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WHATCOM COUNTY  
WASHINGTON

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7 **IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON**

8 **IN AND FOR WHATCOM COUNTY**

9 SCOTT HILLIUS, et al.,

Plaintiffs,

v.

11 18 PARADISE LLP, et al.,

Defendants.

No. 20-2-00701-37

FIFTH AMENDED COMPLAINT  
CLASS ACTION

Judge David E. Freeman

12  
13 For their Complaint, Plaintiffs allege as follows:

14 **I. PARTIES**

- 15 1. Plaintiff Scott Hillius ("Hillius") is a resident of Whatcom County and the owner of residential property  
16 in the Homestead Planned Residential Development, Lynden Washington ("Homestead PRD").
- 17 2. Plaintiff Tom Staehr ("Staehr") is a resident of Whatcom County and the owner of residential property  
18 in the Homestead PRD.
- 19 3. Plaintiff Randy Drubek ("Drubek") is a resident of Whatcom County and the owner of residential  
20 property in the Homestead PRD.
- 21 4. Plaintiff Mark Miedema ("Miedema") is a resident of Whatcom County and the owner of residential  
22 property in the Homestead PRD.
- 23 5. Plaintiffs Daniel and Sonja Lyons ("Lyons") are residents of Whatcom County and the owners of  
24 residential property in the Homestead PRD.
- 25 6. Plaintiffs Douglas and Angelique Scarlett ("Scarlett") are residents of Whatcom County and the owners  
26 of residential property in the Homestead PRD.
- 27 7. Plaintiffs Steven and Lisa Zehm ("Zehm") are residents of Whatcom County and the owners of residential  
property in the Homestead PRD.

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1 8. Plaintiff Ronald Saran (“Saran”) is a resident of Whatcom County and the owner of residential property  
2 in the Homestead PRD.

3 9. Defendant 18 Paradise LLP (“18 Paradise”) is a Washington limited liability partnership.

4 10. Defendant MJ Management LLC (“MJ Management”) is a Washington limited liability company.

5 11. Defendant William O’Bryan (“O’Bryan”) is a resident of Whatcom County and a governor of MJ  
6 Management.

7 12. Defendant Josh Williams (“Williams”) is a resident of Whatcom County and a governor of MJ  
8 Management.

## 9 **II. JURISDICTION AND VENUE**

10 13. This Court has personal and subject matter jurisdiction over the parties and claims in this action.

11 14. Venue for this action is appropriate in Whatcom County Superior Court pursuant to RCW Chapter 4.12.

12 15. On November 13, 2020, the Court certified this action as a class action pursuant to CR 23.

## 13 **III. FACTUAL ALLEGATIONS**

14 16. The Homestead Planned Residential Development (“PRD” and “Homestead PRD”) was formed in 1992  
15 by Homestead Northwest, Inc. (“HNW”). It consists of approximately 250 acres consisting of residential  
16 areas and a golf course.

17 17. The Homestead PRD was expected to be completed by 2007, but completion was delayed by market  
18 conditions and HNW’s financial problems. HNW sold the golf course and what was left of the Homestead  
19 PRD in 2010 to Raspberry Ridge, which finished the PRD and then sold the golf course to defendant 18  
20 Paradise in 2013.

21 18. When HNW recorded the Master Declaration of Covenants, Conditions, Restrictions and Reservations  
22 for Homestead, a Planned Residential Development (the “Declaration”) on June 24, 1992, it took an unusual  
23 approach in several respects.

24 a. Although the Homestead PRD included Common Open Space (“COS”) that was required by the PRD  
25 Ordinance, HNW retained ownership of the COS. Private ownership of the COS is prohibited by  
26 section 19.29.090(D) of the PRD Ordinance.

27 b. Although the Declaration says that the Homestead Owners Association (“HOA”) was formed, the  
Declaration prohibited it from organizing or acting unless and until HNW decided to transfer the COS

to it. HNW retained complete declarant rights under the Declaration. The PRD ordinance requires every PRD to have a functioning homeowners association.

