

Judge Robert E. Olson

COUNTY CLERK

2023 SEP -8 PM 3:41

WHATCOM COUNTY
WASHINGTON

BY _____

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR WHATCOM COUNTY

SCOTT HILLIUS, et al.,

Plaintiffs,

v.

18 PARADISE LLP, et al.,

Defendants.

No. 20-2-00701-37

MOTION FOR LEAVE TO AMEND
COMPLAINT

I. INTRODUCTION

Plaintiffs request leave to amend their Complaint in this action. All parties except 18 Paradise LLP have agreed to the amendment.

II. FACTS

This case was filed on May 29, 2020 and immediately removed to federal court on federal question grounds. In federal court, the parties stipulated to the dismissal of certain claims and parties, and the case was remanded to this Court. Plaintiffs seek leave to amend the Complaint to eliminate the dismissed claims and parties and to include additional plaintiffs. Counsel for 18 Paradise LLP has been unable to stipulate to the amendment, making this motion necessary.

III. ISSUE PRESENTED

Should the Court grant leave to Amend the Complaint?

IV. EVIDENCE RELIED ON

Files and records in this action.

DAVIS LEARY PLLC
3233 56TH PL SW
Seattle, WA 98116
206-578-5800

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V. ARGUMENT

CR 15(a) provides that “a party may amend the party’s pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires.” The standard for granting leave is whether the amendment would be futile. *Ino, Inc. v. City of Bellevue*, 132 Wn.2d 103, 142, 937 P.2d 154, 943 P.2d 1358 (1997). 18 Paradise has articulated no reason why the amendment would be futile.

VI. PROPOSED ORDER

A proposed order with the proposed amended complaint is attached hereto.

DATED this 8th day of September, 2020.

ANDERSSON CROSS-BORDER LAW CORPORATION

By 
R. Dallan Bunce, WSBA 47213
Attorneys for plaintiffs

DAVIS LEARY PLLC

By 
Matthew F. Davis, WSBA No. 20939
Attorneys for plaintiffs

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3233 56TH PL SW
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206-578-5800

Judge Robert E. Olson

FILED
COUNTY CLERK

2020 SEP -08 PM 3:51

WHATCOM COUNTY
WASHINGTON

BY _____

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR WHATCOM COUNTY

SCOTT HILLIUS, et al.,

Plaintiffs,

v.

18 PARADISE LLP, et al.,

Defendants.

No. 20-2-00701-37

ORDER GRANTING LEAVE TO
AMEND


This matter came before the Court on the motion of plaintiffs for leave to amend the Complaint. The Court being fully advised, it is hereby ordered that plaintiffs are granted leave to file and service their First Amended Complaint in the form attached hereto.

DATED this ____ day of _____, 2020.

Presented By:

ANDERSSON CROSS-BORDER LAW CORPORATION

By


R. Dallan Bunce, WSBA 47213
Attorneys for plaintiffs

DAVIS LEARY PLLC
3233 56TH PL SW
Seattle, WA 98116
206-578-5800

FILED
COUNTY CLERK
Judge Robert E. Olson

2020 SEP -8 PM 3:43

WHATCOM COUNTY
WASHINGTON

BY: _____

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR WHATCOM COUNTY

SCOTT HILLIUS; TOM STAEHR; RANDY DRUBEK; MARK MIEDEMA; DANIEL and SONJA LYONS; DOUGLAS and ANGELIQUE SCARLETT; STEVEN and LISA ZEHRM; and RONALD SARAN,

Plaintiffs,

v.

18 PARADISE LLP; WILLIAM (MICK) O'BRYAN; JOSH WILLIAMS; MJ MANAGEMENT, LLC DOING BUSINESS AS HOMESTEAD FARMS GOLF COURSE; and the CITY OF LYNDEN,

Defendants.

No. 20-2-00701-37

FIRST AMENDED COMPLAINT

For their Complaint, plaintiffs allege as follows:

I. PARTIES

1. Plaintiff Scott Hillius ("Hillius") is a resident of Whatcom County and the owner of residential property in the Homestead Planned Residential Development, Lynden Washington.
2. Plaintiff Tom Stachr ("Stachr") is a resident of Whatcom Country and the owner of residential property in the Homestead Planned Residential Development, Lynden Washington.
3. Plaintiff Randy Drubek ("Drubek") is a resident of Whatcom Country and the owner of residential property in the Homestead Planned Residential Development, Lynden Washington.

- 1 4. Plaintiff Mark Miedema is a resident of Whatcom County and the owner of residential
2 property in the Homestead Planned Residential Development, Lynden Washington.
- 3 5. Plaintiffs Daniel and Sonja Lyons ("Lyons") are residents of Whatcom County and the owners
4 of residential property in the Homestead Planned Residential Development, Lynden
5 Washington.
- 6 6. Plaintiffs Douglas and Angelique Scarlett ("Scarlett") are residents of Whatcom County and
7 the owners of residential property in the Homestead Planned Residential Development, Lynden
8 Washington.
- 9 7. Plaintiffs Steven and Lisa Zehm ("Zehm") are residents of Whatcom County and the owners
10 of residential property in the Homestead Planned Residential Development, Lynden
11 Washington.
- 12 8. Plaintiff Ronald Saran is a resident of Whatcom County and the owner of residential property
13 in the Homestead Planned Residential Development, Lynden Washington.
- 14 9. Defendant 18 Paradise LLP ("Paradise") is a Washington limited liability partnership.
- 15 10. Defendant MJ Management, LLC ("MJ") is a Washington limited liability company.
- 16 11. Defendant William (Mick) O'Bryan ("O'Bryan") is an individual resident in Whatcom County
17 and a governor of MJ.
- 18 12. Defendant Josh Williams ("Williams") is an individual resident in Whatcom County and a
19 governor of MJ.
- 20 13. Defendant City of Lynden (the "City") is a Washington State municipality.

