

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SAN LUIS OBISPO

KEN WATTS, JOYCE WATTS, LYNDA  
BURLISON AND ALL THOSE  
SIMILARLY SITUATED,

Plaintiffs,

vs.

OAK SHORES COMMUNITY  
ASSOCIATION, and DOES 1 through 10,  
Inclusive,

Defendants.

AND RELATED CROSS ACTIONS

Case No.: CV060326

**PROPOSED STATEMENT OF  
DECISION**

**I. INTRODUCTION**

The development known as Oak Shores, on the banks of Lake Nacimiento, is the focus of a long-running civil action by several homeowners who challenge the legality of the recorded covenants, conditions and restrictions (“CC&Rs”), and many of the rules and regulations promulgated by the board of directors (“Board”) of the governing homeowners association known as Oak Shores Community Association (“OSCA”).

///

///

1 Plaintiffs Lynda Burlison, Ken Watts and Joyce Watts claim that the Board has  
2 been effectively “hijacked” by a small minority of homeowners living year-round at Oak  
3 Shores (hereinafter “year-round owners”) who have disenfranchised the majority  
4 (hereinafter “absentee owners”), while imposing unauthorized, illegal fees upon the  
5 absentee owners, many of whom rent out their property on a short-term basis. Plaintiffs  
6 also claim that the Board has breached its fiduciary obligations to the membership.

7 Defendant OSCA contends that Plaintiffs and a few other dissident absentee  
8 owners have wreaked havoc with its ability to govern and manage the affairs of Oak  
9 Shores. Aside from defending the merits of OSCA’s rules and regulations, the Board  
10 asserts that Plaintiffs have been “thumbing their noses” at these rules and regulations, and  
11 that Plaintiff Ken Watts’ behavior, in particular, has been irrational, rude and  
12 obstructionist. Oak Shores seeks affirmative declaratory relief upholding the CC&Rs,  
13 rules and regulations.

14 The non-jury trial took place over a period of five weeks, encompassing 19 trial  
15 days, during which 29 witnesses testified and over 481 exhibits were introduced into  
16 evidence. The Court has considered the documentary and testimonial evidence, as well  
17 as the substantial pretrial and trial memoranda submitted by both parties. The Court’s  
18 Proposed Statement of Decision now follows.

## 19 **II. FACTUAL BACKGROUND**

20 Oak Shores is a common-interest development within the meaning of the Davis-  
21 Stirling Common Interest Development Act (Civ. Code §§1350, et seq.). It is a gated  
22 residential, recreational community.

23 Like most common interest developments, Oak Shores has a set of “governing  
24 documents,” which consist of the Articles of Incorporation, the CC&Rs, the Bylaws, and  
25 the Rules and Regulations. Anyone who purchases property in Oak Shores is subject to  
26 the governing documents and automatically becomes a member of OSCA. The Board is  
27 elected annually by the members.

28 ///

1           There are approximately 851 lots or parcels in Oak Shores, about 660 of which  
2 have been improved with single-family dwellings. However, only about 80 homes are  
3 occupied on a year-round basis. The rest are rented to others either on a long-term or  
4 short-term basis by the absentee owners. Short-term rentals (i.e., those rented for less  
5 than 90 days) are considered to be vacation rentals.

6           Article II of the Articles of Incorporation authorizes OSCA to provide community  
7 services for the general benefit and welfare of the owners. Article III (a) states that the  
8 general purpose and objectives of OSCA are to, among other things, perform any and all  
9 other community services for the general benefit of the owners, lessees and/or occupants  
10 which are not adequately provided for by public authority or otherwise.

11           Article III (b) authorizes OSCA to fix and establish the fees, dues, and  
12 assessments for the purpose of providing funds to carry out the community purposes and  
13 objectives of the association. Article IV provides that the association's funds are to be  
14 used for the purposes of the association in such manner as the Board may from time to  
15 time determine.

16           The original Bylaws gave the Board authority “[t]o conduct, manage and control  
17 the affairs and business of the [OSCA], and to make and enforce such rules and  
18 regulations therefore consistent with law, with the Articles of Incorporation, the  
19 Declaration and/or these Bylaws, as the Board may deem necessary or advisable.” (Art.  
20 V, Sec. 1, ¶ (b).)

21           The powers specified in the CC&Rs are “in addition to the duties and powers  
22 enumerated in its Articles of Incorporation and Bylaws, or elsewhere provided for,” and  
23 do not “limit[] the generality thereof...” (Art. VII, Sec. 1.) The CC&Rs state that the  
24 purpose of the association is to enhance and protect the value, desirability and  
25 attractiveness of the community.

26           In 2008, OSCA amended the CC&Rs. On October 30, 2008, Judge La Barbera  
27 ruled that the new CC&Rs were validly approved by OSCA's membership. The new

28 / / /

1 CC&Rs supersede and replace the original CC&Rs, and became effective when they  
2 were recorded on November 18, 2008.

3 The new Bylaws reiterate that the Board has authority to “adopt, amend, or repeal  
4 rules for the use, occupancy and maintenance of the Project; for the general health,  
5 welfare, comfort, and safety of Members; and to interpret and implement the CC&Rs,  
6 and establish penalties for violation of such Rules.” (Art. 6, Sec. 6.2.) They confirm that  
7 the Board has “the powers and duties set forth in the Association’s Governing  
8 Documents,” as well as “the power to perform any and all other acts that a nonprofit  
9 mutual benefit corporation is empowered to do in the administration of the Association’s  
10 affairs and to protect and advance the general welfare of the Association.” (Art. 6, Sec.  
11 6.1.)

12 The new CC&Rs reconfirm that the Board “may adopt, amend and repeal Rules  
13 and Regulations regarding any matter set forth in the Governing Documents, including (i)  
14 the use, occupancy and maintenance of the Development, (ii) the general health, welfare,  
15 comfort, and safety of residents in the Development, and (iii) the interpretation and  
16 implementation of the Governing Documents.” (Art. 4, Sec. 4.6.)