1  
2 c. The Declaration assesses a Joint Maintenance Fee against all Homestead owners subject to the PRD to  
3 cover the expenses of maintaining the COS.

4 19. When HNW sold the remainder of the Homestead PRD to Raspberry Ridge in 2010, the sale included  
5 the declarant rights. When Raspberry Ridge sold the golf course to 18 Paradise in 2013, that sale also  
6 included the declarant rights. 18 Paradise is the second successor declarant of the Homestead PRD.

7 20. When the Declaration was recorded, the Homestead PRD contained only 33 lots, and the COS was  
8 limited to Tract A of the Maberry Plat. The Declaration provided that additional property could be made  
9 subject to its terms and additional COS could be designated in phasing amendments.

10 21. HNW recorded a series of phasing amendments that identified additional property subject to the  
11 Declaration and designated additional COS. Under the phasing amendments, only residential platted  
12 property within the Homestead PRD area is subject to the Declaration.

13 22. On April 6, 2022, the Court in this action entered an order defining the term "Common Open Space" for  
14 the Homestead Declaration as:

15 Platted areas within the Homestead PRD that are: (1) identified on the face of a plat as "Common  
16 Open Space" or "Open Space;" (2) delineated on a plat but not identified as a lot; and (3)  
17 easements on the face of a plat for ingress and egress, pedestrian use, or pathways. Except: (1)  
areas dedicated to the City of Lynden for roadways and utilities; (2) areas that are also identified  
as utility easements, (3) unplatted areas, and (4) areas within the golf course, clubhouse, R.V.  
storage and maintenance areas.

18 23. The COS is limited to the areas within the definition set forth in the Court's order.

19 24. Paragraph 3.3 of the Declaration provides that "The Declarant shall manage and maintain the Common  
20 Open Space," and that "All costs and expenses of maintenance of and improvements to the Common Open  
21 Space shall be paid by the Declarant...."

22 25. Paragraph 3.3 of the Declaration defines the term "maintenance" as management and maintenance of  
23 the COS, and further provides that "Maintenance also includes maintenance of entry signs and landscape,  
24 mail box surrounds, street light electrical power bills, and maintenance of lights not maintained by the City  
25 of Lynden." The definition of maintenance in section 3.3 of the Declaration is complete and exhaustive.

26 26. Maintenance under the Declaration does not include work on the golf course or infrastructure of the  
27 Homestead PRD unless specifically set forth in section 3.3 of the Declaration.

1 27. Paragraph 3.3 of the Declaration also provides that “payments for costs and expenses shall be funded  
2 by joint maintenance fees provided by Parcel Owners other than the Declarant.” The intent of the  
3 Declaration was for the maintenance fee to be used to pay costs and expenses of maintenance.

4 28. The Assignments to Raspberry Ridge and to 18 Paradise both state that the purpose of the maintenance  
5 fee was to “recover the costs for services and maintenance of the Common Open Space as from the owner  
6 of any lot or parcel as provided for in the Master Declaration, as amended.” Raspberry Ridge and 18  
7 Paradise were assigned only the right to recover the costs for services and maintenance of the COS.

8 29. The initial maintenance fee was \$25 per parcel per month. Paragraph 3.5(e) allowed the declarant to  
9 increase the maintenance fee up to 5% each year by giving a notice during December of the year before the  
10 increase would take effect.

11 30. HNW did not increase the maintenance fee from 1992 to 2005. Between 2005 and 2008, HNW increased  
12 the maintenance fee from \$25 to \$30 per month.

13 31. After acquiring the golf course and declarant rights in 2013, 18 Paradise regularly increased the  
14 maintenance fee by the allowable 5%. By 2019, 18 Paradise had increased the fee to \$36 per month.

