matter with Plaintiff and his counsel.

75. In tacit recognition of the legitimacy of Plaintiff's grievances and the Defendants failure to properly maintain the common area, Defendants have agreed to build a "V-ditch" drainage system on the location of the trench.

76. Unfortunately, this is not enough. The culvert remains blocked and the Defendants have refused to flush or otherwise maintain it, remove the common area tree roots from the pipe and properly grade the trench so water would flow out, despite their duty to do so. Defendants also have refused to address the other portion of the common area causing the flooding. Defendants also have not maintained the road itself, despite its duty to do so.

DEFENDANTS THREATEN TO REMOVE PLAINTIFF'S DRAINAGE PIPES

77. More than three years ago, as part of Plaintiff's general efforts to mitigate the flooding problem arising from the common area, and from open space northwest of Plaintiffs property from the common area Plaintiff placed small drainage pipes alongside his road, pressed against the curb.

78. Defendants never complained about these pipes for more than three years. Suddenly, in early-May 2018, Defendants claimed that the pipes violate the Covenants because they constitute an unauthorized modification or addition to the common area. Only a small area adjacent to the curb of the road is common area and this space is roughly the same width on all properties in this subdivision. This space is used by all residents, including Defendants for planting plants, trees, ground cover, irrigation, drainage and even concrete structures. On May 2, 2018, Defendants 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.

79. Defendants, however, changed their mind. On June 18, 2018, Defendants demanded by letter that Plaintiff remove the pipes altogether, as well as the

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1 rocks. In the same letter, Defendants demanded that Plaintiff remove a few circles of
2 small stones around trees near the curb.

3 80. Defendants have also claimed that, in the same area, there is water
4 flowing from Plaintiff's property. In its June 15, 2018 letter, Defendants states that
5 "Mr. Romano must take action to stop the substantial run-off from his property," and
6 again implies discipline if he does not comply with this demand. Defendants have
7 never identified how they believe water running down hill is within Plaintiff's control,
8 nor any harm from this alleged runoff or explained why such runoff violates the
9 Covenants.

10 **THE HOA REFUSES MEDIATION**

11 81. On May 16, 2018, in an effort to avoid litigation and amicably resolve
12 the various disputes between the parties, Plaintiff sent a letter to the HOA formally
13 requesting alternative dispute resolution under Civil Code section 5925 *et seq.* In the
14 letter, Plaintiff identified each of the issues discussed in this Complaint and asked that
15 the parties participate in mediation at the HOA's "soonest availability."

16 82. On June 15, 2018, the HOA wrote to Plaintiff declining his request to
17 participate in mediation.

18 83. Pursuant to Civil Code section 5950, Plaintiff has concurrently filed with
19 this Complaint a certificate stating that the HOA declined alternative dispute resolution
20 and, regardless, alternative dispute resolution is not required.

21 **DEFENDANTS IMPOSE UNLAWFUL PENALTIES ON PLAINTIFF**

22 84. On June 15, 2018, Defendants notified Plaintiff by letter of the results of
23 the June 4, 2018 disciplinary hearing concerning the trench.

24 85. The letter states that the HOA is imposing a \$250.00 fine on Plaintiff, as
25 well as \$9,257.50 in attorney's fees and costs "related to obtaining Mr. Romano's
26 compliance with the common area damages and the architectural application." The
27 letter further states that "[a]ll future attorneys' fees and costs related to the common
28 area damages and architectural application will be added as additional sums." The

1 letter also suggests that the HOA will seek attorney's fees and costs "incurred in
2 regards to his website and rehabilitation committee, his document demands, and his
3 communications to other members."

4 86. By "architectural application," the HOA is referring to Plaintiff's
5 construction plans described in Paragraphs 51 to 60. These construction plans,
6 however, were not part of the June 4, 2018 disciplinary hearing. Nor have they been
7 part of any other hearing.

8 87. Plaintiff has never provided any documentation or evidence
9 substantiating the amount of attorneys' fees and costs.

