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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF VENTURA - EAST COUNTY DIVISION

THEODORE M. SULLIVAN and PAULA C. SULLIVAN,)
SULLIVAN,)
Plaintiffs,)
vs.)
WOOD RANCH SYCAMORE CANYON)
VILLAGE ASSOCIATION, a California)
nonprofit mutual benefit corporation; and)
DOES 1 through 25, Inclusive,)
Defendants)

CASE NO. 56-2011-00395532-CU-CO-SIM
Unlimited Civil Case
SECOND AMENDED COMPLAINT FOR:

1. Breach of Written Contract;
2. Breach of Oral Contract;
3. Negligence;
4. Nuisance;
5. Breach of Fiduciary Duty;
6. Permanent Injunction and Damages - Removal of Association Trees;
7. Declaratory Relief

Plaintiffs THEODORE M. SULLIVAN and PAULA C. SULLIVAN, hereby allege:

GENERAL ALLEGATIONS

(Against all Defendants)

1. Plaintiffs THEODORE M. SULLIVAN ("TED") and PAULA C. SULLIVAN are husband and wife who reside in Ventura County, California (collectively "Plaintiffs" or "SULLIVAN"). SULLIVAN are, and at all times mentioned in this Complaint since in or about October 1999 were, the record owners of that residential real property located at [REDACTED], Simi Valley, California 93065 ("Property"), which legal description of the Property is as follows: "LOT [REDACTED], TRACT NO. 4053, as per Map thereof recorded in Book 113,

1 Pages 63 through 82, inclusive, of Maps, in the Office of the County Recorder of said County.”
2 The Property is located within Defendant WOOD RANCH SYCAMORE CANYON VILLAGE
3 ASSOCIATION (“Association”), and is subject to its covenants, conditions, restrictions,
4 reservations, easements, and rights-of-way of record. Plaintiffs are, and at all times mentioned in
5 this Complaint since they purchased the Property were, Members in good standing of the
6 Association.

7 2. Defendant WOOD RANCH SYCAMORE CANYON VILLAGE ASSOCIATION
8 is a California nonprofit mutual benefit corporation, which was incorporated on May 5, 1989.

9 3. Plaintiffs are unaware of the names and capacities of the defendants sued
10 herein as Does 1 through 25 and therefore sue said defendants by such fictitious names.
11 Plaintiffs will amend this Complaint to allege their true names and capacities when they become
12 known. Plaintiffs are informed and believe and on that basis allege that each of the fictitiously
13 named defendants is responsible in some manner for the damages suffered by Plaintiffs as alleged
14 in this Complaint.

15 4. The Association caused to be recorded its Declaration of Covenants, Conditions
16 and Restrictions on July 29, 1988 as Instrument No. 88-107320 (“Original CC&Rs”). The
17 Association caused to be recorded its First Amendment to Declaration of Covenants, Conditions
18 and Restrictions on May 23, 1989 as Instrument No. 89-080630 (“First Amendment”). The
19 Association caused to be recorded its Restated Declaration of Covenants, Conditions and
20 Restrictions on July 22, 1998 as Instrument No. 98-121774 (“CC&Rs” or “Restated CC&Rs”).
21 Section 12.10 of the CC&Rs requires, “[e]xcept for injunctive relief, and unless the parties agree
22 to alternative dispute resolution, any dispute which arises in connection with management or
23 operation of the Association (other than the collection of Assessments) including but not limited
24 to claims to enforce or interpret the terms of the Governing Documents” to be “heard by judicial
25 reference (‘Referee’) without a jury pursuant to the provisions of Section 638 of the Code of
26 Civil Procedure.” This action falls within Section 12.10 of the CC&Rs and, among other things,
27 seeks to enforce and interpret the Governing Documents of the Association. Upon service of this
28 Second Amended Complaint (“Complaint”) on the Association, Plaintiffs, through their

1 attorneys, will cooperate with the Association, by its attorneys, to select a mutually acceptable
2 Referee.

3 5. The original developer of the Association was Olympia/Roberts Company, a
4 California general partnership, whose general partner was The Roberts Group, Inc., a California
5 corporation, with an affiliated entity known as The Roberts Group VII, Inc., a California
6 corporation, which assigned its Development Agreement with the City of Simi Valley recorded
7 on March 16, 1982, as amended, to Standard Pacific Corp., a Delaware corporation ("Standard
8 Pacific") (Olympia/Roberts Company, with its affiliated entities, and Standard Pacific
9 collectively "Developer"). Plaintiffs purchased the Property in or about October 1999 from
10 Standard Pacific. Plaintiffs are the first owners of the Property, on which they built their
11 residence. The Property is a Farm Style Ranch Lot in accordance with the Wood Ranch Specific
12 Plan (Reformatted and Published: July 1999) ("Specific Plan").

13 6. On August 7, 1989, the Developer caused to be recorded an Easement Corporation
14 Grant Deed with the Ventura County Recorder as Instrument No. 89-123061 ("Easement
15 Corporation Grant Deed"). The Easement Corporation Grant Deed granted to the Association
16 various easements for slope maintenance and fuel modification purposes, obligating the
17 Association to continuously maintain the areas described therein. Exhibit "A" requires the
18 Association to maintain a strip of land located on the Property for fuel modification zone
19 purposes. Exhibit "G" requires the Association to maintain a strip of land located on the
20 Property for slope maintenance purposes, which includes a large number of trees on a hillside,
21 including one of the Association Trees, defined in Paragraph 12 herein. Exhibit "L" requires the
22 Association to maintain a strip of land on the Property for slope maintenance purposes which
23 includes approximately 16 Tipu trees that the Association abandoned, and approximately five of
24 the Association Trees, as well as ground cover and an irrigation system that the Association
25 abandoned.