15 32. In 2017, 18 Paradise entered into a management and lease agreement with MJ Management, LLC (“MJ  
16 Management”). At all times since, MJ Management has acted as the agent of 18 Paradise with respect to  
17 the Golf Course and declarant rights.

18 33. On September 22, 2022, the Court in this action entered an order confirming the agency relationship  
19 between 18 Paradise and MJ Management as follows:

20 (1) MJ Management acted as the agent of 18 Paradise under the 2017 Lease Management  
21 Agreement between them.

22 (2) MJ Management’s execution and recording of the Sixth and Seventh Amendments to the  
23 Homestead Declaration of Covenants was within the general scope of the agency relationship  
24 formed under the Lease Management Agreement.

25 (3) The Lease Management Agreement required MJ Management to obtain 18 Paradise’s express  
26 permission before signing and recording the Sixth and Seventh Amendments to the Declaration.

27 (4) MJ Management failed to obtain 18 Paradise’s express permission before signing and  
recording the Sixth and Seventh Amendments to the Declaration.

34. On July 1, 2019, on behalf of 18 Paradise, MJ Management caused the Sixth Amendment to the  
Declaration to be recorded in the name of 18 Paradise. The Sixth Amendment permitted 18 Paradise, as  
declarant, to impose special assessments.

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

3 36. RCW 64.90.525(3) provides that a homeowners association may propose a special assessment at any  
4 time, and that the special assessment must be approved by the members of the association. 18 Paradise did  
5 not seek or obtain homeowner approval of the special assessment.

6 37. Through its agent MJ Management, 18 Paradise assessed and collected the special assessment. 18  
7 Paradise did not comply with RCW 64.90.525(3).

8 38. The proceeds of the special assessment were used for the benefit of 18 Paradise.

9 39. On December 3, 2019, on behalf of 18 Paradise, MJ Management caused the Seventh Amendment to  
10 the Declaration to be recorded in the name of 18 Paradise. The Seventh Amendment added a sentence to  
11 the Declaration stating that:

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

14 40. On December 4, 2019, 18 Paradise's agent MJ Management sent a notice to Homestead parcel owners  
15 falsely stating that the Maintenance Fee increases from 2016-2019 "have been inadequate in covering the  
16 bare minimum expenses required to maintain the common open space and cannot continue to operate at a  
17 deficit."

18 41. The December 4, 2019 notice stated that the maintenance fee would retroactively increase 158% to \$93  
19 per month effective January 1, 2020.

20 42. The increase was imposed to increase profits from the maintenance fee.

21 43. 18 Paradise did not comply with RCW 64.90.525.

22 44. In November of 2017, 18 Paradise executed a Management and Lease Agreement with MJ Management  
23 under which MJ Management would manage the Homestead Golf Course (the "Management Agreement").  
24 MJ Management acted as 18 Paradise's agent.

25 45. Under the Management Agreement, 18 Paradise delegated the Homestead PRD declarant rights to MJ  
26 Management.

27 46. Pursuant to that delegation, MJ Management was required to obtain 18 Paradise's express approval  
before it exercised the declarant's right to increase the maintenance fee or amend the Declaration.

1 47. On June 28, 2019, O'Bryan executed the Sixth Amendment to Covenants ("Sixth Amendment"), which  
2 purported to Amend the Declaration to permit the imposition of special assessments on Homestead  
3 homeowners.

4 48. O'Bryan executed the Sixth Amendment as 18 Paradise.

5 49. O'Bryan executed the Sixth Amendment as successor declarant.

6 50. On July 1, 2019, O'Bryan and MJ Management recorded the Sixth Amendment to Covenants.

7 51. O'Bryan and MJ Management failed to obtain the express approval of 18 Paradise before signing and  
8 recording the Sixth Amendment.

9 52. O'Bryan's signature and the recording of the Sixth Amendment were not authorized acts of 18 Paradise.

