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ENDORSED-FILED

MAY 10 2017

CLERK OF MENDOCINO COUNTY
SUPERIOR COURT OF CALIFORNIA
TRACY JOHNSON

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF MENDOCINO, UKIAH BRANCH

WILLIAM H. MOORES, TONA
ELIZABETH MOORES,

Plaintiffs,

vs.

IRISH BEACH WATER DISTRICT,
DOES 1 through 10, inclusive,

Defendants.

GORDON MOORES, SANDY
MOORES, MENDOCINO COAST
PROPERTIES, a California
Corporation, and MOORES
ASSOCIATES, a partnership,

Real parties in Interest.

Case No. SCUJ CVG 09-54665

JUDGMENT

1 This trifurcated action came before the Court regularly for trial on or
2 about December 19, 2011 (phase 1), August 18, 2014 (phase 2), and February
3 29, 2016 (phase 3), the Honorable Ann Moorman, Judge, presiding. Plaintiffs
4 William Moores and Tona Moores (collectively "Moores") appeared through their
5 counsel, Donald J. McMullen of the Law Office of Duncan M. James, and
6 Defendant Irish Beach Water District ("District") appeared through its counsel,
7 Matthew Emrick and David Rapport.

8 Trial for each phase was by the court. Phase 1 concerned Moores'
9 inverse condemnation liability claims against the District. Phase 2 concerned
10 Moores' inverse condemnation compensation/damages claims against the
11 District. Phase 3 concerned all of Moores' other claims against the District in
12 this action, including those regarding the District's "Proposition 218"
13 assessments, Declaratory and Injunctive Relief, Trespass, Unjust Enrichment,
14 and Breach of Contract. For each phase of trial, after receiving and hearing the
15 evidence and argument, the Court issued a statement of decision on the issues
16 presented in that phase.
17

18
19 Given time gaps between phases and unique standards applicable to
20 inverse condemnation claims and awards, the Court, after receiving and
21 hearing evidence and argument, issued orders for attorney's fees, costs, and
22 expenses and, also, interest, associated with the inverse condemnation claims.
23 Following dismissal of the District's appeal of the Court's phases 1 and 2
24 decisions, and after receiving and hearing evidence and argument, the Court
25 also issued orders for attorney's fees and costs on that appeal.
26

1 Additionally, prior to commencement of trial in phase 3, Moores and the
2 District entered a stipulation for partial settlement of some phase 3 issues,
3 which was to be incorporated into this Judgment, as recited below.

4 The Court issued a final Statement of Decision on remaining phase-3
5 issues on October 26, 2016.

6 **GOOD CAUSE APPEARING, IT IS ORDERED, ADJUDGED, AND**
7 **DECREED AS FOLLOWS:**

8 **I. Inverse Condemnation**

9 A. Phase One.

10 The court finds that the District inversely condemned Moores' property,
11 rights, and interests, effective September 18, 2008, by invading Moores'
12 property, drilling a water well on Moores' property known as the T5 Well, and
13 taking water from that well on Moores' property for the District's use.¹

14 B. Phase Two.

15 Moores is awarded **\$401,000.00** as compensation/damages, as of March
16 4, 2015, against the District related to its development on Moores' property of
17 the T5 Well.
18

19 C. Pre-Award Interest On Inverse Condemnation Award Only.

20 In accordance with the Court's Order Re Attorneys' Fees, Costs And
21 Expert Fees and Awarding And Declining Prejudgment Interest, filed January
22 13, 2016, Moores is additionally awarded **\$163,232**, as of March 4, 2015,
23 against the District for pre-award interest accruing between September 18,
24
25

1 2008 (date of inverse condemnation) and March 4, 2015 (Phase Two statement
2 of decision date

3 D. Additional Interest On Inverse Condemnation Awards.

4 Moores is awarded the additional amount of **\$11,560** as post-award /
5 pre-judgment interest on said award(s) as accrued interest from March 4,
6 2015, to the date of entry of this Judgment.¹

7 E. Attorney's Fees, Costs & Expenses for Phases One and Two
8 (Inverse Condemnation Only).

9 In accordance with the Court's Order Re Attorneys' Fees, Costs And
10 Expert Fees and Awarding And Declining Prejudgment Interest, filed January
11 13, 2016, Moores is additionally awarded **\$553,637**, as of said date, against
12 the District for attorney's fees, costs, and expenses incurred in Moores' inverse
13 condemnation proceedings. Moores is awarded the additional amount of
14 **\$51,921.54** as post-award / pre-judgment interest on said award (accrued
15 interest from January 13, 2016, to the date of entry of this Judgment (per
16 motion)).

17 F. Attorney's Fees and Costs for Dismissed Appeal of Phases 1-2
18 Decisions.

19 In accordance with the Court's Order Re Attorneys' Fees and Costs on
20 Appeal, filed February 22, 2016, Moores is additionally awarded **\$6,928.55**, as
21 of said date, against the District for attorney's fees and costs incurred by
22 Moores in the appeal of the Court's decisions in phases 1 and 2, which appeal
23
24

25
26 ¹ This amount was calculated using the prevailing market rate adopted in previous rulings concerning pre-judgment interest awarded through March 4, 2015.

1 was dismissed by the appellate court. Moores is awarded the additional
2 amount of **\$597.17** as post-award / pre-judgment interest on said award as
3 accrued interest from February 22, 2016, to the date of entry of this Judgment.

4 **II. Partial Stipulation of Phase 3 Issues.**

5 The parties' Stipulation for Partial Settlement, filed February 24, 2016, a
6 true copy of which is attached hereto as **Exhibit 1**, is incorporated herein by
7 reference and made part of this Judgment.

8 **III. Proposition 218 Assessments, Trespass, Unjust Enrichment, Breach**
9 **of Contract--Phase 3.**

10 A. Proposition 218 Assessments

11 By District-wide voter approval in 2002, and pursuant to Article XIID of
12 the California Constitution (aka Proposition 218), the District imposed
13 assessments on all parcels within its boundaries. The assessments were
14 comprised of four components or funds specified in an engineer's report (Phase
15 3 Trial Exhibit 19), which formed the basis for the assessments: (1) System
16 Wide capital improvement ("System Wide"); (2) Mallo Pass capital improvement
17 ("Mallo Pass"); (3) Capital Replacements, or Greater than 40 year, capital
18 improvement ("Capital Replacements"); and, (4) loan repayment. Moores'
19 claims in Phase 3 concerned the first three funds.
20

21 **1. System Wide**

22 a. Injunction: a permanent injunction is hereby granted
23 in Moores' favor, limiting the District's collection of the System Wide
24 component to 15 years, ending with the property tax bill that is due and
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26

1 payable February 1, 2017 and delinquent April 2017. The District shall
2 conclude the assessment for this component, effective as of that time.

