

1 SUSAN BURNS COCHRAN (SBN 136268)
SUZANNE E. KENNEDY (SBN 251339)
2 8401 Laguna Palms Way
Elk Grove, CA 95758
3 Telephone: (916) 683-7111
Facsimile : (916) 627-4001
4

FILED
Superior Court Of California,
Sacramento
07/16/2010
ebemardo
By _____, Deputy
Case Number:
34-2009-80000332

5 Attorneys for CITY OF ELK GROVE
6

7 SUPERIOR COURT OF THE STATE OF CALIFORNIA
8 FOR THE COUNTY OF SACRAMENTO
9

10 FRIENDS OF MADEIRA, an
unincorporated association,
11
12 Petitioner,

13 v.

14 CITY OF ELK GROVE, BY AND
THROUGH THE CITY COUNCIL, and
DOES 1 through XXX,
15
16 Respondents.

17 WAL-MART STORES, INC. a Delaware
corporation; and DOES XXXI-XXXXX,
18 inclusive.
19 Real Parties in
Interest.

Case No. 34-2009-80000332

Assigned to: Hon. Lloyd G. Connelly,
Dept. 33

**CITY OF ELK GROVE, BY AND
THROUGH THE CITY COUNCIL'S
ANSWER TO FIRST AMENDED
PETITION FOR WRIT OF MANDATE**

[First Amended Petition Filed: 6/24/2010]

20
21 Respondent, City of Elk Grove, by and through the City Council ("City") answers
22 the First Amended Petition (the "Petition") for Writ of Mandate filed by Petitioner Friends
23 of Madeira ("Petitioner") as follows:

24 In response to the first unnumbered paragraph of the Petition, City alleges that the
25 Petition speaks for itself. Except as expressly admitted herein, City denies each and every
26 allegation contained in the first unnumbered paragraph of the Petition.
27
28

1 **PARTIES**

2 1. In response to the allegations contained in Paragraph 1 of the Petition, City
3 lacks sufficient information or belief to admit or deny the allegations contained therein
4 and, on that basis, denies each and every allegation contained in Paragraph 1.

5 2. City admits the allegations contained in Paragraph 2 of the Petition.

6 3. In response to the allegations contained in Paragraph 3 of the Petition, City
7 lacks sufficient information or belief to admit or deny the allegations contained therein
8 and, on that basis, denies each and every allegation contained in Paragraph 3.

9 4. In response to the allegations contained in Paragraph 4 of the Petition, City
10 admits that Wal-Mart submitted a land use application to the City for the construction of a
11 Wal-Mart store. City alleges that Wal-Mart's February 25, 2009 project submittal
12 application, which is part of the administrative record, speaks for itself. Except as
13 expressly admitted herein, City denies each and every allegation contained in Paragraph 4.

14 5. In response to the allegations contained in Paragraph 5 of the Petition, City
15 lacks sufficient information or belief to admit or deny the allegations contained therein
16 and, on that basis, City denies each and every allegation contained in Paragraph 5.

17 6. In response to the allegations contained in Paragraph 6 of the Petition, City
18 lacks sufficient information or belief to admit or deny the allegations contained therein
19 and, on that basis, City denies each and every allegation contained in Paragraph 6.

20 **GENERAL ALLEGATIONS**

21 7. In response to the allegations contained in Paragraph 7 of the Petition, City
22 admits that in or about 2008, Taylor Village Sacramento Investments Partners LP proposed
23 to develop a shopping center known as The Vineyard at Madeira located at the southeast
24 corner of Bruceville Road and Whitelock Parkway in the City of Elk Grove. City also
25 admits that the main anchor tenant proposed for the shopping center was a Target store.
26 Except as expressly alleged herein, City lacks sufficient information or belief to admit or
27 deny the remainder of the allegations contained therein and, on that basis, City denies each
28 and every allegation in Paragraph 7.

1 8. In response to the allegations contained in Paragraph 8 of the Petition, City
2 admits that City Council adopted Resolution 2008-152, which is part of the administrative
3 record in this matter, and that this Resolution speaks for itself. City also alleges that
4 Chapter 23.74 of the Elk Grove Municipal Code and the Zoning Code speak for
5 themselves. Except as expressly alleged herein, City lacks sufficient information or belief
6 to admit or deny the allegations contained therein and, on that basis, City denies each and
7 every allegation in Paragraph 8.