10 53. O'Bryan and MJ Management knowingly procured and recorded a false or forged instrument when they  
11 recorded the Sixth Amendment.

12 54. The Sixth Amendment created a new obligation for Homestead homeowners to pay special assessments.

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

15 56. The Common Ownership Interest Act, RCW Chapter 64.90, ("COIA") contains specific provisions for  
16 special assessments that apply to the Homestead PRD. The Sixth Amendment failed to comply with those  
17 requirements.

18 57. The August 19, 2019 Notice falsely stated that "the joint maintenance fees came nowhere close to  
19 covering the costs incurred" from a 2017-2018 storm.

20 58. On December 3, 2019, O'Bryan executed the Seventh Amendments to Covenants ("Seventh  
21 Amendment"), which purported to Amend the Declaration to permit retroactive increases in the  
22 maintenance fee for prior years.

23 59. O'Bryan executed the Seventh Amendment as 18 Paradise.

24 60. O'Bryan executed the Seventh Amendment as successor declarant.

25 61. On December 3, 2019, O'Bryan and MJ Management recorded the Seventh Amendment to Covenants.

26 62. O'Bryan and MJ Management failed to obtain the express approval of 18 Paradise before signing and  
27 recording the Seventh Amendment.

63. O'Bryan's signature and the recording of the Seventh Amendment were not authorized acts of 18  
Paradise.

64. O'Bryan and MJ Management knowingly procured and recorded a false or forged instrument when they recorded the Seventh Amendment.

65. The Seventh Amendment added a sentence to the Declaration stating that the failure to increase maintenance fees in one or more years does not waive the right to increase fees the following year up to the maximum combined amount for all years.

66. On December 4, 2019, 18 Paradise sent a notice to Homestead parcel owners falsely stating that the Maintenance Fee increases from 2016-2019 "have been inadequate in covering the bare minimum expenses required to maintain the common open space and cannot continue to operate at a deficit."

67. In 2019 and at all times since, MJ Management and 18 Paradise received more in maintenance fees than the amount spent on maintenance pursuant to the Declaration.

68. The December 4, 2019 notice stated that the monthly maintenance fee would increase to \$93 on January 1, 2020. The notice stated that this amount was calculated as a 5% retroactive increase every year since 1992.

69. The increase to \$93 is contrary to the plain terms of the Seventh Amendment, which allows retroactive increases **only in years for which a December notice was given.**

70. COIA contains specific provisions for the adoption of budgets and assessments that apply to the Homestead PRD. The Seventh Amendment failed to comply with those requirements.

71. Paragraph 17 of the PRD Agreement provides that covenants, conditions and restrictions "will not be altered or amended without the consent of the City."

72. Defendants did not seek or obtain the consent of the City to the Sixth Amendment.

#### IV. CLASS ACTION ALLEGATIONS

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

74. The Class Members consist of the owners of a fee interest in real property that is subject to the Declaration.

75. The class consists of approximately 600 property owners.

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

1 77. The legal and factual issues in this action are identical with respect to each of the Class Members. Each  
2 of the Class Members were subject to exactly the same monthly maintenance fee for exactly the same  
3 reason.

4 78. The claims of the named plaintiffs are typical of claims of the Class Members because all class members  
5 have the same claims against the same defendant.

6 79. The named plaintiffs are personally and financially prepared to fairly and adequately represent the  
7 interests of the Class Members.

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

11 81. The Court's determination of the merits of the claims of some of the members of the class would as a  
12 practical matter decide the merits of the claims of other members who did not participate in the action.

13 82. 18 Paradise has acted in exactly the same manner with respect to all Class Members. The Court should  
14 render a single decision applicable to all Class Members.

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

18 84. A significant portion of Class Members have already opted to participate in this class action and have  
19 requested class action certification.

20 85. The Court should certify this action as a class action pursuant to CR 23.

21 86. On November 13, 2020, the Court certified this action as a class action pursuant to CR 23.