3 b. Improper Expenditures, Fund Balance &
4 Reimbursement: the Court finds that the District improperly expended money
5 from this fund and had other unsupported expenditures. Those expenditures
6 also resulted in unrealized, or lost, investment/interest income. As of February
7 29, 2016, the District's Proposition 218 System Wide assessment fund's
8 corrected balance shall be **\$170,829**. (Phase 3 Trial Exhibit 167, Tab 2,
9 "Corrected Reserve SW-1-II [Tab 2 Summ. & Tab 2.B.].) This figure includes
10 unrealized investment/interest income and adjustments for improper and
11 unsupported expenditures found by the Court as of February 29, 2016. The
12 District shall maintain an accounting of this fund subsequent to February
13 2016, including all additional assessments collected and proper expenditures
14 (see below), using the corrected fund balance stated above. The District shall
15 reimburse this fund such that its balance, as of February 29, 2016, is
16 \$170,829. That reimbursement shall be from the District's unrestricted, non
17 Proposition 218, monies.
18

19 c. Refund: after reimbursing the fund, the District shall
20 refund the entire remaining balance of this fund, as properly accounted for and
21 as corrected (including collected assessments and approved expenditures
22 subsequent to February 2016), at the conclusion of the assessment for this
23 component as ordered above. In the interim, these funds may be used by the
24 District to construct the enumerated capital improvement project(s) detailed in
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26

1 the engineer's report for this component of the Proposition 218 assessment, so
2 long as the expenditure thereof does not exceed the total approved assessment
3 amount for this component. (Phase 3 Trial Exhibit 19.) Refunds of remaining
4 monies in this fund, calculated in accordance with the accounting
5 requirements above, shall be made at the conclusion of this component of the
6 assessment as specified above, on a proportionate basis, to the owner of record
7 for each and every parcel on which said owner paid assessments.

8 **2. Mallo Pass**

9
10 a. Injunction: a permanent injunction is hereby granted
11 in Moores' favor. The District shall immediately cease collecting the
12 assessment for this component. The Court finds that the District abandoned
13 the Mallo Pass project as of September 12, 2009.

14 b. Improper Expenditures, Fund Balance &
15 Reimbursement: the District improperly expended money from this fund and
16 had other unsupported expenditures. Those expenditures also resulted in
17 unrealized, or lost, investment/interest income. As of February 29, 2016, the
18 District's Proposition 218 Mallo Pass assessment fund's corrected balance shall
19 be **\$432,792**. (Phase 3 Trial Exhibit 167, Tab 1.B.i, "Alternate 2".) This figure
20 includes unrealized investment/interest income and adjustments for improper
21 and unsupported expenditures found by the Court as of February 29, 2016.
22 The District shall maintain an accounting of this fund subsequent to February
23 2016, including all additional assessments collected, using the corrected fund
24 balance stated above. The District shall reimburse this fund such that its
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1 balance, as of February 29, 2016, is \$432,792. The District shall also
2 reimburse this fund for any expenditure made from it after February 29, 2016
3 and shall account for all assessments received for this fund subsequent to that
4 date. All reimbursement shall be from the District's unrestricted, non
5 Proposition 218, monies.

6 c. Refund: after reimbursing the fund, the District shall
7 refund the entirety of the balance of this fund, as corrected as of February 29,
8 2016, and as adjusted thereafter (including assessments collected after
9 February 2016), as set forth above, and shall additionally pay pre-judgment
10 interest (again, from its unrestricted, non Proposition 218 monies) on refunds
11 due from this fund in the amount of **\$68,434.88**¹, on a proportionate basis to
12 the owner of record for each and every parcel on which said owner paid
13 assessments, within 180 days after entry of this Judgment.

15 **3. Capital Replacements**

16 a. Component Assessment Limits: the ceiling for, or the
17 point at which the District must halt, collection for this fund is set at 10% of
18 one-half (50%) of the total replacement value of the District's greater-than-40
19 year-assets as listed in Appendix A of the engineer's report (Phase 3 Trial
20 Exhibit 19), excepting those assets that have been eliminated from use by the
21 District and including those adjustments to allowable assets as detailed in
22 Phase 3 Trial Exhibit 167, Tab 4.C.i. The District shall use that formula for
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25
26 ¹ Prejudgment interest calculated from date of accrual through December 31, 2013 at 7% per annum and after
January 1, 2014 until the date of this Judgment pursuant to Civil Code §3287(c).

1 calculating the ceiling of this fund at all times. The District shall halt all
2 assessments for this component whenever the fund balance is above the fund
3 ceiling and until refund(s) are made to parcel holders of assessments collected
4 above the ceiling, as further specified below.

5 b. Recalculation of Fund Ceiling, Over-Collections, Fund
6 Balance, & Reimbursement: the District improperly calculated the ceiling for
7 assessment of this fund, over collected assessments for this component,
8 improperly expended money from this fund, and had other unsupported
9 expenditures. Those expenditures also resulted in unrealized, or lost,
10 investment/interest income. As of February 29, 2016, the District's
11 Proposition 218 Capital Replacements assessment fund's corrected balance
12 shall be **\$332,657** and its assessment ceiling shall be **\$112,247**. (Phase 3
13 Trial Exhibit 167, Tab 4.C.i.) The District's total over-collections as of that
14 date are **\$213,552**. (*Ibid.*) These figures are inclusive of and account for the
15 improper and unsupported expenditures and unrealized investment/interest
16 income found by the Court as of February 29, 2016. The District shall
17 maintain an accounting of this fund subsequent to February 2016, including
18 all additional assessments collected, using the corrected fund balances and
19 assessment fund ceiling parameters and formula stated above. The District
20 shall reimburse this fund such that its balance, as of February 29, 2016, is
21 \$332,657. All reimbursement, including that made necessary by over-
22 collection of assessments and/or expenditure of funds that have been over-
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1 collected, shall be from the District's unrestricted, non Proposition 218,
2 monies.