26 7. In October 1990 the City Council of the City of Simi Valley annexed Tract No.
27 4053, which includes the Property, as Zone 86, into Simi Valley Landscape District No. 1,
28 obligating the Association to properly maintain the landscaping on the Property including most, if

1 not all, of the Association Trees and other landscaping/trees on the Property ("SV1 Annexation").
2 Landscape plans for the Property and surrounding area show the location of an
3 "Assessment District" that is approximately 400 feet long and approximately 120 feet wide at the
4 widest point, bordering Wood Ranch Parkway, located on/over the Property ("Assessment
5 District"). Plaintiffs are informed and believe and on that basis allege that the Association is
6 obligated to maintain the Assessment District. Approximately three of the Association Trees are
7 located in this Assessment District, as well as three surviving Sycamore trees, and brush and
8 weeds in this area, all of which the Association has failed to maintain.

9 8. There are two "Right of Way" areas on the Property as it borders North Martha
10 Morrison Drive, located across from Warrendale Avenue and Twin Peaks Street (collectively
11 "Rights of Way"). Plaintiffs are informed and believe and on that basis allege that the
12 Association is obligated to maintain these Rights of Way. Approximately five Association Trees
13 are located in these Rights of Way. The Association has failed to clear the weeds and brush in
14 the Rights of Way.

15 9. Among other relevant provisions of the CC&Rs, Section 1.5 includes within the
16 definition of "Association," when the context requires, "its Board of Directors, officers, and duly
17 authorized representatives and agents." "Governing Documents" are defined in Section 1.18 to
18 "mean these CC&Rs, Articles of Incorporation, Bylaws, Architectural Standards, Rules and
19 Regulations, any amendments to these documents, and such other written documents, reports,
20 maps, schedules and exhibits as are required by law to be recorded, filed or issued in connection
21 with the Village." "Village" is defined in Section 1.33 as "the planned residential development
22 known as Sycamore Canyon Village situated in the master planned community known as Wood
23 Ranch in Simi Valley, California."

24 10. Section 7.03(b) of the Original CC&Rs required every "Owner" to "install and
25 thereafter maintain in attractive and viable condition front yard landscaping in accordance with
26 the provisions of this Article." Section 7.04(b) of the Original CC&Rs required the "Owner" to
27 maintain the landscaping of "all portions of a Lot which are unimproved with a Dwelling or
28 Structure" "in a clean, safe and attractive condition" Section 7.04(b) of the Original CC&Rs

1 further states: "Any Maintenance Association shall maintain any landscaped areas which it owns
2 or which are owned in common by its members in a clean, safe and attractive condition according
3 to any rules promulgated by the Board." Section 15.22 of the First Amendment states: "A
4 portion of the Initial Covered Property has been or will be annexed to property within Simi
5 Valley Landscape Maintenance District No. 1. In the event that the Association is unable or fails
6 to maintain or repair property subject to the jurisdiction of said Landscape Maintenance District,
7 the Landscape Maintenance District may perform such maintenance and/or repairs and assess the
8 costs incurred by the Landscape Maintenance District in performing such functions against the
9 Owners and their Lots." Exhibit A to the First Amendment describes the "Initial Covered
10 Property" which matches the description of Tract No. 4053, which includes the Property, in
11 Exhibit "A" to the CC&Rs. Section 4.2 of the CC&Rs requires the Association to maintain "in a
12 first-class condition," among other things, "landscaping and rail fences located on Wood Ranch
13 Parkway, Martha Morrison Drive" Section 4.3 requires the Association to "maintain the
14 Village landscaping in a first-class condition along the street sides of Martha Morrison Drive . . .
15 for the full length of those streets. The Association shall also maintain the street side landscaping
16 on both sides of Wood Ranch Parkway" Pursuant to Section 4.4, "[t]he Association shall
17 stabilize and maintain, including landscaping and watering, all major slopes and drainage
18 contours throughout the Village" Section 4.5 requires the Association to "control and
19 maintain, in an appropriate manner, as the Board shall determine, the Open Area Lots." The
20 Open Area Lots, under Section 1.24, are "those lots owned and maintained by the Association."
21 Under Section 4.6, "[t]he Association shall maintain and replace as required any . . . asset owned
22 by the Association." Section 7.1 states: "Each Member shall keep all shrubs, trees, grass and
23 plantings of every kind on his Lot, including set-back areas and planted areas between adjacent
24 sidewalks and the street curb neatly trimmed, watered, cultivated and free of trash, weeds and
25 other unsightly material." Section 7.2 states: "No tree, shrub or planting of any kind shall be
26 allowed to protrude onto a sidewalk or to overhang a sidewalk or other pedestrian walkway from
27 ground level to a height of ten feet." Section 8.6 states: "All conditions which existed prior to the
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1 recording of these Restated CC&Rs which would otherwise violate the provisions of these
2 CC&Rs, are grandfathered and exempted from compliance with these CC&Rs”

3 11. Plaintiffs are informed and believe and on that basis allege that the Association’s
4 maintenance obligations on the Property related to the Easement Corporation Grant Deed, SV1
5 Annexation, Assessment District and Rights of Way were conditions of development of the
6 Association and/or are incorporated into the Association’s maintenance obligations described in
7 the CC&Rs, constituting a written agreement with Plaintiffs.

