

CWPOA HAS NO ASSESSMENT AUTHORITY

Once again, the small, voluntary neighborhood association club known as the Cascadel Woods Property Owners Association (CWPOA), suffered another major blow August 4, in its quest to sue enough property owners in small claims court to force us all to keep paying its illegal assessments or face getting wrongfully sued.

For the third time, this time in a lengthy written ruling, the court repeated:

As the Court found in the earlier actions, Cascadel Woods Property Owners Association is a voluntary association which does not have the legal authority to issue mandatory assessments on property owners within the subdivision.

The court also found that the CWPOA lacks standing under Civil Code Section 845:

Even if section 845 of the Civil Code were applicable to the property owners within the Cascadel Woods subdivision, a determination that this Court finds unnecessary to reach in the present small claims actions, the Court finds that the plaintiff Cascadel Woods Property Owners Association, as a voluntary association, without the power to levy assessments, lacks standing to prosecute the present actions pursuant to subsection (c) of section 845.

Civil Code Section 845 (c) grants easement owners authority to collect for easement maintenance either jointly or severally. The CWPOA is not an owner. The CWPOA cannot.

CWPOA's misrepresentations of authority to assess fees, even going so far as to falsely claim authority in its bylaws, were soundly refuted by the Madera County Superior Court, for the third time. Twelve individual properties have now successfully stood up to CWPOA bullying and won.

As you may remember from last year, Lloyd Carter, Mark Stamas, Judy Castles, Chris Iden, Marie Iden and Daniel Norton, successfully beat the association in Madera County Small Claims Court, twice.

Even after losing due to its lack of standing or authority, the CWPOA attempted to make an end run around the Madera Court by filing additional identical lawsuits against multiple residents again only this time in the Bass Lake Court Sierra Division.

In the first attempt against one property owner, misrepresenting itself as a homeowners association, the Bass Lake Court made a bad ruling in favor of the CWPOA club.

Then the Bass Lake Court found out the association had previously lost multiple times in Madera, recognized its mistake, and sent all of the pending cases back to Madera, where the CWPOA lost on all its claims.

Once a Social Club Always a Social Club

The CWPOA story can finally come to an end. What started as a promotional social and recreational entity to promote property rights and social and beneficial activities had become a group pretending to be a true HOA. But it never was. And never will be.

Many of us served for several years on its board. We were told many incorrect and inaccurate things by folks with a vested financial interest in perpetuating a myth. Something just didn't seem right.

From that experience we all suspected the CWPOA was just a voluntary neighborhood association formed as a voluntary social club. We did the research for ourselves. We found out the truth. We were right. Then we got demonized, marginalized, and attacked by haters with a serious financial conflict of interest. We didn't give up. We stood up to them.

Current CWPOA President Stan Eggink served with Mark Stamas until 2008. By then Mr. Eggink already knew the CWPOA has no standing or authority. The record just didn't show any assessment authority.

But Mr. Eggink quit to avoid pursuing legal action for a determination of rights. Prior to that, after the big blowup about Cascadel Road to the east being blocked, the CWPOA had eliminated road fees, but still continued to do some road maintenance.

Then, in 2009, after multiple civil suits and a criminal action left it reeling from the obvious fact that a social club has no standing or authority to assess fees and certainly shouldn't attempt road maintenance, the last legitimate CWPOA board pulled the plug and ended road maintenance once and for all after residents decided not to fund legal action.

But then Mr. Eggink returned. He and his friends drove out the board reducing it to less than a quorum.

The CWPOA was, and remains, legally defunct. According to corporate law, when the board drops below a quorum, the corporation cannot continue without court action.

In violation of corporate law, and penal code, Mr. Eggink then resurrected the CWPOA.

He put himself and his friends on the board, reinstated road fees, reinstated membership dues, increased fees 40%, reduced the board to five members then proceeded to bill residents misrepresenting authority to assess where there is none. MANDATORY and OBLIGATED were on the bills even though the board had not established any authority through any legal action.

Then in 2012 to 2013, through a massive disinformation campaign, his board and paid employees used your road money to work hard to stop a viable road maintenance district for county performed road maintenance like Cascadel Heights has enjoyed since 1995.

In 2013, under Mr. Eggink, the CWPOA was fired by the county for alleged misuse of funds and price gouging. The CWPOA and Water company, both under Mr. Eggink, were evicted from the public facilities and remain barred.