8 9. In response to the allegations contained in Paragraph 9 of the Petition, City
9 alleges that City Council Resolution 2008-152, which is part of the administrative record
10 in this matter, speaks for itself. Except as expressly alleged herein, City lacks sufficient
11 information or belief to admit or deny the allegations contained therein and, on that basis,
12 City denies each and every allegation in Paragraph 9.

13 10. In response to the allegations contained in Paragraph 10 of the Petition, City
14 alleges that City Council Resolution 2008-152, which is part of the administrative record
15 in this matter, speaks for itself. Except as expressly alleged herein, City lacks sufficient
16 information or belief to admit or deny the allegations contained therein and, on that basis,
17 City denies each and every allegation in Paragraph 10.

18 11. In response to the allegations contained in Paragraph 11, City admits
19 allegations contained therein and, on that basis, City denies each and every allegation in
20 Paragraph 11.

21 12. In response to the allegations contained in Paragraph 12 of the Petition, City
22 admits each and every allegation in Paragraph 12. City further alleges that Resolution
23 2008-152, which is a part of the administrative record speaks for itself.

24 13. In response to the allegations contained in Paragraph 13, City lacks sufficient
25 information or belief to admit or deny the allegations contained therein and, on that basis,
26 City denies each and every allegation in Paragraph 13.

27
28

1 14. In response to the allegations contained in Paragraph 14 of the Petition, City
2 lacks sufficient information or belief to admit or deny the allegations contained therein
3 and, on that basis, denies each and every allegation contained in Paragraph 14.

4 15. In response to the allegations contained in Paragraph 15 of the Petition, City
5 alleges that the City Council Meeting Agenda, Transcript, and Minutes for February 11,
6 2009, which are part of the administrative record in this matter, speaks for themselves.
7 City also alleges that, as of February 11, 2009, Wal-Mart had not submitted a
8 development application. Except as expressly alleged herein, City denies each and every
9 allegation in Paragraph 15.

10 16. In response to the allegations contained in Paragraph 16 of the Petition, City
11 alleges that the transcript of the City Council Meeting on February 11, 2009, which is part
12 of the administrative record in this matter, speaks for itself. Except as expressly alleged
13 herein, City denies each and every allegation in Paragraph 16.

14 17. In response to the allegations contained in Paragraph 17 of the Petition, City
15 alleges that Wal-Mart's counsel's February 24, 2009 letter and Wal-Mart's project
16 submittal, which are part of the administrative record in this matter, speak for themselves.
17 Except as expressly alleged herein, City denies each and every allegation in Paragraph 17.

18 18. In response to the allegations contained in Paragraph 18 of the Petition, City
19 alleges that Petitioners' counsel's March 3, 2009 letter, which is part of the administrative
20 record in this matter, speaks for itself. Except as expressly alleged herein, City denies each
21 and every allegation in Paragraph 18.

22 19. In response to the allegations contained in Paragraph 19 of the Petition, City
23 lacks sufficient information or belief to admit or deny the allegations contained therein
24 and, on that basis, City denies each and every allegation in Paragraph 19.

25 20. In response to the allegations contained in Paragraph 20 of the Petition, City
26 alleges that the City Planning Department's letter of March 26, 2009, which is part of the
27 administrative record in this matter, speaks for itself. City also alleges that the City
28

1 Planning Department approved Wal-Mart's Land Use Approvals. Except as expressly
2 alleged herein, City denies each and every allegation in Paragraph 20.

3 21. In response to the allegations contained in Paragraph 21 of the Petition, City
4 denies each and every allegation in Paragraph 21.

5 22. In response to the allegations contained in Paragraph 22 of the Petition, City
6 alleges that, consistent with CEQA's requirements, the City did not prepare an Initial Study
7 or conduct a separate environmental review after Wal-Mart submitted its February 25,
8 2009 application. Except as expressly alleged, City denies each and every allegation in
9 Paragraph 22.

10 23. In response to the allegations contained in Paragraph 23 of the Petition, City
11 alleges that, consistent with CEQA's requirements, the City did not file a "notice of
12 exemption" or "notice of determination" with respect to the City's decision to approve
13 Wal-Mart's February 25, 2009 application. Except as expressly alleged, City denies each
14 and every allegation in Paragraph 23.