8 12. Prior to SULLIVAN’s purchase of the Property in 1999, and prior to the recording
9 of the Restated CC&Rs, the Association, via the Developer and/or Board of Directors (“Board”),
10 planted approximately 47 trees on the Property owned at that time by the Developer or by the
11 Association (“Association Trees”). The Association owned the Association Trees before
12 SULLIVAN purchased the Property and continues to own the Association Trees to this date.
13 Some of the Association Trees were planted near Wood Ranch Parkway and others were planted
14 close to the curb of North Martha Morrison Drive. Prior to the recording of the Restated
15 CC&Rs, prior to SULLIVAN’s purchase of the Property, and continuing through the time that
16 SULLIVAN purchased the Property, the Association, by and through the Developer and/or
17 Board, was watering and maintaining all of the Association Trees, at the Association’s sole cost
18 and expense, and continued to do so after SULLIVAN purchased the Property. Plaintiffs are
19 informed and believe and on that basis allege that the Association planted the Association Trees
20 on the Property, and watered and maintained them, prior to the recording of the Restated CC&Rs,
21 and both before and after Plaintiffs purchased the Property, to beautify North Martha Morrison
22 Drive, and the surrounding neighborhood, and because of the Property’s proximity to the Open
23 Area Lots. The planting of the Association Trees on the Property did not benefit Plaintiffs in any
24 way.

25 13. In or about 1999, the Association entered into an agreement with SULLIVAN (the
26 “1999 Agreement”) whereby, in exchange for SULLIVAN agreeing to permit the Association to
27 plant additional Association Trees on the Property, the Association agreed to: (1) continue to
28 maintain all of the Association Trees on the Property in perpetuity in “first class” condition per

1 the CC&Rs at its sole cost and expense; (2) have the Association's maintenance company move
2 the above ground irrigation pipes/system off of the SULLIVAN's maintenance road and place the
3 pipes/system as close as possible to the Wood Ranch split rail fence so that the irrigation
4 pipe/system did not obstruct the SULLIVAN's maintenance road; and (3) maintain the
5 approximate 10-foot wide strip of land on the Property all along the Wood Ranch split rail fence
6 in perpetuity at its sole cost and expense ("Strip"). The 1999 Agreement was both an oral
7 agreement and a written agreement. It was an oral agreement with respect to the Association's
8 agreement to perform items (1), (2) and (3) described herein. It was a written agreement because
9 the Association was required to perform its obligations under the 1999 Agreement in accordance
10 with the CC&Rs, the Association's other Governing Documents, and the SV1 Annexation, as
11 well as operative law.

12 14. Among other provisions of the Governing Documents, the Association was
13 required to comply with Sections 7.1 and 7.2 of the CC&Rs under the 1999 Agreement, having
14 stepped into the shoes of SULLIVAN, as Members, when the Association agreed to perform
15 items (1), (2) and (3). Further, the Association's obligation to water and maintain all of the
16 Association Trees was grandfathered under Sections 7.03(b) and 7.04(b) of the Original CC&Rs,
17 Section 15.22 of the First Amendment and Section 8.6 of the CC&Rs, thereby permanently
18 relieving SULLIVAN from any present or future obligation to water and maintain the
19 Association Trees or otherwise comply with Section 7.1 or 7.2 of the CC&Rs or any other
20 provision of the Governing Documents requiring SULLIVAN to maintain the Association Trees
21 or any area surrounding the Association Trees.

22 15. The 1999 Agreement was fully executed by the parties; to wit, the Association
23 planted the additional Association Trees on the Property, moved its irrigation pipes/system to the
24 new location, continued maintenance of the original and new Association Trees and commenced
25 maintenance of the Strip, all at the Association's sole cost and expense. For approximately 21
26 years, the Association watered and maintained the Association Trees on the Property at its sole
27 cost and expense. For approximately 11 years, the Association maintained the Strip at its sole
28 cost and expense.

1 Assessment District and the Rights of Way by their actions, or omissions including, but not
2 limited to, the following:

3 (a) Failing to water and maintain the Association Trees and the Strip, as
4 required under the 1999 Agreement, Governing Documents, Easement Corporation Grant Deed,
5 SV1 Annexation, Assessment District and/or Rights of Way including, but not limited to, those
6 sections of the CC&Rs described in the General Allegations of this Complaint.

7 (b) Improperly maintaining the Association Trees including, but not limited
8 to, leaving metal deeply imbedded in the trees, causing trees to become scarred, causing trees to
9 grow with co-dominant trunks, and structural weakness; causing trees to grow with epicomic
10 branches (water sprouts or suckers) caused by bad pruning, other injuries or environmental stress;
11 causing trees to lose large amounts of bark; causing trees that are proportionately very tall and
12 slender and lean toward the street, likely caused by the trees searching for sunlight as they are
13 shadowed by the trees behind them; causing trees to become weakened from wind storms;
14 improperly wiring trees, causing them to weaken; and permitting the roots of trees to grow
15 around rebar, all of the foregoing creating an eyesore on the Property and resulting in hazardous
16 conditions on and off the Property, exposing Plaintiffs to liability, and causing most of the
17 Association Trees to become weak, non-viable and/or in need of drastic rehabilitation.

18 (c) Failing to properly and timely prune the Association Trees, causing the
19 Association Trees to protrude onto the pedestrian strip of grass/walkway (“Pedestrian Walkway”)
20 or to overhang the Pedestrian Walkway in violation of the 1999 Agreement, Governing
21 Documents, Easement Corporation Grant Deed, SV1 Annexation, Assessment District and/or
22 Rights of Way, causing a hazardous condition and exposing Plaintiffs to liability.

23 (d) Failing to cap, or properly cap, the Association pipes when the Association
24 removed its irrigation pipes/system from the Property, causing flooding to the Property in March
25 and April 2010, and preventing trucks from driving up SULLIVAN’s maintenance road.

26 (e) Spraying a vegetation killer in the area of the Strip without any
27 authorization by SULLIVAN, damaging, or potentially damaging, organically grown trees on the
28 Property which SULLIVAN planted.

1 (f) Failing to maintain the Association Trees and the Strip, causing an
2 overgrowth of the Association Trees, blocking SULLIVAN's maintenance road, and preventing
3 SULLIVAN's maintenance crew from driving their truck to the necessary locations on the
4 Property to do their work.