3 c. Refund: after reimbursing the fund, the District shall
4 refund any amounts above the fund ceiling (i.e. the difference between the
5 corrected balance of this fund and the fund ceiling (as of February 29, 2016,
6 \$213,552), as set forth above, and shall additionally pay pre-judgment interest
7 (again, from its unrestricted, non Proposition 218 monies) on refunds due from
8 this fund in the amount of **\$38,006.76**, on a proportionate basis to the owner
9 of record for each and every parcel on which said owner paid assessments,
10 within 180 days after entry of this Judgment. (See n 1 *infra*.)

12 B. Trespass

13 The Court finds that the District committed a trespass. Moores is
14 awarded damages of **\$401,000.00** against the District; however, this award is
15 duplicative of the award for inverse condemnation and therefore shall not be
16 added to the previous awards. Moores is awarded no damages for the District's
17 trespass regarding its use of the Improvements and Roadway. Prejudgment
18 interest on said \$401,000 is awarded to Moores in the amount of **\$243,157.40**
19 calculated at seven percent (7%) per annum.
20

21 C. Unjust Enrichment

22 The Court finds that the District has been unjustly enriched. Moores is
23 entitled to recover **\$401,000.00** against the District; however, this award is
24 duplicative of the award for inverse condemnation and therefore shall not be
25 added to the previous awards. Said unjust enrichment recovery is the amount
26

1 by which the District was unjustly enriched for their conduct associated with
2 the T5 Well and is equivalent to the Moores' loss. Moores is awarded no
3 recovery related to its use of the Improvements and Roadway. Prejudgment
4 interest on said \$401,000 is awarded to Moores in the amount of
5 **\$243,157.4** calculated at seven percent (7%) per annum.

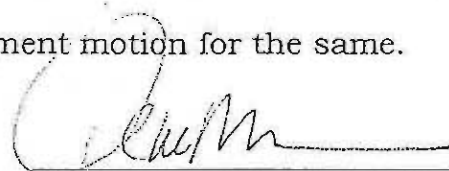
6 D. Breach of Contract

7 The Court finds that the District breached its 2002 Settlement
8 Agreement (Phase 3 Trial Exhibit 18) with Moores. Moores is awarded damages
9 of **\$133,649.00** against the District for breach of contract, which is in addition
10 to the amounts previously awarded Moores. Prejudgment interest on said
11 \$133,649.00 is awarded to Moores in the amount of **\$121,270.12** calculated at
12 ten percent (10%) per annum.

14 E. Attorney's Fees, Costs & Expenses for Phase Three

15 Any amounts awarded Moores for attorney's fees, costs, and expenses
16 incurred on Phase three matters will be the subject of a subsequent order of
17 this Court following any post-judgment motion for the same.

19 Dated: *May 16, 2017*



JUDGE OF THE SUPERIOR COURT

EXHIBIT "1"

FILED

FEB 24 2016

CLERK OF MENDOCINO COUNTY
SUPERIOR COURT OF CALIFORNIA



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LAW OFFICES OF DUNCAN M. JAMES
DUNCAN M. JAMES, CA State Bar No. 40505
DONALD J. McMULLEN, CA State Bar No. 220840
GINEVRA K. CHANDLER, CA State Bar No. 151231
P.O. Box 1381
Ukiah, CA 95482
Telephone: (707) 468-9271

Attorneys for WILLIAM H. MOORES and TONA ELIZABETH MOORES

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF MENDOCINO, UKIAH BRANCH

WILLIAM H. MOORES, TONA
ELIZABETH MOORES,

Plaintiffs,

vs.

IRISH BEACH WATER DISTRICT, DOES 1
through 10, inclusive,

Defendants.

CASE NO.: SCUJ CVG 09-54665

STIPULATION FOR PARTIAL
SETTLEMENT

GORDON MOORES, SANDY MOORES,
MENDOCINO COAST PROPERTIES, a
California Corporation, and MOORES
ASSOCIATES, a partnership,

Real Parties in Interest.

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FILED BY FAX 707-468-4443
LAW OFFICE OF DUNCAN M. JAMES

STIPULATION FOR PARTIAL SETTLEMENT

This Stipulation for Partial Settlement (Agreement) is made by and between William and Tona Moores (collectively "Moores"), on the one hand, and Irish Beach Water District (IBWD), on the other hand, who at times may be collectively referred to as the "Parties."

RECITALS

A. Moores is the owner and developer of several parcels and/or subdivisions of real property within and without the boundaries of IBWD. IBWD is a governmental agency who provides water to residential customers in the Irish Beach subdivisions along the Mendocino County coast.

B. Presently pending before the Mendocino County Superior Court is an action filed by Moores against IBWD entitled *Moores v. Irish Beach Water District et al.*, case number SCUk CVG 09-54665 (Action).

C. The action was bifurcated by the court into three (3) phases. Phases 1-2 concerned Moores' claims for inverse condemnation against IBWD and have been adjudicated. Phase 3 concerns a host of issues, including, among other things, claims by Moores against IBWD related to shared road maintenance costs and obligations, restrictions and requirements for the installation of utilities within the boundaries of IBWD, Moores' right to 21 water-service connections and assignability and transferability thereof, and the imposition and application to Moores of future charges, buy-in fees, connection fees, assessments, and other charges by IBWD. This Agreement concerns only particular portions of those claims and rights in Phase 3, as more particularly set forth herein.

D. This Agreement shall be filed in the Action as a stipulation and order and incorporated into the Court's Judgment in the Action.

E. The foregoing Recitals shall be deemed incorporated by reference into all portions of this Agreement.

TERMS

Section 1 - Road Maintenance - Count III of Action

This Agreement resolves the parties disagreement regarding road maintenance as expressed in Plaintiffs' First Cause of Action, Count III, for Road Maintenance, and shall be the complete and total agreement between the Parties and settles said Count in the Action (exclusive of any incorporating or incorporated allegations in said Count), according to the following terms:

a. For the purpose of this Agreement, "Roadway": means the roadway(s) that commences at the point at which the Private Portion of Alta Mesa

Road (as described the Parties' Phase 1 stipulation) commences (just below IBWD's Tank 3) and which then traverses through the Unit 9 Subdivision, through the Unit 9 Subdivision gate easterly of the subdivision, continuing to IBWD's Tank 4, then onward to the Unit 9 Well and T5 Well, southerly to the Acreage Parcels and into and through Unit 8 where it terminates at the Western boundary line of Unit 8, and including all roadway lengths over which IBWD has recorded easements rights associated therewith. This Roadway is commonly known as Road A, Road B, Road C, and Road D.

b. One-Time IBWD Payment for Prior Work: within 15 days from the execution of this Agreement by the Parties, IBWD shall pay Moores the sum of \$8,000.00 for reimbursement of previously incurred and invoiced Roadway maintenance and repair costs over the prior 10 years; this is beyond any Roadway repairs contributed by the IBWD. Said payment shall be made by check to Moores' attorney, Duncan M. James Trust, at 445 North State Street, Ukiah, CA 95482.

c. IBWD Roadway Maintenance & Repair Obligations: as between Moores and IBWD, IBWD's maintenance and repair obligations of the Roadway, from the date of execution of this Agreement continuing indefinitely thereafter, shall be as follows:

(1) Along the entire Roadway:

(a) IBWD shall be solely responsible for repair of issues caused by IBWD's (or its agents') action or inaction, improvements or repair necessitated as a result of such action or inaction, and maintenance of said repair and improvements..

