

MODE = MEMORY TRANSMISSION

START=FEB-28 13:11

END=FEB-28 13:13

FILE NO. = 085

NO.	COM	ABBR/NTWK	STATION NAME/ TELEPHONE NO.	PAGES	PRG.NO.	PROGRAM NAME
-----	-----	-----------	--------------------------------	-------	---------	--------------

001	OK	S	4131190	004/004		
-----	----	---	---------	---------	--	--

-SILVER & ARSHT -

***** -805 494 4704 FAX- ***** - 805 495 4044 - *****

SILVER & ARSHT

Attorneys at Law

1860 BRIDGEGATE STREET, SUITE 100
 WESTLAKE VILLAGE, CALIFORNIA 91361-1409
 TELEPHONE (805) 495-4044
 FACSIMILE (805) 494-4704
 E-mail SANDA@SILVERANDARSHT.COM

SAMUEL J. ARSHT *
 MICHAEL J. SILVER
 BRENDA L. THOMAS
 MARSHA C. BRILLIANT
 RANDALL A. COHEN

OF COUNSEL:
 J. PETER WAKEMAN
 CERTIFIED SPECIALIST -
 ESTATE PLANNING, PROBATE
 AND TRUST LAW

MEMBER OF THE BAR

TELECOPIER TRANSMITTAL COVER SHEET

DATE: February 28, 2011

SENT TO: Wood Ranch Sycamore Canyon Village Assn.
c/o Ms. Alicia Camarillo,
Agent for Service of Process

FACSIMILE NUMBER: (805) 413-1190

THIS TELECOPY IS BEING SENT BY: Samuel J. Arsht, Esq.

FACSIMILE OPERATOR: Jenny

FROM FACSIMILE NUMBER: (805) 494-4704

NUMBER OF PAGES (including cover page): 4

COMMENTS: Request for Resolution is attached.

IF YOU DO NOT RECEIVE ALL THE PAGES, PLEASE CALL BACK AS SOON AS POSSIBLE. OUR NUMBER IS (805) 495-4044.

This message is intended only for the use of the individual or entity to which it is addressed and may contain information that is privileged, confidential or exempt from disclosure under applicable Federal or State law. If the reader of this message is not the intended recipient or the employee or agent responsible for delivering the message to the intended recipient, you are hereby notified that any dissemination, distribution, or copying of this communication is strictly prohibited.

The parties agree that a facsimile transmission of the signed Agreement constitutes an original and binding document.

___ HARD COPY TO FOLLOW

MODE = MEMORY TRANSMISSION

START=FEB-28 13:13

END=FEB-28 13:15

FILE NO. = 086

NO.	COM	ABBR/NTWK	STATION NAME/ TELEPHONE NO.	PAGES	PRG.NO.	PROGRAM NAME
001	OK	B	13109450281	004/004		

-SILVER & ARSHT

***** -805 494 4704 FAX- ***** - 805 495 4044 - *****

SILVER & ARSHT

Attorneys at Law

SAMUEL J. ARSHT *
 MICHAEL J. SILVER
 BRENDA L. THOMAS
 MARSHA C. BRILLIANT
 RANDALL A. COHEN

1860 BRIDGEGATE STREET, SUITE 100
 WESTLAKE VILLAGE, CALIFORNIA 91361-1409
 TELEPHONE (805) 495-4044
 FACSIMILE (805) 494-4704
 E-mail SANDA@SILVERANDARSHT.COM

OF COUNSEL:
 J. PETER WAKEMAN
 CERTIFIED SPECIALIST -
 ESTATE PLANNING, PROBATE
 AND TRUST LAW

*ALSO MEMBER OF PA 040

TELECOPIER TRANSMITTAL COVER SHEET

DATE: February 28, 2011

SENT TO: Adrian J. Adams, Esq.
Aide C. Ontiveros, Esq.
Adams Kessler PLC

FACSIMILE NUMBER: (310) 945-0281

THIS TELECOPY IS BEING SENT BY: Samuel J. Arsht, Esq.

FACSIMILE OPERATOR: Jenny

FROM FACSIMILE NUMBER: (805) 494-4704

NUMBER OF PAGES INCLUDING COVER SHEET: 4

COMMENTS: Request for Resolution is attached.