5 (g) Dumping debris on the Property including, but not limited to the
6 following: (i) three (3) railroad/tie wooden steps, that the Association's workers dumped on the
7 Property when they put in new steps on the other side of North Martha Morrison Drive, which the
8 Association permitted to remain on the Property for almost one year after TED notified the
9 Association in writing about this situation; (ii) many broken cement pieces from the Wood Ranch
10 split rail fence that the Association's workers dumped on the Property after repairing broken
11 fence sections; (iii) permitting the Association's workers to enter onto the Property on various
12 occasions, despite "No Trespassing" signs, to urinate and defecate on the Property, leaving,
13 among other things, Coke and other bottles containing urine on the Property, after SULLIVAN
14 notified the Association about this problem and demanded that it stop.

15 (h) Unilaterally, and wrongly, declaring that, upon the removal of the
16 irrigation pipes/system from the Property in January 2010, the Association had and has no further
17 obligation to water or maintain any of the Association Trees and Strip and that SULLIVAN own
18 all of the Association Trees.

19 (i) Unilaterally, and wrongly, demanding, upon the removal of the irrigation
20 pipes/system from the Property in January 2010, that SULLIVAN water, maintain and prune the
21 Association Trees and maintain the Strip.

22 (j) Unreasonably refusing to permit SULLIVAN to remove the Association
23 Trees from the Property, notwithstanding their condition, confirmed by professional arborists, as
24 weak, non-viable and/or in need of drastic rehabilitation.

25 (k) Harassing SULLIVAN including, but not limited to, sending a letter to
26 SULLIVAN on behalf of the Board dated August 17, 2010, demanding that SULLIVAN remove
27 overgrown weeds along "Martha Morrison North," which is not required by Owners of Farm
28 Style Ranch Lots in accordance with the Specific Plan, and demanding that SULLIVAN remove

1 so-called "debris" that was either not debris or were items described in this Paragraph 21(g) that
2 the Association dumped on the Property and which the Association was responsible for
3 removing. Plaintiffs are informed and believe and on that basis allege that the Association, via
4 the Board, sent the aforementioned letter to SULLIVAN as a disingenuous and clearly veiled
5 attempt to avoid its maintenance responsibilities on the Property.

6 (l) Harassing SULLIVAN by sending SULLIVAN a letter dated April 13,
7 2011 on behalf of the Board, stating: "It has come to the HOA's attention that the required 100-
8 foot brush clearance along the perimeter of your property, which had been cleared by the HOA in
9 the past, is the homeowner's responsibility to maintain . . . , " and requiring that SULLIVAN
10 "arrange for the brush clearance to be completed in the area by June 1, 2011 to meet the Fire
11 Department's deadline." Said letter/demand was contrary to the express language of the
12 Easement Corporation Grant Deed, recorded in August 1989, which requires the Association to
13 perform all brush clearance/fuel modification zone clearance at/on the Property. Moreover, the
14 Association, via the Board, sent this letter to SULLIVAN while, at the proximate time, arranging
15 for the Association to perform the required brush clearance/fuel modification on the property of
16 SULLIVAN's fellow "homeowner" neighbor, whose property was subject to the same Easement
17 Corporation Grant Deed. On May 6, 2011, the Board withdrew its request that SULLIVAN
18 perform the above brush clearance (but was investigating whether it would do so in the future)
19 only after receiving a letter from SULLIVAN's attorneys, wherein the Board/Association stated:
20 ". . . the Association (at its expense) has arranged for the 100-foot brush clearance to be
21 completed in this area by June 1, 2011 to meet the Fire Department's deadline." Despite the
22 foregoing promise by the Association, by and through the Board, as of June 22, 2011, the
23 Association had only completed about half of the required brush clearance and had not removed
24 the cuttings from the area where the brush clearance had been done, representing a fire hazard
25 and failure to meet the Fire Department's June 1, 2011 deadline.

26 (m) Failing to perform, or properly perform, the maintenance obligations on/at
27 the Property required under the Easement Corporation Grant Deed.

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1 (n) Failing to perform, or properly perform, the maintenance obligations on/at
2 the Property required in connection with the Assessment District.

3 (o) Failing to perform, or properly perform, the maintenance obligations on/at
4 the Property required in connection with the Rights of Way.

5 (p) Unreasonably failing and refusing to add Plaintiffs to one or more of the
6 Association's insurance policies, thereby exposing Plaintiffs to potential uninsured liability.

7 (q) Failing to perform, or properly perform, the maintenance obligations on/at
8 the Property required in connection with the SV1 Annexation.

9 22. As a result of defendants' breach of the 1999 Agreement, the Governing
10 Documents, the Easement Corporation Grant Deed, and their obligations in connection with the
11 SV1 Annexation, Assessment District and the Rights of Way, Plaintiffs have been damaged in an
12 amount and of a nature according to proof at trial.

13 23. Pursuant to Civil Code section 1354(c), and Section 12.11 of the CC&Rs,
14 Plaintiffs are entitled to recover from defendants their reasonable attorneys' fees and costs.

15 **SECOND CAUSE OF ACTION**

16 **(Breach of Oral Contract against all Defendants)**

17 24. Plaintiffs restate the allegations of paragraphs 1 through 16 of the General
18 Allegations of this Complaint and paragraphs 18 through 23 of the First Cause of Action and
19 incorporate them into this Second Cause of Action.

20 25. Within the last two years prior to the filing of this action, defendants breached the
21 1999 Agreement. Plaintiffs have performed all obligations required on their part to be performed
22 under the 1999 Agreement except those obligations, if any, which were excused as a result of
23 defendants' breach of their respective obligations under the 1999 Agreement.

24 26. As a result of defendants' breach of the 1999 Agreement, Plaintiffs have been
25 damaged in an amount and of a nature according to proof at trial.

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1 **THIRD CAUSE OF ACTION**

2 **(Negligence against all Defendants)**

3 27. Plaintiffs restate the allegations of paragraphs 1 through 16 of the General
4 Allegations of this Complaint and paragraphs 18 through 21 and paragraph 23 of the First Cause
5 of Action and incorporate them into this Third Cause of Action.