(b) Except as otherwise set forth herein, the extent of IBWD's road maintenance obligation under this agreement shall be solely in the form of monetary payments as follows:

- Commencing in 2016 and continuing each year thereafter, IBWD shall pay Moores prior to November 1 each year, the sum of \$2,500.00 for maintenance and repair work along the Roadway. Said amount shall automatically increase each year thereafter by three (3) percent. This annual payment shall be applied solely to the repair and maintenance of the Roadway.
- Except as provided below in paragraph (2): unless the amount of annual maintenance and repair exceeds \$7,500 (due to circumstances that do not constitute ordinary maintenance and repair as set forth in this Agreement and pursuant to common practice, but which are repairs and maintenance necessary due to emergency, extraordinary, or other circumstances not anticipated in this Agreement), said payment shall represent IBWD's sole

obligation for its proportionate share of Roadway maintenance and repair obligations; and, if the amount of any extraordinary or unanticipated repair and maintenance exceeds \$7,500, then IBWD shall pay an additional 35% of said expenses above that amount. Provided however that except in such emergency and extra ordinary situations, the Moores shall first notify the IBWD of any emergency, extraordinary or unanticipated repair and maintenance to allow the IBWD to perform the work itself at its own costs, which if done, shall be in accordance with standard and governing practices associated with the matter for which repair and maintenance is required. Any such payments made for such emergency and extra ordinary situations shall be used for such repair and maintenance situations.

- Additionally, IBWD shall pay Moores prior to November 1, 2021, the additional sum of \$1,000 to be applied toward maintenance and repair costs associated with Roadway re-rocking. For each five year segment thereafter, said payments shall be increased by \$250.00, all due and payable on or before November 1 of each five-year increment thereafter.

The Parties agree that the items listed below include all of the anticipated items of ordinary and regular maintenance for purposes of this Agreement and for which the District's \$2,500 proportionate annual payment shall be applied to (and used towards) and shall be the full extent of the IBWD's obligation under this Agreement unless specifically provided otherwise. This is the work covered by the District's payment and shall be performed by the Moores, their agents or assigns:

- The maintenance and repair of the Roadway in good and drive worthy condition.
- Maintenance and addition of water bars as described below and, as is customary and reasonably necessary, re-grade roads and replace washed out rock at least once every 7 years.
- Maintenance of brush and trees as described below and as reasonably necessary.
- Lopping or pulling all tree and brush seedlings (including, but not limited to, madrone, oak, baccurus and cyanothous, laurel) growing within roadside ditches, including all within 2 feet of the back slope of ditches, on roadway shoulders and within the roadways themselves at least once every three (3) years, and including all other road extensions from this portion of the Roadway upon which IBWD has easements.
- Cutting and removing off site all trees and brush branches that overhang the roadway that drop to lower than 12 feet above the Roadway at least every three (3) years or as necessary to allow free and clear vehicular and equipment ingress and egress.

- Cleaning out all culvert inlets and outlets and ditch lines on or before November 15 each year, including, but not limited to, dirt slides, vegetation or needle piles, leaves, twigs, branches and blockages, rocks, etc., and including all other road extensions from this portion of the Roadway upon which IBWD has easements. Particular attention to this aspect of maintenance is critical for the three (3) culverts uphill from the Roadway entrance to the T2 Well on the southerly portion of Road A.
- Inspecting roadway drainage problems within four (4) days of each storm that drops more than two (2) inches of rain and correct any apparent water that washes rock on or along the Roadway or that bypasses culverts or runs onto the Roadway from ditch lines. For large continuous storms dropping more than three (3) inches of rain, promptly inspect drainage during the storm and correct as needed, including as noted above.
- Limbing and cutting into 30 inch long chunks, the entire length of all windfall or dead or uprooted trees or limbs that fall over and above the Roadway.
- Each year, on or before December 15 and up to March 15, removing needles from all paved portions of the Roadway and clean out all needle and branch debris in drop inlets and water turnouts along the Roadway. Once each year, on or before December 15, using a rigid rake to re-spread any road surface rocking that has developed wash out channels due to accumulated runoff on Roadway. Also on or before December 15 of each year, installing 1.5 inch high surface rock water-bars at 300 foot intervals on all rocked road sections with a grade over 12 % to direct roadway water accumulating on Roadway into ditches.
- Maintaining ditch depths at gate locations to prevent vehicles from driving around gates.
- Repair, replacement and maintenance of the two existing gates along the roadway commonly known as the Unit 9 Gates and the Hillcrest Gates. (Provided however that within 1 year after the effective date of this agreement, the District at its own cost shall: a. replace the gate off of Hillcrest Drive with a new pipe gate of equal size and dimensions as the existing gate, and shall coat the same with rust preventatives. IBWD shall also sand blast or remove rust from metal gate arms and parts as needed and recoat surfaces with protective paint coating; b. complete a one-time repair of the Unit 9 Gate as discussed between the Moores and current District Manager, Charlie Acker within the last several months (to wit, put on fresh coat of rust preventer and repair or replace the gate's solar operator). IBWD accepts no responsibility regarding whether the gates are required to be locked or unlocked by applicable law or land use regulations.

This shall be a one-time obligation under this agreement). IBWD will maintain such gates in a locked condition unless otherwise advised by Moores, recognizing, however, that those with deeded easements must be given a reasonable means of access.

(2) Along the Unpaved Portion of Roadway Between the Third Culvert on the Roadway Easterly of the T2 Well to the Hillcrest Gate: Notwithstanding any other provision herein, IBWD shall be responsible for all repair, maintenance, and improvements of this portion of the Roadway to ensure access to the T2 Well at all times. Furthermore, IBWD shall comply with provisions associated with this portion of the Roadway as set forth below in section "2" of this Agreement below.

