

NOV 02 2015

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2 Timothy W. Brown, CSB #158388  
3 3890 – 11<sup>th</sup> Street, Suite 111  
4 Riverside, CA 92501  
5 (951) 781-0767; FAX: (951) 781-0436

BY   
CASSANDRA DELATORRE, DEPUTY

Attorneys for Defendants, GEORGE HATT AND DONNA HATT

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
9 **FOR THE COUNTY OF SAN BERNARDINO**

11 ARROWHEAD WOOD ARCHITECTURAL )  
12 COMMITTEE, INC., A CALIFORNIA )  
13 CORPORATION. )

13 Plaintiff,

14 vs

15 GEORGE HATT, DONNA HATT )

16 Defendants. )  
17 \_\_\_\_\_ )

CASE NO. CIVDS 1400240

Assigned for all Purposes to:  
The Honorable Judge David Cohn  
Dept: S-37

OPPOSITION TO PLAINTIFF  
ARROWHEAD WOODS  
ARCHITECTURAL COMMITTEE  
MEMORANDUM OF COSTS AND  
MOTION FOR ATTORNEY FEES;  
DECLARATION OF TIMOTHY W.  
BROWN

[Objection to Declarations of Stacey Lippert  
and John Wurm filed Concurrently  
Herewith]

DATE: November 16, 2015  
TIME: 8:30 a.m.  
DEPT: S-37

Action Date: April 11, 2014

23 **TO THIS HONORABLE COURT, TO ALL PARTIES AND THEIR ATTORNEYS OF**  
24 **RECORD HEREIN:**

25 **INTRODUCTION**

26 Plaintiff seeks a determination that it was the prevailing party. Nothing could be further from  
27 the truth. Plaintiff's initial Complaint sought as its First Cause of Action, Declaratory Relief, as its  
28

1 Second Cause of Action, Injunction and its Third Cause of Action, Damages, in the amount of  
2 \$37,200.00.

3 In its First Amended Complaint, Plaintiff dropped its Declaratory Relief action no longer  
4 seeking a determination that it had authority to enforce the Declaration of Restrictions (CC & Rs),  
5 essentially what the Declaration of John Wurm indicates took him the most time and billing.  
6 Injunction became the First Cause of Action and the Second Cause of Action for Damages was  
7 reduced to \$12,400.00.  
8

9 The Court denied Plaintiff's claim for an Injunction ruling that there was no evidence that  
10 Defendants would remove additional trees. The Court awarded damages to Plaintiff in the amount of  
11 \$50.00, the permit fee, stating that Plaintiff had not proved its case that it had been damaged beyond  
12 the loss of the permit fee.  
13

#### 14 FACTS

15 In Plaintiff's Motion for Attorney fees it argues that it had to oppose two Motions to  
16 bifurcate. While technically true, the Court denied the first motion because Plaintiff had filed its  
17 First Amended Complaint. The two Motions were essentially identical. (Pl. Motion for attorney  
18 fees, Page 2, lines 12-13).  
19

20 Plaintiff argues that Defendants challenged the validity of the CC & R's. Defendants never  
21 challenged any of the Quit Claims or other chain of documents which lead up to the CC & R's. In  
22 fact, as the Court noted in its Findings after Trial attached to Plaintiff's Motion as Exhibit E, "I also  
23 appreciate the professionalism that both of you have shown in stipulating to the admission of  
24 exhibits and making sure this case is decided on its merits..." (Page 1, Lines 19-22). Defendants  
25 stipulated to each and every document which lead up to the CC & R's. The only evidence submitted  
26 by Defendants which challenged Plaintiff's existence was that introduced for a determination that the  
27  
28

1 Proxies were not valid when filed by AWAC. To this the Court made a one word Ruling: "Denied."  
2 Plaintiff filed no written opposition.