15 24. In response to the allegations contained in Paragraph 24 of the Petition, City
16 alleges that, consistent with CEQA's requirements, no documents regarding Wal-Mart's
17 February 25, 2009 application were filed with the Governor's Office of Planning and
18 Research "State Clearinghouse." Except as expressly alleged, City denies each and every
19 allegation in Paragraph 24.

20 25. In response to the allegations contained in Paragraph 25 of the Petition, City
21 admits that it did not inform Plaintiff's counsel of the March 26, 2009, decision. City
22 alleges that, consistent with state law, City was not required to provide notice of its
23 decision as the March 26, 2009, Approval Letter was not the type of approval contained
24 within Government Code section 65092 and Public Resources Code section 21092.2.

25 26. In response to the allegations contained in Paragraph 26 of the Petition, City
26 alleges that Petitioner's counsel's letter of August 7, 2009, which is part of the
27 administrative record in this matter, speaks for itself. Except as expressly alleged herein,
28 City denies each and every allegation in Paragraph 26.

1 27. In response to the allegations contained in Paragraph 27 of the Petition, City
2 alleges that the City's September 9, 2009 letter, which is part of the administrative record
3 in this matter, speaks for itself. Except as expressly alleged herein, City denies each and
4 every allegation in Paragraph 27.

5 28. In response to the allegations contained in Paragraph 28 of the Petition, City
6 alleges that the transcript of the City Council Meeting on February 11, 2009, which is part
7 of the administrative record in this matter, speaks for itself. Except as expressly alleged
8 herein, City denies each and every allegation in Paragraph 28.

9 29. In response to the allegations contained in Paragraph 29, City denies each
10 and every allegation in Paragraph 29.

11 30. In response to the allegations contained in Paragraph 30 of the Petition, City
12 lacks sufficient information or belief to admit or deny the allegations contained therein
13 and, on that basis, City denies each and every allegation in Paragraph 30.

14 31. In response to the allegations contained in Paragraph 31 of the Petition, City
15 alleges that CEQA, State Planning and Zoning law, and other applicable laws speak for
16 themselves. Except as expressly alleged herein, City denies each and every allegation in
17 Paragraph 31.

18 32. In response to the allegations contained in Paragraph 32 of the Petition, City
19 alleges that the City Planning Department's letter of March 26, 2009, which is part of the
20 administrative record in this matter, speaks for itself. Except as expressly alleged herein,
21 City denies each and every allegation in Paragraph 32.

22 33. In response to the allegations contained in Paragraph 33, City lacks sufficient
23 information or belief to admit or deny the allegations contained therein and, on that basis,
24 denies each and every allegation contained in Paragraph 34.

25 34. In response to the allegations contained in Paragraph 34, City denies each
26 and every allegation in Paragraph 34.

27
28

1 45. In response to the allegations contained in Paragraph 45 of the Petition, City
2 alleges that the state law governing a city's approval of a development application speaks
3 for itself. Except as expressly alleged herein, City denies each and every allegation in
4 Paragraph 45.

5 46. In response to the allegations contained in Paragraph 46 of the Petition, City
6 alleges that the Elk Grove Zoning Code speaks for itself. Except as expressly alleged
7 herein, City denies each and every allegation in Paragraph 46.

8 47. In response to the allegations contained in Paragraph 47 of the Petition, City
9 alleges that Exhibit B to the Petition, which is City's Counsel's February 24, 2009 letter, is
10 part of the administrative record in this matter and speaks for itself. Except as expressly
11 alleged herein, City denies each and every allegation in Paragraph 47.

12 48. In response to the allegations contained in Paragraph 48 of the Petition, City
13 alleges that the Elk Grove Zoning Code speaks for itself. Except as expressly alleged
14 herein, City denies each and every allegation in Paragraph 48.

15 49. In response to the allegations contained in Paragraph 49 of the Petition, City
16 alleges that the Elk Grove Zoning Code speaks for itself. Except as expressly alleged
17 herein, City denies each and every allegation in Paragraph 49.

18 50. In response to the allegations contained in Paragraph 50 of the Petition, City
19 alleges that the Elk Grove Zoning Code speaks for itself. Except as expressly alleged
20 herein, City denies each and every allegation in Paragraph 50.

21 51. In response to the allegations contained in Paragraph 51 of the Petition, City
22 alleges that the Elk Grove Zoning Code speaks for itself. Except as expressly alleged
23 herein, City denies each and every allegation in Paragraph 51.