Since 2009 the CWPOA has spent a small fortune of your money in legal fees, and counting. Well over six figures of your road money has been spent on other than roads.

Despite all the CWPOA smoke and mirrors and inappropriate spending, the roads were poorly maintained at best.

Through voluntary community fundraising, only the Eastern Madera County Fire Safe Council has performed any meaningful routine road maintenance, and is the only entity permitted to do so.

After the county blew the whistle on the CWPOA lack of authority to assess fees in 2013, it changed its bills removing the words MANDATORY and OBLIGATED. Though the bills still implied mandatory assessment, we stopped paying at that time.

And the rest, as they say, is history.

Conclusion

The bottom line is that the Cascadel Woods Property Owners Association is a voluntary association which does not have the legal authority to issue mandatory assessments.

Furthermore, the CWPOA, as a voluntary association, not only has no power to levy assessments, but also lacks standing under Civil Code Section 845.

Even knowing this judgment was inevitable, Mr. Egginks' group sent out yet another round of false bills instead of waiting for the judgment.

Under Mr. Eggink now for over a decade, your Water Company is now mailing CWPOA propaganda and paying it fees, dues, and 'administrative' fees, commingling the entities misusing our water money.

The bottom line is that the CWPOA cannot make you contribute a single dime.

Now it is time for property owners in Cascadel to embark on a different path to maintain our mountain roads. Stay tuned.

Lloyd Carter
Bob Buckles
Mark Stamas
Daniel Norton

Handwritten signatures of Lloyd G. Carter, Bob Buckles, Mark Stamas, and Dan Norton.

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF MADERA

WALTER C. SCOTT,)

Plaintiff,)

vs.)

CASCADEL WOODS PROPERTY)
OWNERS ASSOCIATION,)

Defendant.)

CASCADEL WOODS PROPERTY)
OWNERS ASSOCIATION,)

vs.)

MICHAEL FREEMIRE and JOANNE)
FREEMIRE,)

Defendants.)

CASCADEL WOODS PROPERTY)
OWNERS ASSOCIATION,)

vs.)

WALTER SCOTT and SUSAN SCOTT,)

Defendants.)

Case Nos. MSC008671
SSC014518
SSC014520
SSC014522

JUDGMENT IN SMALL
CLAIMS ACTIONS

Trial Date: 6-13-16
Department: 45

1 CASCADEL WOODS PROPERTY)
OWNERS ASSOCIATION,)
2)
vs.)
3)
HARVEY FISCHER, JACK CORNETT,)
4 KATHI CORNETT and ANN KENNEDY,)
5)
Defendants.)
6)

7 The above-entitled small claims actions came on regularly for trial on June 13, 2016, in
8 Department 45 of the above-entitled court, Judge James E. Oakley presiding. Cascadel Woods
9 Property Owners Association was represented in court by its representatives Ken Wood and Stan
10 Eggink. Walter Scott, Michael Freemire, Joanne Freemire, Harvey Fischer, Kathi Cornett and
11 Ann Kennedy, were each personally present in court. The Court heard testimony, admitted
12 evidence, heard arguments of the parties, and declared that the case would be taken under
13 submission. Having considered all of the testimony, evidence and arguments presented by the
14 parties in these actions, the Court finds as follows:

15 This is the third occasion in which this Court has considered the issues relating to the
16 payment and collection of road maintenance assessments by the Cascadel Woods Property
17 Owners Association. On August 21, 2015, this Court heard the claims of five property owners
18 within the Cascadel Woods subdivision for a refund of assessments previously paid to the
19 Association, and the counter-claims by the Association for the collection of road maintenance
20 assessments which had not been paid.¹ In that action, this Court granted judgment for the
21 defendant Association on the plaintiff property owners' claims, and granted judgment for the
22 plaintiff property owners on the defendant Association's claims. After reviewing the

23 _____
24 ¹ *Loyd Carter, Mark Stamas, Judy Castles and Chris Iden vs. Cascadel Woods Property Owners Association.*
25 Madera County Superior Court action number MSC008538.