3 **OPPOSITION TO HEADNOTE I OF PLAINTIFF'S MOTION FOR ATTORNEY FEES.**  
4

5 Plaintiff wrongly asserts that because it had a net monetary recovery (\$50.00) that it is the  
6 prevailing party. Plaintiff totally dismisses that it failed on its most important First Cause of Action  
7 for Injunction. In its First Amended Complaint, Plaintiff states at page three, paragraph 10:  
8 "Plaintiff has no adequate remedy at law for the injuries which will be suffered as a result of  
9 Defendant's violation of the restrictions in said Declaration. Therefore, Plaintiff is entitled to  
10 injunctive relief." (Exhibit A, attached)  
11

12 In Plaintiff's Second Cause of Action it sought "damages to be proven at trial, believed to be  
13 not less than twelve thousand four hundred dollars...." In its PRAYER on this Second Cause of  
14 Action, Plaintiff requested "damages to be proven at trial, but not less than twelve thousand four  
15 hundred dollars...." (Exhibit A)  
16

17 Now Plaintiff argues that it is the prevailing party because it received its permit fee of \$50.00.  
18 It received far less than "not less than twelve thousand four hundred dollars...."

19 In Plaintiff's First Cause of Action for Injunction, Plaintiff requested "a temporary restraining  
20 order, a preliminary injunction and a permanent injunction." (Exhibit A) Plaintiff lost on all three  
21 counts. Defendants were the prevailing party on this most important Cause of Action.

22 Plaintiff cites Zamora v Shell Oil Co. (1997) 55 Cal.App.4<sup>th</sup> 204) as its basis for this Court  
23 to determine that it is the prevailing party. Interestingly for defense counsel, this is a construction  
24 defect case. The primary holding in *Zamora* was that there was no damage for a negligence cause of  
25 action by the owners of homes without plumbing leaks. (*Zamora* at page 211, B)  
26

27 What Plaintiff fails to include in its analysis of *Zamora* is that the jury found defendant  
28

1 strictly liable and awarded plaintiffs \$222,282 in damages. Of course plaintiffs were the prevailing  
2 party in *Zamora*. The court went on to analyze the fact that other settling defendants had paid  
3 settlements which covered this award. The jury found defendants strictly liable and rendered an  
4 award. That is the clear fact and therefore *Zamora* is easily distinguished from the facts here.

5  
6 Plaintiff argues that it is “clearly” the prevailing party. Again Plaintiff ignores its First Cause  
7 of Action wherein it sought an Injunction because there was no legal remedy. Plaintiff argues that it  
8 obtained the primary relief sought because the CC & R’s were deemed valid. However, Plaintiff  
9 ignores that it dropped that Cause of Action from its original Complaint. In its First Amended  
10 Complaint it sought two things: an Injunction because there was no legal remedy and Damages not  
11 less than \$12,400.00. Plaintiff did not seek a ruling in its First Amended Complaint that it exists.  
12 That issue was not tried before this court.

13  
14 **OPPOSITION TO HEADNOTE III OF PLAINTIFF’S MOTION FOR**  
15 **ATTORNEY FEES**

16  
17 In Plaintiff’s Motion for Attorney Fees, Headnote III, Plaintiff states that it was the party  
18 recovering the greater relief. (Plaintiff’s motion, page 6, lines 23-24). Again Plaintiff veers off  
19 course. Its First Amended Complaint sought two forms of relief: Injunction and Damages. The First  
20 and therefore most important Cause of Action was denied. The requested damages of \$12,400.00  
21 were denied. The Court ruled that AWAC had not been damaged by the removal of one half-dead  
22 tree. (Exhibit E to Plaintiff’s Motion, page 5 lines 20-21; page 6 lines 18-25)

23  
24 At page nine of Plaintiff’s motion it again makes the argument that the majority of Plaintiff’s  
25 case involved establishing the Declarations of Restrictions. Again Plaintiff ignores that Defendants  
26 stipulated to evidence of all of the Quit Claims and to the Declaration itself. Plaintiff did use an  
27 entire trial day with respect to these documents, but they were already stipulated to be admissible.

