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WILD OAK HOMEOWNERS ASSOCIATION

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SONOMA

CIVIL - UNLIMITED JURISDICTION

LAWRENCE SIMONS,

Plaintiff,

vs.

WILD OAK HOMEOWNERS
ASSOCIATION, et al.,

Defendants.

Case No. SCV-268591

**DEFENDANT WILD OAK
HOMEOWNERS ASSOCIATION'S
OBJECTIONS TO PROPOSED
STATEMENT OF DECISION**

Action Filed: 6/11/2021

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1 **I. LEGAL AUTHORITY FOR OBJECTIONS**

2 Defendant WILD OAK HOMEOWNERS ASSOCIATION (“Defendant”) respectfully
3 objects to the Proposed Statement of Decision pursuant to California Rules of Court, Rules
4 3.1590(g), which states “Any party may, within 15 days after the proposed statement of decision
5 and judgment have been served, serve and file objections to the proposed statement of decision or
6 judgment.” The Clerk of Court in the proof of service mailed served the Proposed Statement of
7 Decision on March 29, 2024. Fifteen (15) days after March 29, 2024 is Saturday, April 13, 2024.
8 “Unless otherwise provided by law, if the last day for the performance of any act that is required
9 by these rules to be performed within a specific period of time falls on a Saturday, Sunday, or other
10 legal holiday, the period is extended to and includes the next day that is not a holiday.” (California
11 Rules of Court, Rule 1.10(b).) Therefore, the last day to file and serve the objections to the Proposed
12 Statement of Decision is Monday, April 15, 2024.

13 **II. GENERALLY**

14 This case is an example of the maxim “*Injuria sine damnum*” – Injury without damage, or
15 infringement of an absolute private right without any actual loss or damage.

16 Trial of the matter was had only on the First Cause of Action for Breach of Contract stated
17 in the Complaint. All other claims were bifurcated and not before the Court for decision.

18 Plaintiff claims, and the Court in its Proposed Statement of Decision (or “PSOD”) finds,
19 that Defendant breached a Settlement Agreement between the two. The Breach is described as a
20 failure of Defendant to obtain Plaintiff’s Cooperation in submitting documents to PG&E in
21 connection with an application to move utility meters, as part of a settlement of an action by
22 Defendant against Plaintiff to compel Plaintiff’s compliance with existing CC&Rs.

23 “A settlement agreement is a contract, and the legal principles which apply to contracts
24 generally apply to settlement contracts.” (*Monster Energy Co. v. Schecter* (2019) 7 Cal. 5th 781,
25 789, citing *Weddington Productions v. Flick* (1998) 60 Cal. App. 4th 793, 810-811.) For Plaintiff
26 to prevail on a Breach of Contract action, he must prove that the parties entered into a contract, that
27 the Defendant breached the contract, and that the breach caused harm to Plaintiff for which
28 Defendant should pay. (*See*, CACI No. 300; *see also* CACI No. 303; *Richman v. Hartley* (2014)

1 224 Cal. App. 4th 1182, 1186.)

2 As pertains to damages, Plaintiff’s Complaint prays for relief that “2. The Defendant be
3 compelled to perform its obligations under the Settlement Agreement.” I.e., Plaintiff’s Complaint
4 seeks Specific Performance. Plaintiff does not allege damage as a result of the alleged breach.
5 Consistently, during trial of the case, no evidence of monetary damage or actual harm to Plaintiff
6 was offered or admitted, and indeed the parties did not dispute that Plaintiff sustained no damage
7 by the breach of the “Cooperation Clause.”

8 During trial, Defendant took the position that 1) there was no breach – that the parties had
9 agreed on using existing utility trenching to link utility service from the existing location to
10 Plaintiff’s house; 2) that if there was a breach, it was not material because it did not go to the
11 essence of the contract; and 3) that regardless of breach, Plaintiff sustained no damage.

12 The Proposed Statement of Decision contains omissions and ambiguities regarding the
13 factual findings necessary to support a judgment.

