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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SAN DIEGO

11 WILLIAM (BILL) STRONG,  
12 Plaintiff,

13 v.

14 RANCHO SANTA FE ASSOCIATION,  
15 et al.,  
16 Defendants.

Case No. 37-2022-00043451-CU-BC-CTL  
Assigned for All Purposes to  
Hon. Kenneth J. Medel,  
Department C-66

**FIRST AMENDED COMPLAINT FOR  
BREACH OF CONTRACT FOR FAILURE  
TO PERFORM AGREED-TO ILLEGAL  
ACTS INVESTIGATION UNDER AU317  
RELATED TO RANCHO SANTA FE  
ASSOCIATION'S ILLEGAL GRADING**

Complaint filed: October 28, 2022

**IMAGED FILE**

**INTRODUCTION**

21 1. Plaintiff William (Bill) Strong, a member of the Rancho Santa Fe Association  
22 (RSFA), a former Vice President of the RSFA Board of Directors (Board), and a member of the  
23 RSFA Board (Board) until July 2022, brings this action for breach of settlement agreement  
24 between himself and the RSFA in which the RSFA Decision Makers agreed to -- but did not --  
25 direct its auditor, Porter & Lasiewicz CPAs, to conduct an AU 317 Illegal Acts Investigation  
26 regarding the facts and circumstances under which a grading Stop Work Order was issued by San  
27 Diego County Code Compliance Officer Alphonso Colmenero on August 13, 2021, and the  
28 manner in which the RSFA resolved the alleged violations.

1           2.       In 2019, the RSF Golf Club proposed a Masterplan update for the Golf Course  
2 (Remodel), including new turf, an irrigation system replacement, renewed bunkers, a new  
3 practice area and a renovated driving range. Note 15 to the fiscal year 2021 RSFA audited  
4 financials (attached as Exhibit 1) described the Remodel as follows:

5           In April 2019, the Board approved the commencement of a Master Plan project to  
6 enhance and update the golf course and practice areas, including the installation of  
7 a new irrigation system. Planning and design for this project began in 2019, and  
8 construction began in April 2021. As of September 2, 2021 the Board had  
approved items relating to this project (including change orders and contingency)  
totaling approximately \$7,878,000.

9           3.       The as of June 30, 2021, “financial statements were issued on and subsequent  
10 events were evaluated through October 7, 2021.” The auditor’s RSFA 2021 financial statements  
11 mailed to all members omitted any mention of the August 13, 2021, Stop Work Order, which is  
12 an “Illegal Act” as defined by AICPA AU 317.02. (See photos of unpermitted grading, Exhibit 2)  
13 In addition to not disclosing the Stop Work Order, the audit report did not report any analysis  
14 under AU 317.16, which provides that the implications of an illegal act should be considered in  
15 relation to other aspects of the investigation, particularly the reliability of representations of  
16 management.

17           4.       After the RSFA Board breached its contractual duty to direct its auditor to perform  
18 the Agreed Upon Illegal Acts Procedure, Plaintiff Strong further investigated the facts that  
19 support the claims made in this operative complaint. This complaint is being amended by this  
20 First Amended Complaint to add the facts Plaintiff has discovered to further document the illegal  
21 acts related to the unpermitted grading done in connection with the RSFA Golf Course  
22 remodeling project. The additional facts should have been developed by the RSFA auditor as part  
23 of the illegal act’s investigation the RSFA Board agreed to -- but did not -- conduct.

24                                   **JURISDICTION AND VENUE**

25           5.       Venue is proper because the parties reside in San Diego County and dispute arose  
26 in San Diego County.

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1 **PARTIES AND KEY PLAYERS**

2 **A. Plaintiff**

3 6. Petitioner William (Bill) Strong is a former Director of the RSFA Board of  
4 Directors. Mr. Strong has been a homeowner and RSFA member living in the Rancho Santa Fe  
5 Covenant for over 35 years. Mr. Strong has served on the RSFA Finance Committee from 2018-  
6 2021, as an RSFA Director 2001-04 (2 years as VP) and again from 2019-2022 (one year as VP),  
7 and Member of the RSFA Community Center Board 1989-92 (2 years as Treasurer; Silver Level  
8 Donor). Mr. Strong has served on the RSF School Bond Committee, and has been a member of  
9 the RSF Golf Club since 1999. In addition, Mr. Strong has served as a Member of RSF Historical  
10 Society and RSF Village Church, and is a current Rancho Santa Fe Tennis Club member and  
11 former Riding Club member.

12 7. If Plaintiff is successful, the action will enforce the public rights of the class of  
13 RSFA members as relates to the conduct of RSFA Board, the reliability of representations of its  
14 management, and the relationship of the perpetration and concealment, if any, of the illegal act to  
15 specific control procedures and the level of management or employees involved. (AU 317.16).

16 **B. Defendant**

17 8. Defendant Rancho Santa Fe Association (RSFA) is a California Non-Profit  
18 Corporation operating as a nonprofit organization and common interest development. The RSFA  
19 offers golf and tennis clubs, hiking, horseback riding, and other activities.

20 **C. The RSFA Decision Makers**

21 9. The RSFA Decision Makers are certain RSFA officers, directors, and management  
22 of the RSFA. Decision Maker Bill Weber is the RSFA President. Decision Maker Christy  
23 Whalen is the RSFA Manager. Decision Makers Rick Sapp, Greg Gruzdownich and Dan  
24 Comstock are members of the RSFA Board.

25 **BACKGROUND**

26 10. The RSFA Golf Course (“Course” or “GC”) is in the unincorporated part of San  
27 Diego County. The Course first opened in 1929 by master golf-course architect Max Behr. The  
28 Course is an 18-hole par 72 design and holds the distinction of being one of the finest walkable

1 designs in the world. The Course is shown here:



13 11. The Remodel affected over 50 acres of grassed/playable areas of the golf course,  
14 including 23 acres of bunker remodeling and regrading in excess of 15,000 cubic yards of soil and  
15 dirt. The RSFA named the irrigation system replacement Phase 1. Phase 2 consisted of  
16 **renovation, reshaping or relocation of bunkers (sand traps), and re-sodding Holes 1-18 of**  
17 **GC**; Phase 3 involved Phase 3 involved a renovated Driving Range and **Practice Area, and**  
18 **related grading.** The footprint of the Remodel is shown here:



23 12. In December 2020, Rancho Santa Fe Golf Club Golf Course Superintendent Tim  
24 Barrier requested the Ekard Smith government relations firm look at the Golf Club Master Plan to  
25 see if it needed permits to begin. After reviewing the plans, the Ekard Smith firm advised the  
26 Golf Club that the Remodel needs grading permits, but the Remodel might be separated into  
27 phases to defer the portions that would require a permit. **The only plan completed at that time**  
28 **was the “GC Masterplan by David Kidd McClay (“DKM”), which described the work in**

1 general terms, and used the words “reshape” or “relocate” to indicate graded areas which  
2 were shown with diagonal yellow hatch lines. Civil Engineer Jonathan Petke prepared a  
3 standard or typical Grading Plan which was submitted to the County in late September  
4 2021.

5 13. All grading within the County of San Diego must be completed in accordance with  
6 approved plans and permits. Work that involves movement of more than 5,000 cubic yards of  
7 material must be done under the supervision of a civil engineer. In order to assure that work is  
8 being adequately supervised, the County requires submission of periodic reports.

9 14. On January 4, 2021, RSFA Golf Club General Manager Brad Shupe retained  
10 Ekard Smith stressing the “tight timeline” and a “very aggressive president that wants to be kept  
11 informed:”

12 On Jan 4, 2021, at 4:41 PM, Brad Shupe <[brad@rsfgc.com](mailto:brad@rsfgc.com)> wrote:

13 Pete,



14 Great talking to you and I am really excited to have a chance to work with you.  
15 Please send an invoice so I can get you paid ASAP.

