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16 THE LUGLIANI TRUST; THOMAS J. LIEB, Trustee, THE VIA PANORAMA TRUST

17 **SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES**

18 **CENTRAL DISTRICT – STANLEY MOSK COURTHOUSE**

19 CITIZENS FOR ENFORCEMENT OF  
PARKLAND COVENANTS and JOHN  
20 HARBISON,

21 Petitioners,

22  
23 vs.

24 CITY OF PALOS VERDES ESTATES, a  
25 municipal corporation, PALOS VERDES  
HOMES ASSOCAITION, a California  
26 corporation; ROBERT LUGLIANI and  
DOLORES A. LUGLIANI, as co-trustees of  
27 the LUGLIANI TRUST, THOMAS J. LIEB,  
TRUSTEE, THE VIA PANORAMA TRUST

28 4814-9360-0290.2

CASE NO. BS142768

**JOINT EX PARTE APPLICATION TO  
CONTINUE MOTION FOR SUMMARY  
JUDGMENT/ADJUDICATION DUE TO  
THE NEED FOR DISCOVERY;  
MEMORANDUM OF POINTS AND  
AUTHORITEIS IN SUPPORT;  
DECLARATION OF BRANT H. DVEIRIN**

**[Proposed Order Filed Concurrently]**

Judge: Hon. Barbara A. Meiers

Petition Filed: May 13, 2013  
Ex Parte Date: February 26, 2015  
Time: 8:30 a.m.  
Trial Date: None Set

1 U/DO MAY 2, 2012; and DOES 1 through 20,

2 Defendants.

Motion for Summary Adjudication or  
Judgment

Date: March 25, 2015

Time: 10:30 a.m.

Dept.: 12

**EX PARTE APPLICATION**

**Date: March 3, 2015**

**Time: 8:30 a.m.**

**Dept.: 12**

9 TO PARTIES AND THEIR COUNSEL OF RECORD: PLEASE TAKE NOTICE that on  
10 Tuesday March 3 at 8:30 a.m. in Dept. 12 of the Los Angeles Superior Court, located at 111 North  
11 Hill Street, Los Angeles, California, Defendants, Robert Lugliani and Dolores A. Lugliani, as co-  
12 trustees of The Lugliani Trust, Thomas J. Lieb, Trustee, The Via Panorama Trust ("Via  
13 Panorama"), Defendant City of Palos Verdes Estates ("City"), Defendant Palos Verdes Homes  
14 Association ("PVHA") (collectively the "Defense Parties" or "Defendants" ) will apply ex parte to  
15 Continue Petitioner Citizens for Enforcement of Parkland Covenants' and John Harbison'  
16 ("Petitioners") Motion For Summary Adjudication or Judgment ("Petitioners' Motion") currently  
17 scheduled for March 25, 2015.

18 This ex parte application is based upon this Application, Memorandum of Points and

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28 4814-9360-0290.2

1 Authorities, the Declaration of Brant H. Dveirin, and upon such further evidence and argument as  
2 may be permitted at the hearing on this matter.

3 DATED: March 2, 2015

**ARMBRUSTER GOLDSMITH & DELVAC, LLP**

4  
5 By:

  
R.J. Comer, Esq.

6 Attorneys for Defendants,  
7 ROBERT LUGLIANI and DOLORES A.  
8 LUGLIANI, as co-trustees of THE LUGLIANI  
9 TRUST; THOMAS J. LIEB, TRUSTEE, THE VIA  
PANORAMA TRUST U/DO MAY 2, 2012

10 DATED: March 2, 2015

**LEWIS BRISBOIS BISGAARD & SMITH LLP**

11  
12 By:

Brant H. Dveirin, Esq.  
Attorneys for Defendant,  
PALOS VERDES HOMES ASSOCIATION

13  
14  
15 DATED: March 2, 2015

**JENKINS & HOGIN, LLP**

16  
17  
18 By:

Christi Hogin  
Attorneys for Attorneys for Defendant  
CITY OF PALOS VERDES ESTATES

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2 may be permitted at the hearing on this matter.

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R.J. Comer, Esq.  
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LUGLIANI, as co-trustees of THE LUGLIANI  
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PANORAMA TRUST U/DO MAY 2, 2012

6  
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8  
9  
10 DATED: March 2, 2015

**LEWIS BRISBOIS BISGAARD & SMITH LLP**

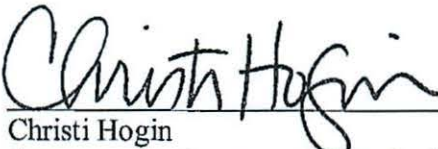
11  
12 By:

  
Brant H. Dveirin, Esq.  
Attorneys for Defendant,  
PALOS VERDES HOMES ASSOCIATION

13  
14  
15 DATED: March 2, 2015

**JENKINS & HOGIN, LLP**

16  
17 By:

  
Christi Hogin  
Attorneys for Attorneys for Defendant  
CITY OF PALOS VERDES ESTATES

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. STATEMENT OF FACTS/INTRODUCTION**

3 The Defense Parties seek a continuance of Petitioners' Motion for Summary Adjudication  
4 or Judgment ("Motion") to take percipient and expert discovery of the essential facts supporting at  
5 least the following defenses from the answers of the Defendants:

- 6 • lack of standing,  
7 • laches,  
8 • failure to exhaust remedies,  
9 • res judicata/collateral estoppel,  
10 • unclean hands, and  
11 • merger of covenants.

12 The Defense Parties, upon being served with the Motion, served interrogatories and  
13 deposition notices, and met with expert witnesses that Defendants are now in the process of  
14 retaining. The Depositions of Petitioner Harbison and the PMK of Petitioner CEPC are set for  
15 March 12 and 13, which is after the date of March 11, when Defendants' opposition(s) are due.  
16 Defendants were just served last Friday afternoon with the interrogatory responses from  
17 Petitioners, which are 38 pages and list the witnesses and documents supporting Petitioners' case,  
18 and which we are in the process of reviewing.

19 By the percipient discovery, the Defense Parties intend to discover the essential facts to  
20 show:

- 21 • who Petitioners are,  
22 • that depending on who they are that they lack standing if they are not homeowners,  
23 • that they are bound to the Memorandum Of Understanding ("MOU") from previous  
24 litigation if they are homeowners,  
25 • what Petitioners did, if anything, to exhaust remedies before the City,  
26 • their engagement and knowledge of the previous litigation that resulted in the  
27 MOU,  
28 • that they are bound by the ruling in that litigation, and

1 • their communication and participation with the Palos Verdes Homes Association.

2 By the expert discovery, the Defense Parties intend to at least present the facts of which of  
3 the many recorded documents may apply to the subject property, contrary to the “only the 1940  
4 deed” applies approach now taken by Petitioners. There has been much confusion in this case, as  
5 to which recorded documents in the chain apply, and Petitioners’ pleadings and other filings have  
6 changed over time, contributing to the confusion. The experts will provide opinions of which title  
7 documents apply to the property, in light of the property transfers described in the pleadings. This  
8 will enable the parties and Court to focus on the correct documents.

9 The law is clear that if Defendants need discovery to prepare their opposition, they are  
10 entitled to a continuance. Defendants need time to complete the percipient and expert discovery,  
11 and are requesting the Court continue the hearing on the Motion for 150 days until August or  
12 September 2015.

13 **II. ARGUMENT**

14 **1. The Defense Parties May Move Ex Parte to Continue the Motion Hearing for Good**  
15 **Cause**

16 California Rule of Civil Procedure §473c(h) (“CCP”) provides:

17 The application to continue the motion [for summary judgment] to  
18 obtain necessary discovery may also be made by ex parte motion at  
19 any time on or before the date the opposition response to the motion  
is due.

20 Thus, Defense Parties are permitted to move ex parte. (CCP §473c(h); *Ambrose v. Michelin North*  
21 *America, Inc.* (2005) 134 Cal. App. 4th 1350, 1353.) The Rutter Group recommends the  
22 application be made before the opposition is due and not with the opposition. (The Rutter Group,  
23 *supra*, § 10:207.6, p. 10-87).

24 Here, Petitioners’ Motion was filed without any discussion of scheduling with Defendants.  
25 It is currently scheduled to be heard March 25, 2015, a date the parties agreed to, *to allow for*  
26 *further meet and confer on scheduling*. It was never intended to be the final hearing date, just to  
27 give the parties more time to negotiate. Petitioners refused to continue the hearing date any  
28 further. Defendants’ opposition(s) is now due March 11, 2015, in less than 2 weeks. On February



1 26, 2015, this Court denied Defendants' Ex Parte Application for a case management order to  
2 provide a schedule to allow for Defendants to complete their percipient and expert discovery,  
3 prepare their opposition(s) and file cross motions.<sup>1</sup> The Court stated on February 26, 2015, that if  
4 the Defendants wanted to continue the Motion date based on the need to conduct discovery, they  
5 needed bring a motion to continue to obtain that relief. This Ex Parte Application is timely  
6 brought pursuant to CCP §437c(h) and following the court's direction.

7 The Defense Parties provided Notice of this Ex Parte Application to all parties as required  
8 under Cal. Rules of Court Rule 3.124. Counsel for the Defense Parties sent correspondence  
9 providing the required notice by email prior to 10 a.m. on Monday March 2, 2015. (See Dveirin  
10 Declaration and Exhibit A attached thereto).

11 **2. Continuances Should Be Liberally Granted Provided A Requisite Showing is Made**

12 This Court has the authority to grant a continuance of the hearing date for Petitioners'  
13 Motion for Summary Adjudication or Judgment ("Petitioners' Motion"):

14 If it appears from the affidavits submitted in opposition to a motion  
15 for summary judgment or summary adjudication or both that facts  
16 essential to justify opposition *may exist* but cannot, for reasons  
17 stated, then be presented, the court shall deny the motion, or order a  
continuation to permit affidavits to be obtained or discovery to be  
had or may make any other order as may be just.

18 CCP §473c(h) (emphasis added). "The drafters' inclusion of the italicized words 'may' and  
19 'shall' leaves little room for doubt that such continuances are to be liberally granted. Indeed, as  
20 one court noted, 'an opposing party can compel a continuance of a summary judgment motion' by  
21 making a declaration meeting the requirements of section 437c, subdivision (h). (*Mary Morgan,*  
22 *Inc. v. Melzark* (1996) 49 Cal. App. 4th 765, 770-771 [57 Cal. Rptr. 2d 4].)" (*Bahl v. Bank of*

23 \_\_\_\_\_  
24 <sup>1</sup> As detailed in the Declaration of Brant H. Dveirin in support of Defendants' Joint Ex Parte  
25 Application To Set A Briefing Schedule For Motion For Summary Judgment/Adjudication and  
26 Cross-Motions For Summary Judgment/Adjudication (filed February 26, 2015), Defendants  
27 engaged in a lengthy meet and confer process with Petitioners to reach an agreement as to a  
28 schedule that would allow for Defendants to conduct their discovery, prepare opposition(s) and  
bring cross-motions. That meet and confer was unsuccessful in producing a schedule; however,  
the parties did agree to ask the Court for a case management order addressing the scheduling  
issues. The Court elected not to enter such an order.

1 *America*, (2001) 89 Cal. App. 4th 389, 395-396.)

2 Pursuant to CCP §437c(h), relief is liberally granted once the necessary thresholds have  
3 been met. “If the party opposing summary judgment is able to make this showing in good faith,  
4 the trial court must at the very least grant a continuance.” (*Park v. First American Title Co.* (2011)  
5 201 Cal. App. 4th 1418.) “[The] Code of Civil Procedure section 437c mandates a continuance of  
6 a summary judgment hearing upon a good faith showing by affidavit that a continuance is needed  
7 to obtain facts essential to justify opposition to the motion.” (*Fisher v. Larsen* (1982) 138 Cal.  
8 App. 3d 627, 648). See also *Aguimatang v. Cal. State Lottery* (1991), 234 Cal. App. 3d 769, 803-  
9 804 [trial court abused its discretion in denying motion for a continuance to allow for further  
10 discovery – “Given the drastic nature of summary judgment, the continuance should have been  
11 granted”].)

12 The party need not show that essential evidence exists, but only that it may exist. (*Dee v.*  
13 *Vintage Petroleum, Inc.* (2003) 106 Cal. App. 4th 30, 34 (trial court erred in failing to grant  
14 continuance to allow for a deposition to obtain additional evidence); *Frazee v. Seely* (2002) 95  
15 Cal. App. 4th 627, 634.) Indeed, the leading practice guide Weil & Brown, Cal. Practice Guide:  
16 Civil Procedure Before Trial (The Rutter Group Civil Procedure Before Trial) Section 10:207, p.  
17 10-87, citing to the *Dee* and *Frazee* cases, states “Thus, a continuance (normally a matter within  
18 the court’s discretion) is “*virtually mandated*” where the non moving party makes the requisite  
19 showing.” (Emphasis in original.)

20 The case law is clear that the court’s emphasis should be on the opposing party showing  
21 the need for the discovery. If the party seeking a continuance submits an affidavit demonstrating  
22 that facts essential to justify opposition may exist, the court’s discretion is “strictly limited.” (*Bahl*  
23 , 89 Cal. App. 4th at 398 [held, “The issue of discovery diligence is not mentioned in section 437c,  
24 subdivision (h), which raises obvious doubts about its relevance”].) While there are some  
25 conflicting case authorities that say the court may also consider diligence as a factor, clearly the  
26 most important factor is showing the need for the discovery, which Defense Parties establish  
27 below.

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1       **3. The Defense Parties Can Establish A Good Faith Showing For The Need For The**  
2       **Continuance Which Virtually Mandates The Court Grant The Continuance**

3               **a. Defense Parties Need to Complete Discovery to Oppose Petitioners' Motion**

4               The Defense Parties have acted with diligence in pursuing the discovery necessary to  
5 present its opposition to Petitioners' Motion. *See* Declaration of Brant Dveirin filed concurrently.  
6 The need for discovery clearly exists here to support Defendants' oppositions and go to the  
7 following: who Petitioners are, that depending on who they are that they lack standing if they are  
8 not homeowners, that they are bound to the MOU from previous litigation if they are homeowners,  
9 what Petitioners did, if anything, to exhaust remedies before the City, their engagement and  
10 knowledge of the previous litigation that resulted in the MOU, that they are bound by the ruling in  
11 that litigation, and their communication and participation with the Palos Verdes Homes  
12 Association. The Defense Parties propounded interrogatories to the Petitioners as to these  
13 essential fact issues, responses to which were only provided the afternoon of February 27, 2015,  
14 following the granting of an extension request.<sup>2</sup> The interrogatories also ask for all documents and  
15 witnesses supporting Petitioners' claims. Further, Petitioners' depositions (of both Harbison and  
16 the PMK of CEPC) are scheduled for March 12 and 13, which is after the Defense Parties'  
17 oppositions are due. (*See* Dveirin Declaration §§ 6, 11.)

18              Additionally, Defense Parties' opposition(s) to Petitioners' Motion will also be based on  
19 expert witness testimony from two experts, and the Defense Parties have been working to  
20 interview, retain and prepare the experts, almost immediately after being served with the  
21 Petitioners' Motion. The two experts are title insurance expert Lore Hilburg, and Professor Susan  
22 French from UCLA Law School, who is the editor of the Third Restatement of Law of Property,  
23 Servitudes. The experts will at least testify as to which of the many Covenants Conditions and  
24 Restrictions ("CCRs"), tracts and deeds over an almost 100 year period actually apply to the  
25

26 \_\_\_\_\_  
27 <sup>2</sup> It is somewhat disingenuous of Petitioners on the one hand alleged that the Defense Parties were  
28 not diligent in propounding discovery and on the other hand ask for an extension of time to  
provide their responses to that very discovery.

1 subject property, so the Court and parties are focusing on the correct documents. This is  
2 unknown or ambiguous currently, as even Petitioners' own various complaints and filings have  
3 cited and relied on various historical CCRs and deeds which have changed over the time of several  
4 filings. Petitioners most recent Motion relies solely on the 1940 deed language, ignoring the  
5 previous other CCRs and deeds cited in Petitioners' own previous filings. This has created  
6 considerable confusion. The experts will decipher and explain to the Court which of the many  
7 chain of title documents apply to the subject property and need to be reviewed by the Court and  
8 parties. The experts will also testify as to the history of the of the various property transfers that  
9 have occurred over the years, and under the subject MOU, and which and what of the many  
10 recorded documents remain applicable in light of the property transfers. The experts will also  
11 likely have opinions on the doctrines of mergers of servitudes and reverter, as a result of the  
12 transfers described in the pleadings. (See Dveirin Declaration §§ 4-10.)

13 Retention of the experts is in process and should be completed this week, and Defendants  
14 need the time to retain and work with the experts. Once that is done, the experts will need at least  
15 60 days to complete their initial work, and then counsel and the witnesses will need time to  
16 prepare their declarations. In meeting and conferring with Petitioners' counsel, the parties have  
17 agreed to handle all experts by declaration for the Motion hearing, and to forego depositions  
18 unless clearly necessary, in order to save time on briefing. (See Dveirin Declaration §§ 12,13.)

19 Based on the time for expert discovery and the other discovery, Defendants are requesting  
20 a continuance of Petitioners' Motion to late August or early September 2015<sup>3</sup>, which will allow  
21 time to complete the discovery and to allow time to draft the opposition briefs.<sup>4</sup> (See Dveirin  
22

23  
24 <sup>3</sup> The continuance requested is consistent with Defense Parties communications to Petitioners of  
25 the need to continue their Motion 150 days from its filing. (See Declaration of Brant H. Dveirin in  
26 support of Defendants' Joint Ex Parte Application To Set A Briefing Schedule For Motion For  
27 Summary Judgment/Adjudication and Cross-Motions For Summary Judgment/Adjudication filed  
28 for the February 26 Ex Parte.)