1 voluminous documents presented by all parties, and after considering the testimony of all parties
2 at the hearing, the Court concluded that the roads within the subdivision are public roads,
3 although they are not County roads, which means that the County is not required to maintain the
4 roads and that the ongoing maintenance of the roads is the responsibility of the property owners
5 within the subdivision; and that Cascadel Woods Property Owners Association is a voluntary
6 association which does not have the legal authority to issue mandatory assessments on property
7 owners within the subdivision, but that the property owners within the subdivision could propose
8 maintenance projects and seek reasonable contribution from other property owners.

9 As a matter of proof, the Court found that the plaintiff property owners had failed to
10 demonstrate by a preponderance of evidence that the monies which they had previously paid to
11 the defendant Association for earlier “assessments” had not been utilized by the Association for
12 road improvements projects, and that the defendant Association had failed to demonstrate by a
13 preponderance of evidence that specific road maintenance projects were being planned or
14 undertaken to justify the new contributions claimed in the action against the plaintiff property
15 owners.

16 On November 20, 2015, this Court heard a new action involving an almost identical
17 claim of a property owner within the Cascadel Woods subdivision for a refund of assessments
18 previously paid to the Association, and the counter claim by the Association for the collection of
19 road maintenance assessments levied against the property owner which had not been paid.² This
20 Court again considered all of the voluminous evidence presented by the parties, and the
21 testimony of the parties at the hearing, and reached the same conclusions as it had in the earlier
22 proceeding. Again, this Court granted judgment for the defendant Association on the plaintiff
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24 ² Daniel P. Norton vs. *Cascadel Woods Property Owners Association*. Madera County Superior Court action
25 number MSC008575.

1 property owner's claims, and granted judgment for the plaintiff property owner on the defendant
2 Association's claims.

3 At the trial of each of the above actions, and at the trial of the present action, this Court
4 expressed its concern that the small claims court is an adequate forum for resolving the issues
5 confronting the parties with the type of finality that the parties seek and deserve. First, the Court
6 in a small claims action does not have the power to grant declaratory relief which would
7 universally resolve the ongoing issues between the Association and the property owners within
8 the subdivision. While a final judgment in a small claims action is conclusive as to the specific
9 claims of the parties adjudicated in that action, the findings and conclusions of the court do not
10 extend beyond those specific claims. As explained by the California Supreme Court,

11 . . . [T]he small claims court "was established in order to offer a means of
12 obtaining speedy settlement of claims of small amounts. The theory behind its
13 organization is that only by escaping from the complexity and delay of the normal
14 course of litigation could anything be gained in a legal proceeding which may
15 involve a small sum. Consequently, the small claims court functions informally
16 and expeditiously. The chief characteristics of its proceedings are that there are no
17 attorneys, no pleadings and no legal rules of evidence; there are no juries, and no
18 formal findings are made on the issues presented. At the hearings the presentation
19 of evidence may be sharply curtailed, and the proceedings are often terminated in
20 a short space of time. The awards – although made in accordance with substantive
21 law – are often based on the application of common sense; and the spirit of
22 compromise and conciliation attends the proceedings."

23 (*Rosse v. DeSoto Cab Co.* (1995) 34 Cal.App.4th 1047, 1051, citing *Sanderson v. Niemann*
24 (1941) 17 Cal.2d 563, 573.)

25 Second, as the Court noted at the trial of the present action, a small claims court may
issue “. . . an injunction or other equitable relief only when a statute expressly authorizes a small
claims court to award that relief.” (Code of Civ. Proc., §116.220(a)(5).) This means that this
Court, in this small claims action, is unable to grant declaratory relief which could resolve the
issues relating to the payment of expenses of road maintenance within the subdivision for all
property owners, and is unable to issue an injunction which would direct any of the parties to

1 perform, or cease from performing, any activities.

2 With respect to the present claims by the Association, there is a genuine issue as to
3 whether section 845 of the Civil Code grants the authority to property owners within the
4 subdivision to seek contribution from other property owners for the expenses of road
5 maintenance. Subdivision (a) of section 845 provides as follows: "The owner of any easement in
6 the nature of a private right-of-way, or of any land to which any such easement is attached, shall
7 maintain it in repair." (Civ. Code §845(a))

8 As was explained by the court in *Healy v. Onstott* (1987) 192 Cal.App.3d 612, 617:

9 . . . It is perhaps surprising that even though Civil Code section 845 has
10 been on the books since 1939, no reported decision has interpreted that language.
11 We suspect the reason to be that the statute has been invoked most frequently in
12 small claims actions or cases within the jurisdiction of the municipal court.

