



IN THE 23RD JUDICIAL CIRCUIT, JEFFERSON COUNTY, MISSOURI


Judge or Division: TROY CARDONA	Case Number: 20JE-CC00241
Plaintiff/Petitioner: DAVID STALOCH	Plaintiff's/Petitioner's Attorney/Address SHERRIE A. SCHRODER 13205 MANCHESTER RD SUITE 210 ST LOUIS, MO 63131
Defendant/Respondent: DAVID TUCKER	Court Address: P O BOX 100 300 MAIN ST HILLSBORO, MO 63050
Nature of Suit: CC Other Miscellaneous Actions	

(Date File Stamp)

Summons in Civil Case

The State of Missouri to: **RAINTREE PLANTATION PROPERTY OWNERS ASSOCIATION INC**
Alias:

727 NORTH FIRST STREET
SUITE 310
ST LOUIS, MO 63102

COURT SEAL OF

JEFFERSON COUNTY

You are summoned to appear before this court and to file your pleading to the petition, a copy of which is attached, and to serve a copy of your pleading upon the attorney for plaintiff/petitioner at the above address all within 30 days after receiving this summons, exclusive of the day of service. If you fail to file your pleading, judgment by default may be taken against you for the relief demanded in the petition.

04/15/2020 MICHAEL REUTER, CIRCUIT CLERK
BY: *Isi* M.TRUAX, DEPUTY CLERK

Sheriff's or Server's Return

Note to serving officer: Summons should be returned to the court within 30 days after the date of issue.

I certify that I have served the above summons by: (check one)

- delivering a copy of the summons and a copy of the petition to the defendant/respondent.
- leaving a copy of the summons and a copy of the petition at the dwelling place or usual abode of the defendant/respondent with _____, a person of the defendant's/respondent's family over the age of 15 years who permanently resides with the defendant/respondent.
- (for service on a corporation) delivering a copy of the summons and a copy of the complaint to: _____ (name) _____ (title).
- other: _____

Served at _____ (address)
in _____ (County/City of St. Louis), MO, on _____ (date) at _____ (time).

Printed Name of Sheriff or Server

Signature of Sheriff or Server

Must be sworn before a notary public if not served by an authorized officer:

Subscribed and sworn to before me on _____ (date).

(Seal)

My commission expires: _____ Date _____ Notary Public

Sheriff's Fees, if applicable

Summons	\$ _____
Non Est	\$ _____
Sheriff's Deputy Salary	
Supplemental Surcharge	\$ 10.00
Mileage	\$ _____ (_____ miles @ \$._____ per mile)
Total	\$ _____

A copy of the summons and a copy of the petition must be served on each defendant/respondent. For methods of service on all classes of suits, see Supreme Court Rule 54.

IN THE CIRCUIT COURT OF THE COUNTY OF JEFFERSON
STATE OF MISSOURI

DAVE STALOCH,)
)

Plaintiff,)

v.)

DAVID TUCKER,)

JEFFERSON COUNTY RAINTREE)
COUNTRY CLUB, LLC, a Missouri)
limited liability company,)

DKAAT Properties, LLC, a Missouri)
limited liability company,)

RAINTREE PLANTATION PROPERTY)
OWNERS' ASSOCIATION, INC., a)
Missouri non-profit corporation,)

DAVE WOOLDRIDGE, individually)
and as President and Director of Raintree)
Plantation Property Owners' Association,)
Inc.,)

DAVID GETTY, individually and as)
Vice President and Director of Raintree)
Plantation Property Owners' Association,)
Inc.,)

BARBARA MURRILL, individually and)
as Treasurer and Director of Raintree)
Plantation Property Owners' Association,)
Inc.,)

DEB ENDERSON, individually and as)
Secretary and Director of Raintree)
Plantation Property Owners' Association,)
Inc.,)

JOHN DROUANT, individually and as)
Director of Raintree Plantation Property)
Owners' Association, Inc.,)