29 <sup>4</sup> The Defense Parties intend to file a cross motion for summary judgment, so that the court can  
30 consider all of the relevant summary judgment issues at the same time. The filing of cross  
31 motions is recommended in all practice guides, so that judgment can be entered in favor of all  
32 parties, which is also more convenient for the court. The failure to file a cross-motion for  
(footnote continued)

1 Declaration § 14.)

2 **b. The Court Should Exercise Its Discretion And Grant The Continuance**

3 As established above and in the Declaration of Brant H. Dveirin, the Court should grant a  
4 continuance of Petitioners' Motion to allow Defendants to complete their percipient and expert  
5 discovery that will address specific and essential factual issues at issue in Petitioners' Motion. As  
6 set forth above, while the Court has the discretion as to whether or not to grant such a continuance  
7 request, the Court's discretion to deny a continuance is more limited when the requesting party  
8 submits an affidavit demonstrating that facts essential to justify opposition may exist even when a  
9 party has not been diligent in searching for the facts through discovery. In such instances, *the*  
10 *policy favoring disposition on the merits outweighs the competing policy favoring judicial*  
11 *efficiency. See Bahl*, 89 Cal. App. 4th at 397 (trial court improperly denied continuance to party  
12 opposing summary judgment motion in case that was 18 months old when continuance denied).  
13 While Defendants disagree that they have not been diligent in conducting discovery – rather, it  
14 was only via the filing of Petitioners' Motion that Defendants learned of reframing of issues of  
15 Petitioners' case and thus the need for discovery as to those issues (*See Dveirin Declaration § 10,*  
16 *Exhibit D (see response to Interrogatory No. 7 where Petitioner's counsel admits he changed legal*  
17 *theories) – delay should not be the basis for this Court to deny the continuance.*

18 **4. The Defense Parties will be Prejudiced If the Motion for Summary Judgment is Not**  
19 **Continued**

20 The Defense Parties are clearly prejudiced if the Motion is not continued, as they will be  
21 forced to oppose Petitioners' evidence without the experts' declarations and without the  
22 depositions of Petitioner John Harbison, and the PMK for Petitioner CEPC, and will be precluded  
23

24 summary judgment precludes the court from granting summary judgment to the opposing party,  
25 even if the court determines, after review of the evidence, that the opposing party is entitled to  
26 summary judgment as a matter of law. *See California Summary Judgment (Cal CEB Annual) §*  
27 *7.46A, citing Peerless Lighting Corp. v American Motorists Ins. Co. (2000) 82 Cal App. 4th 995,*  
28 *1017 n14 (after reversing summary judgment in favor of insured, court of appeal noted that,*  
*because insurer failed to file cross-motion for summary judgment on issue of duty to defend as it*  
*should have, it lacked power to direct trial court to grant nonexistent motion).*

1 from filing a cross motion for summary judgment. Conversely, Petitioners are not prejudiced, as  
2 no trial date has yet been set, and there are no discovery cut off dates set.

3 **III. CONCLUSION**

4 For the reasons stated, the ex parte should be granted and the hearing on Petitioners'  
5 Motion for Summary Adjudication or Judgment continued for a period of 150 days.

6 DATED: March 2, 2015

**ARMBRUSTER GOLDSMITH & DELVAC, LLP**

7  
8 By: 

R.J. Comer, Esq.

Attorneys for Defendants,

ROBERT LUGLIANI and DOLORES A.

LUGLIANI, as co-trustees of THE LUGLIANI

TRUST; THOMAS J. LIEB, TRUSTEE, THE VIA

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15 By: \_\_\_\_\_

Brant H. Dveirin, Esq.

Attorneys for Defendant,

PALOS VERDES HOMES ASSOCIATION

16  
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Christi Hogin

Attorneys for Attorneys for Defendant

CITY OF PALOS VERDES ESTATES

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21 By:

  
Christi Hogin  
Attorneys for Attorneys for Defendant  
CITY OF PALOS VERDES ESTATES





1           6.       In the responses of the Palos Verdes Homes Association to form and special  
2 interrogatories served by Petitioners, asking the PVHA to state which exact documents applied to  
3 Area A, PVHA responded that the title documents, Tract Maps and deeds, are in the chain of title.  
4 PVHA could not say with certainty which chain of title documents actually applied to Area A,  
5 because even at that earlier time, PVHA recognized that to answer these questions, PVHA would  
6 need to consult with expert witnesses, and expert discovery was not yet due in the case. Now,  
7 with the filing of Petitioners' Motion, however, the Defense Parties have to retain experts to  
8 definitively answer the question that Petitioners' asked in earlier discovery. True and correct  
9 copies of the PVHA Response to Special and Form Interrogatories, are attached as Exhibits B and  
10 C (See responses to Special Interrogatory 1 and 2).

11           7.       Moreover, Petitioners in their various pleadings, Original, First and now Second  
12 Amended Complaint, referred at various time to some or all of the following: 1923 Restrictions,  
13 1924 Restrictions, 1925 and 1938 Deeds, 1940 Deeds and 2012 Deeds, and also the recorded  
14 Memorandum of Understanding or MOU. Moreover, the various demurrers and motions to strike  
15 in this case, in the motions and in oppositions, identified Restrictions in Tract nos. 6888, 7331,  
16 7333 and 8652. The original Complaint alleged in the First Cause of Action that the Defense  
17 Parties violated use restrictions in the 1925, 1938, 1940 and 2012 deeds. The Second Amended  
18 Complaint only alleges violations of the 1940 deed. Similarly in Petitioners' Motion for Summary  
19 Adjudication, Petitioners only allege violation of the 1940 deed—as if all of the other title  
20 documents referred to earlier in the case are now irrelevant. THIS SITUATION HAS CREATED  
21 CONSIDERABLE CONFUSION OVER WHAT RESTRICTIONS ACTUALLY APPLY IN  
22 THIS CASE. PETITIONERS' CASE HAS BEEN A MOVING TARGET IN PETITIONERS'  
23 OWN FILINGS, NOW ONLY ALLEGING THE 1940 DEED, WHICH HAS RESULTED IN  
24 AMBIGUITY. THE DEFENSE PARTIES, BECAUSE OF THIS CURRENT MOTION FILING  
25 ARE NOW FORCED TO ADDRESS THIS KEY ISSUE IN ORDER TO OPPOSE THE  
26 MOTION WITH EXPERTS ON A SHORTENED TIME BASIS. This expert testimony is needed

27 ///

28 ///

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1 so that the parties and the court are all correctly looking at the same title documents. The experts  
2 the Defense Parties seek to retain will clear up the ambiguity that has existed in the case.

3 8. Secondly, the same title and servitudes experts will also testify regarding the effect  
4 or result of the various title transfers over time, and which and what of the many or few recorded  
5 documents in the chain survive and apply to the subject Area A. Petitioners in their Motion argue  
6 that only the 1940s restrictions apply and are violated. The Defense Parties intend to present  
7 experts, who will either confirm that to be the case, or answer what provisions of the other  
8 documents in the chain of title apply or also apply in the case. THERE IS ALSO  
9 CONSIDERABLE AMBIGUITY ON THIS ISSUE AS WELL from the various filings to date,  
10 and the Defense Parties seek to have this issue finally addressed by the experts.

11 9. The answer to both the questions of what documents in the chain of title actually  
12 apply, and what provisions of those documents apply, is critical to the Defense Parties defense of  
13 showing which provisions survive and govern the property's use, and that it is not merely the 1940  
14 deed as claimed in Petitioners' Motion.

15 10. Third, the experts will be asked to provide opinions on the doctrines of merger of  
16 servitudes and reverter, and their applicability to the facts of this case. This is in support of the  
17 Defense Parties intended argument that the 1940s deed provisions do not apply to the PVHA, due  
18 to merger, and that there is no mandatory reversion, even in light of alleged deed violations.

19 11. The continuance is also necessary because lay or factual discovery needs to be  
20 taken on the defenses, among others, of failure to state a cause of action, standing to sue, laches,  
21 ripeness, the failure to exhaust remedies, res judicata, unclean hands, merger of covenants.  
22 PVHA propounded discovery, interrogatories, on the issue of standing and other issues, and also  
23 noticed the depositions of Petitioner John Harbison and the PMK of Petitioner CEPC. The  
24 interrogatory responses were served on the Defense Parties on Friday February 27, 2015 and are  
25 38 pages long, and have not yet been fully reviewed. The Defense parties intend to discover and  
26 show with the discovery, that John Harbison, and any other members of the association, while he  
27 or they may

28 ///

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2 have standing under the title documents as homeowners, they are bound as members of the PVHA

3 to the settlement agreement/MOU entered into by the PVHA. As to those members of CEPC who

4 are not members of PVHA, who for example are not property owners, lack the standing necessary

5 under the title documents to challenge the MOU. The interrogatory and depositions seek to

6 confirm finally who are the members of CEPC, and what their status is. Moreover the fact

7 discovery will inquire about and show that Petitioners failed to appear and failed to exhaust

8 remedies in front of the City and PVHA, and have waived any right to proceed against some or all

9 of the Defense Parties. Some of the answers may be provided in the interrogatory response served

10 on February 27, but the many pages of the responses still to be reviewed. The depositions of the

11 Petitioners are scheduled to take place on March 12 and March 13, 2015, which is after the date

12 that the Defense Parties oppositions are due on March 11. The Defense Parties will need at least

13 some extra weeks to make use of the interrogatory response and depositions, and there may be

14 possibly other discovery necessary from the interrogatory responses and depositions. The Defense

15 parties seek an additional 60 to 90 days continuance due to the need for fact discovery. A true and

16 and correct copy of the interrogatory responses received this last Friday February 27 are attached

17 as Exhibit D.

18 **The Defense Parties Have Been Diligent**

19 12. The Defense Parties have been diligent in retaining the necessary experts and in

20 seeking fact discovery. Upon service of the Motion for Summary Adjudication or Judgment on

21 December 5, 2014, within approximately one week, the Defense parties had a conference call and

22 agreed to serve fact discovery, interrogatories on standing and other issues, and to notice Petitioner

23 John Harbison's deposition and the deposition of the PMK of Petitioner CEPC and of the need to

24 hire experts. During that same initial week, the Defense Parties had a conference call with

25 Petitioner's counsel, where they explained both the need for fact and expert discovery prior to the

26 hearing on the motion and that the Defense parties intended to file cross motions, which required

27 more time. Over approximately 30 days, I engaged in a search for experts on title documents and

28 ///

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2 servitudes, calling experienced title counsel for recommendations, then calls to experts, and it was  
3 narrowed down to two experts, title expert Lore Hilburg and Professor Susan French from UCLA  
4 Law School. On January 28, the Defense Parties met with both experts, and agreed within little  
5 over a week to retain both experts, either collectively or individually. The experts sent their CVs  
6 to the Defense Parties within a few more days. We just received the retainer agreement from  
7 Lore Hilburg, and we sent her the various documents to begin her review. We are in the process  
8 of doing the same with Dr. French. We learned from the experts that it will take them about 60  
9 days from the day they are retained to do the work necessary to provide declarations for the  
10 oppositions to the Motion. Then we will need time to prepare the declarations and include them  
11 in the oppositions. In meeting and conferring with Petitioners' counsel, the parties have agreed to  
12 handle all experts by declaration for the Motion hearing, and to forego depositions unless clearly  
13 necessary, in order to save time on briefing. We estimate that both experts will be retained by the  
14 end of this week, and that we need an extension of approximately 90 to 120 days to complete the  
15 use of the experts work. True and correct copies of the CVs of the experts are attached as Exhibits  
16 E and F.

17 13. On the fact discovery, there was an extensive meet and confer on issues, which  
18 went on in late December and early January, and the Motion hearing date was continued to March  
19 25, 2015. This was already explained in my Declaration submitted in support of the ex parte on  
20 February 27, 2015. The March 25<sup>th</sup> date was not intended to be the final date for the hearing, but  
21 only to allow more time to meet and confer on scheduling and discovery. In summary, the  
22 interrogatories and notices of deposition were served on January 16, 2015. Petitioners counsel  
23 requested more time to respond to the interrogatories, and asked that the depositions be continued  
24 due to scheduling issues. The only date all the parties were available was March 12 and 13 for the  
25 depositions. OF NOTE, THE DATES OF THE DEPOSITIONS ARE AFTER THE MARCH 11  
26 DUE DATE FOR THE OPPOSITIONS TO THE MOTION. AGAIN, THE MARCH 25 DATE  
27 WAS NOT INTENDED TO BE THE FINAL HEARING DATE ON THE MOTION. With the  
28 extension, we just received the responses to the interrogatories on February 27, which we have not

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1 ///

2 reviewed extensively and it is 38 pages. We are in the process of preparing for the depositions,  
3 and need the time over the next two weeks to prepare for the depositions. We need a continuance  
4 of at least 60 to 90 days to make use of the discovery from the interrogatories and depositions,  
5 address any further discovery issues, and bring any motions to compel on shortened time.

6 14. The Defense parties are requesting a continuance of the Motion for 150 days to  
7 allow the completion of the expert and fact discovery and to prepare a cross motion. Therefore,  
8 we ask that the Motion be continued to a date in August or September 2015.

9 I declare under penalty of perjury under the laws of the State of California that the  
10 foregoing is true and correct.

11 Executed on March 2, 2015, at Los Angeles, California.

12   
13 \_\_\_\_\_  
14 Brant H. Dveirin, Declarant

A



## Dveirin, Brant

---

**From:** Jeffrey Lewis <jeff@broedlowlewis.com>  
**Sent:** Sunday, March 01, 2015 8:52 PM  
**To:** Dveirin, Brant  
**Subject:** Re: IMPORTANT EX PARTE NOTICE - CEPC vs. City of PVE et al. - BS142768

Notice received. I intend to appear and oppose the application.

Jeffrey Lewis

### **BROEDLOW LEWIS LLP**

734 Silver Spur Road, Suite 300 | Rolling Hills Estates, CA | 90274  
Tel. (310) 935-4001 | Direct (310) 935-4002 | Fax. (310) 872-5389  
Email: [Jeff@BroedlowLewis.com](mailto:Jeff@BroedlowLewis.com) | Web: [www.BroedlowLewis.com](http://www.BroedlowLewis.com)

*Certified Specialist in Appellate Law*  
*The State Bar of California Board of Legal Specialization*

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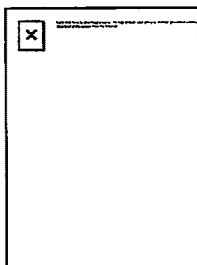
On Mar 1, 2015, at 8:45 PM, Dveirin, Brant <[Brant.Dveirin@lewisbrisbois.com](mailto:Brant.Dveirin@lewisbrisbois.com)> wrote:

Dear Counsel,

Please take notice that on Tuesday, March 3, at 8:30 a.m. in Dept. 12 of the Los Angeles Superior Court, located at 111 North Hill Street, Los Angeles, California, Defendants, Robert Lugliani and Dolores A. Lugliani, as co-trustees of The Lugliani Trust, Thomas J. Lieb, Trustee, The Via Panorama Trust, Defendant City of Palos Verdes Estates, Defendant Palos Verdes Homes Association (collectively the "Defense Parties") will apply ex parte to continue the hearing on Petitioners' Citizens for Enforcement of Parkland Covenants and John Harbison ("Petitioners") motion for summary judgment/adjudication currently scheduled for March 25, 2015, based on the need for additional discovery.

The Ex Parte Application and supporting documents will be sent as soon as they are finalized.

Regards, Brant Dveirin.



**Brant H. Dveirin**

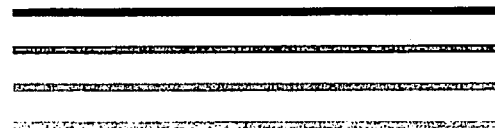
**Partner**

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B

50013-1840  
D ✓

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4 BRANT H. DVEIRIN, SB No. 130621  
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221 North Figueroa Street, Suite 1200  
6 Los Angeles, California 90012  
7 Telephone: 213.250.1800  
8 Facsimile: 213.250.7900

6 Attorneys for Respondent/Defendant, PALOS VERDES  
HOMES ASSOCIATION

8 SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES  
9 CENTRAL DISTRICT - STANLEY MOSK COURTHOUSE

11 CITIZENS FOR ENFORCEMENT OF  
12 PARKLAND COVENANTS, an  
13 unincorporated association; JOHN  
HARBISON, an individual,

14 Plaintiff /Petitioners,

15 vs.

16 CITY OF PALOS VERDES ESTATES, a  
17 municipal corporation; PALOS VERDES  
18 HOMES ASSOCIATION, a California  
corporation; PALOS VERDES PENINSULA  
UNIFIED SCHOOL DISTRICT, a political  
subdivision of the State of California,

19 Defendants/Respondents.

20 ROBERT LUGLIANI and DOLORES A.  
21 LUGLIANI, as co-trustees of the LUGLIANA  
22 TRUST; THOMAS J. LIEB, TRUSTEE, THE  
VIA PANORAMA TRUST,

23 Defendants/Real Parties in Interest.

CASE NO.: BS 142 768

Assigned to:  
JUDGE: Hon. Barbara A. Meiers  
DEPT.: 12

**DEFENDANT PALOS VERDES HOMES  
ASSOCIATION'S RESPONSES TO  
PLAINTIFF'S SPECIAL  
INTERROGATORIES, SET ONE**

Action filed: May 13, 2013  
Trial Date: None

24 PROPOUNDING PARTY : Plaintiff, CITIZENS FOR ENFORCEMENT  
25 OF PARKLAND COVENANTS

26 RESPONDING PARTY : Defendant, PALOS VERDES HOMES ASSOCIATION

27 SET NUMBER : One (1)

28 Pursuant to *Code of Civil Procedure* §2030.010 et seq., Defendant, PALOS VERDES

4814-6845-9291.4

1 HOMES ASSOCIATION ("Defendant") hereby responds to the Special Interrogatories, Set One,  
2 propounded by Plaintiff, CITIZENS FOR ENFORCEMENT OF PARKLAND COVENANTS  
3 ("Plaintiff"), as follows:

4 **PRELIMINARY STATEMENT**

5 It should be noted that Defendant has not fully completed its investigation of the facts  
6 relating to the case, has not fully completed its discovery in this action, and has not completed its  
7 preparation for trial. All of the answers contained herein are based only upon such information and  
8 documents which are presently available to and specifically known to Defendant and disclose only  
9 those contentions which presently occur to defendant. It is anticipated that further discovery,  
10 independent investigation, legal research, and analysis will supply additional facts, add meaning to  
11 known facts, as well as establish entirely new factual conclusions and legal contentions, all of which  
12 may lead to substantial additions to, changes in, and variations from the contentions herein set forth.  
13 The following responses are given without prejudice to Defendant's right to produce evidence of  
14 any subsequently discovered fact or facts which defendant may later develop.