14 **III. OBJECTIONS TO PROPOSED STATEMENT OF DECISION**

15 **1. Objection 1: Objection Proposed Statement of Decision Inadvertently Misstates**
16 **the Stipulation by the Parties at pages 5-6: “However during the testimony of the**
17 **first witness, the parties reached a stipulation that Plaintiff’s Exhibit #5 was the**
18 **settlement agreement at issue in this case.”**

19 Defendant respectfully objects that Plaintiff’s Exhibit #5 was the stipulated version of the
20 settlement agreement between the parties. Plaintiff’s Exhibit #5 is an email dated September 25,
21 2017 from Mr. Dan Stamps to Allen Nelson, Jeff Luchetti, Jackie Simons and “cc” to Kathleen
22 Muller.

23 The record demonstrates that the stipulated settlement agreement was Plaintiff’s Exhibit #2,
24 which contained the “\$70,000 Escape Clause.” (Transcript of Proceedings, December 14, 2023,
25 143:21-28 to 144:1-21.)

26 Defendant respectfully requests that this be considered or corrected with regard to the
27 Proposed Statement of Decision.

28 ///

1 **2. Objection 2: Objection Proposed Statement of Decision fails to directly address**
2 **that at the time the parties applied to PG&E for an application to move the utility**
3 **meters, the parties were in agreement to use the existing utility trench.**

4 The parties cooperated within the initial submittal and made the application to use the
5 existing utility trench. The parties cooperated in the application to use the existing trench. The use
6 of the existing trench was agreed upon by both Jeff Luchetti and Dan Stamps when they worked
7 together to submit the application. There was testimony by both Jeff Luchetti and Dan Stamps
8 regarding the same.

9 Mr. Simons also testified that he also understood that the hope was to use the existing utility
10 trench when with the first application to PG&E. (Trial Transcript, December 19, 2023, 235:9-25 to
11 236:1-22.) Mr. Simons also testified that the request to use the existing utility trench was agreed to
12 by Jeff Luchetti. (Trial Transcript, December 19, 2023, 250:20-25 to 251:1-2.)

13 **3. Objection 3: Objection that the Proposed Statement of Decision fails to address**
14 **Witness Dan Stamps' Testimony that Plaintiff Lawrence Simons Contended that**
15 **PG&E Would Not Let Him Move His Utility Meters since approximately 2014.**

16 Defendant respectfully objects that the Proposed Statement of Decision fails to address that
17 Dan Stamps' testimony that Plaintiff Lawrence Simons contend that PG&E would not let him move
18 his utility meters. Dan Stamps testified as follows:

19 The Court: Okay. So when you say the first thing you had to do was
20 to determine whether PG&E would allow the meters to be placed at
21 the house, this means either literally on the house in a close proximity
22 on the house?

23 The Witness: Yeah, or in an agreement upon agreement. Yeah, close
24 proximity to the house.

25 The Court: Okay. Thank you. Go ahead.

26 The Witness: Yeah, So the first thing we had to determine, Mr.
27 Simons had contended all along that PG&E would not allow him to
28 take the meters to the house.

 And that was kind of where we had started back in '14, back in 2014.
 And so the first thing to determine is whether or not PG&E would
 allow him to take the meters to the house.

 By Ms. Pavone:

 Q: So when you say Mr. Simons contended that PG&E would not
 allow him to take meters to the house, what did you understand that

1 to be? What did you understand that to be?

2 A: That they wouldn't allow him to take it to the house. That's what
3 he had mentioned.

4 (Transcript of Proceedings, December 19, 2023, 301:16-25 to 302:1-13.) This is relevant because
5 it goes to that Defendant was trying to establish that Plaintiff's utility meters could even be moved
6 to the house.