10 **FIRST CAUSE OF ACTION**

11 **(Breach of Fiduciary Duty)**

12 **(Against all Defendants and Does 11-20)**

13 88. Plaintiff re-alleges and incorporates each and every allegation contained
14 in this First Amended Complaint, as though set forth in full herein.

15 89. **Duty:** As a homeowners association, the HOA owes a fiduciary duty to
16 its members, including Plaintiff. Accordingly, the HOA must act as a fiduciary toward
17 Plaintiff and other members with the utmost good faith, due care, and fair dealing,
18 including by only acting in the members' best interests.

19 90. The Board Members, each owe the members of the HOA a fiduciary
20 duty, including the duty of loyalty, duty to avoid a conflict of interest, duty to not
21 exceed the degree of authority granted in the governing documents and by statute, and
22 duty to act within the scope of authority granted by the Covenants and Architectural
23 Control Guidelines.

24 91. **Breach:** The HOA has breached its duty to Plaintiff and other members,
25 including, but not limited to:

- 26 a. Attempting to stop Plaintiff's lawful organizational efforts with other
27 members and stop the dissemination of association documents among
28 members.

- b. 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.*
- c. Refusing to abate a destructive weed in the common area that has harmed Plaintiff's property and increased his maintenance costs.
- d. 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. Plaintiff also has not maintained the road itself.
- e. 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.
- f. Specifically prohibiting Plaintiff from voting as an HOA member or running for a position on the Board.
- g. Unreasonably and in bad faith blocking Plaintiff's construction plans.
- h. Violating the Covenants and Architectural Control Guidelines.
- i. Selectively enforcing the Covenants against Plaintiff and ignoring other members' violations and the Board Members' own violations.
- j. 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.
- k. Threatening the destruction of Plaintiff's property, including the drainage pipes and rocks placed next to Plaintiff's road.
- l. Moving Board meetings to Rohnert Park, approximately 10 miles from Fairway View Estates.
- m. Limiting residents to speaking for only three minutes at the beginning of Board meetings and otherwise imposing unreasonable restrictions on their participation rights.
- n. In retaliation against Plaintiff, Defendants proposed and approved an enormous and unreasonable fine structure with fines up to \$10,000 a day

1 for infractions of the Covenant's or Architectural Guidelines and any
2 accusation of any HOA violation would immediately cause suspension of
3 Plaintiff's voting rights in all HOA matters.

- 4 o. In continued retaliation against Plaintiff, Defendants proposed and passed a
5 Covenant modification to the election rules which are stated in the By-
6 Laws of the HOA. Among other things the new rules prevent any person
7 who is in violation or is accused of a violation cannot run for seats on the
8 Board of Directors. The HOA immediately denied Joseph Romano and
9 Pixie Romano ability to run for a Board election based on the disciplinary
10 action the HOA has held in abeyance and the fact that Plaintiff has filed
11 this lawsuit against the HOA.

12 92. The Board Members have breached their individual duties to Plaintiff
13 including:

- 14 a. Assessing nearly \$10,000 in fines and costs to Plaintiff without adequate
15 notice and opportunity to present information opposed to the fine, in
16 violation of the Covenants.
- 17 b. Ordering Plaintiff to halt construction by asserting that his planned
18 improvement was unacceptably within the final map's building setback
19 requirements, when each of them had (1) permitted other owners to build
20 within those same setbacks, and/or (2) built within those setbacks on their
21 own property.
- 22 c. Refusing to maintain the common area near Plaintiff's property which has
23 caused flooding and invasive weeds to overtake the land. When these
24 issues were raised by Plaintiff, Board Members treated Plaintiff differently
25 from other owners when they refused to mitigate the issues, harassed
26 Plaintiff when he attempted to mitigate the issues and threatened Plaintiff
27 with fines.

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1 d. Declaring Plaintiff to be in violation of the Covenants when they alleged
2 Plaintiff improperly landscaped the common area in front of his home,
3 when they have allowed virtually all other owners including themselves to
4 improve the common areas in front of their homes.