15 The answers contained herein are made in a good faith effort to supply as much factual  
16 information and as much specification of legal contentions as is presently known, but should in no  
17 way be to the prejudice of defendant in relation to further discovery, research or analysis.

18 **GENERAL OBJECTIONS AND RESERVATIONS**

19 As to each and every Interrogatory in Plaintiff's Special Interrogatories, Set One, Defendant  
20 states the following:

21 A. Defendant has not yet completed its discovery and investigation of the facts giving rise  
22 to this action, but has made a diligent, good faith effort to obtain all information responsive to these  
23 Interrogatories within Defendant's possession, custody, or control. Accordingly, these responses are  
24 made without prejudice to Defendant's right to introduce prior to or at the time of trial or otherwise  
25 use any additional information he may obtain as a result of Defendant's continuing discovery and  
26 investigation, but Defendant assumes no obligation, beyond that imposed by the California *Code of*  
27 *Civil Procedure* § 2030.010, *et seq.*, to supplement and amend these responses to reflect witnesses,  
28 facts or other information discovered following the date of these responses.

4814-6845-9291.4

1 B. Defendant has based these responses on the assumption that Plaintiff did not intend to  
2 seek information protected against discovery by the attorney-client privilege or the attorney work  
3 product doctrine, the right of privacy laws, the protection afforded trade secrets or any other  
4 applicable privilege or protection from disclosure. To the extent that the Interrogatories are intended  
5 to elicit such privileged or protected information, Defendant objects thereto as to each  
6 Interrogatory and asserts the applicable privilege or protection to the fullest extent permitted by law.

7 C. To the extent that Defendant responds to these Interrogatories, Defendant does not  
8 concede the relevancy of those responses to this action, nor does it concede that such responses may  
9 be used for any purpose in this action or any other action or proceeding. Defendant expressly  
10 reserves the right to object to further discovery into the subject matter of any Interrogatory or any  
11 portion thereof.

12 D. Defendant objects to each Interrogatory to the extent it seeks information in violation of  
13 Sections 2017 *et seq.* of the California *Code of Civil Procedure*.

14 E. Defendant objects to each Interrogatory to the extent that it seeks information equally  
15 available to Plaintiff or information that is not within Defendant's possession, custody or control.

16 F. Defendant objects to each Interrogatory to the extent that it is intended to be and is  
17 overly broad, unduly burdensome and/or oppressive.

18 G. Defendant objects to each Interrogatory to the extent it seeks information that is not  
19 relevant to the subject matter of this action and is not reasonably calculated to lead to the discovery  
20 of admissible evidence.

21 Without waiving any of the foregoing General Objections, each of which applies to each and  
22 every one of the individual responses set forth below and is incorporated by this reference therein,  
23 Defendant responds to the individual Interrogatories as set forth below.

24 **RESPONSES TO SPECIAL INTERROGATORIES, SET ONE**

25 **SPECIAL INTERROGATORY NO. 1:**

26 Please describe with specificity (by recordation date if possible) the set(s) of covenants,  
27 conditions and restrictions that YOU contend currently limit the use for the PROPERTY (for  
28 purposes of these interrogatories, the terms "YOU" and/or "YOUR" when set forth in all capital

4814-6845-9291.4



1 letters shall mean and refer to defendant Palos Verdes Homes Association; the term "PROPERTY"  
2 when set forth in all capital letters shall mean and refer to the real property- adjacent to 900 Via  
3 Panorama conveyed in September 2012 by the Palos Verdes Homes Association to Thomas J. Lieb  
4 and that is the subject of this litigation)

5 **RESPONSE TO SPECIAL INTERROGATORY NO. 1:**

6       Objection. In addition to the General Objections above, Defendants object to this  
7 Interrogatory on the grounds that "describe with specificity" and "currently limit the use for the  
8 PROPERTY" are vague and ambiguous. Defendants also object to the extent this Interrogatory  
9 calls for information subject to the attorney client privilege, common interest privilege and/or  
10 attorney work product doctrine. Defendants also object to the extent this interrogatory calls for a  
11 legal conclusion. Defendants also object on the grounds that this information is equally available to  
12 Plaintiff by performing its own search of recorded documents.

13       Without waiving the foregoing objections, Defendants respond as follows: The CC&R's for  
14 Tract 7333 and Tract 8652 are in the chain of title for the subject property. Defendants do not admit  
15 or agree or that the restrictions and requirements in the CCRS apply and are binding on the parties.  
16 Discovery is continuing.

17 **SPECIAL INTERROGATORY NO. 2:**

18       Please describe with specificity (by recordation date if possible) the deeds containing land  
19 use restrictions that YOU' contend currently limit the use of the PROPERTY.

20 **RESPONSE TO SPECIAL INTERROGATORY NO. 2:**

21       Objection. In addition to the General Objections above, Defendants object to this  
22 Interrogatory on the grounds that "describe with specificity" and "currently limit the use for the  
23 PROPERTY" are vague and ambiguous. Defendants also object to the extent this Interrogatory  
24 calls for information subject to the attorney client privilege, common interest privilege and/or  
25 attorney work product doctrine. Defendants also object to the extent this Interrogatory calls for a  
26 legal conclusion. Defendants also object on the grounds that this information is equally available to  
27 Plaintiff by performing its own search of recorded documents.

28       Without waiving the foregoing objections, Defendants respond as follows: The following

1 deed(s) are within the chain of title for the subject property: (1) Deed from Palos Verdes Homes  
2 Association to the City of Palos Verdes Estates dated June 14, 1940; and (2) the Deed from the  
3 Palos Verdes Homes Association to the Real Parties In Interest dated September 5, 2012. .  
4 Defendants do not admit or agree that the restrictions and requirements in the deeds apply and are  
5 binding on the parties. Discovery is continuing.

6 **SPECIAL INTERROGATORY NO. 3:**

7 Please identify with specificity all title insurance companies who declined to issue a title  
8 insurance policy covering the September 2012 conveyances of the PROPERTY.

9 **RESPONSE TO SPECIAL INTERROGATORY NO. 3:**

10 Objection. In addition to the General objections above, Defendants object that the term  
11 "identify with specificity" is vague and ambiguous. Defendants also object to the extent this  
12 Interrogatory calls for information subject to the attorney client privilege, common interest privilege  
13 and/or work product doctrine. The City also objects to the extent this response calls for a legal  
14 conclusion.

15 Without waiving the foregoing objections, Defendants respond as follows: Defendants are  
16 informed and believe that no title companies declined to issue a title insurance policy.

17 DATED: June 17, 2014

LEWIS BRISBOIS BISGAARD & SMITH LLP

18  
19 By: 

20 BRANT H. DVEIRIN, ESQ.  
21 Attorneys for Respondent/Defendant ,  
22 PALOS VERDES HOMES ASSOCIATION  
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VERIFICATION

*Citizens for Enforcement of Parkland Covenants, et al. v. City of Palos Verdes Estates, et al.*  
File No.: 50013.1840

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I have read the foregoing **DEFENDANT PALOS VERDES HOMES ASSOCIATION'S RESPONSES TO PLAINTIFF'S SPECIAL INTERROGATORIES, SET ONE** and know its contents.

☐ I am a party to this action. The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

☒ I am a representative for **PALOS VERDES HOMES ASSOCIATION**, a party to this action, and am authorized to make this verification for and on its behalf, and I make this verification for that reason.  
☒ I am informed and believe and on that ground allege that the matters stated in the foregoing document are true. ☐ The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

☐ I am one of the attorneys for , a party to this action. Such party is absent from the county where such attorneys have their offices, and I make this verification for and on behalf of that party for that reason. I am informed and believe and on that ground allege that the matters stated in the foregoing document are true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on June 18, 2014, at Palos Verdes Estates, California.

  
(Signature)

Philip J. Franks

Representative for: Respondent/Defendant,  
**PALOS VERDES HOMES ASSOCIATION**

1 **CALIFORNIA STATE COURT PROOF OF SERVICE**

2 *Citizens for Enforcement of Parkland Covenants, et al.*

3 v.

4 *City of Palos Verdes Estates, et al.*

5 *File No.: 50013.1840*

6 STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

7 At the time of service, I was over 18 years of age and not a party to the action. My business  
8 address is 221 North Figueroa Street, Suite 1200, Los Angeles, CA 90012.

9 On the below date, I served the following document(s) described as: **DEFENDANT  
10 PALOS VERDES HOMES ASSOCIATION'S RESPONSES TO PLAINTIFF'S SPECIAL  
11 INTERROGATORIES, SET ONE** on the following persons at the following addresses (including  
12 fax numbers and e-mail addresses, if applicable):

13 **SEE ATTACHED SERVICE LIST**

14 ☒

15 **(BY U.S. MAIL)** I enclosed the above-stated document(s) in a sealed envelope or package  
16 addressed to the person(s) at the address(es) listed by placing the envelope or package for  
17 collection and mailing, following our ordinary business practices. I am readily familiar with the  
18 firm's practice for collection and processing correspondence for mailing. Under that practice, on  
19 the same day that correspondence is placed for collection and mailing, it is deposited in the  
20 ordinary course of business with the U.S. Postal Service, in a sealed envelope of package with the  
21 postage fully prepaid thereon. I am aware that on motion of the party served, service is presumed  
22 invalid if postal cancellation date or postage meter date is more than one day after date of deposit  
23 for mailing in affidavit.

24 ☐

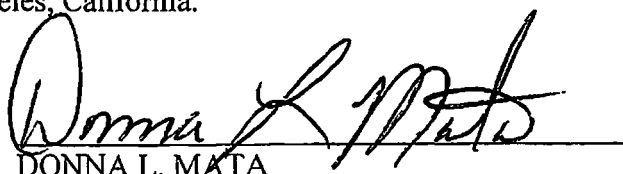
25 **(BY FAX TRANSMISSION)** Based on an agreement of the parties to accept service by  
26 fax transmission, I faxed the documents to the persons at the fax numbers listed above. No error  
27 was reported by the fax machine that I used. A copy of the record of the fax transmission  
28 containing the time, date, and sending fax machine telephone number, which I printed out, is  
attached.

☐

**(BY OVERNIGHT DELIVERY)** I enclosed the documents in an envelope or package  
provided by an overnight delivery carrier and addressed to the persons at the addresses listed  
above. I placed the envelope or package for collection and delivery at an office or a regularly  
utilized drop box of the overnight delivery carrier.

23 I declare under penalty of perjury under the laws of the State of California that the foregoing  
24 is true and correct.

25 Executed on **June 23, 2014**, at Los Angeles, California.

26   
27 DONNA L. MATA

**SERVICE LIST**

*Citizens for Enforcement of Parkland Covenants, et al. v. City of Palos Verdes Estates, et al.*  
File No.: 50013.1840

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C



50015-1870  
D ✓

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Attorneys for Respondent/Defendant, PALOS VERDES  
HOMES ASSOCIATION

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES**

**CENTRAL DISTRICT - STANLEY MOSK COURTHOUSE**

CITIZENS FOR ENFORCEMENT OF  
PARKLAND COVENANTS, an  
unincorporated association; JOHN  
HARBISON, an individual,

Plaintiff /Petitioners,

vs.

CITY OF PALOS VERDES ESTATES, a  
municipal corporation; PALOS VERDES  
HOMES ASSOCIATION, a California  
corporation; PALOS VERDES PENINSULA  
UNIFIED SCHOOL DISTRICT, a political  
subdivision of the State of California,

Defendants/Respondents.

ROBERT LUGLIANI and DOLORES A.  
LUGLIANI, as co-trustees of the LUGLIANA  
TRUST; THOMAS J. LIEB, TRUSTEE, THE  
VIA PANORAMA TRUST,

Defendants/Real Parties in Interest.

CASE NO.: BS 142 768

Assigned to:  
JUDGE: Hon. Barbara A. Meiers  
DEPT.: 12

**DEFENDANT PALOS VERDES HOMES  
ASSOCIATION'S RESPONSES TO  
PLAINTIFF'S FORM  
INTERROGATORIES, SET TWO**

Action filed: May 13, 2013  
Trial Date: None

PROPOUNDING PARTY : Plaintiff, CITIZENS FOR ENFORCEMENT  
OF PARKLAND COVENANTS

RESPONDING PARTY : Defendant, PALOS VERDES HOMES ASSOCIATION

SET NUMBER : Two (2)

Pursuant to *Code of Civil Procedure* §2030.010 et seq., Defendant, PALOS VERDES

4830-7972-7387.10

HOMES ASSOCIATION ("Defendant") hereby responds to the Form Interrogatories-General, Set Two, propounded by Plaintiff, CITIZENS FOR ENFORCEMENT OF PARKLAND COVENANTS ("Plaintiff"), as follows:

**PRELIMINARY STATEMENT**

It should be noted that Defendant has not fully completed its investigation of the facts relating to the case, has not fully completed its discovery in this action, and has not completed its preparation for trial. All of the answers contained herein are based only upon such information and documents which are presently available to and specifically known to Defendant and disclose only those contentions which presently occur to defendant. It is anticipated that further discovery, independent investigation, legal research, and analysis will supply additional facts, add meaning to known facts, as well as establish entirely new factual conclusions and legal contentions, all of which may lead to substantial additions to, changes in, and variations from the contentions herein set forth. The following responses are given without prejudice to Defendant's right to produce evidence of any subsequently discovered fact or facts which defendant may later develop.

The answers contained herein are made in a good faith effort to supply as much factual information and as much specification of legal contentions as is presently known, but should in no way be to the prejudice of defendant in relation to further discovery, research or analysis.

**GENERAL OBJECTIONS AND RESERVATIONS**

As to each and every Interrogatory in Plaintiff's Form Interrogatories - General, Set Two, Defendant states the following:

A. Defendant has not yet completed its discovery and investigation of the facts giving rise to this action, but has made a diligent, good faith effort to obtain all information responsive to these Interrogatories within Defendant's possession, custody, or control. Accordingly, these responses are made without prejudice to Defendant's right to introduce prior to or at the time of trial or otherwise use any additional information he may obtain as a result of Defendant's continuing discovery and investigation, but Defendant assumes no obligation, beyond that imposed by the California *Code of Civil Procedure* § 2030.010, *et seq.*, to supplement and amend these responses to reflect witnesses, facts or other information discovered following the date of these responses.

4830-7972-7387.10

1 B. Defendant has based these responses on the assumption that Plaintiff did not intend to  
2 seek information protected against discovery by the attorney-client privilege or the attorney work  
3 product doctrine, the right of privacy laws, the protection afforded trade secrets or any other  
4 applicable privilege or protection from disclosure. To the extent that the Interrogatories are intended  
5 to elicit such privileged or protected information, Defendant objects thereto as to each  
6 Interrogatory and asserts the applicable privilege or protection to the fullest extent permitted by law.

7 C. To the extent that Defendant responds to these Interrogatories, Defendant does not  
8 concede the relevancy of those responses to this action, nor does it concede that such responses may  
9 be used for any purpose in this action or any other action or proceeding. Defendant expressly  
10 reserves the right to object to further discovery into the subject matter of any Interrogatory or any  
11 portion thereof.

12 D. Defendant objects to each Interrogatory to the extent it seeks information in violation of  
13 Sections 2017 *et seq.* of the California *Code of Civil Procedure*.

14 E. Defendant objects to each Interrogatory to the extent that it seeks information equally  
15 available to Plaintiff or information that is not within Defendant's possession, custody or control.

16 F. Defendant objects to each Interrogatory to the extent that it is intended to be and is  
17 overly broad, unduly burdensome and/or oppressive.

18 G. Defendant objects to each Interrogatory to the extent it seeks information that is not  
19 relevant to the subject matter of this action and is not reasonably calculated to lead to the discovery  
20 of admissible evidence.

21 H. Defendant objects to the duplicative Form Interrogatories served on this Defendant, and  
22 responds to both sets in the instant pleading.

23 Without waiving any of the foregoing General Objections, each of which applies to each and  
24 every one of the individual responses set forth below and is incorporated by this reference therein,  
25 Defendant responds to the individual Interrogatories as set forth below.

26 **RESPONSES TO FORM INTERROGATORIES, SET TWO**

27 **FORM INTERROGATORY NO. 1.1:**

28 State the name, ADDRESS, telephone number, and relationship to you of each PERSON

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1 who prepared or assisted in the preparation of the responses to these interrogatories. *(Do not identify*  
2 *anyone who simply typed or reproduced the responses.)*

3 **RESPONSE TO FORM INTERROGATORY NO. 1.1:**

4 Brant H. Dveirin, Lewis Brisbois Bisgaard & Smith LLP, 221 North Figueroa Street, Suite  
5 1200, Los Angeles, CA 90012, (213) 680-6317.

6 Sidney F. Croft of Law Offices of Sidney Croft, 314 Tejon Place, Palos Verdes Estates, CA  
7 90274, (310) 849-1992.

8 Phil Frengs, Palos Verdes Homes Association, may be contacted through Brant Dveirin.

9 **FORM INTERROGATORY NO. 17.1:**

10 Is your response to each request for admission served with these interrogatories an  
11 unqualified admission? If not, for each response that is not an unqualified admission:

12 (a) state the number of the request;

13 (b) state all facts upon which you base your response;

14 (c) state the names, **ADDRESSES**, and telephone numbers of all **PERSONS** who have  
15 knowledge of those facts; and

16 (d) identify all **DOCUMENTS** and other tangible things that support your response and  
17 state the name, **ADDRESS**, and telephone number of the **PERSON** who has each **DOCUMENT** or  
18 thing.

19 **RESPONSE TO FORM INTERROGATORY NO. 17.1:**

20 (a) 34;

21 (b) The documents appear to be recorded documents in the chain of title and appear to  
22 be true and correct copies of the documents. The original of these documents are recorded and  
23 equally available to Plaintiffs.

24 (c) Brant Dveirin; Sid Croft; Phil Frengs (see response 1.1(d); and

25 (d) The documents are attached to the Requests for Admissions served on Defendants,  
26 and are equally available to Plaintiff through a search of recorded documents.