16 As you know, we are on a tight timeline and I have a very aggressive president that wants to  
17 keep informed. Is it possible for you to lay out a very high level vision of what will be done to  
18 get from here to a stockpile permit? April 1 is go time and I hope to keep on schedule.

18 Thanks!

19 15. On April 9, 2021, County of San Diego Land Use & Environmental Planner Sean  
20 Oberbauer notified Pete Smith “a grading permit will not be required for Phase 1, irrigation utility  
21 work on the following specified condition: (1) the engineer of work provides a certification that  
22 the proposed irrigation utility work is temporary and will not include grading or any permanent  
23 changes to land contours; (2) the certification should recognize that the subject property contains  
24 streams or waters that may be subject to regulation by the Federal or State agencies and it is the  
25 applicant’s responsibility to consult with each agency to determine if permits are required prior to  
26 commencement of work; (3) a “No-Rise Certification” to be signed and stamped by the EOW”  
27 **(Engineer of Work)**. The April 9, 2021, email, is shown here:

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From: **Oberbauer, Sean** Sean.Oberbauer@sdcounty.ca.gov  
Subject: RSF Golf Course Follow-Up  
Date: April 9, 2021 at 3:23 PM  
To: Pete Smith peterbale@icloud.com, Jonathan Petke JPetke@hunsaker.com, Erika Gretler erikamblack@hotmail.com  
Cc: Ryan, Taylor Taylor@sdcounty.ca.gov, Agahi, Sara Sara.Agahi@sdcounty.ca.gov, Carlton, Gregory A Gregory.Carlton@sdcounty.ca.gov, Garcia, Teni Teni.Garcia@sdcounty.ca.gov, Kahler, David David.Kahler@sdcounty.ca.gov, Mills, Benjamin Benjamin.Mills@sdcounty.ca.gov



Good Afternoon All,

Hope everyone had a nice week. We've had a chance to review the narrative and follow-up information and have the following determination.

A grading permit will not be required for the Phase 1, irrigation utility work as long as the following items are provided:

- The engineer of work provides a certification that the proposed irrigation utility work is temporary and will not include grading or any permanent changes to land contours
- The certification should recognize that the subjects property contains streams or waters that may be subject to regulation by the Federal or State agencies and it is the applicant's responsibility to consult with each agency to determine if permits are required prior to commencement of work.
- A "No-Rise Certification" (see attached) to be signed and stamped by the EOW. Where the No-Rise Certification says "name of attached report, study, or analysis\_" please refer to the engineer's statement of subsurface, temporary work.

Please let us know if you have any questions. We'll be happy to work with you on the later phases of the project.

Thank you and hope you have a nice weekend,

**Sean Oberbauer**

Land Use & Environmental Planner | He/Him/His  
County of San Diego | Planning & Development Services  
Phone: (858) 495-5747 | Email: [sean.oberbauer@sdcounty.ca.gov](mailto:sean.oberbauer@sdcounty.ca.gov)

16. On April 15, 2021, at the direction of the Golf Club, the engineer for the project signed and stamped a memorandum to the County guaranteeing the RSFA would not grade or change contours, as shown here:

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*Whalen*



**M E M O R A N D U M**



**DATE:** April 15, 2021  
**TO:** Sean Oberbauer  
Land Use & Environmental Planner  
County of San Diego, Planning and Development Services  
**FROM:** Jonathan Petke, PE  
Hunsaker & Associates Irvine, Inc.  
**SUBJECT:** Rancho Santa Fe Golf Course  
Irrigation Utility Replacement Work  
Engineer's Certification Memo

The proposed irrigation utility replacement work at the Rancho Santa Fe Golf Course is temporary and will not include grading or any permanent changes to land contours. It is understood that the subject property contains streams or waters that may be subject to regulation by Federal or State agencies. It is also understood that the applicant is responsible for consulting with those agencies when the nature of the project requires such consultation.  
Should you have any questions, please do not hesitate to call me at (949) 458-5440.

JHP:ll  
W.O. 4444-1  
(r:\wov\4444-1 M01-jhp.docx)



17. The RSFA agents failed to update the County that in and before June 2021, the RSFA decided to do grading and make permanent changes to land contours.

18. In and before June 2021, RSFA Decision Makers authorized RSFA agents to engage in illegal grading of over many thousands of cubic yards of soil as part of the Course Renovation. Defendant concealed the unlawful grading from Plaintiff, from certain members of the RSFA board, from the RSFA membership, and from the County of San Diego grading officials, and did not disclose or seek formal Board approval to hire Ekard Smith.

19. Between April 9 and August 13, 2021, RSFA agents engaged in unpermitted grading in connection with the Remodel which they concealed from the County. **An email from consultant Pete Smith on August 11, 2021 to RSFA Manager Whalen, Engineer of Work Petke, acting GC GM McCarthy, and Walt Ekard stated: "I was at the course yesterday and unfortunately it looks like a war zone. Large holes where bunkers use to be, dirt mounded everything, large volumes of dirt mounded in the maintenance storage area etc. It does not show well at all..... There is no way around it, we are in violation of his (SDCO Oberbauer's) understanding and the written agreement limiting the scope of the work we**

1 **were supposed to do.”** Some RSFA residents complained to the County about the impact of the  
2 extensive unpermitted grading on the community, and took pictures, as shown here:



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20. After residents complained to the San Diego County Land Use and Code Enforcement about the unlawful grading, the County of San Diego conducted an investigation

1 and determined the RSFA was engaged in unlawful grading. County officials visited RSFA  
2 offices in late July 2021 asking about the unpermitted grading, and on August 13, 2021, Assistant  
3 Engineer Alphonso Colmenero from the San Diego Office of Code Compliance issued a Stop  
4 Work Order against the RSFA as follows:



5  
6 County of San Diego, Planning & Development Services

## 7 **ORDER TO STOP WORK**

8 CODE COMPLIANCE DIVISION

9  
10 The work you are performing requires a grading/ building permit. You are ordered  
11 to immediately stop work until you are authorized in writing by a County Official  
12 or you have obtained a permit for the work. It is unlawful and a misdemeanor  
13 crime for any person to violate a Stop Work Order and continue to work unless a  
14 County Official directs a person to do otherwise. **If you fail to comply with this  
15 order you will be subject to fines, penalties or arrest.**

16 \*\*

17 1) CEASE ALL GRADING AND/OR CLEARING ACTIVITIES ON THIS  
18 PROPERTY UNTIL APPROPRIATE APPROVALS AND PERMITS ARE IN  
19 PLACE.

20 2) SUBMIT PLANS AND OBTAIN A GRADING AND/OR CLEARING  
21 PERMIT.

22 3) INSTALL EROSION CONTROL BMPS IMMEDIATELY WHERE  
23 GRADING HAS TAKEN PLACE, EROSION CONTROL BMPS MUST BE  
24 MAINTAINED AT ALL TIMES.

25 4) PER OUR MEETING ON 8/13, WE ARE HAPPY TO COORDINATE WITH  
26 YOU TO ALLOW CONTINUED WORK NOT REQUIRING A PERMIT.  
27 PLEASE SUBMIT INFORMATION THAT WILL HELP IDENTIFY THE  
28 ACTIVITIES YOU WOULD LIKE TO CONTINUE WITH.