6 28. The Association was formed and now exists for the purposes set forth in the
7 Governing Documents, among them: "Be for the benefit of Members of the Association" as
8 stated on page 1 of the CC&Rs.

9 29. Pursuant to the 1999 Agreement and the applicable provisions of the Governing
10 Documents including, but not limited to those sections of the CC&Rs described in the General
11 Allegations of this Complaint, the Association was, and is, obligated to properly water and
12 maintain all of the Association Trees in a "first-class" condition, and to keep all of those
13 Association Trees, and the area around them, neatly trimmed, watered, cultivated and free of
14 trash and other unsightly material. Further, the Association was required to ensure that none of
15 the Association Trees protruded onto the Pedestrian Walkway or overhung the Pedestrian
16 Walkway from ground level to a height of ten feet. The Association also has maintenance
17 obligations on/at the Property pursuant to the Easement Corporation Grant Deed, and in
18 connection with the SV1 Annexation, Assessment District and Rights of Way.

19 30. The Association, by and through its Board, had, and has, a duty of due care to
20 Plaintiffs to perform its obligations under the 1999 Agreement, the Governing Documents,
21 Easement Corporation Grant Deed, and their obligations in connection with the SV1 Annexation,
22 Assessment District and Rights of Way, and to exercise due care for Plaintiffs, their Property, the
23 Strip, and the Association Trees which are planted on the Property.

24 31. Defendants failed to properly maintain the Association Trees and to exercise due
25 care for Plaintiffs, the Property, the Strip, and the Association Trees, under the Association's
26 control, by their actions or omissions including, but not limited to, the acts and omissions
27 described hereinabove, after repeated notice by Plaintiffs, individually, and by and through their
28 attorneys.

1 them, to secure compensation for damages sustained, thus requiring a multiplicity of suits, and
2 Plaintiffs will be regularly threatened with dumping of debris on the Property and the
3 Association's workers urinating and defecating on the Property, and will be forced to maintain
4 the Association Trees which, due to the actions and omissions of defendants, have become weak,
5 non-viable and/or in need of drastic rehabilitation, and will have to prune the overgrowth from
6 the Association Trees protruding onto the Pedestrian Walkway or overhanging the Pedestrian
7 Walkway, and perform other maintenance obligations on/at the Property which is the
8 Association's sole responsibility.

9 40. Plaintiffs have no plain, speedy, or adequate remedy at law, and injunctive relief is
10 expressly authorized by Sections 526 and 731 of the Code of Civil Procedure.

11 41. Plaintiffs are informed and believe and on that basis allege that defendants (a)
12 dumped the debris described above and in Paragraph 21(g), incorporated herein, on the Property,
13 (b) permitted the Association's workers to urinate and defecate on the Property, and leave Coke
14 and other bottles containing urine on the Property; (c) improperly maintained the Association
15 Trees, causing them to become weak, non-viable and/or in need of drastic rehabilitation, and
16 failed to prune the overgrowth from the Association Trees protruding onto the Pedestrian
17 Walkway or overhanging the Pedestrian Walkway, and then refused to maintain or prune the
18 Association Trees, forcing SULLIVAN to do so and perform other maintenance obligations on/at
19 the Property which is the Association's responsibility; and permitted those acts to continue, even
20 after SULLIVAN notified the Board of these acts and demanded that the Association workers
21 stop urinating and defecating on the Property, the debris be removed and the Association properly
22 maintain and prune the Association Trees, because the Association, by and through the Board,
23 wrongfully intended to cause injury to SULLIVAN. This was despicable, unethical and
24 unscrupulous conduct carried on by the Association, by and through the Board, with a deliberate,
25 willful and conscious disregard of Plaintiffs' rights. This was also despicable, unethical and
26 unscrupulous conduct that subjected, and subjects, Plaintiffs to cruel and unjust hardship in
27 conscious disregard of Plaintiffs' rights. It is a cruel and unjust hardship to Plaintiffs to be forced
28 to maintain, at their sole cost and expense, as well as their time and energy, the extensive

1 maintenance and pruning of the Association Trees, which is the Association's sole responsibility,
2 and to be exposed to the potential liability for the Association Trees, in their weakened and non-
3 viable state, as a result of the Association's aforementioned actions. Plaintiffs are further
4 informed and believe and on that basis allege that the Board acted with advance knowledge and
5 conscious disregard, authorization, ratification or act of oppression, fraud or malice, and
6 specifically authorized, directed and/or participated in the above-described tortious conduct of the
7 Association. Plaintiffs are further informed and believe and on that basis allege that, in
8 maintaining this nuisance, defendants, and each of them, are acting with full knowledge of the
9 consequences and damage being caused to Plaintiffs, and their conduct is willful, oppressive, and
10 malicious; accordingly, Plaintiffs are entitled to punitive damages against defendants, and each of
11 them.

12 **FIFTH CAUSE OF ACTION**

13 **(Breach of Fiduciary Duty against all Defendants)**

14 42. Plaintiffs restate the allegations of paragraphs 1 through 16 of the General
15 Allegations of this Complaint, paragraphs 18 through 23 of the First Cause of Action, paragraphs
16 25 through 26 of the Second Cause of Action, paragraphs 28 through 33 of the Third Cause of
17 Action and paragraphs 35 through 41 of the Fourth Cause of Action and incorporate them into
18 this Fifth Cause of Action.