27

28 (a) 35;

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1 (b) The documents are recorded documents in the chain of title and appear to be true and  
2 correct copies of the documents. The original of these documents are recorded and equally available  
3 to Plaintiffs.

4 (c) Brant Dveirin; Sid Croft; and Phil Frengs (see response 1.1(d); and

5 (d) The documents are attached to the Request for Admissions served on Defendants,  
6 and are equally available to Plaintiff through a search of recorded documents.

7 DATED: June 19, 2014

LEWIS BRISBOIS BISGAARD & SMITH LLP

8  
9 By: 

10 BRANT H. DVEIRIN, ESQ.  
11 Attorneys for Respondent/Defendant ,  
12 PALOS VERDES HOMES ASSOCIATION  
13  
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**VERIFICATION**

*Citizens for Enforcement of Parkland Covenants, et al. v. City of Palos Verdes Estates, et al.*  
*File No.: 50013.1840*

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I have read the foregoing **DEFENDANT PALOS VERDES HOMES ASSOCIATION'S RESPONSES TO PLAINTIFF'S FORM INTERROGATORIES, SET TWO** and know its contents.

☐ I am a party to this action. The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

☒ I am a representative for **PALOS VERDES HOMES ASSOCIATION**, a party to this action, and am authorized to make this verification for and on its behalf, and I make this verification for that reason.  
☒ I am informed and believe and on that ground allege that the matters stated in the foregoing document are true. ☐ The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

☐ I am one of the attorneys for , a party to this action. Such party is absent from the county where such attorneys have their offices, and I make this verification for and on behalf of that party for that reason. I am informed and believe and on that ground allege that the matters stated in the foregoing document are true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on June 18, 2014, at Palos Verdes Estates, California.

  
(Signature)

PHILIP J. FRENAS

Representative for: Respondent/Defendant,  
**PALOS VERDES HOMES ASSOCIATION**

1 **CALIFORNIA STATE COURT PROOF OF SERVICE**

2 *Citizens for Enforcement of Parkland Covenants, et al.*

3 v.

4 *City of Palos Verdes Estates, et al.*

5 *File No.: 50013.1840*

6 STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

7 At the time of service, I was over 18 years of age and not a party to the action. My business  
8 address is 221 North Figueroa Street, Suite 1200, Los Angeles, CA 90012.

9 On the below date, I served the following document(s) described as: **DEFENDANT  
10 PALOS VERDES HOMES ASSOCIATION'S RESPONSES TO PLAINTIFF'S FORM  
11 INTERROGATORIES, SET TWO** on the following persons at the following addresses (including  
12 fax numbers and e-mail addresses, if applicable):

13 **SEE ATTACHED SERVICE LIST**

14 ☒

15 **(BY U.S. MAIL)** I enclosed the above-stated document(s) in a sealed envelope or package  
16 addressed to the person(s) at the address(es) listed by placing the envelope or package for  
17 collection and mailing, following our ordinary business practices. I am readily familiar with the  
18 firm's practice for collection and processing correspondence for mailing. Under that practice, on  
19 the same day that correspondence is placed for collection and mailing, it is deposited in the  
20 ordinary course of business with the U.S. Postal Service, in a sealed envelope of package with the  
21 postage fully prepaid thereon. I am aware that on motion of the party served, service is presumed  
22 invalid if postal cancellation date or postage meter date is more than one day after date of deposit  
23 for mailing in affidavit.

24 ☐

25 **(BY FAX TRANSMISSION)** Based on an agreement of the parties to accept service by  
26 fax transmission, I faxed the documents to the persons at the fax numbers listed above. No error  
27 was reported by the fax machine that I used. A copy of the record of the fax transmission  
28 containing the time, date, and sending fax machine telephone number, which I printed out, is  
attached.

☐

**(BY OVERNIGHT DELIVERY)** I enclosed the documents in an envelope or package  
provided by an overnight delivery carrier and addressed to the persons at the addresses listed  
above. I placed the envelope or package for collection and delivery at an office or a regularly  
utilized drop box of the overnight delivery carrier.

23 I declare under penalty of perjury under the laws of the State of California that the foregoing  
24 is true and correct.

25 Executed on **June 23, 2014**, at Los Angeles, California.

26   
27 DONNA L. MATA

**SERVICE LIST**

*Citizens for Enforcement of Parkland Covenants, et al. v. City of Palos Verdes Estates, et al.*  
File No.: 50013.1840

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9 Attorneys for Plaintiff CITIZENS FOR  
10 ENFORCEMENT OF PARKLAND  
11 COVENANTS and JOHN HARBISON

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
13 **COUNTY OF LOS ANGELES – CENTRAL DISTRICT**

14 CITIZENS FOR ENFORCEMENT OF  
15 PARKLAND COVENANTS,

16 Plaintiff,

17 vs.

18 CITY OF PALOS VERDES ESTATES,  
19 etc. et al.

20 Defendants.

Case No.: BS142768

(Assigned for all purposes to the Hon. Barbara  
A. Meiers, Dept. 12)

**PLAINTIFFS' RESPONSES TO  
SPECIAL INTERROGATORIES, SET  
ONE PROPOUNDED BY DEFENDANT  
PALOS VERDES HOMES  
ASSOCIATION**

Action Filed: May 13, 2013  
Trial Date: None Set

21  
22 **Propounding Party:** Palos Verdes Homes Association

23 **Responding Party:** Citizens for Enforcement of Parkland Covenants and  
24 John Harbison

25 **Set Number:** One

1 **SPECIAL INTERROGATORY NO. 1.:**

2 Is every member of Plaintiff Citizens for Enforcement of Parkland Covenants  
3 (hereinafter "CEPC"), a member of Defendant Palos Verdes Homeowners Association  
4 (hereinafter the "ASSOCIATION").

6 **RESPONSE TO SPECIAL INTERROGATORY NO. 1.:**

7 Plaintiffs object to this request on the grounds that it impermissibly invades the  
8 members of CEPC's associational rights of privacy and assert their associational rights of  
9 privacy as guaranteed by the California and United States Constitutions. (See *N.A.A.C.P. v.*  
10 *Alabama* (1958) 357 U.S. 449, 462; *Church of Hakeem, Inc. v. Superior Court* (1980) 110  
11 Cal.App.3d 384, 387-88). Plaintiffs further objects on the grounds that responding to this  
12 interrogatory requires Plaintiffs to have access to the Association's membership list, which  
13 the Association has refused to produce in this litigation. Plaintiffs further object on the  
14 grounds that information sought in response to this interrogatory (membership in the  
15 Association) is information equally available to the propounding party. Subject to and  
16 without waiving said objections, Plaintiffs respond as follows:

17 No. Approximately 10 members reside outside the city limits of Palos Verdes Estates  
18 and are not members of the Association. CEPC Members John Harbison and Renata  
19 Harbison are members of the Association. Plaintiffs are informed and believe that a total of  
20 74 members of CEPC reside in the city limits of Palos Verdes Estates and, of that number,  
21 Plaintiffs believe them all to be Association members. Plaintiffs have provided Defendants  
22 with a list of the names of these CEPC Members, and have also offered to check the names  
23 against the PVHA membership list if the PVHA supplies that list.

25 **SPECIAL INTERROGATORY No. 2.:**

26 Identify by stating their name, address, telephone number and email address, of every  
27 member of CEPC who is also a member of the ASSOCIATION.

28 ///

**RESPONSE TO SPECIAL INTERROGATORY No. 2.:**

Plaintiffs object to this request on the grounds that it impermissibly invades the members of CEPC's associational rights of privacy and assert their associational rights of privacy as guaranteed by the California and United States Constitutions. (See *N.A.A.C.P. v. Alabama* (1958) 357 U.S. 449, 462; *Church of Hakeem, Inc. v. Superior Court* (1980) 110 Cal.App.3d 384, 387-88). Plaintiffs further objects on the grounds that responding to this interrogatory requires Plaintiffs to have access to the Association's membership list, which the Association has refused to produce in this litigation. Plaintiffs further object on the grounds that information sought in response to this interrogatory (membership in the Association) is information equally available to the propounding party. Plaintiffs further object on the grounds that responding to this interrogatory requires the responding party to prepare a compilation or list and that the propounding party is equally capable of preparing such a list. Plaintiffs further object to this interrogatory on the grounds that it invades the privacy of third parties and the Association has not provided those third parties notice of this invasive discovery request. Plaintiffs further object that this interrogatory does not call for relevant information nor is it reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving said objections, Plaintiffs respond as follows:

On January 13, 2015, Plaintiffs produced its membership list, bates stamped CEPC 0001-0002. An additional copy of that list is attached hereto and incorporated herein as Exhibit "A." That list identifies those CEPC members who chose to be identified by name and identifies which members reside in the City of Palos Verdes Estates. The Association has membership lists in its possession by which the Association could access the address, of each CEPC member who is a member of the Association. John Harbison is a member of both the Association and CEPC and, therefore, CEPC has standing in this matter. Therefore, plaintiffs have not sought and do not have the information about which additional CEPC members may or may not be members of the Association since plaintiffs do not know who are renters vs owners (and hence PVHA members); but it is reasonable to expect that the vast majority are owners and hence members. Regardless, such determination is not

relevant to the case since proving the standing of John Harbison as a Member of the Association should suffice for the purposes of this litigation – information on additional CEPC members is not needed.

**SPECIAL INTERROGATORY NO. 3.:**

Identify by stating their name, address, telephone number and email address, of every member of CEPC who is not a member of the ASSOCIATION.

**RESPONSE TO SPECIAL INTERROGATORY NO. 3.:**

Plaintiffs object to this request on the grounds that it impermissibly invades the members of CEPC's associational rights of privacy and assert their associational rights of privacy as guaranteed by the California and United States Constitutions. (See *N.A.A.C.P. v. Alabama* (1958) 357 U.S. 449, 462; *Church of Hakeem, Inc. v. Superior Court* (1980) 110 Cal.App.3d 384, 387-88). Plaintiffs further objects on the grounds that responding to this interrogatory requires Plaintiffs to have access to the Association's membership list, which the Association has refused to produce in this litigation. Plaintiffs further object on the grounds that information sought in response to this interrogatory (membership in the Association) is information equally available to the propounding party. Plaintiffs further object on the grounds that responding to this interrogatory requires the responding party to prepare a compilation or list and that the propounding party is equally capable of preparing such a list. Plaintiffs further object to this interrogatory on the grounds that it invades the privacy of third parties and the Association has not provided those third parties notice of this invasive discovery request. Plaintiffs further object that this interrogatory does not call for relevant information nor is it reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving said objections, Plaintiffs respond as follows:

On January 13, 2015, Plaintiffs produced its membership list, bates stamped CEPC 0001-0002. An additional copy of that list is attached hereto and incorporated herein as Exhibit "A." That list identifies those CEPC members who chose to be identified by name

1 and identifies which members reside in the City of Palos Verdes Estates. The Association  
2 has membership lists in its possession by which the Association could access the address of  
3 each CEPC member who is a member of the Association. John Harbison is a member of  
4 both the Association and CEPC and, therefore, CEPC has standing in this matter.  
5 Therefore, plaintiffs have not sought and do not have the information about which additional  
6 CEPC members may or may not be members of the Association.

7  
8 **SPECIAL INTERROGATORY NO. 4.:**

9 Does every member of CEPC live within the boundaries of Defendant City of Palos  
10 Verdes Estates (hereinafter the "CITY").

11  
12 **RESPONSE TO SPECIAL INTERROGATORY NO. 4.:**

13 Plaintiffs object to this request on the grounds that it impermissibly invades the  
14 members of CEPC's associational rights of privacy and assert their associational rights of  
15 privacy as guaranteed by the California and United States Constitutions. (See *N.A.A.C.P. v.*  
16 *Alabama* (1958) 357 U.S. 449, 462; *Church of Hakeem, Inc. v. Superior Court* (1980) 110  
17 Cal.App.3d 384, 387-88). Plaintiffs further objects on the grounds that responding to this  
18 interrogatory requires Plaintiffs to have access to the Association's membership list, which  
19 the Association has refused to produce in this litigation. Plaintiffs further object on the  
20 grounds that information sought in response to this interrogatory (membership in the  
21 Association or residency within city limits) is information equally available to the  
22 propounding party. Subject to and without waiving said objections, Plaintiffs respond as  
23 follows:

24 No. Approximately 10 members reside outside the city limits of Palos Verdes Estates  
25 and are not members of the Association. CEPC Members John Harbison and Renata  
26 Harbison are members of the Association. Plaintiffs are informed and believe that a total of  
27 74 members of CEPC reside in the city limits of Palos Verdes Estates and, of that number,  
28 Plaintiffs believe them all to be Association members.

**SPECIAL INTERROGATORY No. 5.:**

Identify by stating their name, address, telephone number and email address, every member of CEPC who does not live within the boundaries of the CITY.

**RESPONSE TO SPECIAL INTERROGATORY No. 5.:**

Plaintiffs object to this request on the grounds that it impermissibly invades the members of CEPC's associational rights of privacy and assert their associational rights of privacy as guaranteed by the California and United States Constitutions. (See *N.A.A.C.P. v. Alabama* (1958) 357 U.S. 449, 462; *Church of Hakeem, Inc. v. Superior Court* (1980) 110 Cal.App.3d 384, 387-88). Plaintiffs further objects on the grounds that responding to this interrogatory requires Plaintiffs to have access to the Association's membership list, which the Association has refused to produce in this litigation. Plaintiffs further object on the grounds that information sought in response to this interrogatory (membership in the Association) is information equally available to the propounding party. Plaintiffs further object on the grounds that responding to this interrogatory requires the responding party to prepare a compilation or list and that the propounding party is equally capable of preparing such a list. Plaintiffs further object to this interrogatory on the grounds that it invades the privacy of third parties and the Association has not provided those third parties notice of this invasive discovery request. Plaintiffs further object that this interrogatory does not call for relevant information nor is it reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving said objections, Plaintiffs respond as follows:

On January 13, 2015, Plaintiffs produced its membership list, bates stamped CEPC 0001-0002. An additional copy of that list is attached hereto and incorporated herein as Exhibit "A." That list identifies those CEPC members who chose to be identified by name and identifies which members reside in the City of Palos Verdes Estates. The Association has membership lists in its possession by which the Association could access the address of each CEPC member who is a member of the Association and thus, by definition, resides within the City of Palos Verdes Estates.

**SPECIAL INTERROGATORY No. 6.:**

To the extent not identified above, identify by stating their name, address, telephone number and email address, all other members of CEPC.

**RESPONSE TO SPECIAL INTERROGATORY No. 6.:**

Plaintiffs object to this request on the grounds that it impermissibly invades the members of CEPC's associational rights of privacy and assert their associational rights of privacy as guaranteed by the California and United States Constitutions. (See *N.A.A.C.P. v. Alabama* (1958) 357 U.S. 449, 462; *Church of Hakeem, Inc. v. Superior Court* (1980) 110 Cal.App.3d 384, 387-88). Plaintiffs further objects on the grounds that responding to this interrogatory requires Plaintiffs to have access to the Association's membership list, which the Association has refused to produce in this litigation. Plaintiffs further object on the grounds that information sought in response to this interrogatory (membership in the Association) is information equally available to the propounding party. Plaintiffs further object on the grounds that responding to this interrogatory requires the responding party to prepare a compilation or list and that the propounding party is equally capable of preparing such a list. Plaintiffs further object to this interrogatory on the grounds that it invades the privacy of third parties and the Association has not provided those third parties notice of this invasive discovery request. Plaintiffs further object that this interrogatory does not call for relevant information nor is it reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving said objections, Plaintiffs respond as follows:

On January 13, 2015, Plaintiffs produced its membership list, bates stamped CEPC 0001-0002. An additional copy of that list is attached hereto and incorporated herein as Exhibit "A." That list identifies those CEPC members who chose to be identified by name and identifies which members reside in the City of Palos Verdes Estates. The Association has membership lists in its possession by which the Association could access the address of each CEPC member who is a member of the Association and thus, by definition, resides within the City of Palos Verdes Estates.



**SPECIAL INTERROGATORY No. 7.:**

Do YOU (YOU or YOUR means Plaintiffs CEPC and John Harbison) contend in this action that the Memorandum of Understanding (hereinafter the "MOU") between the CITY, Palos Verdes Unified School District, the ASSOCIATION and Thomas J. Lieb, Trustee, The Via Panorama Trust U/DO May 2, 2012, Together with Trusts for the Benefit of Related Parties, referred to in the operative Complaint, is void and of no force and effect, and state all facts that support your contention.

**RESPONSE TO SPECIAL INTERROGATORY No. 7.:**

Plaintiffs object that this question is compound. It asks whether plaintiffs make a contention and then asks for the facts supporting that contention. The question is also ambiguous as to time as it does not specify a time period as to when Plaintiffs may have made such a contention in the past. Subject to and without waiving said objection, Plaintiffs respond as follows:

The original complaint and petition filed in this matter contended that the MOU was illegal and void because it purported to authorize a conveyance of public parkland to a private party in violation of land use restrictions that the property be used forever for park purposes. The operative pleading in effect now does not make that contention because, as advised by the Court, it is unnecessary to make such a contention to prevail on its theories pled and to strike down.

**SPECIAL INTERROGATORY No. 8.:**

Identify all witnesses, by stating their name, address, telephone number and email address, who have knowledge of those facts.

**RESPONSE TO SPECIAL INTERROGATORY No. 8.:**

Plaintiffs object that this question is not complete in and of itself as required by the Code of Civil Procedure. It impermissibly incorporates a prior question and response. The

question is also ambiguous as to time as it does not specify a time period as to when Plaintiffs may have made such a contention in the past. Subject to and without waiving said objection, Plaintiffs respond as follows:

Plaintiffs do not presently make the contention as described in Interrogatory Nos. 7 and 8 and, therefore, there are no facts or witnesses to identify in response to this interrogatory.

**SPECIAL INTERROGATORY No. 9.:**

Identify all documents and other tangible things that support those facts, and the name, address, telephone number and email address, of all persons who have each document or thing.