5 93. **Harm**: Plaintiff has been harmed by the HOA's breach of its fiduciary
6 duty, including, but not limited to, as follows:

- 7 a. Plaintiff has been impeded in his ability to organize with other residents
8 and share and discuss association documents with them.
- 9 b. Plaintiff has been denied email addresses and other contact information to
10 which he is entitled.
- 11 c. Plaintiff's landscaping has been destroyed and his maintenance costs
12 increased by an invasive weed in the common area.
- 13 d. Plaintiff's road has been damaged by flooding. Plaintiff also was forced to
14 dig a trench, which cost substantial time and money. Plaintiff has been
15 forced to pay to repair the road as well.
- 16 e. Plaintiff has been overcharged \$750.00 a year for his annual assessment for
17 multiple years.
- 18 f. Plaintiff's construction plans have been needlessly delayed, causing his
19 construction costs to increase and impairing the use and enjoyment of his
20 property.
- 21 g. Because Defendant has failed to address other members' Covenant
22 violations, parts of the common area and Development have been
23 despoiled and Plaintiff has been subjected to various nuisances.
- 24 h. Plaintiff has been subjected to an excessive and unlawful penalty, some of
25 the basis for which was not subject to a required disciplinary hearing.
- 26 i. Plaintiff's property has been threatened with harm or removal.
- 27 j. Plaintiff and other residents have been subjected to inconvenience and
28 travel costs associated with driving to Board meetings in Rohnert Park.

1 k. Defendant has only allowed residents to speak for three minutes at the
2 beginning of Board meetings and otherwise imposed unreasonable
3 restrictions on their participation rights, which curtails their ability to raise
4 issues with Defendant.

5 94. Plaintiff has been harmed by the Board Members' breach of their
6 fiduciary duty, including, but not limited to, as follows:

- 7 a. Financial damages due to their order to halt construction on his property,
8 including costs to mitigate rain erosion and increased construction
9 materials and labor costs.
- 10 b. Costs to mitigate water erosion to the common area near his home that
11 Defendants refused to repair.
- 12 c. Loss of the use of his property in the manner that is lawful and permitted
13 by the Covenants and under common practice within the community.
- 14 d. Assessment of fines and accrual of attorney's fees to attempt to assert his
15 rights.

16 95. **Causation**: The harm described herein flows directly from Defendants'
17 breach of fiduciary duty.

18 96. Through their communications with Plaintiff and otherwise, Defendants
19 had knowledge of the consequences of their actions and omissions, and their adverse
20 effects on Plaintiff's rights and property, but continued in their conduct, nevertheless.
21 Defendants have also performed such actions and omissions to punish Plaintiff for his
22 lawful organizational activities and other lawful efforts protesting misconduct by
23 Defendants. Moreover, the individual defendants knew or should have known that
24 their own properties were in violation of the same rules they have sought to enforce
25 against Plaintiff only. Therefore, Defendants have acted with malice, fraud, and/or
26 oppression.

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1 **SECOND CAUSE OF ACTION**

2 **(Breach of Contract)**

3 **(Against the HOA and Does 11-20)**

4 97. Plaintiff re-alleges and incorporates each and every allegation contained
5 in this First Amended Complaint, as though set forth in full herein.

6 98. **Contract**: All lots within Fairway View Estates are subject to the
7 Covenants and Architectural Control Guidelines. These documents set forth a binding
8 legal agreement between the HOA and residents. This agreement was entered into
9 between Plaintiff and the HOA when Plaintiff purchased his property at Fairway View
10 Estates.

11 99. **Breach**: The Covenants and Architectural Control Guidelines set forth
12 specific rules governing the relationship between Plaintiff and the HOA. The HOA
13 have broken these rules, including, but not limited to, as follows:

- 14 a. The Covenants state that the HOA shall have the duty to “manage,
15 operate, maintain, repair, landscape, care for and preserve the Common
16 Area and the Common Facilities,” and must do so “For the benefit of the
17 Lots and the Owners.” (Paragraph 9.) Similarly, the HOA must “repair
18 and replace the Common Facilities.” (*Id.*) The HOA must also “keep all
19 access ways, roadways, and appurtenances thereto on the subdivided
20 property in a state of good condition and repair, consistent with the
21 standard of quality of said roadways and appurtenances upon original
22 installation. All such repairs shall be made at the expense of the
23 Association.” (Paragraph 30.) The HOA has failed to do so, including
24 by: (a) refusing to abate a destructive weed in the common area that has
25 harmed Plaintiff’s property and increased his maintenance costs; (b)
26 refusing to maintain the common area by Plaintiff’s road, including the
27 storm drain and culvert, in such a way as to prevent flooding on the road.
28 Plaintiff also has not maintained the road itself.