7 Defendant respectfully requests that the Court consider this evidence in its decision.

8 **4. Objection 4: Objection that the Proposed Statement of Decision omits the**
9 **Testimony of Plaintiff Lawrence Simons Where Testified that He was Told by Jeff**
10 **Luchetti That PG&E Would Not Allow the Existing Trench to Be Used**

11 Mr. Simons testified that Jeff Luchetti represented that PG&E did not want to use the
12 existing trench because PG&E was afraid that water infiltration would go into the pipes and
13 possibly short with water infiltration into the conduits. (Trial Transcript, December 19, 2023,
14 252:7-17 and at 254:21-25 to 255:1-12.) Mr. Simons also testified that his understanding was that
15 PG&E was not going to allow Mr. Simons to move the utility meters at all because of water
16 infiltration. (Trial Transcript, December 19, 2023, 254:18-24.)

17 Mr. Simons' own testimony established that he had a motive not to move his utility meters.

18 **5. Objection 5: Objection that the Proposed Statement of Decision fails to address**
19 **Testimony by Dan Stamps that His Dealings with Jeff Luchetti were contentious.**

20 The Proposed Statement of Decision fails to address the testimony by Dan Stamps that his
21 dealings with Jeff Luchetti were contentious.

22 Dan Stamps testified that his interactions with Jeff Luchetti were contentious.

23 Q: One of the things that you had testified to on the 19th,
24 yesterday, was regarding your interactions with Mr.
25 Luchetti.

26 And I think you described him as contentious. And I wanted
27 to go back to this because you had used this example of
28 asking a lot but giving up little.

You had a night to think about it. Have you refreshed your
recollection at all as to -- or are you able to give any
examples of -- of what you meant by asking a lot, giving up
little?

A: Well, I think I also mentioned that I don't think I ever left a

1 meeting with -- with Luchetti that my blood wasn't steaming
2 a little bit.
3 He was just kind of a bulldog which would probably be a
4 great person to have in the role that he played for Mr.
5 Simons, but he was very difficult to deal with. We would go
6 in with somewhat simple questions. You know, he was a
7 contractor. Right? And we were not trying to have a difficult
8 time with him. We were trying to get along with him. And -
9 - and, you know, just his attitude -- I don't know. His attitude
10 was contentious.

11 (Trial Transcript, December 20, 2023, 431:26-28 to 432:1-19.) Mr. Stamps' testimony also
12 demonstrates that Defendant was attempting to get the meters moved and work with Mr. Luchetti,
13 who was appearing to make the process difficult.

14 Defendant respectfully requests that the Court consider this testimony by Mr. Stamps.

15 **6. Objection 6: Objection that the Proposed Statement of Decision Inadvertently**
16 **misstates Testimony at Page 9, Lines 22-25: "Additionally, a contractor, Mr.**
17 **Nelson, was one of the WOHA Architecture Review Committee 'ARC' board**
18 **members, and testimony made clear that he played an active role in estimating the**
19 **cost to move the meters"**

20 The Proposed Statement of Decision inadvertently misstates testimony on page 9, lines 22-
21 25 ""Additionally, a contractor, Mr. Nelson, was one of the WOHA Architecture Review
22 Committee 'ARC' board members, and testimony made clear that he played an active role in
23 estimating the cost to move the meters."

24 There was testimony that Mr. Allen Nelson was on the architectural review committee, but
25 there was no testimony that Defendant can recall that Mr. Allen Nelson "played an active role in
26 estimating the cost to move the meters."

27 Dave Nebel testified as follows:

28 Q: Did the association consult with any contractor in preparing these
revisions to the RFP?

A: The only contractor we had was that -- at that point was Allen
Nelson. We used his expertise.

(Trial Transcript, December 20, 2023, 460:1-4.)

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Dave Nebel testified as follows:

Q: Do you recall having spoken with any contractor besides Mr. Nelson in the preparation of this RFP?

A: Any other contractor, no.

Q: Was Mr. Nelson ever retained or hired by the association for purposes of this project?

A: No.

(Trial Transcript, December 20, 2023, 465:20-26.) Defendant is not aware of any testimony that Mr. Allen Nelson was actively involved in estimated the cost to move the meters. However, the testimony established from Dan Stamps that Mr. Nelson was a member of Defendant’s architectural review committee. (Trial Transcript, December 20, 2023, 394:4-21.) Defendant’s understanding of Mr. Nelson’s role was reviewing Jeff Luchetti’s RFP and not estimating the cost to move the meters.