IF YOU DO NOT RECEIVE ALL THE PAGES, PLEASE CALL BACK AS SOON AS POSSIBLE. OUR NUMBER IS (805) 495-4044.

This message is intended only for the use of the individual or entity to which it is addressed and may contain information that is privileged, confidential or exempt from disclosure under applicable Federal or State law. If the reader of this message is not the intended recipient or the employee or agent responsible for delivering the message to the intended recipient, you are hereby notified that any dissemination, distribution, or copying of this communication is strictly prohibited.

The parties agree that a facsimile transmission of the signed Agreement constitutes an original and binding document.

__ HARD COPY TO FOLLOW

<p>ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and Address) Telephone Number</p> <p>Samuel J. Arsht, Esq. - SBN 100156 (805) 495-4044 Marsha C. Brilliant, Esq. - SBN 173798 SILVER & ARSHT 1860 Bridgegate Street, Suite 100 Westlake Village, CA 91361 E-MAIL ADDRESS sanda@silverandarsht.com</p> <p>ATTORNEY FOR (Name): Plaintiffs THEODORE M. SULLIVAN and PAULA C. SULLIVAN</p> <p>SUPERIOR COURT OF CALIFORNIA, COUNTY OF VENTURA</p> <p><input type="checkbox"/> 800 SOUTH VICTORIA AVE. VENTURA, CA 93009 <input checked="" type="checkbox"/> 3855 - F ALAMO ST. SIMI VALLEY, CA 93063-2110</p> <p>PLAINTIFF/PETITIONER THEODORE M. SULLIVAN and PAULA C. SULLIVAN DEFENDANT/RESPONDENT WOOD RANCH SYCAMORE CANYON VILLAGE ASSOCIATION</p>	<p>FOR COURT USE ONLY</p> <p>VENTURA SUPERIOR COURT FILED</p> <p>APR 08 2011</p> <p>MICHAEL D. PLANET Executive Officer and Clerk</p> <p>By: <u>M. SOTO</u>, Deputy</p>
<p>DECLARATION FOR COURT ASSIGNMENT (Family Law and Unlawful Detainer and all other General actions ONLY)</p>	
<p>56-2011-00395532-CU-CO-SIM</p>	

Family Law, Domestic Violence, Paternity, Harassment, Unlawful Detainer, and all other General Civil actions presented for filing MUST be accompanied by this declaration.

The undersigned declares that the above entitled matter is filed for proceedings in the:

East County Division, 3855 - F Alamo St., Simi Valley, Ca 93063 (Based upon Zip Code designation.)

- | | | | | | |
|---|---------------------------------|---------------------------------|---------------------------------|---------------------------------|---------------------------------|
| <input type="checkbox"/> 91301* | <input type="checkbox"/> 91302* | <input type="checkbox"/> 91304* | <input type="checkbox"/> 91307* | <input type="checkbox"/> 91360* | <input type="checkbox"/> 91362* |
| <input type="checkbox"/> 91377* | <input type="checkbox"/> 93020 | <input type="checkbox"/> 93021 | <input type="checkbox"/> 93062 | <input type="checkbox"/> 93063 | <input type="checkbox"/> 93064 |
| <input checked="" type="checkbox"/> 93065 | <input type="checkbox"/> 91363* | | | | |

(* - Civil Only)

Ventura Division, 800 S. Victoria Ave., Ventura, Ca 93009 (Venue does NOT fall within the Zip Codes above but is within Ventura County).

For the checked reason:

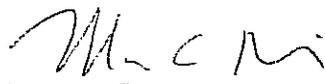
- | | |
|---|--|
| <input type="checkbox"/> Contract | Performance in the division is expressly provided for |
| <input checked="" type="checkbox"/> Equity | The cause of action arose within the division |
| <input type="checkbox"/> Eminent Domain | The property is located within the division |
| <input type="checkbox"/> Family Law | Plaintiff, defendant, petitioner or respondent resides within the division |
| <input type="checkbox"/> Harassment | Plaintiff, defendant, petitioner or respondent resides within the division |
| <input type="checkbox"/> Mandate | The defendant functions wholly within the division |
| <input type="checkbox"/> Name Change | The petitioner resides within the division |
| <input type="checkbox"/> Paternity | Plaintiff, defendant, petitioner or respondent resides within the division |
| <input type="checkbox"/> Personal Injury | The injury occurred within the division or the defendant resides within the division |
| <input type="checkbox"/> Personal Property | The property is located within the division or the defendant resides within the division |
| <input type="checkbox"/> Prohibition | The defendant functions wholly within the division |
| <input type="checkbox"/> Review | The defendant functions wholly within the division |
| <input type="checkbox"/> Title to Real Property | The property is located within the division |
| <input type="checkbox"/> Unlawful Detainer | The property is located within the division |
| <input type="checkbox"/> Domestic Violence | Plaintiff, defendant, petitioner or respondent resides with the division |
| <input checked="" type="checkbox"/> Civil not otherwise specified | <u>Defendant HOA located within Division/real property of Plaintiffs located within HOA has zipcode of 93065</u> |
- (Venue Rule Applicable)