## 22 **V. CAUSES OF ACTION**

### 23 **A. Claims Against 18 Paradise.**

#### 24 **1. Consumer Protection Act, RCW Chapter 19.86.**

25 87. RCW 19.86.02 prohibits unfair or deceptive acts in trade or commerce.

26 88. Defendant 18 Paradise and its agents have engaged in unfair and deceptive acts, including the following:

- 27 a. Charging a maintenance fee in excess of the amount necessary to perform maintenance as defined by the  
Declaration;



- b. Commingling the maintenance fee with golf course funds and failing to maintain accurate accounting of the funds;
- c. Increasing the maintenance fee for reasons other than covering the actual cost of maintenance as defined by the Declaration;
- d. Misrepresenting the adequacy of the maintenance fee and the need for increases;
- e. Recording the Sixth Amendment;
- f. Recording the Seventh Amendment;
- g. Collecting maintenance fees under the Sixth and Seventh Amendments; and
- h. Maintaining private ownership of the COS.

89. Each act described in the foregoing paragraphs is a separate and distinct violation of the Consumer Protection Act and with respect to each individual class member.

90. The conduct of 18 Paradise alleged above constitutes unfair and deceptive acts or practices in violation of RCW 19.86.020.

91. 18 Paradise committed the unfair and/or deceptive acts and practices in the conduct of its business.

92. The unfair and deceptive acts and practices occurred in trade or commerce.

93. The unfair and/or deceptive acts and practices set forth herein affected the public interest pursuant to RCW 19.86.093 because they injured hundreds of Homestead PRD homeowners and have the capacity to continue to injure hundreds more.

94. Plaintiffs and the members of the class have been injured in their business or property as a proximate result of the unfair and/or deceptive acts and practices because they incurred financial losses in the amount of the payments made and because their properties lost value as a result of the arbitrary and high-handed maintenance fee increases and collection practices.

95. The unfair and/or deceptive acts and practices as alleged herein were the direct and proximate cause of the harm incurred by plaintiffs and members of the class.

96. Plaintiffs and members of the class have incurred damages in an amount to be proven at trial.

97. Pursuant to RCW 19.86.090, plaintiffs and members of the class are entitled to exemplary damages of three times their actual damages up to \$25,000 per violation.

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

99. Pursuant to RCW 19.86.090, plaintiffs are entitled to an injunction for 18 Paradise to cease its private ownership of the COS.

1           **2.       Declaratory Judgment – Declaration.**

2 100. Pursuant to RCW 7.24.020, plaintiffs are entitled to have determined any question of construction or  
3 validity arising under a contract to which they are party or in which they have an interest.

4 101. Plaintiffs are parties to the Declaration and have a sufficient interest in it.

5 102. A justiciable dispute exists between the parties concerning the meaning and interpretation of the  
6 Declaration, including the following:

- 7 a. The definition of COS;  
8 b. The definition of maintenance;  
9 c. Whether the Sixth Amendment is valid;  
10 d. Whether the Seventh Amendment is valid;  
11 e. Whether the use of the maintenance fee is limited to maintenance as defined by the Declaration; and  
12 f. The identity of the properties that are subject to the Declaration.

13 103. The Court should enter a declaratory judgment that:

- 14 a. COS has the definition set forth in paragraph 1.3.8 of the Declaration;  
15 b. Maintenance is limited to the cost of maintaining the COS as defined by the Declaration, and “includes  
16 maintenance of entry signs and landscape, mail box surrounds, street light electrical power bills, and  
17 maintenance of lights not maintained by the City of Lynden.”  
18 c. The Sixth Amendment is invalid and void;  
19 d. The Seventh Amendment is invalid and void;  
20 e. Identifies the properties that are subject to the Declaration.

21           **3.       Declaratory Judgment – PRD Ordinance.**

22 104. Plaintiffs are persons whose legal rights are affected by a municipal ordinance because they own  
23 property in the Homestead PRD, which is subject to the PRD Ordinance.

