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7 ODD FELLOWS SIERRA RECREATION ASSOCIATION

8  
9 **SUPERIOR COURT OF CALIFORNIA**  
10 **COUNTY OF TUOLUMNE**

11 ODD FELLOWS SIERRA RECREATION ) Case No. CV58100  
ASSOCIATION, a California corporation, )  
12 ) **PLAINTIFF'S PROPOSED**  
Plaintiff, ) **TENTATIVE DECISION**  
13 )  
vs. )  
14 )  
CHARLES P. VARVAYANIS and PATRICIA ) TRIAL DATE (day 1): April 16, 2018  
15 JONES; et al., ) TRIAL DATE (day 2): April 17, 2018  
16 ) TRIAL DATE (day 3): April 18, 2018  
Defendants. )  
17 ) DEPT: 3  
Judge: The Hon. Frank Dougherty  
18 )  
AND RELATED CROSS-ACTIONS. )  
19 )

20 Plaintiff and Cross-Defendant ODD FELLOWS SIERRA RECREATION ASSOCIATION  
21 submits the following proposed Tentative Decision following trial of the above-referenced action on  
22 April 16, 17 and 18, 2018:

23  
24 **I**

25 **PARTIES AND REPRESENTATION**

26 Plaintiff was represented by Timothy T. Trujillo of Dambacher, Trujillo & Associates, 32 N.  
27 Washington Street, Sonora, California.

28 Defendants/Cross-Complainants FREDDIE GLEN COLEMAN aka FRED COLEMAN and

1 BARBARA ANN COLEMAN, Trustees of the FREDDIE COLEMAN & BARBARA ANN  
2 COLEMAN TRUST; LARRY GIACOMINO; DEANNA G. MOONEY, Trustee of the DEANNA G.  
3 MOONEY TRUST; STEVEN P. WALLACE, Trustee of the STEVEN P. WALLACE TRUST;  
4 JOSEPH M. NELSON, JR., Trustee of the JOSEPH M. NELSON, JR., TRUST; JOSEPH F.  
5 SCHULTZ and KARIN V. SCHULTZ, Trustees of the JOSEPH F. and KARIN V. SCHULTZ  
6 TRUST; LARRY LEE VAUGHN; and KARIN LOUANNE VAUGHN (collectively "Defendants" or  
7 "Cross-Complainants") were represented by Nicholas D. Yonano of Yonano Law Offices, 4944  
8 Windplay Drive, Suite 119, El Dorado Hills, California.

9 Defendants JOSEPH F. SCHULTZ and KARIN V. SCHULTZ, Trustees of the JOSEPH F. and  
10 KARIN V. SCHULTZ TRUST, were dismissed during trial by Plaintiff and Cross-Defendant/Cross-  
11 Complainant SIERRA PARK SERVICES, INC. However, such Defendants are still Cross-  
12 Complainants.

13 Cross-Defendant/Cross-Complainant SIERRA PARK SERVICES, INC., was represented by  
14 Bret F. Meich of Downey Brand LLP, 3425 Brookside Road, Suite A, Stockton, California.

## 16 II

### 17 PLEADINGS

18 Plaintiff's Complaint was filed on March 26, 2013 against Defendants and includes four (4)  
19 causes of action for: 1. quantum meruit; 2. maintenance of a right of way easement; 3. common counts-  
20 account stated; and 4. common counts-open account.

21 The Defendants Cross-Complaint filed a Cross-Complaint against Plaintiff and Cross-  
22 Defendant/Cross-Complainant SIERRA PARK SERVICES, INC. which contained eight (8) causes of  
23 action: 1. Action to Declare Assessments Invalid; 2. Action to Declare Form of Assessments Invalid;  
24 3. Quiet Title; 4. Permanent Injunction; 5. Abatement of Nuisance; 6. Accounting; 7. Action to  
25 Determine Obligations of Landowners; and 8. Declaratory Relief.

