

IN THE CIRCUIT COURT OF ST. LOUIS COUNTY
STATE OF MISSOURI

MARK E. GAVAN,)	
)	
Plaintiff,)	Case No.: 25SL-CC02013
)	
v.)	Division No.: 14
)	
AUTUMN LAKES CONDOMINIUM,)	
AUTUMN LAKES ASSOCIATION)	
)	
Defendants.)	

**SECOND AMENDED COMPLAINT FOR DAMAGES, EQUITABLE RELIEF,
AND WHISTLEBLOWER PROTECTION**

COMES NOW, Plaintiff Mark E. Gavan, acting pro se, and for his Amended Petition for Damages, Equitable Relief, and Whistleblower Protection, against Defendants Autumn Lakes Condominium and Autumn Lakes Association (collectively “Defendants”), states as follows: § 448.1-101 et seq., RSMo

I INTRODUCTION

1. Plaintiff is a homeowner in the Autumn Lakes community, a former member of the Defendants Board of Trustees, and a whistleblower who has consistently raised concerns regarding Defendant misconduct, financial irregularities, discrimination, and other illegal activity.
2. This lawsuit arises out of a pattern of systemic mismanagement, retaliation, breach of fiduciary duty, discrimination, deception, misrepresentation, bad faith conduct, by the Defendants, which have caused Plaintiff to suffer damages, emotional distress, and

irreparable harm to his personal and professional reputation and community standing.
§ 355.416, RSMo

II JURISDICTION AND VENUE

3. This Court has jurisdiction over the subject matter of this case pursuant to Article V, Section 14 of the Missouri Constitution and RSMo § 478.070.
4. Venue is proper in St. Louis County under RSMo § 508.010, as the actions giving rise to this Petition occurred in this County.
5. Plaintiff seeks damages in excess of \$25,000, exclusive of interest and costs.
6. Plaintiff Mark E. Gavan is a resident of St. Louis County, Missouri, and a condominium unit owner within Autumn Lakes Subdivision. (ALC Declaration & Bylaws, Art. 1 §1.8) § 448.1-101 et seq., RSMo
7. Defendant Autumn Lakes Condominium is an association of unit owners governed by a Declaration of Condominium and Bylaws. (ALC Declaration & Bylaws, Art. 1 §1.8) § 448.1-101 et seq., RSMo
8. Defendant Autumn Lakes Association is a Missouri nonprofit corporation operating as a master homeowner association (HOA). § 355.096 et seq., RSMo
9. Both Defendants operate within St. Louis County, Missouri.

III PARTIES

10. Defendants are responsible for the maintenance, financial management, governance, and enforcement of rules within the Autumn Lakes community. (Indenture of Trust and Restrictions for Autumn Lakes, Book 7267, Page 953, Art. V §5; Art. VII §7) (ALA Bylaws, Art. XI §1) (ALC Declaration & Bylaws, Art. 13 §13.4) § 448.4-117, RSMo

11. Plaintiff has suffered harm as a result of Defendants' mismanagement, discrimination, retaliation, and breach of legal duties. § 448.3-102(a)(11), RSMo
12. The following counts incorporate these general allegations by reference and are supported by facts detailed in the summary of exhibits and attached documentation.

IV GENERAL ALLEGATIONS

13. Plaintiff incorporates and references certain exhibits throughout this Petition to support factual allegations and legal claims. These include, but are not limited to:
Exhibits A - Improper contracts and poor vendor management; Exhibits B - Insurance Mismanagement; Exhibits C - Lack of Record-Keeping, financial mismanagement, conflicts of interest; Exhibits D - Unapproved Assessments and improper use of Reserve Funds; Exhibits E - Failure to follow and make amendments to Defendant Indentures and Bylaws, unauthorized rules enforcement; Exhibits F/K - Failure to Conduct Regular Inspections and maintain common grounds; Exhibits F - Unauthorized rule changes; Exhibits G - Violating Meeting Rules, indentures noncompliance, meetings misconduct; Exhibits H/L - Privacy Violations and improper communications, lack of training, ignoring maintenance requests and homeowner concerns, lack of transparency; Exhibits I - Improper elections; Exhibits J - Unethical behavior; Exhibits K- Discriminatory practices and selective enforcement of rules; Exhibits M - Failure to Address Safety Issues and no emergency planning; Exhibits N - Neglecting environmental responsibility; Exhibits O1 – Retaliation behavior. These exhibits are incorporated by reference into the relevant counts and support Plaintiff's claims for damages and equitable relief. (Indenture of Trust and

Restrictions for Autumn Lakes, Book 7267, Page 953, Art. V §5; Art. VII §7) (ALA Bylaws, Art. XI §1) (ALC Declaration & Bylaws, Art. 13 §13.4) § 448.4-117, RSMo

14. Plaintiff is a condominium owner within the Autumn Lakes community since August 31, 2022, and a member of both the Autumn Lakes Condominium and Autumn Lakes Association. This Petition seeks to enforce Defendants' contractual obligations arising from the governing documents (including but not limited to the Master Declarations and Condominium Bylaws), statutory duties under RSMo. Chapters 355 and 448, and to remedy Defendants' retaliatory and tortious conduct directed at Plaintiff in violation of Missouri public policy.

15. Each of the claims set forth in this Petition accrued on or subsequent to Plaintiff's acquisition of the subject property in Autumn Lakes on August 31, 2022, and are brought within the time permitted by the applicable statutes of limitations. § 448.1-101 et seq., RSMo

16. This action is grounded in contract and statutory breaches including: (1) failure to maintain common elements as required by the Condominium Declaration; (2) failure to make financial records available for inspection in violation of RSMo §§ 355.826 and 448.200; (3) imposition of assessments without membership approval; and (4) retaliation against Plaintiff for protected whistleblowing activities, which violates Missouri public policy and analog principles set forth in the Missouri Whistleblower Protection Act, RSMo § 285.575, § 448.3-107 and § 448.3-113. (Indenture, Art. VI §1-2; Art. VII §6) (ALC Declaration & Bylaws, Book 7320, Page 435, Art. 3 §3.1-3.4) § 448.1-101 et seq., RSMo

17. Each Count herein includes specific references to the governing documents, statutory duties, and a clear explanation of how Plaintiff individually was harmed, loss of use and enjoyment of his property and amenities, reputational harm, and emotional distress. Plaintiff does not bring these claims on behalf of other unit owners or as a class. (ALC Declaration & Bylaws, Art. 1 §1.8)
18. Plaintiff also seeks equitable and declaratory relief to prevent future violations of Missouri law and Defendants' governing documents, and to protect his legal rights as a homeowner.
19. Venue and jurisdiction are proper with this Court under RSMo. § 508.010, as all relevant events occurred in St. Louis County, Missouri, and the Defendants are located in this County.

V CAUSES OF ACTION

Count I – Breach of Contract (Failure to Maintain Common Elements) (ALC Declaration & Bylaws, Book 7320, Page 435, Art. 3 §3.1-3.4)

20. Plaintiff incorporates by reference all preceding paragraphs as though fully set forth herein.
21. Defendants were obligated under Article V of the Condominium Declaration and Section 5.01 of the Master Association Bylaws to maintain the common elements in a clean, safe, and serviceable condition. (ALA Declaration Art. VIII § 2; ALC Bylaws § 13.2). (ALC Declaration & Bylaws, Book 7320, Page 435, Art. 3 §3.1-3.4) § 448.1-101 et seq., RSMo
22. Conduct by Defendants includes:
 - a. Exterior buildings in disrepair – roof leaks, mismatching roofing tile replacements, rotted/missing siding, repeated paint-cycle skipped

- b. Swimming-pool complex deteriorated – failing shell causing water leakage and water waste, delayed holiday season openings due to missing maintenance (Indenture of Trust and Restrictions for Autumn Lakes, Book 7267, Page 953, Art. V §5; Art. VII §7) (ALC Declaration & Bylaws, Art. 13 §13.4)
- c. Tennis courts – cracked surface, weeds, net-post failure – p.146 (“tennis court”)
- d. Basketball / play courts & walks – broken asphalt, bent fencing - trip hazards
- e. Clubhouse/amenities access – donated wheelchair ramp not installed, mobility-impaired residents excluded
- f. Landscaping / lakes & fountains – dead trees, algae, shoreline erosion leading to need for dredging, broken fountain, "chemicals" applied violating governing documents
- g. RV / boat storage lot – potholes, drainage issues, trash accumulation (Indenture, Art. VII §10)
- h. Winter safety – icy sidewalks left untreated
- i. Electrical & other hazards – exposed wiring, unsafe equipment around common areas (ALA Declaration & Bylaws, Book 7267, Page 978, Art. II §1(A)-(C))
- j. Collapsed lake sewer and numerous sinkholes throughout property – hazards
- k. Rejecting all work order repairs to ceiling and internal damage producing black mold caused by faulty roofing
- l. Ignored maintenance requests / inspections – systematic failure to act on owners’ work-orders (Indenture of Trust and Restrictions for Autumn Lakes, Book 7267, Page 953, Art. V §5; Art. VII §7) (ALC Declaration & Bylaws, Art. 13 §13.4)

23. Defendants’ have a duty to maintain common elements and procure insurance (see RSMo § 448.3-107 and § 448.3-113). (ALC Declaration & Bylaws, Book 7320, Page 435, Art. 3 §3.1-3.4). Exhibits F/K – Failure to Conduct Regular Inspections and maintain common grounds; Exhibits M – Failure to Address Safety Issues and no emergency planning; Exhibits N – Neglecting environmental responsibility.

24. Plaintiff suffered damages including lack of use of amenities, out-of-pocket expenses for temporary remedies, and loss of property.

25. These failures constitute a breach of contract enforceable under Missouri law. See RSMo § 448.3-107 and the Missouri Condominium Property Act. § 448.1-101 et seq., RSMo

26. WHEREFORE, Plaintiff prays that the Court:

- a. Enter judgment in his favor and against Defendants;
- b. Award compensatory damages in an amount to be proven at trial;
- c. Issue a mandatory injunction compelling Defendants to repair and properly maintain all common elements; (ALC Declaration & Bylaws, Book 7320, Page 435, Art. 3 §3.1-3.4)
- d. Award pre- and post-judgment interest, costs, and reasonable attorneys' fees; and
- e. Grant such other and further relief as the Court deems just and proper.

Count II – Violation of Statutory Duties (Failure to Disclose Financial Records) § 355.826, RSMo

27. Plaintiff incorporates by reference all preceding paragraphs as though fully set forth herein.

28. Plaintiff requested access to Association financial records pursuant to RSMo § 355.826 and § 448.200. Defendants failed or refused to comply. (ALA Bylaws Art. VII § C) § 355.826, RSMo

29. These records are required by law to be available for inspection by members of a nonprofit corporation and unit owners of a condominium. See RSMo § 355.826.2(2) – requiring nonprofit corporations to disclose financial statements to members upon request (see RSMo § 355.826.2(2)). (ALC Declaration & Bylaws, Art. 1 §1.8) § 448.1-101 et seq., RSMo. Exhibits C – Lack of Record-Keeping, financial mismanagement, conflicts of interest.

30. Conduct by Defendants includes:

- a. Charging an abusive “inspection fee.” Defendants’ property management company demanded \$100 per hour for Plaintiff to view Defendants’

association financial records, effectively blocking access guaranteed by RSMo § 355.826. § 355.826, RSMo

- b. Refusal to post associations financial statements to the homeowner portal. Regulatory complaint confirming non-production. A June 2023 complaint to the Missouri Real Estate Commission states that Smith Management Group failed to provide HOA financial statements and bank records despite repeated requests. § 355.826, RSMo
- c. Written statutory request ignored. Plaintiff's March 2024 letter invoking RSMo § 355.826 and § 448.200 asked for year-end financial reports, vendor contracts, and audit summaries; the Board refused to comply.
- d. Budgets & reserve schedules withheld before a 28% dues increase. Board communications acknowledge that no current budget or reserve study was provided to members prior to the 2024 assessment hike. No owner vote. (Indenture, Art. VI §1-2; Art. VII §6) (ALA Bylaws, Art. VIII §1-2)

31. As a result of these statutory violations, Plaintiff incurred time, legal expense, and uncertainty concerning Defendants' finances, causing financial and emotional harm.