17 There are three Plaintiffs. The first is Lynda Burlison, wife of Plaintiffs’ attorney  
18 Robert Burlison. She and her husband have owned their property at Oak Shores since  
19 1998.

20 In 2002, Lynda Burlison filed a lawsuit contesting a variety of issues with respect  
21 to OSCA. Among other things, she claimed that the Board had interfered with her right  
22 to build a patio on their home. On November 15, 2002, Lynda Burlison’s first lawsuit  
23 was settled on the record before the Honorable Douglas Hilton.

24 The second and third Plaintiffs are Ken and Joyce Watts, who have owned their  
25 property at Oak Shores since 1982. At various times during their ownership, Plaintiff Ken  
26 Watts has served on the Board. Whether on or off the Board, Ken Watts has been a  
27 constant, vocal critic of its decisions.

28 / / /

1           Neither the Burlisons nor the Watts live year-round at their home; they either rent  
2 out their homes on a short-term basis or (depending on whom one believes) loan them out  
3 to guests. Plaintiffs' situation is fairly typical because, as stated, only about 80 homes are  
4 occupied on a year-round basis, and most are rented to others on a short-term basis.

5           The thrust of Plaintiffs' complaint is that the Board has been discriminating  
6 against them and other absentee owners who rent their homes on a short-term basis by  
7 restricting their right to rent out their homes and by charging fees that are unauthorized  
8 by the governing documents and that violate State law. Instead of imposing fees that  
9 discriminate against short-term rentals, Plaintiffs claim that all owners should be assessed  
10 fees that are deemed necessary to maintain the common areas of the development,  
11 including roads, parking areas, docks, marina, and pool.

12           Plaintiffs challenge the following rules, regulations and fees adopted by the  
13 Board: 1) the rule restricting owners from renting out their homes more than one time  
14 during any seven-day period i.e., a seven day minimum rental period; 2) the annual fee of  
15 \$325 imposed on owners who rent their home to tenants; 3) the rule limiting the number  
16 of automobiles, boats and other watercraft that renters are allowed to bring into Oak  
17 Shores; 3) the mandatory garbage collection fee; 4) the boat and watercraft fees; 5) the  
18 building permit fees; and, 6) the property transfer fees.<sup>1</sup>

19           To say that there is strong disagreement between Plaintiffs and OSCA is an  
20 understatement. Life at Oak Shores during the past decade has been increasingly  
21 punctuated by animosity between factions, restraining orders, vandalism, and perceived  
22 threats of violence. These unfortunate events have not been conducive to voluntarism,  
23 which is the lifeblood of most homeowners associations.

24 ///

---

25  
26 <sup>1</sup> Plaintiffs also challenge the rules prohibiting members who are delinquent in payment of their  
27 homeowners' association dues or assessments from using the common areas, rules reserving certain  
28 marina parking areas for owners only, rules permitting the assessment of fines for violation of rules  
and regulations. They also claims that the board wasted money by paying approximately \$30,000 to a  
contractor for earthquake damage repairs to the common area swimming pool.

1 Before discussing the validity of particular fees, the Court will address Lynda  
2 Burlison's standing to bring suit in light of her 2002 settlement, as well as the general  
3 authority of the Board to adopt rules and regulations with respect to owners who rent  
4 their homes.

### 5 III. DISCUSSION

#### 6 A. LYNDA BURLISION'S STANDING

7 Lynda Burlison's earlier lawsuit, filed on April 18, 2002, includes causes of action  
8 for declaratory relief, enforcement of the CC&Rs, unfair business practices, negligence,  
9 trespass, and a petition to amend the CC&Rs.<sup>2</sup> Although principally contesting a  
10 decision by OSCA's architectural committee denying her the right to expand the  
11 porch/patio area at the Burlison residence, her complaint also attacks the validity of  
12 OSCA's rental regulations. Paragraph 12(b) of her complaint reads as follows:

13 OSCA has written and promulgated CC&Rs which are invasive of the  
14 constitutional rights of plaintiff and other owners of property at Oak Shores,  
15 including CC&Rs, rules, and regulations restricting the use of properties for  
"rental" purposes.

16 It is noteworthy that virtually all of the rental regulations at issue in the current  
17 lawsuit were in place at the time Lynda Burlison filed and settled her first lawsuit. (*See,*  
18 *e.g.*, Exhibit 63 (effective May 1, 1983)).

19 After OSCA filed its answer, the parties agreed to conduct an early mediation  
20 before Judge Hilton, which took place on November 18, 2002. The transcript of the  
21 mediation demonstrates that the settlement went well beyond the porch expansion issue.  
22 In addition to issuing Plaintiff Lynda Burlison a \$3,000 payment, OSCA agreed to accept  
23 suggestions for revisions to its rules and regulations as follows:

24 "The defendant agrees to accept within 90 days suggestions that are made  
25 by the plaintiff to changes in the rules and regulations and/or the -- I think  
26 it's called the A.R.C, architectural review committee rules and regulations  
dealing with three subjects. The first subject being the area of

---

27  
28 <sup>2</sup> At the conclusion of trial, the parties jointly asked the Court to take judicial notice of the file, CV 02-0369, which the Court has done.

1 architectural committee procedures in denying applications for variances.  
2 **The second area being in the area of the rental policies of the bylaws,**  
3 **rules and regulations.** The Association defendant will take those  
4 suggestions to the board and will process them through whatever the  
5 normal and reasonable process are that the board has concerning the  
6 suggestions. They will comment on them, they will proceed in what  
7 reasonable fashion is appropriate." (emphasis added.)

8 The two areas of suggested changes were emphasized again during the settlement  
9 hearing by Judge Hilton and affirmed by Plaintiff's attorney, Robert Burlison. (*Id.*) The  
10 parties also discussed a signed release agreement including, as pointed out by Mr.  
11 Burlison, a general release under Civil Code section 1542. (*Id.*)

12 The release that Lynda Burlison signed on December 4, 2002, is indeed very  
13 broad. Attached as Exhibit A to Plaintiff's motion to enforce the settlement in 2006, the  
14 release states that OSCA is discharged "from any and all claims, demands, actions or  
15 causes of actions, known or unknown, which . . . [arise] out of the incident set forth in the  
16 complaint . . . ."