1 Cross-Defendant/Cross-Complainant SIERRA PARK SERVICES, INC. filed a Cross-Complaint  
2 against Defendants in which it asserted five (5) causes of action for: 1. quantum meruit; 2. unjust  
3 enrichment; 3. maintenance of right of way easement; 4. account stated; and 5. open account.  
4

5 **III.**

6 **FACTUAL FINDINGS BY COURT**

7 The Court makes the following factual findings:

8 **A. The Subdivisions.**

- 9 1) In or around 1950, Plaintiff developed a portion of real property owned by it located in  
10 Tuolumne County, California into a subdivision called I.O.O.F. Odd Fellows Sierra  
11 Camp Subdivision No. 1. In 1959, Plaintiff resubdivided a portion of I.O.O.F. Odd  
12 Fellows Sierra Camp Subdivision No. 1 which it called Odd Fellows Sierra Camp  
13 Subdivision No. 2. I.O.O.F. Odd Fellows Sierra Camp Subdivision No. 1 and Odd  
14 Fellows Sierra Camp Subdivision No. 2 may hereinafter be collectively referred to as the  
15 "Subdivisions."
- 16 2) At the time of the filing of Plaintiff's complaint in this matter, the Subdivisions consisted  
17 of 364 separate lots owned by third parties as set forth in the original maps recorded for  
18 the Subdivisions. At the time of the filing of Plaintiff's complaint in this matter, Plaintiff  
19 had ownership of one lot within the Subdivisions (the "Caretaker's Lot") but had sold the  
20 remaining lots in the Subdivisions to third parties (individually a "Lot Owner" and  
21 collectively the "Lot Owners"), including Defendants. Plaintiff used the Caretaker's Lot  
22 to house a caretaker who provided services to the Lot Owners.
- 23 3) Defendants FREDDIE GLEN COLEMAN and BARBARA ANN COLEMAN became a  
24 Lot Owner on February 17, 1989, Defendant LARRY LEE VAUGHN became a Lot  
25 Owner on October 5, 1988, Defendant KARIN LOUANNE VAUGHN became a Lot  
26 Owner on October 5, 1988, Defendant STEVEN P. WALLACE became a Lot Owner on  
27 August 7, 1987, Defendant JOSEPH M. NELSON JR. became a Lot Owner on April 24,  
28

1 1997, Defendants JOSEPH F. SCHULTZ and KARIN V. SCHULTZ became a Lot  
2 Owner on July 13, 1994, Defendant LARRY V. GIACOMINO became a Lot Owner on  
3 July 9, 1992 and DEANNA G. MOONEY became a Lot Owner on September 10, 1974.

- 4 4) Plaintiff had retained ownership of all real property within the perimeter of the  
5 Subdivisions other than the lots sold to the Lot Owners (collectively, the "Subject  
6 Property"), including, without limitation, the real property on which the following  
7 improvements are located: (i) roads/streets, (ii) wells for the supply of water; (iii)  
8 recreation hall, (iv) lake, picnic area, baseball field and playground, (v) dog park; (vi)  
9 area for disposal of garbage by the Lot Owners; (vii) an area for disposal of pine needles  
10 by the Lot Owners; and (viii) various areas for the storage and maintenance of equipment  
11 and tools used to maintain the aforementioned water system and roads and streets. The  
12 Subject Property is solely used for the benefit of the Lot Owners. No portion of the  
13 Subject Property is used for the private gain of Plaintiff.
- 14 5) All Defendants use a variety of roads and streets within the Subdivisions to access their  
15 respective lot, to visit other Lot Owners within the Subdivisions, to dispose of their  
16 trash, to dispose of their pine needles and to use certain recreation areas within the  
17 Subdivisions. At no time has any Defendant exercised ownership or control over the  
18 roads and streets within the perimeter of the Subdivisions. No Lot Owner, including  
19 Defendants, has ever maintained any portion of the roads and streets within the  
20 Subdivisions. Instead Plaintiff maintained such road and streets for approximately 65  
21 years (until May 31, 2013).
- 22 6) Plaintiff granted the Lot Owners an easement over the roads and streets within the  
23 Subdivisions pursuant to that certain "Declaration Relating to the Roads and Streets  
24 Located in and Appurtenant to the I.O.O.F. Odd Fellows Sierra Camp Subdivision #1  
25 and Subdivision #2" (the "Declaration"). The Declaration allows all Lot Owners  
26 complete access to all roads and streets within the Subdivisions. The Declaration,  
27 recorded in 1996, reiterates specifically that Plaintiff is the owner of the roads and  
28 streets with the Subdivisions. In fact, the Declaration specifically provides that Plaintiff