**RESPONSE TO SPECIAL INTERROGATORY No. 9.:**

Plaintiffs object that this question is not complete in and of itself as required by the Code of Civil Procedure. It impermissibly incorporates a prior question and response. The question is also ambiguous as to time as it does not specify a time period as to when Plaintiffs may have made such a contention in the past. Subject to and without waiving said objection, Plaintiffs respond as follows:

Plaintiffs do not presently make the contention as described in Interrogatory Nos. 7 and 9 and, therefore, there are no documents to identify in response to this interrogatory.

**SPECIAL INTERROGATORY No. 10.:**

Do YOU contend in this action that the September 5, 2012 deeds, Instrument Numbers 20121327414 and 21021327415, referred to in the operative Complaint, are void and of no force or effect, and state all facts that support your contention.

**RESPONSE TO SPECIAL INTERROGATORY No. 10.:**

Plaintiffs object that this question is compound. It asks whether plaintiffs make a

1 contention and then asks for the facts supporting that contention. Subject to and without  
2 waiving said objections, Plaintiffs respond as follows:

3 Yes. On June 14, 1940, the Association conveyed a number of parks to the City of  
4 Palos Verdes Estates ("City") in multiple grant deeds. The properties conveyed by the  
5 Association to the City on June 14, 1940 included the Panorama Parkland. The properties  
6 conveyed by the Association to the City on June 14, 1940 included Lot A of Tract 7540. The  
7 properties conveyed by the Association to the City on June 14, 1940 included Lot A of Tract  
8 8652. The June 14, 1940 deeds conveying property from the Association to the City included  
9 restrictions on the future use and ownership of the conveyed property. Specifically, the June  
10 14, 1940 deeds state:

- 11 ➤ That the transferred property "is to be used and administered forever for park and/or  
12 recreation purposes..."
- 13 ➤ That "no buildings, structures or concessions shall be erected, maintained or  
14 permitted" on the parkland "except such as are properly incidental to the convenient  
15 and/or proper use of said realty for park and/or recreation purposes."
- 16 ➤ That the transferred property "shall not be sold or conveyed, in whole or in  
17 part...except to a body suitably constituted by law to take, hold, maintain and regulate  
18 public parks..."
- 19 ➤ That, with written permission, a property owner abutting the park may construct  
20 paths or landscaping on the conveyed property as a means of improving access to or  
21 views from such property. Such improvements must not impair or interfere with the  
22 use and maintenance of said realty for park and/or recreations purposes.
- 23 ➤ That none of the use or ownership restrictions set forth in the June 14, 1940 deeds  
24 may be changed by the City or the Association even if the Association complies with  
25 its own internal procedures for modifying land use restrictions and obtains the written  
26 consent of two-thirds of the property owners.
- 27 ➤ That any breach of the use or ownership conditions "shall cause said realty to revert  
28 to the" Association.

- 1 ➤ That the deed restrictions “inure to and pass with said property and each and every  
2 parcel of land therein, and shall apply to and bind the respective successors in interest  
3 of the parties hereto, and are...imposed upon said realty as a servitude in favor of said  
4 property and each and every parcel of land therein as the dominant tenement or  
5 tenements.”

6 The June 14, 1940 deeds do not contain any text or provision that authorizes the  
7 transfer of parkland to a private party for private purposes. Notably absent from the June 14,  
8 1940 deeds are:

- 9 ➤ Any express provision authorizing the City or Association to “swap” parkland  
10 properties.  
11 ➤ Any express provision authorizing the City or Association to convey parks as part of a  
12 resolution of litigation.  
13 ➤ Any express provision authorizing the City or Association to convey parks to fund  
14 budgetary shortfalls for school districts.

15 The City passed Resolution No. 12 formally accepting the deeds and confirming the  
16 land use restrictions. Resolution No. 12 re-states verbatim each of the land use restrictions  
17 set forth above.

18  
19 **SPECIAL INTERROGATORY No. 11.:**

20 Identify all witnesses by stating their name, address, telephone number and email  
21 address, who have knowledge of those facts.

22  
23 **RESPONSE TO SPECIAL INTERROGATORY No. 11.:**

24 Plaintiffs object that this question is not complete in and of itself as required by the  
25 Code of Civil Procedure. It impermissibly incorporates a prior question and response.  
26 Subject to and without waiving said objection, Plaintiffs respond as follows:

27 John Harbison is the representative of CEPC with the most knowledge concerning  
28 the illegal actions by the City of Palos Verdes Estates and the Palos Verdes Homes

1 Association. Other persons with knowledge include:

2 A. The members of the Palos Verdes Estates City Council that voted to approve  
3 the MOU and authorized the signing of the deeds in question;

4 B. The members of the Board of Directors for the Palos Verdes Homes  
5 Association that voted to approve the MOU and authorized the signing of the deeds in  
6 question;

7 C. The members of the Palos Verdes Peninsula Unified School District Board  
8 that voted to approve the MOU and authorized the signing of the deeds in question;

9 D. Frank Zerunyan, the architect of the ill-conceived plan to sell public parkland  
10 to his clients for private purposes;

11 E. Christi Hogin, the attorney for the City of Palos Verdes Estates who approved  
12 the ill-conceived plan to sell public parkland to a private party for private purposes;

13 F. Sidney Croft, the attorney for the Palos Verdes Homes Association who  
14 approved the ill-conceived plan to sell public parkland to private party for private purposes;  
15 and

16 G. Allan Rigg, a former city employee who previously enforced the City's land use  
17 restrictions.

18 Plaintiffs have access to the name, address, telephone number and email address of  
19 each of these persons.

20  
21 **SPECIAL INTERROGATORY No. 12.:**

22 Identify all documents and other tangible things that support those facts, and the  
23 name, address, telephone number and email address, of all persons who have each document  
24 or thing.

25  
26 **RESPONSE TO SPECIAL INTERROGATORY No. 12.:**

27 Plaintiffs object that this question is not complete in and of itself as required by the  
28 Code of Civil Procedure. It impermissibly incorporates a prior question and response. The

question is also compound because it asks Plaintiffs to both identify documents and the persons who may have them. Subject to and without waiving said objection, Plaintiffs respond as follows:

The following documents, Exhibits 1 – 30, which were attached to the Plaintiffs’ summary judgment motion herein,

Exhibit 1 – Second Amended Complaint.....	Tab 3
Exhibit 2 - Area Map .....	Tab 4
Exhibit 3 - Legal Description of Panorama Parkland.....	Tab 5
Exhibit 4 - Bolton Engineering Map of Panorama Parkland .....	Tab 6
Exhibit 5 – Tract 8652 CC&R’s .....	Tab 7
Exhibit 6 – Tract 7540 Deed .....	Tab 8
Exhibit 7 – Tract 8652 Deed .....	Tab 9
Exhibit 8 – Resolution 12.....	Tab 10
Exhibit 9 – Quitclaim Deed from City to Association .....	Tab 11
Exhibit 10 - Grant Deed from Association to Lieb .....	Tab 12
Exhibit 11 – Judgment dated September 22, 2011.....	Tab 13
Exhibit 12 – Executed Memorandum of Understanding.....	Tab 14
Exhibit 13 – Lugliani Answer to Second Amended Complaint.....	Tab 15
Exhibit 14 – Palos Verdes Homes Association Answer to Second Amended Complaint .....	Tab 16
Exhibit 15 – City of Palos Verdes Estates Answer to Second Amended Complaint.....	Tab 17
Exhibit 16 – 1972 Association Letter.....	Tab 18
Exhibit 17 – July 18, 2003 Letter .....	Tab 19
Exhibit 18 – August 11, 2003 Allan Rigg Memorandum .....	Tab 20
Exhibit 19 – April 14, 2009 Letter .....	Tab 21
Exhibit 20 – September 19, 2011 Letter .....	Tab 22
Exhibit 21 – April 19, 2012 Palos Verdes Homes Association Resolution.....	Tab 23

1	Exhibit 22 – May 2, 2012 Panorama Trust Document .....	Tab 24
2	Exhibit 23 – February 19, 2013 Planning Commission Staff Report.....	Tab 25
3	Exhibit 24 – March 7, 2013 Rockey & Wahl Letter.....	Tab 26
4	Exhibit 25 – Special Interrogatories, Set One Propounded on the City of	
5	Palos Verdes Estates .....	Tab 27
6	Exhibit 26 – The City of Palos Verdes Estates’ Responses to Special	
7	Interrogatories, Set One.....	Tab 28
8	Exhibit 27 – April 11, 2014 Minute Order .....	Tab 29
9	Exhibit 28 – May 21, 2014 Reporter’s Transcript .....	Tab 30
10	Exhibit 29 – Notice of Entry of Dismissal.....	Tab 31
11	Exhibit 30 – October 31, 2014 Letter to Palos Verdes Homes Association regarding the	
12	District.....	Tab 32

13 Plaintiffs are informed and believe that all of the foregoing documents are in the  
14 possession of the parties herein.

15  
16 **SPECIAL INTERROGATORY No. 13.:**

17 Do YOU contend that the ASSOCIATION has the duty, as opposed to the  
18 discretion, to enforce its reversionary rights to the PROPERTY, defined herein as the real  
19 property adjacent to 900 Via Panorama which was conveyed from the ASSOCIATION to  
20 Thomas J. Lieb, as described in the operative Complaint, and state all facts that support your  
21 contention.

22  
23 **RESPONSE TO SPECIAL INTERROGATORY No. 13.:**

24 Yes. On June 14, 1940, the Association conveyed a number of parks to the City of  
25 Palos Verdes Estates (“City”) in multiple grant deeds. The properties conveyed by the  
26 Association to the City on June 14, 1940 included the Panorama Parkland. The properties  
27 conveyed by the Association to the City on June 14, 1940 included Lot A of Tract 7540. The  
28 properties conveyed by the Association to the City on June 14, 1940 included Lot A of Tract

1 8652. The June 14, 1940 deeds conveying property from the Association to the City included  
2 restrictions on the future use and ownership of the conveyed property. Specifically, the June  
3 14, 1940 deeds state:

- 4 ➤ That the transferred property "is to be used and administered forever for park and/or  
5 recreation purposes..."
- 6 ➤ That "no buildings, structures or concessions shall be erected, maintained or  
7 permitted" on the parkland "except such as are properly incidental to the convenient  
8 and/or proper use of said realty for park and/or recreation purposes."
- 9 ➤ That the transferred property "shall not be sold or conveyed, in whole or in  
10 part...except to a body suitably constituted by law to take, hold, maintain and regulate  
11 public parks..."
- 12 ➤ That, with written permission, a property owner abutting the park may construct  
13 paths or landscaping on the conveyed property as a means of improving access to or  
14 views from such property. Such improvements must not impair or interfere with the  
15 use and maintenance of said realty for park and/or recreations purposes.
- 16 ➤ That none of the use or ownership restrictions set forth in the June 14, 1940 deeds  
17 may be changed by the City or the Association even if the Association complies with  
18 its own internal procedures for modifying land use restrictions and obtains the written  
19 consent of two-thirds of the property owners.
- 20 ➤ That any breach of the use or ownership conditions "shall cause said realty to revert  
21 to the" Association.
- 22 ➤ That the deed restrictions "inure to and pass with said property and each and every  
23 parcel of land therein, and shall apply to and bind the respective successors in interest  
24 of the parties hereto, and are...imposed upon said realty as a servitude in favor of said  
25 property and each and every parcel of land therein as the dominant tenement or  
26 tenements."

27 The June 14, 1940 deeds do not contain any text or provision that authorizes the  
28 transfer of parkland to a private party for private purposes. Notably absent from the June 14,



1 1940 deeds are:

- 2 ➤ Any express provision authorizing the City or Association to “swap” parkland  
3 properties.  
4 ➤ Any express provision authorizing the City or Association to convey parks as part of a  
5 resolution of litigation.  
6 ➤ Any express provision authorizing the City or Association to convey parks to fund  
7 budgetary shortfalls for school districts.

8 The City passed Resolution No. 12 formally accepting the deeds and confirming the  
9 land use restrictions. Resolution No. 12 re-states verbatim each of the land use restrictions  
10 set forth above.  
11

12 **SPECIAL INTERROGATORY No. 14.:**

13 Identify all witnesses by stating their name, address, telephone number and email  
14 address, who have knowledge of those facts.  
15

16 **RESPONSE TO SPECIAL INTERROGATORY No. 14.:**

17 This is a legal contention. There are no witnesses to a legal contention.  
18

19 **SPECIAL INTERROGATORY No. 15.:**

20 Identify all documents and other tangible things that support those facts, and the  
21 name, address, telephone number and email address, of all persons who have each document  
22 or thing.  
23

24 **RESPONSE TO SPECIAL INTERROGATORY No. 15.:**

25 The preamble to the Association’s governing documents declare that: “It will be the  
26 duty of [the Association] to maintain the parks ... and to perpetuate the restrictions. Section  
27 17 of the Association’s governing documents is entitled “Interpretation and Enforcement by  
28 Palos Verdes Homes Association.” This title confirms that the Association has the duty not

only to read and understand the land use restrictions but to also enforce them. In addition, the documents identified in response to interrogatory number 12 above. All of the foregoing documents are already in the possession, custody and control of the propounding party.

**SPECIAL INTERROGATORY No. 16.:**

Do you contend that the ASSOCIATION has the duty to enforce the land use restrictions to compel the removal of the alleged illegal improvements on the PROPERTY, which are the subject of the operative Complaint, and state all facts that support your contention.

**RESPONSE TO SPECIAL INTERROGATORY No. 16.:**

Yes.

**SPECIAL INTERROGATORY No. 17.:**

Identify all witnesses by stating their name, address, telephone number and email address, who have knowledge of those facts.

**RESPONSE TO SPECIAL INTERROGATORY No. 17.:**

This is a legal contention. There are no witnesses to a legal contention.

**SPECIAL INTERROGATORY No. 18.:**

Identify all documents and other tangible things that support those facts, and the name, address, telephone number and email address, of all persons who have each document or thing.

**RESPONSE TO SPECIAL INTERROGATORY No. 18.:**

The preamble to the Association's governing documents declare that: "It will be the

1 duty of [the Association] to maintain the parks ... and to perpetuate the restrictions. Section  
2 17 of the Association's governing documents is entitled "Interpretation and Enforcement by  
3 Palos Verdes Homes Association." This title confirms that the Association has the duty not  
4 only to read and understand the land use restrictions but to also enforce them. In addition,  
5 the documents identified in response to interrogatory number 12 above. All of the foregoing  
6 documents are already in the possession, custody and control of the propounding party.

7  
8 **SPECIAL INTERROGATORY No. 19.:**

9 Did YOU receive notice of any of the City Council Meetings where the MOU was  
10 considered and/or approved by the City, and identify all such Meetings for which you  
11 received notice.

12  
13 **RESPONSE TO SPECIAL INTERROGATORY No. 19.:**

14 Plaintiffs object to the interrogatory as vague and ambiguous as to the definition of  
15 "YOU." It could refer to Plaintiff John Harbison or CEPC or both or all of CEPC's  
16 members. Plaintiffs further object to the remainder of the interrogatory as it could refer to  
17 the initial meeting in which the MOU was first approved or the subsequent meetings in  
18 which the MOU was implemented or the various land use meetings that ensued from the  
19 approval of the MOU. Plaintiffs further object to this interrogatory as being neither relevant  
20 nor reasonably calculated to lead to the discovery of admissible evidence. Subject to and  
21 without waiving said objections, Plaintiffs respond as follows:

22 John Harbison did not receive actual notice of the city council meetings on May 8,  
23 2012 where the MOU was presented and approved, and the subsequent meeting on July 24,  
24 2012 when the final MOU was approved. It is also his understanding that no signs providing  
25 notice of the meeting were posted (as is customary in Palos Verdes Estates) and no notice  
26 was given in the local newspaper (even though several City Councilmembers later asserted  
27 that such notice was given in the newspaper) for either of these meetings. Plaintiffs are  
28 unaware as to whether other members of the CEPC received actual notice of the initial

1 meeting, but Plaintiffs have spoken with most of the neighbors on Via Panorama and Via  
2 Mirada and none of them indicated that they had received actual notice nor were aware of the  
3 sale of parkland at that time.

4  
5 **SPECIAL INTERROGATORY No. 20.:**

6 Did YOU attend any of the CITY Council Meetings, where the MOU was considered  
7 and/or approved by the City, and identify all such meetings YOU attended.

8  
9 **RESPONSE TO SPECIAL INTERROGATORY No. 20.:**

10 Plaintiffs object to the interrogatory as vague and ambiguous as to the definition of  
11 "YOU." It could refer to Plaintiff John Harbison or CEPC or both or all of CEPC's  
12 members. Plaintiffs further object to the remainder of the interrogatory as it could refer to  
13 the initial meeting in which the MOU was first approved or the subsequent meetings in  
14 which the MOU was implemented or the various land use meetings that ensued from the  
15 approval of the MOU. Plaintiffs further object to this interrogatory as being neither relevant  
16 nor reasonably calculated to lead to the discovery of admissible evidence. Subject to and  
17 without waiving said objections, Plaintiffs respond as follows:

18 John Harbison did not attend the city council meeting where the MOU was first  
19 presented and approved. Plaintiffs are unaware of any member of CEPC who attended the  
20 initial meeting of the city council where the MOU was approved.

21  
22 **SPECIAL INTERROGATORY No. 21.:**

23 Did YOU receive notice of any of the meetings of the ASSOCIATION, where the  
24 MOU was approved by the Association, and identify all such meetings for which YOU  
25 received notice.

26  
27 **RESPONSE TO SPECIAL INTERROGATORY No. 21.:**

28 Plaintiffs object to the interrogatory as vague and ambiguous as to the definition of

1 “YOU.” It could refer to Plaintiff John Harbison or CEPC or both or all of CEPC’s  
2 members. Plaintiffs further object to this interrogatory as being neither relevant nor  
3 reasonably calculated to lead to the discovery of admissible evidence. Subject to and without  
4 waiving said objections, Plaintiffs respond as follows:

5 John Harbison did not receive actual notice of the Association’s meeting. Plaintiffs  
6 are informed and believe that those CEPC members who reside outside the City of Palos  
7 Verdes Estates also did not receive notice of the meeting. Plaintiffs do not know whether  
8 those CEPC members who reside within the City of Palos Verdes Estates had actual notice,  
9 but Plaintiffs have spoken with most of the neighbors on Via Panorama and Via Mirada and  
10 none of them indicated that they had received actual notice nor were aware of the sale of  
11 parkland at that time.