17 It is hard to imagine a clearer case of a release barring the current litigation vis-à-vis  
18 Lynda Burlison. (*See, e.g., Winet v. Price* (1992) 4 Cal.App.4th 1159, 1166-69 (broad  
19 unambiguous release was found to extinguish all claims, especially given involvement of  
20 counsel as well as the context and surrounding circumstances of its execution).)  
21 Moreover, Ms. Burlison did not avail herself of the right to testify during trial in an  
22 attempt either to create an ambiguity or to explain or avoid the consequences of her  
23 release through extrinsic evidence. (*Jefferson v. Department of Youth Authority* (2002)  
24 28 Cal.4th 299, 310.) Even had she done so, though, it is doubtful that she would have  
25 been able to avoid the consequences of her waiver and release, given its timing,  
26 circumstances and nature. (*Winet*, 4 Cal.App.4th at 1159, 1162.) All of Lynda Burlison's  
27 claims in this lawsuit are barred by the release she signed in 2002. (*Winet*, 4 Cal.App.4th  
28 at 1166-69; *Jefferson*, 28 Cal.4th at 310.)

///

///



1 of their authority under relevant statutes, covenants, and restrictions, upon reasonable  
2 investigation, in good faith, and in a manner in the best interests of the Association and  
3 its members.”); *Hannula v. Hacienda Homes* (1949) 34 Cal.2d 447 (“refusal to approve  
4 plans must be a reasonable determination made in good faith”).)

5 The burden of proof is on an objecting homeowner to show that an association’s  
6 decision “is arbitrary, imposes burdens on the use of lands it affects that substantially  
7 outweigh the restriction's benefits to the development's residents, or violates a  
8 fundamental public policy.” (*Nahrstedt*, 8 Cal.4th at 361, 386; *Cohen*, 142 Cal.App.3d at  
9 642, 651-654.) In this regard, “courts do not conduct a case-by-case analysis of the  
10 restrictions to determine the effect on an individual homeowner; [instead they] consider  
11 the reasonableness of the restrictions by looking at the goals and concerns of the entire  
12 development.” (*Dolan-King*, 81 Cal.App.4th at 965, 975.)

13 Although rules and regulations enacted by the board of a homeowners’  
14 association are not recorded, they are entitled to similar judicial deference. “[W]here a  
15 duly constituted community association board, upon reasonable investigation, in good  
16 faith and with regard for the best interests of the community association and its members,  
17 exercises discretion within the scope of its authority under relevant statutes, covenants  
18 and restrictions to select among means for discharging an obligation to maintain and  
19 repair a development’s common areas, courts should defer to the board’s authority and  
20 presumed expertise.” (*Lamden*, 21 Cal.4th at 249, 265.)

21 An association such as Oak Shores has a corollary, fiduciary relationship with its  
22 members. (*Cohen*, 142 Cal.App.3d at 642, 650–651.) *Berryman v. Merit Property*  
23 *Management, Inc.* (2007) 152 Cal.App.4th 1544, 1558.) Its actions must be undertaken  
24 in good faith, with regard for the best interests of the community association and its  
25 members, seeking professional advice where necessary. (*Id.*)

### 26 **C. THE OVERALL REASONABLENESS OF OSCA’S ACTIONS**

27 The Court concludes from the evidence at trial that all of the CC&Rs, Bylaws,  
28 and other Rules and Regulations at issue in this lawsuit were adopted by the Board in

1 good faith, upon reasonable investigation, and with regard for the best interests of the  
2 community association and its members.<sup>3</sup> All of the contested Bylaws, Rules and  
3 Regulations serve important interests within Oak Shores.

4 The Board has a legitimate and compelling interest in regulating short-term and  
5 long-term rentals, garbage collection, boat and marina areas, construction projects, and  
6 other issues pertaining to the common welfare. A further word about rental regulation  
7 and Oak Shores' "membership" is in order here.

8 The original CC&Rs provided for two different classes of members, and made a  
9 distinction between long term and short term renters. Article III, Section 1, defined  
10 Members; Article III, Section 2, defined Associate Members. Members included renters,  
11 defined in Article 1 - Definitions, Section 11, as a lessee (as used in 1971, meaning a long  
12 term contract); an Associate Member was defined in subsection (b) as "any person who is  
13 a tenant in guesthouse, inn or hotel facility on the property."

14 Since the original CC&Rs also provided that all real property in the Tract had to  
15 be used exclusively for private single family residential use (and not for any business or  
16 profession or commercial purpose), the most reasonable interpretation of the phrase  
17 "tenant in guesthouse, inn or hotel facility" is that it was intended to refer to a part-time  
18 renter of a home whose tenancy is akin to a hotel guest, i.e., for a few days.

19 The Articles of Incorporation also provided for different classes of membership in  
20 Article VII. The original Bylaws stated that renters were considered to be members of  
21 the association, but that the Board had authority to enact rules and regulations concerning  
22 renters:

---

23  
24 <sup>3</sup> The Court agrees with Oak Shores' expert, James Smith, that under *Nahrstedt*, *Lamden* and *Dolan-*  
25 *King*, courts should undertake the following five-step analysis in determining the validity of a  
26 homeowners association rule: 1) whether the Board has the power to regulate the subject matter; 2)  
27 whether the rule or fee is adopted in good faith; 3) whether the benefit of the fee or rule to the  
28 association outweighs the burden on the individual homeowners; 4) whether the rule or fee is adopted  
and implemented in compliance with the governing documents; and 5) whether the rule or fee violates  
public policy or law. At set forth herein, the Court concludes that all of the challenged fees pass  
muster with respect to four of the five requirements. The Court will separately address compliance  
with law and public policy, i.e., the Davis-Stirling Act.

1 “Privileges of Membership: Members and associate members and their  
2 guests, family members, tenants or regular occupants of any living unit  
3 shall have the use of the streets, common area and common facilities  
4 *subject to the Declaration and such rules and regulations as may be  
adopted by the Board of Directors of the Association.*” (Art. III, Sect. 11  
(emphasis added).)