1 is responsible for "maintenance, snow removal and drainage of all streets and roadways  
2 located" within the Subdivisions. If Plaintiff did not own the roads and streets within  
3 the Subdivisions, then of course Plaintiff could not grant the Lot Owners an easement  
4 over such roads and streets.

- 5 7) Plaintiff also owns an automated gate that the Lot Owners, including Defendants, use to  
6 access the Subdivisions from Highway 108 (the "Gate"). The Gate was completed in  
7 1997. Between 1997 and May 31, 2013, the Gate was located on real property owned  
8 by the State of California (more specifically Wheeler Road). The Gate was later  
9 relocated by Plaintiff onto private property of Plaintiff. Each Defendant uses Wheeler  
10 Road to access their lot in the Subdivisions. There is no other way to access the  
11 Subdivisions other than to pass through the Gate or through other gates to the  
12 Subdivisions which are locked. Each Defendant is provided access to the Gate either in  
13 the form of an access code, a free keycard or a remote control device. Each Defendant  
14 acknowledges that there are some benefits to having the Gate. There are many times  
15 when the Gate is open as a result of a malfunction in the gate control. Prior to May 31,  
16 2013, no Defendant objected to the existence of the Gate

17 **B. Plaintiff's History Of Approving Budget, Sending Invoices And Providing Services To**  
18 **May 31, 2012.**

- 19 1) From 1950 to May 31, 2012, Plaintiff provided certain services to the Lot Owners  
20 (either directly or through the Odd Fellows Sierra Homeowners' Association (the  
21 "HOA")), including, but not limited to, access to and use of unmetered water;  
22 maintenance and repair of roads/streets within the perimeter of the Subdivisions;  
23 snowplowing of such roads and streets; pine needle disposal; garbage disposal;  
24 recreational use of a recreation hall, lake, picnic area, baseball field, playground, and  
25 dog park on the Subject Property; the use of certain equipment to provide such  
26 maintenance and repair; services of an onsite caretaker to assist in providing the  
27 aforementioned services; and certain other services.

- 1           2)     From 1950 to May 31, 2012, all services provided by Plaintiff to the Lot Owners were  
2                     "bundled" and were not provided on an "a la carte" basis. The vast majority of the  
3                     services provided by Plaintiff pursuant to the Lot Owners were provided by a caretaker  
4                     employed by Plaintiff who lived in the Caretaker's Cabin. The equipment used by  
5                     Plaintiff to provide the services to the Lot Owners was owned by Plaintiff.
- 6           3)     At the time that each Defendant purchased their respective lot, he/she was aware that  
7                     Plaintiff was providing services to all of the Lot Owners of the Subdivisions on a  
8                     "bundled" basis and that they were responsible for payment in advance for such invoice.  
9                     Between the date that each Defendant purchased their respective lots and May 31, 2012,  
10                    each Defendant paid in full all invoices received for Plaintiff's services, whether from  
11                    Plaintiff or the HOA.
- 12          4)     Plaintiff would invite all Lot Owners to attend its annual meeting of shareholders held  
13                     on Memorial Day weekend each year by sending notice of such meeting to such Lot  
14                     Owners. Defendants knew that Plaintiff typically held its annual meeting of  
15                     shareholders and Lot Owners on Memorial Day weekend each year. After becoming a  
16                     Lot Owner, all Defendants were invited by Plaintiff to attend Plaintiff's annual meeting  
17                     of shareholders and Lot Owners. Defendants were typically invited in writing by  
18                     Plaintiff in April of each year for the upcoming annual meeting. Information regarding  
19                     such upcoming annual meeting was also posted on an information board located within  
20                     the Subdivisions. The invitation sent by the Lot Owners typically contained an agenda,  
21                     a proposed budget for the services to be provided by Plaintiff for the upcoming fiscal  
22                     year as well as minutes of the prior annual meeting, among other things. No Defendant  
23                     was told that they could not attend an annual meeting. Defendants were aware that  
24                     Plaintiff's fiscal year was from June 1 to May 31. No Defendant was told that they  
25                     could not vote on the proposed budget for the services to be provided for the upcoming  
26                     fiscal year
- 27          5)     Plaintiff's shareholders and the Lot Owners who were present at the aforementioned  
28                     annual meetings would then discuss and approve a budget for the estimated cost of the