12  
13 **SPECIAL INTERROGATORY No. 22.:**

14 Did YOU attend any of the meetings of the ASSOCIATION, where the MOU was  
15 approved by the Association, and identify all such meetings YOU attended.

16  
17 **RESPONSE TO SPECIAL INTERROGATORY No. 22.:**

18 Plaintiffs object to the interrogatory as vague and ambiguous as to the definition of  
19 “YOU.” It could refer to Plaintiff John Harbison or CEPC or both or all of CEPC’s  
20 members. Plaintiffs further object to this interrogatory as being neither relevant nor  
21 reasonably calculated to lead to the discovery of admissible evidence. Subject to and without  
22 waiving said objections, Plaintiffs respond as follows:

23 John Harbison did not attend the Association’s meeting where the MOU was  
24 approved. Plaintiffs are informed and believe that those CEPC members who reside outside  
25 the City of Palos Verdes Estates did not attend the meeting. Plaintiffs are unaware of any  
26 CEPC members who attended the Association’s meeting. Plaintiffs are informed and believe  
27 that the Association has a sign in sheet or other documents that would evidence who  
28 attended the meeting.

**SPECIAL INTERROGATORY No. 23.:**

Do YOU contend that the CITY's participation in the MOU and the September 2012 deeds is an ultra vires act and a waste of public funds, and if so, state all facts that support your contention.

**RESPONSE TO SPECIAL INTERROGATORY No. 23.:**

Yes. On June 14, 1940, the Association conveyed a number of parks to the City of Palos Verdes Estates ("City") in multiple grant deeds. The properties conveyed by the Association to the City on June 14, 1940 included the Panorama Parkland. The properties conveyed by the Association to the City on June 14, 1940 included Lot A of Tract 7540. The properties conveyed by the Association to the City on June 14, 1940 included Lot A of Tract 8652. The June 14, 1940 deeds conveying property from the Association to the City included restrictions on the future use and ownership of the conveyed property. Specifically, the June 14, 1940 deeds state:

- That the transferred property "is to be used and administered forever for park and/or recreation purposes..."
- That "no buildings, structures or concessions shall be erected, maintained or permitted" on the parkland "except such as are properly incidental to the convenient and/or proper use of said realty for park and/or recreation purposes."
- That the transferred property "shall not be sold or conveyed, in whole or in part...except to a body suitably constituted by law to take, hold, maintain and regulate public parks..."
- That, with written permission, a property owner abutting the park may construct paths or landscaping on the conveyed property as a means of improving access to or views from such property. Such improvements must not impair or interfere with the use and maintenance of said realty for park and/or recreations purposes.
- That none of the use or ownership restrictions set forth in the June 14, 1940 deeds

1 may be changed by the City or the Association even if the Association complies with  
2 its own internal procedures for modifying land use restrictions and obtains the written  
3 consent of two-thirds of the property owners.

- 4 ➤ That any breach of the use or ownership conditions “shall cause said realty to revert  
5 to the” Association.
- 6 ➤ That the deed restrictions “inure to and pass with said property and each and every  
7 parcel of land therein, and shall apply to and bind the respective successors in interest  
8 of the parties hereto, and are...imposed upon said realty as a servitude in favor of said  
9 property and each and every parcel of land therein as the dominant tenement or  
10 tenements.”

11 The June 14, 1940 deeds do not contain any text or provision that authorizes the  
12 transfer of parkland to a private party for private purposes. Notably absent from the June 14,  
13 1940 deeds are:

- 14 ➤ Any express provision authorizing the City or Association to “swap” parkland  
15 properties.
- 16 ➤ Any express provision authorizing the City or Association to convey parks as part of a  
17 resolution of litigation.
- 18 ➤ Any express provision authorizing the City or Association to convey parks to fund  
19 budgetary shortfalls for school districts.

20 The City passed Resolution No. 12 formally accepting the deeds and confirming the  
21 land use restrictions. Resolution No. 12 re-states verbatim each of the land use restrictions  
22 set forth above.

23 Moreover, Plaintiffs are informed and believe that prior to the illegal settlement that is  
24 the subject of this litigation, the City and Association viewed the encroachments on AREA A  
25 to be in violation of the deed restrictions and a nuisance. Plaintiffs are further informed,  
26 believe and thereon allege that the CITY and ASSOCIATION have, through conduct and  
27 statements, taken the position that the land use restrictions for CITY parkland are mandatory  
28 and not discretionary. The sources of Plaintiffs and Petitioners’ information and belief are as

1 follows:

2 a. On November 22, 1972, the ASSOCIATION wrote to the then owners of the  
3 PANORAMA PROPERTY citing "the apparent use of dedicated parkland to serve" private  
4 property "and the possible illegal location of the new garage structure."

5 b. On November 22, 1972, the CITY wrote to the then owners of the  
6 PANORAMA PROPERTY to complain about illegal construction on public parkland.

7 c. On December 19, 1972, the ASSOCIATION wrote to the CITY about the  
8 illegal improvements to the PANORAMA PROPERTY and complained that "the use of  
9 parkland for the benefit of a single private residence is not consistent with the intent of the  
10 deed restrictions and such use should be disallowed..."

11 d. On August 14, 1973, the CITY, through its City Council, voted to order the  
12 then owners of the PANORAMA PROPERTY to remove the illegal construction on the  
13 parkland and restore it to its original condition.

14 e. In 1993, the CITY enacted a policy to remove illegal encroachments from  
15 parkland. The 1993 process called for gradual removal when an encroaching property  
16 subjected itself to the planning commission for a project review, when the encroachments fell  
17 into disrepair or when the encroachments were modified.

18 f. On July 17, 2003, Allan Rigg, who then identified himself as the CITY  
19 Engineer, opened a code enforcement complaint for AREA A for "Parkland  
20 Encroachment."

21 g. In August 11, 2003, Allan Rigg, the CITY's Public Works Director, wrote a  
22 staff report detailing, in his words, "the illegal improvements on the parklands adjacent to  
23 900 Via Panorama." Mr. Rigg's August 11, 2003 report details that the land restrictions  
24 governing the property next to 900 Via Panorama "legally bind the City to keep these areas  
25 free of fences, walls, or any other private usage." Mr. Rigg's report goes on to say that, "The  
26 City has not and will not grant any permits for permanent private occupation of City  
27 Parklands as we are legally bound to keep these areas open to the public."

28 h. On October 25, 2005, Allan Rigg authored a CITY memo in support of the



City's policy on removal of unauthorized encroachments on CITY parkland. The memo describes how 849 acres of CITY parkland was "dedicated to the City by the Palos Verdes Homes Association, subject to the deed restriction that these areas must be perpetually maintained for the public to enjoy. The deed restrictions further stipulated that should any open space be privately occupied, ownership would revert to the original owner: the Homes Association. The City wholeheartedly accepted this condition, recognizing the value to the community in preserving its open space." The memo goes on to state that, "Over the years encroachments into the parklands, by private residents, have occurred in various forms. These encroachments violate the City code and the deed restrictions, but more importantly they rob the community of public land which exists for the use and enjoyment of all." The memo also notes that Section 12.04.010 of the CITY's Municipal Code "does not allow the permanent private occupation of City property without a permit. When the City is made aware of any modification underway to an existing unauthorized encroachment, removal of the entire encroachment is required." The 2005 memo noted that many community members complained about the encroachments. These residents "contend that the City's allowance of these encroachments to continue to exist constitutes a 'taking' from the public of the open space designated for their use. These sentiments echo the deed restrictions placed on the parklands by the Palos Verdes Homes Association."

i. On November 8, 2005, the CITY passed resolution R05-32 which adopted a policy for the removal of unauthorized encroachments in the City's parklands. The second recital in the resolution notes that, "the City owns 849 acres of parklands that comprise much of the open space and are deed-restricted to remain open for the public's use..." The Resolution tightened up the enforcement efforts of the City. It noted that Staff was obligated when informed of an illegal encroachment to take steps to notify the owner of the need to remove the encroachment. The new policy noted that if an owner did not comply, the City was to "immediately" remove the encroachment, bill and lien the property owner and cite the property owner for an infraction. None of the language in the resolution was permissive or discretionary. All of the language in the resolution clarified that staff's obligation to enforce

1 the deed restrictions was mandatory.

2 j. The CITY passed resolution R05-32 in reliance on Allan Rigg's October 25,  
3 2005 memo.

4 k. At this time the CITY notified 38 owners that they had illegally encroached on  
5 parkland adjacent to their homes in the area known as the "Boundary Trail" in the Valmonte  
6 tract within Palos Verdes Estates, and they were each given five years to remove the  
7 encroachments. All 38 owners complied and removed the encroachments within the five-year  
8 period, in some cases at considerable expense to the owners.

9 l. On September 8, 2006, James Hendrickson, City Manager, wrote to the 900  
10 VIA PANORAMA PROPERTY OWNERS and, citing the resolution passed by the CITY in  
11 2005, reminded them of their obligation to remove the illegal encroachments by no later than  
12 September 8, 2011. The letter noted that the encroachments "violate the deed restrictions,  
13 which the City must legally comply with..."

14 m. On April 13, 2007, Allan Rigg, Public Works and Planning Director for the  
15 CITY, wrote to the 900 VIA PANORAMA PROPERTY OWNERS and reminded them of  
16 their obligation to remove the illegal encroachments by no later than September 8, 2011. The  
17 letter noted that the encroachments "violate the deed restrictions, which the City must legally  
18 comply with..."

19 n. On April 10, 2008, Allan Rigg, Public Works and Planning Director for the  
20 CITY, wrote to the 900 VIA PANORAMA PROPERTY OWNERS and reminded them of  
21 their obligation to remove the illegal encroachments by no later than September 8, 2011. The  
22 letter noted that the encroachments "violate the deed restrictions, which the City must legally  
23 comply with..."

24 o. On April 14, 2009, Allan Rigg, Public Works and Planning Director for the  
25 CITY, wrote to the 900 VIA PANORAMA PROPERTY OWNERS and reminded them of  
26 their obligation to remove the illegal encroachments by no later than September 8, 2011. The  
27 letter noted that the encroachments "violate the deed restrictions, which the City must legally  
28 comply with..."

1 p. On September 19, 2011, Joe Mendoza, Code Enforcement Officer for the  
2 CITY wrote to the 900 VIA PANORAMA PROPERTY OWNERS and warned of the  
3 CITY's intent to initiate nuisance abatement procedures if the encroachments were not  
4 removed.

5 q. By the end of September 2011, the 900 VIA PANORAMA PROPERTY  
6 OWNERS had still not eliminated the illegal encroachment and the CITY was poised to  
7 commence legal nuisance abatement procedures. Bulldozers began the abatement, and some  
8 structures were removed before the removal efforts ceased.

9  
10 **SPECIAL INTERROGATORY No. 24.:**

11 Identify all witnesses by stating their name, address, telephone number and email  
12 address, who have knowledge of those facts.

13  
14 **RESPONSE TO SPECIAL INTERROGATORY No. 24.:**

15 Plaintiffs object that this question is not complete in and of itself as required by the  
16 Code of Civil Procedure. It impermissibly incorporates a prior question and response.  
17 Subject to and without waiving said objection, Plaintiffs respond as follows:

18 John Harbison is the representative of CEPC with the most knowledge concerning  
19 the illegal actions by the City of Palos Verdes Estates and the Palos Verdes Homes  
20 Association. Other persons with knowledge include:

21 A. The members of the Palos Verdes Estates City Council that voted to approve  
22 the MOU and authorized the signing of the deeds in question;

23 B. The members of the Board of Directors for the Palos Verdes Homes  
24 Association that voted to approve the MOU and authorized the signing of the deeds in  
25 question;

26 C. The members of the Palos Verdes Peninsula Unified School District Board  
27 that voted to approve the MOU and authorized the signing of the deeds in question;

28 D. Frank Zerunyan, the architect of the ill-conceived plan to sell public parkland

1 to his clients for private purposes;

2 E. Christi Hogen, the attorney for the City of Palos Verdes Estates who approved  
3 the ill-conceived plan to sell public parkland to a private party for private purposes;

4 F. Sidney Croft, the attorney for the Palos Verdes Homes Association who  
5 approved the ill-conceived plan to sell public parkland to a private party for private purposes;  
6 and

7 G. Allan Rigg, a former city employee who previously enforced the City's land use  
8 restrictions.

9 Plaintiffs have access to the name, address, telephone number and email address of  
10 each of these persons.

11  
12 **SPECIAL INTERROGATORY No. 25.:**

13 Identify all documents and other tangible things that support those facts, and the  
14 name, address, telephone number and email address, of all persons who have each document  
15 or thing.

16  
17 **RESPONSE TO SPECIAL INTERROGATORY No. 25.:**

18 Plaintiffs object that this question is not complete in and of itself as required by the  
19 Code of Civil Procedure. It impermissibly incorporates a prior question and response. The  
20 question is also compound because it asks Plaintiffs to both identify documents and the  
21 persons who may have them. Subject to and without waiving said objection, Plaintiffs  
22 respond as follows:

23 The following documents, Exhibits 1 – 30, which were attached to the Plaintiffs'  
24 summary judgment motion herein,

25 Exhibit 1 – Second Amended Complaint..... Tab 3

26 Exhibit 2 - Area Map ..... Tab 4

27 Exhibit 3 - Legal Description of Panorama Parkland..... Tab 5

28 Exhibit 4 - Bolton Engineering Map of Panorama Parkland ..... Tab 6

1	Exhibit 5 – Tract 8652 CC&R’s .....	Tab 7
2	Exhibit 6 – Tract 7540 Deed .....	Tab 8
3	Exhibit 7 – Tract 8652 Deed .....	Tab 9
4	Exhibit 8 – Resolution 12.....	Tab 10
5	Exhibit 9 – Quitclaim Deed from City to Association .....	Tab 11
6	Exhibit 10 - Grant Deed from Association to Lieb.....	Tab 12
7	Exhibit 11 – Judgment dated September 22, 2011.....	Tab 13
8	Exhibit 12 – Executed Memorandum of Understanding.....	Tab 14
9	Exhibit 13 – Lugliani Answer to Second Amended Complaint.....	Tab 15
10	Exhibit 14 – Palos Verdes Homes Association Answer to Second	
11	Amended Complaint .....	Tab 16
12	Exhibit 15 – City of Palos Verdes Estates Answer to Second Amended	
13	Complaint.....	Tab 17
14	Exhibit 16 – 1972 Association Letter.....	Tab 18
15	Exhibit 17 – July 18, 2003 Letter .....	Tab 19
16	Exhibit 18 – August 11, 2003 Allan Rigg Memorandum .....	Tab 20
17	Exhibit 19 – April 14, 2009 Letter .....	Tab 21
18	Exhibit 20 – September 19, 2011 Letter .....	Tab 22
19	Exhibit 21 – April 19, 2012 Palos Verdes Homes Association Resolution.....	Tab 23
20	Exhibit 22 – May 2, 2012 Panorama Trust Document .....	Tab 24
21	Exhibit 23 – February 19, 2013 Planning Commission Staff Report.....	Tab 25
22	Exhibit 24 – March 7, 2013 Rockey & Wahl Letter.....	Tab 26
23	Exhibit 25 – Special Interrogatories, Set One Propounded on the City of	
24	Palos Verdes Estates .....	Tab 27
25	Exhibit 26 – The City of Palos Verdes Estates’ Responses to Special	
26	Interrogatories, Set One.....	Tab 28
27	Exhibit 27 – April 11, 2014 Minute Order.....	Tab 29
28	Exhibit 28 – May 21, 2014 Reporter’s Transcript .....	Tab 30

1 Exhibit 29 – Notice of Entry of Dismissal..... Tab 31

2 Exhibit 30 – October 31, 2014 Letter to Palos Verdes Homes Association

3 regarding the District..... Tab 32

4 Plaintiffs are informed and believe that all of the foregoing documents are in the  
5 possession of the parties herein.

6  
7 **SPECIAL INTERROGATORY No. 26.:**

8 Do YOU contend that Defendants Robert Lugliani and Delores A. Lugliani, as co  
9 trustees of the The Lugliani Trust; Thomas J. Lieb, Trustee, the Via Panorama Trust U/DO  
10 May 2, 2012, have maintained a nuisance per se on the PROPERTY, and state all facts that  
11 support your contention.

12  
13 **RESPONSE TO SPECIAL INTERROGATORY No. 26.:**

14 Yes. On June 14, 1940, the Association conveyed a number of parks to the City of  
15 Palos Verdes Estates ("City") in multiple grant deeds. The properties conveyed by the  
16 Association to the City on June 14, 1940 included the Panorama Parkland. The properties  
17 conveyed by the Association to the City on June 14, 1940 included Lot A of Tract 7540. The  
18 properties conveyed by the Association to the City on June 14, 1940 included Lot A of Tract  
19 8652. The June 14, 1940 deeds conveying property from the Association to the City included  
20 restrictions on the future use and ownership of the conveyed property. Specifically, the June  
21 14, 1940 deeds state:

- 22 ➤ That the transferred property "is to be used and administered forever for park and/or  
23 recreation purposes..."
- 24 ➤ That "no buildings, structures or concessions shall be erected, maintained or  
25 permitted" on the parkland "except such as are properly incidental to the convenient  
26 and/or proper use of said realty for park and/or recreation purposes."
- 27 ➤ That the transferred property "shall not be sold or conveyed, in whole or in  
28 part...except to a body suitably constituted by law to take, hold, maintain and regulate

1 public parks..."

- 2 ➤ That, with written permission, a property owner abutting the park may construct
- 3 paths or landscaping on the conveyed property as a means of improving access to or
- 4 views from such property. Such improvements must not impair or interfere with the
- 5 use and maintenance of said realty for park and/or recreations purposes.
- 6 ➤ That none of the use or ownership restrictions set forth in the June 14, 1940 deeds
- 7 may be changed by the City or the Association even if the Association complies with
- 8 its own internal procedures for modifying land use restrictions and obtains the written
- 9 consent of two-thirds of the property owners.
- 10 ➤ That any breach of the use or ownership conditions "shall cause said realty to revert
- 11 to the" Association.
- 12 ➤ That the deed restrictions "inure to and pass with said property and each and every
- 13 parcel of land therein, and shall apply to and bind the respective successors in interest
- 14 of the parties hereto, and are...imposed upon said realty as a servitude in favor of said
- 15 property and each and every parcel of land therein as the dominant tenement or
- 16 tenements."