5 Thus, from the very outset, it would appear that the Board had the ability to adopt  
6 rules and regulations affecting Members (including owners and lessees on “long-term  
7 contracts”) and Associate Members (including short-term renters). This interpretation is  
8 reasonable and comports with the interpretation of Oak Shores’ expert witnesses. (*See,*  
9 *e.g.,* testimony of James Smith, Adrian Adams, and Robert Hillshafer.)

10 Perhaps because the original CC&Rs were somewhat ambiguous, OSCA amended  
11 its CC&Rs and Bylaws in 2008, which removed the title “associate members,” and  
12 denominated as “members” any person or entity who owned property in the development  
13 subject to the homeowners association. (Art. 2.) The new CC&Rs state that “Tenants and  
14 Lessees shall not be Members,” although “[l]imited membership privileges shall be  
15 extended to Tenants and Lessees as provided in the Rules and Regulations...” (Art. 2,  
16 Sec. 2.3(c).)

17 The governing documents, together with the testimony of James Smith, Adrian  
18 Adams, and Robert Hillshafer, convince the Court that the Board has always had, and  
19 still has, the power to adopt rules for the common areas and lots, the power to levy fines  
20 and fees, the power to restrict uses of common areas, and the power to impose limitations  
21 upon, as well as assess fees for the use of homes on a rental basis. These are necessary  
22 and proper areas of Board involvement.

23 Relatedly, although an association such as Oak Shores plainly has a fiduciary  
24 relationship with its members, there were no breaches of any fiduciary duty by the Board  
25 regarding the issues raised in this case. (*Cohen*, 142 Cal.App.3d at 642, 650–651;  
26 *Berryman*, 152 Cal.App.4th at 1544, 1558.)

27 The trial evidence persuades the Court that the Board repeatedly sought out  
28 professional legal and actuarial advice on multiple issues, and reasonably relied upon that

1 advice in conducting its affairs. The testimony of Robert Hillshafer and Karen Conlon  
2 supports the conclusion that the Board has complied with standard of care. The Court  
3 finds untrustworthy Plaintiffs' allegations that the Board met secretly, acted as  
4 "cowboys" or "good ole boys," discriminated against absentee owners, or singled out the  
5 Watts or Burlisons for purposeful discrimination.

#### 6 **D. SPECIFIC RESTRICTIONS, FEES AND FINES**

7 A brief, specific discussion of some of these restrictions and rules is in order  
8 before turning to the more challenging question of compliance with Civil Code §1366.1.

##### 9 **1. Rental Fees & Restrictions**

10 In 1983, the Board began imposing an annual rental charge, referred to as a  
11 conditional use permit ("CUP") fee, on all owners who rented their homes. Currently set  
12 at \$325 per calendar year, the CUP fee does not vary depending on the number of days or  
13 weeks that the home is rented each year.

14 The purpose of the CUP fee, and other rental-related fees, is to recover the  
15 increased costs that owners impose on the Oak Shores community in connection with  
16 renting their homes. Cindy Peyton, a member of OSCA since 2003 as well as a realtor  
17 and owner of Oak Shores Rentals, explained the myriad of demands and increased costs  
18 generated by short-term rentals.

19 Among other things, short-term renters generate "tremendous amounts of  
20 garbage" and impose a large burden on the marina, playgrounds, pool, golf course,  
21 courtesy slips and other areas. Tending to be "clueless" when they arrive at Oak Shores,  
22 short-term renters seldom have guidance with respect to the rules, regulations and fees  
23 that are required. They often need and seek help from OSCA staff. They place an  
24 increased burden on gate staff, office staff and security staff.<sup>4</sup>

25 Many courts have recognized that homeowners associations can regulate rental of  
26 units. (*Nahrstedt*, 8 Cal.4th at 374, fn. 6 ("The power to regulate pertains to a "wide  
27 spectrum of activities," such as the volume of playing music, hours of social gatherings,  
28

---

<sup>4</sup> Peyton's testimony was corroborated by other witnesses, which the Court finds persuasive.

1 use of patio furniture and barbecues, and rental of units."); *Colony Hill v. Ghamaty*  
2 (2006) 143 Cal.App.4th 1156, 1169 (association has power "to maintain its family  
3 character by prohibiting uses other than for single-family dwelling purposes."); *City of*  
4 *Oceanside v. McKenna* (1989) 215 Cal.App.3d 1420; *Liebler v. Point Loma Tennis Club*  
5 (1995) 40 Cal.App.4th 1600, 1611.)

6 As discussed above, the Court concludes that the aforementioned seven-day  
7 minimum rental restriction, the CUP fee, and the other rental-related and non-rental  
8 related fees are authorized by the Oak Shores governing documents and were reasonably  
9 enacted by the Board in the best interests of the association as a whole.

## 10 **2. Garbage Collection Costs.**

11 In 1982, the Board passed a rule requiring owners of developed lots to pay for  
12 garbage collection. The trial evidence shows that this rule was (and is) based on a  
13 legitimate concern for the health and welfare of the development as a whole. The Board  
14 did not (and does not) mark-up or earn any profit from the fee that is charged by the  
15 garbage collection company.

16 Although the fee initially varied depending on whether the owner was a year-  
17 round or part-time occupant, the Board amended the rule in 2000. At the present time,  
18 anyone who owns a home in Oak Shores pays the same garbage collection fee, which is  
19 currently set at approximately \$250 per year.

20 The new CC&R's authorize the Board to adopt rules regarding "the general  
21 health, welfare, comfort, and safety of residents in the Development." (Art. 4, Sect. 4.6.)  
22 Moreover, it almost goes without saying that "[t]he accumulation of garbage and trash  
23 within a city is deleterious to public health and safety [and that] collection and disposal of  
24 garbage and trash . . . constitutes a valid exercise of police power . . ." (*Davis v. City of*  
25 *Santa Ana* (1952) 108 Cal.App.2d 669, 676-77.) Indeed, municipal governments have  
26 authority to require their residents to pay for garbage collection from their individual  
27 homes, *even if they do not want or need this service.* (*City of Glendale v. Trondsen*

28 / / /

1 (1957) 48 Cal.2d 93, 102 (emphasis added); *Perez v. City of San Bruno* (1980) 27 Cal.3d  
2 875, 885 (superseded by statute on a different ground).)