1 services to be provided by Plaintiff to the Lot Owners for the fiscal period of June 1 to  
2 May 31 and then vote on the amount due by each Lot Owner. Prior to 2012, each  
3 Defendant had attended several annual meetings of Plaintiff's shareholders and Lot  
4 Owners. Prior to 2012, Defendants knew that Plaintiff's shareholders and the Lot  
5 Owners voted on the proposed budget for the services to be provided for the upcoming  
6 fiscal year at the annual meeting.

7 6) From 1950 to May 31, 2012, Plaintiff would then promptly inform all Lot Owners (or  
8 the HOA as the case may be) of the amount of the approved budget, divide the approved  
9 budget by the number of lots in the Subdivisions (excluding the Caretaker's Lot) and  
10 invoice each Lot Owner for their pro rata share of such budget. Prior to 2012,  
11 Defendants knew that after each annual meeting, Plaintiff would then invoice them in  
12 advance in full for their prorated share of the proposed budget for the services to be  
13 provided during the upcoming fiscal year based on the foregoing formula.

14 7) Defendant Fred Coleman was an officer and/or director of Plaintiff from 1995 to 2004,  
15 and again briefly in 2010. Defendant Fred Coleman was even the President of Plaintiff  
16 from 2003 to 2004. Defendant Steve Wallace was an officer and/or director of Plaintiff  
17 from 2006 to 2009, and again in 2010. Defendant Fred Coleman and Defendant Steve  
18 Wallace used the same formula set forth above for calculating the amount of the invoice  
19 due by each Lot Owner for the services to be provided by Plaintiff while they were  
20 officers and directors of Plaintiff.

21 8) From time to time between 1950 and May 31, 2012, Plaintiff's cost of providing  
22 services to the Lot Owners was greater than the annual fees collected from the Lot  
23 Owners and thus from time to time the services were provided at a loss. In order to  
24 cover such losses, from time to time Plaintiff would harvest trees on real property that it  
25 owned surrounding the Subdivisions. All income receiving from harvesting trees was  
26 used to cover the cost of providing services to the Lot Owners. Defendants provided  
27 absolutely no evidence to the contrary and in fact Defendant Fred Coleman and  
28 Defendant Steve Wallace acknowledged during testimony that Plaintiff had never

1 declared a dividend or distributed assets to any shareholders while they were officers  
2 and directors of Plaintiff nor were they aware of Plaintiff ever doing so.