Cause No.: 20JE-CC00241

JURY TRIAL DEMANDED

KRISTEN KILMAN, individually and)
 as Director of Raintree Plantation Property)
 Owners' Association, Inc.,)
)
 CHRIS WALLER, individually and)
 as Director of Raintree Plantation Property)
 Owners' Association, Inc., and)
)
 AL WIDEMAN, individually and as)
 Director of Raintree Plantation Property)
 Owners' Association, Inc.,)
)
 ADAM CRITES, individually and as)
 Director of Raintree Plantation Property)
 Owners' Association, Inc.,)
)
 HELEN FIGUEROA, individually and as)
 Director of Raintree Plantation Property)
 Owners' Association, Inc.,)
)
 Defendants,)
 (All service through special process server))

AMENDED PETITION FOR CLASS RELIEF

COMES NOW plaintiff Dave Staloch (Plaintiff), on behalf of himself and as representative of the class of Raintree Plantation owners of Plats 1-19 and Raintree Forest (Class), by and through counsel, and bring the following Petition. The allegations are made on the personal knowledge of the named plaintiff and upon information and belief relating to the Class.

NATURE OF THE ACTION

1. This is an action for declaratory judgment and monetary damages and equitable relief by plaintiffs for themselves and on behalf of all other similarly situated property owners against David Tucker and his business entities, Jefferson County Raintree Country Club, LLC and DKAAT Propertires, LLC (the Tucker defendants) and against Wooldridge, Getty, Murrill, Enderson, Drouant, Kilman, Waller, Wideman and Crites (the Board of Directors defendants), in

their individual capacities, for violations of the Missouri Merchandising Practices Act (MMPA) and to declare that a related lawsuit is illegal to the extent that it is relitigating an issue that was already fully and finally adjudicated, and also that the Tucker defendants must maintain the country club and reopen and maintain the restaurant and bar in good working order and that the Tucker defendants cannot charge greater membership fees or assessments to owners of Raintree Plantation plots 20-25 than it does to the general public.

2. This is also an action for monetary damages and equitable relief by plaintiffs for themselves and on behalf of the Class of all other similarly situated property owners against Raintree Plantation Property Owners Association, Inc. and its current Board of Directors, both in their official capacities as officers and directors for breach of fiduciary duty, and in their individual capacities for constructive fraud and breach of the implied covenant of good faith and fair dealing.

JURISDICTION AND VENUE

3. This Court has subject matter jurisdiction over these causes of action, all of which arose in Missouri, pursuant to RSMO Section 527.010, RSMO Section 478.070, RSMO Section 407.025, the Missouri Merchandising Practices Act (MMPA), and Article V, Section 14 of the Missouri Constitution.

4. Venue is proper in this Court pursuant to RSMO Section 508.010, because the parties all reside, or can be found, in this County.

PARTIES

5. The named plaintiff herein is Dave Staloch (Plaintiff), an individual with his principal residence in Jefferson County, Missouri who owns property in Raintree Plantation

Subdivision (Raintree) and is representative of the interests of all lot owners within plats 1-19 and Raintree Forest.

6. Plaintiff also brings this action in his capacity as a representative of other persons who own property in Raintree within plats 1-19 and Raintree Forest. Those persons represented include, but are not limited to, Larry Lott, Scott Clark, Joe and Marlene Fitzianons, Mary Lou Watson, Marsha Metter, Kia Reising, James and Colleen Guthrie, Josh and Lisa Rue, Kayla and Kristin Willis, Justin Willis, Bill Brakefield, Julie Bobbitt, Dixie Bobbitt, Jeffrey Piyl, John and Greta Simpson, Ed Williams, Joe and Rebecca Manion, Jacquell Keating, Martha Bell, Terry and Sonya McCarthy, Mike Vaughn, Colleen Lynn, Mike and Sandi Lynn, Nathaniel Self, Bob Rumbley, Tim and Elaine Smith, Ed and Diane Cain, Bob and Gar Wuebbels, Dan and Judith Love, Ron and Marilyn Reinbold, Scott Armstrong, Terry and Bryan Zeitler, Charles Schaeffer.

7. Defendant David Tucker (Tucker) is an individual with his principal resident in Jefferson County, Missouri. Upon information and belief, Tucker is the sole owner and member of Jefferson County Raintree Country Club, LLC and DKAAT Properties, LLC.