24 105. A justiciable dispute exists between the parties concerning the PRD Ordinance, including the  
25 following:

- 26 a. Whether the Declaration established a homeowners association as required by the PRD Ordinance; and  
27 b. Whether the declarant’s ownership of the COS violates section 19.29.090.

106. The Court should enter a declaratory judgment that:

- a. The Declaration violates the requirements of sections 19.29.020 and 19.29.090 to establish an HOA; and
- b. The declarant's ownership of the COS violates section 19.29.090.

**B. Claim Against MJ Management, O'Bryan and Williams for Violation of the Consumer Protection Act, RCW Chapter 19.86.**

107. All acts of MJ Management as alleged herein were the acts of O'Bryan and Williams.

108. At all relevant times, MJ Management was the agent of 18 Paradise.

109. All acts of MJ Management as alleged herein were committed within the general scope of MJ Management's agency relationship with 18 Paradise.

110. 18 Paradise benefitted from the acts of MJ Management, Williams and O'Bryan because the funds obtained through the unfair and deceptive acts and practices were spent for 18 Paradise's benefit.

111. In the scope of their agency, defendants MJ Management, O'Bryan and Williams committed unfair and deceptive acts and practices in furtherance of 18 Paradise's interests. The unfair and deceptive acts and practices include but are not limited to the following:

- a. Using the maintenance fee for purposes other than those allowed by the Declaration;
- b. Commingling the maintenance fee and failing to maintain accurate accounting of the funds;
- c. Increasing the maintenance fee without justification;
- d. Misrepresenting the need for the maintenance fee and the increases;
- e. Recording the Sixth Amendment;
- f. Recording the Seventh Amendment;
- g. Collecting maintenance fees under the Sixth and Seventh Amendments; and
- h. Purporting to act as 18 Paradise without authority to do so.

112. Each act described in the foregoing paragraphs is a separate and distinct violation of the Consumer Protection Act and with respect to each individual class member.

113. The conduct of defendants alleged above constitutes unfair and deceptive acts or practices in violation of RCW 19.86.020.

114. Defendants committed the unfair and/or deceptive act and practices in the conduct of their business.

115. The unfair and deceptive acts and practices occurred in trade or commerce.

116. The unfair and/or deceptive acts and practices set forth herein affected the public interest pursuant to RCW 19.86.093 because they injured hundreds of Homestead PRD homeowners and have the capacity to continue to injure hundreds more.

117. Plaintiffs and the members of the class have been injured in their business or property as a proximate result of the unfair and/or deceptive acts and practices because they incurred financial losses in the amount of the payments made and because their properties lost value as a result of the increased fees.

118. The unfair and/or deceptive acts and practices as alleged herein were the direct and proximate cause of the harm incurred by plaintiffs and members of the class.

119. Plaintiffs and members of the class have incurred damages in an amount to be proven at trial.

120. Pursuant to RCW 19.86.090, plaintiffs and members of the class are each entitled to exemplary damages of three times their actual damages up to \$25,000 per violation.

121. Pursuant to RCW 19.86.090, plaintiffs and members of the class are entitled to a permanent injunction prohibiting MJ Management from continuing its unfair and/or deceptive acts or practices.


#### VI. RELIEF REQUESTED

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

1. Awarding plaintiffs damages and treble damages under the Consumer Protection Act;
2. Issuing a permanent injunction to 18 Paradise to cease its unfair and deceptive acts and practices and to cease its private ownership of the COS;
3. Entering declaratory judgment as set forth above;
4. Granting plaintiffs such additional relief as may be provided for by law; and
5. Awarding plaintiffs costs and attorney fees as provided by law.

DATED this 8<sup>th</sup> day of December, 2022.

ANDERSSON CROSS BORDER LAW CORPORATION

  
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