3         The fact that the County of San Luis Obispo provides *optional* garbage collection  
4 services in Oak Shores region does not render the Oak Shores garbage fee arbitrary.  
5 Indeed, the County's Solid Waste Coordinator, Mary Whittlesey, testified that there is an  
6 ongoing debate in County government about instituting mandatory garbage collection  
7 *because of significant litter and illegal disposal issues*. In other words, many people who  
8 do not have mandatory collection services use unlawful "self-help" techniques in order to  
9 avoid paying for garbage services.

10         Given that the Board is functioning in the nature of a mini-government, and given  
11 that trash regulation is clearly in the public interest, the Court concludes that this fee is  
12 authorized by the Oak Shores governing documents and was reasonably enacted by the  
13 Board in the best interests of the association as a whole. The Court rejects the position  
14 that the County's optional services invalidate an association's mandatory collection fee.

### 15                 **3. Boat Fees.**

16         In 1984, the Board enacted a rule that requiring all guests and short-term renters  
17 to pay for each boat or personal watercraft brought into Oak Shores. Currently the fee is  
18 \$25 per day, or \$125 per week, for each watercraft. No more than one boat, or two  
19 personal watercraft, can be brought into the development. Owners and long-term renters  
20 do not have to pay boat fees, and there are no restrictions limiting the number of  
21 watercraft that they can bring into the property.

22         The trial evidence shows that the Board enacted the boat fees after realizing that  
23 the small Oak Shores marina was overflowing with owners, renters and guests trying to  
24 use the boat launch during crowded holiday and summer periods. The excessive use of  
25 the boat launch was causing the ramp and surrounding areas to deteriorate. The evidence  
26 also shows that guests and renters who tow their boats on trailers through the  
27 development place extra burdens on the roads, causing them to experience more  
28 maintenance and repairs.

1 As discussed above, the Court concludes that the boat fee is authorized by the  
2 Oak Shores governing documents and that it was reasonably enacted by the Board in the  
3 best interests of the association as a whole.

#### 4 **4. Building Permit Fee**

5 The Board charges approximately \$1,600 to process “building permits” related to  
6 new construction in Oak Shores. Based upon the testimony at trial, it was established  
7 that heavier construction vehicles add an increased burden to the roads in the  
8 development. Large trucks and heavy-duty construction equipment are often driven on  
9 the Oak Shores roads while construction is ongoing, causing the roads to deteriorate more  
10 quickly than they otherwise would.

11 As discussed above, the Court concludes that the fee for building permits is  
12 authorized by the Oak Shores governing documents and that it was reasonably enacted by  
13 the Board in the best interests of the association as a whole.

#### 14 **5. Penalties and Fines**

15 Civil Code section 1363, subdivision (g), authorizes homeowners associations to  
16 impose a “monetary penalty, including any fee, on any association member for a  
17 violation of the governing documents or rules of the association, including any monetary  
18 penalty relating to the activities of a guest or invitee of a member....” Further, the Board  
19 must distribute to all association members “a schedule of the monetary penalties that may  
20 be assessed for those violations, which shall be in accordance with authorization for  
21 member discipline contained in the governing documents.” (Civ. Code §1363, subd.  
22 (g).)<sup>5</sup>

23 The Oak Shores governing documents provide the Board with authority to enact  
24 and enforce a fine schedule. The trial evidence demonstrates that such a fine schedule has

25 / / /

---

27 <sup>5</sup> Fines are not subject to the restriction in Civil Code section 1366.1. (See, Civil Code §1363,  
28 subdivision (g).)

1 been adopted, and is distributed to all members either when they purchase a home or  
2 whenever the fine schedule is revised.

3 Where, as here, a fine schedule has been adopted pursuant to the authority granted  
4 by Civil Code §1363, subdivision (g), the Board is authorized to enforce those fines.  
5 (*Liebler*, 40 Cal.App.4th at 1613-1614.) As discussed above, the Court concludes that  
6 the fine schedule is authorized by the Oak Shores governing documents and that it was  
7 reasonably enacted by the Board in accordance with Civil Code §1363.<sup>6</sup>

#### 8 **E. COMPLIANCE WITH CIVIL CODE §1366.1**

9 The provisions of Civil Code §1366.1 state, innocuously enough, that "[a]n  
10 association shall not impose or collect an assessment or fee that exceeds the amount  
11 necessary to defray the costs for which it is levied." This brief sentence is one of the  
12 culprits behind five years of rancorous, expensive litigation.

13 Distilled to its essence, Plaintiffs' position is that Oak Shores must precisely  
14 counterbalance the amount of money generated by any specific fee (e.g., the CUP fee, the  
15 boat/watercraft fee, the garbage collection fee) against the exact costs the fee is used to  
16 offset. Although Plaintiffs produced no expert witnesses to support this position, they  
17 relied upon the wording of the statute, its purported legislative history, as well as the  
18 cross-examination of fact and expert witnesses, to establish the alleged lack of  
19 correlation.

20 Oak Shores, on the other hand, states that there is demonstrated correlation  
21 between all of the fees and costs at issue in this suit. To support its position, Oak Shores

---

22  
23 <sup>6</sup> The other issues raised by Plaintiffs deserve only brief mention. With respect to marina parking, the  
24 Board reasonably decided that reserving several parking spots in the marina for "owners only" would  
25 help alleviate the parking problem to a small degree. With respect to the pool contractor issue, the  
26 Board acted reasonably in voting to repair earthquake damage to the common area pool. When the  
27 contractor failed to perform the work, the Board initiated legal action and obtained a judgment against  
28 the contractor. With respect to delinquent accounts, courts have recognized that homeowners  
associations may restrict delinquent members from using the common area facilities. (*See, e.g.,*  
*Mountain Home Properties v. Pine Mountain Lake Ass'n.* (1982) 135 Cal.App.3d 959, 963.) With  
respect to real property transfers, homeowners associations have the statutory right to charge a transfer  
fee in connection with a member's sale of their home. (Civ. Code § 1368.)