8. Defendant Jefferson County Raintree Country Club, LLC (JRCC) is a limited liability company organized under the laws of the State of Missouri with its principal place of business in Jefferson County, Missouri.

9. Defendant DKAAT Properties, LLC (DKAAT) is a limited liability company organized under the laws of the State of Missouri with its principal place of business in Jefferson County, Missouri.

10. Jointly, Tucker, JRCC and DKAAT are referred to herein as the "Tucker defendants."

11. Defendant Raintree Plantation Property Owners' Association, Inc. (POA) is a Missouri non-profit corporation organized as a property owners' association for the governance and enforcement of the Covenants and Restrictions of Raintree Plantation in Jefferson County, Missouri.

12. Defendants Dave Wooldridge, President and Director, David Getty, Vice President and Director, Barbara Murrill, Treasurer and Director, Deb Enderson, Secretary and Director, John Drouant, Director, Kristen Kilman, Director, Chris Waller, Director, Al Wideman, Director, Adam Crites, Director, and Helen Figueroa, Director, are all individuals with their principal residences in Jefferson County, Missouri who own property in Raintree and who are, or were at relevant times, officers and/or directors of the POA and are jointly referred to herein as the "Board of Directors". The Board of Director defendants are being sued both in their official capacities and in their individual capacities.

ALLEGATIONS COMMON TO ALL COUNTS

13. Plaintiff restates and incorporates by reference the allegations contained in paragraphs 1 through 12 as if fully restated herein.

Background and Governing Documents

14. Raintree is a subdivision of approximately 3,075 lots divided into three sections:

- a. Plats 1-19, which were the initial development in 1979;
- b. Raintree Forest, which was the second development, also developed in 1979; and
- c. Plats 20-25, which were developed in 1987.

15. At the time Plaintiffs became a lot owner in Raintree, there were numerous recorded governing documents granting Plaintiff certain rights and privileges, including the right to be a

voting member of the POA. Those rights and obligations are slightly different depending on when the lot was purchased.

16. The private, for-profit Country Club facilities are outside of Raintree and were developed for the dual purpose of offering amenities for commercial use by the general public and to Raintree residents who pay for access. The Country Club facilities include a clubhouse, golf course, restaurant and bar.

17. DKAAT and Country Club are the current owners of the private, for-profit Country Club facilities.

18. The 1979 Covenants and Restrictions (Book 644, Page 823) state:

(IIIh)...any assessment in excess of Eighty Dollars (\$80.00) per platted lot per year, shall be approved by a majority voice of lot owners. . .

And

(IVc) All lot owners...shall be deemed social members of any country club or golf course...Such membership can be modified or terminated by the owners. . .

19. The 1985 Contract (Book 768 Page 834) states regarding disputes involving the POA:

*10. It is understood by and between the parties hereto that in the event any dispute of any type arises...that said dispute shall be settled by **binding arbitration**....*

(emphasis added)

20. When Plats 20-25 were added to Raintree, the developer and the POA agreed that only residents in Plats 20-25 would pay for access to the private for-profit Country Club facilities.

21. The 1987 Amended Covenants and Restrictions (Book 372 Page 1064) states:

(III f) The funds raised by said assessments, shall be used for the improvement, betterment, upkeep and maintenance of the development....No assessment on any lot in excess of \$100.00 per

year... shall be made unless it shall be approved by a majority vote of the lot owners....

And

(IVc) In addition, all unpaid and delinquent [social membership] dues presently set at \$120.00 shall be treated as unpaid assessments and shall become a lien on said lot and enforceable the same as unpaid assessments with any penalties as provided herein.

22. The 1993 Amendments to Covenants and Restrictions (Book 590 Page 457) state:

(III f) The funds raised by said assessments, shall be used for the improvement, betterment, upkeep and maintenance of the development.... No assessment on any lot in excess of \$150.00 per year... shall be made unless it shall be approved by a majority vote of the lot owners....