- b. 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.
- c. 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).) The HOA 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, the HOA’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 the HOA 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. The HOA confirmed as much in writing before the hearing. Nevertheless, based on the June 4, 2018 proceeding, the HOA 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.

- d. The Covenants state that the HOA 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.
- e. 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. The HOA have 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 Defendants’ assertions that Plaintiff’s plans violate the applicable building envelope.
- f. 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 the HOA does nothing to stop it.
- g. 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.)

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1 Plaintiff is aware of neighbors with paint and other repairs that need to be
2 fixed, but the HOA does nothing to stop it.

3 h. The Covenants state that “No hardscape, landscape, personal property,
4 fixtures, refuse, signs, or other items shall be placed on, altered, or
5 removed from the Common Area by anyone other than the Association in
6 connection with its maintenance obligations.” (Paragraph 28(c).) They
7 also state that “[n]o fences, hedges used for screening, walls, or screens
8 shall be erected on any Lot unless first approved by the Architectural
9 Committee.” (Paragraph 28(h).) Plaintiff is aware of neighbors who
10 have landscaped, built on, or otherwise developed portions of the
11 common area, but the HOA has taken no action against any other HOA
12 members and has done nothing to stop it. Nevertheless, the HOA is
13 attempting to enforce the rule against Plaintiff only.

14 i. The Covenants state that “[a]ll garbage and trash containers shall be
15 maintained so as to not be visible from any neighboring property or the
16 street . . . except to make the same available for collection and then only
17 the shortest time reasonably necessary to effect such collection.”
18 (Paragraph 28(d).) Plaintiff is aware of a neighbor whose trashcans
19 remain visible outside of collection times, but the HOA does nothing to
20 stop it.

21 j. The Covenants state that meetings “shall be held within the Fairway
22 View Estates Subdivision or in close proximity thereto as established by
23 the Board of Directors.” (Paragraph 6(d).) The HOA, however, has been
24 holding meetings approximately 10 miles from Fairway View Estates,
25 requiring substantial travel time for residents.

26 100. **Harm:** Plaintiff has been harmed by the HOA’s breach of its contract,
27 including, but not limited to, as follows:

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- 1 a. Plaintiff's landscaping has been destroyed and his maintenance costs
2 increased by an invasive weed in the common area.
- 3 b. Plaintiff's road has been damaged by flooding. Plaintiff also was forced to
4 dig a trench, which cost substantial time and money. Plaintiff has been
5 forced to pay to repair the road as well.
- 6 c. Plaintiff has been overcharged \$750.00 a year for his annual assessment for
7 multiple years.
- 8 d. Plaintiff's construction plans have been needlessly delayed, causing his
9 construction costs to increase and impairing the use and enjoyment of his
10 property.
- 11 e. Because the HOA has failed to address other members' Covenant
12 violations, parts of the common area and Development have been
13 despoiled and Plaintiff has been subjected to various nuisances.
- 14 f. Plaintiff has been subjected to an excessive and unlawful penalty, some of
15 the basis for which was not subject to a required disciplinary hearing.
- 16 g. Plaintiff's property has been threatened with harm or removal.
- 17 h. Plaintiff and other residents have been subjected to inconvenience and
18 travel costs associated with driving to Board meetings in Rohnert Park.

19 101. **Causation:** The harm described in Paragraph 100, among other
20 paragraphs, flows directly from the HOA's breach of contract described herein.

21 102. The HOA's obligation to obey the Covenants was not conditioned on
22 Plaintiff's performance and/or Plaintiff performed as required under the Covenants.