1 Defendants filed a motion for a determination that the proxies were invalid, a motion that Plaintiff  
2 did not even file an Opposition to. The Court denied that motion stating that the proxies were  
3 ballots.  
4

5 **OPPOSITION TO HEADNOTE IV OF PLAINTIFF'S MOTION FOR**

6 **ATTORNEY FEES**

7 Plaintiff argues that it may be entitled to attorney fees because it was acting as a private  
8 Attorney General. Code of Civil Procedure Section 1021.5 only conveys that standing when there  
9 is enforcement of an important right affecting public interest and there is a significant benefit  
10 conferred on the general public or large class of persons.  
11

12 Testimony ad nauseam was presented at trial that the Arrowhead Woods is a private  
13 community and only those persons living in that area have rights to use Lake Arrowhead. There was  
14 no benefit conferred on the general public because the general public is not allowed on the Lake or  
15 its shoreline. The lawsuit was an action to stop further tree cutting focused on one homeowner and  
16 one tree. Whether or not a significant benefit was conferred upon the Arrowhead Woods community  
17 is certainly up for debate based on the general reaction of people in the community when they  
18 learned that AWAC had lost its court battle against these defendants. Most expressed hope that  
19 AWAC would now "get its act together."  
20

21 **CONCLUSION**

22 Defendants are the prevailing parties. Plaintiff sought an Injunction which was denied. This  
23 was the primary relief sought per its First Amended Complaint. Plaintiff sought monetary damages  
24 even though it stated in its First Amended Complaint First Cause of Action that there was no legal  
25 remedy. Plaintiff sought "not less than" \$12,400.00 and received its \$50.00 permit fee. Plaintiff is  
26

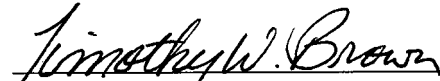
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in no way the prevailing party.

DATED: October 30, 2015

BULLARD, BROWN & BEAL LLP



\_\_\_\_\_  
Timothy W. Brown, Esq.  
Attorneys for Defendants  
GEORGE HATT and DONNA HATT

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Attorneys for Defendants, GEORGE HATT AND DONNA HATT

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF SAN BERNARDINO**

ARROWHEAD WOOD ARCHITECTURAL )  
COMMITTEE, INC., A CALIFORNIA )  
CORPORATION. )  
  
Plaintiff, )  
  
vs )  
  
GEORGE HATT, DONNA HATT )  
  
Defendants. )  
\_\_\_\_\_ )

CASE NO. CIVDS 1400240  
  
Assigned for all Purposes to:  
The Honorable Judge David Cohn  
Dept: S-37  
  
OBJECTIONS TO DECLARATION  
OF STACEY LIPPERT  
  
[Opposition to Plaintiff Arrowhead Woods  
Architectural Committee Memorandum of  
Costs and Motion For Attorney Fees-Filed  
Concurrently Herewith]

DATE: November 16, 2015  
TIME: 8:30 a.m.  
DEPT: S-37  
Action Date: April 11, 2014

**OBJECTIONS TO DECLARATION OF STACEY LIPPERT**

Defendants object to paragraph two of the Declaration of Stacey Lippert. This is total opinion regarding the proper measure of damages. The Court and the Court alone determines the proper measure of damages. Declarant is not qualified to offer this opinion.

In paragraph 3 Ms. Lippert states that the tree removed was living and that the AWAC approval would not be given to remove such a tree. Evidence presented at trial was that the tree was half dead. (Court’s Findings attached as Exhibit E to Plaintiff’s Motion, Page 5 lines 3-6) Evidence


1 presented by Ms. Lippert at trial indicated that 98% of all requests to trim or remove trees are  
2 granted. (Exhibit E to Plaintiff's Motion, page five lines 7-8) She went on to state at trial that this  
3 percentage goes up when the tree represents a hazard. Evidence presented at trial indicated that  
4 Santa Ana winds broke off a portion of the half dead tree narrowly missing Defendants' home.  
5

6 The Declaration Ms. Lippert states that "the tree that was removed was living..." The  
7 evidence admitted at trial and indicated in the court's ruling confirmed that the tree was half dead.

8 Finally, Defendant's object to paragraph five of the Declaration of Stacey Lippert as totally  
9 irrelevant. It is interesting to note that Ms. Lippert states that one other matter went to trial and that  
10 defendant lost. Mr. Wurm boasted to defense counsel that AWAC won that trial and with the award  
11 of attorney fees defendant lost his home.  
12

13  
14 DATED: October 30, 2015

BULLARD, BROWN & BEAL LLP

15  
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17 Timothy W. Brown, Esq.  
18 Attorneys for Defendants

19 GEORGE HATT and DONNA HATT  
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1 \$12,400.00. AWAC received its permit fee of \$50.00. Plaintiff did not succeed.