(3) Overlay Work: In order to resurface and repair previously-IBWD-installed road excavation patches that are unraveling and have edges, IBWD shall also install, within the next two (2) years, an asphalt-concrete overlay on, along, and over that section of Alta Mesa Road from Tank 3 uphill 300 feet; said work shall be completed in a good and workmanlike manner in accordance with County, State, and industry standards applicable to roads of similar nature and purposes and with employment of best practices and materials. The District and its contractor shall meet with the Moores prior to performing such work to discuss the scope of the work (disagreements to be resolved pursuant to the arbitration provision below).

(4) Along the Roadway from the Unit 9 gate to the Hillcrest gate (unpaved): Within thirty (36) months of the date this Agreement is executed, IBWD shall, at its sole cost and responsibility, surface shale rock, to a 2 inch+ thickness, for the full width of that road section from Unit 9 Well to Tank 4. Moores will permit IBWD to acquire, at its own costs, but without charge by Moores, up to 28 transfer loads (or equivalent) of shale rock from Moores' rock quarry for rock required for this sub-paragraph; IBWD maintains the right to acquire the rock from Moores' quarry or a third party. At the time IBWD performs said work, it shall also deliver (but not spread, blade or compact), four (4) full transfer loads (or equivalent) of shale rock to within 600 feet of the Unit 9 gate and 14 such loads on Road B (Martin intersection) in locations to be more specifically designated later by Moores, all at IBWD's sole cost and without contribution, reimbursement, payment, and assessment from Moores and Moores' successors. IBWD shall employ customary quarry practices to ensure integrity and continued use of the quarry and its access. Additionally, IBWD shall leave 10 transfer loads of broken-out shale rock in Moores' rock pit (for Moores' subsequent use) in manner such that it is ready to be loaded. IBWD shall repair all disturbed water bars on the haul road (road leading from Road A to the rock quarry). IBWD's right to use Moores' quarry as detailed above is a one-time right for the stated purposes only. All work shall be according to State, County, and industry standards. This shall be a one-time obligation of the District under this agreement

d. No Contribution to IBWD's Obligations: IBWD's obligations hereunder shall be at its sole expense without any right to contribution, reimbursement, assessment, or payment, however any of the same may be characterized otherwise, from Moores or Moores' successors. As such, IBWD waives any right to such contribution, reimbursement, payment, and assessment from Moores and Moores' successors related to its obligations here. Obligations for repair and maintenance of the Roadway beyond IBWD's obligations hereunder shall be borne by Moores and/or other persons/entities (other than IBWD) who may have responsibility for the same.

e. Indemnity: Except as otherwise set forth herein, each party shall indemnify, defend, and hold the other harmless from all claims, demands, liabilities, costs, damages, and/or expenses, however characterized, arising out of, or in connection with, that party's obligations hereunder, excepting only such harm as may be fully and exclusively caused by the other party's fault or negligence. This obligation includes, but is not limited to, payment of all attorney's fees, costs, damages, and expenses incurred by said other party, and any awards against said other party, associated with the aforementioned claims, demands, liabilities, costs, damages, and/or expenses.

f. Dispute Resolution

(1) Notice of any dispute or claim relating to this section 1 of the Agreement shall be served by the complaining party on the other party in writing by mail, personal delivery, or email on the other party between October 1 and October 31 each year for any claims accruing within one year of October 1 of that year. California law pertaining to discovery and delayed discovery of claims shall apply for purposes of determining the date on which a claim or dispute accrues. Failure to lodge any such dispute or claim within this period shall constitute a waiver of such dispute or claim.

(2) Such notice of dispute or claim shall reasonably specify the details of it and include any evidence presently known to or in the possession of the complaining party.

(3) The party receiving notice of the dispute or claim shall have 15 days following receipt thereof to respond in writing by mail, personal delivery, or email. Failure to so respond shall constitute acceptance of the dispute or claim.

(4) If the notice of dispute or claim is rejected, disputed, or conditionally accepted, the complaining party shall have 10 days to serve on the other a notice of intent to resolve the dispute or claim by binding arbitration. The Parties agree binding arbitration shall be the sole proceeding by which any such disputes or claims shall be resolved.

(5) The complaining party shall make initial contact with the arbitrator in an effort to schedule pre-arbitration conferencing. The other party shall cooperatively work with the complaining party to facilitate said arrangements and appear at the conference. The Parties desires to conclude any arbitration within a 120 days of the notice of intent to arbitrate, recognizing that holidays, life events, and other circumstances may reasonable necessitate a different timeframe. Arbitration shall be conducted by an arbitrator mutually agreed to by the parties. Briefing schedules, evidentiary, and discovery issues shall be agreed upon by the Parties with the arbitrator. Generally, upon informal request, each party agrees to promptly provide the other with all relevant documents and materials associated with the claim or dispute, potential witnesses and the nature of such person's knowledge as relates to the claim or dispute, and facts supporting their position on the claim or dispute. Each party shall bear their own costs, expenses, and fees related to the arbitration, except that the prevailing party shall be awarded reasonable attorney's fees, costs, and/or expenses actually incurred up to a maximum of \$5,000.00, with any such award becoming part of the arbitration award and judgment.

(6) The arbitration award shall be in writing and final and may be converted to, and enforced as, a civil judgment.

h. Term & Termination: Section 1 of this Agreement is effective as of the date last signed below and shall continue in effect for 20 years thereafter. Unless either party provides written notice to the other party (by mail or personal delivery) at least five (5) years prior to the expiration of said 20-year term, this Section 1 will be automatically renewed and effective for an additional 20 years, with successive 20 year terms automatically renewing thereafter unless written notice to the other party (by mail or personal delivery) is provided at least five (5) years prior to the expiration of each successive 20-year term. In the alternative, each party may elect to seek re-negotiation of the Agreement terms by giving such notice up to the end of the initial 20 year term (or any following term) which shall be handled via the Arbitration proceedings set forth above, which shall be non binding. Either party may seek appropriate legal action to rescind for cause to the extent allowed by law through the arbitration provision above. IBWD shall have the right to reasonably request an accounting of any work performed by Moores and to review receipts and invoices for work on the Roadway. The District shall not be responsible for the replacement of the roadway as capital project (any replacement shall be limited to situations under section c (1)(a) above), relocation of the roadway (or any component part of the roadway) unless necessitated by IBWD's own actions. The terms repair and maintenance shall be given its ordinary meaning and shall not include capital project replacements unless specifically provided in this agreement. By entering into this agreement the parties are not waiving their present positions and

contentions regarding the parties' respective obligations for road maintenance.