23 103. The Covenants expressly provide that, if "the Association declines to take
24 action in any instance [of a violation of the Covenants], any Owner shall have such
25 rights of enforcement as exist by virtue of section 5975 of the California Civil Code or
26 otherwise by law." (Paragraph 15(f).)

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1 **THIRD CAUSE OF ACTION**

2 **(Breach of Equitable Servitude)**

3 **(Against the HOA and Does 11-20)**

4 104. Plaintiff re-alleges and incorporates each and every allegation contained
5 in this First Amended Complaint, as though set forth in full herein.

6 105. **Equitable Servitude**: The preamble to the Covenants states that, “[a]s
7 so amended and restated, the easements, restrictions, reservations, liens, charges,
8 covenants, and conditions set forth herein shall constitute enforceable equitable
9 servitudes and covenants that run with the real property hereinbefore described and
10 shall be binding on all parties or acquiring any right, title, or interest therein . . . and
11 shall insure to the benefit of each Owner thereof.” Civil Code section 5975(a)
12 similarly states that the “covenants and restrictions in the declaration shall be
13 enforceable equitable servitudes, unless unreasonable, and shall inure to the benefit of
14 and bind all owners of separate interests in the development.” Therefore, the
15 Covenants and Architectural Control Guidelines are an equitable servitude binding
16 Plaintiff and the HOA.

17 106. **Breach**: The HOA has breached the equitable servitude for the reasons
18 set forth in Paragraph 99 (regarding Breach of Contract), among other paragraphs.

19 107. **Harm**: Plaintiff has been harmed by the HOA’s breach of equitable
20 servitude for the reasons set forth in Paragraph 100 (regarding Breach of Contract),
21 among other paragraphs.

22 108. **Causation**: The HOA’s breach of equitable servitude has harmed
23 Plaintiff for the reasons set forth in Paragraph 100 (regarding Breach of Contract),
24 among other paragraphs.

25 109. The HOA’s obligation to obey the Covenants was not conditioned on
26 Plaintiff’s performance and/or Plaintiff performed as required under the Covenants.

27 110. The Covenants expressly provide that, if “the Association declines to take
28 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)

(Against the HOA and Does 11-20)

111. Plaintiff re-alleges and incorporates each and every allegation contained in this First Amended Complaint, as though set forth in full herein.

112. 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.”

113. For the reasons set forth in Paragraph 99, among other paragraphs, the HOA 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.

114. For the reasons set forth in Paragraph 100, 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.

115. Through its communications with Plaintiff and otherwise, the HOA 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. The HOA also has performed such actions and omissions to punish Plaintiff for his lawful organizational activities and other lawful efforts protesting misconduct by the HOA. Therefore, the HOA has acted with malice, fraud, and/or oppression.

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1 **FIFTH CAUSE OF ACTION**

2 (Negligence)

3 (Against all Defendants and Does 11-20)

4 116. Plaintiff re-alleges and incorporates each and every allegation contained
5 in this First Amended Complaint, as though set forth fully herein.

6 117. **Duty**: Defendants owe a duty to Plaintiff as a homeowner and resident to
7 exercise reasonable care and refrain from engaging in acts or omissions that cause
8 injury to Plaintiff and his property. Board Members specifically, owe Plaintiff a duty
9 to perform his or her duties in good faith, in a manner that he or she believes to be in
10 the best interests of the members, and with the care of a reasonably prudent person in
11 similar circumstances.

12 118. **Breach**: The Defendants have breached their duty by not exercising
13 reasonable care in performing their obligations under the law and under the Covenants
14 as alleged herein.

15 119. **Harm**: Because of Defendants conduct, Plaintiff has suffered financial
16 harm as alleged herein, and has been prevented from using his property and has been
17 prevented from participating in the HOA and obtaining the benefits of the Covenants
18 all as alleged herein.

19 120. Moreover, Plaintiff has suffered emotional distress damages due to
20 Defendants' conduct, in an amount to be proven at trial.

21 121. **Causation**: Defendants' failure to exercise reasonable care and in the
22 best interests of all the members, are what caused the harm described herein.