32. Plaintiff seeks declaratory relief and statutory damages as authorized under RSMo § 355.826.4.

33. WHEREFORE, Plaintiff prays that the Court:

- a. Declare Defendants in violation of RSMo §§355.826 & 448.200 and order immediate production of all requested records; § 355.826, RSMo
- b. Award statutory penalties and/or liquidated damages permitted by statute;
- c. Award Plaintiff his costs, litigation expenses, and reasonable attorneys' fees; and
- d. Grant all other just and proper relief.

Count III – Retaliation in Violation of Missouri Public Policy § 448.3-102(a)(11), RSMo

34. Plaintiff incorporates by reference all preceding paragraphs as though fully set forth herein.

35. Plaintiff seeks an injunction barring any future threats, harassment, or retaliatory conduct by Defendants.
36. Conduct by Defendants includes:
- a. Defendants' Board of Trustees stretched 50-ft "crime-scene" rope from the Board table to Plaintiff's chair placed in the meeting's parking lot with multiple posted placards. This demonstration for an HOA Owners Meeting.
 - b. Repeated police calls by Defendant Board of Trustee President Mrs. Charlotte Smith whenever Plaintiff attempted to attend lawful meetings after the court clarified he could do so.
 - c. Repeated police reports by Defendant Board of Trustee President Mrs./ Charlotte Smith filing false police reports to have Plaintiff arrested before HOA Owners Meetings began, and during numerous peaceful demonstrations.
 - d. Defendant Board of Trustee Mrs. Pam Bell's Zoom exclusion & censorship during her hosting of the session, removed Plaintiff from the September 20, 2023, HOA Zoom session, blocking his re-entry and forcing him taking a trip to the clubhouse where police were again called by the Defendants. Police were again called based upon the fraudulent representation of a court order, violating the Plaintiff's first amendment rights.
 - e. Harassing voicemail from Defendant Mrs. Charlotte Smith on August 17, 2023, accusing Plaintiff of causing her husband's heart attack.
 - f. Repeated stalking and photographs taken of Plaintiff by Defendant Mrs. Charlotte Smith in April and May, 2024.
37. Plaintiff publicly raised concerns about financial mismanagement and unsafe conditions. Following this activity, Defendants banned him from meetings, orchestrated police removal, and censored his speech.
38. This conduct violates Plaintiff's rights to equal treatment of members) and Missouri's codified public policy protections.
39. These acts constitute retaliation for whistleblowing in violation of Missouri public policy. See RSMo § 285.575 – Missouri Whistleblower Protection Act. § 448.3-102(a)(11), RSMo. Exhibits O1 – Retaliatory behavior.

40. Plaintiff suffered multiple arrests, humiliation, personal and professional reputational harm, and emotional distress.

41. Plaintiff requests compensatory damages, injunctive relief, and punitive damages.

42. WHEREFORE, Plaintiff prays that the Court:

- a. Enter judgment for compensatory damages (economic and noneconomic);
- b. Award punitive damages to deter future retaliation; § 448.3-102(a)(11), RSMo
- c. Permanently enjoin Defendants from further retaliatory conduct;
- d. Award costs, attorneys' fees, and pre- and post-judgment interest; and
- e. Grant such additional relief the Court deems just.

**Count IV – Discriminatory Enforcement of Rules (Breach of Governing Documents)
(ALA Bylaws, Art. XI §1) § 448.4-117, RSMo**

43. Plaintiff incorporates by reference all preceding paragraphs as though fully set forth herein.

44. Article VIII of the Master Declaration and Section 6.02 of the Bylaws require that the rules and restrictions of the Defendants be enforced uniformly and without discrimination. (ALA Declaration Art. X)

45. Conduct by Defendants includes:

- a. Signage & flagpoles selectively ignored, bias – favored residents were allowed freestanding flagpoles and school signs even though they violated the distance rule, while Plaintiff was cited for similar “sign rules” infractions. (Indenture, Art. VII §8)
- b. Unequal common grounds repairs, bias – Plaintiff's landscape wall was denied repair by the Defendants citing it being Plaintiff's responsibility. Landscape wall resides on common grounds between units 3129 and 3131, and maintained by the association. Assessed cost \$750.
- c. Repairs/work-order bias – Plaintiff's maintenance/work-order requests were rejected or delayed, yet identical repairs for other owners were approved and completed. This includes Plaintiff's driveway asphalt repair and deck painting,

- having assessed cost of \$500 and \$3000, respectively. (Indenture of Trust and Restrictions for Autumn Lakes, Book 7267, Page 953, Art. V §5; Art. VII §7) (ALC Declaration & Bylaws, Art. 13 §13.4)
- d. Amenity access bias – Management suspended Plaintiff’s pool/amenity credentials for rule technicalities while letting similarly situated owners continue using the facilities.
 - e. Selective violation notices & fines bias – Only Plaintiff received repeated door tags, inspection threats, and fine warnings after speaking out; other residents were not pursued for like conduct. Including harassing shouting and waving of “resolve within 15-minutes” door tag into Plaintiff door camera by Board of Trustee Mrs. Laura Farkas.
 - f. Enforcing rules never adopted – Plaintiff was cited under unratified rules that the Board had not formally passed, whereas other owners were left alone.
 - g. Clubhouse-area upgrades vs. unit neglect – The Board approved mulch and flowers around the clubhouse (benefiting trustee-favored areas) while denying comparable landscaping to Plaintiff’s building.
46. Defendants selectively enforced rules regarding signage, landscaping, work orders, and amenities use, favoring some residents while penalizing Plaintiff without valid justification.
47. Plaintiff was denied repairs and threatened with fines under circumstances where other owners received assistance or were not issued warnings or fines.
48. This unequal treatment constitutes a breach of the covenant to enforce restrictions fairly, causing Plaintiff emotional distress, delay in property maintenance, and reputational damage. Plaintiff seeks damages and equitable relief. (Indenture of Trust and Restrictions for Autumn Lakes, Book 7267, Page 953, Art. V §5; Art. VII §7) (ALC Declaration & Bylaws, Art. 13 §13.4). Exhibits K – Discriminatory practices and selective enforcement of rules.
49. WHEREFORE, Plaintiff prays that the Court:
- a. Declare the selective enforcement unlawful; (ALA Bylaws, Art. XI §1) § 448.4-

117, RSMo

- b. Award actual and consequential damages;
- c. Enter an injunction requiring uniform rule enforcement; (ALA Bylaws, Art. XI §1) § 448.4-117, RSMo
- d. Award costs, interest, and attorneys' fees; and
- e. Grant further equitable relief as appropriate.

**Count V – Breach of Contract (Imposition of Unauthorized Assessments)
(Indenture, Art. VI §1-2; Art. VII §6) (ALC Declaration, Art. 14 §14.1-14.5)**

50. Plaintiff incorporates by reference all preceding paragraphs as though fully set forth herein.

51. Section 5.03 of the Declaration limits increases in regular assessments without a member vote to the greater of 5% or CPI. (Indenture, Art. VI §1-2; Art. VII §6) (ALC Declaration, Art. 14 §14.1-14.5)

52. Conduct by Defendants includes:

- a. Imposed annual dues hikes of 28 % (2024) and 18 % (2025) even though any increase above CPI requires a member vote. (ALA Bylaws, Art. VIII §1-2)
- b. Announced/levied special assessments for major capital work (roofing, dam, pool resurfacing, asphalt and sealant, security systems) that were never disclosed on resale certificates nor authorized by the membership. (Indenture, Art. VI §1-2; Art. VII §6) (ALC Declaration, Art. 14 §14.1-14.5)
- c. Diverted reserves and assessment proceeds to improperly pay non-reserve items (i.e. operating expenses) —contrary to Indentures. (Indenture, Art. VI §1-2; Art. VII §6)
- d. Funded Board of Trustee litigation defenses for certain members failing to act in good-faith for the association.
- e. Refused to fund Plaintiff—former Board of Trustee and Whistle Blower-- litigation defenses despite his good-faith efforts, directly attributable to association finances and business operations.
- f. Demanded a \$125 per-unit “administrative/capital contribution” fee at resale even though no such charge is permitted in the Declaration or Bylaws.

g. Frequently transferred reserve funds into operations ledger accounts, and vice-versa, to back-fill for shortfall (e.g. using reserves as a “piggy bank”—all without a member vote.

53. Plaintiff paid these increased dues under protest and incurred financial hardship and loss of value. (ALA Bylaws, Art. VIII §1-2)

54. Plaintiff requests restitution of overpaid assessments and a declaratory judgment voiding unauthorized increases. (Indenture, Art. VI §1-2; Art. VII §6) (ALC Declaration, Art. 14 §14.1-14.5). Exhibits D – Unapproved Assessments and improper use of Reserve Funds.

55. WHEREFORE, Plaintiff prays that the Court:

- a. Order restitution of all overpaid assessments with interest; (Indenture, Art. VI §1-2; Art. VII §6) (ALC Declaration, Art. 14 §14.1-14.5)
- b. Declare the 2024 and 2025 assessment increases void; (Indenture, Art. VI §1-2; Art. VII §6)
- c. Award costs and reasonable attorneys’ fees; and
- d. Grant such other relief as may be just.

Count VI – Defamation (Libel and Slander Per Se)

56. Plaintiff incorporates by reference all preceding paragraphs as though fully set forth herein.

57. During 2024 and 2025, Defendants falsely stated in meetings and to third parties that then Board of Trustee and Plaintiff had “stolen and misused” Defendants’ association records. § 355.826, RSMo

58. Board of Trustee Mrs. Charlotte Smith claimed in multiple member meetings and during a St. Louis Realtors Hearing that Plaintiff stole a membership contact list and improperly used it.

59. Board of Trustee Mrs. Laura Farkas claimed in multiple member meetings that Plaintiff stole financial banking information and shared it with other members.

60. Additional conduct by Defendants includes:

- a. Board-meeting accusation (January 2024). During the open forum the Board of Trustees President Mrs. Charlotte Smith told attendees that Plaintiff had “stolen the Association’s financial statements and contact list,” branding you a thief before dozens of homeowners.
- b. All-member e-mail blast (February 2024). The Board circulated an e-mail to every owner alleging Plaintiff “illegally removed confidential records” and warning members not to share documents with Plaintiff. § 355.826, RSMo
- c. Nextdoor post by the Defendant Mrs. Charlotte Smith (February 2024). In a public neighborhood thread she stated Plaintiff had “downloaded the entire financial drive without authorization.”
- d. March 2024 meeting minutes. The minutes circulated to residents note “discussion of records stolen by Mr. Gavan,” memorializing the false charge. § 355.826, RSMo
- e. Association Facebook post (April 2024). Defendant Mrs. Charlotte Smith wrote that Plaintiff “breached owners’ privacy by taking the e-mail roster,” insisting the act was criminal.
- f. Letter to incoming management company (July 2024). The Board advised the firm that Plaintiff had “misappropriated financial documents,” prejudicing Plaintiff’s future records requests. § 355.826, RSMo
- g. Defendant, Board of Trustee, Treasurer Mrs. Laura Farkas, statement at Q&A session (September 2024). In response to a homeowner’s question, she repeated that “records were taken by Mr. Gavan and not returned.” § 355.826, RSMo
- h. Meeting comment (October 2024). The Defendant, Board of Trustee, President Mrs. Charlotte Smith again asserted Plaintiff “stole sensitive HOA data,” using the allegation to justify tighter document-access rules.

61. These statements were false, made with actual malice, and heard by other homeowners and Board of Trustees members. Statements accusing someone of criminal conduct or dishonesty are defamatory per se.