21 21. After the Stop Work Order was issued and served on the RSFA, the RSFA  
22 Decision Makers continued to direct that the unlawful Golf Course renovation grading continue  
23 until completion at an unknown date in October 2021. On September 3, 2021, the County of San  
24 Diego Planning & Development Services Code Compliance Division issued an Administrative  
25 Warning for Grading Violation to the RSFA stating the address of the violation being 5539 Via  
26 de Las Cumbres.  
27

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22. The Administrative Warning stated that “The following violations were verified during a site visit on Thursday, August 12, 2021.” The Administrative Warning also stated “Administrative Citations may be issued to you if you fail to take the required corrective actions to remove violations from your property by the deadlines shown below.” The Administrative Warning identified the following Violations:

VIOLATION (CODE SECTION VIOLATED)	CORRECTIONS REQUIRED	DEADLINE
Grading Without Permits (SDCCRO Section 87.201)	Meet all deadlines on the attached Compliance Schedule to Obtain a PDS Grading Permit	Refer to the attached Compliance Schedule .
Erosion Control (SDCCRO Section 67.804)	Provide and install adequate Erosion Control BMPs. Erosion Control BMPs must be maintained at all times	Immediately

23. The Administrative Warning also stated, under the heading **FAILURE TO COMPLY:**

Should you fail to complete the corrections required by the deadline(s) provided, one or more of the following compliance actions may be taken:

1. Issuance of Administrative Citations up to a total amount of \$10,000.
2. Issuance of Civil Penalties up to \$1,000 per day; for a total of \$50,000 per violation, per year.
3. Enacting Public Nuisance Abatement proceedings with violations being remedied by the County at your expense.
4. Referral to County Counsel for filing of Civil Enforcement Action in Superior Court.
5. Referral to District Attorney's Office for Criminal Prosecution.

Should you have any questions or concerns, please feel free to contact the assigned Code Compliance Officer whose name and direct telephone number are shown at the bottom of this Warning.

Thank you in advance for taking an active role in correcting the violation(s) on your property and for being part of the solution as the Department strives to enhance safe and livable communities.

NOTICE: The Building Official may suspend or refuse to issue any building permits until all violations are corrected per Section 91.1.114.5 of the County Code. If you fail to respond to this notice and make the required corrections by the deadline(s) provided, the Department may take additional compliance action which may include citations and administrative fines pursuant to Sections 18.103 and 18.104 of the County Code of Administrative Ordinances. (Revised 5/18/2016)

1           24.     On September 2, 2021, RSFA Manager Christy Whalen presented to the RSFA  
2 Board for approval, without disclosing unapproved prior payments to Ekard Smith of \$72,000, a  
3 proposed agreement dated August 26, 2021, retaining the Ekard Smith firm to assist the RSFA in  
4 connection with the Remodel, which provided in pertinent part:

5           The Rancho Santa Fe Association has retained the services of Ekard Smith and  
6 Associates (the Partnership) to coordinate communication with the County of San  
7 Diego and provide advice to the Association, regarding construction activity at  
8 their Golf Course facilities. Additionally, the Partnership will work with the  
9 County to obtain all permits and authorizations necessary to complete the Golf  
10 Course renovation project. The partnership is to use their best efforts to protect and  
11 maintain the Association's positive relationship and standing with the County of  
12 San Diego. The Partnership will take direction from Christy Whalen and will not  
13 make any representations to the County without first consulting with her. The  
14 Partnership's primary contact will be Christy Whalen, the Association's Manager.  
15 It is the Partnership's responsibility to report all pertinent information, issues,  
16 developments and findings to the Manager or her designated representative. The  
17 rate will be \$21,000 for September 2021 with an itemized invoice for work done  
18 on behalf of the construction project and on behalf of the Association and its  
19 relationship with the County. A summary of work completed will be included  
20 with the invoice. Moving forward, future services and rates will be estimated on a  
21 month-to-month basis. The Association may terminate the relationship with the  
22 Partnership at any time and for any reason.

23           25.     In and around September 24, 2021, Plaintiff learned a Stop Work Order had been  
24 issued in connection with the Golf Course Renovation project. Plaintiff attempted to obtain the  
25 material facts regarding the Stop Work Order, but President Bill Weber, Director Comstock and  
26 Manager Whalen declined to provide the material information including (1) how and why did the  
27 RSFA officials fail to obtain the required grading permit; (2) who at the RSFA made the decision  
28 to go forward with the illegal grading; (3) who on the RSFA Board and Staff knew about the  
pertinent facts and when and how did they learn of them; (4) why were some members of the  
RSFA Board not informed of the illegal grading's pertinent facts. Plaintiff was able to obtain a  
writing dated April 9, 2021, that Plaintiff read to state a grading permit was, in fact, required. It  
was at this time that Plaintiff requested information about the illegal grading from RSFA Board  
and management; in response, Weber, Sapp and Whalen declined to provide the information  
Plaintiff sought regarding the Stop Work Order, and no information on the matter was given the  
Board until January 2022.

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1           26.     On September 27, 2021, San Diego County Chief Administrative Office Staff  
2 Officer Land Use and Environment Group notified Pete Smith: “The Stop Work Order was issued  
3 with the intent that all construction work would cease immediately. The earthwork observed  
4 during our August site visit was found to be over the 200 cubic yard threshold, meaning all  
5 additional work requires a grading permit to complete. Specifically, the stop work means no  
6 more bunker work or similar earthwork until grading plans are approved” as shown here:

7           **From:**            [Pete Smith](#)  
8           **To:**                [McGee, Conor](#)  
9           **Cc:**                [Panas, Brent](#)  
10          **Subject:**        [External] Re: RSF Golf Club code compliance follow up  
11          **Date:**            Monday, September 27, 2021 6:53:33 PM

12           Conor: I fully understand. I am meeting with decision makers tomorrow for the Association  
13           and I will get back with you in the afternoon. Thank you for your help. Pete



14           On Sep 27, 2021, at 9:17 AM, McGee, Conor <[Conor.McGee@sdcounty.ca.gov](mailto:Conor.McGee@sdcounty.ca.gov)>  
15           wrote:

16           Morning Pete – Thanks again for your time on Friday. As discussed, couple things to  
17           clarify as below.

18           The Stop Work Order was issued with the intent that all construction work would cease  
19           immediately. The earthwork observed during our August site visit was found to be over  
20           the 200 cubic yard threshold, meaning all additional work requires a grading permit to  
21           continue. Specifically the stop work means no more bunker work or similar earthwork  
22           until grading plans are approved. Any additional earthwork work conducted in  
23           violation of the stop work order could result in escalated enforcement action and is  
24           likely to further complicate and delay the process to receive a grading permit and get  
25           the course back open. We look forward to documenting the work that has occurred  
26           following confirmation that the stormwater BMPs are in place.

27           Also as we discussed, Code Compliance would like to meet and review the Club’s plans  
28           to reopen the course in late October. We would request a summary of what the  
29           Association plans moving – including the work necessary to reopen and timelines  
30           moving forward to facilitate the discussion. We are hopeful we can collectively find a  
31           path forward that works for all parties and appreciate your outreach to date.

32           Thank you,

33           <image001.png>

**Conor McGee**

Manager, Safe Reopening Compliance Team

Planning Manager, Code Compliance Division

Planning & Development Services

County of San Diego

5510 Overland Avenue | Suite 310 | San Diego | CA | 92123-1666

☎ 619-695-8017 | ✉ [conor.mcgee@sdcounty.ca.gov](mailto:conor.mcgee@sdcounty.ca.gov)

Code Compliance Home Page: <http://www.sandiegocounty.gov/>

34           27.     On September 28, 2021, RSFA Assistant Manager Arnold Keene emailed “in  
35 response to the most recent comments from the County, work on the two remaining bunkers that  
36 have not been completed should stop immediately,” as shown here:

1 From: **Arnold Keene** Arnold@rsfassociation.org  
2 Subject: RE: GC Progress Update  
3 Date: September 28, 2021 at 8:49 AM  
4 To: Tom Huesgen thuesgen@rsfgc.com, Pete Smith peterbale5@icloud.com  
5 Cc: Christy Whalen christy@rsfassociation.org, Shannon McCarthy SMcCarthy@rsfgc.com, Bill Weber bweber@rsfaboard.com



6 Ali,

7 At this point, and after further discussions this morning, in response to the most recent  
8 comments from the County, work on the two remaining bunkers that have not been completed  
9 should stop immediately. This action will demonstrate to the County that we have positively  
10 responded to the most recent comments from County Code Compliance Officer, Connor McGhee  
11 to Pete, that we are dedicated to working with the County toward a positive outcome of the  
12 issues we are facing.