23 **SIXTH CAUSE OF ACTION**

24 (Declaratory Relief)

25 (Against the HOA and Does 11-20)

26 122. Plaintiff re-alleges and incorporates each and every allegation contained
27 in this First Amended Complaint, as though set forth in full herein.

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1 123. A bona fide dispute exists between Plaintiff and the HOA as to various
2 issues, including the following:

3 a. The HOA has attempted to stop Plaintiff's lawful organizational efforts
4 with other members and stop the dissemination of association documents
5 among members.

6 b. The HOA has refused to provide the email addresses of other members
7 from its records, despite Plaintiff's right to them under Civil Code section
8 5200 *et seq.*

9 c. The HOA has refused to abate a destructive weed in the common area that
10 has harmed Plaintiff's property and increased his maintenance costs.

11 d. The HOA has refused to maintain the common area, including the storm
12 drain and culvert, by Plaintiff's road, causing and exacerbating flooding
13 and damaging the road. The HOA has refused to maintain the road itself.

14 e. The HOA has levied an excessive annual assessment against Plaintiff based
15 on his alleged ownership of two lots, when as a matter of law he only owns
16 one lot.

17 f. The HOA has unreasonably and in bad faith blocked Plaintiff's
18 construction plans.

19 g. The HOA has violated the Covenants and Architectural Control
20 Guidelines.

21 h. The HOA has been selectively enforcing the covenants against Plaintiff,
22 and ignoring or expressly permitting other members' violations, including
23 Board Members.

24 i. The HOA has imposed an excessive and unlawful penalty against Plaintiff
25 in connection with the June 4, 2018 disciplinary hearing, including by
26 charging Plaintiff for attorney's fees on matters not at issue in the hearing.

27 j. The HOA has threatened the destruction of Plaintiff's property, including
28 the drainage pipes and rocks placed next to the road.

- 1 k. The HOA has demanded that Plaintiff stop any water runoff toward the
2 road from his property.
- 3 l. The HOA has subjected Plaintiff and other residents to inconvenience and
4 travel costs associated with driving to Board meetings in Rohnert Park,
5 rather than in a convenient location.
- 6 m. The HOA has limited residents' speaking time to three minutes at the start
7 of each Board meeting and otherwise imposed numerous unreasonable
8 restrictions on their participation rights.
- 9 124. Plaintiff has raised all such issues with the HOA, but the HOA refused to
10 cease its harmful acts and omissions. Therefore, there is an actual
11 controversy over the parties' respective rights and obligations.
- 12 125. It is necessary that the Court determine the rights and obligations of the
13 respective parties.

14 **SEVENTH CAUSE OF ACTION**

15 **(Injunctive Relief)**

16 **(Against the HOA and Does 11-20)**

17 126. Plaintiff re-alleges and incorporates each and every allegation contained
18 in this First Amended Complaint, as though set forth in full herein.

19 127. The Covenants state that "Except for the non-payment of any assessment,
20 it is hereby expressly declared and agreed that the remedy at law to recover damages
21 for the breach, default or violation of any of the covenants, conditions, restrictions,
22 limitations, reservations, grants of easements, rights, rights-of-way, liens, charges or
23 equitable servitude contained in this Declaration is inadequate and that the failure of
24 any Owner, tenant, occupant or user of any Lot, Residence, or any portion of the
25 Common Area or Common Facilities, to comply with any provision of the Governing
26 Documents may be enjoined by appropriate legal proceedings instituted by any
27 Owner." (Paragraph 15(a).)

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128. As described herein, the HOA have violated various provisions of the Covenants. Paragraph 15(a) of the Covenants states that this entitles Plaintiff to injunctive relief. The HOA's unlawful acts and omissions have harmed or threaten to immanently harm Plaintiff. Such acts and omissions violate Plaintiff's rights.

129. Unless the HOA 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 the HOA to take affirmative acts.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against Defendants as follows:

I. ON FIRST CAUSE OF ACTION (BREACH OF FIDUCIARY DUTY)
AGAINST ALL DEFENDANTS AND DOES 11-20

(a) 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.