24 52. In response to the allegations contained in Paragraph 52 of the Petition, City
25 alleges that the Elk Grove Zoning Code speaks for itself. Except as expressly alleged
26 herein, City denies each and every allegation in Paragraph 52.

27
28

1 53. In response to the allegations contained in Paragraph 53 of the Petition, City
2 alleges that the Elk Grove Zoning Code speaks for itself. Except as expressly alleged
3 herein, City denies each and every allegation in Paragraph 53.

4 54. In response to the allegations contained in Paragraph 54 of the Petition, City
5 alleges that City's February 25, 2009 project submittal application, which is part of the
6 administrative record, speaks for itself. Except as expressly alleged herein, City denies
7 each and every allegation in Paragraph 54.

8 55. In response to the allegations contained in Paragraph 55 of the Petition, City
9 alleges that the Elk Grove Zoning Code speaks for itself. Except as expressly alleged
10 herein, City denies each and every allegation in Paragraph 55.

11 56. In response to the allegations contained in Paragraph 56 of the Petition, City
12 denies each and every allegation in Paragraph 56.

13 57. In response to the allegations contained in Paragraph 57 of the Petition, City
14 alleges that City Council Resolution 2008-152, which is part of the administrative record,
15 speaks for itself. Except as expressly alleged herein, City denies each and every allegation
16 in Paragraph 57.

17 58. In response to the allegations contained in Paragraph 58 of the Petition, City
18 alleges that the administrative record and City Council Resolution 2008-152, which is part
19 of the administrative record, speaks for themselves. Except as expressly alleged herein,
20 City denies each and every allegation in Paragraph 58.

21 59. In response to the allegations contained in Paragraph 59 of the Petition, City
22 denies each and every allegation in Paragraph 59.

23 60. In response to the allegations contained in Paragraph 60 of the Petition, City
24 denies each and every allegation in Paragraph 60.

25 61. In response to the allegations contained in Paragraph 61 of the Petition, City
26 denies each and every allegation in Paragraph 61.

27 62. In response to the allegations contained in Paragraph 62 of the Petition, City
28 alleges that it did not seek a new CUP or modification for the Project after submitting its

1 February 25, 2009 application because such acts were unnecessary. Except as expressly
2 alleged herein, City denies each and every allegation in Paragraph 62.

3 63. In response to the allegations contained in Paragraph 63 of the Petition, City
4 alleges that the studies described in Paragraph 63 were not prepared because they were
5 unnecessary. Except as expressly alleged herein, City denies each and every allegation in
6 Paragraph 63.

7 64. In response to the allegations contained in Paragraph 64 of the Petition, City
8 denies each and every allegation in Paragraph 64.

9 **SECOND CAUSE OF ACTION**

10 **(Abuse of Discretion: Failure to Conduct Supplemental Environmental Review in**
11 **Violation of CEQA)**

12 65. In response to the allegations contained in Paragraph 65 of the Petition, City
13 reincorporates the allegations of Paragraph 1 through 64 of this Answer.

14 66. In response to the allegations contained in Paragraph 66 of the Petition, City
15 alleges that the California Environmental Quality Act speaks for itself. Except as
16 expressly alleged herein, City denies each and every allegation in Paragraph 66.

17 67. In response to the allegations contained in Paragraph 67 of the Petition, City
18 alleges that the California Environmental Quality Act speaks for itself. Except as
19 expressly alleged herein, City denies each and every allegation in Paragraph 67.

20 68. In response to the allegations contained in Paragraph 68 of the Petition, City
21 alleges that the Public Resources Code § 21166 speaks for itself. Except as expressly
22 alleged herein, City denies each and every allegation in Paragraph 68.

23 69. In response to the allegations contained in Paragraph 69 of the Petition, City
24 alleges that the Public Resources Code § 15162(a) speaks for itself. Except as expressly
25 alleged herein, City denies each and every allegation in Paragraph 69.

26 70. In response to the allegations contained in Paragraph 70 of the Petition, City
27 alleges that the Public Resources Code § 15163 speaks for itself. Except as expressly
28 alleged herein, City denies each and every allegation in Paragraph 70.

1 71. In response to the allegations contained in Paragraph 71 of the Petition, City
2 alleges that *Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124
3 Cal.App.4th 1184, 1213 speaks for itself. Except as expressly alleged herein, City denies
4 each and every allegation in Paragraph 71.