3 **C. Determination and Partial Payment of 2011-12 Annual Fee.**

- 4 1) On May 29, 2011, Plaintiff's shareholders held its annual meeting of shareholders and  
5 Lot Owners. The services to be provided by Plaintiff to the HOA for the fiscal period of  
6 June 1, 2011 to May 31, 2012 were discussed at such annual meeting. Defendants  
7 attended Plaintiff's annual meeting of shareholders and Lot Owners held on May 29,  
8 2011. At the May 29, 2011 annual meeting, a budget was approved by Plaintiff's  
9 shareholders and the Lot Owners of \$830.00 per lot (based on 364 lots) as set forth on  
10 Exhibit 23. The minutes of such May 29, 2011 meeting included a discussion regarding  
11 the proposed budget and assessment for the June 1, 2011 through May 31, 2012 fiscal  
12 year. Defendant Fred Coleman seconded a motion during a discussion regarding the  
13 proposed budget and assessment for June 1, 2011 through May 31, 2012 fiscal year at  
14 the May 29, 2011 annual meeting of the shareholders of Plaintiff.
- 15 2) Plaintiff informed the HOA of the Annual Fee due for the fiscal period of June 1, 2011  
16 through May 31, 2012 (the "2011-12 Annual Fee") and thereafter, the HOA invoiced  
17 each Lot Owner of the Subdivisions for their prorata share of the 2011-12 Annual Fee  
18 (or \$830 per subdivision lot). The invoice sent to each Lot Owner for their prorated  
19 share of the 2011-12 Annual Fee by the HOA was based on 364 lots. Each Defendant  
20 paid \$830.00 to the HOA for their share of the 2011-2012 fiscal year budget (**Exhibit**  
21 **52, Stipulated Fact No. 27**). Defendant Fred Coleman, Defendant Steve Wallace and  
22 Defendant Larry Vaughn were officers and directors of the HOA from June 1, 2011 until  
23 sometime in late spring 2012.
- 24 3) The HOA failed to pay the entire 2011-12 Annual Fee due to Plaintiff for the period  
25 beginning on June 1, 2011 and ending on May 31, 2012. As a result thereof, Plaintiff  
26 filed an action in Tuolumne County Superior Court, Case No. CV57297, against the  
27 HOA. This court determined that Plaintiff was entitled to judgment against the HOA in  
28 the amount of \$213,770.00 plus attorneys' fees and costs (the "Judgment").



1 4) Despite the failure of the HOA to pay for the entire 2011-12 Annual Fee, Plaintiff  
2 continued providing services to the Lot Owners to May 31, 2012 as was testified to by  
3 Del Wallis and confirmed by Defendants. Such services were provided at a significant  
4 loss to Plaintiff for the June 1, 2011 to May 31, 2012 fiscal year.

5 **D. Plaintiff's Provision Of Services To Lot Owners From June 1, 2012 To May 31, 2013.**

6 1) Plaintiff's annual meeting of shareholders was scheduled for May 27, 2012. As was its  
7 custom, Plaintiff sent a newsletter in April 2012 to all Lot Owners (the "April 2012  
8 Newsletter") inviting them to the May 27, 2012 annual meeting. Each Defendant has  
9 stipulated that in April 2012, each Defendant was invited in writing to attend the annual  
10 meeting of shareholders of Plaintiff and the Lot Owners to be held on May 27, 2012 in  
11 the form of Exhibit 23.

12 2) Plaintiff provided information in the April 2012 Newsletter regarding the upcoming  
13 May 27, 2012 annual meeting and the proposed budget and assessment for the  
14 2012/2013 fiscal year. Prior to May 27, 2012, Defendants were aware that Plaintiff's  
15 practice was to discuss and then solicit a vote from its shareholders and the lot owners  
16 on the proposed budget for the services to be provided for the upcoming fiscal year

17 3) The April 2012 Newsletter specifically included an "Official Notice" of the May 27,  
18 2012 meeting of the shareholders of Plaintiff. Such official notice included an agenda  
19 which included an item 9(b) for "Vote on Budget for 2012/2013 fiscal year" and an item  
20 9(c) for "Vote on Assessment for 2012/2013 fiscal year." Such official notice also stated  
21 that "Each property owner can vote on the budget and assessment (Agenda items b and  
22 c)." The April 2012 Newsletter also included the proposed 2012-13 budget for the  
23 services to be provided by Plaintiff to the Lot Owners for the period of June 1, 2012 to  
24 May 31, 2013. The 2012-13 proposed budget included a proposed assessment of  
25 \$1,033.85 per Lot Owner (based on 364 lots). Each Defendant reviewed the proposed  
26 budget for the services to be provided for the upcoming 2012-2013 fiscal year included  
27 with such invitation as set forth in Exhibit 23.  
28