23. The 1998 Amendments to Covenants and Additions (Book 879 Page 2276) state:

All of the owners of a fee interest in a lot... have a vote of 1 vote per lot owned to be case (sic) in all matters requiring a vote. The vote may be cast among other things on such matters as assessments, amending, altering or deleting the restrictions....

(emphasis added)

24. The 1999 Amendments and Additions (Book 957 Page 1036) state:

(III f) The funds raised by said assessments, shall be used for the improvement, betterment, upkeep and maintenance of the development.... No assessment on any lot in excess of \$150.00 per year... shall be made unless it shall be approved by a majority vote of the lot owners....

25. The 2000 Amendments and Additions (Book 1024 Page 2398) state:

(III f) The funds raised by said assessments, shall be used for the improvement, betterment, upkeep and maintenance of the development.... No assessment on any lot in excess of \$195.00 per year... shall be made unless it shall be approved by a majority vote of the lot owners....

26. The 2004 Amendments and Additions (Document 040059313) state:

(IV b) All of the owners of a fee interest in a lot... have only one (1) collective vote... to be cast in all matters requiring a vote. The vote may be cast among other things on such matters as assessments, amending, altering or deleting the restrictions....

27. The 2008 Amendments and Additions (Document 2008R-038233) state:
- (III) The funds raised by said assessments, shall be used for the improvement, betterment, upkeep and maintenance of the development.... No assessment on any lot in excess of \$205.00 per year... shall be made unless it shall be approved by a majority vote of the lot owners....*
28. The 2011 Amendments to Covenants (2011R-030467) state, in relevant part:
- If any person subject to the Governing Documents fails to comply with any provision thereof, the POA or any Owner or class of Owners adversely affected by such failure has a claim for appropriate relief, including but not limited to claims at law for damages and claims for equitable relief, including injunction. Punitive damages may be awarded in the case of a willful, wanton and malicious failure to comply with any provision of the Governing Documents.*

Relevant Judgments and Impact

29. A lot owner from Plat 20-25 filed a class action lawsuit in Jefferson County in 2008, Case No. **08JR-CC1575**, alleging that the owners of lots in Plat 20-25 had no obligation to pay dues under Section IVc and that the lot owners reserve the right to alter, amend or delete Section IVc. This lawsuit concluded in 2011 with a judgment declaring that lot owners in Plats 20-25 were social members of the Country Club, had a legal obligation to pay assessments under Section IVc, and the owner of the Country Club was the only party that could modify or terminate Section IVc. The judgment was upheld on appeal.

30. In 2013, the POA voted to eliminate Section IVc of the Indentures.

31. Immediately thereafter, Tucker, DKAAT and Country Club filed suit in Jefferson County, Missouri, in Case No. **13JE-CC00841**, seeking a declaration to set aside the vote and require all Raintree lot owners to pay assessments under Section IVc. The lawsuit concluded with a judgment entered October 27, 2014 holding that the owners within Raintree Forest and Plats 1-19 (where this plaintiff resides) properly terminated their obligations under Section IVc, but lot

owners within Plats 20-25 were contractually obligated to support the private, for-profit Country Club facilities.

32. The parties to the 2013 lawsuit, **Case No. 13JE-CC00841**, were the POA, Tucker, DKAAT and the Country Club.

33. This matter involves controversies within Raintree concerning the operation of the Country Club and the interpretation of Paragraph IV(c) of the Subdivision's Covenants and Restrictions.

34. Currently, owners within Plats 1-19 and Raintree Forest can join the private golf site of the Country Club, but cannot be required to do so. Owners within Plats 20-25 are mandated to pay annual dues as social members of the Country Club, as confirmed in Case No. 13JE-CC00841.

35. The mandatory contributions by lot owners to the private Country Club within Plats 20-25 have quadrupled since 2014.

36. Members of the general public pay a lesser annual fee to Country Club and DKAAT for use of the Country Club than lot owners within Plats 20-25. The Tucker defendants are currently knowingly requiring lot owners within Plats 20-25 to pay over \$873.99 plus tax per year for use of the Country Club, but the general public can pay as little as \$264.17 per year for same.

37. The Tucker defendants have intentionally failed to provide contracted for amenities related to the Country Club since January 2015. Currently the bar and restaurant are closed and have been for some time.