13 That fact is relevant. Literally construed, "proportionately to the use
14 made" would require the trier of fact to distinguish between residents having two
15 cars and those owning only one, between easement holders heating their homes
16 with electricity and those being serviced periodically by heavy butane trucks.
17 Given that the amount in controversy will ordinarily be small, no such intention
18 can be attributed to the Legislature. In the interest of speed and economy of
19 proceedings, the arbitrator and judge must be free to paint with a broad brush.
20 Obviously, a property owner may be asked to contribute only to the maintenance
21 of that segment of the right of way lying between his driveway and the public
22 road. Also, a distinction must be made between a parcel having an
23 occupied residence and one which is unimproved, although we are not prepared to
24 say that the owner of the latter should escape all contribution as his property is
25 obviously benefitted by the maintenance of the common easement. But within
those general guidelines, the trier of fact must be allowed to fashion any
reasonable contribution scheme.

20 As this Court found in the earlier actions, the roads within the subdivision are public
21 roads, although they are not County roads. (See *Statmas v. County of Madera* (2011) 795
22 F.Supp.2d 1047, 1073-75.) Although the roads were dedicated to the County by the developer
23 by virtue of the recording of a subdivision map, the roads have never been accepted by the
24 County as County roads. As a consequence, the County has no obligation to maintain them.
25 Clearly, if the County has no obligation to maintain them, then it is left to the property owners to

1 develop a mechanism to maintain them.

2 However, the property owners in the present actions argue that that section 845 is not
3 applicable to the roads in the Cascadel Woods subdivision because they are public roads, not, as
4 the statute requires, “any easement in the nature of a private right-of-way” (Civ. Code
5 §845(a).) However, while the roads in the subdivision are clearly public roads, the property
6 owners in the subdivision do possess private easement rights.

7 . . . It is a thoroughly established proposition in this state that when one lays out a
8 tract of land into lots and streets and sells the lots by reference to a map which
9 exhibits the lots and streets as they lie in relation to each other, the purchasers of
10 such lots have a private easement in the streets opposite their respective lots, for
11 ingress and egress and for any use proper to a private way, and that this private
12 easement is entirely independent of the fact of dedication to public use, and is a
13 private appurtenance to the lots, of which the owners cannot be divested except by
14 due process of law.

15 (*Kenney v. Overton* (2007) 153 Cal.App.4th 482 292, quoting *Ratchford v. County of Sonoma*
16 (1972) 22 Cal.App.3d 1056, 1069.)

17 Therefore, although the roads in the Cascadel Woods subdivision are public streets, as
18 explained above, the property owners within the subdivision do have “a private easement in the
19 streets opposite their respective lots.” (*Ibid.*) Arguably, therefore, subdivision (a) of section 845
20 of the Civil Code does apply to the property owners in the Cascadel Woods subdivision because
21 they each have easement rights “in the nature of a private right-of-way.”

22 This position is supported also by a fairly common sense argument, namely, if the County
23 is not required to, and will not, maintain the roads in the subdivision because the roads are not
24 County roads, and section 845 of the Civil Code applies only to “private” as opposed to “public”
25 roads, then who is left to maintain the roads in this subdivision? There is certainly some
common sense to the argument that all of the members of the subdivision who benefit from the
roads should be required to contribute their fair share toward the maintenance of those roads. If
so, then there appears to be valid policy reasons for the language of subsection (a) of section 845

1 of the Civil Code to be applicable to the roads within the Cascadel Woods subdivision.

2 If applicable, subsection (b) of section 845 of the Civil Code sets forth the obligation of
3 the property owners within the subdivision to maintain the roads, as follows:

4 (b) If the easement is owned by more than one person, or is attached to parcels of
5 land under different ownership, the cost of maintaining it in repair shall be shared
6 by each owner of the easement or the owners of the parcels of land, as the case
7 may be, pursuant to the terms of any agreement entered into by the parties for that
8 purpose. In the absence of an agreement, the cost shall be shared proportionately
9 to the use made of the easement by each owner.