1 relied upon two certified public accountants, David Levy and Travis Hickey. Both of  
2 these witnesses used the accrual basis of accounting to show an equivalence between the  
3 fees imposed upon short-term renters by Oak Shores and the expenses incurred by Oak  
4 Shores for short-term renters during an eight-year period between 2003 and 2010.

5 Levy and Hickey have collectively represented over 3,000 homeowners  
6 associations in California. They examined the reserve studies and auditors' reports  
7 during the applicable timeframes and found nothing out of line. They looked at  
8 comparable fees assessed by other homeowners associations in California.

9 They performed an analysis whereby they compared the revenues with the  
10 expenses. They examined the totality of the operating expenses, including reserves and  
11 the annual "wearing out" of the Oak Shores assets, on a percentage basis. They took into  
12 account costs of maintenance, utilities, roadways, employee payroll and benefits, and  
13 certain legal fees.

14 After approximating total expenses, they estimated the number of people  
15 benefitting from the fees, using gate studies and other data showing the various types of  
16 people entering Oak Shores (e.g., renters, contractors, and guests) during particular  
17 periods of time. From these studies they estimated the percentage of short-term renters at  
18 Oak Shores to calculate what percentage of annual expenses should be attributed to them.

19 Against these expenses, both Levy and Hickey calculated the amount of income  
20 that could reasonably be attributed to short-term renters. They totaled certain fees,  
21 including boat and watercraft fees, CUP fees, and fines, and then calculated the  
22 percentage of those total revenues that could be attributed to short-term renters. Using a  
23 "conservative" approach, they concluded that the costs and revenues were reasonable and  
24 correlated well with one another.

25 Both Levy and Hickey further testified that the industry custom and practice is to  
26 look at the homeowners association's reasonable needs in terms of computing  
27 assessments while considering both reserves and operating expenses. They stated that  
28

1 homeowners associations typically do not calculate the incremental cost of each fee  
2 because it would be "theoretically possible" but practically impossible.

3 As Plaintiffs demonstrated during trial, the analysis undertaken by the Oak  
4 Shores' experts is far from precise. For example, it is very difficult to differentiate  
5 between short-term renters and guests in terms of measuring facility usage, demand for  
6 services, and/or damage to OSCA assets. Although both Oak Shores accounting experts  
7 were conservative in their analyses (to the effect that they underestimated the number of  
8 renters at the facility), each was forced to concede the uncertainty of his calculations, as  
9 well as the absence of precise impact studies supporting particular fees.

10 With this state of the evidence, two questions arise: (1) Who bears the burden of  
11 proof in terms of showing compliance with the Davis-Stirling Act? (2) Is rough  
12 proportionality between the fees and the costs good enough to pass muster under the  
13 statute?

14 As to the first question, Plaintiffs have the burden of proving that the challenged  
15 fees violate state law. (*Dey v. Continental Cent. Credit* (2008) 170 Cal.App.4th 721, 727,  
16 citing *Berryman*, 152 Cal.App.4th at 1544, 1560 ("It is [plaintiffs] burden to demonstrate  
17 why the collection fee is illegal, rather than defendants' burden "to justify that it is legal  
18 for it to charge a fee for [the] service.")) As the party with the burden of proof, Plaintiffs  
19 have not demonstrated that the challenged fees violate the Davis-Stirling Act.

20 Regardless of the burden of proof, though, the Court will pause here to explain its  
21 rationale for concluding that the proportionality established here is sufficient under the  
22 law.

23 Initially, while the wording of section 1366.1 may be simple enough to appreciate, it is  
24 but one small part of the Davis-Stirling Act, which collectively provides no clear  
25 guidance as to how homeowners associations must go about the business of correlating  
26 fees and costs.

27 Resort to the statutory language and/or legislative history is of questionable value  
28 because the Davis-Stirling Act, which was adopted in 1985 in order to bring together

1 under one statute the laws related to condominiums, cooperatives, and other common  
2 interest developments, has been roundly criticized as an incomprehensible, unwieldy  
3 statute. (See, French, Study H-850 – BACKGROUND STUDY: Study of Laws  
4 Affecting Common Interest Developments (UCLA Law School).) For example, since its  
5 adoption, the Davis-Sterling Act has been amended numerous times, including 39  
6 amendments between 1987 and 1998 alone. (See, Rosenberry & Sproul, *A Comparison*  
7 *of California Common Interest Development Law and the Uniform Common Interest*  
8 *Ownership Act*, 38 Santa Clara L. Rev. 1009 n.4, 1998).

9 These multiple amendments, as well as the hodgepodge nature of this law, have  
10 led to criticism from several studies sponsored by the Law Revision Commission:

11 [The Davis-Sterling Act] is almost impossible to read, even for people  
12 with legal training. It is poorly written — some parts are virtually  
13 incomprehensible; others are extremely difficult to wade through. The Act  
14 lacks a logical organizational structure. Captions for some sections fail to  
15 signal important matters that are covered. In addition, the numerous and  
16 frequent amendments to the Act make it hard for people to maintain a  
17 current understanding of the law.

18 The Davis-Sterling Act is so unwieldy, disorganized, and loaded with  
19 micromanagement minutia, that serious consideration should be given to  
20 starting over with a new framework on which a more comprehensible and  
21 comprehensive law of common interest developments could be  
22 constructed. See French, Study H-850, *supra*.

23 Taking one small piece of this statute in isolation, however, is inappropriate and  
24 unhelpful.<sup>7</sup>

25 Further, there is only one case that actually touches upon the issue squarely  
26 presented in this lawsuit. Although the court of appeal in *Berryman*, 152 Cal.App.4th  
27 1544, analyzed Civil Code §1366.1, it did so in the context of discussing whether a  
28 homeowners association could be held accountable for inflated fees allegedly charged for

---

<sup>7</sup> The Court declines to take judicial notice of Exhibit 107, purporting to be the legislative history of Civil Code §1366.1. Oak Shores raises serious questions about the authenticity and reliability of this document, and it is not a proper candidate for judicial notice under the circumstances.