The address of the accident, performance, party, detention, place of business, or other factor which qualifies this case for filing in the division: 406 Wood Ranch Parkway, Simi Valley, CA 93065

Name: Plaintiffs THEODORE M./PAULA C. SULLIVAN Address: Plaintiffs' real property which is part of Defendant HOA is located at 406 Wood Ranch Parkway, Simi Valley, CA 93065

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

Date: April 7, 2011



 Signature of Attorney/Party
 SILVER & ARSHT BY: MARSHA C. BRILLIANT

APR 08 2011

MICHAEL D. PLANET
Executive Officer and Clerk

By: _____ M. SOTO, Deputy

1 Samuel J. Arsht, Esq. - SBN 100156
2 Marsha C. Brilliant, Esq. - SBN 173798
3 SILVER & ARSHT
4 1860 Bridgegate Street, Suite 100
5 Westlake Village, California 91361-1409
6 Phone: (805) 495-4044
7 Fax: (805) 494-4704
8 E-mail: sanda@silverandarsht.com

Attorneys for Plaintiffs THEODORE M. SULLIVAN and PAULA C. SULLIVAN

7
8 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **COUNTY OF VENTURA - EAST COUNTY DIVISION**

10 THEODORE M. SULLIVAN and PAULA C.) CASE NO. 56-2011-00395532-CU-CO-SIM
11 SULLIVAN,)
12 Plaintiffs,) Unlimited Civil Case
13 vs.) **CERTIFICATE REGARDING**
14 WOOD RANCH SYCAMORE CANYON) **ALTERNATIVE DISPUTE**
15 VILLAGE ASSOCIATION, a California) **RESOLUTION**
16 nonproft mutual benefit corporation; and)
17 DOES 1 through 25, Inclusive,)
18 Defendants)
19)

20 I, THEODORE M. SULLIVAN, am one of the Plaintiffs in the above-referenced action. I
21 hereby certify that defendant WOOD RANCH SYCAMORE CANYON VILLAGE
22 ASSOCIATION, a California nonprofit mutual benefit corporation, refused alternative dispute
23 resolution prior to the filing of the Complaint in this action.

24
25 Dated: March 27, 2011



THEODORE M. SULLIVAN, Plaintiff

26
27 W:\SULLIVAN\HOA\CERTIFICATE.ADR.wpd

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):
Samuel J. Arsht, Esq. - SBN 100156
Marsha C. Brilliant, Esq. - SBN 173798
SILVER & ARSHT
1860 Bridgegate Street, Suite 100
Westlake Village, CA 91361
TELEPHONE NO.: (805) 495-4044 FAX NO.: (805) 494-4704

FOR COURT USE ONLY
VENTURA SUPERIOR COURT
FILED
APR 08 2011
MICHAEL D. PLANET
Executive Officer and Clerk
M. SOTO, Deputy

ATTORNEY FOR (Name): Plaintiffs THEODORE M. SULLIVAN and PAULA C. SULLIVAN
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Ventura
STREET ADDRESS: 3855-F Alamo Street
MAILING ADDRESS:
CITY AND ZIP CODE: Simi Valley, CA 93063
BRANCH NAME: East County Division

CASE NAME: SULLIVAN v. WOOD RANCH SYCAMORE CANYON VILLAGE ASSOCIATION

CIVIL CASE COVER SHEET
[X] Unlimited (Amount demanded exceeds \$25,000)
[] Limited (Amount demanded is \$25,000 or less)

Complex Case Designation
[] Counter [] Joinder
Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)

CASE NUMBER: 56-2011-00395532-CU-CO-SIM
JUDGE:
DEPT:

See attachment re: Unlimited Case. Items 1-6 below must be completed (see instructions on page 2).