21 **II. JURISDICTION AND VENUE**

- 22 14. This Court has personal and subject matter jurisdiction over the parties and claims in this
23 action.
- 24 15. Venue for this action is appropriate in Whatcom County Superior Court pursuant to RCW
25 Chapter 4.12.
- 26
27

III. FACTUAL ALLEGATIONS

A. Background Facts.

16. In January 1992, the City of Lynden adopted Chapter 19.29 of the Lynden Municipal Code, which provided for the development of Planned Residential Developments ("PRD"). Chapter 19.29 is referred to as the "PRD Ordinance." Because the PRD Ordinance was subsequently amended and repealed, a copy of the version in effect at all relevant times is attached hereto as Exhibit A.
17. A PRD is defined by the ordinance as "a tract of land which is to be developed as a coordinated unit according to an approved detailed plan within a residential zone."
18. Because of the complexity of a PRD, the PRD Ordinance required the establishment of an Administrative Review Committee to handle PRD applications. The Administrative Review Committee included a Planning Commission member, the Police Chief, the Building Inspector, the Utilities Superintendent, the Director of Public Works, and any other appropriate persons he appointed, including Lynden Public Works Department staff members and private utility representatives and consultants.
19. The Administrative Review Committee reviewed applications for compliance with the City's Comprehensive Plan, adverse environmental impacts, shoreline and sensitive area issues, after which it would issue a written report, and public hearings would be held.
20. The Final PRD plan had to be approved by the Lynden City Council after a hearing.
21. The PRD Ordinance required that every PRD shall have a homeowner's association and agreements to fund such an organization. LMC 19.29.020. Specifically,
- a. Section 19.29.020 provided: "To preserve community facilities and open space, every PRD shall have a homeowner's association and agreements to fund such an organization."
 - b. Section 19.29.080(B) provided: "Private streets are to be maintained by the PRD property owners through dues collected as part of a homeowner's association."
 - c. Section 19.29.080(F) provided: "Control of land area reserved for visitors must be maintained by the homeowners' association."

1 d. Section 19.29.090 provided: "A homeowner's association shall be formed as a part of the
2 PRD."

3 e. Section 19.29.090(B) provided: "The homeowner's association may provide restrictive
4 covenants and shall provide for homeowner's dues schedules for maintenance of common
5 grounds and facilities."

6 22. The PRD Ordinance provided that the homeowners association bylaws and any restrictive
7 covenants had to be reviewed by the Administrative Review Committee and approved by the
8 City Council and City Attorney.

9 23. The PRD Ordinance required that any changes to the homeowners association bylaws or
10 restrictive covenants had to be reviewed and approved by the City Council. LMC

11 24. The PRD Ordinance also addressed common areas. Specifically,

12 a. The allowable density of residential development was dependent on the amount of common
13 areas.

14 b. All common area improvements were required to be completed or bonded before the sale
15 of any PRD property.

16 c. Privately owned land could be designated as common open space only if the restrictive
17 covenants: (1) provided satisfactory assurance that the open space will be maintained in
18 perpetuity for PRD purposes; (2) established a formula for the assessment of maintenance
19 dues; and (3) established rules whereby the common land may be turned over to the
20 homeowners.

21 **B. The Homestead Planned Residential Development.**

22 25. Immediately after the PRD Ordinance was adopted, James Wynstra ("Wynstra") submitted a
23 proposal for the Homestead Planned Residential Development to the City through his company
24 Homestead Northwest, Inc. ("HNW").

25 26. The Homestead PRD encompassed approximately 250 acres, of which 140 acres would be a
26 golf course and the balance more than 600 residential units, parks and open space.

- 1 27. HNW planned to start the PRD with a single plat and add the remaining plats and
2 condominiums over a period of 5-15 years.
- 3 28. On June 24, 1992, HNW recorded the Maberry Plat ("Maberry 1"), which had 33 parcels over
4 approximately 15 acres of land. Maberry 1 was the first plat in the Homestead PRD.
- 5 29. On June 24, 1992, HNW also recorded a Master Declaration of Covenants, Conditions,
6 Restrictions and Reservations for Homestead, a Planned Residential Development (the
7 "Declaration").
- 8 30. The Declaration states that HNW would retain ownership of the common areas unless and until
9 it elected to transfer them to a homeowners association.
- 10 31. Homestead parcel owners were given the right to use the common areas only as an easement
11 or license, subject to any rules imposed by HNW.
- 12 32. In consideration of this easement, the Declaration assessed each parcel a maintenance fee of
13 \$25 per month.
- 14 33. The Declaration allowed the declarant to increase the maintenance fee by up to 5% each year.
- 15 34. Any increase in the maintenance fee required notice to the parcel owners in December of each
16 year where an adjustment has been made for the following calendar year.
- 17 35. Homestead parcel owners had no control over how the common areas would be used.
- 18 36. The Declaration states that it establishes the "Homestead Owners Association."
- 19 37. The Declaration states that HNW would retain control over the association unless and until it
20 elected to transfer the common areas to a homeowners association.
- 21 38. HNW and the successor declarants have retained declarant control and ownership of the
22 common areas for more than 28 years since the Declaration was recorded.
- 23 39. The Declaration violated many terms of the PRD Ordinance, including the following:
- 24 a. The Declaration violated the requirement of Section 19.29.020 that "every PRD shall have
25 a homeowner's association and agreements to fund such an organization."
26
27