1 services rendered under contract to the association. (*Berryman*, 152 Cal.App.4th at  
2 1552.) The opinion did not discuss the required nexus between a fee and a cost.

3 More on point is the decision in *Foothills Townhome Assn. v. Christiansen* (1998)  
4 65 Cal.App.4th 688, 693 ("*Christiansen*"), *disapproved of on other grounds in Fidelity*  
5 *Nat. Home Warranty Co. v. American Home Shield of California, Inc.* (Cal. Ct. App.,  
6 Mar. 8, 2002, D038181) 2002 WL 373077, *Equilon Enterprises v. Consumer Cause, Inc.*  
7 (2002) 29 Cal.4th 53, and *Navellier v. Sletten* (2002) 29 Cal.4th 82. The issue in  
8 *Christiansen* was whether a homeowners association could assess fees to replenish a  
9 general reserve fund after spending money to pay for storm damage.

10 Similarly to Plaintiffs Watts and Burlison, the *Christiansen* plaintiffs claimed that  
11 "the assessment violated section 1366.1 because it was levied to replenish a reserve fund,  
12 it exceeded the amount necessary to pay for the storm damage because some of the fund  
13 expenditures had been for other reasons, and [the homeowners association] could have  
14 replenished the fund over time." (*Christiansen*, 65 Cal.App.4th at 693, 693.) The court  
15 of appeal rejected Plaintiffs' argument:

16  
17 The assessment was levied to replenish the fund after money was  
18 expended to pay for storm damage. Even if we consider as binding the  
19 superior court's finding at the de novo trial that the assessment would  
20 replenish the fund *for non-storm-related expenses as well*, nothing about  
21 the facts indicate: (1) homeowner association reserve funds are improper;  
22 (2) *levying assessments to replenish such funds is impermissible*; (3)  
23 *Foothills' usual reserve balance was excessive*; or (4) *the amount of the*  
24 *assessment pushed the fund above its usual balance*.

25 Thus, the evidence showed the assessment was within the amount  
26 necessary to defray the costs for which it was levied—*the cost of*  
27 *replenishing the reserve fund*. Whether the fund *could* have been  
28 replenished over time is irrelevant to whether the assessment exceeded  
costs for which it was levied. As a matter of law, an assessment does not  
violate section 1366.1 merely because the costs *could* have been recouped  
incrementally. Nothing in the language of the statute suggests that is so.  
(*Christiansen*, 65 Cal.App.4th at 693.) (emphasis added).

1 Under *Christiansen*, it would seem that only a very loose correlation is required  
2 between a particular fee being assessed and the cost that the fee is used to offset. Indeed,  
3 if the cost being offset by a fee can lawfully be considered to be general replenishment of  
4 a reserve fund, then the relationship is very broad indeed. However, this Court need not  
5 go that far in order to conclude that the fees in this case pass muster.

6 The evidence presented by Oak Shores establishes a reasonably close relationship  
7 between each contested fee and the cost it is intended to offset. The evidence also  
8 establishes that both the Oak Shores reserve fund balance and cash fund balance were in  
9 very poor shape at the time that the rental-related fees were imposed and increased.  
10 Plaintiffs did *not* establish that the reserve fund currently is pushed above its usual  
11 balance, or that the cash on hand at Oak Shores is excessive. This state of the evidence  
12 suggests an acceptable relationship between the challenged fees and related costs under  
13 Civil Code §1366.1.

14 Practical experience must also play an important role in understanding the  
15 operation of Civil Code §1366.1. The undisputed expert testing, coming from individuals  
16 with decades of experience representing over 3,000 homeowners' associations in  
17 California, convincingly establishes that the industry practice is not to conduct "time and  
18 motion" studies precisely correlating particular fees with related costs. Plaintiffs could  
19 point not to a single instance where a precise correlation has ever been attempted.  
20 Moreover, the testimony establishes that it would be very expensive to perform more  
21 detailed studies, which would totally handcuff homeowners associations in the way they  
22 raise revenue.

23 Accordingly, the correlation established here is good enough for purposes of Civil  
24 Code §1366.1. Addressing the fifth step of the five-step analysis under *Nahrstedt*,  
25 *Lamden* and *Dolan-King*, the Court concludes that none of the challenged fees violates  
26 public policy or the Davis-Stirling Act.<sup>8</sup>

27 ///

28 \_\_\_\_\_  
<sup>8</sup> The Court will also grant the declaratory relief requested in the cross-complaint.

1                   **F. UNCLEAN HANDS**

2                   Aside from defending the validity of its fees and regulations, Oak Shores claims  
3 that the Watts Plaintiffs should be denied any relief because of the doctrine of "unclean  
4 hands." The court of appeal in *Kendall-Jackson Winery, Ltd. v. Superior Court* (1999) 76  
5 Cal.App.4th 970, 978-79, eloquently summarized this doctrine as follows:

6                   The defense of unclean hands arises from the maxim, "He who comes into  
7 Equity must come with clean hands." The doctrine demands that a plaintiff  
8 act fairly in the matter for which he seeks a remedy. He must come into  
9 court with clean hands, and keep them clean, or he will be denied relief,  
10 regardless of the merits of his claim. The defense is available in legal as  
11 well as equitable actions. Whether the doctrine of unclean hands applies is  
12 a question of fact.

13                   The unclean hands doctrine protects judicial integrity and promotes justice. It  
14 protects judicial integrity because allowing a plaintiff with unclean hands to  
15 recover in an action creates doubts as to the justice provided by the judicial  
16 system. Thus, precluding recovery to the unclean plaintiff protects the court's,  
17 rather than the opposing party's, interests. The doctrine promotes justice by  
18 making a plaintiff answer for his own misconduct in the action. It prevents "a  
19 wrongdoer from enjoying the fruits of his transgression." (internal citations  
20 omitted.)