- 1. Check one box below for the case type that best describes this case:
Auto Tort: [] Auto (22), [] Uninsured motorist (46)
Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort: [] Asbestos (04), [] Product liability (24), [] Medical malpractice (45), [] Other PI/PD/WD (23)
Non-PI/PD/WD (Other) Tort: [] Business tort/unfair business practice (07), [] Civil rights (08), [] Defamation (13), [] Fraud (16), [] Intellectual property (19), [] Professional negligence (25), [] Other non-PI/PD/WD tort (35)
Employment: [] Wrongful termination (36), [] Other employment (15)
Contract: [] Breach of contract/warranty (06), [] Rule 3.740 collections (09), [] Other collections (09), [] Insurance coverage (18), [X] Other contract (37)
Real Property: [] Eminent domain/Inverse condemnation (14), [] Wrongful eviction (33), [] Other real property (26)
Unlawful Detainer: [] Commercial (31), [] Residential (32), [] Drugs (38)
Judicial Review: [] Asset forfeiture (05), [] Petition re: arbitration award (11), [] Writ of mandate (02), [] Other judicial review (39)
Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403): [] Antitrust/Trade regulation (03), [] Construction defect (10), [] Mass tort (40), [] Securities litigation (28), [] Environmental/Toxic tort (30), [] Insurance coverage claims arising from the above listed provisionally complex case types (41)
Enforcement of Judgment: [] Enforcement of judgment (20)
Miscellaneous Civil Complaint: [] RICO (27), [] Other complaint (not specified above) (42)
Miscellaneous Civil Petition: [] Partnership and corporate governance (21), [] Other petition (not specified above) (43)

- 2. This case [] is [X] is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
a. [] Large number of separately represented parties d. [] Large number of witnesses
b. [] Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve e. [] Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
c. [] Substantial amount of documentary evidence f. [] Substantial postjudgment judicial supervision
3. Remedies sought (check all that apply): a. [X] monetary b. [X] nonmonetary; declaratory or injunctive relief c. [X] punitive

- 4. Number of causes of action (specify): Seven (7)
5. This case [] is [X] is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: April 7, 2011
SILVER & ARSHT BY: MARSHA C. BRILLIANT (TYPE OR PRINT NAME)
[Signature] (SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE
• Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
• File this cover sheet in addition to any cover sheet required by local court rule.
• If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
• Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

ATTACHMENT TO CIVIL CASE COVER SHEET

This Case is designated as “Unlimited” because the Fourth Cause of Action and Sixth Cause of Action of the Complaint each seeks a permanent injunction against defendants, and the Seventh Cause of Action seeks Declaratory Relief.

An action seeking permanent injunctive relief is in the jurisdiction of the superior court and is not a limited civil case. Code of Civil Procedure section 580(b) states: “Notwithstanding subdivision (a), the following types of relief may not be granted in a limited civil case: (2) A permanent injunction, except as otherwise authorized by statute . . . (4) Declaratory relief, except as authorized by Section 86.” Code of Civil Procedure section 86 (a)(7) does not include the type of declaratory relief brought in this action.

APR 08 2011

MICHAEL D. PLANET
Executive Officer and Clerk

By _____ M. SOTO, Deputy

1 Samuel J. Arsht, Esq. - SBN 100156
Marsha C. Brilliant, Esq. - SBN 173798
2 SILVER & ARSHT
1860 Bridgegate Street, Suite 100
3 Westlake Village, California 91361-1409
Phone: (805) 495-4044
4 Fax: (805) 494-4704
E-mail: sanda@silverandarsh.com

5 Attorneys for Plaintiffs THEODORE M. SULLIVAN and PAULA C. SULLIVAN
6

7
8 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **COUNTY OF VENTURA - EAST COUNTY DIVISION**

10	THEODORE M. SULLIVAN and PAULA C. SULLIVAN,	)	CASE NO. 56-2011-00395532-CU-CO-SIM
11		)	Unlimited Civil Case
12	Plaintiffs,	)	COMPLAINT FOR:
13	vs.	)	1. Breach of Written Contract;
14	WOOD RANCH SYCAMORE CANYON	)	2. Breach of Oral Contract;
15	VILLAGE ASSOCIATION, a California	)	3. Negligence;
16	nonprofit mutual benefit corporation; and	)	4. Nuisance;
17	DOES 1 through 25, Inclusive,	)	5. Breach of Fiduciary Duty;
18		)	6. Permanent Injunction and
19	Defendants	)	Damages - Removal of Association
20		)	Trees;
21		)	7. Declaratory Relief