8 Certainly, the maintenance could be accomplished by agreement of the property owners.
9 The evidence presented in this action suggests that many, if not most, of the property owners
10 within the Cascadel Woods subdivision have, in the past, voluntarily contributed to the
11 maintenance of the roads. The property owners in the present action may contend that the earlier
12 payments which they, and others, made were not truly "voluntary," but were paid in the mistaken
13 belief that they were required. In fact, the present small claims action, and the earlier small
14 claims actions, brought by the Association to collect contributions from property owners in the
15 subdivision, would suggest that the Association views the contributions of the property owners to
16 be mandatory, as opposed to being voluntary.³

17 Again, if section 845 of the Civil Code is applicable to the roads in the Cascadel Woods
18 subdivision, and no agreement is reached between the parties, then contribution from the
19 property owners may be enforced pursuant to subsection (c)(1) of section 845, which provides as
20 follows:

21 (c) If any owner refuses to perform, or fails after demand in writing to pay the
22 owner's proportion of the cost, an action to recover that owner's share of the cost,

23 ³ Another example of maintenance of the roads in the subdivision being funded by voluntary agreement
24 was presented in this action. While on a more limited scale than the work performed by the Association, it appears
25 that certain road maintenance was recently performed on the roads in the subdivision by the Eastern Madera Fire
Safe Council, the expense for which was funded on a purely voluntary basis.

1 or for specific performance or contribution, may be brought by the other owners,
2 either jointly or severally. The action may be brought before, during, or after
performance of the maintenance work, as follows:

3 (1) The action may be brought in small claims court if the amount claimed to be
4 due as the owner's proportion of the cost does not exceed the jurisdictional limit
5 of the small claims court. A small claims judgment shall not affect apportionment
of any future costs that are not requested in the small claims action.

6 As the Court found in the earlier actions, Cascadel Woods Property Owners Association
7 is a voluntary association which does not have the legal authority to issue mandatory assessments
8 on property owners within the subdivision. Nevertheless, as an association of property owners,
9 the Association has the capacity to bring or defend an action in court. However, the "capacity"
10 to bring or defend an action in court does not necessarily mean that an association has "standing"
11 to pursue an action under a particular statute. "There is a difference between the *capacity* to sue,
12 which is the right to come into court, and the *standing* to sue, which is the right to relief in
13 court." (*Friendly Village Community Assn., Inc. v. Silva & Hill Construction Co.* (1973) 31 Cal.
14 App.3d 220, 224 [italics in original].)⁴

15 The standing to bring an action in small claims court pursuant subsection (c) of section
16 845 is strictly limited by statute to "owners, either jointly or severally." "If any owner refuses to
17 perform, or fails after demand in writing to pay the owner's proportion of the cost, an action to
18 recover that owner's share of the cost, or for specific performance or contribution, may be
19 brought by *the other owners*, either jointly or severally." (Civ. Code §845(c) [italics added].)

20 Even if section 845 of the Civil Code were applicable to the property owners within the
21 Cascadel Woods subdivision, a determination that this Court finds unnecessary to reach in the

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24 ⁴ Subsequent legislation granted to certain homeowner's associations the right to seek the specific relief denied
25 in *Friendly Village, supra*, but such legislation would not be applicable to the relief sought in the present action by
the plaintiff Cascadel Woods Property Owners Association. (See Civ. Code §1368.3, renumbered Civ. Code §5980
in 2002.)

1 present small claims actions, the Court finds that the plaintiff Cascadel Woods Property Owners
2 Association, as a voluntary association, without the power to levy assessments, lacks standing to
3 prosecute the present actions pursuant to subsection (c) of section 845. Therefore, the Court will
4 grant judgment for each of the property owners on the complaints by Cascadel Woods Property
5 Owners Association.

6 With respect to the complaint by plaintiff Walter C. Scott for a refund of \$760.00 in
7 contributions which he paid to the Association for road maintenance between September 1, 2009,
8 and July 1, 2012, the Court will grant judgment for the defendant Cascadel Woods Property
9 Owners Association. The Court views the claim of plaintiff Scott as being one for fraud or
10 negligent misrepresentation. The Association represented to the property owners that the monies
11 which it received from the property owners would be used toward road maintenance.