21                   Not only are Plaintiffs, on the merits, entitled to no relief, but the trial evidence  
22 establishes that Plaintiff Ken Watts has engaged in prejudicial misconduct that directly  
23 bears upon his claims in this case.

24                   First, although required to have a business license from the County of San Luis  
25 Obispo to rent his home, Watts has never held such a license. Second, although required  
26 by County ordinance to pay a 9% transient occupancy tax, Watts has not paid any such  
27 tax since at least 2000. He therefore owes at least \$5,000 in back taxes. Third, in order  
28 to avoid applicable rental rules and regulations, Watts has repeatedly mischaracterized his  
renters as guests. Fourth, Watts has refused to pay applicable CUP fees, boat fees,  
garbage collection fees and fines for many years.<sup>9</sup> Fifth, Watts' credibility was

---

<sup>9</sup> Although OSCA started down the path of suspending the Watts' property rights, the letter purporting to do so was rescinded and the Watts were notified of the rescission immediately after the letter was sent. OSCA cannot be faulted for this conduct.

1 impeached at trial; in many respects it was unreliable, in other respects it was  
2 demonstrably false (i.e., his lack of knowledge about the contents of his VRBO website).  
3 Sixth, throughout his tenure at Oak Shores, Watts has adopted a rancorous, accusatory  
4 and obstructionist style of interaction with opposing Board members and various OSCA  
5 employees. Occasionally he has physically intimidated OSCA staff with bizarre and/or  
6 threatening behavior.

7 The collective conduct of Plaintiff Ken Watts violates equitable standards of  
8 conduct. (*DeRosa v. Transamerica Title Ins. Co.* (1989) 213 Cal.App.3d 1390, 1395–  
9 1396; *Precision Co. v. Automotive Co.*(1945) 324 U.S. at pp. 814–815.) Such  
10 misconduct directly bears upon Plaintiffs’ claims for declaratory relief and equitable  
11 restitution under Business and Professions Code §17200, thereby implicating the  
12 equitable relations between the litigants. (*Fibreboard Paper Products Corp. v. East Bay*  
13 *Union of Machinists* (1964) 227 Cal.App.2d 728–729.)<sup>10</sup>

14 Given that Ken Watts has refused to pay many of the applicable fees, evaded  
15 taxes, and interfered with the reasonable operation of his homeowners association for  
16 many years, it would be inequitable to grant relief by invalidating fees or requiring  
17 OSCA to refund the contested fees to the Watts Plaintiffs. (*Mattco Forge, Inc. v. Arthur*  
18 *Young & Co.* (1997) 52 Cal.App.4th 820, 846; *Blain v. Doctor’s Co.* (1990) 222  
19 Cal.App.3d 1060; accord, *Unilogic, Inc. v. Burroughs Corp.* (1992) 10 Cal.App.4th 612,  
20 618–621; *CrossTalk Productions, Inc. v. Jacobson* (1998) 65 Cal.App.4th 641–643.)<sup>11</sup>

21 ///

---

24 <sup>10</sup> Although Joyce Watts has not been implicated in any of the misconduct, her claims are inextricably  
25 tied with those of her husband. Therefore, the unclean hands doctrine operates to bar relief on her  
26 behalf as well. See, *Palo Alto Bldg. Co. v. Jones* (1947) 81 Cal.App.2d 725, 726; *B. F. Goodrich Co.*  
*v. Naples* (S.D. Cal. 1954) 121 F.Supp. 345, 356.

27 <sup>11</sup> In light of its rulings rejecting all of Plaintiffs’ claims on their merits, the Court need not address the  
28 statute of limitations issues raised by OSCA, or Plaintiffs’ failure to prove damages, both of which  
would appear to raise additional barriers to relief.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

#### IV. CONCLUSION

The Court can imagine why absentee owners of Oak Shores, being required to pay a variety of fees and taxes in order to rent his or her home, might feel frustrated by the way the OSCA has chosen to raise revenue or otherwise conduct its affairs. The appropriate response, however, lies in the *political* process within the Oak Shores community.

If the absentee owners who rent out their homes on a short-term basis (by all accounts the overwhelming majority) truly feel their interests are not represented by the year-round owners who do not do so (by all accounts a small minority), the ballot box is the obvious and authorized method of addressing this problem. Plaintiffs' alleged "disenfranchisement" of 80-90% of the Oak Shores owners can be remedied in a single election.

With respect to a *judicial* remedy, Plaintiffs have not met their burden of showing that the CC&Rs, Bylaws or rules and regulations at issue are arbitrary, or that they impose burdens on the few that outweigh the benefits to the whole, or that they violate fundamental public policy or state law. Further, Plaintiffs have not shown that the Board acted unreasonably or in bad faith to the detriment of the best interests of the OSCA as a whole.

This Proposed Statement of Decision under California Rules of Court, Rule 3.1590(c)(1) will become the Statement of Decision unless, within fifteen (15) days, any party serves and files objections under CRC Rule 3.1590(g).

Any pleading that specifies objections shall be fifteen (15) total pages or less, and shall use appropriate formatting and font size as provided by the California Rules of Court. No abbreviations, charts, or additional exhibits will be allowed or considered. A courtesy copy of any such pleading should be e-mailed to opposing counsel and the court clerk when served. For purposes of filing objections, OSCA shall file, at most, one combined pleading; the Watts and Lynda Burlison shall likewise file one combined pleading.

1           In the event that any party serves and files objections, the responding party shall  
2 have ten (10) days from the date of service of the objections to file a Response. Any  
3 Response shall be fifteen (15) total pages or less and shall use appropriate formatting and  
4 font size as provided by the Rules of Court. No abbreviations, charts, or additional  
5 exhibits will be allowed or considered. A courtesy copy of any such responsive pleading  
6 should be e-mailed to opposing counsel and the court clerk when served. For purposes of  
7 a Response, Oak Shores shall file one combined pleading; the Watts and Lynda Burlison  
8 shall likewise file one combined pleading.

9  
10 Dated: June 24, 2011

\_\_\_\_\_  
11 CHARLES S. CRANDALL  
12 Judge of the Superior Court

13 CSC:jn  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28