18
19 Plaintiffs THEODORE M. SULLIVAN and PAULA C. SULLIVAN, hereby allege:

20 **GENERAL ALLEGATIONS**

21 **(Against all Defendants)**

22 1. Plaintiffs THEODORE M. SULLIVAN ("TED") and PAULA C. SULLIVAN are
23 husband and wife who reside in Ventura County, California (collectively "Plaintiffs" or
24 "SULLIVAN"). SULLIVAN are, and at all times mentioned in this Complaint since in or about
25 October 1999 were, the record owners of that residential real property located at [REDACTED]
26 [REDACTED], Simi Valley, California 93065 ("Property"), which legal description of the
27 Property is as follows: "LOT [REDACTED], TRACT NO. 4053, as per Map thereof recorded in Book 113,
28 Pages 63 through 82, inclusive, of Maps, in the Office of the County Recorder of said County."

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

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

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

14 4. The Association caused to be recorded its Restated Declaration of Covenants,
15 Conditions and Restrictions on July 22, 1998 (“CC&Rs” or “Restated CC&Rs”). Section 12.10
16 of the CC&Rs requires, “[e]xcept for injunctive relief, and unless the parties agree to alternative
17 dispute resolution, any dispute which arises in connection with management or operation of the
18 Association (other than the collection of Assessments) including but not limited to claims to
19 enforce or interpret the terms of the Governing Documents” to be “heard by judicial reference
20 (‘Referee’) without a jury pursuant to the provisions of Section 638 of the Code of Civil
21 Procedure.” This action falls within Section 12.10 of the CC&Rs and, among other things, seeks
22 to enforce and interpret the Governing Documents of the Association. Upon service of this
23 Complaint on the Association, Plaintiffs, through their attorneys, will cooperate with the
24 Association, by its attorneys, to select a mutually acceptable Referee.

25 5. The original developer of the Association was Olympia/Roberts Company, which
26 assigned its Development Agreement with the City of Simi Valley recorded on March 16, 1982,
27 as amended, to Standard Pacific Corp., a Delaware corporation (“Standard Pacific”)
28 (Olympia/Roberts Company and Standard Pacific collectively “Developer”). Plaintiffs purchased

1 the Property in or about October 1999 from Standard Pacific. Plaintiffs are the first owners of
2 the Property, on which they built their residence. The Property is a Farm Style Ranch Lot in
3 accordance with the Wood Ranch Specific Plan (Reformatted and Published: July 1999)
4 (“Specific Plan”).

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

14 7. Section 4.2 of the CC&Rs requires the Association to maintain “in a first-class
15 condition”, among other things, “landscaping and rail fences located on Wood Ranch Parkway,
16 Martha Morrison Drive” Section 4.3 requires the Association to “maintain the Village
17 landscaping in a first-class condition along the street sides of Martha Morrison Drive . . . for the
18 full length of those streets. The Association shall also maintain the street side landscaping on
19 both sides of Wood Ranch Parkway” Pursuant to Section 4.4, “[t]he Association shall
20 stabilize and maintain, including landscaping and watering, all major slopes and drainage
21 contours throughout the Village” Section 4.5 requires the Association to “control and
22 maintain, in an appropriate manner, as the Board shall determine, the Open Area Lots.” The
23 Open Area Lots, under Section 1.24, are “those lots owned and maintained by the Association”.
24 The Open Area Lots include Lots 385, 386 and 387 of Tract 4053. The Property consists of Lot
25 384 of Tract 4053. Under Section 4.6, “[t]he Association shall maintain and replace as required
26 any . . . asset owned by the Association.” Section 7.1 states: “Each Member shall keep all shrubs,
27 trees, grass and plantings of every kind on his Lot, including set-back areas and planted areas
28 between adjacent sidewalks and the street curb neatly trimmed, watered, cultivated and free of