38. On information and belief, the Tucker defendants are intentionally overcharging the lot owners within Plats 20-25 and intentionally failing to provide contracted for amenities in

order to punish all the lot owners in Raintree for the results of the 2013 litigation, Case No. 13JE-CC0841, filed by the POA.

Pending Related Litigation (Case No. 15JE-CC00809)

39. In 2015, the POA filed suit in Jefferson County, Missouri in Case No. 15JE-CC00809 against the Tucker defendants seeking relief from the inequitable assessments against lot owners within Plats 20-25 and seeking to require the Tucker defendants to operate and fully maintain the Country Club amenities.

40. In 2018, the POA Board of Directors abruptly changed attorneys and changed the aim of the litigation against the Tucker defendants. Specifically, the POA switched the focus to making a deal with the Tucker defendants that would profit the individual Directors and the minority of owners (those within Plats 20-25) to the detriment of the majority of owners (those within Plats 1-19 and Raintree Forest).

41. The Board of Directors directed their new counsel to enter his appearance as “Class representative,” and to subsequently amend the pleadings in Case No. 15JE-CC00809, to add Count I, which asked the court to reverse the prior judgments and to request the relief that the *defendants* in that lawsuit had consistently requested.

42. As a class representative, the POA is an incorporated association which is required by Mo. Rule 52.08 to grant the property owners (including the plaintiff here) certain privileges and due process, including the opportunity to opt-out of representation by the POA.

43. The Board of Directors further instructed its attorney to consent to an intervenor in Case No. 15JE-CC00809 on May 14, 2018 to be class representative of all the Raintree lot owners. An unincorporated association, such as the Intervenor there, is not required to provide notice, an opportunity to opt-out and the other privileges and due process of Rule 52.08 to class members.

On information and belief, denying the Class members their due process was the intention of the Board of Directors defendants.

44. To date, the POA also remains “class representative” in Case No. **15JE-CC00809**, but it has never provided the required privileges and due process of Rule 52.08 to class members, including to *the plaintiff and the Class in this litigation*.

45. In the course of 2019, the Board of Directors twice requested a change of judge in order to forum shop to obtain a judge that would permit it to enter into an agreement with the Tucker defendants that it knew was for the personal benefit of the Directors and adverse to the interests of the majority of the POA and without providing the membership notice or an opportunity to vote.

46. The Board of Directors subsequently instructed their attorney to settle Case No. **15JE-CC00809** with terms that violate the Governing Documents, specifically including,

- a. the right for each lot owner to vote on any assessments and the right previously exercised by the lot owners of Plats 1-19 and Raintree Forest to eliminate Section IVc from their Indentures;
- b. that assessments imposed be used only for the maintenance of Raintree and not to extract money from property owner assessments to finance a private for-profit entity (the Country Club);
- c. without notice to this plaintiff and the Class;
- d. denying this plaintiff and the Class the benefits of collateral estoppel based on the judgment in Case No. **13JE-CC0841**; and

e. invalidate the results of the 2013 vote of the Raintree lot owners to eliminate Section IVc of the Indentures, as confirmed by the judgment in Case No. **13JE-CC0841**.

47. The Board of Directors did not advise the POA membership of these changes or intentions through Board meeting discussion, newsletter or in any other manner of general disbursement.

48. The Board of Directors' current plan to enter into an agreement with the Tucker defendants that would require all members of the POA to pay mandatory assessments to the Tucker defendants is collaterally estopped by the judgment in the 2013 litigation between the same parties, which fully and finally resolved the issue of mandatory assessments in favor of the lot owners within Plats 1-19 and Raintree Forest.

49. The POA Board of Directors owes a fiduciary responsibility to all its members to protect the rights and obligations of property owners, including but not limited to voting rights, rights that may differ according to time of purchase, and rights to arbitrate disputes.

CLASS ACTION ALLEGATIONS

50. This action is brought as a class action pursuant to Mo. Rule 52.08. Plaintiff sues on his own behalf and on behalf of a Class defined as all Raintree Plantation lot owners within Plats 1-19 and Raintree Forest.