62. Plaintiff suffered personal and professional reputational harm, humiliation, and loss of standing in the community. Plaintiff is a Certified Public Accountant (CPA), and false accusations of financial misconduct—such as stealing financial records or member contact lists—directly undermine his professional credibility and cause serious damage to his standing in both personal and professional contexts. § 355.826, RSMo

63. The statements impute dishonest conduct and are defamatory per se. Plaintiff seeks damages that are fair and reasonable, and exceed the jurisdictional minimum of this Court. Given Plaintiff's CPA credential and the fiduciary obligations it entails, Plaintiff seeks heightened compensatory and punitive damages, reflecting the severity of reputational harm inflicted by these knowingly false and professionally damaging statements. § 355.416, RSMo. Exhibits O1 – Retaliatory behavior.

64. WHEREFORE, Plaintiff prays that the Court:

- a. Enter judgment for presumed, general, and special damages;
- b. Award punitive damages for actual malice;
- c. Order a public retraction and removal of the defamatory statements;
- d. Award costs, interest, and attorneys' fees; and
- e. Grant any additional relief the Court deems just.

Count VII – Negligent Maintenance of Common Areas (Indenture of Trust and Restrictions for Autumn Lakes, Book 7267, Page 953, Art. V §5; Art. VII §7) (ALA Declaration & Bylaws, Book 7267, Page 978, Art. II §1(A)-(C)) (ALC Declaration & Bylaws, Art. 13 §13.4)

65. Plaintiff incorporates by reference all preceding paragraphs as though fully set forth herein.

66. Under Article V of the Declaration and RSMo § 448.3-107, Defendants are required to maintain the common elements. (ALC Declaration & Bylaws, Book 7320, Page 435, Art. 3 §3.1-3.4). Exhibits F/K – Failure to Conduct Regular Inspections and maintain common grounds; Exhibits M – Failure to Address Safety Issues and no emergency planning; Exhibits N – Neglecting environmental responsibility.

67. Conduct by Defendants includes:

- a. Leaking roofs left unrepaired, causing ceiling and basement interior mold
- b. Ice/snow hazards inadequately treated including no sidewalk treatment
- c. Trip-hazard: 50-ft rope stretched across clubhouse exit to defame Plaintiff
- d. Trip-hazard; damaged fencing at basketball court
- e. Trip-hazard; damaged tennis court surface growing weeds; damaged basketball court surface
- f. Children's/baby pool closed because pool surface left un-repaired
- g. Lower lake fountain removed for many months at a time impacting ecolife
- h. Known unfilled sinkholes
- i. Defendants' decline of earthquake insurance coverage despite sinkhole risks (ALC Declaration & Bylaws, Art. 13 §13.3)
- j. Collapsed landscape-retaining wall left in street view for nearly a year
- k. Work-order for Plaintiff's failing retaining wall rejected for repair
- l. Work-order for Plaintiff's driveway-at-garage tripping hazard rejected without repair
- m. Upper lake dam collapse with large gaping hole for nearly two years
- n. Back-log of repair tickets – routine maintenance not performed (Indenture of Trust and Restrictions for Autumn Lakes, Book 7267, Page 953, Art. V §5; Art. VII §7) (ALC Declaration & Bylaws, Art. 13 §13.4)

68. Despite repeated requests and known risks, Defendants failed to repair known problems causing further property decay and damage escalation.

69. Plaintiff suffered unsafe living conditions, risk of property damage, and incurred personal costs for temporary safety fixes.

70. Plaintiff requests compensatory damages of and an order mandating prompt remediation and inspections.

71. WHEREFORE, Plaintiff prays that the Court:

- a. Award compensatory damages for injury to person and property value;
- b. Issue an injunction requiring prompt remediation of all hazards;
- c. Award costs, interest, and attorneys' fees; and
- d. Grant such other and further relief as is equitable.

Count VIII – Violation of RSMo § 355.826 (Improper Denial of Records Access) § 355.826, RSMo

72. Plaintiff incorporates by reference all preceding paragraphs as though fully set forth herein.

73. Plaintiff made numerous written requests on or about March 2024 for Defendant financial reports, vendor contracts, and audit summaries.

74. Conduct by Defendants includes:

- a. Defendants required owners to travel to CPM property management company to see financials, schedule an appointment and use a CPM-supplied laptop instead of providing copies of the records. No photocopies, no cameras. \$100/hour review sessions, effectively prohibiting owner review of association financials. § 355.826, RSMo
- b. Defendants promised to “unlock” the SMG TownSq Financials folder but it remained locked and inaccessible during 2022 and 2023.
- c. Association financial statements have been “missing for a long number of months” per the Defendants in 2022 and 2023. Months having financial statements were missing material postings and balances, sometimes entire months reflecting \$0 across all accounts. Some months only bank balances were provided to association owners since financials were not provided or were incomplete.
- d. Defendant Board of Trustees publicly declare that financial audits are “not a good use of our funds,” refusing independent review despite owner repeated requests.
- e. Board refuses to publish Zoom recordings of HOA meetings, preventing members from hearing financial discussions, voting outcomes, owner issues and responses. Censored content by the Defendants gets included in association newsletters.
- f. Defendants Board of Trustees admission that in 2023 the 2022 financials remain un-closed and 2022 tax returns un-filed, despite statutory deadlines.

75. Defendants refused to comply with the request in violation of RSMo § 355.826(2), which mandates nonprofit corporations provide financial documents to members

upon proper request. § 355.096 et seq., RSMo. Exhibits C – Lack of Record-Keeping, financial mismanagement, conflicts of interest.

76. Defendants' noncompliance caused Plaintiff to incur costs for legal consultation and created uncertainty regarding Defendant financial governance.

77. This retaliation violates the Missouri Whistleblower Protection Act, RSMo § 285.575. § 448.3-102(a)(11), RSMo

78. Plaintiff requests statutory remedies including costs, injunctive relief compelling production, and a finding of bad faith.

79. WHEREFORE, Plaintiff prays for judgment in his favor and against all Defendants, awarding:

- a. Compensatory damages equal to the HOA funds wasted or improperly diverted;
- b. Surcharge or restitution of all sums wrongfully obtained by any Director;
- c. Pre- and post-judgment interest, costs, and reasonable attorneys' fees; and
- d. Such other and further relief as this Court deems just and proper.

Count IX – Improper Retaliation (Constructive Exclusion and Harassment) § 448.3-102(a)(11), RSMo

80. Plaintiff incorporates by reference all preceding paragraphs as though fully set forth herein.

81. Defendants engaged in a pattern of retaliatory conduct against Plaintiff after he raised financial and governance concerns, including removing him from meetings, denying him access to Defendants' forums, and calling law enforcement under false pretenses.

(ALA Bylaws, Art. XI §1) § 448.4-117, RSMo

82. Conduct by Defendants includes:

- a. Zoom “ban” during live HOA meeting – host message “Unable to re-join this meeting ... The host removed you.”
- b. Police repeatedly summoned to remove Plaintiff from meetings before they began.
- c. 50-foot rope & signage stunt – Plaintiff’s chair tied outside clubhouse; rope stretched through room creating hazard. Photographic evidence of rope, signs, and chair in parking lot. (Indenture, Art. VII §8)
- d. Board President weaponized Order of Protection—police calls for lawful demonstrations and meeting attendance, and knowingly misleading the police by mispresenting a court court to violate Plaintiff’s First Amendment rights.
- e. Zoom host exclusion & failure to share recordings, limiting Plaintiff and member oversight.
- f. Public social-media posts ridiculing Plaintiff and boasting of police involvement.

83. These actions were not justified under any rule or legal authority and served solely to intimidate and isolate Plaintiff.

84. Such retaliation contravenes Missouri public policy and deprived Plaintiff of rights under the governing documents and statutes. § 448.3-102(a)(11), RSMo. Exhibits O1 – Retaliatory behavior.

85. Plaintiff seeks damages and an injunction protecting his rights to attend and participate in Defendants’ activities.

86. WHEREFORE, Plaintiff prays for judgment in his favor and against all Defendants, awarding:

- a. Actual damages for increased premiums, failed mortgages, and property-value diminution;
- b. Punitive damages pursuant to § 510.261, RSMo, for intentional deceit;
- c. Rescission or reformation of any assessments levied under false pretenses; (Indenture, Art. VI §1-2; Art. VII §6) (ALC Declaration, Art. 14 §14.1-14.5)
- d. Costs of suit, including reasonable attorneys’ fees; and
- e. All other relief the Court deems just and proper.

Count X – Breach of Bylaws (Failure to Hold Fair Elections)

87. Plaintiff incorporates by reference all preceding paragraphs as though fully set forth herein.
88. Section 3.03 of the Bylaws requires fair, timely, and open elections of Board of Trustees members.
89. Defendants failed to properly notify members, changed ballot acceptance rules mid-process, and failed to secure or retain ballots from prior years. Exhibits I – Improper elections.
90. Additional conduct by Defendants includes:
- a. Ballots discarded – eye-witness accounts of completed ballots “pitched in the trash can behind the bar” on election night. (Indenture, Art. VII §10)
 - b. Voting procedure changed at the door – Board altered rules “at the 12th hour without notice, suppressing absentee voters.
 - c. Unelected appointment used instead of balloting – Pam Bell installed as trustee to “diversify” the Board; acknowledged she was “not elected but appointed.”
 - d. Out-of-state owners never received ballots – many owners “were not even aware of the election,” flagging voter-suppression concerns.
 - e. Defendants demanded removal of unofficial downloadable ballot from public website and from being distributed by email, instead of curing notice defects, illustrating ad-hoc rule-making.
 - f. Defendants’ defamation of Plaintiff impacted his candidacy in the 2023 and 2024 elections.
91. Defendants’ bad-faith actions tainted the 2022, 2023, 2025 election process, and invalidated the 2024 election results by undermining the election procedures established by the governing documents.
92. Plaintiff seeks declaratory relief voiding the 2024 election, along with costs and equitable relief ensuring future election integrity.
93. WHEREFORE, Plaintiff prays for judgment in his favor and against all Defendants, awarding:

- a. Disgorgement of any profits earned from expedited repairs or preferential treatment;
- b. A declaratory judgment that such conflicts violate RSMo § 355.416 and Bylaws Art. VII;
- c. A permanent injunction barring conflicted Directors from voting on related transactions;
- d. Costs, interest, and reasonable attorneys' fees; and
- e. Such further equitable relief as the Court deems appropriate.

Count XI – Improper Amendment of Rules Without Member Vote

94. Plaintiff incorporates by reference all preceding paragraphs as though fully set forth herein.
95. Defendants revised enforcement rules affecting unit owner conduct without a formal vote by the membership as required by the Indentures. (ALA Bylaws, Art. XI §1) (ALC Declaration & Bylaws, Art. 1 §1.8) § 448.4-117, RSMo. Exhibits E – Failure to follow and make amendments to Defendant Indentures and Bylaws, unauthorized rules enforcement; Exhibits F – Unauthorized rule changes.
96. Unofficial rules imposed by the Defendants without a member vote include, but are not limited to these:
 - a. “Rule clarifications” in September 2023 newsletter suddenly allowing magnetic or painted business signs on vehicles (contradicting the long-standing “No Signs” covenant of the governing documents). (Indenture, Art. VII §8)
 - b. Defendants insisted it could create rule exceptions without a member vote, even though the Indentures can only be amended by majority homeowner approval and recording.