17 The June 14, 1940 deeds do not contain any text or provision that authorizes the transfer of  
18 parkland to a private party for private purposes. Notably absent from the June 14, 1940  
19 deeds are:

- 20 ➤ Any express provision authorizing the City or Association to "swap" parkland
- 21 properties.
- 22 ➤ Any express provision authorizing the City or Association to convey parks as part of a
- 23 resolution of litigation.
- 24 ➤ Any express provision authorizing the City or Association to convey parks to fund
- 25 budgetary shortfalls for school districts.

26 The City passed Resolution No. 12 formally accepting the deeds and confirming the land use  
27 restrictions. Resolution No. 12 re-states verbatim each of the land use restrictions set forth  
28 above.

1 Moreover, Plaintiffs are informed and believe that prior to the illegal settlement that is the  
2 subject of this litigation, the City and Association viewed the encroachment on AREA A to  
3 be in violation of the deed restrictions and a nuisance. Plaintiffs are further informed,  
4 believe and thereon allege that the CITY and ASSOCIATION have, through conduct and  
5 statements, take the position that the land use restrictions for CITY parkland are mandatory  
6 and not discretionary. The sources of Plaintiffs and Petitioners' information and belief are as  
7 follows:

8 a. On November 22, 1972, the ASSOCIATION wrote to the then owners of the  
9 900 VIA PANORAMA PROPERTY citing "the apparent use of dedicated parkland to  
10 serve" private property "and the possible illegal location of the new garage structure."

11 b. On November 22, 1972, the CITY wrote to the then owners of the 900 VIA  
12 PANORAMA PROPERTY to complain about illegal construction on public parkland.

13 c. On December 19, 1972, the ASSOCIATION wrote to the CITY about the  
14 illegal improvements to the 900 VIA PANORAMA PROPERTY and complained that "the  
15 use of parkland for the benefit of a single private residence is not consistent with the intent  
16 of the deed restrictions and such use should be disallowed..."

17 d. On August 14, 1973, the CITY, through its City Council, voted to order the  
18 then owners of the 900 VIA PANORAMA PROPERTY to remove the illegal construction  
19 on the parkland and restore it to its original condition.

20 e. In 1993, the CITY enacted a policy to remove illegal encroachments from  
21 parkland. The 1993 process called for gradual removal when an encroaching property  
22 subjected itself to the planning commission for a project review, when the encroachments fell  
23 into disrepair or when the encroachments were modified.

24 f. On July 17, 2003, Allan Rigg, who then identified himself as the CITY  
25 Engineer, opened a code enforcement complaint for AREA A for "Parkland  
26 Encroachment."

27 g. In August 11, 2003, Allan Rigg, the CITY's Public Works Director, wrote a  
28 staff report detailing, in his words, "the illegal improvements on the parklands adjacent to



1 900 Via Panorama.” Mr. Rigg’s August 11, 2003 report details that the land restrictions  
2 governing the property next to 900 Via Panorama “legally bind the City to keep these areas  
3 free of fences, walls, or any other private usage.” Mr. Rigg’s report goes on to say that, “The  
4 City has not and will not grant any permits for permanent private occupation of City  
5 Parklands as we are legally bound to keep these areas open to the public.”

6 h. On October 25, 2005, Allan Rigg authored a CITY memo in support of the  
7 City’s policy on removal of unauthorized encroachments on CITY parkland. The memo  
8 describes how 849 acres of CITY parkland was “dedicated to the City by the Palos Verdes  
9 Homes Association, subject to the deed restriction that these areas must be perpetually  
10 maintained for the public to enjoy. The deed restrictions further stipulated that should any  
11 open space be privately occupied, ownership would revert to the original owner: the Homes  
12 Association. The City wholeheartedly accepted this condition, recognizing the value to the  
13 community in preserving its open space.” The memo goes on to state that, “Over the years  
14 encroachments into the parklands, by private residents, have occurred in various forms.  
15 These encroachments violate the City code and the deed restrictions, but more importantly  
16 they rob the community of public land which exists for the use and enjoyment of all.” The  
17 memo also notes that Section 12.04.010 of the CITY’s Municipal Code “does not allow the  
18 permanent private occupation of City property without a permit. When the City is made  
19 aware of any modification underway to an existing unauthorized encroachment, removal of  
20 the entire encroachment is required.” The 2005 memo noted that many community  
21 members complained about the encroachments. These residents “contend that the City’s  
22 allowance of these encroachments to continue to exist constitutes a ‘taking’ from the public  
23 of the open space designated for their use. These sentiments echo the deed restrictions  
24 placed on the parklands by the Palos Verdes Homes Association.”

25 i. On November 8, 2005, the CITY passed resolution R05-32 which adopted a  
26 policy for the removal of unauthorized encroachments in the City’s parklands. The second  
27 recital in the resolution notes that, “the City owns 849 acres of parklands that comprise much  
28 of the open space and are deed-restricted to remain open for the public’s use...” The

1 Resolution tightened up the enforcement efforts of the City. It noted that Staff was obligated  
2 when informed of an illegal encroachment to take steps to notify the owner of the need to  
3 remove the encroachment. The new policy noted that if an owner did not comply, the City  
4 was to "immediately" remove the encroachment, bill and lien the property owner and cite the  
5 property owner for an infraction. None of the language in the resolution was permissive or  
6 discretionary. All of the language in the resolution clarified that staff's obligation to enforce  
7 the deed restrictions was mandatory.

8 j. The CITY passed resolution R05-32 in reliance on Allan Rigg's October 25,  
9 2005 memo.

10 k. At this time the CITY notified 38 owners that they had illegally encroached on  
11 parkland adjacent to their homes in the area known as the "Boundary Trail" in the Valmonte  
12 tract within Palos Verdes Estates, and they were each given five years to remove the  
13 encroachments. All 38 owners complied and removed the encroachments within the five-year  
14 period, in some cases at considerable expense to the owners.

15 l. On September 8, 2006, James Hendrickson, City Manager, wrote to the 900  
16 VIA PANORAMA PROPERTY OWNERS and, citing the resolution passed by the CITY in  
17 2005, reminded them of their obligation to remove the illegal encroachments by no later than  
18 September 8, 2011. The letter noted that the encroachments "violate the deed restrictions,  
19 which the City must legally comply with..."

20 m. On April 13, 2007, Allan Rigg, Public Works and Planning Director for the  
21 CITY, wrote to the 900 VIA PANORAMA PROPERTY OWNERS and reminded them of  
22 their obligation to remove the illegal encroachments by no later than September 8, 2011. The  
23 letter noted that the encroachments "violate the deed restrictions, which the City must legally  
24 comply with..."

25 n. On April 10, 2008, Allan Rigg, Public Works and Planning Director for the  
26 CITY, wrote to the 900 VIA PANORAMA PROPERTY OWNERS and reminded them of  
27 their obligation to remove the illegal encroachments by no later than September 8, 2011. The  
28 letter noted that the encroachments "violate the deed restrictions, which the City must legally

1 comply with..."

2 o. On April 14, 2009, Allan Rigg, Public Works and Planning Director for the  
3 CITY, wrote to the 900 VIA PANORAMA PROPERTY OWNERS and reminded them of  
4 their obligation to remove the illegal encroachments by no later than September 8, 2011. The  
5 letter noted that the encroachments "violate the deed restrictions, which the City must legally  
6 comply with..."

7 p. On September 19, 2011, Joe Mendoza, Code Enforcement Officer for the  
8 CITY wrote to the 900 VIA PANORAMA PROPERTY OWNERS and warned of the  
9 CITY's intent to initiate nuisance abatement procedures if the encroachments were not  
10 removed.

11 q. By the end of September 2011, the 900 VIA PANORAMA PROPERTY  
12 OWNERS had still not eliminated the illegal encroachment and the CITY was poised to  
13 commence legal nuisance abatement procedures. Bulldozers began the abatement, and some  
14 structures were removed before the removal efforts ceased.

15  
16 **SPECIAL INTERROGATORY No. 27.:**

17 Identify all witnesses by stating their name, address, telephone number and email  
18 address, who have knowledge of those facts.

19  
20 **RESPONSE TO SPECIAL INTERROGATORY No. 27.:**

21 Plaintiffs object that this question is not complete in and of itself as required by the  
22 Code of Civil Procedure. It impermissibly incorporates a prior question and response.  
23 Subject to and without waiving said objection, Plaintiffs respond as follows:

24 John Harbison is the representative of CEPC with the most knowledge concerning  
25 the illegal actions by the City of Palos Verdes Estates and the Palos Verdes Homes  
26 Association. Other persons with knowledge include:

27 A. The members of the Palos Verdes Estates City Council that voted to approve  
28 the MOU and authorized the signing of the deeds in question;

1 B. The members of the Board of Directors for the Palos Verdes Homes  
2 Association that voted to approve the MOU and authorized the signing of the deeds in  
3 question;

4 C. The members of the Palos Verdes Peninsula Unified School District Board  
5 that voted to approve the MOU and authorized the signing of the deeds in question;

6 D. Frank Zerunyan, the architect of the ill-conceived plan to sell public parkland  
7 to his clients for private purposes;

8 E. Christi Hogin, the attorney for the City of Palos Verdes Estates who approved  
9 the ill-conceived plan to sell public parkland to a private party for private purposes;

10 F. Sidney Croft, the attorney for the Palos Verdes Homes Association who  
11 approved the ill-conceived plan to sell public parkland to a private party for private purposes;  
12 and

13 G. Allan Rigg, a former city employee who previously enforced the City's land use  
14 restrictions.

15 Plaintiffs have access to the name, address, telephone number and email address of  
16 each of these persons.

17  
18 **SPECIAL INTERROGATORY No. 28.:**

19 Identify all documents and other tangible things that support those facts, and the  
20 name, address, telephone number and email address, of all persons who have each document  
21 or thing.

22  
23 **RESPONSE TO SPECIAL INTERROGATORY No. 28.:**

24 Plaintiffs object that this question is not complete in and of itself as required by the  
25 Code of Civil Procedure. It impermissibly incorporates a prior question and response. The  
26 question is also compound because it asks Plaintiffs to both identify documents and the  
27 persons who may have them. Subject to and without waiving said objection, Plaintiffs  
28 respond as follows:

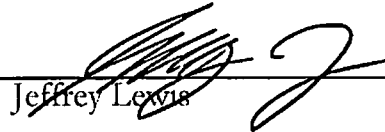
1	The following documents, Exhibits 1 – 30, which were attached to the Plaintiffs’	
2	summary judgment motion herein,	
3	Exhibit 1 – Second Amended Complaint.....	Tab 3
4	Exhibit 2 - Area Map .....	Tab 4
5	Exhibit 3 - Legal Description of Panorama Parkland.....	Tab 5
6	Exhibit 4 - Bolton Engineering Map of Panorama Parkland .....	Tab 6
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1	Exhibit 25 – Special Interrogatories, Set One Propounded on the City of	
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7	Exhibit 29 – Notice of Entry of Dismissal.....	Tab 31
8	Exhibit 30 – October 31, 2014 Letter to Palos Verdes Homes Association	
9	regarding the District.....	Tab 32
10	Plaintiffs are informed and believe that all of the foregoing documents are in the	
11	possession of the parties herein.	

13 DATED: February 27, 2015

BROEDLOW LEWIS LLP


15 By:

  
Jeffrey Lewis

Attorneys for Plaintiff  
Citizens for Enforcement of Parkland  
Covenants

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

  
John Harbison

Last Name	First Name	PVE RES	Non PVE
Allen	Thomas	1	
Barnett	Tom	1	
Bena	Peter	1	
Benjamin	Patricia	1	
Brusavich	Bruce	1	
Brusavich	Deborah	1	
Butler	Mary		1
Caterson	Karl	1	
Chang	Dorothy	1	
Chang	Nien Chih	1	
Choate	Cynthia		1
Cohen	Sydlee	1	
Cook	Richard	1	
Culler	Don	1	
Culler	Phyllis	1	
Culver	Barbara	1	
Donahue	Jerry	1	
Dotson	Linda	1	
Fasoletti	Dario	1	
Fay	Richard	1	
Gagnon	Joseph	1	
George	Zugsmith		1
Goldstein	David	1	
Goldstein	Marcia	1	
Gralow	Ruth	1	
Guzzino	Kim	1	
Guzzino	Maryam	1	
Harbison	John	1	
Harbison	Renata	1	
Harbison	Robert	1	
Harmon	Reed	1	
Higgins	Rick	1	
Hinchliffe	Anne	1	
Huang	Mingnan	1	
Huang	Yueh-Ling	1	
Hunter	Erin	1	
Interion	Lorna	1	
Johnson	Jarret	1	
Jung	Inhee	1	
Jung	Kyu Sik	1	
Kleinman	Carol	1	
Kleinman	David E.	1	
Kohr	Cheryl	1	
Kurkchiev	Theodora	1	
Lanigan	Kevin	1	
Leatherbury	Leven	1	
Leatherbury	Tina	1	
Lewis	Mike	1	
Logan	Robert	1	
Mack	Vickie	1	
Masuda	Melvyn	1	
Melton	Catherine	1	
Melton	Linwood	1	
Miller	Karen	1	
Miller	Tom	1	



Last Name	First Name	PVE RES	Non PVE
Moore	Corey	1	
Moore	Susan	1	
Morris	Bob	1	
Patton	Bill		1
Patton	Sandy		1
Petillon	Lee	1	
Phillips	Shawn	1	
Ramsdell	Clay	1	
Ramsdell	Heather	1	
Ream	Lucille	1	
Reeves	Emily T.	1	
Richardson	Sylvia	1	
Schott	Ried	1	
Scribe	Phyllis	1	
Severns	Anne	1	
Severns	Mark	1	
Smoke	Margaret		1
Smoke	Stephen		1
Stanley	Mari		1
Sugimoto	Monique	1	
Tedesco	Sharon	1	
Teles	Colleen		1
Tsutsui	Fred	1	
Tsutsui	Peggy	1	
Uharriet	John	1	
Uharriet	June	1	
Wasserman	Gail	1	
Wasserman	Karl	1	
Yarber	Sharon		1
		74	10

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**PROOF OF SERVICE**

*Citizens for Enforcement of Parkland Covenants v. City of Palos Verdes Estates, et al.*  
Los Angeles Superior Court Case No. BS142768

I, Jason R. Ebbens, declare that I am over the age of 18 years, employed in the County of Los Angeles, and not a party to the within action; my business address is 734 Silver Spur Road, Suite 300, Rolling Hills Estates, CA 90274.

On February 27, 2015, I served the foregoing: **PLAINTIFFS' RESPONSES TO SPECIAL INTERROGATORIES, SET ONE PROPOUNDED BY DEFENDANT PALOS VERDES HOMES ASSOCIATION** on the interested parties in this action by placing ☐ the original ☒ a true copy thereof, enclosed in a sealed envelope with postage pre-paid, addressed as follows:

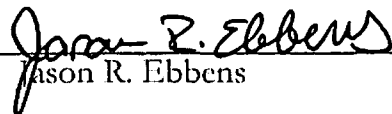
\* See Attached Service List \*

☒ BY MAIL. I am readily familiar with this law firm's practice for collection and processing of correspondence for mailing with the U. S. Postal Service. The within correspondence will be deposited with the U. S. Postal Service on the same day shown on this affidavit, in the ordinary course of business. I am the person who sealed and placed for collection and mailing the within correspondence on this date at Palos Verdes, California, following ordinary business practices.

☐ BY OVERNITE EXPRESS/FEDERAL EXPRESS. The within correspondence will be deposited with Overnight Express on the same day shown on this affidavit, in the ordinary course of business. I am the person who sealed and placed for collection and mailing the within correspondence on this date at Palos Verdes, California, following ordinary business practices.

☒ (STATE) I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on February 27, 2015, in Los Angeles County, California.

  
Jason R. Ebbens

**SERVICE LIST**

(Page 1 of 1)

*Citizens for Enforcement of Parkland Covenants v. City of Palos Verdes Estates, et al.*  
Los Angeles Superior Court Case No. BS142768

<b>JENKINS &amp; HOGIN, LLP</b> 1230 Rosecrans avenue, Suite 110 Manhattan Beach, CA 90266  <b>Christi Hogin, Esq.</b> <a href="mailto:CHogin@LocalGovLaw.com">CHogin@LocalGovLaw.com</a> Tel: (310) 643-8448   Fax: (310) 643-8441	<i>Attorneys for Defendant and Respondent:</i>  <b>City of Palos Verdes Estates</b>
<b>LAW OFFICE OF SIDNEY CROFT</b> 314 Tejon Place Palos Verdes Estates, CA 90274  <b>Sidney F. Croft, Esq.</b> <a href="mailto:SFCroftLaw@AOL.com">SFCroftLaw@AOL.com</a> Tel: (310) 849-1002	<i>Attorneys for Defendant and Respondent:</i>  <b>Palos Verdes Homes Association</b>
<b>LEWIS BRISBOIS BISGAARD &amp; SMITH LLP</b> 221 North Figueroa Street, Suite 1200 Los Angeles, CA 90012  <b>Daniel V. Hyde, Esq.</b> <a href="mailto:Daniel.Hyde@LewisBrisbois.com">Daniel.Hyde@LewisBrisbois.com</a> Tel: (213) 680-5103   Fax: (213) 250-7900  <b>Brant H. Dveirin, Esq.</b> <a href="mailto:Brant.Dveirin@LewisBrisbois.com">Brant.Dveirin@LewisBrisbois.com</a> Tel: (213) 580-6317   Fax: (310) 250-7900	
<b>ARMBRUSTER GOLDSMITH &amp; DELVAC LLP</b> 11611 San Vicente Blvd., Suite 900 Los Angeles, CA 90049  <b>Damon P. Mamalakis, Esq.</b> <a href="mailto:Damon@AGD-LandUse.com">Damon@AGD-LandUse.com</a> Tel: (310) 254-9026   Fax: (310) 254-9046  <b>R.J. Comer, Esq.</b> <a href="mailto:RJ@AGD-LandUse.com">RJ@AGD-LandUse.com</a> Tel: (310) 254-9056   Fax: (310) 254-9046	<i>Attorneys for Defendants and Real Parties in Interest:</i>  <b>Robert Lugliani and Delores A. Lugliani as co-trustees of The Lugliani Trust</b>  <b>Thomas J. Lieb, Trustee, The Via Panorama Trust U/Do May 2, 2012</b>



E

The Law Office of Lore Hilburg  
1943 Buckingham Road  
Los Angeles, California 90016  
Tel: 323.934.4443  
Fax: 323.934.4034  
lore@hilburglaw.com

**CURRICULUM VITAE of Lore Hilburg**

*Admitted to practice law - California 1976 - A.V. Rated*

*More than 6,000 title and escrow claims handled and / or supervised expeditiously, effectively, economically and professionally.*

**EDUCATION:**

Smith College - *with Honors* 1973 B.A. (Northampton, MA)

Santa Clara University 1976 J.D. **Cum Laude**

**EMPLOYMENT:**

**Law Office of Lore Hilburg- (1990 - Present)**

**Consultant:** Title Companies, Title Insurers, Escrows, Realtors, Property Owners and Attorneys.

**Expert Witness:** Recognized by Los Angeles, Orange, Riverside, San Bernardino, Ventura, San Luis Obispo, Santa Barbara and San Diego Superior Courts; Federal Court, Central District; and in various arbitration proceedings.