1 trash, weeds and other unsightly material.” Section 7.2 states: “No tree, shrub or planting of any
2 kind shall be allowed to protrude onto a sidewalk or to overhang a sidewalk or other pedestrian
3 walkway from ground level to a height of ten feet.” Section 8.6 states: “All conditions which
4 existed prior to the recording of these Restated CC&Rs which would otherwise violate the
5 provisions of these CC&Rs, are grandfathered and exempted from compliance with these
6 CC&Rs”

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

24 9. In or about 1999 the Association entered into an agreement with SULLIVAN (the
25 “1999 Agreement”) whereby, in exchange for SULLIVAN agreeing to permit the Association to
26 plant additional Association Trees on the Property, the Association agreed to: (1) continue to
27 maintain all of the Association Trees on the Property in perpetuity in “first class” condition per
28 the CC&Rs at its sole cost and expense; (2) have the Association’s maintenance company move

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

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

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

26 ///

27 ///

28 ///

1 **FIRST CAUSE OF ACTION**

2 **(Breach of Written Contract against all Defendants)**

3 12. Plaintiffs restate the allegations of paragraphs 1 through 11 of the General
4 Allegations of this Complaint and incorporate them into this first cause of action.

5 13. Plaintiffs have performed all obligations required on their part to be performed
6 under the 1999 Agreement and Governing Documents of the Association except those
7 obligations, if any, which were excused as a result of defendants' breach of their respective
8 obligations under the 1999 Agreement and the Governing Documents.

9 14. In January 2010 defendants breached the 1999 Agreement and the Governing
10 Documents of the Association when the Association, unilaterally, and without any prior notice to
11 SULLIVAN, removed its irrigation pipes/system from the Property, thereby depriving the
12 Association Trees of water. The Association also improperly removed one or more of the pipes,
13 which caused flooding on the Property. Plaintiffs are informed and believe and on that basis
14 allege that the Association removed its irrigation/pipes from the Property in an attempt to deny
15 that it had watered and maintained the Association Trees on the Property and to avoid any
16 continued responsibility for the Association Trees.

17 15. Defendants also breached the 1999 Agreement and the Governing Documents by
18 their actions, or omissions including, but not limited to, the following:

19 (a) Failing to water and maintain the Association Trees and the Strip, as
20 required under the 1999 Agreement and the Governing Documents including, but not limited to,
21 those sections of the CC&Rs described in the General Allegations of this Complaint.

22 (b) Improperly maintaining the Association Trees including, but not limited
23 to, leaving metal deeply imbedded in the trees, causing trees to become scarred, causing trees to
24 grow with co-dominant trunks, and structural weakness; causing trees to grow with epicomic
25 branches (water sprouts or suckers) caused by bad pruning, other injuries or environmental stress;
26 causing trees to lose large amounts of bark; causing trees that are proportionately very tall and
27 slender and lean toward the street, likely caused by the trees searching for sunlight as they are
28 shadowed by the trees behind them; causing trees to become weakened from wind storms;

1 improperly wiring trees, causing them to weaken; and permitting the roots of trees to grow
2 around rebar, all of the foregoing creating an eyesore on the Property and resulting in hazardous
3 conditions on and off the Property, exposing Plaintiffs to liability, and causing most of the
4 Association Trees to become weak, non-viable and/or in need of drastic rehabilitation.

5 (c) Failing to properly and timely prune the Association Trees, causing the
6 Association Trees to protrude onto the pedestrian strip of grass/walkway ("Pedestrian Walkway")
7 or to overhang the Pedestrian Walkway in violation of the 1999 Agreement and Governing
8 Documents, causing a hazardous condition and exposing Plaintiffs to liability.

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

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

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

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

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

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

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

11 (k) Harassing SULLIVAN including, but not limited to, sending a letter to
12 SULLIVAN dated August 17, 2010, demanding that SULLIVAN remove overgrown weeds
13 along "Martha Morrison North", which is not required by Owners of Farm Style Ranch Lots in
14 accordance with the Specific Plan, and demanding that SULLIVAN remove so-called "debris"
15 that was either not debris or were items described in this Paragraph 15(g) that the Association
16 dumped on the Property and which the Association was responsible for removing. Plaintiffs are
17 informed and believe and on that basis allege that the Association sent the aforementioned letter
18 to SULLIVAN as a disingenuous and clearly veiled attempt to avoid its maintenance
19 responsibilities on the Property.