19 43. The Association, by and through its Board, had, and has, a fiduciary relationship
20 with Plaintiffs, who are analogous to shareholders of a corporation, which gave rise to a special
21 duty of good faith on the Association's part, as the fiduciary, to comply with the 1999
22 Agreement, the Governing Documents, Easement Corporation Grant Deed, and its obligations in
23 connection with the SV1 Annexation, Assessment District and Rights of Way, and to exercise
24 due care for Plaintiffs, their Property, the Strip, and the Association Trees which are planted on
25 the Property. The Association, by and through its Board, owes this fiduciary duty to Plaintiffs,
26 individually, and not just to the homeowners as a whole. By the actions and omissions of the
27 Association, by and through its Board and other defendants, described in the General Allegations,
28 and First, Second, Third and Fourth Causes of Action of this Complaint, incorporated herein, the

1 Association and other defendants have breached their respective fiduciary duty to Plaintiffs,
2 damaging Plaintiffs in an amount and of a nature according to proof at trial.

3 44. Plaintiffs are informed and believe and thereon allege that the Association, by and
4 through the Board, among other things, (a) unilaterally, and without any notice to SULLIVAN,
5 removed its irrigation pipes/system from the Property, depriving the Association Trees of water;
6 (b) improperly maintained the Association Trees, causing them to weaken and become non-
7 viable and/or in need of drastic rehabilitation, resulting in hazardous conditions on and off the
8 Property, and exposing Plaintiffs to liability; (c) failed to properly and timely prune the
9 Association Trees, causing the Association Trees to protrude onto the Pedestrian Walkway; (d)
10 failed to cap, or properly cap, the Association pipes when the Association removed its irrigation
11 pipes/system from the Property, causing, among other things, flooding to the Property; (e)
12 dumped debris on the Property, permitted the Association's workers to urinate and defecate on
13 the Property, and leave Coke and other bottles containing urine on the Property, and permitted
14 those acts to continue, even after SULLIVAN notified the Board of these acts and demanded that
15 they stop and that the debris be removed; (f) unilaterally, and wrongly, declared that, upon the
16 removal of the irrigation pipes/system from the Property in January 2010, the Association had
17 and has no further obligation to water or maintain the Association Trees and Strip and that
18 SULLIVAN own all of the Association Trees; (g) unilaterally, and wrongly, declared that, upon
19 removal of the irrigation pipes/system from the Property in January 2010, that SULLIVAN water,
20 maintain and prune the Association Trees and maintain the Strip; (h) unreasonably refused to
21 permit SULLIVAN to remove the Association Trees from the Property, notwithstanding their
22 condition, confirmed by professional arborists, as weak, non-viable and/or in need of drastic
23 rehabilitation; (i) unreasonably failed and refused to add Plaintiffs to one or more of the
24 Association's insurance policies, thereby exposing Plaintiffs to potential uninsured liability;
25 (j) harassed SULLIVAN including, but not limited to, sending a letter to SULLIVAN on behalf
26 of the Board dated August 17, 2010, demanding that SULLIVAN remove overgrown weeds
27 along "Martha Morrison North", which is not required by Owners of Farm Style Ranch Lots in
28 accordance with the Specific Plan, and demanding that SULLIVAN remove so-called "debris"

1 that was either not debris or were items described in Paragraph 21(g) of this Complaint that the
2 Association dumped on the Property and which the Association was responsible for removing;
3 and (k) harassed SULLIVAN by sending a letter dated April 13, 2011 on behalf of the Board,
4 refusing to "arrange for the brush clearance to be completed in the area by June 1, 2011 to meet
5 the Fire Department's deadline", which was directly contrary to the express language of the
6 Easement Corporation Grant Deed, recorded in August 1989, which requires the Association to
7 perform all brush clearance/fuel modification zone clearance at/on the Property, while at the
8 proximate time arranging for the Association to perform the required brush clearance/fuel
9 modification on the property of SULLIVAN's homeowner neighbor, whose property was subject
10 to the same Easement Corporation Grant Deed; and, after the Board withdrew its request that
11 SULLIVAN perform the brush clearance, only after receiving a letter from SULLIVAN's
12 attorneys, and promised that the Association would complete the required brush clearance to
13 meet the Fire Department's June 1, 2011 deadline, failed to complete the entire brush clearance,
14 including the removal of the cuttings from the area where the brush clearance had been done, by
15 June 1, 2011, or thereafter, representing, among other things, a fire hazard, because the
16 Association, by and through the Board, wrongfully intended to cause injury to SULLIVAN. This
17 was despicable, unethical and unscrupulous conduct carried on by the Association, by and
18 through the Board, with a deliberate, willful and conscious disregard of Plaintiffs' rights. This
19 was also despicable, unethical and unscrupulous conduct that subjected, and subjects, Plaintiffs
20 to cruel and unjust hardship in conscious disregard of Plaintiffs' rights. It is a cruel and unjust
21 hardship to Plaintiffs to be subject to the Association's continued unfounded harassment, and to
22 be forced to maintain, at their sole cost and expense, as well as their time and energy, the
23 extensive maintenance and pruning of the Association Trees, as well as maintenance of other
24 landscaping on the Property which is the Association's sole responsibility, and to be exposed to
25 the potential liability for the Association Trees, in their weakened and non-viable state, as a result
26 of the Association's aforementioned actions.

27 45. Plaintiffs are informed and believe and on that basis allege that the Board acted
28 with advance knowledge and conscious disregard, authorization, ratification or act of oppression,

1 fraud or malice, and specifically authorized, directed and/or participated in the above-described
2 tortious conduct of the Association. Plaintiffs are further informed and believe and on that basis
3 allege that the acts and conduct of defendants were oppressive, fraudulent, and malicious, and
4 that defendants knew that their conduct was unjust and unreasonable to Plaintiffs, and acted with
5 full knowledge of the consequences and damage being caused to Plaintiffs. Accordingly,
6 Plaintiffs are entitled to punitive damages against defendants, and each of them.