2 Defendants object to paragraph 4a of the Declaration of Mr. Wurm. He states beginning at  
3 line 23 on page 3 of the Declaration that it appeared that short of filing a complaint Mr. Hatt was  
4 going to continue to cut trees. Evidence presented at trial and contained within the court's ruling  
5 stated that there was no evidence presented at trial that Mr. Hatt was going to remove additional  
6 trees.  
7

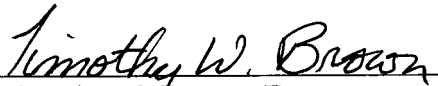
8 Defendants object to paragraph 4b. Mr. Wurm states that defendants contested the existence  
9 of the Declaration of Restrictions. Again, this flies in the face of the evidence admitted at trial.  
10 Defendants stipulated to the admissibility of all of the quit claims and the Declaration. The only  
11 challenge came near the end of this litigation when it was discovered that the proxies collected by  
12 plaintiff were only valid for eleven months.  
13

14 Defendants object to paragraph 4e of the Declaration of Mr. Wurm. He indicates that  
15 "plaintiff may not have been able to enforce Declaration of Restrictions over thousands of properties  
16 in Arrowhead Woods." This litigation only involved one tract and only involved one lot. It did not  
17 involve "thousands of properties."  
18

19 Defendants object to paragraph 4i of the Declaration of Mr. Wurm. He indicates that this  
20 case was not over litigated. Up to the first day of trial, defendants expended \$7,000.00 in attorney  
21 fees. \$7,000.00 up to the first day of trial is a case that was not over litigated. \$33,000.00 for a  
22 \$50.00 award of damages is a case that was over litigated.  
23

24 DATED: October 30, 2015

BULLARD, BROWN & BEAL LLP

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26   
27 Timothy W. Brown, Esq.  
28 Attorneys for Defendants  
GEORGE HATT and DONNA HATT

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Attorneys for Defendants, GEORGE HATT AND DONNA HATT

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF SAN BERNARDINO**

ARROWHEAD WOOD ARCHITECTURAL )  
COMMITTEE, INC., A CALIFORNIA )  
CORPORATION. )  
  
Plaintiff, )  
  
vs )  
  
GEORGE HATT, DONNA HATT )  
  
Defendants. )  
  
\_\_\_\_\_ )

CASE NO. CIVDS 1400240

Assigned for all Purposes to:  
The Honorable Judge David Cohn  
Dept: S-37

DECLARATION OF TIMOTHY W.  
BROWN IN SUPPORT OF OPPOSITION  
TO PLAINTIFF ARROWHEAD WOODS  
ARCHITECTURAL COMMITTEE  
MEMORANDUM OF COSTS AND  
MOTION FOR ATTORNEY FEES

DATE: November 16, 2015  
TIME: 8:30 a.m.  
DEPT: S-37

Action Date: April 11, 2014

**DECLARATION OF TIMOTHY W. BROWN**

1. I am an attorney at law duly licensed to practice law before all the courts of the State of California. I am the attorney of record for Defendants, GEORGE HATT and DONNA HATT, in the within matter. I am familiar with the files, pleadings, and facts in this case and if called upon as a witness, I could and would competently testify to the following facts based upon my own personal knowledge or upon information and belief.

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2. The facts stated herein are based on my personal knowledge, are true and correct, except as to those matters which are stated upon information and belief, and as to those matters, I believe them to be true, and if called as a witness, I could and would testify competently thereto.

3. Attached hereto as Exhibit A is the First Amended Complaint.

4. Attached hereto as Exhibit B is a true and correct copy of the contract entered into between defendants and counsel, wherein defendants agreed to pay counsel \$7,000.00 to represent them if this matter did not go to trial. An additional \$5,000.00 was to be paid if it did go to trial.

I declare under penalty of perjury under the laws of the State of California that the foregoing statements are true and correct, and that this Declaration was executed on October 30, 2015 at Riverside, California.

Timothy W. Brown  
Declarant, Timothy W. Brown, Esq.