- 1           4)     The April 2012 Newsletter also included the minutes of the May 29, 2011 annual  
2           meeting of shareholders of Plaintiff. The 2011-12 budget report for Plaintiff included  
3           with such invitation showed that Plaintiff provided services to the lot owners at a  
4           significant loss for the 2011-2012 fiscal year.
- 5           5)     No Defendant notified Plaintiff prior to the May 27, 2012 annual meeting that they  
6           would not be paying the proposed invoice of \$1,033.85 per Lot Owner.
- 7           6)     Plaintiff held its annual meeting of the shareholders on May 27, 2012 as set forth in the  
8           "Official Notice" included in the April 2012 Newsletter. Plaintiff's shareholders and the  
9           Lot Owners who were present at such meeting (in person or by proxy) approved a  
10          budget of \$372,736.00 for the estimated cost of the services to be provided by Plaintiff  
11          to the Lot Owners for the fiscal period of June 1, 2012 to May 31, 2013. The budget  
12          approved at the May 27, 2012 meeting was slightly less than the proposed budget  
13          included by Plaintiff in the April 2012 Newsletter.
- 14          7)     A copy of the May 27, 2012 annual meeting minutes were sent to the Lot Owners,  
15          including, Defendants, in June 2012. The May 27, 2012 annual meeting minutes sent to  
16          the Lot Owners referenced the amount of the approved budget (\$372,736.00) and the  
17          proposed 2012-13 Annual Fee of \$1,024.00 per Lot Owner which was based on 364 lots  
18          (the "2012-13 Annual Fee").
- 19          8)     No Defendant notified Plaintiff immediately after the May 27, 2012 annual meeting that  
20          they would not be paying their prorated share of the 2012-13 Annual Fee of \$1,024.00  
21          per Lot Owner.
- 22          9)     Plaintiff then began providing services to all Lot Owners, including Defendants, after  
23          May 27, 2012. Such services were the same as those previously provided by Plaintiff to  
24          the HOA/Lot Owners and including, at minimum, provision of unmetered water,  
25          garbage disposal, pine needle disposal, maintenance of roads (including snow removal),  
26          services of an on-site caretaker, use of equipment owned by Plaintiff, use of the Gate,  
27          and use of various recreation areas within the Subdivisions. As set forth above, all  
28

1 services provided by Plaintiff to the Lot Owners between June 1, 2012 to May 31, 2013  
2 were "bundled" and were not provided on an "a la carte" basis.

- 3 10) On June 6, 2012, Plaintiff invoiced each Lot Owner, including Defendants, for their  
4 prorata share of the 2012-13 Annual Fee (or \$1,024 per lot) for the services to be  
5 provided by Plaintiff to the Lot Owners for the fiscal period of June 1, 2012 through  
6 May 31, 2013. The 2012-13 Annual Fee of \$1,024 per Lot Owner was based on 364 lots  
7 as set forth above. Each Defendant stipulated that they were invoiced \$1,024 by  
8 Plaintiff for their prorated share of the 2012-13 budget as set forth in Exhibit 27.
- 9 11) Further invoices were sent by Plaintiff to each Defendant in August, September,  
10 October, November, and December 2012 for their prorated share of the 2012-13 budget  
11 as set forth in Exhibit 27.
- 12 12) In or around late August 2012, each Defendant testified that they sent a letter to Carlson,  
13 Haff & Associates, not Plaintiff, stating that they would only pay for \$134.00 water,  
14 trash disposal and pine needle disposal for the period of June 1, 2012 through May 31,  
15 2013 which they claimed in such letter was a fair estimate of the cost for provision of  
16 water, trash disposal and pine needle disposal by Plaintiff for the entire period of June 1,  
17 2012 through May 31, 2013.
- 18 13) Between June 1, 2012 and May 31, 2013, Defendants accepted services from Plaintiff,  
19 including, without limitation, by using water, using the roads and streets within the  
20 Subdivisions, disposing of trash on the Subject Property, disposing of pine needles on  
21 the Subject Property and using the Gate to access their lot in the Subdivisions.  
22 Defendants and their guests had unfettered access to, and some Defendants and their  
23 guests did use, the recreation areas established for the exclusive use of the lot owners,  
24 including, the recreation hall, lake/pond, picnic area, baseball field, playground, and/or  
25 dog park on the Subject Property between June 1, 2012 and May 31, 2013.
- 26 14) Between June 1, 2012 and May 31, 2013, Plaintiff incurred certain costs in connection  
27 with the maintenance and repair of the aforementioned streets and roads, including  
28 without limitation, filling ruts and holes, repairing cracks, clearing the adjacent drainage