7 **SIXTH CAUSE OF ACTION**

8 **(Permanent Injunction against all Defendants -**

9 **Removal of Association Trees)**

10 46. Plaintiffs restate the allegations of paragraphs 1 through 16 of the General
11 Allegations of this Complaint, paragraphs 18 through 23 of the First Cause of Action, paragraphs
12 25 through 26 of the Second Cause of Action, paragraphs 28 through 33 of the Third Cause of
13 Action, paragraphs 35 through 41 of the Fourth Cause of Action, and paragraphs 43 through 45
14 of the Fifth Cause of Action and incorporate them into this Sixth Cause of Action.

15 47. The acts and omissions of defendants including, but not limited to the foregoing
16 allegations; specifically (a) failing to properly water and maintain the Association Trees, Strip
17 and the surrounding Property, causing the Association Trees to become weak, non-viable and/or
18 in need of drastic rehabilitation, and exposing Plaintiffs to liability on and off the Property; (b)
19 unilaterally removing the Association's irrigation pipes/system from the Property in January 2010
20 without prior notice to SULLIVAN; (c) unilaterally, and wrongly, declaring that, upon removal
21 of the Association's irrigation pipes/system from the Property in January 2010, SULLIVAN
22 owned all of the Association Trees, and demanding that SULLIVAN maintain the Association
23 Trees at SULLIVAN's sole cost and expense; and (d) unreasonably refusing to permit
24 SULLIVAN to remove the Association Trees from the Property, notwithstanding their non-viable
25 condition, confirmed by professional arborists, were undertaken by defendants negligently and
26 carelessly and in breach of their fiduciary duty owed to Plaintiffs, and proximately caused
27 damage to Plaintiffs as alleged in this Complaint.

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1 48. Defendants' failures to properly maintain the Association Trees, coupled with the
2 "secret" removal of the irrigation pipes/system from the Property, evidences the fact that
3 defendants lacked the ability, intention and desire to comply with their obligations under the
4 1999 Agreement and Governing Documents. Having caused the Association Trees to become
5 weak, non-viable and/or in need of drastic rehabilitation, defendants have attempted to "wash
6 their hands" of their ownership and maintenance obligations, and have wrongly attempted to
7 thrust those obligations onto Plaintiffs while, at the same time, unreasonably refusing to allow
8 Plaintiffs to remove the Association Trees from the Property.

9 49. Plaintiffs are informed and believe and on that basis allege that Section 7.3 of the
10 CC&Rs, requiring the express written consent of the Architectural Review Board to destroy or
11 remove any living tree having a height of six feet or more, does not apply to SULLIVAN,
12 because (i) it was the Association, via the Developer and/or the Board, which planted the
13 Association Trees, which continue to belong to the Association; (ii) the Association, via the
14 Board, is solely responsible for maintaining the Association Trees, and causing the Association
15 Trees to become weak, non-viable and/or in need of drastic rehabilitation; (iii) Section 7.3 of the
16 CC&Rs, when drafted, was intended to apply to individual homeowners who planted trees on
17 their property, or whose predecessor homeowners had done so, with continuing maintenance
18 obligations for them, unlike the situation with SULLIVAN; and (iv); the CC&Rs did not
19 contemplate the current situation where the Association/Board is unreasonably forcing
20 SULLIVAN to continue to live with hazardous, weak and non-viable Association Trees which, in
21 the professional opinion of arborists, should be removed, and unreasonably refusing to consent to
22 their removal, while simultaneously attempting to shift all responsibility for the Association
23 Trees, and all liability for them, to SULLIVAN.

24 50. The wrongful conduct of defendants, unless and until enjoined and restrained by
25 order of this court, will cause great and irreparable injury to Plaintiffs in that they will be forced
26 to own and maintain the Association Trees at their sole cost and expense, in violation of the 1999
27 Agreement and Governing Documents, and Easement Corporation Grant Deed, SV1 Annexation,

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1 Assessment District and Rights of Way, and will be forced to do so notwithstanding the opinion
2 of professional arborists that the Association Trees should be removed from the Property.

3 51. Money damages alone for the wrongful conduct of defendants cannot adequately
4 compensate Plaintiffs for the damages currently being suffered and which are threatened because
5 the Association has demanded that Plaintiffs permanently take on the ownership and maintenance
6 responsibilities for the Association Trees without having the ability to remove them.

7 **SEVENTH CAUSE OF ACTION**

8 **(Declaratory Relief against all Defendants)**

9 52. Plaintiffs restate the allegations of paragraphs 1 through 16 of the General
10 Allegations of this Complaint, paragraphs 18 through 23 of the First Cause of Action, paragraphs
11 25 through 26 of the Second Cause of Action, paragraphs 28 through 33 of the Third Cause of
12 Action, paragraphs 35 through 41 of the Fourth Cause of Action, paragraphs 43 through 45 of the
13 Fifth Cause of Action, and paragraphs 47 through 51 of the Sixth Cause of Action and
14 incorporate them into this Seventh Cause of Action.

15 53. An actual controversy has arisen and now exists between Plaintiffs and defendants
16 concerning their respective rights and duties in that Plaintiffs contend that the Association was,
17 and is, obligated to properly water and maintain the Association Trees, and Strip, and perform
18 other maintenance obligations on/at the Property at its sole cost and expense, in perpetuity, in
19 accordance with the 1999 Agreement, the Governing Documents, Easement Corporation Grant
20 Deed, and in connection with the SV1 Annexation, Assessment District and Rights of Way and,
21 having failed to do so, that Plaintiffs should be permitted to remove the Association Trees from
22 the Property, at the Association's sole cost and expense, because the Association caused most of
23 them to become weak, non-viable and/or in drastic need of rehabilitation, whereas the
24 Association disputes these contentions and contends that the Association has no further
25 obligation to maintain the Association Trees, or perform other maintenance obligations on/at the
26 Property, and that the Plaintiffs now own and must permanently maintain the Association Trees,
27 and Strip, and perform other maintenance obligations including, but not limited to those,

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1 described in the Easement Corporation Grant Deed and SV1 Annexation, at Plaintiffs' sole cost
2 and expense.