13 With this response by the Association, in addition to the current installation of BMP's, our hope is  
14 that we will gain a partial agreement with the County to allow completion of the bunkers and  
15 sodding very soon.

16 28. Despite the September 28, 2021, Arnold Keene email indicating grading was to be  
17 stopped, agents of the RSFA continued with the illegal Remodel grading until completion. In  
18 response, the Ekard Smith firm resigned from providing additional services to the RSFA.

19 29. The RSFA officials engaged in the deception of representing to the County  
20 grading needing permits would be postponed to later phases of the Remodel. In an April 2021  
21 certification that omitted material facts needed to make those facts stated not misleading, RSFA  
22 officials assured San Diego County Officials that no unpermitted grading would be done. The  
23 Certification stated that no grading would be done in connection with the irrigation work, but left  
24 out the material fact that Remodel grading work was to be done in addition to the irrigation work.  
25 In so engaging in the illegal grading and willful disobedience of the Stop Work Order and related  
26 deceptions, RSFA officials engaged in knowing violations of law.

27 30. These RSFA officials have caused over ten County of San Diego staff, including  
28 Code Enforcement officers, Chief Administrative Office Staff, Planning officials and staff of at  
least one County Supervisor to correct the impacts of the illegal grading. This illegal conduct has  
materially injured the RSFA's credulity and reputation with County officials. RSFA officials  
were warned their conduct could result in legal action against the RSFA for administrative, civil  
and even criminal charges.

31. Plaintiff engaged in a proper course of conduct to uncover the relevant RSFA  
documents needed to shed light on exactly who and what was responsible for the unlawful

1 grading that resulted in the Stop Work Order, the Administrative Warning and related issues.  
2 Most of Plaintiff Strong's information requests as a member of the RSF Association Board were  
3 never responded to from September 2021 until when Plaintiff Strong's Board term ended, which  
4 is a violation of the law that provides for Board oversight.

5 32. The Decision Makers retaliated against Plaintiff by bringing trumped-up charges  
6 against him that lacked any proper basis, were unsupported by law or fact, and were done in  
7 retaliation against Plaintiff with the goal of silencing him by intimidation and retribution, as  
8 shown in this complaint.

9 33. Key players involved in the unlawful grading included RSFA Manager Christy  
10 Whalen, RSFA Treasurer or President Bill Weber,<sup>1</sup> RSFA Director or President Michael (Mike)  
11 Gallagher, RSFA Director or Treasurer Richard Sapp, Director Greg Gruzdownich and Director  
12 Dan Comstock.

13 34. **While serving as RSFA President, both Gallagher and Weber also served as**  
14 **the Board Liaison to the Golf Club with the primary responsibility of keeping the Board**  
15 **informed about GC matters related to the Board's GC Oversight responsibilities. The GC**  
16 **is not a separate legal entity, but requires RSFA Board approval for all operations. The GC**  
17 **reports to RSFA Manager Whalen, who is the RSFA's Chief Administrative Officer.**  
18 **Manager Whalen attended all monthly GC Board of Governors meetings in 2021, and is**  
19 **allowed to attend their Executive Sessions.**

20 35. In October 2021, the Decision Makers retaliated against Plaintiff by removing him  
21 from three Board committees, and voting against two proposed Board Resolutions Plaintiff had  
22 led for the prior two years and that had substantial Board support to accomplish top-ranked Board  
23 Goals.

24 36. In and around February 1, 2022, the Decision Makers wrongfully and unlawfully  
25 retaliated against Plaintiff by charging him with twelve bogus violations of the Volunteer Code of  
26 Conduct for emails Plaintiff sent to one or more Board members about the lack of disclosure and

27 \_\_\_\_\_  
28 <sup>1</sup> Decision Maker Weber was Treasurer from July 1, 2019, to June 30, 2021, and President from June 2021 to June 2022.

1 requesting the Board place the matter on the agenda to look into the illegal grading. Ten of the  
 2 charges were about a December 16, 2021 Op-Ed by Plaintiff objecting to the Board President's  
 3 failure to follow RSFA CC&R's and other established procedures; others dealt with Plaintiff's  
 4 requests for Board Agenda items:

8.	This seems like an unreasonable delay since September by the Board Pres who may have a conflict of interest in this entire matter, along with two other current Directors, last year's President, the GC Board of Governors. and the GC Construction Manager.	<b>Violates Standards of Conduct, #6, #7, #8 – False allegation about Volunteer Leaders, staff, and a vendor:</b> This email alleges unsubstantiated charges of conflict of interest among Volunteers and a Vendor. What, specifically, is the conflict of interest?
9	I posed the same question to Bill Budd a month ago and he never said anything other than "it could be viewed as a violation. Could this position be because either the Mgr or President asked him to take that position, and he wants to keep his job?"	<b>Violates Standards of Conduct, #6, #8 – False allegation about a Volunteer Leader, staff, and Counsel:</b> This email alleges unsubstantiated charges of undue influence involving the Manager, the President, and Counsel. <b>Violates Open Meeting policy:</b> It was sent to 4 other Directors.
10	A number of current and former Directors are in an obvious Conflict of Interest situation that must be resolved asap.	<b>Violates Standards of Conduct, #6 – False allegation about Volunteer Leaders:</b> An unsubstantiated – and defamatory – accusation of conflict of interest
21	If the Board is not informed of significant events such as hiring ex-Mgr Pete Smith, how is reasonable oversight possible? Pete Smith is a likeable guy, but he is extremely controversial, and it should have been obvious that if he is hired to do any work for the RSFA (or the GC), it should be disclosed. ... It was claimed today that hiring Ekard-Smith was all done according to policy and within the GC's authority. Pete was hired to get special treatment for RSF; it is right there in Christy's report (12-18-2020: "to use our firm as he and Walt Ekard are well connected and can help get projects fast tracked through the County and help navigate the waters and put us in touch with the right people." This makes it clear money paid to Pete or his firm is for special treatment for RSF. A newspaper article about RSFA paying almost \$100,000 to obtain special treatment would have been very harmful.	<b>Violates Standards of Conduct, #7 – False allegations about a vendor:</b> Defamatory and false allegations that the hiring of Ekard-Smith was a significant event, presumably because they were being asked to do something either illegal or unethical in negotiating the permitting process through the County. The statement that Smith is extremely controversial is not substantiated. The statement that money paid to Smith was for "special treatment" falsely implies illegal activity that is both inaccurate and defamatory regarding a vendor.