Defendant respectfully objects to the inadvertently characterization of Mr. Nelson and respectfully requests the Court to reconsider that Mr. Nelson played an active role in estimating the costs to move the utility meters.

7. Objection 7: Objection that the Proposed Statement of Decision is Vague and Ambiguous That the Utility Meters Stay in Their Current Location when the “\$70,000 Escape Clause” was Never Triggered Because the Parties Had Never Put Bids Out to Their Respective Contractors

The Court reasons that the remedy in this case is for the utility meters remain in their current location with screening consistent in the settlement agreement. However, there was evidence that the parties never had bids submitted by their respective contractors pursuant to the “\$70,000 Escape Clause.”

Dave Nebel testified as follows:

Q: Okay. Did the association ever get a bid from the contractor on their -- your final RFP?

A: Not to my knowledge.

(Trial Transcript, December 20, 2023, 468:4-6.)

Q: Okay. And let me see here. Did you actually send any RFP to Mr.

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Cimino?

A: I don't recall, but I think we did. But I'm not 100 percent sure.

Q: Okay. Did you contact any other contractor regarding performing the scope of work pursuant to – or this project pursuant to any RFP?

A: Restate that again.

Q: Sure.

Did you contact any other contractor to perform work as shown in the PG&E drawings we looked at?

A: With an RFP?

Q: With an RFP.

A: No, not to my knowledge we didn't.

Q: Okay.

And you said Mr. Cimino never got back to you; is that correct?

A: Correct.

(Trial Transcript, December 20, 2023, 471:10-28.) However, the Court's reasoning was vague as to the reasoning related to the consequences of the \$70,000 Escape Clause, why it would apply, and under what theory of remedy the \$70,000 Escape Clause would apply such as specific performance, rescission or reformation.

“[I]n the law of contracts, the theory is that the party injured by breach should receive as nearly as possible the equivalent of the benefits of performance.” (*Copenbarger v. Morris Cerullo World Evangelism, Inc.* (2018) 29 Cal.App.5th 1, 9.) The parties bargained (1) to apply if PG&E would allow the utility meters to be moved because Plaintiff contended that they could not be and (2) use the existing trench to save on expenses. This is what the parties bargained for. The evidence showed that PG&E would allow the utility meters to be moved to Plaintiff's house and that the existing utility trench could be used despite Plaintiff's contention that the utility meters could not be moved to his residence.

Defendant respectfully asks for clarification on the reasoning as to why the “\$70,000 Escape Clause” is activated in order to get to Plaintiff leaving his meters where they are currently located.

8. Objection 8: Objection in that the Proposed Statement of Decision Fails to Consider Jeff Luchetti's Testimony that Parts of His Own Scope of Work were not part of the PG&E Greenbook Requirements.

The Proposed Statement of Decision files to consider Jeff Luchetti's testimony that parts of his scope of work were not part of the PG&E Greebook Requirements. Jeff Luchetti testified that

1 certain items in his RFP were not part of PG&E requirements. (Transcript of Proceedings,
2 December 14, 2023, 152:24-28 to 157:1-8.)

3 Timothy Staggs also testified that certain items in his proposal to move the utility meters
4 would not be included under PG&E requirements as noted in Exhibit DD-608, 609, 610 (Transcript
5 of Proceedings, December 21, 2023, 616:1 to 622:1-20.)

6 Defendant ask that the Court respectfully consider this evidence in its Proposed Statement
7 of Decision.

8 **9. Objection 9: Objection that the Proposed Statement of Decision mischaracterizes**
9 **Testimony at Page 10, Lines 14-17 as stated: “Once WOHA made clear that they**
10 **no longer intended to cooperate with Plaintiff but rather were going to dictate the**
11 **process, Plaintiff no longer had any reason to assume that WOHA would attempt**
12 **to abide by the terms of the settlement agreement.”**

13 Defendant respectfully objects to the Proposed Statement of Decision that Defendant “made
14 clear that they no longer intended to cooperate with Plaintiff but rather were going to dictate the
15 process” at page 10, lines 14-17. There was testimony from both Dan Stamps and Dave Nebel that
16 they were attempting to work with Jeff Luchetti regarding the meter relocation. Defendant does not
17 recall direct testimony from any of the Defendant’s former committee members, Dan Stamps and
18 Dave Nebel, that specifically stated that Defendant was going to dictate the process.