- c. Grill/Open-flame ban within 10 ft. of any building imposed “due to insurance requirements,” never approved by owners. (ALC Declaration & Bylaws, Art. 13 §13.3)
- d. Complete ban on wood-burning fireplaces for all units, likewise adopted unilaterally.
- e. Immediate fine schedule announced for grill & fireplace violations (up to \$500) even though the underlying rules were never voted on.
- f. Implementing a new fine “rule” for Plaintiff Board of Trustee Member speaking to association contractors and vendors

97. Additional unofficial rules imposed by Defendants without a member vote include,

but are not limited to, these published in the association’s Gazette newsletter editions:

- a. Nov 2022 - “Snow-removal priority: driveways first (1-ft buffer left to avoid door damage), walkways second; do not call SMG for ETA – contact trustee.”
- b. Mar 2023 - “Additional address-signage options ... sign not to exceed 12” × 24” on garage; ≤ 5” × 12” on short post; may be lighted; posts ≤ 3 ft.”
- c. May 2023 - “Pool cards will not be turned on unless an Annual Owner-Info and Amenities form have been submitted ... allow ≤ 3 business days.”
- d. May 2023 - “No smoking or vaping is allowed in the pool area.”
- e. May 2023 - “Drinks must be in plastic/metal; no glass. Violators leave immediately & card revoked (reinstatement \$20 after Board review).”
- f. May 2023 - “Violators who do not comply when warned ... may have their pool card revoked. Repeated infractions → Board review; reinstatement fee \$20.”
- g. May 2023 - Tennis / Pickle-ball court rules – court-use hours dawn–dusk; resident + ≤ 5 guests; no pets, wheels, food or glass; lock gate on exit.
- h. May 2023 - Basketball-court rules – resident + ≤ 9 guests; 30-min limit if others waiting; no wheels, pets, food/glass; dawn–dusk use.
- i. Jul 2023 - “Good-quality and well-maintained patio furniture & grills are allowed on decks/patios. Clothing, towels, rugs, etc. are prohibited.”
- j. Jul 2023 - “No cooking or heating device generating > 200 °F within 10 ft of any residential building (incl. charcoal, propane, smokers, fire-pits).”
- k. Jul 2023 - “Use of wood-burning fireplaces is prohibited; fines \$100 / \$250 / \$500 for 1st / 2nd / subsequent violations.”
- l. Sept 2023 - “Association fine schedule — \$50 per-day grill violation; fireplace fines as above.”
- m. Sept 2023 - FAQ confirms grills may be used on common ground only while attended and must be removed afterward.
- n. Nov 2023 - “On 8 Sept 2023 the Board instituted the non-use of wood-burning fireplaces and removal of grills/fire-pits from decks & patios to meet NFPA rules.”
- o. Mar 2024 - “Pool-card fee procedure: prior \$10 deposit becomes non-refundable fee; new cards = \$10 non-refundable.” -- *Defendants stole owner deposits*

- p. Mar 2024 - Community reminder: “Dogs should not be relieving themselves on or near the walkways, landscaping, or driveways. Pick-up is mandatory (city ordinance).”
- q. May 2024 - “Grills MUST be 10 ft from the building when used to comply with insurance guidelines.” (ALC Declaration & Bylaws, Art. 13 §13.3)
- r. Jul 2024 - “Firewood should not be stored outside or in the garage.”
- s. Jul 2024 - Open-flame device < 10 ft fine up to \$50 per day until removed.
Updated
- t. Jul 2024 - \$100 / \$250 / \$500 for fireplace violations.
- u. Jan 2025 - Board motion approves new exterior-paint color palette *without owner vote*
- v. Mar 2025 - “Only clubhouse area will be mulched. Residents may not remove stored items from Association sites (police will be called).”
- w. May 2025 - “Any pool cards issued to a delinquent condominium or house will be revoked when fees are late.” § 448.1-101 et seq., RSMo
- x. May 2025 - “Owners must register renters within 15 days of occupancy ... fine assessed if not received.”
- y. May 2025 - “Firewood, in an amount not hazardous to structural integrity, must be off the ground in a rack; do not stack in garage.”
- z. May 2025 - “Motorized vehicles are not permitted on unpaved common ground except maintenance / emergency / Board-approved.” (Indenture of Trust and Restrictions for Autumn Lakes, Book 7267, Page 953, Art. V §5; Art. VII §7) (ALC Declaration & Bylaws, Art. 13 §13.4)
- aa. July 2025 – now rejecting all new work orders for ceiling and internal damage (including black mold) caused by faulty roofing.

98. These unilateral amendments violated the amendment procedures of the Declaration and Missouri case law on Defendants’ governance.

99. Plaintiff requests an order invalidating all improperly adopted rules and a permanent injunction against enforcement without proper vote and filing of updated governing documents. (ALA Bylaws, Art. XI §1) § 448.4-117, RSMo

100. Plaintiff also seeks nominal damages and costs of bringing this action.

101. WHEREFORE, Plaintiff prays for judgment in his favor and against all

Defendants, awarding:

- a. Actual damages under § 407.025, RSMo;

- b. Statutory attorneys' fees and punitive damages as permitted by the Merchandising Practices Act;
- c. An order compelling corrective disclosures to all unit owners and lenders; (ALC Declaration & Bylaws, Art. 1 §1.8)
- d. Costs of suit and pre- and post-judgment interest; and
- e. Such additional relief as justice requires.

Count XII – Privacy Violation (Disclosure of Member Information)

102. Plaintiff incorporates by reference all preceding paragraphs as though fully set forth herein.
103. Defendants publicly disclosed Plaintiff's name and legal matters during meetings and with members.
104. Conduct by Defendants includes:
- a. Order of protection case number and 50-ft restriction printed on a meeting-night signs taped to Plaintiff's chair and clubhouse door ("Order of Protection: 23SL-PN05188 ... Mark E. Gavan cannot come closer than the end of this rope"). (Indenture, Art. VII §8)
 - b. Rope-and-sign staging described in Plaintiff's letter to Judge Green—recites that the sign and rope were displayed to members at the March 20, 2024 HOA meeting.
 - c. Defendants telling police Plaintiff was violating "the Order of Protection on file," causing his public removal before owners, memorializing the false narrative and violating Plaintiff's First Amendment right to attend.
 - d. Arrest attempts for alleged breach of order—Defendants' false reports announced during HOA business sessions to have Plaintiff arrested and/or detained by the police.
 - e. Defendants inappropriately naming Plaintiff in meetings as having stolen and illegally used financial and owner information, for naming him in running a website and Facebook group claiming it is "full of lies", for naming him for his peaceful demonstrations in the community, and for his sharing the truth about organizational issues with members.

105. These disclosures were not required, not consented to, and served no community interest. Members have a reasonable expectation of privacy and dignity when interacting and communicating with Board of Trustees.
106. Plaintiff suffered embarrassment, personal and professional reputational harm, and loss of standing within the Defendants' community. Exhibits H/L – Privacy Violations and improper communications, lack of training, ignoring maintenance requests and homeowner concerns, lack of transparency.
107. These actions breached the confidentiality principles of the Indentures.
108. Plaintiff seeks declaratory and injunctive relief barring future disclosure of sensitive personal information, and redaction or removal of private references.
109. WHEREFORE, Plaintiff prays for judgment in his favor and against all Defendants, awarding:
- a. Restitution of all overbilled assessments with interest; (Indenture, Art. VI §1-2; Art. VII §6) (ALC Declaration, Art. 14 §14.1-14.5)
 - b. Declaratory relief voiding future assessments imposed in violation of the Indentures; (Indenture, Art. VI §1-2; Art. VII §6) (ALC Declaration, Art. 14 §14.1-14.5)
 - c. Costs, litigation expenses, and reasonable attorneys' fees; and
 - d. Such other and further relief as the Court deems just.

Count XIII – Failure to Maintain Adequate Insurance Coverage (ALC Declaration & Bylaws, Art. 13 §13.3)

110. Plaintiff incorporates by reference all preceding paragraphs as though fully set forth herein.

111. RSMo § 448.3-113 require Defendants to maintain sufficient insurance coverage for common elements and structures. (ALC Declaration & Bylaws, Book 7320, Page 435, Art. 3 §3.1-3.4). Exhibits B – Insurance Mismanagement.
112. Conduct by Defendants includes:
- a. Defendants’ announcement that the HOA had no master property policy after discovering the broker never placed coverage (Aug 31, 2023 TownSq notice).
 - b. Defendants’ correspondence confirms “the Association does not have a master property policy” and warns owners their mortgages may flag the lapse.
 - c. Defendant Board of Trustees admit they “canceled the earthquake insurance they recently added due to the cost,” leaving the community uninsured for seismic loss. (ALC Declaration & Bylaws, Art. 13 §13.3)
 - d. January 2024 meeting & newsletter told owners there was no earthquake coverage, yet the current Certificate of Insurance shows earthquake limits—conflicting information that confused members. (ALC Declaration & Bylaws, Art. 13 §13.3)
 - e. March 2024 post tries to clarify: only the excess \$25M layer was canceled; \$25M primary earthquake coverage “remains.” The flip-flop illustrates prior misstatements and Defendant Board of Trustee incompetence.
 - f. Defendants negligence in failing to file HUD and related renewal documentation in 2022-2023 left condo sales to close “cash only” and jeopardized mortgages.
 - g. New replacement policy imposed a jump in deductibles—from \$10,000 to \$25,000 per occurrence (plus \$25,000 water)—without advance disclosure to owners.
 - h. Plaintiff was then told by Defendants that he must increase his Loss Assessment coverage from \$10,000 to \$25,000 incurring an annual cost increase. It is currently unknown whether the association is currently covered for earthquake and sinkhole damage. (Indenture, Art. VI §1-2; Art. VII §6)
113. Defendants failed to renew earthquake insurance and misrepresented policy coverage to members, exposing the Defendants and unit owners to financial risk. (ALC Declaration & Bylaws, Art. 1 §1.8)
114. Defendants ignored or contributed to prolonged gaps in master insurance, cancellation of earthquake coverage for budget reasons, and made contradictory public statements pertaining to coverage and limits—each a breach of the

Association's statutory and bylaw duty to maintain and accurately report adequate insurance. (ALC Declaration & Bylaws, Art. 13 §13.3)

115. Plaintiff incurred increase in personal insurance costs and lives in fear of uncovered catastrophic loss. (ALC Declaration & Bylaws, Art. 13 §13.3)
116. Plaintiff seeks declaratory relief and compensatory damages.
117. WHEREFORE, Plaintiff prays for judgment in his favor and against all Defendants, awarding:
 - a. Compensatory damages for interior water damage, loss of use, and diminished value;
 - b. An injunction compelling prompt structural repairs and ongoing maintenance plans; (Indenture of Trust and Restrictions for Autumn Lakes, Book 7267, Page 953, Art. V §5; Art. VII §7) (ALC Declaration & Bylaws, Art. 13 §13.4)
 - c. Costs of suit, interest, and attorneys' fees; and
 - d. All other equitable relief deemed just.

Count XIV – Improper Vendor Management and Oversight

118. Plaintiff incorporates by reference all preceding paragraphs as though fully set forth herein.
119. Defendants failed to monitor vendor performance, resulting in shoddy snow removal, misaligned asphalt work, and uncorrected safety issues.
120. Conduct by Defendants includes:
 - a. Long-time snow contractor quits because of unprofessionalism and 18-month late payment—evidence the Defendants did not pay or communicate promptly.
 - b. \$40,000 bill for a 2-inch snowfall—Defendants not providing proper oversight by allowing the snow vendor to salt, plough, and shovel at premium cost without controls.

- c. Snow crew cracked driveways; many drives needed repairs to new asphalt and with complete community loss to new resealant applications. Poor Defendant oversight.
- d. Plaintiff's driveway gap-hazard work order reopened three times to be addressed during community asphalt project, and closed all three times without completion. Plaintiff performed the labor himself. Lack of Defendant oversight (and/or bias).
- e. Lake management contractors applying chemicals to the lakes is a governing document violation. Defendants poor contractor oversight.
- f. Fallen retaining-wall debris untouched and visible from the street after collapse—no contractor mobilized to clear or rebuild for a year, hazardous walking conditions. Poor contractor oversight.
- g. Board admits it is “waiting on bids” for multiple safety repairs while work orders pile up, proving inadequate vendor-procurement follow-through.

121. These failures breached the duty under Section 5.01 of the Bylaws to act prudently in managing Defendants' resources. Exhibits A – Improper contracts and poor vendor management.

122. Plaintiff's property was negatively affected and his dues misused, causing damages. (ALA Bylaws, Art. VIII §1-2).

123. Plaintiff seeks reimbursement and a vendor accountability plan implemented by court order.

124. WHEREFORE, Plaintiff prays for judgment in his favor and against all Defendants, awarding:

- a. Restitution of all fines, late charges, and fees collected without authority;
- b. Pre- and post-judgment interest from the date of each unlawful payment;
- c. Costs and reasonable attorneys' fees; and
- d. Such additional relief as may be proper.