**Lecturer:** CEB, National Business Institute, Lorman Education Services, Los Angeles County and Beverly Hills Bar Associations, Professional Education Systems, Inc., Fidelity National Title Insurance Company, Land America Escrow Seminars, Santa Clara Co. Escrow Association, San Fernando Valley Escrow Association, Los Angeles Escrow Association, 2000 and 2004 California Escrow Association Convention, Chicago Title Insurance Company Regional Counsel Meeting, California Land Title Association, Stewart Title Guaranty Company Regional Counsel Meeting, First American Title Insurance Company Legal Department Seminar and California State Bar Real Property Retreat 2013

**Chicago Title Insurance Company (1988 - 1990)**

Vice President and Assistant Manager of Western Regional Claims Department

- . Handled and supervised claims of 4 Western states (CA, NV, AZ, HI).
- . Supervised 10 claims handlers.
- . Provided training for title officers, underwriters and claims handlers.
- . Investigated underwriting practices.

**Safeco Title Insurance Company (1985 - 1988)**

Associate Regional Counsel of Agency Legal Department (1985)

Vice President and Manager of Agency Legal Department (1985 -1988)

- . Handled claims of 4 Western States (CA, NV, AZ, HI).
- . Supervised 6 claims handlers and 3 underwriters.
- . Provided training to underwritten title companies.
- . Audited underwritten title companies.
- . Reviewed underwriting contracts.

**Nordman, Cormany, Hair & Compton - Oxnard, California (1982 - 1985)**

- . Business and real estate litigation

**Title Insurance & Trust Company - Claims and Litigation (1977 - 1982)**

- . Assistant Counsel (1977 - 1978)
- . Associate Counsel (1978 - 1979)
- . Supervisor of Claims - Los Angeles and Ventura Counties (1979 - 1982)

**Organization Memberships:**

2014 - Present:	American Escrow Association
2012 - Present:	State Bar of California: Co-Chair of Escrow and Title Subsection of Real Property Section
2009 - Present:	American Bar Association – Title Insurance Litigation Committee Member
2003 - Present:	Los Angeles Escrow Association: Board member
2001 - Present:	Los Angeles Escrow Association
2001 - Present:	United Trustee Association, formerly known as California Trustee's Association
2001 - Present:	California Escrow Association
1988 - Present:	Los Angeles County Bar Association, Real Property Section: Steering Committee of Title Insurance Subsection
1988 - 1990:	Los Angeles County Bar Association: Co-chairperson, Title Insurance Subsection;
1985 - 1990:	Title Insurance Claims Counsel Chair

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## Curriculum Vitae

### **Susan Fletcher French**

Professor of Law, Emerita

University of California, Los Angeles

### **Education:**

1967: University of Washington Law School, J.D. degree  
rank 1st in class, Order of the Coif,  
Articles Editor of the Washington Law Review  
1964: Stanford University, B.A. degree

### **Professional Employment:**

#### **Permanent:**

1989-2010: **Professor of Law, University of California, Los Angeles**  
1979-1989: Professor of Law, University of California,  
Davis  
1975-79: Acting Professor of Law, University of  
California, Davis  
1967-75: Private practice of law in Seattle, Washington

### **Special and Visiting Appointments:**

2014, Spring UCLA School of Law, Recalled to teach Property  
2012, Summer Louisiana State University Law School (LSU Law Center), taught 3-week  
course in Looted and Stolen Art & Protection of Cultural Heritage Law  
2012, Spring UCLA School of Law, Recalled to teach Property  
2011, Spring UCLA School of Law, Recalled to teach Wills & Trusts  
2007, Fall Duke University School of Law, Visiting Professor  
2005, Fall UNC School of Law, Visiting Professor  
2003-2004: Designated Real Property Expert for Class Action Settlement Agreement  
in Smith v. Spring Communications Company, L.P., Case No. 99 C3844,  
U.S. District Court N.D. Illinois, Hon. Wayne R. Anderson  
2002, Feb. University of Sydney Law School, Parsons Visiting Scholar  
2001, Fall Duke University School of Law, Visiting Professor  
1986-2000: American Law Institute, Reporter for the  
Restatement of the Law of Property, Third,  
Servitudes  
1994-95: University of Miami, LLM Program in Real Estate Development, Special  
Segment on Creating Value Through Easements and Covenants  
1990, Spring: Harvard University Law School, Visiting Professor  
1988-89: University of California, Los Angeles, Visiting Professor



## **Curriculum Vitae, Susan French**

1982-83: Sabbatical Leave, Faculty of Law, University of Chile, Santiago, Chile  
1980, Fall: University of Michigan School of Law, Visiting Professor

### **Courses Taught:**

Real Property, Wills & Trusts, Future Interests, Land Use Regulation, Community Association Law, Looted and Stolen Art & Protection of Cultural Heritage Law

### **Professional Service and Memberships:**

1984-2010: American Law Institute, Adviser to the Reporter  
for the Restatement of Property, Second, and Third, Donative  
Transfers  
1980-85: Consultant to the California Law Revision  
Commission on Probate Code revisions  
1978-80: American Bar Association, Real Property, Probate & Trust Section,  
Chair, Blockbuster Will Committee  
1970-date: Member American Bar Association  
1984-date: Member American Law Institute  
1967-2006: Member Washington State Bar Association (inactive 1975-2006)

### **Publications:**

#### **Books and Book Chapters:**

Susan F. French and Gerald Korngold, CASES AND TEXT ON PROPERTY (6<sup>th</sup> ed. 2014)

Susan F. French, A CALIFORNIA COMPANION FOR THE COURSE IN WILLS, TRUSTS, AND  
ESTATES (Aspen Publishers 2103-2014) (fifth edition).

Wayne S. Hyatt & Susan F. French, COMMUNITY ASSOCIATION LAW: CASES AND  
MATERIALS ON COMMON INTEREST COMMUNITIES (2d ed. 2008)

Susan F. French, "Ch. 1, Basic Easement Law: California and the Restatement (Third) of  
Property: Servitudes" in EASEMENTS AND BOUNDARIES: LAW AND LITIGATION (CEB  
2008, updated annually)

Susan F. French, "The American Restatement of Servitudes Law: Reforming Doctrine by  
Shifting From Ex-Ante to Ex-Post Controls on the Risks Posed by Servitudes" in TOWARDS  
A UNIFIED SYSTEM OF LAND BURDENS (Sjef van Erp & Bram Akkermans, eds., Intersentia,  
Antwerp/Oxford 2006)

Susan F. French, "Gruen v. Gruen, A Tale of Two Stories," in PROPERTY STORIES (Andrew  
Morris & Gerald Korngold, eds., 2d ed. 2009)

A. James Casner, W. Barton Leach, Susan F. French, Gerald Korngold, Lea VanderVelde,  
CASES AND TEXT ON PROPERTY (5<sup>th</sup> ed. 2004)

## **Curriculum Vitae, Susan French**

RESTATEMENT OF THE LAW OF PROPERTY, THIRD, SERVITUDES (French, Reporter, 2000)

A. James Casner, W. Barton Leach, Susan F. French, Gerald Korngold, Lea VanderVelde, CASES AND TEXT ON PROPERTY (4<sup>th</sup> ed. 2000)

CALIFORNIA WILL MANUAL (Susan F. French, ed. 1982)

Robert L. Fletcher & Susan F. French, "A Comparison of the Uniform Probate Code and California Law with Respect to the Law of Wills," in COMPARATIVE PROBATE STUDIES, 1977.

### **Articles & Reports:**

Susan F. French, "Making Easements is Easy; Remaking Them Is Hard: Should the Law Help Out?" Probate & Property (Sept./Oct. 2013).

Susan F. French, "Perpetual Trusts, Conservation Servitudes, and the Problem of the Future" 27 Cardozo L. Rev. 2523 (2006).

Susan F. French, "Making Common Interest Communities Work: The Next Step," 37 Urban Lawyer 359 (2005).

Susan F. French, "What's a Poor Land Trust to Do? Alternatives for Dealing with an Opportunistic World," 44 Natural Resources Journal 563 (2004).

Susan F. French, "Can Covenants Not to Sue, Covenants Against Competition and Spite Covenants Run With Land? Comparing Results Under the Touch or Concern Doctrine and the Restatement (Third), Servitudes," 38 Real Prop., Prob. & Trust J. 267 (Summer, 2003)

Susan F. French, "Relocating Easements: Restatement (Third) Servitudes §4.8(3)," 38 Real Prop., Prob. & Trust J. 1 (Spring, 2003)

Susan F. French, "Emerging From a Doctrinal Snarl Into the World of Modern Servitudes Law," 75 Conn. B.J. 104 (2001)

Susan F. French, "Report on Proposed California Law Revision Commission Study of Laws Affecting Common Interest Developments" November, 2000, available on California Law Revision Commission website at <http://www.clrc.ca.gov/bkstudies.html>.

Susan F. French, "Highlights of the New Restatement (Third) of Property: Servitudes," 35 Real Property, Probate & Trust Journal 225 (2000).

Susan F. French, "Common Interest Communities: The Dilemma of Shared Resources in Residential Housing," CPR Digest, (the newsletter of the International

## Curriculum Vitae, Susan French

Association for the Study of Common Property (IASCP)) (Winter/Spring, 2000).

French, "The Touch and Concern Doctrine and the Restatement (Third) Servitudes: A Tribute to Lawrence E. Berger," 77 Neb. L. Rev. 653 (1998)

French, "Creating Covenants in California, Citizens for Covenant Compliance v. Anderson," 14 Calif. Real Prop. J. No. 2 at 25 (Spring, 1996).

French, "Tradition and Innovation in the New Restatement of Servitudes: A Report from Midpoint (Restatement Third of Property)," 27 Connecticut L. Rev. 119-29 (1994).

French, "The Constitution of a Private Residential Government Should Include a Bill of Rights," 27 Wake Forest L. Rev. 345 (1992).

French, "Perpetuities: Three Essays in Honor of My Father," 65 Wash. L. Rev. 323 (1990)

French, "Servitudes Reform and the New Restatement of Property: Creation Doctrines and Structural Simplification," 73 Cornell L. Rev. 928 (1988)

French, "Design Proposal for the New Restatement of the Law of Property—Servitudes," 21 U.C. Davis L. Rev. 1213 (1988)

French, "Imposing a General Survival Requirement on Beneficiaries of Future Interests: Solving the Problems Caused by the Death of a Beneficiary Before the Time Set for Distribution," 27 Ariz. L. Rev. 801 (1985)

French, "Antilapse Statutes Are Blunt Instruments: A Blueprint for Reform," 37 Hast. L.J. 335 (1985)

French, "Toward a Modern Law of Servitudes: Reweaving the Ancient Strands," 55 So. Cal. L. Rev. 1261 (1982)

French, "Exercise of General Powers of Appointment: Should Intent to Exercise Be Inferred From a General Disposition of Property?" 1979 Duke L.J. 747

French, "Application of Antilapse Statutes to Appointments Made by Will," 53 Wash. L. Rev. 405 (1978)

### **Expert Witness Experience, Susan F. French**

- City of Laguna Woods v. Raintree Realty Corp., Superior Court, Orange County, Case No. 05CC09350, trial testimony August 6, 2010. Question whether easement condemned for reciprocal parking easement over shopping center property decreased property rights of shopping center owner. Retained by Ivan Gold and Robert R. Moore of Allen, Matkins, Leck, Gamble, Mallory & Natsis, who represented owner of shopping center. Jury returned verdict favorable to shopping center owner.
- Arbitration between Oil Basins Limited and BHP Billiton, Ltd., a commercial arbitration in Melbourne, Australia, testimony given March 2-3, 2010. Question whether grant of hydrocarbons royalty of unlimited duration violated New York Rule Against Perpetuities in effect in December, 1960. Retained by Simpson Thacher & Bartlett LLP, Peter Thomas and Millie Kalik.
- Thomas H. Gentry Trusts, Circuit Court of the First Circuit, State of Hawai'i T. No. 02-1-0030 and T. No. 06-1-0044, Superior Court Hawaii, trial testimony November 30 2007. Questions about assets that could be used for funding of marital and residual trusts; breach of fiduciary duty. Retained by Margery Bronster of Bronster, Hoshibata, Honolulu, HI. Case settled after my testimony.
- Hollander v. Caspar South Services Co., Superior Court, Mendocino County, Case No. SCTM CBG 04-93110, deposition taken Sept. 29, 2006. Questions whether covenant amendments to merge subdivisions were valid and whether services company was a common interest community entitled to powers granted by Davis-Stirling Act. Retained by Miriam Hiser, San Francisco. Case settled before trial.
- Estate of John E. Durand, Superior Court, Santa Barbara County, deposition taken, Oct. 7, 2002, testimony at trial December, 10, 2002. Question whether will exercised special power of appointment. Retained by Phil Marking of Fell, Marking, Abkin, Montgomery, Granet & Raney, LLP, Santa Barbara, CA.
- Estate of Terry D. Lowe, Superior Court, San Diego County, No. P-176389, deposition taken Feb. 16, 2001, testimony at trial March 16, 2001, Judge Thomas R. Mitchell. Equitable adoption claim. Retained by Andy J. Marcus, San Diego, CA..
- Fisher v. Bank of America, U.S. District Court, Northern District of California, No. C 96-0203 CAL, Deposition Taken June 26, 1998. Breach of fiduciary duty involved in syndication of and investments of trust assets in real estate limited partnerships. Retained by the Mills Law Firm, Greenbrae, California.
- State v. Shiffrar, San Luis Obispo County, No. 078198, Deposition Taken Nov. 18, 1997. Scope of exclusive easement taken in condemnation proceeding. Retained by California Attorney General.
- State v. Heirs of Wineman, San Luis Obispo County, settled before deposition taken, Feb. 1998. Scope of exclusive easement taken in condemnation proceeding. Retained by California Attorney General.
- Maddock v. Greenville Retirement Community, L.P., Delaware Court of Chancery. Affidavit with respect to question whether condominium buy-back provision constituted

unreasonable restraint on alienation submitted December, 1996. Retained by Richard Abrams of Richards, Layton & Finger, Wilmington, Delaware.

- Texas Medical Center v. St. Luke's Episcopal Hospital, Harris County, Texas, Cause No. 96-023405, deposition taken July 22, 1996. Meaning and validity of deed restrictions. Retained by Liddell, Sapp, Zivley, Hill & LaBoon, L.L.P., Houston Texas, for the Texas Medical Center.
- SCE&G, South Carolina Pipeline, and Duke Power v. South Carolina Dept. of Revenue & Taxation, opinion on character of utility easements as real or personal property. Case settled before formal opinion rendered. Retained by Attorney General for State of South Carolina. August, 1996.
- Marsh v. Fidelity Trust Co., Superior Court for King County, Washington, No. 93-2-28625-2, retained by Perkins, Coie on the issue of the validity of an amendment to a trust that provided indemnity out of a particular beneficiary's share in the event the beneficiary or her descendants made a claim against a trust advisor. The case settled before deposition.
- Vreeland v. Braunstein, Los Angeles Superior Court Case No. C 601 361, retained by Hennigan & Mercer, for trust beneficiary and co-trustee seeking compensatory and punitive damages and accounting against successor co-trustee who also served as beneficiary's lawyer and held her power of attorney. Issues involved adequacy of accounts, breaches of duty of loyalty, prudence, and duty to account. Deposition taken Nov. 27, 1990. Case settled.
- Estate of Mildred McClain Bahr, Santa Barbara County Superior Court No. 162893, retained by Hollister & Brace, William A. Brace representing the proponents of the will. Will contest case involving question whether wife's will exercised power of appointment created in previously deceased husband's will. Deposition taken Feb. 3, 1989; testimony at trial given June 5, 1989.

#### Consultations:

- 1988: Joseph Argenta, Santa Monica, CA, Estate of Ballou, consultation re revocation and revival of will
- 1997: Phyllis Truby, Santa Monica, CA, consultation re prescriptive easement claim
- 1998: David Hammer, Merzon v. Hartz Mtn., New York, NY, consultation on validity of covenant
- 1999: Leigh McCarthy, Bangor ME, consultation re rule against accumulations
- 2001: Austin Estate, Bruce A. McDermott, Seattle, WA, claims re breach of contract to make will, breach of fiduciary duty
- 2005: James L. Robertson, Wise, Carter, Child & Caraway, PA, Jackson, Mississippi, consultation re use of electric power company easements for fiber optic cable
- 2006: Steven Morris, Turner Aubert & Friedman, LLP, Beverly Hills, California, consultation re validity of amended restrictive covenants

- 2006: Gary M. Ruttenberg, Santa Monica, California, consultation re ademption question in Rubin Brown Trust
- 2006: Steven J. Eichberg, Westlake Village, California, consultation re easement questions involved in Edwards v. The Irvine Company, Cal. App. 2005
- 2008: Thomas B. McCullough, Jr., Marina del Rey, consultation re easement; question whether easement is subject to CC&Rs.

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