1 ditches/culvert of debris, repainting lines and resealing and/or overlaying certain  
2 surfaces of such streets and roads, and kept the streets and roads accessible during times  
3 of inclement weather (e.g., snow removal). Such amount totaled \$141,047.53 for  
4 FY2012-13 or \$387.49 per lot.

5  
6 **IV.**

7 **LEGAL FINDINGS AND ORDERS BY COURT-**  
8 **PLAINTIFF'S COMPLAINT**

9 The Court makes the following legal findings and orders on Plaintiff's Complaint:

10 **A. 1<sup>st</sup> Cause of Action.**

11 As to the first cause of action (Quantum Meruit), the Court finds as follows:

- 12 1) Between June 1, 2012 and May 31, 2013, Plaintiff provided a variety of services to the  
13 Lot Owners, including Defendants, as described in the Factual Findings above. Such  
14 services were provided at a significant financial loss to Plaintiff for FY2012/13.  
15 2) In providing such services to Defendants, Plaintiff was acting pursuant to implied  
16 request for such services as set forth in the Factual Findings above.  
17 3) Defendants utilized such services during FY2012-13 and such services provided by  
18 Plaintiff actually benefited Defendants as discussed above.  
19 4) No Defendant ever requested that Plaintiff cease provide such services or that their  
20 access to such services be terminated prior to May 31, 2013.  
21 5) The reasonable value of Plaintiff's services was at least \$1,024.00 per Subdivision lot.  
22 6) Plaintiff has suffered damages in the amount set forth on **Exhibit 51**.

23 **B. 2<sup>nd</sup> Cause of Action.**

24 As to the second cause of action (Maintenance of Right of Way Easement), the Court finds as  
25 follows:

- 26 1) As Plaintiff is the legal owner of the roads and streets within the perimeter of the  
27 Subdivisions to which an easement for ingress and egress over all such private roads and  
28

1 streets is attached pursuant to the Declaration, Plaintiff has the right, pursuant to Civil  
2 Code Section 845(a), to maintain such easement (as the owner of land to which an  
3 easement is attached).

- 4 2) As set forth above, there was an implied agreement described in Civil Code Section  
5 845(b) between Plaintiff and the Lot Owners, including Defendants, that Plaintiff would  
6 maintain and repair such streets and roads (and remove snow pursuant to Civil Code  
7 Section 845(d)) and that the cost would be equally shared between all of the Lot Owners,  
8 including, Defendants.
- 9 3) Demand for payment was made by Plaintiff on Defendants in June 2012 and then  
10 repeated thereafter pursuant to Civil Code Section 845(c).
- 11 4) Plaintiff properly brought its claim to recover each Defendant's share of the cost pursuant  
12 to Civil Code Section 845(c).
- 13 5) This matter was previously submitted to arbitration pursuant to Civil Code Section  
14 845(c)(2).
- 15 6) Plaintiff is entitled to \$387.49 per lot from each Defendant.