1	22	It is right there in Christy's report (12-18-2020: <i>"to use our firm....as he and Walt Ekard are well connected and can help get projects fast tracked through the County and help navigate the waters and put us in touch with the right people."</i> Why doesn't this have the appearance of a \$100,000 bribe? The payments made were excessive, of questionable value, and we can never know where the money went.	<b>Violates Standards of Conduct, #6, #7: This is a defamatory and unsubstantiated allegation of improper conduct by an employee (Barrier) and a vendor (Ekard-Smith).</b> What, specifically, was the bribe – or other illegal activity?
2	23	Even now as I write this, I am forced to "read between the lines" because myself and other Directors have not received required information known by other participants on the Board. It appears this was done deliberately to prevent those Directors in the dark from asking reasonable questions in connection with our duties as a Director. This is very serious intentional obstruction of info and process by two recent Presidents,	<b>Violates Standards of Conduct, #6, #7 - Defamatory and unsubstantiated allegations that the hiring of Ekard-Smith was unusually risky and was hidden from the Board by the Manager and former (and current) Board members.</b> What were the risks?
3	24	In the Jan-June 2021 period Bill Weber, the Mgr., plus my friends Steve Dunn, and Mike G (Pres/GC Liaison) had an obligation to disclose material facts to the Board. Hiring Ekard-Smith is huge news with considerable risks.	<b>Violates Standards of Conduct, #6 - False and defamatory allegation that Director Comstock knew of "undisclosed major facts" and failed to report them to the Board.</b> In fact, Comstock was not on either Board at the start of the golf course renovation and was not in a position to know of any alleged (and unproven) "major facts." The "step up or step down" comment is particularly egregious.
4	25	Since July 1, 2021 Pres/GC Liaison Weber, Treasurer Sapp, and Director Comstock all had a duty to inform the rest of the Board about undisclosed major facts known to them, but important info was withheld from the rest of the Board. Yes Dan, you too once you became a Director, and you are not on the GC Board of Governors now. With respect if you read this, please either "step up" or step down.	<b>Violates Standards of Conduct, #6 - False and defamatory allegation that Director Comstock knew of "undisclosed major facts" and failed to report them to the Board.</b> In fact, Comstock was not on either Board at the start of the golf course renovation and was not in a position to know of any alleged (and unproven) "major facts." The "step up or step down" comment is particularly egregious.
5	26	The Board is now in a worse situation as a result of decisions made in the past year, and the failure to provide proper disclosure by the Mgr and the above named five Directors/Officers.	<b>Violates Standards of Conduct, #6, #7, #8 – False, disparaging, and defamatory allegations against the Manager and Volunteer Leaders.</b> In what way is the Board now in a worse situation – than what?
6	27	Who on the RSFA Board at the time knew that grading had commenced without a Grading Permit which caused the Stop Work Notice.	<b>Violates Standards of Conduct, #6 - – False and defamatory allegation that the work going on in April required a grading</b>

		permit and that some unnamed directors knew of it. No grading permit was required.
28	The issue is the amount of disclosure given to the Board about events a year ago. These are events that half the Board knew about and half the Board was kept in the dark about. Keeping some Directors completely without major oversight and disclosure items prevents Directors deliberately kept in the dark by Board officers from performing their duties for one year.	<b>Violates Standards of Conduct, #6, #7, #8 -- False allegation about Volunteer Leaders:</b> This is a defamatory allegation that there were significant issues at the outset of the golf course renovation that required full disclosure to the Board. In fact, all budgets had been approved and the Golf Club Manager had the authority to engage consultants within the budgets that had been approved.
29	5) The information requested would seem to be necessary to research and write the Mgr's staff report. See # 3 above; such as: Who hired Ekard-Smith, when, and what written agreements would seem to be one of the most important documents. 6) As Treasurer until July 1 and as President since then, “[The President] abrogated his Fiduciary responsibilities to inform the entire Board of material policy and disclosure lapses. <b>7. The delay in receiving info and addressing the matter in the past year is entirely the responsibility of Treas/Pres. Bill Weber, assisted by several others who had a similar duty to bring it to the entire Board</b>	<b>Violates Standards of Conduct, #6, #7:</b> <b>Item</b> 5) disparages the Manager by implying that she must be hiding something, else how could she have written the Staff Report. Item 6) defames the President and former Treasurer by alleging that he failed to disclose policy and disclosure lapses when, in fact, there were none. Item 7) similarly defames the “Treas/Pres.... [and] several others” by alleging that there were issues that were required to be brought to the attention of the Board. The hiring of Ekard-Smith was entirely within the authority of Golf Club management.

37. The code of conduct violations the Decision Makers brought against Plaintiff were designed to silence Plaintiff and to cover up the Decision Makers’ illegal conduct.

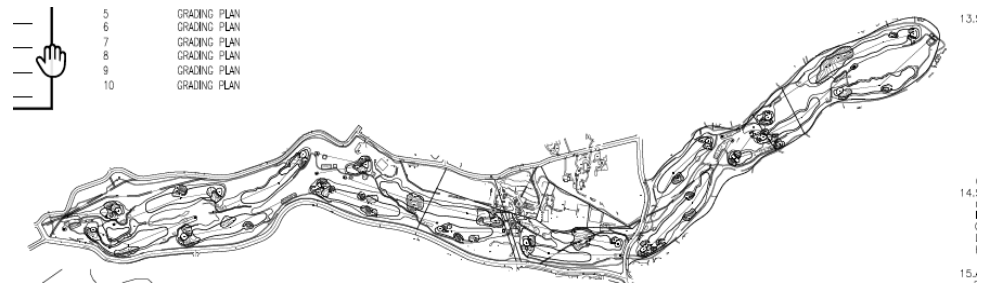
38. Removal of Director Strong as VP in Board Executive Session on March 2, 2022 ignored several written demands by Strong that the hearing be conducted in open session as provided by the Davis Stirling Act, Civil Code section 4935(b).

39. It was not until in and around late September 2021 that the RSFA officials, through their engineer, submitted to the County Planning officials a “Rough Grading Plan” that was needed to apply for a Grading Permit, with the designation “Phase 1 & Phase 2 Violation” as shown here.” Plaintiff’s research to date has been unable to verify issuance of a Grading Permit, required inspections, or “sign-off” at completion of the work performed.

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**ROUGH GRADING PLAN**  
**FOR**  
**RANCHO SANTA FE GOLF CLUB**  
**PHASE 1 & PHASE 2 VIOLATION**



40. Plaintiff responded by focusing on the long-term welfare of the RSFA and, with legal counsel, engaged in an informal mediation process in which the Decision Makers agreed to direct the RSFA auditor to conduct an Illegal Acts investigation under AU 317 in order to (1) document the facts and circumstances leading to the Administrative Warning and Stop Work Order; and (2) identify which RSFA Decision Makers had engaged in unlawful conduct. (“Settlement Agreement”).

**FAILURE TO PERFORM AGREED-TO ILLEGAL ACTS INVESTIGATION**

41. Under the Settlement Agreement with Plaintiff, the RSFA had a contractual duty to direct the RSFA auditor to perform an Agreed Upon Illegal Acts investigation under AU 317 into the facts and circumstances of the Stop Work Order. The RSFA breached its contractual duty to direct the RSFA auditor to conduct Agreed Upon Illegal Acts Investigation.

42. The as of June 30, 2021, “financial statements were issued on and subsequent events were evaluated through October 7, 2021.” The auditor of the RSFA’s 2021 financial statement omitted any mention of the August 13, 2021, Stop Work Order. In addition to not disclosing the Stop Work Order, the audit report did not report any analysis was made under AU 317.16, which provides that the implications of an illegal act should be considered in relation to other aspects of the investigation, particularly the reliability of representations of management.