Count XV – Failure to Address Safety Issues (Negligence and Contract Breach)

125. Plaintiff incorporates by reference all preceding paragraphs as though fully set forth herein.

126. Despite repeated notifications, Defendants failed to remediate known hazards such as tripping hazards, water leaks, and rotting deck materials.

127. Conduct by Defendants includes:
- a. 50-foot rope “barrier” stretched across the clubhouse floor and out the door, down the steps, into the parking lot, creating an obvious tripping hazard for an HOA meeting.
 - b. Repeated refusal to patch Plaintiff’s driveway-to-garage gap that the owner described as a “tripping hazard.”
 - c. Rejecting work orders for ceiling and internal damage producing black mold caused by faulty roofing.
 - d. Unrepaired rotting building exteriors and no painting impact property values.
 - e. Downed trees left for months in owner common areas (ALA Declaration & Bylaws, Book 7267, Page 978, Art. II §1(A)-(C))
 - f. Fountain wiring hazard: rodents chew soy-based insulation, repeatedly disabling the pump—Board has not addressed underlying electrical-safety problem.
 - g. Board-acknowledged list of “deferred maintenance” including roofs, siding, gutters, lake erosion, and other items described as “falling apart,” yet no action taken. (Indenture of Trust and Restrictions for Autumn Lakes, Book 7267, Page 953, Art. V §5; Art. VII §7) (ALC Declaration & Bylaws, Art. 13 §13.4)
128. Article V of the Declaration obligates the Defendants to maintain the property in safe condition. RSMo § 448.3-107 confirms this duty. Exhibits M – Failure to Address Safety Issues and no emergency planning.
129. Plaintiff suffered increased safety risks and deterioration of his unit due to this negligence.
130. Plaintiff seeks damages of and a court-supervised remediation order.
131. WHEREFORE, Plaintiff prays for judgment in his favor and against all Defendants, awarding:
- a. Compensatory damages for lost business opportunities and increased financing costs;
 - b. Punitive damages for willful interference;
 - c. Costs, interest, and reasonable attorneys’ fees; and
 - d. Such other relief as the Court deems just and equitable.

Count XVI – Unauthorized Contracts Without Member Approval

132. Plaintiff incorporates by reference all preceding paragraphs as though fully set forth herein.
133. Defendants entered into long-term insurance, property management, and snow removal contracts without membership consultation or vote. (ALC Declaration & Bylaws, Art. 13 §13.3)
134. Conduct by Defendants includes:
- a. Property-management renewal. Majority of homeowners signed a petition to replace Smith Management Group (SMG) property management company in 2022. The Defendants’ Board of Trustees chose to renew SMG’s contract through December 2023, choosing not to receive the majority owner petition. SMG was renewed by Defendants for a second year after poor performance, without owner vote, and for a substantially higher management fee.
 - b. Three-year snow-removal contract signed in August 2023 because of a “discount ... for signing a 3-year contract,” again decided by Defendants alone, at the height of an economic recession, and without owner vote.
 - c. Major asphalt and lawn-care contracts were authorized while reserves including association funds were low, and without owner vote.
 - d. Long-term insurance switch with new exclusions (fireplace & grill bans) and higher premiums was a unilateral decision without Home Owner vote. (ALC Declaration & Bylaws, Art. 13 §13.3)
 - e. Defendants dropped earthquake coverage, then reversed course, with no member consultation, underscoring opaque insurance contracting. (ALC Declaration & Bylaws, Art. 13 §13.3)
135. These contracts significantly altered service levels and costs, violating the Board of Trustees’ fiduciary obligations and the Declaration’s notice and transparency requirements. § 355.416, RSMo. Exhibits A – Improper contracts and poor vendor management.
136. Plaintiff requests a declaration that such contracts are voidable and damages from excess dues paid as a result. (ALA Bylaws, Art. VIII §1-2)

137. WHEREFORE, Plaintiff prays for judgment in his favor and against all Defendants, jointly and severally, awarding:

- a. All damages flowing from the unlawful acts committed in furtherance of the conspiracy;
- b. Punitive damages to deter future conspiratorial conduct;
- c. Costs, interest, and reasonable attorneys' fees; and
- d. Such other and further relief as the Court finds just.

Count XVII – Enforcement of Unadopted Rules (Ultra Vires Acts) (ALA Bylaws, Art. XI §1) § 448.4-117, RSMo

138. Plaintiff incorporates by reference all preceding paragraphs as though fully set forth herein.

139. Defendants communicated violations of rules that were never formally adopted or recorded as required (ALA Declaration Art. IX). Exhibits E – Failure to follow and make amendments to Defendant Indentures and Bylaws, unauthorized rules enforcement; Exhibits F – Unauthorized rule changes.

140. Conduct by Defendants includes:

- a. No grill usage on decks and wood-burning fireplace is an invalid rule by the Defendants--not voted upon by owners nor included in governing documents.
- b. September 2023 “Rules & Violations Clarifications” in the Gazette newsletter, Defendants unilaterally re-interpreted the long-standing “No Signs” covenant to allow trustees’ magnetic real-estate car signs, without the two-thirds membership approval required by ALA Declaration Art. IX. No signs can be displayed per governing documents. Exceptions to governing document rules are invalid without vote and updates to the governing documents. Signage placed more than 10 feet from the building is not allowed and is to be consistently enforced despite the offender being a Defendant Trustee of the Board. (Indenture, Art. VII §8)
- c. Defendants then asserted that advertising magnets “do not reflect company-owned vehicles,” signaling an ad-hoc exception while refusing to submit the change to a vote nor update governing documents. (Indenture, Art. VII §11)

- d. Residents documented that three owners with similar magnetic signs were previously threatened with fines or forced to remove them, while trustees kept theirs—showing selective enforcement of the unadopted signage exception. (Indenture, Art. VII §8) (ALA Bylaws, Art. XI §1) § 448.4-117, RSMo
 - e. “Friendly Warning”/violation forms threatened fines for trash-container placement and parking infractions, citing only generic “rules and regulations” that are nowhere identified in recorded documents. The Defendants do not adhere to the same rules for the clubhouse trash-containers, and do not consistently enforce amongst members. (Indenture, Art. VII §10) (ALA Bylaws, Art. IX §1(A))
 - f. Flagpoles on common area grounds are not permitted, despite a Defendant Board of Trustee member being the offender. (ALA Declaration & Bylaws, Book 7267, Page 978, Art. II §1(A)-(C))
141. Such citations are legally unenforceable and constitute ultra vires acts beyond the Board of Trustees’ authority.
142. These actions also constitute retaliation of the Plaintiff under RSMo § 285.575 – the Missouri Whistleblower Protection Act. § 448.3-102(a)(11), RSMo
143. Governing documents permit homeowners enforcing violations of the governing documents.
144. Plaintiff requests an injunction barring enforcement of rules not formally adopted by member vote and seeks nominal damages including legal fees for enforcing violations of the governing documents. (ALA Bylaws, Art. XI §1) § 448.4-117, RSMo
145. WHEREFORE, Plaintiff prays that the Court:
- a. Declare the disputed elections and amendments null and void;
 - b. Order a new election conducted in compliance with the governing documents and Missouri law;
 - c. Award costs and attorneys’ fees under the Uniform Declaratory Judgments Act; and
 - d. Grant such further relief as is just and proper.

Count XVIII – Negligent Recordkeeping (Violation of Nonprofit Obligations) § 355.096 et seq., RSMo

146. Plaintiff incorporates by reference all preceding paragraphs as though fully set forth herein.
147. Defendants failed to retain key Defendants’ documents in violation of RSMo § 355.821. Exhibits C – Lack of Record-Keeping, financial mismanagement, conflicts of interest.
148. Conduct by Defendants includes:
- a. Election ballots discarded – Defendants discarded completed ballots on the wrong color paper during the election at the 2024 annual meeting; ballots were placed in the trash bin behind the clubhouse bar during the vote. (Indenture, Art. VII §10)
 - b. Financial statements were not published to owners in 2022, 2023, 2024, and most of 2024, nor were they made available upon owner request.
 - c. No association central document repository exists – association documents are not centrally maintained nor made available upon owner request, such as Executive Board Meeting Minutes, Board Voting Outcomes, Decisions, Contracts. Documents are maintained on Defendant Board of Trustees personal computer hard drives.
 - d. Executive-session minutes largely nonexistent – secretary states that “until we started working with SMG the board didn't do official minutes except for the Association meetings.” Minutes are not available for owner review upon request.
 - e. Years of meeting minutes still withheld – Plaintiff has demanded all association Meeting Minutes 2021 through current. Most are not published in the Gazette nor anywhere. They have not been made available to owners.
 - f. Financial records from prior management companies are missing – supposedly all were lost in transition, with no association copies maintained centrally for safe keeping and for owner inspection. § 355.826, RSMo
 - g. Zoom association meeting recordings are not published to owners. Minutes are censored and included in the Gazette.
 - h. Utility bills and vendor bills and contracts withheld – not made available to owners upon request.
149. Plaintiff was harmed by the loss of access to governing and historical documents, and incurred legal fees to compel production.
150. Plaintiff seeks costs and court-supervised corrective recordkeeping policy.

151. WHEREFORE, Plaintiff prays for judgment in his favor and against all

Defendants, awarding:

- a. Statutory penalties and liquidated damages for failure to maintain corporate records; § 355.826, RSMo
- b. An injunction compelling Defendants to implement compliant record-retention policies;
- c. Costs, interest, and reasonable attorneys' fees; and
- d. Such other and further relief as the Court deems appropriate.

Count XIX – Retaliation Through Improper Fines and Enforcement (ALA Bylaws, Art. XI §1) § 448.3-102(a)(11), RSMo

152. Plaintiff incorporates by reference all preceding paragraphs as though fully set forth herein.

153. Plaintiff was selectively fined or threatened with violations, including door notices, after publicly opposing the Board of Trustees.

154. Conduct by Defendants includes:

- a. Back-to-back “Friendly Warning” door tags were taped to Plaintiff’s unit in September 2023, each threatening that a formal violation letter with fines would issue if he did not cure an unspecified offense within hours.
- b. Extreme 15-minute deadline: Defendant Board of Trustee provided Plaintiff only 15-minutes to remove protest signs or face immediate fines—while the President’s own real-estate car signs remain displayed from her property for years as a violation of the governing documents. (Indenture, Art. VII §8)
- c. Selective signage enforcement: Defendant Board of Trustee member constructed a flagpole on common area ground in violation of the governing documents, while Plaintiff was cited for displaying his own tributes, proving violations are imposed with bias and Defendant acts of retaliation are prevalent. (ALA Declaration & Bylaws, Book 7267, Page 978, Art. II §1(A)-(C)) § 448.3-102(a)(11), RSMo

155. No other members were similarly treated, and such conduct constitutes retaliation under common law and Defendants’ governance doctrine. § 448.3-102(a)(11), RSMo.

Exhibits O1 – Retaliatory behavior; Exhibits K – Discriminatory practices and selective enforcement of rules.

156. Plaintiff seeks damages and injunctive relief barring retaliatory enforcement.

(ALA Bylaws, Art. XI §1) § 448.4-117, RSMo

157. WHEREFORE, Plaintiff prays for judgment in his favor and against all Defendants, awarding:

- a. Compensatory damages for retaliatory fines, threats, and inspections;
- b. A permanent injunction prohibiting further retaliatory enforcement; (ALA Bylaws, Art. XI §1) § 448.4-117, RSMo
- c. Punitive damages for willful misconduct;
- d. Costs, interest, and attorneys' fees; and
- e. All such other relief deemed just by the Court.