19 Defendant ask that the Court respectfully consider that there was a lack of testimony that
20 Defendant was absolutely going to dictate the process.

21 **10. Objection 10: Objection that the Proposed Statement of Decision mischaracterizes**
22 **testament as stated at Page 10, Lines 10-12 regarding that “WOHA, unilaterally**
23 **and without cooperation as required by the contract, submitted their own**
24 **proposed application to PG&E for a new location for the meters.”**

25 Plaintiff’s Exhibit 33 concerns a letter from Mr. Dave Nebel to Mr. Luchetti regarding the
26 meeting and PG&E evaluating the Timothy Staggs drawings. The evidence demonstrated in
27 Plaintiff Exhibit 33 that Timothy Staggs’s drawings discussed with PG&E was a mere inquiry into
28 whether the existing trench could even be used. The letter, in relevant part, states:

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At our meeting with PG&E’s electric and gas inspectors and our contractor Staggs Construction on 4/30/19, we reviewed the site and the original project plans, and learned from their expertise that with some modifications, we can utilize the current/existing trench for this project rather than digging new trench lines to the home.

The project manager, Mike Miller, is out of the office until July so PG&E has named Eric Cookman to take his place for this project. I talked with Eric to as if the original project plans need to be re-drawn and he said that since the gas and electric inspectors understand and approved the change to use the current/existing trench and are familiar with the modifications required, new drawings would not be needed.

There are several options that you could choose from to learn more details.

Then, in the same Plaintiff’s Exhibit #33, Mr. Nebel gave Jeff Luchetti contact information for Eric Cookman at PG&E and to be able to discuss it with their contractor Staggs Construction. The contract was silent as to what was defined as a “submittal document” and an inquiry into whether something can even be done should be allowed by both parties.

The PSOD at p. 9, ll. 4-7 mischaracterizes WOHA’s April 2019 on-site meeting with PG&E representatives as an application for a new meter location. Dave Nebel’s 5/17/19 correspondence to Jeff Luchetti documents that WOHA met with PG&E’s electric and gas inspectors, where they reviewed the site and the original project plans, and learned that the current/existing trench could be used (as the parties had originally intended), rather than digging new trench lines. PG&E project manager Eric Cookman indicated that “new drawings would not be needed.”

Subsequently, on May 22, 2019, Mr. Luchetti requested a written plan and scope of work for the new service routing. Luchetti requested that there be new PG&E design approval showing the proposed route design. The evidence makes it clear that a) the finding in PSOD at p.5, ll. 3-7. “Mr. Luchetti was never apprised of the discussions that took place during those [April 2019] meetings,” is contradicted by the evidence, and b) that the new design drawings (produced by Tim Staggs) were produced at the request of Jeff Luchetti, and submitted to PG&E for the design approval requested by Luchetti.

This also goes back to Mr. Simons representing that the utility meters could not be moved from their current location since approximately 2014.

1 **11. Objection 11: Objects to Vagueness and Ambiguity in regarding Proposed**
2 **Statement of Decision on Page 22, Lines 8-10: “The Court orders the meters to**
3 **remain in their current location and be covered by screening consistent with the**
4 **surrounding area as outlined in Section 5(B)(v) of the settlement agreement.”**

5 Defendant would like clarification as to the Court’s order for the “meters to remain in their
6 current location and be covered by screening consistent with the surrounding area as outlined in
7 Section 5(B)(v) of the settlement agreement.” Per Section 5(B)(v) of the settlement agreement, it
8 states, “Simons shall submit proposed screening consistent with the surrounding area subject to
9 controlling governing documents. The Bd of WOHA shall not unreasonably withhold approval.”