- 1 b. The Declaration violated the requirement of Section 19.29.090(D)(1) because HNW
2 provided no assurance that the open space will be maintained in perpetuity and will only
3 be used for the purposes intended as a part of the PRD.
- 4 c. The Declaration violated Section 19.29.090(D)(2) because the maintenance fee was not
5 limited to or required to be used for maintenance of common areas.
- 6 d. The Declaration violated Section 19.29.090(D)(3) because the privately owned open space
7 was not approved by the Lynden City Council.
- 8 e. The Declaration allows the Declarant to increase the maintenance fee for reasons other than
9 an actual increase in the expenses.
- 10 f. The Declaration gives the Declarant absolute discretion regarding the common space for
11 future expansions of the PRD.
- 12 40. HNW retained declarant control and ownership of the common areas because it planned to
13 develop the Homestead PRD over a period of 5-15 years and wanted declarant control over the
14 entire PRD during that time.
- 15 41. Although the Declaration set no deadline for HNW to transfer the common areas to a
16 homeowners association, HNW orally assured many prospective purchasers of Homestead
17 parcels that it would transfer declarant control and ownership of the common areas to a
18 homeowners association when all of the parcels in the Homestead PRD had been sold. On
19 information and belief, HNW made similar representations to the City.
- 20 42. On information and belief, the City agreed that HNW could retain declarant control until
21 completion of the PRD.
- 22 43. HNW's completion of the PRD was delayed by a number of circumstances including market
23 conditions and HNW's financial difficulties.
- 24 44. In 2009, the Washington Department of Financial Institutions opened a securities law
25 investigation into HNW.
- 26 45. In 2010, Homestead sold its interest in the golf course and the remaining portions of the
27 Homestead PRD to Raspberry Ridge LLC for \$7,277,032.00. HNW's Declarant rights under

1 the Declaration were included in the sale. The Homestead PRD was not fully developed at the
2 time of the sale.

3 46. Raspberry Ridge developed and sold or simply sold the remaining undeveloped residential
4 properties in the Homestead PRD. The residential properties in the Homestead PRD were fully
5 developed and sold by the end of 2012.

6 **C. Ownership by 18 Paradise.**

7 47. On December 11, 2013, Raspberry Ridge sold the golf course, related commercial properties,
8 and its declarant rights to 18 Paradise LLP for \$2,550,000.

9 48. When 18 Paradise purchased the golf course, the maintenance fees were \$30 per month.

10 49. On December 1, 2015, 18 Paradise sent a notice to Homestead parcel owners stating that the
11 monthly maintenance fee would increase to \$31.50 for 2016. The Notice falsely stated that the
12 increase was the result of increased maintenance costs. In 2016, 18 Paradise charged the \$31.50
13 fee.

14 50. In December 2016, 18 Paradise sent notices to Homestead parcel owners stating that the
15 monthly maintenance fee would increase to \$33.00 for 2017. The Notice falsely stated that the
16 increase was the result of increased maintenance costs and an increase in the minimum wage.
17 In 2017, 18 Paradise charged \$33.00 fee.

18 51. On November 27, 2017, 18 Paradise sent a notice to Homestead parcel owners stating that the
19 monthly maintenance fee would increase to \$34.50 for 2018. The Notice falsely stated that the
20 increase was the result of rising costs of expenses and the increased minimum wage. In 2018,
21 18 Paradise charged the \$34.50 fee.

22 52. Although the Declaration requires notices of fee increases to be delivered in December, 18
23 Paradise gave no such notice in December 2017.

24 53. On November 20, 2018, 18 Paradise sent a notice to Homestead parcel owners stating that the
25 monthly maintenance fee would increase to \$36.00 for 2019. The Notice falsely stated that the
26 increase was the result of rising costs of expenses and the increased minimum wage. In 2019,
27 18 Paradise charged the \$36.00 fee.

1 54. Although the Declaration requires notices of fee increases to be delivered in December, 18
2 Paradise gave no such notice in December 2018.

3 55. On July 1, 2019, 18 Paradise recorded a document entitled Sixth Amendment to Covenants.
4 The Amendment was executed by MJ Management as agent for 18 Paradise. The Amendment
5 provided that

6 Declarant may impose on any and all Parcel Owners a special assessment for the
7 purpose of funding improvements to the Common Open Space and/or maintaining a
8 reserve fund for anticipated, extraordinary or unanticipated expenses for maintaining
the Common Open Space. Declarant shall impose and collect any special assessment
as provided in this Article.

9 56. The Sixth Amendment did not alter the provision in paragraph 3.3 of the Declaration that "All
10 costs and expenses of maintenance of and improvements to the Common Open Space shall be
11 paid by the Declarant."