Section 2. Underground Utilities - Count IV of Action

This Agreement resolves the parties' disagreement regarding underground utilities as expressed in Plaintiffs' First Cause of Action, Count IV, for Utility-Line Extensions, and shall be the complete and total agreement between the Parties and settles said Count in the Action (exclusive of any incorporating or incorporated allegations in said Count), according to the following terms:

a. The following establishes IBWD's entire obligation concerning its installation of utilities and extensions of utilities within IBWD's boundaries and within easements for such utilities previously conveyed to IBWD in the following properties: from the western edges of Units 8 and 9, respectively, to all points easterly; and, the parcel(s) known as the Inn Site, which is presently the subject of an annexation application with the County of Mendocino (if and when said parcel(s) are annexed). For purposes of this section of the Agreement, IBWD shall be deemed to also include and any its agents, vendors, contractors, or third parties who may install, or perform work on or for, utilities at the IBWD's request--e.g. PG&E.

b. The utilities that are the subject of this term include all utilities, however characterized, including but not limited to: water, power, electric, gas, telephonic, and internet lines, components, and facilities.

c. IBWD agrees to install all of the District's utilities, utilities serving District facilities, and items in subsection (3) below, on the referenced properties underground as follows (which Moores contends and acknowledges is in accordance with any applicable CC&R's, deeds, and/or Architectural Committee requirements)¹:

¹In the Action, Moores contends that IBWD is obligated to install all utilities underground in accordance with certain recorded covenants and restrictions ("CC&R's") and deeds (namely those recorded in the Official Records of Mendocino County: on November 16, 1977, at Book 868, pages 131-146; on August 12, 1977, at Book 1104, pages 4-17-Q; on October 23, 2012, as document number 2012-15788; on May 8, 1980 at Book 1258, pages 149-151; on February 10, 1989, as document number 2297; and, on June 19, 1989, as document number 10594). Moores likewise contends IBWD must obtain approval of the Architectural Committee prior to any such utility installation. IBWD contends that the CC&Rs do not apply to the District as a matter of law and that IBWD has no present plans to place any of its pipeline or district power lines above ground.

(1) All utilities, including but not limited to those described herein, shall be installed underground within the road prisms, including all utility extensions, in a single trench (unless impermissible as a matter of law), but maintaining separation as required by PUC regulations. Said trenches and any disturbed portions of the roadway in which said utilities are placed shall have 95% compacted backfills with at least six (6) inches of rock. Further, all trenches for utilities are to have excavated spoils end loaded into a dump truck upon excavation and hauled offsite (not dumped onto the existing rock road or into trenches). Trench backfills are to be compacted with a wacker. After repacking the trench lines the roadway for all excavated road lengths are to be resurfaced with 4 inches of compacted shale rock for the full road width using grader, water truck, and compactor. IBWD shall otherwise perform said installations (as is at least standard for the anticipated public / residential use and development) with power line service loops or risers, water service line tap risers for future connections, and telephone risers in all in locations designated by Moores. Therefore, IBWD shall attempt in good faith to coordinate all such installations with the Moores to the extent possible (keeping in mind that the District is providing a vital human resource and time may be of the essence with respect to a particular project) such that said locations may be mutually designated; however, IBWD shall not refuse to locate such items as requested by Moores absent an objectively reasonable health and safety concern over such a location. IBWD shall ensure full road-width shale rock resurfacing in excavated road lengths as described in (4) below.

(2) IBWD will remove the existing overhead utilities associated with the abandoned well in Unit 8 and install the same below ground per parameters in subdivision "(1)" above (excepting the extension southward across the canyon that must be overhead), unless such installation is prohibited by law and prohibited by PG&E at the senior management level (responsible for such decisions) with written confirmation of such action by PG&E). IBWD will do so without contribution, reimbursement, payment, and assessment from Moores and Moores' successors related to its obligations here.

(3) From existing lines at or about the Hillcrest Gate and thence easterly to the point in which the Roadway intersects with the first roadway/driveway easterly of the T2 Well site and which traverses southerly off said Roadway (approximately 900 feet easterly of the T2 Well site), IBWD shall, within 2 years of the date this Agreement is executed and in accordance with the parameters in subdivision "(1)" in this Section "2" above, install: (i) High Voltage (12kv) electric/power line(s); (ii) telephone lines & cables provided by the telephone company; and, (iii) water line(s) of at least three (3) inches in diameter. Said utilities and lines shall terminate on the southerly-most side of the Roadway at the referenced intersection. Regarding the power lines, IBWD need only install conductors to the T2 Well site and, thereafter, only two-ducts of high-voltage conduit sufficient to continue running the referenced High Voltage powers lines to the referenced point of termination (2 ducts, each with a "pull string" placed in

each tied off at either end of the duct run for pulling (in the future) of a rope needed to pull through those ducts the actual power line cables). All such ducts are to be end capped at each end, with 90-degree surface riser ("els") into a single utility box at the T2 Well location to be placed adjacent to the entrance point of the referenced driveway. IBWD will coordinate this installation and completion of the roadway work mentioned below with Moores. Moores shall have the right, without payment or charge of any kind, to connect and run lines from the termination of said line for further development (except that metering charges for any water or PG&E connections, service and use shall be charged). IBWD will undertake this obligation at its own cost and without contribution, reimbursement, payment, and assessment from Moores and Moores' successors.

(4) IBWD shall also, within 3 years of the date this Agreement is executed (and preferably at the same time in performs its obligation in paragraph "(3)" of this section "2"), completely shale rock (at least 4 inches) the Roadway from the Hillcrest gate to just above the third culvert uphill (easterly) from the T2 Well along this currently-unpaved portion of the Roadway, all according to State, County, and industry standards. This work will include a 95% compaction of the backfill, which shall contain at least four inches of rock, for the roadway's trenches and any disturbed portions of the roadway in which said utilities are placed. Irrespective of when it actually installs the above-referenced utility lines, IBWD shall perform the referenced roadway improvement within said 2 year time frame. IBWD will co-ordinate timing with Moores with 4 months advance notice. This is a one-time obligation under this agreement.