10 Pursuant to the CC&R and Architectural Rules of Defendant, Mr. Simons would have to
11 apply for his screening to be approved by the architectural review committee. Defendant is unclear
12 how Defendant or even Plaintiff is supposed to be able to comply with this section of the Proposed
13 Statement of Decision should approved by the Court as an actual Statement of Decision. Defendant
14 asks for clarification if Plaintiff would pick the screening consistent with the surrounding area and
15 if Defendant would approve it in accordance with its Conditions, Covenants and Restrictions.

16 Defendant please respectfully requests clarification regarding the compliance by both
17 parties to promote judicial economy and allow the parties guidance on how to perform the Court’s
18 order.

19 **12. Objection 12: Objects to Lack of Factual Findings regarding Materiality.**

20 The Court must make findings sufficient to support Materiality if it determines the breach
21 to be material. The PSOD fails to do so. A breach is said to be a “Material” breach if the failure
22 to perform goes to the heart of the contractual agreement. When the purpose of the contract is not
23 fulfilled and the contracting party does not get the product or service that he bargained and
24 negotiated for, this is considered to be a material breach. A breach is a non-material breach if the
25 failure to perform is related to a tangential aspect of the agreement, but the fundamental purpose of
26 the contract was fulfilled.

27 The PSOD identifies the fundamental purpose of the settlement agreement in several places.
28 Page 1 identifies the underlying lawsuit which alleged Simons’ failure to comply with Wild Oak

1 Homeowners Association CC&Rs by not having a PG&E meter installed on the residence located
2 on his property. The complaint was settled with a Settlement Agreement with an operative goal to
3 move the utility meters from their current location to the Simons residence. (Plaintiff's Exhibit #2,
4 PSOD pgs. 2-3.) There really isn't any question but that the essence of the contract was to move
5 the meters to the house.

6 There also isn't really any evidence identified that WOHA was doing anything other than
7 trying to move the meters to the house, in the same fashion and manner that the parties had
8 contemplated at the time the Settlement Agreement was entered into; i.e., by using the existing
9 utility trench. The uncontradicted evidence is that upon learning that PG&E would allow the
10 existing utility trench to be used, WOHA communicated with Luchetti, who asked for plans and a
11 scope of work. It took a period of time for WOHA to obtain plans from Staggs; when those plans
12 were received, they were forwarded to Luchetti and PG&E (although PG&E had indicated that
13 there was no need for updated plans). Thereafter, the evidence shows that WOHA, through Staggs,
14 continued to pursue placement of the meters on the house, as had been agreed to by
15 Simons/Luchetti.

16 While it is true that the parties included a cooperation clause with respect to PG&E
17 submittals, to stretch that clause to cover site visits and communications between WOHA and
18 PG&E goes beyond what the parties apparently contemplated. While it might have been courteous
19 or professional for WOHA to have extended an invitation to Luchetti to participate in on-site
20 meetings, the Settlement Agreement did not contemplate such. Had the parties so intended, they
21 could have easily have included a "communications" term. They chose only a "submittals" term,
22 and as such, the failure to include Luchetti in the meetings involving Dave Nebel and PG&E cannot
23 be considered a breach. Defendant respectfully requests that the Proposed Statement of Decision
24 take that into consideration in preparation of a final Statement of Decision.

25 **13. Objection 13: The Proposed Remedy Does Not Bear a Relationship To The Alleged**
26 **Breach.**

27 Throughout the trial, the Court repeatedly discussed the difficulty in finding a Remedy in
28 the event of a Breach. It was fairly clear that Plaintiff sustained no monetary damages if a breach

1 (whether material or non-material) had occurred. Plaintiff’s prayer was for Specific Performance
2 – i.e., an equitable remedy. And specifically, Plaintiff prayed that “The Defendant be compelled
3 to perform its obligations under the Settlement Agreement.” Plaintiff did not seek to terminate the
4 agreement, or have the agreement be declared a nullity. The remedy imposed by the PSOD was
5 not contemplated by the Plaintiff. Under the circumstances of the case, the proposed remedy
6 imposed by the PSOD is *punitive*.