12 57. Paragraph 17 of the binding PRD Plan provides that "covenants, conditions and restrictions
13 submitted to the City and herein referred to will be placed in force upon the property covered
14 by this plan and will not be altered or amended without the consent of the City."

15 58. The Homestead PRD Plan was executed on July 20, 1992 by Wynstra and the Mayor and City
16 Attorney for Lynden. It constitutes a valid and binding contract.

17 59. Owners of residential properties in the Homestead PRD are intended third party beneficiaries
18 of the PRD Plan and contract.

19 60. 18 Paradise did not seek or obtain the consent of the City to the Sixth Amendment.

20 61. On August 9, 2019, 18 Paradise notified Homestead parcel owners that it was imposing an
21 \$83.00 special assessment on each Homestead parcel pursuant to the Sixth Amendment.

22 62. The Notice falsely states that "the joint maintenance fees came nowhere close to covering the
23 costs incurred" from a 2017-2018 storm.

24 63. On December 3, 2019, 18 Paradise recorded a document entitled Seventh Amendment to
25 Covenants. The Seventh Amendment added a sentence to the Declaration stating that

26 The failure to increase maintenance fees in one or more years does not waive the right
27 to increase fees the following year up to the maximum combined amount for all years.

- 1 64. The Seventh Amendment did not amend any other provision of the Declaration, including
2 paragraph 3.5(e), which states: "The Declarant shall have the right and power to increase the
3 maintenance fee each calendar year. Notices of fee adjustment shall be sent to Parcel Owners
4 in December of each year where an adjustment has been made for the following calendar year."
- 5 65. On December 4, 2019, 18 Paradise sent a notice to Homestead parcel owners stating that the
6 Maintenance Fee increases from 2016-2019
7 have been inadequate in covering the bare minimum expenses required to maintain the
8 common open space and cannot continue to operate at a deficit. Our desire is not to do
9 the bare minimum, but to bring the maintenance of the Homestead common space back
10 up to its original standard and protect the value of your homes.
11 Specifically, the notice asserted that the Maintenance Fee was not keeping up with "rising costs
12 and the ever increasing minimum wage (\$12.00 to \$13.50 in 2020)."
- 13 66. The statements in the December 4, 2019 notice were false, 18 Paradise was receiving more in
14 fees than it spent on the Homestead PRD common areas.
- 15 67. The December 4, 2019 Notice stated that 18 Paradise was using the Seventh Amendment to
16 increase the monthly fee from \$36 to \$93.
- 17 68. The Notice explained that "This represents a 5% increase per year since 1992 as stated in the
18 Homestead Master Declaration."
- 19 69. In response to complaints, 18 Paradise held a series of meeting with a group of homeowners.
- 20 70. At one of those meetings, 18 Paradise presented the Parcel Owners with a document entitled
21 "Homestead Farms Golf Club Joint Maintenance Fees Profit & Loss, January through
22 December 2019" (the "P&L").
- 23 71. 18 Paradise represented that the P&L was an accurate statement of its income and expenses
24 for maintenance of the Homestead common areas.
- 25 72. According to the P&L, 18 Paradise received \$253,946.91 in monthly fees and \$35,600.99 in
26 special assessments in 2019 for total maintenance fees of \$289,547.90.
- 27 73. According to the P&L, 18 Paradise incurred expenses of \$346,065.93 for the Homestead PRD
common areas in 2019 and incurred a loss of \$56,518.04 for the work.

1 74. The P&L lists 18 Paradise's alleged 2019 expenses to maintain Homestead PRD common
2 areas. The following expenses listed in the P&L are false:

- 3 a. Lights/Fixtures, \$4,527.69
- 4 b. Flowers/Hanging Baskets, \$7,656.00
- 5 c. Fertilizers/Chemicals, \$3,017.60
- 6 d. Fuel & Oil, \$4,503.30
- 7 e. Office Supplies/Postage, \$2,018.29
- 8 f. Topsoil/Bark, \$2,364.57
- 9 g. Shop Supplies/Small Tools, \$1,859.75
- 10 h. Contract Labor, \$8,865.00
- 11 i. Repair & Maintenance – Equipment, \$4,657.60
- 12 j. Repair & Maintenance – Irrigation, \$1,220.25
- 13 k. Equipment Lease, \$13,237.39
- 14 l. Utilities – Electric, \$25,493.60
- 15 m. Utilities - Phone/Internet, \$2,715.90
- 16 n. Utilities – Water, \$4,735.50
- 17 o. Utilities - Trash/Recycling, \$9,609.93
- 18 p. Liability Insurance, \$1,881.25
- 19 q. WA State Excise Tax, \$3,752.91
- 20 r. Accounting, \$28,500.00
- 21 s. Salaries/Wages/Payroll Taxes – ADMIN, \$65,165.33
- 22 t. Salaries/Wages/Payroll Taxes – LABOR, \$150,284.07

23 75. 18 Paradise prepared and presented the P&L to justify an increase in the common area fee from
24 \$36.00 to \$93.00 per property per month commencing in January 2020.

25 76. 18 Paradise presented the P&L with the intent to induce the Parcel Owners to pay the increased
26 monthly fee.