5 72. In response to the allegations contained in Paragraph 72 of the Petition, City
6 alleges that *American Canyon Community United for Responsible Growth v. City of*
7 *American Canyon* (2006) 145 Cal.App.4th 1062, 1075 speaks for itself. Except as
8 expressly alleged herein, City denies each and every allegation in Paragraph 72.

9 73. In response to the allegations contained in Paragraph 73 of the Petition, City
10 alleges that the administrative record and Wal-Mart's project submittal, which is part of the
11 administrative record, speaks for themselves. Except as expressly admitted, City lacks
12 sufficient information or belief to admit or deny the allegations contained therein and, on
13 that basis, City denies each and every allegation in Paragraph 73.

14 74. In response to the allegations contained in Paragraph 74 of the Petition, City
15 denies each and every allegation in Paragraph 74.

16 75. In response to the allegations contained in Paragraph 75 of the Petition, City
17 denies each and every allegation in Paragraph 75.

18 76. In response to the allegations contained in Paragraph 76 of the Petition, City
19 denies each and every allegation in Paragraph 76.

20 77. In response to the allegations contained in Paragraph 77 of the Petition, City
21 alleges that full environmental review pursuant to CEQA of development at the proposed
22 Project site at the Vineyard at Madeira was duly performed prior to Wal-Mart's project
23 submittal in February 2009. City further alleges that no additional environmental review
24 was necessary, and consequently no additional review occurred after February 2009.
25 Except as expressly alleged herein, City denies each and every allegation in Paragraph 77.

26 78. In response to the allegations contained in Paragraph 78 of the Petition, City
27 alleges that full environmental review pursuant to CEQA of development at the proposed
28 Project site at the Vineyard at Madeira was duly performed prior to Wal-Mart's project

1 submittal in February 2009. City further alleges that no additional environmental review
2 was necessary, and consequently no additional review occurred after February 2009.
3 Except as expressly alleged herein, City denies each and every allegation in Paragraph 78.

4 79. In response to the allegations contained in Paragraph 79 of the Petition, City
5 denies each and every allegation in Paragraph 79.

6 80. In response to the allegations contained in Paragraph 80 of the Petition, City
7 denies each and every allegation in Paragraph 80.

8 81. In response to the allegations contained in Paragraph 81 of the Petition, City
9 denies each and every allegation in Paragraph 81.

10 **AFFIRMATIVE DEFENSES**

11 **FIRST AFFIRMATIVE DEFENSE**

12 **(Failure to State a Claim)**

13 82. The Petition and each and every cause of action pled therein fails to state
14 facts sufficient to constitute a cause of action,

15 **SECOND AFFIRMATIVE DEFENSE**

16 **(Failure to Exhaust Administrative Remedies)**

17 83. The Petition and each and every cause of action pled therein is barred due to
18 Petitioner's failure to exhaust administrative remedies. Issues sought to be raised by the
19 Petition are barred by the common law doctrine of exhaustion of administrative remedies
20 and by Public Resources Code section 21177.

21 **THIRD AFFIRMATIVE DEFENSE**

22 **(Lack of Standing)**

23 84. The Petition and each and every cause of action pled therein is barred due to
24 the fact that the Petitioner lacks standing to sue City for the claims alleged in the Petition.
25
26
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

FOURTH AFFIRMATIVE DEFENSE

(Statute of Limitations)

85. The Petition and each and every cause of action pled therein is barred by any and all applicable statute of limitations, including Government Code section 65009 and Public Resources Code section 21167.

FIFTH AFFIRMATIVE DEFENSE

(Laches)

86. The Petition and each and every cause of action pled therein is barred by the doctrine of laches.

SIXTH AFFIRMATIVE DEFENSE

(Ripeness)

87. The Petition and each and every cause of action pled therein is barred because they are not ripe for judicial review.

SEVENTH AFFIRMATIVE DEFENSE

(Estoppel)

88. The Petition and each and every cause of action pled therein is barred by the doctrine of estoppel.

EIGHTH AFFIRMATIVE DEFENSE

(Unclean Hands)

89. Petitioner, by reason of its conduct, is barred from the relief sought in the Petition, or any relief whatsoever, based on the doctrine of unclean hands.