LAW OFFICES OF JOHN G. WÜRM  
P.O. Box 1875, Lake Arrowhead, CA 92352  
Telephone: (909) 337-2557

1 THE LAW OFFICES OF JOHN G. WÜRM  
JOHN G. WÜRM, State Bar No. 106475  
2 27321 North Bay Road  
Post Office Box 1875  
3 Lake Arrowhead, California 92352  
Telephone: (909) 337-2557  
4 Facsimile: (909) 336-3697  
5 Attorney for Plaintiff, Arrowhead Woods Architectural  
Committee, Inc., a California corporation  
6

7 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
8 COUNTY OF SAN BERNARDINO, CENTRAL DIVISION  
9

10 ) Case No.: CIVDS 1400240  
11 ARROWHEAD WOODS )  
ARCHITECTURAL COMMITTEE, ) (proposed)  
12 INC., a California corporation, )  
13 ) **FIRST AMENDED COMPLAINT FOR:**  
Plaintiff, )  
14 vs. ) **1) INJUNCTION; and**  
15 ) **2) DAMAGES**  
16 )  
GEORGE D. HATT, DONNA R. HATT, and )  
17 all persons unknown claiming any legal or )  
equitable right, title, estate, lien or interest in )  
18 the property described in the Complaint, )  
named as DOES 1 to 50, inclusive )  
19 )  
Defendants. )  
20 )  
21 )

22 Plaintiff, ARROWHEAD WOODS ARCHITECTURAL COMMITTEE, INC. alleges  
23 as follows:

24 **FIRST CAUSE OF ACTION**

25 **(Injunction)**

26 1. The Defendants herein named as "*all persons unknown claiming any legal or*  
27 *equitable right, title, estate, lien, or interest in the property described in the Complaint, named*  
28 *as DOES 1 to 50, inclusive,*" are unknown to Plaintiff. Such Defendants, and each of them,  
claim some right, title, estate, lien or interest in the below-described property, adverse to

1 Plaintiff's title thereto. Such claim or claims are without any right whatsoever and these  
2 Defendants have no right, title, estate, lien, or interest whatsoever in the below-described  
3 property or any part thereof adverse to Plaintiff.

4 2. Defendants GEORGE D. HATT and DONNA R. HATT (hereinafter referred to  
5 as "Defendants") are the title owners of improved real property located in San Bernardino  
6 County, legally described as

7 Lot 49 of Tract No. 7891, Arrowhead Woods Tract No. 113, as  
8 per map recorded in Book 101, Page(s) 20 to 26, inclusive of  
9 maps, in the Office of the County Recorder of said County  
10 APN 0333-862-14, commonly known as 145 Birchwood Drive, Lake Arrowhead, California  
11 92352 (hereinafter referred to as "Defendants' Property").

12 3. Plaintiff, ARROWHEAD WOODS ARCHITECTURAL COMMITTEE, INC.  
13 (hereinafter referred to as "AWAC") is the Successor to the Architectural Committee and  
14 Grantor referenced in the *Declaration of Restrictions* attached hereto as Exhibit "A"  
15 (hereinafter referred to as "*Declaration*") recorded on May 2, 1968 at Book 7019, Page 860.  
16 Said *Declaration*, under Article VII, provides in part that no tree may be removed or destroyed  
17 without Plaintiff's approval. Defendant's Property is subject to said *Declaration*.

18 4. AWAC is the successor to the Architectural Committee referenced in the  
19 *Declaration*. The authority of AWAC to enforce the provisions of the *Declaration* was  
20 extended pursuant to the *Certification of Amendment of Declaration of Restrictions* (hereinafter  
21 referred to as "Amendment") recorded December 15, 2010 as Document No. 2010-0531609  
22 attached hereto as Exhibit "B."