- 1 77. Many Parcel Owners agreed to pay and have paid the \$93 annual monthly fee in reliance on
2 the truth and accuracy of the P&L.
- 3 78. At a subsequent meeting, 18 Paradise presented the parcel owners with what it claimed was its
4 2020 budget for the "Joint Maintenance Fees. (the "Budget").
- 5 79. According to the Budget, 18 Paradise expects to incur costs totaling \$652,095.00 performing
6 its duties under the Master Declaration.
- 7 80. The Budget lists 18 Paradise's alleged 2019 projected expenses to maintain Homestead PRD
8 common areas. The following projected expenses listed in the P&L are intentionally
9 overstated:
- 10 a. Lights/ Fixtures, \$6,500.00
 - 11 b. Flowers/Hanging Baskets/Trees/Shrubs, \$12,200.00
 - 12 c. Fertilizers/Chemicals, \$5,500.00
 - 13 d. Fuel & Oil, \$7,500.00
 - 14 e. Office Supplies/Postage, \$2,300.00
 - 15 f. Topsoil/Bark, \$3,900.00
 - 16 g. Shop Supplies/Small Tools, \$6,100.00
 - 17 h. Contract Labor (snow removal, tree removal), \$40,000.00
 - 18 i. Repair & Maintenance - Equipment/Building, \$10,500.00
 - 19 j. Repair & Maintenance - Irrigation, \$4,500.00
 - 20 k. Equipment Lease/Rental, \$32,500.00
 - 21 l. Utilities - Electric, \$26,000.00
 - 22 m. Utilities - Phone/Internet, \$2,900.00
 - 23 n. Utilities - Water, \$5,000.00
 - 24 o. Utilities - Trash/Recycling, \$4,000.00
 - 25 p. O/S - Legal, \$5,000.00
 - 26 q. Liability Insurance, \$2,000.00
 - 27 r. WA State Excise Tax, 9,695.00

- s. Accounting, 30,000.00
- t. Salaries/Wages/Payroll Taxes – ADMIN, 86,000.00
- u. Salaries/Wages/Payroll Taxes – LABOR, 280,000.00
- v. Capital Projects, 70,000.00

81. 18 Paradise prepared and presented the Budget to justify an increase in the common area fee from \$36.00 to \$93.00 per property per month commencing in January 2020.

82. 18 Paradise deliberately misrepresented the Budget with the intent to induce the Parcel Owners to pay the increased monthly fee.

83. Many Parcel Owners agreed to pay and have paid the \$93 annual monthly fee in reliance on the truth of 18 Paradise’s Budget.

84. 18 Paradise also presented the Parcel Owners with a Summary of Storm Assessment Expenses for the special assessment in 2019. The Summary of Storm Assessment Expenses claimed the following costs:

	2018	2019	Total
Contract Labor	\$5800	\$6,800	\$12,600
Labor	\$16,700	\$2,600	\$19,300
Equipment + Fuel (Tractor/Lifts/Chippers)	\$7,468	\$2,000	\$9,468
Disposal	--	\$8,300	\$8,300
Street Light Repair + Fencing	\$1,325		\$1,325
	\$31,293	\$19,700	\$50,993

85. 18 Paradise did not incur the expenses listed in its a Summary of Storm Assessment Expenses

86. 18 Paradise prepared and presented the Summary to justify an increase its 2019 special assessment.

87. 18 Paradise deliberately misrepresented the storm costs with the intent to induce the Parcel Owners to agree to the special assessment.

88. Many Parcel Owners agreed to pay and have paid the \$93 annual monthly fee in reliance on the truth of 18 Paradise’s Summary of Storm Assessment Expenses.

1 89. 18 Paradise intends to retain ownership of the Homestead PRD common areas and continue to
2 charge Homestead PRD owners excessive fees in perpetuity.

3 90. Homestead parcels owners have repeatedly asked 18 Paradise to transfer the common areas
4 and relinquish its declarant control. 18 Paradise refuses because it wishes to continue to keep
5 a profit on the maintenance fees and work.

6 **IV. CLASS ACTION ALLEGATIONS**

7 91. Plaintiffs bring this action on behalf of themselves and on behalf of a proposed class consisting
8 of Parcel Owners subject to the Master Declaration (the "Class Members").

9 92. The Class Members consists of approximately 600 Parcel Owners.

10 93. It would be impractical at best to join all Class Members in a single action.

11 94. The legal and factual issues in this action are identical with respect to each of the Class
12 Members. Each of the Class Members were subject to exactly the same payment demands by
13 defendants and affected in exactly the same way by defendants' conduct.

14 95. The claims of the named plaintiffs are typical of claims of the Class Members. None of the
15 named plaintiffs has any different or additional claims against defendants.

16 96. The named plaintiffs are personally and financially prepared to fairly and adequately represent
17 the interests of the Class Members.

18 97. If the Class Members each brought their own actions, there would be a high risk of inconsistent
19 adjudications of legally identical claims and/or res judicata or collateral estoppel effects of
20 earlier cases on later ones.

21 98. The Court's determination of the merits of the claims of some of the members of the class
22 would as a practical matter decide the merits of the claims of other members who did not
23 participate in the action.

24 99. The defendants have acted in exactly the same manner with respect to all Class Members. The
25 Court should render a single decision applicable to all Class Members.

1 100. The common questions between members of the class predominate over any potential
2 differences. Potential differences primarily concern the period and resulting amount of
3 damages, but all claims will be decided under the same standard.