43. On August 30, 2022, the RSFA legal counsel admitted that instead of conducting the Agreed-Upon Illegal Acts investigation, the RSFA auditor Cheryl Lasiewicz, CPA wrote this email to the RSFA Board:

1 *AU 317 refers to the auditor’s consideration of the possibility of Illegal Acts. The*  
2 *procedures have already been completed during our audit including inquiry of*  
3 *management and the board Treasurer, review of minutes and attorney*  
4 *confirmation responses, and obtaining written representations from management.*  
5 *Again, there is **no investigation of Illegal Acts or Fraud** included in this standard*  
6 *and all the above procedures are completed during the normal course of an audit.*

7 44. The fiscal year 2021 RSFA financial statement has an “as of” date of June 30,  
8 2021, but it was issued with “subsequent events” through October 7, 2021, over a month after the  
9 RSFA was given notice of the August 13, 2021, Stop Work Order. Note 15 of the RSFA  
10 Financial Statement reports events as of September 2, 2021, and states in pertinent part:

11 In April 2019, the Board approved the commencement of a Master Plan project to  
12 enhance and update the golf course \*\*construction began in April 2021. As of  
13 September 2, 2021 the Board had approved items relating to this project (including  
14 change orders and contingency) totaling approximately \$7,878,000.

15 45. The RSFA fiscal year financial statement auditor report does not mention the Stop  
16 Work Order, nor does it state that the auditor performed the Agreed Upon Illegal Acts  
17 Investigation the RSFA agreed to perform in the Settlement Agreement between Plaintiff and the  
18 RSFA.

19 46. Legal counsel for the RSFA represented that in “addition to the above response  
20 from the Association’s CPA, I have received assurance from the **Association’s CFO** that the  
21 Firm was made aware of the dispute and settlement agreement, including being provided with the  
22 timeline of events relating to the golf course construction project, prior to the beginning of their  
23 audit work.” The RSFA legal counsel claimed: “As such, it appears that AU 317 was already  
24 complied with in the normal course of the Association’s audit, and the Auditor was fully aware of  
25 the issues related to the golf project and stop work order. In other words, Mr. Strong already got  
26 what he wanted.” These statements from the RSFA auditor and legal counsel do not constitute  
27 performance of the RSFA contractual duty to direct the auditor to perform the Agreed Upon  
28 Illegal Acts Investigation. The statements are false and misleading.

47. The RSFA Minutes of the Board of Directors June 15, 2021 meeting confirmed  
that the illegal grading had started:

///



**Rancho Santa Fe Association  
Board of Directors  
Minutes of Regular Meeting  
June 15, 2021**

**5. Golf Course Project Update**

Director of Agronomy Huesgen shared a presentation of golf course project improvements. The project is ramping up and **tilling** of dead grass area and tie-ins for the irrigation sources will allow for the next phase of **reshaping the playing areas** and re-grassing to be completed.

48. Current RSFA Board Member Phil Trubey, publisher of the online newspaper The RSF Post, documented the illegal grading in a July 2, 2021, article entitled “Association Violating Own Rules in Golf Course Renovation:”



Association Violating Own Rules in Golf Course Renovation  
By Phil Trubey  
July 2, 2021



*A dust cloud from the golf course renovation project. Water truck needed!*

*Update 7/7/21: See the Association's response at the end. Many members have complained to the Association that the golf course remodel project is violating basic construction noise and nuisances' practices. Trucks are working, dust & loud*

1 beeping, at 7:30 pm despite my telling them construction ends at 7 pm. Driver said  
2 he has to unload the sod & no one told him construction hours. He recognized the  
3 huge dust storm coming up & said this project needs water trucks....is mad that his  
4 own truck is filthy. We had friends come for dinner tonight at 7 since work was  
5 supposed to stop then...now eating inside (because I was out there trying to get  
6 them to leave for a half hour)! Even 7 pm seems kind of late for a construction  
7 project! I have a video a member took after 9 pm on June 30th of equipment still at  
8 work using equipment headlights. I'd post it, but it is just pitch black with a  
9 headlight dancing around – and diesel machine noise, of course.



14 Here's a picture of a truck working at 6 am on the golf course.

15 Apparently some work went on during Memorial day and some Sundays as well. I  
16 am beginning to understand why people who live around the golf course are  
17 already sick and tired of this project. Truck working at 6 am on golf course.

18 It is routine for large construction projects like this to have water trucks available  
19 to tamp down dust clouds. But that hasn't been the experience of many nearby  
20 residents.

21 I noticed this pile of dead and dying sod near the 7th green drying out in the hot  
22 sun. I took this picture June 30th, but as of today July 2nd, it is still there.



1 Raw wood chips strewn on the ground are a health hazard to humans, but  
2 especially to horses that are ridden on the *horse trails*. Wood chips that freshly  
3 come out of a wood chipper contain shards that are very sharp. Horses can and  
4 have gone lame walking, trotting and cantering on trails that have these sharp  
5 shards on them. The Association normally processes wood chips by partially  
6 decomposing them before using them on trails. It seems that the golf course  
7 project is not so careful and people have noticed raw wood chips on the trails.

8 Various people have complained directly to the Association about these violations,  
9 but they rarely get feedback that the problem has been properly addressed. Some  
10 more openness from the Association, some mea culpas, and some  
11 acknowledgement of problems with a promise to do better would be appreciated.  
12 Maybe even a weekly zoom call with project supervisor(s) where people affected  
13 by the project could express their concerns?

14 *Update July 3: A truck came by this morning and took all those huge rolls of sod  
15 away. The truck driver said it was going to trash. Huge rolls of sod being driven  
16 away to be thrown out.*



49. On July 7, 2021, the RSFA responded to the July 2, 2021, “Association Violating  
Own Rules in Golf Course Renovation,” with admissions showing the RSFA knew the  
unpermitted grading was underway:

*Update July 7: The Association responded to our article:*

We requested that a water truck be brought in to mitigate the dust and dirt from the  
project, and it arrived last week. Regarding late work, we’ve been aware of a few  
isolated instances where work was being done after 7:00 pm, and we have alerted  
the Golf Club so they can address it with their vendors. Companies working on the  
project were previously notified about working hours, but they are being  
reminded/reprimanded as needed. With a project this size and with the number of  
vendors and workers involved, it’s a challenging and ongoing effort. However,  
given the scope, it’s being managed fairly well. We will no doubt continue to see  
further hiccups and will address them quickly as possible.

50. During the week of July 19, 2021, the RSFA “had a unannounced County Grading  
Inspector show up about a week ago at the Association offices asking about the authorization for  
the grading at the Golf Club” as doubted in pertinent part in the following email:

1 From: **Pete Smith** [peterbale5@icloud.com](mailto:peterbale5@icloud.com)  
2 Subject: Grading  
3 Date: July 26, 2021 at 8:55 PM  
4 To: Blair Nicholas [blair.nicholas6@gmail.com](mailto:blair.nicholas6@gmail.com), Shanon McCarthy  
5 [SMcCarthy@rsfgc.com](mailto:SMcCarthy@rsfgc.com), Michael Jack [MJack@rsfgc.com](mailto:MJack@rsfgc.com),  
6 Tom Huesgen [thuesgen@rsfgc.com](mailto:thuesgen@rsfgc.com)

7 As you know, we had a unannounced County Grading Inspector show up about a  
8 week ago at the Association offices asking about the authorization for the grading  
9 at the Golf Club. The Inspector said he was responding to "several" complaints  
10 concerning improper grading and dust Issues. In addition to the Inspector I heard  
11 some feedback from another County employee about the number of trees being  
12 removed. I think this was in reference to a story that appeared in the UT. It is clear  
13 that the project is being discussed at the County.

14 51. On July 30, 2021, consultant Pete Smith met at the RSFA offices with Manager  
15 Whalen, President Weber, Treasurer Sapp, GC President Nicholas and other senior members of  
16 the GC construction team for several hours to discuss next steps. Plaintiff/then-VP Strong was  
17 not invited to this or any other construction meetings, even though the Board knew of his  
18 considerable construction experience, and he was not informed of the lack of permits and  
19 presence of construction irregularities. GC construction and grading continued uninterrupted for  
20 over the next three more months until completion at an unknown date in the Fall of 2021, about a  
21 month after the Board was informed of the Stop Work Order.