20 16. As a result of defendants' breach of the 1999 Agreement and the Governing
21 Documents, Plaintiffs have been damaged in an amount and of a nature according to proof at
22 trial.

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

25 ///
26 ///
27 ///
28 ///

1 comply with the 1999 Agreement and the Governing Documents, and to exercise due care for
2 Plaintiffs, their Property, the Strip, and the Association Trees which are planted on the Property.

3 25. Defendants failed to properly maintain the Association Trees and to exercise due
4 care for Plaintiffs, the Property, the Strip, and the Association Trees, under the Association's
5 control, by their actions or omissions including, but not limited to, the acts and omissions
6 described hereinabove.

7 26. Plaintiffs are informed and believe and on that basis allege that the Board
8 specifically authorized, directed and/or participated in the above-described tortious conduct of the
9 Association or specifically knew or reasonably should have known that defendants' actions could
10 cause damage to Plaintiffs but negligently failed to take or order appropriate action to avoid the
11 harm.

12 27. As a proximate result of the negligence and carelessness of defendants, and each
13 of them, Plaintiffs have been damaged in an amount and of a nature according to proof at trial.

14 **FOURTH CAUSE OF ACTION**

15 **(Nuisance against all Defendants)**

16 28. Plaintiffs restate the allegations of paragraphs 1 through 11 of the General
17 Allegations of this Complaint and paragraphs 13 through 15 (a) - (g) and paragraph 17 of the
18 First Cause of Action and incorporate them into this Fourth Cause of Action.

19 29. Defendants have dumped debris on the Property and permitted other acts to occur
20 in violation of Plaintiffs' rights including, but not limited to, the acts and omissions alleged
21 hereinabove.

22 30. The aforementioned occupation, use and maintenance of the Property by
23 defendants constitutes a nuisance within the meaning of Section 3479 of the Civil Code, in that it
24 is injurious to the health and/or is indecent or offensive to the senses and/or an obstruction to the
25 free use of the Property, so as to interfere with the comfortable enjoyment of life or property.

26 31. Plaintiffs are informed and believe and on that basis allege that, unless restrained
27 by this court, defendants will continue to maintain this nuisance and continue the acts

28 ///

1 complained of, and similar acts, and each and every act has been, and will be, without the
2 consent, against the will, and in violation of Plaintiffs' rights.

3 32. As a proximate result of the nuisance created by the defendants, and each of them,
4 Plaintiffs have been, and will be, damaged in an amount and of a nature according to proof at
5 trial.

6 33. Unless defendants, and each of them, are restrained by order of this court, it will
7 be necessary for Plaintiffs to commence many successive actions against defendants, and each of
8 them, to secure compensation for damages sustained, thus requiring a multiplicity of suits, and
9 Plaintiffs will be regularly threatened with dumping of debris on the Property and the
10 Association's workers urinating and defecating on the Property, and will be forced to maintain
11 the Association Trees which, due to the actions and omissions of defendants, have become weak,
12 non-viable and/or in need of drastic rehabilitation, and will have to prune the overgrowth from
13 the Association Trees protruding onto the Pedestrian Walkway or overhanging the Pedestrian
14 Walkway.

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

17 35. Plaintiffs are informed and believe and on that basis allege that, in maintaining
18 this nuisance, defendants, and each of them, are acting with full knowledge of the consequences
19 and damage being caused to Plaintiffs, and their conduct is willful, oppressive, and malicious;
20 accordingly, Plaintiffs are entitled to punitive damages against defendants, and each of them.

21 **FIFTH CAUSE OF ACTION**

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

23 36. Plaintiffs restate the allegations of paragraphs 1 through 11 of the General
24 Allegations of this Complaint, paragraphs 13 through 17 of the First Cause of Action, paragraphs
25 19 through 20 of the Second Cause of Action, paragraphs 22 through 27 of the Third Cause of
26 Action and paragraphs 29 through 35 of the Fourth Cause of Action and incorporate them into
27 this Fifth Cause of Action.

28 ///

1 condition, confirmed by professional arborists, were undertaken by defendants negligently and
2 carelessly and in breach of their fiduciary duty owed to Plaintiffs, and proximately caused
3 damage to Plaintiffs as alleged in this Complaint.