NINTH AFFIRMATIVE DEFENSE

(Waiver)

90. The Petition and each and every cause of action pled therein is barred by the doctrine of waiver.

1 **TENTH AFFIRMATIVE DEFENSE**

2 **(Injunctive Relief is Not Available)**

3 91. Injunctive relief is not available to Petitioner because it cannot satisfy any of
4 the requisite elements for such relief.

5 **ELEVENTH AFFIRMATIVE DEFENSE**

6 **(Equitable Relief is Not Available)**

7 92. Equitable relief is not available to Petitioner because of its unclean hands and
8 because it cannot satisfy the elements necessary for such relief.

9 **TWELFTH AFFIRMATIVE DEFENSE**

10 **(Mootness)**

11 93. The Petition and each and every cause of action pled therein is barred by the
12 doctrine of mootness.

13 **THIRTEENTH AFFIRMATIVE DEFENSE**

14 **(Failure to Timely File Proof of Prior Service)**

15 94. The Petition and each and every cause of action pled therein is barred by
16 virtue of Petitioner's failure to comply with Public Resources Code section 21167.5 which
17 requires the filing concurrently with its initial pleading a proof of prior service upon
18 Respondents of a written notice of commencement of this action.

19 **FOURTEENTH AFFIRMATIVE DEFENSE**

20 **(No Beneficial Interest)**

21 95. The Petition and each and every cause of action pled therein is barred by
22 virtue of the fact that Petitioner lacks any beneficial interest to pursue this action.
23 Petitioner is not acting in the public's interest, but rather in furtherance of private economic
24 interests outside of CEQA's purview.

25 **FIFTEENTH AFFIRMATIVE DEFENSE**

26 **(Undiscovered Affirmative Defenses Reserved)**

27 96. The Petition and each cause of action pled therein is set forth in conclusory
28 or uncertain terms, thereby precluding City from fully anticipating all affirmative defenses

1 and/or privileges and immunities that may be applicable; accordingly, the right to add
2 additional defenses, immunities and privileges is hereby reserved.

3 WHEREFORE, City prays for judgment as follows:

4 97. That the writ of mandate be denied with prejudice;

5 98. That all relief requested in the Petition be denied with prejudice;

6 99. That judgment be entered in favor of Respondents and City and against
7 Petitioner;

8 100. That City be awarded its costs of suit, and

9 101. For such other and further relief as the Court may deem just and proper.

10 DATED: July 15, 2010

11 CITY OF ELK GROVE

12
13
14 By



15 SUSAN BURNS COCHRAN
16 City Attorney, City of Elk Grove

17
18
19
20
21
22
23
24
25
26
27
28

1 I, SHERRIE PERITORE, declare:

2 I am a resident of the State of California and over the age of eighteen years, and not a party to the
3 within action; my business address is 8401 Laguna Palms Way, Elk Grove, CA 95758. On July
4 16, 2010, I served the within document(s):

5 *City of Elk Grove, By and Through the City*
Council's, Answer to Amended Petition for writ of
Mandate

6 by transmitting via facsimile from (916) 321-4555 the above listed document(s)
7 without error to the fax number(s) set forth below on this date before 5:00 p.m.

8 by placing the document(s) listed above in a sealed envelope with postage thereon
9 fully prepaid, in the United States mail at Sacramento, California addressed as set
10 forth below.

11 by causing personal delivery by _____ of the document(s) listed above
12 to the person(s) at the address(es) set forth below.

13 by placing the document(s) listed above in a sealed Federal Express envelope and
14 affixing a pre-paid air bill, and causing the envelope to be delivered to a Federal
15 Express agent for delivery

16 by personally delivering the document(s) listed above to the person(s) at the
17 address(es) set forth below.

18
19 **Arthur J. Friedman**
20 **Sheppard, Mullin, Richter & Hampton**
21 **Four Embarcadero Center, 17th Floor**
22 **San Francisco, CA 94111-4109**

23 **Brett S. Jolley**
24 **Herum Crabtree**
25 **2291 West March Lane, Ste. B-100**
26 **Stockton, CA 95207**

27 I am readily familiar with the firm's practice of collection and processing correspondence
28 for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same
day with postage thereon fully prepaid in the ordinary course of business. I am aware that on
motion of the 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.

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

Executed on July 16, 2010 at Elk Grove, California.



SHERRIE PERITORE

RECEIVED
IN DROP BOX

2010 JUL 16 PM 3:42

DOWNTOWN COURTHOUSE
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SACRAMENTO