However, Moores will permit IBWD to acquire, at its own costs, but without charge by Moores, up to 900 tons of shale rock from Moores' rock quarry for this purpose. Unless already done per section 1 above, at the time IBWD performs said work, it shall also deliver (but not spread, blade or compact) for Moores' benefit the shale rock as referenced in section "1" subdivision "c.4." of this Agreement. All quarry activity shall be performed in accordance with said provision.

d. Nothing in this Agreement, express or implied, shall be considered or operate as a waiver of any claim or right regarding application of CCR's/Architectural Committee authority and neither Parties' rights or interests related to said matters shall be effected by this Agreement.

e. IBWD's obligations shall be at its sole expense without any right to contribution, reimbursement, assessment, or payment, however any of the same may be characterized otherwise, from Moores or Moores' successors. As such, IBWD waives any right to such contribution, reimbursement, payment, and assessment from Moores and Moores' successors related to its obligations here. IBWD preserves all of its rights to seek contribution and/or entire payment for such work from any other utilities such as PG&E. Nothing in this agreement requires IBWD to install any facilities not specifically related to the District and its facilities (e.g. PG&E or cable lines to private property owners) or beyond the scope

of this agreement (the facilities referenced in section 2.c.(3) above shall be deemed related to the District).

f. The Moores will release any and all Lis Pendens, liens or other encumbrances on the T2 Well parcel within 60 days of the effective date of this Agreement to the extent the same is within their control.

Section 3 - 21 Water-Service Obligations – Count V of Action

This Agreement resolves the parties disagreement regarding 21 water-service obligations, as expressed in Plaintiffs' First Cause of Action, Count V, for non-appurtenant water-service obligations, and shall be the complete and total agreement between the Parties and settles said Count in the Action (exclusive of any incorporating or incorporated allegations in said Count), according to the following terms:

a. In 2002, the Parties entered into a settlement agreement, previously admitted as Exhibit 18 in the Phase 2 of the Action. Section II.A.6. of that agreement provided a certain grant to Moores by IBWD of 21 water service connection rights ("21 water connections"). In the Action, Moores seeks confirmation that the 21 water-service obligations are transferable and assignable to any other parcel within the IBWD and that the obligations may be so transferred or assigned without triggering any application, IBWD approval, or fee or cost (other than metering).

b. IBWD agrees to the following terms regarding the 21 water connections it granted to Moores in the 2002 settlement agreement. The following shall entirely replace section II.A.6. of the 2002 settlement agreement:

(1) IBWD agrees to provide Moores 21 water service obligations / connections to the Acreage Parcels. Each service obligation / connection right shall consist of the equivalent of one customary residential connection of 300 gallons of water per day and shall be billed accordingly, subject to the conditions and limitations stated below. The Moores shall notify the IBWD in writing of any transfer at least 60 days before any such transfer. Any connection transferred to a property not owned by the Moores or an entity owned by the Moores shall not thereafter be again transferable.

(2) Said connection-rights can be assigned to anyone or transferred to any parcel within the boundaries of IBWD. They are not appurtenant to any parcel (including any Acreage Parcel). However, Moores agrees to not transfer or assign eight (8) such connection rights to non-Acreage Parcel parcels. No application is necessary to make such an assignment or transfer. No charge of any kind, however characterized, shall be imposed or paid for the right to connect (since physical metering connection costs (cost of IBWD to actually install water meter for the physical connection) are not deemed charges for the right to

connect, IBWD may charge these nominal metering costs for installed meters). IBWD will not object to or otherwise interfere with any such assignment or transfer.

(3) The 3-inch water main provision (2nd to last sentence of Section II.A.6) in the 2002 Settlement Agreement, which does not limit Moores' assignment and transfer rights, shall nonetheless be eliminated.

(4) Within two months of the date this Agreement is executed, IBWD shall accept into its system the previously-installed and constructed 4-inch line from the "Martin intersection" to the property boundary line of the property presently owned by Charles Elmer (commonly known as the "Martin parcel"), which will be available for future connections upon inspection by IBWD that such pipeline is in good condition. However, nothing in this paragraph shall be deemed to alter Moores' right to transfer and/or assign the 21 water connections not reserved to the acreage parcels as provided in section B (2) above.

(5) Consideration for the 21 water connections has already been given. Therefore, there shall be no buy-in fees, right-to-connect fees, assessments, or other charges, however characterized, imposed on Moores related to the 21 water connections (again, the previously-referenced actual cost to IBWD to install physical connection/meter, is not considered such a fee) or on the Acreage Parcels, except as permitted under section 4 of this Agreement, below.

(6) The Moores acknowledge their understanding that the IBWD has no obligation to replace to any Acreage Parcel any of the connection referenced in this Section 3 that are transferred by Moores. The District shall not be responsible for any actions by any regulatory or government agency as the result of any such transfer. The District shall not be responsible for the costs of any work necessary to connect any transferred water service connection to the District's system and the costs of any transfer shall be borne solely by the Moores.

Section 4 - Future Fees, Charges & Assessments

a. In the Action, Moores seeks a determination that IBWD is precluded from charging stand-by fees, assessments, right to connect fees, buy-in fees (see, e.g., IBWD board Resolution 2009-2), or charges, however characterized, to the Acreage Parcels or the Inn Site, before connection or as a condition of connection (again, the nominal fees associated with the physical meter connection is not considered such a fee). IBWD stipulates that, in light of the 2002 settlement agreement, it will not impose such fees on the referenced properties. Only regular, lawfully imposed, assessments and water charges may be imposed on said properties after physical connection is made to IBWD's water system. Again, consideration for these connections has already been given by way of the 2002 settlement agreement.