4 101. A significant portion of Class Members have already opted to participate in this class action
5 and have requested class action certification.

6 102. The Court should certify this action as a class action pursuant to CR 23.

7 **V. CAUSES OF ACTION**

8 **A. Consumer Protection Act, RCW Chapter 19.86 Against 18 Paradise**

9 103. Defendant 18 Paradise performed the following unfair and/or deceptive acts and practices:

- 10 a. 18 Paradise recorded the Sixth Amendment without legal justification and charged
11 Homestead parcel owners under it.
- 12 b. 18 Paradise recorded the Seventh Amendment without legal justification and charged
13 Homestead parcel owners under it.
- 14 c. 18 Paradise misrepresented the reason for the increase in the Maintenance Fee in its
15 December 1, 2015 letter.
- 16 d. 18 Paradise misrepresented the reason for the increase in the Maintenance Fee in its
17 December 1, 2016 letter.
- 18 e. 18 Paradise misrepresented the reason for the increase in the Maintenance Fee in its
19 December 16, 2016 letter.
- 20 f. 18 Paradise misrepresented the reason for the increase in the Maintenance Fee in its
21 November 27, 2017 letter.
- 22 g. 18 Paradise misrepresented the reason for the increase in the Maintenance Fee in its
23 November 20, 2018 letter.
- 24 h. 18 paradise retroactively imposed increases in the Maintenance Fee contrary to the vested
25 rights of the Parcel Owners.
- 26 i. 18 Paradise misrepresented the reason for the increase in the Maintenance Fee in its
27 December 4, 2019 letter.

- 1 j. 18 Paradise falsely represented its actual profit and loss in the P&L.
- 2 k. 18 Paradise falsely represented its actual and anticipated expenses in the 2020 Budget.
- 3 l. 18 Paradise falsely represented its actual and anticipated expenses in the Summary of
- 4 Storm Assessment Expenses.
- 5 m. The above list is not inclusive or complete.
- 6 104. Each act described in the foregoing is a separate and distinct violation of the Consumer
- 7 Protection Act and with respect to each individual parcel owner.
- 8 105. The conduct of Paradise alleged above constitutes unfair and deceptive acts or practices in
- 9 violation of RCW 19.86.020.
- 10 106. 18 Paradise committed the unfair and/or deceptive act and practices in the conduct of its
- 11 business.
- 12 107. Violation of the Consumer Protection Act, RCW 19.86.020 committed by 18 Paradise occurred
- 13 in trade or commerce.
- 14 108. The unfair and/or deceptive act and practices set forth herein affected the public interest
- 15 pursuant to RCW 19.86.093 because they injured hundreds of Homestead PRD owners and
- 16 have the capacity to continue to injure hundreds more.
- 17 109. Plaintiffs and the members of the proposed class have been injured in their business or property
- 18 as a proximate result of the unfair and/or deceptive acts and practices because they incurred
- 19 financial losses in the amount of the payments made and because their properties lost value as
- 20 a result of the increased fees.
- 21 110. The unfair and/or deceptive acts and practices as alleged herein were the direct and proximate
- 22 caused of the harm incurred by plaintiffs and members of the proposed class.
- 23 111. Plaintiffs and members of the proposed class have incurred damages in an amount to be proven
- 24 at trial.
- 25 112. Pursuant to RCW 19.86.090, plaintiffs and members of the proposed class are entitled to
- 26 exemplary damages of three times their actual damages up to \$25,000 per violation.
- 27

1 113. Pursuant to RCW 19.86.090, plaintiffs and members of the proposed class are entitled to a
2 permanent injunction prohibiting 18 Paradise from continuing its unfair and/or deceptive acts
3 or practices.

4 **B. Consumer Protection Act, Claim Against O'Bryan, Williams, and MJ Management.**

5 114. Plaintiffs reassert paragraphs 102-112 in full against defendants O'Bryan, Williams and MJ
6 Management.

7 115. Defendants O'Bryan, Williams, and MJ Management performed the actions set forth in
8 paragraphs 102-112 that constituted violations of the Consumer Protection Act.

9 116. Defendants O'Bryan, Williams, and MJ Management are each personally liable for their
10 conduct in violation of the Consumer Protection Act.

11 117. Defendants O'Bryan and Williams are the members of MJ Management.

12 118. Defendants O'Bryan and Williams are liable for MJ Management's violations of the Consumer
13 Protection Act.

14 **C. Breach of Contract Against 18 Paradise LLP**

15 119. The Master Declaration constitutes a valid and enforceable contract between the Parcel Owners
16 and between the Parcel Owners and the Declarant.

17 120. 18 Paradise LLP has breached the Declaration by increasing the maintenance fee for improper
18 reasons, failing to maintain the common areas as required by the Declaration, assessing
19 maintenance fees in violation of the Declaration, and in other ways to be proven.

20 121. Every contract carries with it an implied duty to act in good faith which obligates parties to
21 cooperate with each other so that each may obtain the full benefit of performance.

22 122. 18 Paradise has breached the express terms of the Master Declaration, the intent as expressed
23 by the parties, and the implied covenant of good faith.

24 123. Plaintiffs and members of the proposed class have been damaged in an amount to be proven at
25 trial.

1 **D. Express and Constructive Trust Against 18 Paradise**

2 124. Pursuant to the terms of the Master Declaration, the Declarant retained fee ownership of the
3 common areas for the benefit of the Homestead owners.