22 52. On August 20, 2021, RSFA representatives confer about needing to "keep going  
23 on the bunkers and the minor fairway improve[m]ents] the Golf Club told the membership \*\* to  
24 get membership approval." Also discussed was the need "to keep an eye over our shoulder that a  
25 County Inspector doesn't just show up. We need to stop worrying and focus getting [o]n getting  
26 the work done" as shown in this email (typographical errors in the original email):

27 8/20/21  
28 Late night Plan idea.

The basic problems we are facing:

We need to keep going on bunkers and the minor fairway improve[m]ent]s that the  
Golf Club told the membership [ab]out to get membership approval.

The County has filed a Stop Order that is telling us to Stop Work.

**We have to keep an eye over our shoulder** that a County Inspector doesn't just  
show up. We need to stop worrying and focus [on] getting the work done. \*\*



1 The reality is that we can't put together any kind of plan. That they want in the  
2 time frame needed to keep going.

3 **We are facing significant community issues when the word of the Stop Order  
4 gets out .**

5 Long term damage to the Association's reputation at the County.

6 Alphonso said in his

7 I will Taylor and get his support - maybe have him in the meeting with Mike  
8 Johnson.

9 No more weekly update from Tom - time consuming. **We simply cant stop** is the  
10 reality and we will have to take the penalties.

11 If Micahela won't go for it we go over his head. I think **we have enough clout to  
12 pull it off**

13 This clears the way for Phase 3

14 Jonathan does have to devote time now to trying to come up with the plans they  
15 are asking for and can focus on Phase 3.

16 If it doesn't work that all we have done is kick the ball further down the road  
17 I can reach out to Michael Johnson if Arnold doesn't feel comfortable - maybe it is  
18 best. They are going to want to keep Walt and I happy by showing that they are  
19 responsive and willing to work with us.

20 You asked if we can go over their heads - now we can this is a fair proposal.

21 We get Jim Desmond's on board to help us.

22 Taylor told me in our meeting that the County big concern is being able to answer  
23 the concerns of the community complaints. This was we can all speak from the  
24 same position - we can put our proposal together in writing - that is the plan we  
25 will submit.

26 **If the community does complain to the Association Board we can honestly say  
27 that we have reached an agreement with the County to address all of their  
28 concerns. The County can confirm it**

The Plan

Arnold and I meet with Mike and Alphonse and tell them we have a Plan that  
meets both of our needs.

1. Propose that we finish the work that is currently underway. It is not in  
anyone's best interest to stop. From a paractable standpoint **we just can't stop.**
2. We agree to submit a plan that addresses all of the identified grading  
violations - #4, the pit and #18. We remove the Pit. We will add to that Plan all of  
the bunkers that are new, that combined with other bunkers or were removed. They  
are gong to ask anyway for this. This way the plan will reflect exactly what was  
done since we don't have a formal plan now and won't know what that is until it is  
finished.

1 3. The county knows what the status is out there and the violations and rather  
2 than play a game of us submitting the correction grading plan then wait for them to  
3 come back with any other areas they want addressed we have Alphonso just tell us  
4 upfront - maybe we can negotiate some of them away.

5 Selling points - Taylor is leaving and the Land Use Group is going to way  
6 overworked and this will take a ton of work off their plates - it kicks it down the  
7 road for them as well.

8 Alphonso is already short handed and if we can take this off his plate immediately  
9 he should support it - it kicks it down the road for them as well.

10 We are being proactive in admitting our mistakes and giving them a plan to correct  
11 them. This address Taylor issue that the Golf Club won't just admit they are in  
12 violation.

13 We will agree to remove the bury pit as park of the plan. We are going to have to  
14 do it anyway but this gives the County a tangible plan to tell people.

15 This avoids the County issue of us having the ability to proceed with items that we  
16 don't believe require a grading permit and having them fight over it. Brent should  
17 be happy.

18 Maybe we can get the County to remove the Stop Work Order.

19 We will have been proactive in addressing the issue and this takes the cloud of the  
20 violations off the table to get Phase 3 approved. We are working in good faith and  
21 have the county do the same to get Phase 3 approve[d].

22 Taylor said the violations are creating a cloud over everything we are doing at the  
23 County in regards to Phase 3 this clears the cloud away. Taylor told me they took  
24 so man pictures to be able to respond to community complaints - this way we have  
25 a Plan that works for everyone. The Association an tell people that the issue has  
26 been resolved (should be rea by the next board meeting) and the County will back  
27 us up.\*\*

## 28 **FIRST CAUSE OF ACTION**

### **Breach of Contract**

53. Plaintiff incorporates by reference each of the preceding paragraphs as though set  
forth fully herein.

54. The Settlement Agreement is an enforceable agreement. Plaintiff has fully  
performed under the Settlement Agreement.

55. Defendant RSFA has breached the Settlement Agreement because the RSFA has  
failed to direct its auditor, Porter & Lasiewicz CPAs, to conduct an AU 317 Illegal Acts  
Investigation regarding the facts and circumstances under which the Stop Work Order issued by  
San Diego County Code Compliance Officer Alphonso Colmenero was made on August 13,

1 2021, and the manner in which the RSFA Board resolved the alleged violations.

2 56. Plaintiff seeks a remedy requiring the RSFA to direct its auditor, Porter &  
3 Lasiewicz CPAs, to conduct an AU 317 Illegal Acts Investigation regarding the facts and  
4 circumstances under which the Stop Work Order issued by San Diego County Code Compliance  
5 County Officer Alphonso Colmenero was made on August 13, 2021, and the manner in which the  
6 RSFA Board resolved the alleged violations.

7 **PRAYER FOR RELIEF**

8 WHEREFORE, Plaintiff prays judgment as follows:

9 1. For an order directing the RSFA Board to direct its auditor, Porter & Lasiewicz  
10 CPAs, to conduct an AU 317 Illegal Acts Investigation regarding the facts and circumstances  
11 under which the Stop Work Order issued by San Diego County Code Compliance Officer  
12 Alphonso Colmenero was made on August 13, 2021, and the way the RSFA Board resolved the  
13 alleged violations.

14 2. For all other relief the Court determines is warranted.

15 AGUIRRE & SEVERSON, LLP

16  
17 Dated: January 12, 2023

/s/Michael J. Aguirre  
18 Michael J. Aguirre, Esq.,  
19 Attorneys for Plaintiff

# EXHIBIT 1

300 DPI SCAN

# **Rancho Santa Fe Association**



## **Audit Report Consolidated Financial Statements and Supplemental Information**

**June 30, 2021**



**Porter & Lasiewicz CPAs**  
980 Enchanted Way, Suite 104  
Simi Valley, California 93065  
(805) 433-6022 [www.pl.cpa](http://www.pl.cpa)

## **Board of Directors and Members**

Rancho Santa Fe Association  
Rancho Santa Fe, CA

## **Independent Auditors' Report**

### **Report on the Financial Statements**

We have audited the accompanying consolidated financial statements of Rancho Santa Fe Association, a non-profit corporation, which comprise the balance sheet as of June 30, 2021, and the related statements of revenues and expenses and changes in fund balances, and cash flows for the year then ended, and the related notes to financial statements.

### **Management's Responsibility for the Financial Statements**

Management is responsible for the preparation and fair presentation of these financial statements in accordance with accounting principles generally accepted in the United States of America; this includes the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

### **Auditors' Responsibility**

Our responsibility is to express an Audit opinion on these financial statements based on our audit. We conducted our audit in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. Accordingly, we express no such opinion. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the financial statements.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

### **Opinion**

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of Rancho Santa Fe Association as of June 30, 2021, and the results of its operations and its cash flows for the year then ended in conformity with accounting principles generally accepted in the United States of America.