Section 5 - Other

a. **No Charges or Assessments:** Moores shall not be assessed, billed, or otherwise charged by IBWD for its costs in implementing the foregoing except as specifically noted in this Agreement. This term is included to ensure the same.

b. **Interests & Rights Not Altered:** Nothing in this Agreement shall be deemed to grant or alter ownership, rights, or interests in and to the Roadway or real property over which the Roadway lies. To the extent IBWD does not maintain deeded easements over any property, or portion of property, that is the subject hereof, Moores grants it a license for the purpose of enabling IBWD to perform its obligations hereunder. Provided that IBWD does not waive its contended statutory rights of access or any dedicated rights granted by the County or Coastal Commission and for which Moores does not waive their opposition to said contended rights (i.e. the contention, if any, is not resolved one way or the other through this Agreement).

c. **No Other Claims or Rights in Action Resolved:** This Agreement shall in no manner be deemed to waive, bar, or resolve any claims or rights of the Parties in the Action except those issues specifically addressed herein. Unless otherwise allowed by contract provision or law, each party shall bear their own attorney's fees and costs relating to the matters that are settled under this Agreement. The parties make no admission of fact applicable to any other matter in the Action.

d. **Successors, Agents, and Assigns:** This Agreement shall be binding on, and inure to the benefit of the successors, heirs, devisees, agents, and assigns of the Parties hereto.

e. **Continuing Jurisdiction:** the Court in the Action will maintain jurisdiction under law, including *Code of Civil Procedure* 664.6, to enforce the provisions of this Agreement. The parties agree that this Agreement was jointly prepared by the parties.

f. **Modification:** This Agreement may be modified only by a writing signed by each party hereto. The parties acknowledge that the time-frames committing IBWD to certain specific projects in this Agreement assume IBWD will timely take all steps that it has the legal authority to take to ensure that it has the funding to timely carry out the projects and that IBWD is not legally prevented from taking those actions. Provided that IBWD has taken all such actions and demonstrated good faith in attempting to timely execute and fund such projects, but was prevented from doing so by actions beyond its control and it has met the burden of proving that it so acted in good faith (in consideration of the fact that IBWD is required to provide water service to its customers and in consideration of emergency situations) (to an arbitrator if the parties dispute such good faith in accordance with

the arbitration provision above or, for purposes of this paragraph only, an agreed-upon member of the California State Bar), then the timing of projects may be reasonably delayed for so long as the parties or arbitrator decides is required enable such funding. Reasonable deference shall be afforded the District in its decisions herein as to providing water services and making financial decisions that may impact the timing of projects set forth in this agreement.

g. Notices: Notices and communication between the Parties are required or allowed hereunder shall be made as set forth below. Either party may modify the person/place/location at which such notices are to be delivered upon communicating the same to the other party in writing by mail or personal delivery and with a copy by email. To:

1. Moores: Bill Moores and Tona Moores
3880 Sleepy Hollow
Santa Rosa, CA 95404

2. IBWD
P.O. Box 67
Manchester, CA 95459-0067

SO STIPULATED:

Dated: _____, 2016

WILLIAM MOORES

Dated: _____, 2016

TONA MOORES

Dated: _____, 2016

Authorized IBWD
Member/Manager
Irish Beach Water District

the arbitration provision above or, for purposes of this paragraph only, an agreed-upon member of the California State Bar), then the timing of projects may be reasonably delayed for so long as the parties or arbitrator decides is required enable such funding. Reasonable deference shall be afforded the District in its decisions herein as to providing water services and making financial decisions that may impact the timing of projects set forth in this agreement.

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Santa Rosa, CA 95404
- 2. IBWD
P.O. Box 67
Manchester, CA 95459-0067

SO STIPULATED:

Dated: 2/23, 2016

William Moores
WILLIAM MOORES

Dated: 2/23, 2016

Tona Moores
TONA MOORES

Dated: _____, 2016

Authorized IBWD
Member/Manager
Irish Beach Water District

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LAW OFFICE OF DUNCAN M. JAMES

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Santa Rosa, CA 95404

2. IBWD
P.O. Box 67
Manchester, CA 95459-0067

SO STIPULATED:

Dated: _____, 2016

WILLIAM MOORES

Dated: _____, 2016

TONA MOORES

Dor Harley

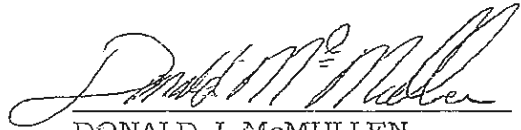
Dated: Feb 24, 2016

Authorized IBWD
Member/Manager
Irish Beach Water District

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LAW OFFICE OF DUNCAN M. JAMES

Approved as to form:

Dated: Feb 23, 2016



DONALD J. McMULLEN
Attorney for Moores

Dated: _____, 2016

MATTHEW L. EMRICK
Attorney for IBWD

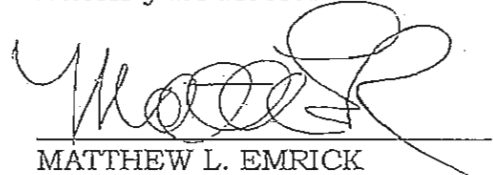
FILED BY FAX 707-468-0453
LAW OFFICE OF DUNCAN M. JAMES

Approved as to form:

Dated: Feb. 24, 2016

DONALD J. McMULLEN
Attorney for Moores

Dated: Feb 24, 2016



MATTHEW L. EMRICK
Attorney for IBWD

FILED BY FAX 707-468-0453
LAW OFFICE OF DUNCAN M. JAMES

**Superior Court of California, County of Mendocino
PROOF OF SERVICE**

Case: SCUK-CVG-2009-54665

Document Served: JUDGMENT

I declare that I am employed in the County of Mendocino, State of California; I am over the age of eighteen years and not a party to the within action. My business address is:

- Mendocino County Courthouse, 100 North State Street, Ukiah, California 95482.
- Ten Mile Branch, 700 South Franklin Street, Fort Bragg, CA 95437

I am familiar with the County of Mendocino's practice whereby each document is placed in the Attorneys' boxes, located in Room 107 of the Mendocino County Courthouse and the Public Access Room of the Ten Mile Branch, transmitted by fax or e-mail, and/or placed in an envelope that is sealed with appropriate postage is placed thereon and placed in the appropriate mail receptacle which is deposited in a U.S. mailbox at or before the close of the business day.

On the date of the declaration, I served copies of the attached document(s) on the below listed party(s) by placing or transmitting a true copy thereof to the party(s) in the manner indicated below.


Party Served	Ukiah US Mail	Ten Mile US Mail	Ukiah Attorney Box	Ten Mile Attorney Box	Inter Office Mail	Fax	E-mail
DONALD J MCMULLEN Law Offices of Donald J McMullen PO Box 1381 Ukiah, CA 95482	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
MATTHEW L EMRICK Law Offices of Matthew Emrick A Professional Corporation 6520 Lone Tree Blvd., Ste. 1009 Rocklin, CA 95765	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
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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 and that this declaration was executed at:

- Ukiah, California
- Fort Bragg, California

Date: May 16, 2017

KIM TURNER, Interim Clerk of the Court


 By: T. JOHNSON, Deputy Clerk