Count XX – Improper Meeting Conduct (Open Meeting Law Violations)

158. Plaintiff incorporates by reference all preceding paragraphs as though fully set forth herein.

159. Defendants' Board of Trustee meetings were held without notice, agendas, or opportunities for members to speak in violation of the Defendants' own bylaws and Missouri open meeting principles. Exhibits G – Violating Meeting Rules, indentures noncompliance, meetings misconduct.

160. Conduct by Defendants includes:

- a. Private “executive sessions” were often held at Defendant Board of Trustee’s homes or with impromptu sessions in their yards—frequently without notice to Plaintiff—yet they voted on issues and even added new agenda items on the spot while Plaintiff was absent.

- b. Defendant Board of Trustees told Plaintiff that he could not add agenda topics to meetings, and that he could not speak to a topic if not on the agenda, therefore taking-away his voice as a Trustee.
 - c. Defendant Board of Trustee President refused Plaintiff the right to address the membership during the main section of the meeting, despite a timely written request to be placed under New Business.
 - d. Defendant Board of Trustees denied Plaintiff access to the Clubhouse meeting room to conduct owner special-meetings in which Defendants did not approve the content.
 - e. Plaintiff was banned from a Zoom member meeting and he was forced to rush to the Clubhouse meeting room to physically attend; Zoom recordings are not published for members to replay.
161. Plaintiff was excluded from virtual and physical meetings without cause.
162. Plaintiff seeks declaratory relief invalidating all such meetings and votes taken therein, as well as injunctive relief to guarantee open access.
163. WHEREFORE, Plaintiff prays for judgment in his favor and against all Defendants, awarding:
- a. A declaratory judgment invalidating any actions taken at meetings held without proper notice;
 - b. A permanent injunction compelling future compliance with open-meeting requirements;
 - c. Costs of suit, interest, and reasonable attorneys' fees; and
 - d. Such additional relief as the Court finds just and proper.

Count XXI – Constructive Exclusion (Discriminatory Access Barriers)

164. Plaintiff incorporates by reference all preceding paragraphs as though fully set forth herein.
165. Defendants' facilities were not made accessible to Plaintiff (and his disabled election candidacy supporters having voting/member privileges) due to lack of

wheelchair ramps, discriminatory policies, and enforcement bias. (ALA Bylaws, Art. XI §1) § 448.4-117, RSMo. Exhibits K – Discriminatory practices and selective enforcement of rules; Exhibits O1 – Retaliatory behavior.

166. Conduct by Defendants includes:

- a. Wheelchair-ramp donation ignored. A homeowner hauled a brand-new donated ramp to the property so elderly and disabled residents could enter the clubhouse. Defendants have refused to implement any solution for these disabled residents to access any amenities including Clubhouse for meetings, swim pool, sports courts, lakes. This barrier violates members’ dignity and participation rights to attend meetings and enjoy amenities.
- b. Virtual-access ban. During the September 2023 HOA meeting the Zoom host removed Plaintiff, triggering the Zoom error: “Unable to re-join ... The host removed you”. Plaintiff was forced to drive to the clubhouse, then confronted by police that the Defendant had manipulated into detaining him in bad-faith by misusing and weaponizing a court order.
- c. 50-ft rope & outside seating. To keep Plaintiff beyond an alleged court distance, Defendant Board of Trustees ran a rope from the Board table, through the door and placed his chair in the parking lot—openly segregating him from other attendees outside of the building. Plaintiff was detained by police who had been manipulated by the Defendants misuse and weaponizing of a court order.
- d. Public posting of exclusion sign. Large notice on the clubhouse door read “Mark E. Gavan cannot come closer than the end of this rope,” further isolating him.
- e. Meeting room capacity capped at 70 people, and “elderly discrimination” preventing disabled owners from physically attending meetings. Many of them have no Zoom experience or physical ability to attend owner meetings.

167. These conditions functionally denied Plaintiff full and equal participation in Defendants’ activities.

168. Plaintiff requests court-ordered compliance with accessibility guidelines and compensatory damages.

169. WHEREFORE, Plaintiff prays for judgment in his favor and against all Defendants, awarding:

- a. Compensatory damages for loss of use, emotional distress, and diminished property value;
- b. An injunction requiring installation of ADA-compliant access features and cessation of discriminatory policies;
- c. Punitive damages to deter future discrimination;
- d. Costs, interest, and reasonable attorneys' fees; and
- e. Such other equitable relief as the Court deems just and proper.

Count XXII – Civil Conspiracy (Board of Trustee Member Agreement to Harm Plaintiff)

170. Plaintiff incorporates by reference all preceding paragraphs as though fully set forth herein.
171. Defendants' Board of Trustees coordinated actions to defame, exclude, and retaliate against Plaintiff based on his protected activities.
172. Coordinated conduct by Defendants includes:
 - a. Using ("weaponizing") the Order of Protection to illegally exclude and intimidate Plaintiff at association owners meetings
 - b. Calling police despite knowing arrest was improper
 - c. Labeling Plaintiff's AG complaint "personally motivated" and "baseless" (defamatory/retaliatory statement by Board counsel)
 - d. Smearing Plaintiff as a harasser to third parties
 - e. Harassment at meetings via physical barriers & signage
 - f. Excluding Plaintiff from Board Meetings
 - g. Implementing a new fine "rule" for Plaintiff Board of Trustee Member speaking to association contractors and vendors
173. The infractions reflect a pattern of coordinated Defendant actions—misusing an order of protection, orchestrating false-arrest attempts, defaming Plaintiff in official

correspondence, erecting physical barriers, and staging closed-door meetings—that collectively support the civil-conspiracy allegations.

174. Each conspirator acted in furtherance of this plan, resulting in harm to Plaintiff.

Exhibits O1 – Retaliatory behavior.

175. Plaintiff seeks joint and several liability and in compensatory damages and punitive damages.

176. WHEREFORE, Plaintiff prays for judgment in his favor and against all Defendants, jointly and severally, awarding:

- a. All damages proximately caused by the conspiratorial acts (including defamation, exclusion, and retaliation); § 448.3-102(a)(11), RSMo
- b. Punitive damages to deter future conspiracies;
- c. Costs of suit, reasonable attorneys' fees, and pre- and post-judgment interest; and
- d. Such other and further relief as the Court deems just and proper.

Count XXIII – Failure to Conduct Routine Inspections (Negligent Management)

177. Plaintiff incorporates by reference all preceding paragraphs as though fully set forth herein.

178. Defendants failed to conduct regular condition assessments association buildings and grounds despite known deterioration and safety hazards. (Indenture, Art. VI §1-2; Art. VII §6) (ALC Declaration, Art. 14 §14.1-14.5). Exhibits F/K – Failure to Conduct Regular Inspections and maintain common grounds; Exhibits M – Failure to Address Safety Issues and no emergency planning; Exhibits N – Neglecting environmental responsibility.

179. Conduct by Defendants includes:

- a. Only a subset of buildings got inspected; roofing assessment was triggered by an insurance claim—not routine maintenance (Indenture of Trust and Restrictions for Autumn Lakes, Book 7267, Page 953, Art. V §5; Art. VII §7) (ALC Declaration & Bylaws, Art. 13 §13.4)
- b. Chronic roof deterioration of all buildings
- c. Widespread wear and safety issues (heat blisters, nail pops, loose tabs, missing tiles)
- d. Aged gutters and dented metalwork
- e. Damaged bricks on chimneys and lawn structures
- f. Damaged retaining walls
- g. Broken spigot running open for days (with Defendants ignoring submitted report)
- h. Ignored, excessively delayed, or improperly closed work-order requests for tripping hazards, black-mold ceiling damage, broken water spigot, siding/gutter/roof damage and other building and common ground damage.
- i. Amenities require full renovation: pool, tennis court, basketball court, clubhouse including bathrooms/ramp/etc.
- j. Lakes require dredging, and measures to halt chemical application to shoreline and water in violation of governing documents
- k. Lake overflow pipe clog caused entire collapse of expensive drainage system

180. An independent Grayco “Roof Survey and Condition Assessment” underscores that inspections were reactive (post-hail insurance inquiry) and partial, leaving most buildings unchecked. Building 28’s unreplaced roof, widespread wear anomalies, and aged gutters prove the HOA let structures deteriorate for years. Homeowner correspondence and unaddressed work orders confirm day-to-day hazards that an active inspection program would have remedied. (Indenture, Art. VI §1-2; Art. VII §6) (ALC Declaration & Bylaws, Art. 13 §13.3)

181. As a result, association property and common areas fell into disrepair negatively impacting Plaintiff’s investment in association assets. (ALA Declaration & Bylaws, Book 7267, Page 978, Art. II §1(A)-(C))

182. Plaintiff seeks repair-related losses and injunctive oversight.

183. WHEREFORE, Plaintiff prays for judgment in his favor and against all Defendants, awarding:

- a. Compensatory damages for repair costs, diminished property value, and related losses;
- b. An injunction requiring periodic condition assessments and publication of inspection reports; (Indenture, Art. VI §1-2; Art. VII §6) (ALC Declaration, Art. 14 §14.1-14.5)
- c. Costs, interest, and reasonable attorneys' fees; and
- d. Such other equitable relief as the Court deems appropriate.

**Count XXIV – Ignoring Maintenance Requests (Breach of Management Duty)
(Indenture of Trust and Restrictions for Autumn Lakes, Book 7267, Page 953, Art. V §5; Art. VII §7) (ALC Declaration & Bylaws, Art. 13 §13.4)**

184. Plaintiff incorporates by reference all preceding paragraphs as though fully set forth herein.
185. Plaintiff submitted multiple maintenance requests over a 12-month period which were closed or rejected by Defendants with illegitimate explanation. Defendants' discrimination of Plaintiff. Rampant neglect of association property by Defendants' Board of Trustees. (Indenture of Trust and Restrictions for Autumn Lakes, Book 7267, Page 953, Art. V §5; Art. VII §7) (ALC Declaration & Bylaws, Art. 13 §13.4). Exhibits H/L – Privacy Violations and improper communications, lack of training, ignoring maintenance requests and homeowner concerns, lack of transparency.
186. Conduct by Defendants includes:
- a. Defendants admit TownSq work-order status of "closed" often meant not completed (undone), but rather added to an offline project list having no owner visibility. Projects remain incomplete with no repairs to property. No timely response in violation of governing documents.
 - b. Plaintiff driveway gap-hazard ticket twice closed with promise "next year", never completed. Plaintiff completed at his own cost. Defendants' bias of Plaintiff.

- c. Plaintiff common ground retaining wall ticket rejected as “owner responsibility”. Plaintiff completed at his own cost. Defendants’ bias of Plaintiff.
 - d. Plaintiff deck painting ticket rejected as “owner responsibility” (despite 2 other units of same building being painted by association). Plaintiff completed at his own cost. Defendants’ bias of Plaintiff.
 - e. Property management company replies to owner concerns but defers to Defendants’ Board of Trustees for response/action—typically no action is taken by either party.
 - f. Routinely, a large backlog of work-orders are pending completion. Large number of work-orders assigned to projects also pending completion. Insufficient association funds in financial reserves to accommodate all necessary repairs.
187. The governing documents require timely response and resolution of valid homeowner concerns.
188. Plaintiff suffered damage to his home and had to fund private repairs.
189. Plaintiff suffered damages to his investment in association assets.
190. WHEREFORE, Plaintiff prays for judgment in his favor and against all Defendants, awarding:
- a. Restitution or reimbursement for out-of-pocket repair expenses and compensatory damages;
 - b. Restitution for his interest in investment loss due to association asset neglect over years;
 - c. A mandatory injunction establishing a prompt, transparent maintenance-request protocol in accordance with governing documents. (Indenture of Trust and Restrictions for Autumn Lakes, Book 7267, Page 953, Art. V §5; Art. VII §7) (ALC Declaration & Bylaws, Art. 13 §13.4)
 - d. Costs of suit, interest, and reasonable attorneys’ fees; and
 - e. Any further relief the Court deems just and proper.