## **Report on Summarized Comparative Information**

We have previously audited Rancho Santa Fe Association's June 30, 2020 financial statements, and we expressed an unmodified audit opinion on those audited financial statements in our report dated September 30, 2020. The June 30, 2021 financial statements include certain prior-year summarized comparative information in total but not by fund. Such information does not include sufficient detail to constitute a presentation in conformity with generally accepted accounting principles. Accordingly, such information should be read in conjunction with the Association's financial statements for the year ended June 30, 2020, from which the summarized information was derived.

## **Disclaimer of Opinion on Required Supplementary Information**

Accounting principles generally accepted in the United States of America require that the supplementary information regarding replacement fund balances on page 21 be presented to supplement the basic financial statements. Such information, although not a part of the basic financial statements, is required by the Financial Accounting Standards Board, who considers it to be an essential part of financial reporting for placing the basic financial statements in an appropriate operational, economic, or historical context. We have applied certain limited procedures to the required supplementary information in accordance with auditing standards generally accepted in the United States of America, which consisted of inquiries of management about the methods of preparing the information and comparing the information for consistency with management's responses to our inquiries, the basic financial statements, and other knowledge we obtained during our audit of the basic financial statements. We do not express an opinion or provide any assurance on the information because the limited procedures do not provide us with sufficient evidence to express an opinion or provide any assurance.

## **Report on Supplementary Information**

Our audit was conducted for the purpose of forming an opinion on the financial statements as a whole. The Supplemental Schedule of Revenues and Expenses and Changes in Fund Balances on page 20 is presented for purposes of additional analysis and is not a required part of the financial statements. Such information is the responsibility of the Association's management and was derived from and relates directly to the underlying accounting and other records used to prepare the financial statements. The information has been subjected to the auditing procedures applied in the audit of the financial statements and certain additional procedures, including comparing and reconciling such information directly to the underlying accounting and other records used to prepare the financial statements or to the financial statements themselves, and other additional procedures in accordance with auditing standards generally accepted in the United States of America. In our opinion, the information is fairly stated in all material respects in relation to the financial statements as a whole.

*Porter & Lasiewicz, CPAs*

October 7, 2021

**RANCHO SANTA FE ASSOCIATION**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**  
For the Year ended June 30, 2021  
(With comparative totals for June 30, 2020)

**NOTE 14 – LITIGATION**

The Association is involved periodically in judicial, regulatory or arbitration proceedings concerning matters arising in connection with the conduct of Association services. Based on a consideration of currently available and relevant information, the Association and its management do not believe that the outcome of any matters will have a material adverse effect upon the Association's operations, financial condition or financial statements taken as a whole.

During the year ended June 30, 2019, an unincorporated group of members of the Rancho Santa Fe Association filed a lawsuit challenging the Association's long-standing assessment methodology. In August 2019, this lawsuit was ordered dismissed in San Diego Superior Court. In April 2020, the Association entered into a settlement agreement that provides for dismissal of the plaintiff's appeal, and which will allow the trial court's judgment in favor of the Association to be the final judgment in the matter.

**NOTE 15 – GOLF COURSE MASTERPLAN CONSTRUCTION PROJECT**

In April 2019, the Board approved the commencement of a Master Plan project to enhance and update the golf course and practice areas, including the installation of a new irrigation system. Planning and design for this project began in 2019, and construction began in April 2021. As of September 2, 2021 the Board had approved items relating to this project (including change orders and contingency) totaling approximately \$7,878,000. Approximately \$5,237,000 of this total will be paid to the contractor engaged under an agreement that is being paid as the project progresses. The project will be funded by approximately \$3,277,000 from the Replacement Fund (for irrigation and bunkers), with the remainder coming from the Golf Club's portion of the Operating Fund. Construction in Progress includes amounts related to the project of \$3,443,342 and \$117,308 as of June 30, 2021 and 2020, respectively. The Association has capitalized interest on this project during the construction period. The interest cost incurred that otherwise could have been avoided in the amount of \$14,505 has been included in the Construction in Progress amount in Note 10 as of June 30, 2021.

**NOTE 16 – RSF CONNECT FIBER-OPTIC PROJECT**

In October 2017, the Board voted to approve the RSF Connect Fiber-Optic Project, bringing high-speed internet to Association members. Expenditures related to the project totaled \$16,691,220 and \$16,452,074 as of June 30, 2021 and 2020, respectively.

Portions of member assessments in the amounts of \$1,225,325 and \$1,222,472 were recorded in the Fiber-Optic Fund for the years ended June 30, 2021 and 2020, respectively.

The Association has entered into a licensing agreement with a telecommunications company for the purpose of providing various communication services to the members of the community. The first subscriber began service in July 2019. The agreement contains provisions for, among other things, that the telecommunications company will collect a fee from customers designed to recover the investment made by the Association in the Fiber-Optic network and to establish reserves for network replenishment. This fee is remitted to the Association on a monthly basis. These Recovery Fees totaled \$659,690 and \$170,804 for the years ended June 30, 2021 and 2020, respectively.



**RANCHO SANTA FE ASSOCIATION**  
**SUPPLEMENTAL INFORMATION ON REPLACEMENT FUND BALANCES**  
For the Year Ended June 30, 2021  
(unaudited)

The Board commissioned a study in 2021 to estimate the remaining useful lives and the replacement costs of the components of common property. The Association has assessed the present condition of all common area components, estimated replacement costs relying upon published data, contractor or engineer estimates, previously paid amounts, and estimated remaining lives, relying upon consultants or published data. Funding has been provided using a pooled calculation with provisions for inflation of 2.5%, interest earnings of 0.75%, and no provision for taxes. The Board plans to fully fund reserves in order to meet the Association's obligation for the repair and replacement of all major components with an expected life of 30 years or less, not including those components that the Board determines will not be replaced. The estimated total replacement cost of all components included in the study is \$12,894,109 with an annual funding requirement calculated to be \$731,235. The Replacement Fund is \$5,232,662 and the accumulated replacement requirement is \$5,800,469 as of June 30, 2021. Therefore, the replacement funding is approximately 90.2% funded. The following table is based on the study and presents significant information about the components of common property:

Reserve Component Groups	As of June 30, 2021		
	Estimated Remaining Life (in years)	Estimated Useful Life (in years)	Estimate of Replacement Cost
<b><u>General Services:</u></b>			
Buildings	1-27	6-40	\$ 863,716
Furniture & Equipment	1-18	3-60	1,057,485
Land Improvements	1-13	7-26	512,430
Vehicles	0-14	5-18	1,212,274
<b><u>Golf Club:</u></b>			
Buildings	1-27	8-30	689,209
Golf Course Maintenance Equipment	0-16	5-39	1,514,205
Furniture & Other Equipment	0-12	5-18	688,161
Land Improvements	0-10	4-37	1,799,608
Golf Carts	0-1	3	265,134
<b><u>Restaurant:</u></b>			
Buildings	0-26	8-30	1,063,115
Kitchen Equipment	0-15	8-17	162,741
Furniture & Other Equipment	0-18	4-21	380,886
<b><u>Tennis Club:</u></b>			
Buildings	0-29	5-40	530,297
Courts	1-27	5-40	542,022
Furniture & Equipment	1-14	10-20	49,421
<b><u>Osuna Ranch:</u></b>			
Barns & Corrals	0-27	10-60	945,241
Furniture & Equipment	0-13	3-15	205,185
Grounds	0-16	15-25	310,792
<b><u>RSF Connect</u></b>			
Furniture & Equipment	14	15-60	102,187
<b>TOTAL</b>			<b>\$ 12,894,109</b>
<b>Replacement Fund balance at June 30, 2021</b>			<b>\$ 5,232,662</b>

\* Funding calculated on aggregate cash flow basis only.

# EXHIBIT 2