51. The Class does not include Raintree Plantation lot owners within Plats 20-25.

52. The Class consists of several hundred Raintree owners, making joinder impractical.

53. All members of the class have been subject to and affected by the same practices and policies and common thread of misconduct, and these actions have resulted in injury to plaintiffs and to all class members. There are numerous questions of law and fact that are common

to the Class and can be answered on a class-wide basis, the resolution of which will substantially advance this litigation. These questions include, but are not limited to:

- a. Whether defendants can compromise the rights of the Class to not pay mandatory assessments to the Country Club;
- b. Whether the POA and Board of Director defendants violated the rights of the Class to transparent operations, meaningful voting rights, and the right to arbitrate disputes;
- c. Whether the Board of Directors defendants failed to fairly and adequately represent the interests of the majority of the POA membership, to the detriment of the Class;
- d. Whether the Board of Directors defendants intentionally misled the Class into believing that it was pursuing the interests of the POA membership as a whole when in fact it was only pursuing the interests of the lot owners within Plats 20-25 and of Tucker;
- e. Whether the Tucker defendants materially breached the implied duty of good faith and fair dealing by failing to maintain the amenities relating to the Country Club;
- f. Whether the Tucker defendants' conduct violated the MMPA;
- g. Whether the members of the Class have suffered an ascertainable loss as a result of the Tucker defendants' violation of the MMPA;
- h. Whether, as a result of all the defendants' misconduct, Class members are entitled to damages, equitable relief, attorney fees and costs, or other relief, and the amount and nature of such relief.

54. The claims of the named plaintiff are typical of the claims of the Class and do not conflict with the interests of any other members of the Class in that both the plaintiff and the other Class members are subject to defendants' same wrongful practices.

55. The named plaintiff will fairly and adequately represent and protect the interests of the Class. Plaintiff's interests are aligned with those of the Class and plaintiff is committed to the vigorous prosecution of the Class' claims. Plaintiff has retained competent and experienced counsel who are qualified to pursue this litigation and have significant experience in Class actions.

56. Certification is appropriate under Rule 52.08. Common issues predominate over any individualized issues because defendants have engaged in a consistent and uniform practice that has injured all Class members in the same fashion. All Class members were subject to the Board of Directors misleading omissions and to the Tucker defendants' failure to provide amenities. The enumerated common questions predominate over any individual issues that could conceivably be raised.

57. A class action is superior to all other available means for the fair and efficient adjudication of this controversy. The damages or other financial detriment suffered by the individual Class members is relatively small compared to the burden and expense that would be entailed by individual litigation of their claims against defendants. Furthermore, individual litigation would overburden the judicial system. Individualized litigation would also create the danger of inconsistent or contradictory judgments arising from the same set of facts, and would increase the delay and expense to all parties and to the court system from the issues raised in this action. The class action device provides the benefit of adjudication of these issues in a single proceeding, economies of scale and comprehensive supervision by a single court. There will be no difficulty in managing this lawsuit as a class action.

58. Defendants have acted and refused to act on grounds generally applicable to the entire Class, thereby making appropriate final injunctive relief or declaratory relief with respect to the Class as a whole.

COUNT I: DECLARATORY JUDGMENT
(Against The Tucker Defendants, The POA And The Board Of Directors)

59. Plaintiff restates and incorporates by reference the allegations contained in paragraphs 1-58 as if fully restated herein.

60. The judgment in the 2013 lawsuit involved the same parties involved in Case No. 15JE-CC00809.

61. The 2013 lawsuit included the issue of whether lot owners in Plats 1-19 and Raintree Forest can be mandated to pay assessments to Country Club.

62. The essential factual background relating to the issue of assessments was presented in the 2013 litigation.

63. The judgment in the 2013 lawsuit fully and finally adjudicated the issue of whether lot owners in Plats 1-19 and Raintree Forest can be mandated to pay assessments to Country Club. The judgment is valid.

64. Accordingly, the defendants in this suit, jointly and severally, are collaterally estopped from reaching an agreement that adopts a mandatory assessment against the lot owners in Plats 1-19 and Raintree Forest and in favor of Country Club.