16 **C. 3rd Cause of Action.**

17 As to the third cause of action (Common Counts-Account Stated), the Court finds as follows:

- 18 1) Defendants owe Plaintiff money on an account stated based on an invoice sent in June  
19 2012 for the 2012-13 Annual Due (totaling \$1,024).
- 20 2) Defendants owed money from previous financial transactions spanning back to the very  
21 day that each Defendant became a Lot Owner and until June 1, 2012, each Defendant  
22 had always paid such money.
- 23 3) As set forth above, Defendants impliedly agreed that the amount stated in the account  
24 was the correct amount owed to Plaintiff.
- 25 4) Defendants, by their conduct, promised to pay the stated amount to Plaintiff when  
26 Plaintiff produced a statement to Defendants which it did in June 2012.
- 27  
28

1 5) Defendants have not paid Plaintiff the amount owed under this account as set forth on  
2 **Exhibit 51.**

3 **D. 4th Cause of Action.**

4 As to the fourth cause of action (Common Counts-Open Accounts), the Court finds as follows:

- 5 1) Defendants owe Plaintiff money on an open book account as evidenced by the invoices sent  
6 by Carlson, Haff & Associates to Defendants for the 2012-13 Annual Dues.  
7 2) Such invoices would include credits when payments were made by Defendants and debits  
8 when amounts became due.  
9 3) Such account of debits and credits that was involved in the transactions which resulted in  
10 Defendants owing money on the account as set forth above to Plaintiff.  
11 4) Defendants have not paid Plaintiff the amount owed under this account as set forth on  
12 **Exhibit 51.**

13 **E. Other Orders by Court.**

- 14 1) Plaintiff's costs shall be awarded based on its Memorandum of Costs to be filed with this  
15 judgment.

17 **V**

18 **LEGAL FINDINGS AND ORDERS BY COURT-**  
19 **DEFENDANT'S CROSS COMPLAINT**

20 The Court makes the following legal findings and orders on Defendant's Cross-Complaint:

- 21 1) Defendants have failed to meet their burden on each of their causes of action and the  
22 Cross-Complaint is therefore dismissed with prejudice.  
23  
24  
25  
26  
27  
28



1 PROOF OF SERVICE

2 Odd Fellows Sierra Recreation Association v. Varvayanis, et al.  
3 Tuolumne County Superior Court, No. CV58100

4 I, Tricia Lenox, hereby declare:

5 I am employed in the County of Tuolumne; my business address is 32 N. Washington Street,  
6 Sonora, California 95370. I am over the age of 18 years and not a part to the foregoing action. On  
7 May 30, 2018, I served the foregoing **PLAINTIFF'S PROPOSED TENTATIVE DECISION:**

8  **by mail** on the following parties as set forth below, in accordance with Code of Civil Procedure  
9 §1013(a), by placing true copies thereof enclosed in sealed envelopes in a designated area for  
10 outgoing mail, addressed as set forth below. In the ordinary course of business at Dambacher,  
11 Trujillo & Associates, mail placed in that designated area is given the correct amount of postage  
12 and is deposited that same day in a United States mailbox in Sonora, California.

13  **by electronic mail** on today's date on the Honorable Frank Dougherty and following parties as  
14 set forth below.

15 Service list:

16 Hon. Frank Dougherty  
17 Tuolumne County Superior Court  
18 41 West Yaney Avenue  
19 Sonora, California 95370  
20 **Email: frank-dougherty@comcast.net**

21 For Defendants/Cross-Complainants:  
22 Nicholas D. Yonano, Esq.  
23 Yonano Law Offices  
24 4944 Windplay Drive, Suite 119  
25 El Dorado Hills, California 95762  
26 **Email: nick@yonanolaw.com**

27 For Cross-Defendants/Cross-Complainants Sierra Park Services, Inc:  
28 Bret F. Meich, Esq.  
Downey Brand LLP  
3425 Brookside Road, Suite A  
Stockton, California 95219  
Email: **bmeich@DowneyBrand.com**

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this document was executed on May 30, 2018, in Sonora, California.

  
TRICIA LENOX