3 54. Plaintiffs desire a judicial determination of their rights and duties, and a
4 declaration as to whether the Association is still obligated to maintain the Association Trees and
5 Strip, and perform other maintenance obligations on/at the Property, and having failed to comply
6 with its obligations under the 1999 Agreement, Governing Documents, Easement Corporation
7 Grant Deed, and in connection with the SV1 Annexation, Assessment District and Rights of
8 Way, that the Association must pay for the removal of all of the Association Trees from the
9 Property and continue to perform other maintenance obligations on/at the Property.

10 55. A judicial declaration is necessary and appropriate at this time under the
11 circumstances in order that Plaintiffs may ascertain their rights and duties regarding the
12 responsibility for the Association Trees and Strip, and other maintenance obligations on/at the
13 Property, and the Association's obligation to remove the Association Trees at its sole cost and
14 expense.

15 Plaintiffs therefore pray for judgment against defendants, and each of them, as follows:

16 **ON THE FIRST CAUSE OF ACTION:**

17 1. For compensatory damages according to proof at trial;

18 **ON THE SECOND CAUSE OF ACTION:**

19 2. For compensatory damages according to proof at trial;

20 **ON THE THIRD CAUSE OF ACTION:**

21 3. For general damages according to proof at trial;

22 **ON THE FOURTH CAUSE OF ACTION:**

23 4. For a permanent injunction enjoining defendants, and each of them, and their
24 agents, servants, contractors, and employees, from dumping debris on the Property, and
25 permitting the Association's agents and contractors from urinating and defecating on the
26 Property; and compelling defendants to permit Plaintiffs to remove all of the Association Trees
27 from the Property, at the Association's sole cost and expense, including all overgrowth from the

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1 Association Trees on the Property and off the Property that protrudes onto the Pedestrian
2 Walkway or overhangs the Pedestrian Walkway;

3 5. For general damages according to proof;

4 6. For exemplary and punitive damages;

5 **ON THE FIFTH CAUSE OF ACTION:**

6 7. For general damages according to proof;

7 8. For exemplary and punitive damages;

8 **ON THE SIXTH CAUSE OF ACTION:**

9 9. For a permanent injunction compelling defendants to permit Plaintiffs to remove
10 all of the Association Trees from the Property, at the Association's sole cost and expense,
11 including all overgrowth from the Association Trees on the Property and off the Property that
12 protrudes onto the Pedestrian Walkway or overhangs the Pedestrian Walkway;

13 **ON THE SEVENTH CAUSE OF ACTION:**

14 10. For a declaration that the Association was, and is, required to properly maintain all
15 of the Association Trees, and the Strip, in perpetuity, and perform other maintenance obligations
16 on/at the Property, and having failed to comply with its obligations under the 1999 Agreement
17 and Governing Documents, as well as the Easement Corporation Grant Deed, SV1 Annexation,
18 Assessment District and Rights of Way, that the Association must permit Plaintiffs to remove all
19 of the Association Trees from the Property at the Association's sole cost and expense, including
20 all overgrowth from the Association Trees on the Property and off the Property that protrudes
21 onto the Pedestrian Walkway or overhangs the Pedestrian Walkway, and the Association must
22 perform all of its other maintenance obligations on/at the Property;

23 **ON ALL CAUSES OF ACTION:**

24 11. For reasonable attorneys' fees and costs of suit herein pursuant to Civil Code
25 section 1354(c) and Section 12.11 of the CC&Rs;

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12. For such other and further relief as the Court deems just and proper.

Dated: October 3, 2011

SILVER & ARSHT

By: *Marsha C. Brilliant*
SAMUEL J. ARSHT, ESQ.
MARSHA C. BRILLIANT, ESQ.
Attorneys for Plaintiffs THEODORE M.
SULLIVAN and PAULA C. SULLIVAN

W:\SULLIVAN\HOA\PLEADINGS\SECOND AMENDED COMPLAINT.wpd

1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA)
3 COUNTY OF VENTURA) ss.

4 I am employed in the County of Ventura, State of California; I am over the age of eighteen
5 years and not a party to the within action; my business address is 1860 Bridgegate Street, Westlake
Village, California 91361-1409.

6 On October 4, 2011, I served the foregoing document described as **SECOND AMENDED**
7 **COMPLAINT** on the interested parties in said action, by placing a true copy thereof enclosed in a
sealed envelope, addressed as follows:

8 David Gorney, Esq.
9 David M. Gruen, Esq.
Manning & Kass
10 Ellrod, Ramirez, Trester LLP
801 South Figueroa Street, 15th Floor
11 Los Angeles, CA 90017
(213) 624-6900 Telephone
(213) 624-6999 Facsimile

12 **Attorneys for Defendant WOOD RANCH SYCAMORE CANYON VILLAGE**
13 **ASSOCIATION**

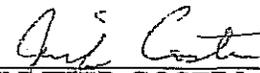
14 **[VIA MAIL]** I am "readily familiar" with the firm's practice of collecting and
15 processing correspondence for mailing. It is deposited with the United States Postal Service on the
16 same day in the ordinary course of business. I am aware that on motion of party served, service is
presumed invalid if postal cancellation date or postage meter date is more than one day after date of
deposit for mailing in affidavit.

17 I caused such envelope to be deposited in the mail at Westlake Village, California.
The envelope was mailed with postage thereon fully prepaid.

18 **[BY FACSIMILE]** I transmitted a true copy of said document by facsimile machine,
19 pursuant to Rule 2005. The facsimile machine I used complied with Rule 2003(3) and no error was
20 reported by the machine. Said facsimile transmission was directed as indicated on the fax number
listed above.

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

22 Executed on October 4, 2011, at Westlake Village, California.

23 
24 _____
JENNIFER COSTIN