7 At the close of trial, Defense argued that Specific Performance was limited the Court
8 ordering Defendant to perform the obligation that it had failed to perform – which of course is the
9 nature of Specific Performance. In this case, the obligation was to cooperate with Plaintiff in
10 making submittals to PG&E. Finding material breach, Specific Performance would result in an
11 Order that WOHA perform that obligation. With no monetary damages, the Court could award
12 Nominal Damages (i.e., \$1.00), or Specific Performance.

13 The PSOD selects a remedy – leave the meters where they are and put screening around
14 them – which bears no relationship to the breach.

15 The PSOD states that Specific Performance is no “remedy,” but rather it would be a “do
16 over.” While that is subject to debate, the difficulty in finding a remedy may be more a function
17 of whether there was a material breach by Wild Oak, or whether the breach was more an Infraction
18 than a Felony. Some breaches are truly *injuria sine damnum*.

19 This is not a case where a punitive remedy should be imposed. The proposed remedy would
20 require that the meters be left in a location which violates Wild Oak CC&Rs, as well as City of
21 Santa Rosa Municipal Code provisions. It is *unfair*, which is contrary to the goal of Equity. The
22 remedy is objected to because there are no factual findings which justify or explain it, nor does the
23 law appear to make provisions for it.

24 **14. Objection 14: The Statement in the PSOD That Plaintiff Would Be Required to**
25 **Spend an “Incredible Expense” or “\$250,000+” if Nominal Damages Were to be**
26 **Awarded is Hyperbolic.**

27 At Page 22, the PSOD states: “In WOHA’s proposed remedy of nominal damages, the Court
28 would award Plaintiff nominal damages and then the CC&Rs would require Plaintiff to move the

1 meters at incredible expense despite WOHA’s breach. Plaintiff would be punished and forced to
2 spend \$250,000+ to move the meters despite WOHA’s breach. That is not an equitable remedy.”

3 Of course, nominal damages is an award of damages, not an equitable remedy. But the
4 suggestion of incredible expense or \$250,000+ also does not consider that the remedy sought,
5 Specific Performance, would require the parties to perform the Settlement Agreement, which
6 parenthetically, is what the parties bargained for. The Settlement Agreement contains a provision
7 which limits the cost of the movement of the meters. Under Specific Performance, the “do-over”
8 would presumably result in the outcome contemplated by the parties when they entered into the
9 agreement, which includes participation in the cost of the project by WOHA, and a limit on the
10 overall expense.

11 That is an equitable remedy.

12 **IV. CONCLUSION**

13 In conclusion, Defendant respectfully submits the aforementioned objections and requests
14 for clarifications.

15 Dated: April 15, 2024

McNAMARA, AMBACHER, WHEELER,
HIRSIG & GRAY LLP

17
18 By: 

19 Daniel L. Sullivan, Jr.
20 Sarah I. Pama
21 Attorneys for Defendant
22 WILD OAK HOMEOWNERS ASSOCIATION
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1 CERTIFICATE OF SERVICE VIA E-MAIL

2 I hereby declare that I am a citizen of the United States, am over the age of eighteen years,
3 and not a party to the within action. My electronic notification address is:
4 liesl.swartwood@mcnamaralaw.com.

5 On this date, I electronically served the foregoing **DEFENDANT WILD OAK**
6 **HOMEOWNERS ASSOCIATION'S OBJECTIONS TO PROPOSED STATEMENT OF**
7 **DECISION** based on a court order or an agreement of the parties to accept service by e-mail or
8 electronic transmission, I caused the documents to be sent to the persons at the e-mail addresses
9 listed below. I did not receive, within a reasonable time after the transmission, any electronic
10 message or other indication that the transmission was unsuccessful.

11
12 **Attorneys for Plaintiff, Lawrence Simons:**

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20 E-Mail: pavone@zp-law.net

21 I declare under penalty of perjury under the laws of the State of California that the foregoing
22 is true and correct and that this declaration was executed on April 15, 2024 at Fairfield, California.

23 

24 LIESL C. SWARTWOOD