(b) Punitive and/or exemplary damages.

II. ON SECOND CAUSE OF ACTION (BREACH OF CONTRACT)
AGAINST THE HOA AND DOES 11-20

(a) 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.

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**III. ON THIRD CAUSE OF ACTION (BREACH OF EQUITABLE
SERVITUDE) AGAINST THE HOA AND DOES 11-20**

(a) 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.

(b) 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 the HOA to take affirmative acts.

**IV. ON FOURTH CAUSE OF ACTION (NUISANCE) AGAINST THE HOA
AND DOES 11-20**

(a) 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.

(b) Punitive and/or exemplary damages.

**V. ON FIFTH CAUSE OF ACTION (NEGLIGENCE) AGAINST ALL
DEFENDANTS AND DOES 11-20**

(a) 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.

(b) Non-economic damages, including to compensate Plaintiff for emotional distress, pain and suffering, and loss of pleasure and enjoyment of life.

**VI. ON SIXTH CAUSE OF ACTION (DECLARATORY RELIEF) AGAINST
THE HOA AND DOES 11-20**

(a) 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) the HOA has an obligation to provide member email

1 addresses to Plaintiff pursuant to Civil Code section 5200 *et seq*; (3) the HOA must
2 abate the destructive weed in the common area; (4) the HOA must maintain the
3 common area by the road next to Plaintiff's property in such a way as prevent flooding,
4 as well as maintain the storm drain, culvert, and road itself; (5) the HOA may only
5 charge Plaintiff an annual assessment for one lot; (6) Plaintiff may commence
6 construction on his property according to submitted plans and issued building permits;
7 (7) the HOA must take appropriate measures to remedy the Covenant violations of
8 other residents described herein and any such other violations discovered by Plaintiff
9 or the HOA; (8) the penalty Defendant imposed on Plaintiff in connection with the
10 June 4, 2018 disciplinary hearing is null, void, and unenforceable; (9) the HOA may
11 not remove nor demand that Plaintiff remove the drainage pipes and rocks Plaintiff
12 placed alongside the road by his property; (10) Plaintiff need not take any measures to
13 abate alleged water runoff from his property; (11) Board meetings may not be held at
14 the offices of Grapevine Property Services in Rohnert Park and instead must be held at
15 a location in close proximity to Fairway View Estates; (12) residents be allowed to
16 speak for a reasonable amount of time at the start of each Board meeting, substantially
17 longer than the current three-minute limit; (13) at Board meetings, residents shall be
18 allowed to verbally ask questions and raise concerns about the operation of the
19 homeowners association and receive answers as soon as practicable; (14) residents
20 shall also be provided copies of documents being voted on by the Board; and (15)
21 Plaintiff be declared in good standing as a resident of the Association i.e. as having all
22 assessments current and not subject to suspension of membership rights.

23 **VII. ON SEVENTH CAUSE OF ACTION (INJUNCTIVE RELIEF) AGAINST**
24 **THE HOA AND DOES 11-20**

25 (a) For injunctive relief prohibiting the HOA, including its Board, agents,
26 servants, and employees, and all persons acting under, in concert with, or for it, from
27 engaging in the unlawful actions and omissions described in this Complaint. Such
28 relief includes "positive" injunctive relief requiring the HOA to take affirmative acts.

1 **VIII. ON ALL CAUSES OF ACTION**

2 (a) For reasonable costs and attorney's fees incurred in bringing and
3 prosecuting this suit pursuant to Paragraph 15(c) of the Covenants and as otherwise
4 provided for by law.

5 (b) For statutory penalties as provided for by law, including under Civil
6 Code section 5235.

7 (c) For pre-judgment and post-judgment interest.

8 (d) For such other and further relief as the Court deems just and proper,
9 including equitable relief.

10 **DEMAND FOR JURY TRIAL**

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

13

14 Dated: April 19, 2019

CARLE, MACKIE, POWER & ROSS LLP

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By: _____

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Philip J. Terry, Esq.
Attorneys for Plaintiff

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