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

12 42. The wrongful conduct of defendants, unless and until enjoined and restrained by
13 order of this court, will cause great and irreparable injury to Plaintiffs in that they will be forced
14 to own and maintain the Association Trees at their sole cost and expense, in violation of the 1999
15 Agreement and Governing Documents, and will be forced to do so notwithstanding the opinion
16 of professional arborists that the Association Trees should be removed from the Property.

17 43. Money damages alone for the wrongful conduct of defendants cannot adequately
18 compensate Plaintiffs for the damages currently being suffered and which are threatened because
19 the Association has demanded that Plaintiffs permanently take on the ownership and maintenance
20 responsibilities for the Association Trees without having the ability to remove them.

21 **SEVENTH CAUSE OF ACTION**

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

23 44. Plaintiffs restate the allegations of paragraphs 1 through 11 of the General
24 Allegations of this Complaint, paragraphs 13 through 17 of the First Cause of Action, paragraphs
25 19 through 20 of the Second Cause of Action, paragraphs 22 through 27 of the Third Cause of
26 Action, paragraphs 29 through 35 of the Fourth Cause of Action, paragraphs 37 through 38 of the
27 Fifth Cause of Action and paragraphs 40 through 43 of the Sixth Cause of Action and incorporate
28 them into this Seventh Cause of Action.

1 45. An actual controversy has arisen and now exists between Plaintiffs and defendants
2 concerning their respective rights and duties in that Plaintiffs contend that the Association was,
3 and is, obligated to properly water and maintain the Association Trees, and Strip, at its sole cost
4 and expense, in perpetuity, in accordance with the 1999 Agreement and the Governing
5 Documents and, having failed to do so, that Plaintiffs should be permitted to remove the
6 Association Trees from the Property, at the Association's sole cost and expense, because the
7 Association caused most of them to become weak, non-viable and/or in drastic need of
8 rehabilitation, whereas the Association disputes these contentions and contends that the
9 Association has no further obligation to maintain the Association Trees, and that the Plaintiffs
10 now own and must permanently maintain the Association Trees, and Strip, at Plaintiffs' sole cost
11 and expense.

12 46. Plaintiffs desire a judicial determination of their rights and duties, and a
13 declaration as to whether the Association is still obligated to maintain the Association Trees and
14 Strip, and having failed to comply with its obligations under the 1999 Agreement and Governing
15 Documents, that the Association must pay for the removal of all of the Association Trees from
16 the Property.

17 47. A judicial declaration is necessary and appropriate at this time under the
18 circumstances in order that Plaintiffs may ascertain their rights and duties regarding the
19 responsibility for the Association Trees and Strip, and the Association's obligation to remove the
20 Association Trees at its sole cost and expense.

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

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

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

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

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

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

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

28 ///

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

2 4. For a permanent injunction enjoining defendants, and each of them, and their
3 agents, servants, contractors, and employees, from dumping debris on the Property, and
4 permitting the Association's agents and contractors from urinating and defecating on the
5 Property; and compelling defendants to permit Plaintiffs to remove all of the Association Trees
6 from the Property, at the Association's sole cost and expense, including all overgrowth from the
7 Association Trees on the Property and off the Property that protrudes onto the Pedestrian
8 Walkway or overhangs the Pedestrian Walkway;

9 5. For general damages according to proof;

10 6. For exemplary and punitive damages;

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

12 7. For general damages according to proof;

13 8. For exemplary and punitive damages;

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

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

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

20 10. For a declaration that the Association was, and is, required to properly maintain all
21 of the Association Trees, and the Strip, in perpetuity, and having failed to comply with its
22 obligations under the 1999 Agreement and Governing Documents, that the Association must
23 permit Plaintiffs to remove all of the Association Trees from the Property at the Association's
24 sole cost and expense, including all overgrowth from the Association Trees on the Property and
25 off the Property that protrudes onto the Pedestrian Walkway or overhangs the Pedestrian
26 Walkway;

27 ///

28 ///

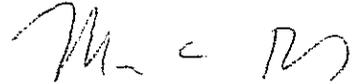
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

ON ALL CAUSES OF ACTION:

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

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

Dated: April 7, 2011 SILVER & ARSHT

By: 

SAMUEL J. ARSHT, ESQ.
MARSHA C. BRILLIANT, ESQ.
Attorneys for Plaintiffs THEODORE M.
SULLIVAN and PAULA C. SULLIVAN

W:\SULLIVAN\HOA\COMPLAINT.wpd