23 5. AWAC is the Successor and Assign to the Architectural Committee referenced  
24 in the Corporation Quitclaim Deed attached hereto as Exhibit "C" (hereinafter referred to as  
25 "*Quitclaim Deed*") recorded on July 8, 1965 at Book 6425, Page 729. Said *Quitclaim Deed*,  
26 provides in part that no tree may be cut down or removed without approval by AWAC.  
27 Defendants' Property is subject to the restrictions alleged above.  
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Dated: May 4, 2015

LAW OFFICES OF JOHN G. WÜRM

By: \_\_\_\_\_  
JOHN G. WÜRM, Attorney for  
Arrowhead Woods Architectural  
Committee, Inc., a California  
corporation





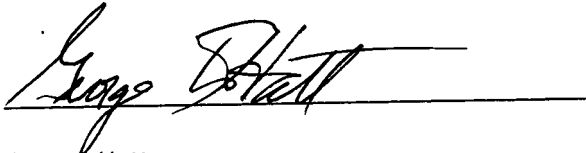
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CONTRACT

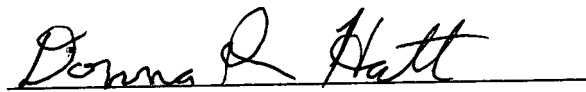
George and Donna Hatt retain the services of attorney Timothy W. Brown to represent them in a lawsuit titled AWAC v HATT.

Hatt agrees to pay Mr. Brown \$7,000.00 to represent them if this does not go to trial. Hatt agrees to pay Mr. Brown an additional \$5,000.00 if this matter goes to trial (\$12,000.00 total).

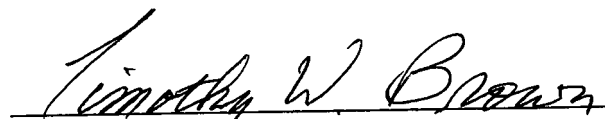
Dated: February 2, 2014

A handwritten signature in cursive script, appearing to read "George Hatt", is written over a horizontal line.

George Hatt

A handwritten signature in cursive script, appearing to read "Donna R. Hatt", is written over a horizontal line.

Donna Hatt

A handwritten signature in cursive script, appearing to read "Timothy W. Brown", is written over a horizontal line.

Timothy W. Brown

**PROOF OF SERVICE**

Arrowhead Architectural Committee, Inc. v. George D. Hatt and Donna R. Hatt  
San Bernardino County Superior Court Case No.: CIVDS1400240  
247 West Third Street, San Bernardino CA 92415

I am employed in the County of Riverside, State of California; I am over the age of 18 and not a party to the within action; my business address is 3890 11<sup>th</sup> Street, Ste. 111, Riverside, CA 92501

On October 30, 2015, I served the foregoing document(s) described as:

**OPPOSITION TO PLAINTIFF ARROWHEAD WOODS ARCHITECTURAL COMMITTEE  
MEMORANDUM OF COSTS AND MOTION FOR ATTORNEY FEES; DECLARATION OF  
TIMOTHY W. BROWN IN SUPPORT THEREOF; OBJECTIONS TO DECLARATION OF  
STACEY LIPPERT; OBJECTIONS TO DECLARATION OF JOHN WURM**

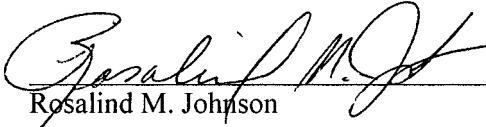
on the interested parties to this action by placing a copy thereof enclosed in a sealed envelope addressed as follows:

John G. Wurm, Esq.  
P.O. Box 1875  
Lake Arrowhead, CA 92352  
Tel: 909.337.2557 Fax: 909.336.3697

- (BY MAIL) I am readily familiar with the business practice for collection and processing of correspondence for mailing with the United States Postal Service. This correspondence shall be deposited with the United States Postal Service this same day in the ordinary course of business at our Firm's office address in Riverside, California. Service made pursuant to this paragraph, upon motion of a party served, shall be presumed invalid if the postal cancellation date of postage meter date on the envelope is more than one day after the date of deposit for mailing contained in this affidavit.
- (BY OVERNIGHT DELIVERY SERVICE) I served the foregoing document by United Parcel Service, an express service carrier which provides overnight delivery, as follows. I placed true copies of the foregoing document in sealed envelopes or packages designated by the express service carrier, addressed to each interested party as set forth above, with fees for overnight delivery paid or provided for.
- (BY PERSONAL SERVICE) I caused such envelope to be delivered by hand to the offices of the above named addressee(s).
- (BY FACSIMILE) See attached proof of transmission by fax.

Executed this 30<sup>th</sup> day of October, 2015 at Riverside, California.

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

  
Rosalind M. Johnson