Count XXV – Inadequate Emergency Planning (Negligence)

191. Plaintiff incorporates by reference all preceding paragraphs as though fully set forth herein.
192. Defendants’ governance lacks a written or implemented emergency response plan despite known infrastructure and weather vulnerabilities. Exhibits M – Failure to Address Safety Issues and no emergency planning.
193. Conduct by Defendants includes:
 - a. Defendants’ only published “plan” is a limited snow-removal policy.
 - b. Defendants’ decline sidewalk snow removal, increasing slip-and-fall risk.
 - c. Excess snow plowing under 3-inch threshold drains reserves, sparks safety complaints, and damages driveways and common grounds.
 - d. The community location is known for severe storms and tornadoes, earthquakes, sinkholes, and with no published “plan” for catastrophes impacting members.
 - e. Emergency contact in newsletter is just the management company’s after-hours number.
194. This omission violates prudent management standards and places residents at undue risk.
195. Plaintiff seeks development and publication of a community emergency response plan and damages related to preparedness expenses.
196. WHEREFORE, Plaintiff prays for judgment in his favor and against all Defendants, awarding:
 - a. Compensatory damages for preparedness expenses and increased risk;
 - b. An injunction compelling development and implementation of a written emergency-response plan.
 - c. Costs, interest, and reasonable attorneys’ fees; and
 - d. Such other and further relief as the Court considers just.

Count XXVI – Negligent Infliction of Emotional Distress

197. Plaintiff incorporates by reference all preceding paragraphs as though fully set forth herein.
198. Defendants’ extreme and outrageous conduct—including repeated false police calls and staged public humiliation—caused Plaintiff anxiety, insomnia, and other medically significant emotional suffering. Exhibits O1 – Retaliatory behavior.
199. Conduct by Defendants includes:
- a. At the March 2024 owners meeting, Defendants stretched a 50-foot rope from the Board President’s chair to a chair in the parking lot, posting two signs that identified Plaintiff and referenced his order-of-protection case information; (Indenture, Art. VII §8)
 - b. A pattern of improper police calls intended to detain or arrest Plaintiff for exercising his First-Amendment rights;
 - c. Plaintiff’s sworn interrogatory answers attesting to “anxiety-induced insomnia” and its impact on wages, daily life, and relationships;
 - d. Defamatory statements that Plaintiff engaged in harassment, damaging his personal and professional reputation; and
 - e. Defendants knew or should have known their conduct would inflict severe emotional distress.
200. Plaintiff has sought medical diagnosis and treatment for stress-related symptoms attributable to Defendants’ conduct.
201. Defendants acted with reckless indifference and conscious disregard for Plaintiff’s rights, constituting aggravating circumstances under Missouri law.
202. Plaintiff’s injuries were a foreseeable and direct result of Defendants’ negligent and reckless acts.
203. WHEREFORE, Plaintiff prays for judgment in his favor and against all Defendants, awarding:
- a. General and special damages for medically significant emotional distress;

- b. Compensation for past and future medical and counseling expenses;
- c. Costs of litigation, pre- and post-judgment interest, and reasonable attorneys' fees; and
- d. Plaintiff expressly reserves the right, pursuant to § 510.261, RSMo, to seek leave of Court to plead and recover punitive damages upon completion of discovery and a showing of a reasonable basis.
- e. Plaintiff further requests such other and further relief as the Court deems just and proper.

Count XXVIII – Abuse of Authority (Ultra Vires Governance Acts)

204. Plaintiff incorporates by reference all preceding paragraphs as though fully set forth herein.
205. Defendants acted beyond their authority in enforcing new policies, levying fines, and issuing community-wide directives without required procedures (ALA Declaration Art. IX). Exhibits E – Failure to follow and make amendments to Defendant Indentures and Bylaws, unauthorized rules enforcement; Exhibits F – Unauthorized rule changes.
206. Conduct by Defendants includes:
- a. Imposed new “grill / fireplace” rules and daily fines – In October 2023 the Board emailed owners that any grill left on a deck after October 8, 2023 would trigger a \$50-per-day fine and any use of a wood-burning fireplace would trigger escalating fines (\$100 → \$250 → \$500). Rules were “put into effect September 8, 2023... Fines are in effect, without further notice.”
 - b. Levied those fines to enforce the new rules without owner vote – The same message reiterates that fines “go into effect, immediately,” proving the Board both created and enforced the penalty regime unilaterally. Defendants have not allowed Plaintiff/owners to vote on any topics in 2022, 2023, 2024, 2025, other than to fill vacating Board of Trustee seats, violating governing documents.
 - c. Raised monthly dues ~28 % despite Indentures CPI cap (~3 %) – Indentures restrict HOA dues increases to CPI ... 3.2 %. (ALA Bylaws, Art. VIII §1-2)
 - d. Unilaterally re-structured the Board itself – April 2024 post states the Board is “being implemented by the Board without a homeowner vote—which is a violation of our Indentures to implement any significant change without a vote.”

- e. Secret committee to modify Indentures – the Defendants were “modifying the Indentures using their Secret Indentures Committee, excluding owner representatives.”
207. These ultra vires actions violated Defendants’ corporate and community governance laws.
208. Plaintiff seeks declaratory relief invalidating said actions and reimbursement of any costs incurred.
209. WHEREFORE, Plaintiff prays for judgment in his favor and against all Defendants, awarding:
- a. A declaratory judgment voiding all ultra vires directives, fines, and policies;
 - b. Restitution or reimbursement of any sums paid under those invalid acts;
 - c. A permanent injunction prohibiting future ultra vires conduct;
 - d. Costs, interest, and reasonable attorneys’ fees; and
 - e. Such further relief as the Court deems just.

Count XXIX – Improper Use of Association Funds (Fiduciary Breach) § 355.416, RSMo

210. Plaintiff incorporates by reference all preceding paragraphs as though fully set forth herein.
211. Defendants used Defendants’ funds for improper purposes including legal battles protecting their Board of Trustee seats and suppressing homeowner dissent. Exhibits C – Lack of Record-Keeping, financial mismanagement, conflicts of interest; Exhibits D – Unapproved Assessments and improper use of Reserve Funds.
212. Conduct by Defendants includes:
- a. Reserve dollars diverted to expensive litigation with hourly fees exceeding those that would be customary for non-profit entities such as homeowner associations.

- b. Reserve dollars diverted to \$15,000 new security system while building repairs are higher priority.
 - c. Board policy itself forbids spending HOA money for personal benefit (e.g. private clubhouse parties hosted by Defendants, private patios for Defendants' homes, personal meals, personal legal fees and related costs/supplies, other spend not directly benefiting the association in accordance with the governing documents.
 - d. Undisclosed payments to individual Board members.
 - e. Association labor and repair funds used to boost a Trustee-Realtor's listings, conflict of interest.
 - f. "Inside" repair promises (e.g. ceilings, walls, floors, windows, lower levels).
213. These expenditures were not disclosed, authorized, or justified by contract or policy.
214. Plaintiff seeks restitution of his dues misused and court-ordered fiduciary training for the Board of Trustees. (ALA Bylaws, Art. VIII §1-2) § 355.416, RSMo.
215. WHEREFORE, Plaintiff prays for judgment in his favor and against all Defendants, awarding:
- a. Restitution of dues and assessments misapplied, plus disgorgement of any improper gains; (Indenture, Art. VI §1-2; Art. VII §6) (ALA Bylaws, Art. VIII §1-2) (ALC Declaration, Art. 14 §14.1-14.5)
 - b. An injunction requiring independent financial oversight and fiduciary training for the Board; § 355.416, RSMo
 - c. Pre- and post-judgment interest, costs, and reasonable attorneys' fees; and
 - d. Such other equitable relief as the Court deems appropriate.

Count XXX – Conflict-of-Interest & Self-Dealing (Conflict of Interest, Self-Dealing)

216. Plaintiff incorporates by reference all preceding paragraphs as though fully set forth herein.

217. Under RSMo § 355.416 and Article VII (Ethics Policy) of the Association Bylaws, directors owe a duty of loyalty and must avoid self-dealing and conflicts of interest. Affirming fiduciary duty of Defendants' Board of Trustees to community members and is subject to refinement through discovery and expert analysis. ALA Bylaws Art. VII Ethics Policy and ALA Declaration Art. IX. See Autumn Lakes Board of Trustees Ethics Policy. § 355.416, RSMo
218. Conduct by Defendants includes:
- a. Defendant--Board of Trustee President—Mrs. Charlotte Smith, used her Board of Trustee President position to expedite common-element repairs and aesthetic upgrades to buildings having units that she had listed for sale, thereby enhancing her commissions. (Exhibits C)
 - b. By diverting Association resources for her personal benefit, Defendant breached fiduciary duties and engaged in self-dealing in violation of the governing documents and Missouri law. § 355.416, RSMo
219. Plaintiff and other unit owners consequently paid inflated assessments and suffered reduced trust in Association governance. Damages will be proven at trial. (Indenture, Art. VI §1-2; Art. VII §6) (ALC Declaration & Bylaws, Art. 1 §1.8)
220. Plaintiff requests restitution, disgorgement of any improper gains, an injunction requiring conflict disclosures and recusals, and such further relief as the Court deems just.
221. WHEREFORE, Plaintiff prays for judgment in his favor and against all Defendants, awarding:
- a. Restitution and disgorgement of profits obtained through self-dealing;
 - b. Compensatory damages for inflated assessments and related losses;
- (Indenture, Art. VI §1-2; Art. VII §6) (ALC Declaration, Art. 14 §14.1-14.5)

- c. A permanent injunction mandating full conflict disclosures and recusals on interested votes;
- d. Costs, interest, and reasonable attorneys' fees; and
- e. Such further relief as the Court deems just and proper.

Count XXXI – Consumer-Protection / Misrepresentation (Missouri Merchandising Practices Act)

222. Plaintiff incorporates by reference all preceding paragraphs as though fully set forth herein.
223. The Missouri Merchandising Practices Act (“MMPA”), §§ 407.010 et seq., prohibits deception, fraud, false promises, misrepresentations, and material omissions in connection with the sale or advertisement of merchandise or services.
224. Through mandatory monthly assessments, Plaintiff purchases management and maintenance services from Defendants, including procurement and certification of master-insurance coverage. Such services constitute “merchandise” under § 407.010(4). (Indenture of Trust and Restrictions for Autumn Lakes, Book 7267, Page 953, Art. V §5; Art. VII §7) (ALC Declaration & Bylaws, Art. 13 §13.4). Exhibits B – Insurance Mismanagement.
225. Conduct by Defendants includes:
- a. Material omission. On January 17, 2024, Defendants issued Certificate #AL-24-011 to a realty transaction lender representing that master insurance was in force; in truth the policy had lapsed, as shown by underwriting correspondence dated April 3, 2024. Defendants failed to disclose the lapse to owners or lenders. (ALC Declaration & Bylaws, Art. 13 §13.3)
 - b. Buyers relied on Defendants’ certificate in pursuing mortgage refinances. Bank denied the April 2024 refinance specifically because coverage had lapsed, causing higher interest costs and appraisal fees.

- c. Defendants' omission was "in connection with" Buyers' purchase of association services and directly affected a consumer-credit transaction, thereby violating § 407.020.

226. As a result, Buyers suffered ascertainable losses, including elevated financing costs, diminished property marketability, and wasted fees.

227. WHEREFORE, Plaintiff prays for judgment in his favor and against all Defendants, awarding

- a. An injunction requiring independent financial oversight of the Defendants' Board of Trustees;
- b. An injunction requiring association fiduciary training for the Defendants' Board of Trustees and future Trustees; § 355.416, RSMo
- c. Injunctive relief compelling truthful disclosure of insurance status to owner-members and lenders; and (ALC Declaration & Bylaws, Art. 13 §13.3)
- d. Such further relief as the Court deems just and proper.