12 The Court does not find that the defendant Association intentionally misrepresented
13 either their authority to assess mandatory road maintenance fees prior to 2013, or their intent to
14 use the fees collected for the purposes of road maintenance; therefore, the Court will analyze the
15 claim as one for negligent misrepresentation. The elements of negligent misrepresentation are as
16 follows:

- 17 1. That defendant represented to plaintiff that a fact was true;
- 18 2. That defendant's representation was not true;
- 19 3. That although defendant may have honestly believed that the representation was true,
20 the defendant had no reasonable grounds for believing the representation was true
21 when the defendant made it;
- 22 4. That the defendant intended that the plaintiff rely on this representation;
- 23 5. That the plaintiff reasonably relied on the defendant's representation;
- 24 6. That the plaintiff was harmed; and
- 25 7. That the plaintiff's reliance on the defendant's representation was a substantial factor

1 in causing his harm.

2 (California Civil Jury Instructions (CACI) §1903, Negligent Misrepresentation.)

3 In this action, as in civil actions generally, the plaintiff has the burden of proof, meaning
4 that the plaintiff has the burden of demonstrating to the court that what he is required to prove is
5 more likely true than not true. The plaintiff claims that he provided monies to the Association
6 upon the false representation one, that the assessments were mandatory, and two, that the
7 assessments would be utilized for the road maintenance within the subdivision.

8 The Court does not find by a preponderance of evidence that the defendant Association
9 had no reasonable belief prior to 2013 that it had the authority to assess and collect mandatory
10 road maintenance fees. Further, the Court does not find by a preponderance of evidence that the
11 Association did not intend to use the monies collected from the plaintiff for purpose of road
12 maintenance. Finally, the Court does not find by a preponderance of evidence that the specific
13 amounts collected from the plaintiff in this action were not ultimately used by the Association
14 for the purpose of road maintenance.⁵

15 THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that
16 judgments be entered as follows:


- 17 1. MSC008671 – For the defendant Cascadel Woods Property Owners Association on
18 the Complaint by Walter C. Scott
- 19 2. SSC014518 – For the defendants Michael Freemire and Joanne Freemire on the
20 Complaint by Cascadel Woods Property Owners Association
- 21 3. SSC014522 – For the defendants Harvey Fischer, Kathi Cornett and Ann Kennedy on
22 the Complaint by Cascadel Woods Property Owners Association

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24 ⁵ In light of these findings, the Court will not address the issues of the statute of limitations for breach of oral
25 contract (generally two years (Code of Civ. Proc. §339)), and fraud or mistake (generally three years from discovery
(Code of Civ. Proc. §338(d))).

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4. SSC014520 – For the defendants Walter Scott and Susan Scott on the Complaint by
Cascadel Woods Property Owners Association

Dated: August 4, 2016



JUDGE OF THE SUPERIOR COURT

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5 MSC008671
6 SSC014518
7 SSC014520
8 SSC014522

Certificate of Mailing

9 I declare under penalty of perjury of the laws of the State of California that I am over the
10 age of 18 years and not a party to this action. On the date shown below, I mailed the
11 JUDGMENT IN SMALL CLAIMS ACTIONS for hearing date of June 13, 2016 in Department 45
12 to the parties named below by depositing a true copy thereof in an envelope, first class postage
13 prepaid and depositing the same in the Court mail basket.

14 Cascadel Woods Property Owners
15 57839F Rd 225
16 North Fork, CA 93643

17 Walter Scott
18 Susan Scott
19 144 Holm Rd Spc 70
20 Watsonville, CA 95076

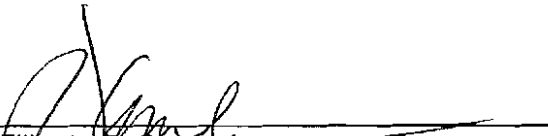
21 Harvey Fischer
22 9106 Wheatland
23 Sun Valley, CA 91352

24 Jack Cornett
25 Kathi Cornett
55975 Cascadel Lane
North Fork, CA 93643

1 Ann Kennedy
59857 Cascadel Drive North
2 North Fork, CA 93643

3
4 Michael Freemire
Joanne Freemire
59889 Hillcrest Rd.
5 North Fork, Ca 93643

6
7 I declare under penalty of perjury that the foregoing is true and correct, and that the
8 proof of service was executed in Madera, California on August 4, 2016.

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11 Filigata N. Samuelu
Court Clerk Dept 45

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