4 125. The Master Declaration created a trust relationship in which the Declaration would retain
5 ownership of the common areas in trust for the Parcel Owners.

6 126. As trustee, the Declarant owes the Parcel Owners fiduciary duties.

7 127. 18 Paradise has violated its fiduciary duties with self-dealing, conflicts of interest, failure to
8 perform duties, and dishonesty.

9 128. The Court should rule that 18 Paradise holds the common areas in trust for the Parcel Owners,
10 award Parcel Owners damages in an amount to be proven, and order 18 Paradise to relinquish
11 the trust property to a homeowners association.

12 **E. Declaratory Judgment**

13 129. Plaintiffs and members of the proposed class are persons interested under the PRD Agreement
14 originally between HNW and the City of Lynden.

15 130. Plaintiffs and members of the proposed class are third part beneficiaries to the PRD Agreement.

16 131. As the Successor Declarant, 18 Paradise is a part of the PRD Agreement and bound by its
17 terms.

18 132. Pursuant to the PRD Ordinance in effect when the PRD Agreement was executed, the PRD
19 Agreement applies to plaintiffs and members of the proposed class.

20 133. A justiciable controversy exists between plaintiffs and 18 Paradise regarding the requirement
21 for formation of a homeowners association and the right of 18 Paradise to retain ownership of
22 the common areas for its own benefit.

23 134. Section 19.29.020 of the PRD Ordinance provides that "every PRD shall have a homeowner's
24 association and agreements to fund such an organization."

25 135. Section 19.29.090 of the PRD Ordinance provides that "A homeowner's association shall be
26 formed as a part of the PRD."
27

1 136. The City approved HNW's retention of the common areas during completion of the Homestead
2 PRD but did not exempt HNW from the requirement to form and maintain an HOA.

3 137. The Court should enter judgment declaring that the PRD Agreement and the PRD Ordinance
4 require the formation of a homeowners association and the conveyance of the common areas
5 to the association upon completion of the PRD.

6 138. The Court should further enter judgment declaring that the Homestead PRD is complete and
7 that 18 Paradise is now required to assist in the formation of the association and to convey the
8 common areas to the association.

9 **VI. RELIEF REQUESTED**

10 Based upon the foregoing, Plaintiffs requests this Court enter judgment as follows:

- 11 1. Enjoining the defendants from further violations of the Consumer Protection Act;
- 12 2. Awarding plaintiffs damages pursuant to the Consumer Protection Act and treble
13 damages as authorized by statute;
- 14 3. Imposing a constructive trust on the assets of defendants in the amount of the judgment;
- 15 4. Entering a declaratory judgment that 18 Paradise is required to assist in the formation
16 of the Homestead PRD Association and to convey the common areas to the association.
- 17 5. Granting plaintiffs such additional relief as may be provided for by law; and
- 18 6. Awarding plaintiffs costs and attorney fees as provided by law.

19 DATED this 24th day of August, 2020

20 ANDERSSON CROSS BORDER LAW CORPORATION

21 
22 K. David Andersson, WSBA No. 24730
23 R. Dallan Bunce, WSBA No. 47213
24 Attorneys for Plaintiffs

25 DAVIS LEARY PLLC

26 
27 Matthew Davis, WSBA No. 20939
Attorneys for Plaintiffs

FILED
COUNTY CLERK
2020 SEP -8 PM 3:43
WHATCOM COUNTY
WASHINGTON

**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR WHATCOM COUNTY**

Plaintiffs:

SCOTT HILLIUS; TOM STAEHR;
RANDY DRUBEK; MARK MIEDEMA;
DANIEL and SONJA LYONS;
DOUGLAS and ANGELIQUE
SCARLETT; STEVEN and LISA
ZEHM; and RONALD SARAN

vs.

Defendants:

18 PARADISE LLP; WILLIAM (MICK)
O'BRYAN; JOSH WILLIAMS; MJ
MANAGEMENT, LLC DOING
BUSINESS AS HOMESTEAD
FARMS GOLF COURSE; and the
CITY OF LYNDEN

Case No.: 20-2-00701-37

CERTIFICATE OF SERVICE

JUDGE: Robert E. Olson

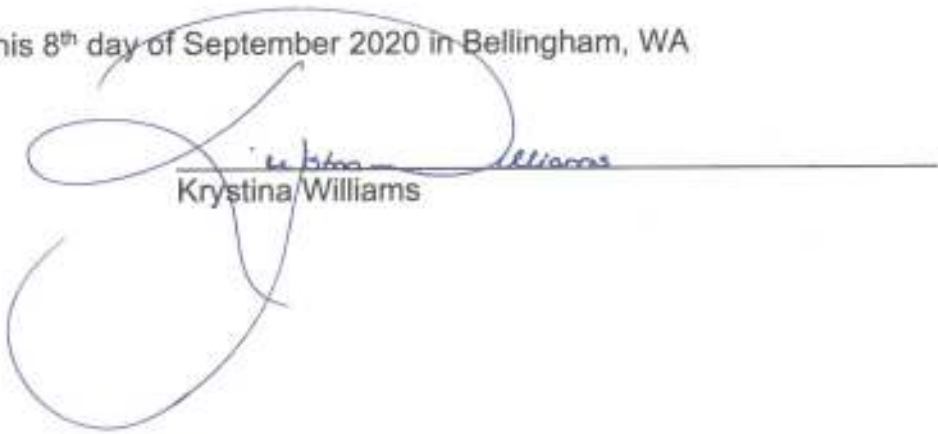
The undersigned certifies that under penalty of perjury under the laws of the State of Washington, that on the date stated below, I caused delivery of true and correct copies of the *Plaintiff's Motion for Leave to Amend Complaint, Proposed Order Granting Leave to Amend, with accompanying, First Amended Complaint, Note for Motion Docket, and this Certificate of Service* to the parties listed below:

CERTIFICATE OF SERVICE

ANDERSSON CROSS BORDER LAW
CORPORATION
1305 11TH STREET, SUITE 304
BELLINGHAM, WA 98225
TELEPHONE: (360) 768-1265

MONTGOMERY PURDUE BLANKINSHIP & AUSTIN PLLC Benjamin I. VandenBerghe WSBA #35477 Henry G. Ross WSBA #51591 Attorneys for Defendant 18 Paradise, L.L.P. 701 Fifth Avenue, Suite 5500, Seattle, WA 98104 (206) 682-7090	<input checked="" type="checkbox"/> By US Mail
CARMICHAEL CLARK, P.S. Lisa M. Keeler, WSBA # 39463 Robert Carmichael, WSBA # 14008 Attorneys for Defendant City of Lynden 1700 D Street, Bellingham, WA 98225 (360) 647-1500	<input checked="" type="checkbox"/> By US Mail
BURI FUNSTON MUMFORD & FURLONG, PLLC Philip Buri, WSBA # 17637 Counsel for MJ Management, O'Bryan and Williams 1601 F St, Bellingham WA 98225 (360) 752-1500	<input checked="" type="checkbox"/> By US Mail

Dated this 8th day of September 2020 in Bellingham, WA



Krystina Williams

CERTIFICATE OF SERVICE

ANDERSSON CROSS BORDER LAW
 CORPORATION
 1305 11TH STREET, SUITE 304
 BELLINGHAM, WA 98225
 TELEPHONE: (360) 768-1265

FILED
 COUNTY CLERK
 2020 SEP -8 PM 3:43
 WHATCOM COUNTY
 WASHINGTON
 BY _____

SUPERIOR COURT OF THE STATE OF WASHINGTON FOR WHATCOM COUNTY

SCOTT HILLIUS, et al.,

 Plaintiff/Petitioner,
 vs.
 18 PARADISE LLP, et al.,

 Defendant/Respondent.

NO. 20-2-00701-37
 ASSIGNED JUDGE: Robert E. Olson
NOTE FOR MOTION DOCKET (NTMTDK)
 Civil Motion Calendar
 Domestic Calendar
 Revision of Commissioner Ruling
 Special Set
(Use separate sheet for each noting)

NOTE FOR MOTION DOCKET
 Please take note that the issue in this case will be heard on the date set out in the margin and the clerk is requested to note the same on the motion docket for that day, subject to the confirmation rule.

Friday, September 25, 2020 Motions Calendar
 Date and Time of Hearing
 Nature of Hearing:
Motion for leave to amend Complaint

CERTIFICATE OF MAILING:
 I certify under penalty of perjury under the laws of the State of Washington that I mailed a copy of this document to the parties listed below, postage prepaid on the 8th day of September, 2020

 By: Signature

DATE SUBMITTED: September 8, 2020
 SUBMITTED BY: Matthew F. Davis
 Signature of Lawyer or Party
Matthew F. Davis, WSBA No. 20939
 Print or Type Name; WSBA # if Attorney
 Address: 3233 56th PI SW, Seattle, WA 98116
 Telephone 206-778-6696
 if Attorney, Party Represented
 Petitioner/Plaintiff Plaintiffs
 Respondent/Defendant

NAME (below) _____ WSBA: _____
 ADDRESS: 1305 11th St. Suite 304
Bellingham, WA 98225
 Attorney for: Petitioner/Plaintiff Respondent/Defendant

NAME (below) _____ WSBA: _____
 ADDRESS: _____
 Attorney for: Petitioner/Plaintiff Respondent/Defendant

{Note for Motion Docket 9 16 2010}

<p>Andersson Cross-Border Law Corporation K. David Andersson, WSBA No. 24730 R. Dallan Bunce, WSBA 47213 Attorneys for plaintiffs Suite 301 1305 11th Street Bellingham, WA 98225 604-608-0818</p>	<p>MONTGOMERY PURDUE BLANKINSHIP & AUSTIN PLLC Benjamin I. VandenBerghe WSBA #35477 Henry G. Ross WSBA #51591 Attorneys for Defendant 18 Paradise, L.L.P. 701 Fifth Avenue, Suite 5500, Seattle, WA 98104 (206) 682-7090</p>
<p>BURI FUNSTON MUMFORD & FURLONG, PLLC Philip Buri, WSBA 17637 Counsel for MJ Management, O'Bryan and Williams 1601 F St, Bellingham WA 98225 360-752-1500</p>	<p>CARMICHAEL CLARK, P.S. LISA M. KEELER, WSBA No. 39463 ROBERT CARMICHAEL WSBA No. 14008 Attorneys for Defendant City of Lynden 1700 D Street, Bellingham, WA 98225 360 647 1500</p>