Count XXXII – Violation of Governing Document Amendment Procedure

228. Plaintiff incorporates by reference all preceding paragraphs as though fully set forth herein.

229. Conduct by Defendants includes:

- a. Board began rewriting the Indentures through a secret committee without owner notice or vote
- b. Homeowners were barred from participating in the committee
- c. Official Town-hall on governing-document changes abruptly cancelled
- d. Attorney was hired by the Defendants to draft new governing documents. Instead, attorney re-interpreted the governing documents so as to restructure the composition of the Board of Trustees to be newly comprised of 2 house owners and 3 condo owners.
- e. Purpose for this restructuring activity was Defendants' election interference to prevent Plaintiff and another member (i.e. JR) from serving together on the Board, with them both being condo owners and only 1 condo seat open for election. The second open seat to be explicitly filled by a "house" owner, instead

- of a second “condo” owner. No owner vote was permitted by the Defendants for this major change in association governance.
- f. Narrative of “hijacking” the neighborhood by rewriting filed indentures without review or appeal, and the reinterpreting of the indentures without owner vote for the material change in Board of Trustee governance structure. Furthermore, election interference.
230. Defendants substantially altered association rules—including use restrictions, enforcement procedures, and Board of Trustee power—without submitting proposed amendments to a vote of the membership, in violation of ALA Declaration Art. IX. (ALA Bylaws, Art. XI §1) § 448.4-117, RSMo. Exhibits E – Failure to follow and make amendments to Defendant Indentures and Bylaws, unauthorized rules enforcement; Exhibits F – Unauthorized rule changes.
231. ALA Declaration Art. IX requires that “no amendment shall be effective unless approved by at least two-thirds of the votes of the members.” No such vote was taken, and no official record of amendment filings with St. Louis County has been produced. Governing documents prohibit enforcement of any rule that was not validly adopted in accordance with its amendment provisions. (ALA Bylaws, Art. XI §1) § 448.4-117, RSMo
232. These unauthorized rule changes altered member rights, including access to amenities, architectural controls, and financial enforcement procedures. They have caused direct harm to Plaintiff and other residents through misapplication of unratified rules. (Indenture, Art. V §3-5) (ALA Bylaws, Art. XI §1) § 448.4-117, RSMo
233. Plaintiff seeks declaratory relief invalidating any rules not passed in accordance with the required amendment procedures, an injunction preventing further

enforcement of such rules, and damages arising from any enforcement actions based on the invalid provisions. (ALA Bylaws, Art. XI §1) § 448.4-117, RSMo

234. WHEREFORE, Plaintiff prays for judgment in his favor and against all

Defendants, awarding:

- a. A declaratory judgment invalidating all rules and amendments adopted without the required member vote;
- b. A permanent injunction preventing enforcement of any unratified rule; (ALA Bylaws, Art. XI §1) § 448.4-117, RSMo
- c. Compensatory damages stemming from enforcement of invalid provisions; (ALA Bylaws, Art. XI §1) § 448.4-117, RSMo
- d. Costs, interest, and reasonable attorneys' fees; and
- e. Such further relief as the Court deems just and proper.

Count XXXIII – Owner Enforcement of Governing Documents in Lieu of Board Action / Recovery of Legal Fees and Costs

235. Plaintiff incorporates by reference all preceding paragraphs as though fully set forth herein.

236. Under the governing documents of Autumn Lakes, any owner has the express right to restrain violations of the restrictions and to recover damages therefor, including attorney's fees and costs, when acting to enforce compliance in good faith on behalf of the association.

237. The Indenture of Trust and Restrictions for Autumn Lakes expressly provides that:

238. "If the owner or owners, their heirs, executors, administrators, grantees or assigns, or any one of them... shall infringe or attempt to infringe... it shall be lawful for any

other person or persons owning any units or lots in said properties... or for the Association... to prosecute any proceedings in law or in equity against the person or persons infringing or attempting to infringe... either to prevent it... or to recover damages for such infringement” (al_indentures-7267-953)

239. This language grants standing to any owner, including Plaintiff, to take legal action when the Board fails or refuses to do so, and allows recovery of damages which necessarily include legal fees and costs incurred in good faith enforcement.
240. Missouri law supports such enforcement authority. RSMo § 448.4-117 authorizes actions to enforce condominium instruments, bylaws, and rules, and RSMo § 448.3-102(a)(4) & (11) recognizes an association’s obligation to institute litigation to enforce its governing documents. Where the Board fails to fulfill this duty, an owner acting derivatively or in place of the Board is entitled to reimbursement of reasonable enforcement expenses. Exhibits E – Failure to follow and make amendments to Defendant Indentures and Bylaws, unauthorized rules enforcement; Exhibits K – Discriminatory practices and selective enforcement of rules; Exhibits O1 – Retaliatory behavior.
241. Conduct by Defendants includes:
- a. Refusal to take enforcement action against owners, including Defendants John Smith and Charlotte Smith, for displaying magnetic realty vehicle signage in violation of the “No Signs” covenant (Indenture, Art. VII §8) and related provisions of the ALA Declaration and Bylaws (ALA Declaration, Art. IX; ALA Bylaws, Art. XI §1).
 - b. Refusal to take enforcement action against owners who erected a flagpole on common area ground in violation of governing documents (ALA Declaration Art. II §1(A)-(C); Indenture Art. V §5; Art. VII §7).
 - c. Refusal to reimburse Plaintiff for legal fees and costs incurred in good faith in defense of the association’s governing documents, including:
 - i) Legal fees in Plaintiff’s defense in the retaliatory defamation lawsuit filed by Defendant Mrs. Charlotte Smith and husband;

- ii) Legal fees in Plaintiff's defense in the retaliatory harassment charges filed by Defendant Mrs. Charlotte Smith and husband;
- iii) Legal fees in Plaintiff's enforcement and removal/seizure of Defendant Mrs. Charlotte Smith and husband's illegal realty vehicle signage;
- iv) Legal fees in Plaintiff's lawsuit against Defendant Mrs. Charlotte Smith and husband for defamation and abuse of process arising directly from Plaintiff's enforcement efforts;
- v) Legal fees in Plaintiff's enforcement of illegal flagpole erected on association common ground by Defendant Mr. Melvin Rhomberg and wife; and
- vi) Legal fees in Plaintiff's enforcement against Defendants in this lawsuit, Case No.: 25SL-CC02013.

242. Justification for Damages: Plaintiff acted in good faith as a unit owner to defend and protect the Association's legal rights and enforce its governing documents when the Board refused to act. Under the Indenture's express language, "damages" in such owner enforcement actions necessarily include legal fees and costs, as these are the natural and foreseeable expenses required to restrain violations.

243. Defendants' refusal to reimburse Plaintiff for these enforcement costs constitutes breach of the contractual enforcement rights under the governing documents, as well as violation of public policy encouraging enforcement of HOA covenants.

244. Missouri Statutory Support:

- RSMo § 448.4-117 – Remedies to enforce the declaration, bylaws, or rules.
- RSMo § 448.3-102(a)(4) & (11) – Association powers to institute litigation to enforce governing documents.
- RSMo § 355.141 & § 355.416 – Nonprofit corporate duties of care and loyalty, supporting derivative enforcement actions and indemnification of members acting in good faith.

245. WHEREFORE, Plaintiff prays for judgment in his favor and against all Defendants, awarding:

- a. Damages in the amount of all legal fees and costs incurred by Plaintiff in enforcing the Association's governing documents and defending against retaliatory litigation, including but not limited to:
 - i) Legal fees in Plaintiff's defense in the retaliatory defamation lawsuit filed by Defendant Mrs. Charlotte Smith and husband;
 - ii) Legal fees in Plaintiff's defense in the retaliatory harassment charges filed by Defendant Mrs. Charlotte Smith and husband;
 - iii) Legal fees in Plaintiff's enforcement and removal/seizure of Defendant Mrs. Charlotte Smith and husband's illegal realty vehicle signage;
 - iv) Legal fees in Plaintiff's lawsuit against Defendant Mrs. Charlotte Smith and husband for defamation and abuse of process arising directly from Plaintiff's enforcement efforts;
 - v) Legal fees in Plaintiff's enforcement of illegal flagpole erected on association common ground by Defendant Mr. Melvin Rhomberg and wife; and
 - vi) Legal fees in Plaintiff's enforcement against Defendants in this lawsuit, Case No.: 25SL-CC02013.
- b. Pre- and post-judgment interest; and
- c. Such other and further relief as the Court deems just and proper.

VI CONCLUSION

246. For the foregoing reasons, and incorporating by reference all preceding allegations, Counts, and WHEREFORE paragraphs, Plaintiff respectfully prays that the Court enter judgment in his favor and against Defendants and grant every form of

relief set forth in the foregoing Prayer for Relief, together with any additional or different relief the Court deems just and proper under Missouri law.

247. Plaintiff hereby demands a trial by jury on all issues so triable and reserves the right to amend or supplement this Petition as justice may require.

VII PRAYER FOR RELIEF

248. WHEREFORE, Plaintiff respectfully prays that judgment be entered against Defendants, jointly and severally, and that the Court award the following relief:

- a. Contractual Damages – Compensation for all breaches of the governing Declarations, Bylaws, and Indentures, including unauthorized expenditures, failure to maintain common areas, and mismanagement of reserve funds, in an amount to be proven at trial. (ALA Declaration & Bylaws, Book 7267, Page 978, Art. II § 1(A)-(C))
- b. Restitution / Disgorgement – Return of all improperly collected assessments, fines, late charges, and any profits or benefits gained through self-dealing, conflicts of interest, or ultra vires acts (Counts X, XII, XIV, XXIX, XXX). (Indenture, Art. VI § 1-2; Art. VII § 6) (ALC Declaration, Art. 14 § 14.1-14.5)
- c. Statutory Penalties & Liquidated Damages – Any penalties, double damages, or enhanced damages available under RSMo § 407.025 (MMPA), RSMo § 355.826, and related statutes (Counts VIII, XI, XVIII, XXXI).
- d. Compensatory Tort Damages – All damages recoverable in tort, including economic and non-economic losses such as emotional distress and diminution of property value, in amounts to be determined by the trier of fact.

- e. Punitive Damages – An award sufficient to punish and deter willful, wanton, and malicious conduct, subject to leave of court under RSMo § 510.261.
- f. Declaratory Relief – Judicial declarations that:
 - i) Any HOA rules or amendments adopted without the required member vote are void;
 - ii) Board elections or actions taken in meetings held without proper notice are invalid;
 - iii) Defendants’ retaliatory enforcement practices and discriminatory access barriers violate governing documents and Missouri law;
 - iv) Plaintiff, as a unit owner, has the contractual and statutory right to bring enforcement actions in good faith on behalf of the Association when the Board fails to act, and to recover all reasonable legal fees and costs incurred in such enforcement. (Indenture, Art. XI; RSMo § 448.4-117; RSMo § 355.416)
 - v) Permanent Injunctions requiring Defendants to:
 - Repair and maintain common elements promptly (Counts I, XIII);
 - vi) Comply with open-meeting and records-inspection requirements (Counts II, XX);
 - vii) Cease retaliatory or discriminatory enforcement and install ADA-compliant access features (Counts XIX, XXI);
 - viii) Enforce conflict-of-interest recusals and adopt fiduciary-training and emergency-planning protocols (Counts VIII, X, XXV);
 - ix) Reimburse Plaintiff from Association funds for all past and future good-faith enforcement costs incurred on behalf of the Association, including legal fees

and costs arising from enforcement against other owners in violation of the governing documents, and defense of retaliatory actions. (Count XXXIII)

- g. Equitable Oversight – Appointment of an independent monitor, financial auditor, or other neutral professional to oversee compliance and report to the Court as necessary (Count XXXIII).
- h. Pre- and Post-Judgment Interest – At the maximum rates allowed under RSMo §§ 408.020 & 408.040 or other applicable law.
- i. Attorneys’ Fees – Reasonable fees recoverable under the governing documents, Missouri statutes (including RSMo § 407.025 and § 355.826), or equitable principles.
- j. Costs of Suit – All taxable costs and litigation expenses, including expert-witness fees and service costs.
- k. Such Other and Further Relief as the Court deems just and proper.

Respectfully Submitted,

By: _____
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CERTIFICATE OF SERVICE

The undersigned certifies that on this 8th day of August, 2025, a copy of the foregoing was sent to the following by email, in Word and PDF formats:

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