WHEREFORE, plaintiff respectfully prays for an Order of Declaratory Judgment in his favor and against all of the defendants, affirming that the judgment in Case No. 13JE-CC0841 collaterally estops defendants, jointly and severally, from mandating the lot owners in Plats 1-19 and Raintree Forest to financially support the private, for-profit Country Club, and further

awarding plaintiff his reasonable attorney fees and costs from defendants, jointly and severally, and for any such further relief as this Court may deem just and proper under the circumstances.

COUNT II: VIOLATION OF MMPA
(Against the Tucker Defendants and the Board of Directors, in their individual and official capacities)

65. Plaintiff restates and incorporates by reference the allegations contained in paragraphs 1 through 64 as though fully restated herein.

66. The actions of the Tucker defendants and of defendants Wooldridge, Getty, Murrill, Enderson, Drouant, Kilman, Waller, Wideman, Crites and Figueroa (Board of Director defendants) complained of here occurred in the State of Missouri.

67. The named plaintiff and all Class members are “persons” and the property rights of Class members and amenities of the Country Club are “merchandise” within the meaning of the MMPA.

68. The Tucker defendants’ intentional neglect of the Country Club and its amenities violates their duty of good faith and fair dealing by accepting the benefit of its location on Raintree’s property without the concomitant service to the Class of adequate facilities.

69. As a result of the Tucker defendants’ intentional neglect, the Class has suffered loss of enjoyment of their property and loss in property value, as well as having incurred substantial attorney fees over the last five years. Accordingly, the Tucker defendants’ acts have caused Class members an ascertainable loss within the meaning of RSMo. Section 407.025.

70. The Board of Directors defendants’ actions of trying to extract money from plaintiff and the Class to finance the private for-profit Country Club for the personal benefit of the members of the Board of Directors defendants and knowingly in the adverse interest of plaintiff and the

Class violates the Board of Directors defendants' fiduciary duty and duty of good faith and fair dealing.

71. As a result of the Board of Directors defendants' intentional wrongdoing, the Class has or will suffer loss in property value, as well as having incurred substantial attorney fees. Accordingly, the Board of Directors defendants' acts have caused Class members an ascertainable loss within the meaning of RSMo. Section 407.025.

WHEREFORE, Plaintiff prays, on behalf of himself and the Class, for actual damages, attorney fees and court costs, from all defendants, jointly and severally, including individual liability of Wooldridge, Getty, Murrill, Enderson, Drouant, Kilman, Waller, Wideman Crites, and Figueroa; injunctive relief in the form of an order directing the Tucker defendants to reopen and fully maintain the Country Club and related amenities or sell the Country Club at fair market value; and injunctive relief prohibiting each and every defendant, jointly and severally, from violating the judgment in Case No. **13JE-CC0841** by mandating the plaintiff and the Class to finance the private for-profit Country Club, and for reimbursement by the individual defendants of all legal fees incurred by Raintree to obtain a settlement the purpose of which is to benefit all the defendants at the expense of this plaintiff and this Class.

**COUNT III: BREACH OF FIDUCIARY DUTY
(Against the Board of Director Defendants)**

72. Plaintiff restates and incorporates by reference the allegations contained in paragraphs 1-71 as if fully restated herein.

73. The governing documents of a property owners' association are a form of a contract between the developer, the association and the members. *Wildflower Comty Ass'n v Rinderknecht*, 25 S.W.3d 530 (Mo.App.1996).

74. The POA Board of Directors (Wooldridge, Getty, Murrill, Enderson, Drouant, Kilman, Waller, Wideman, Crites, and Figueroa) owe a fiduciary duty to the POA members that includes honoring the intent and language of the Raintree Governing Documents, such as that each property owner gets a vote, that nonminimal assessments require a vote of the membership, that disputes relating to the POA be arbitrated, and the rights to the benefits of prior litigation victories.

75. The Board of Directors defendants have violated their fiduciary duties to the Class by intentionally misleading Class members through omitting information into believing the Board was continuing to pursue a course with the litigation in Case No. 15JE-CC00809 that benefited the entire POA membership, rather than the true circumstance that the Board was pursuing a course directly adverse to the interests of the Class and adverse to the majority of the POA membership.

76. The Board of Directors defendants have violated their fiduciary duties to the Class by attempting to assess Class members with a mandatory assessment in favor of the Country Club, despite the action of the Class to eliminate Section IVc of the Indenture, which would be the basis for any such assessment, and despite the actions of the defendants' predecessor Board of Directors which obtained a contrary result through a final judgment in litigation.

WHEREFORE, plaintiff prays, on behalf of himself and the Class, for the Court to assess jointly and severally against each of the Board of Directors defendants (Wooldridge, Getty, Murrill, Enderson, Drouant, Kilman, Waller, Wideman Crites, and Figueroa), actual damages, attorney fees and court costs, and injunctive relief in the form of an order directing the Board of Directors to forever cease attempts to settle Case No. 15JE-CC00809 in a manner that imposes a new financial obligation on members of the Class, to provide a detailed written statement of the current status of the litigation to the Class (and the entire membership of the POA), provide a fair summary of all substantive changes in the litigation to the membership at each monthly meeting

of the Board of Directors, and provide a meaningful opportunity to vote on all proposed assessments in the future, and for reimbursement by the individual defendants of all legal fees incurred by Raintree to obtain a settlement the purpose of which is to benefit all the defendants at the expense of this plaintiff and this Class.

COUNT IV: CONSTRUCTIVE FRAUD
(Against the Board of Director Defendants in their Individual Capacities)

77. Plaintiff restates and incorporates by reference the allegations contained in paragraphs 1 through 76 as though fully restated herein.

78. The Board of Directors defendants (Wooldridge, Getty, Murrill, Enderson, Drouant, Kilman, Waller, Wideman Crites, and Figueroa), jointly and severally, intentionally withheld information from the POA membership and the members of the Class, specifically, in order to hide their intent to settle Case No. 15JE-CC00809 in a manner adverse to the Class in that it imposes a new financial obligation on members of the Class.

79. The acts and omissions of the Board of Directors to hide its true intent from the Class include, but are not limited to:

- a. Replacing the long-time POA attorney with someone amenable to acting in a manner adverse to the majority interests of the POA members who are members of the Class;
- b. Intentionally neglecting to notify the POA members, including members of the Class, of this change in attorneys or the reason therefor;
- c. Repeatedly requesting a change of judge in an attempt to find a judge who would permit the Board to act adversely to the interests of the Class and without notice of same;

d. Intentionally neglecting to notify the POA members, including members of the Class, of this change in judge and the reason therefor;

e. Agreeing to an Intervenor in order to deny due process and the privileges of Rule 52.08 to this plaintiff and to the Class in this litigation; and

f. Attempting to settle Case No. 15JE-CC00809 by imposing a financial assessment on members of the Class without following the Raintree Indentures that require a membership vote before such assessment in contradiction of the judgment in Case No. 13JE-CC00841, which judgment collaterally estops such assessment.

80. The constructive fraud by the Board of Directors defendants subjects them to the remedy provisions added to the Raintree Indentures in 2011, to wit:

*If any person subject to the Governing Documents fails to comply with any provision thereof, the POA or any Owner or class of Owners adversely affected by such failure has a claim for appropriate relief, including but not limited to claims at law for damages and claims for equitable relief, including injunction. **Punitive damages** may be awarded in the case of a willful, wanton and malicious failure to comply with any provision of the Governing Documents.*

(emphasis added)

WHEREFORE, plaintiff prays, on behalf of himself and the Class, for the Court to assess jointly and severally against each of the Board of Directors defendants (Wooldridge, Getty, Murrill, Enderson, Drouant, Kilman, Waller, Wideman Crites, and Figueroa), jointly and severally, **in their individual capacities**, actual damages, **punitive damages**, attorney fees and court costs, and injunctive relief in the form of an order directing the Board of Directors to forever cease attempts to settle Case No. 15JE-CC00809 in a manner that imposes a new financial obligation on members of the Class.

81. Plaintiff demands trial by jury.

Respectfully Submitted,

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