

1 Michael Duane Davis, SBN 093678
2 Marlene Allen-Hammarlund, SBN 126418
3 **GRESHAM SAVAGE NOLAN &**
4 **TILDEN, A Professional Corporation**
5 3750 University Avenue, Suite 250
6 Riverside, California 92501-3335
7 Telephone: (951) 684-2171
8 Facsimile: (951) 684-2150

9 Attorneys for Cross-Defendant,
10 SERVICE ROCK PRODUCTS CORPORATION

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **IN AND FOR THE COUNTY OF LOS ANGELES**

13 Coordination Proceeding
14 Special Title (Rule 1550(b))

) Judicial Council Coordination
) Proceeding No. 4408

15 ANTELOPE VALLEY GROUNDWATER
16 CASES

) For Filing Purposes Only:
) Santa Clara Case No. 1-05-CV-049053

17 Including Actions:

) Assigned to the
) Honorable Jack Komar, Department 17

18 Los Angeles County Waterworks District No.
19 40 v. Diamond Farming Co.
20 Superior Court of California, County of Los
21 Angeles, Case No. BC 325 201

) **ANSWER OF SERVICE ROCK**
) **PRODUCTS CORPORATION TO**
) **PHELAN PIÑON HILLS COMMUNITY**
) **SERVICES DISTRICT'S CROSS-**
) **COMPLAINT FOR DECLARATORY,**
) **INJUNCTIVE AND OTHER**
) **EQUITABLE RELIEF INCLUDING A**
) **PHYSICAL SOLUTION AGAINST ALL**
) **PARTIES**

22 Los Angeles County Waterworks District No.
23 40 v. Diamond Farming Co.
24 Superior Court of California, County of Kern,
25 Case No. S-1500-CV-254-348

26 Wm. Bolthouse Farms, Inc. v. City of
27 Lancaster
28 Diamond Farming Co. v. City of Lancaster
Diamond Farming Co. v. Palmdale Water Dist.
Superior Court of California, County of
Riverside, consolidated actions, Case Nos. RIC
353 840, RIC 344 436, RIC 344 668

AND RELATED CROSS-ACTIONS

1 PHELAN PINON HILLS COMMUNITY
2 SERVICES DISTRICT,

3 Cross-Complainant,

4 vs.

5 CALIFORNIA WATER SERVICE
6 COMPANY; CITY OF LANCASTER; CITY
7 OF PALMDALE; LITTLEROCK CREEK
8 IRRIGATION DISTRICT; ROSAMOND
9 COMMUNITY SERVICES DISTRICT;
10 QUARTZ HILL WATER DISTRICT; LOS
11 ANGELES COUNTY WATERWORKS
12 DISTRICT NO. 40; PALMDALE WATER
13 DISTRICT; CITY OF LOS ANGELES;
14 COUNTY SANITATION DISTRICT NO. 14;
15 COUNTY SANITATION DISTRICT NO. 20;
16 DESERT LAKES COMMUNITY SERVICES
17 DISTRICT; BORON COMMUNITY
18 SERVICES DISTRICT; PALM RANCH
19 IRRIGATION DISTRICT; ANTELOPE
20 VALLEY-EAST KERN WATER AGENCY;
21 REVECCA LEE WILLIS AS
22 REPRESENTATIVE OF THE CERTIFIED
23 WILLIS CLASS; MR. RICHARD A. WOOD
24 AS REPRESENTATIVE OF THE
25 CERTIFIED WOOD CLASS; DIAMOND
26 FARMING COMPANY; BOLTHOUSE
27 PROPERTIES LLC; WILLIAM
28 BOLTHOUSE FARMS, INC.; CRYSTAL
ORGANIC FARMS LLC; A. V. UNITED
MUTUAL GROUP; BRITTON
ASSOCIATES, LLP; BUJULIAN
BROTHERS, INC.; BUSHNELL
ENTERPRISES, LLC; CAMERON
PROPERTIES, INC.; COPA DE ORO LAND
COMPANY, A CALIFORNIA GENERAL
PARTNERSHIP; DEL SUR RANCH, LLC;
GATEWAY TRIANGLE PROPERTIES;
HEALY ENTERPRISES, INC.; HIGH
DESERT INVESTMENTS, LLC; LANDINV,
INC.; MIDDLE BUTTE MINE, INC.;
MOUNTAIN BROOK RANCH, LLC;
NORTHROP GRUMAN CORPORATION;
PALMDALE HILLS PROPERTY LLC; SPC
DEL SUR RANCH, LLC; SERVICE ROCK
PRODUCTS CORPORATION; SORRENTO
WEST PROPERTIES, INC.; TEJON
RANCHORP; THE THREE ARKLIN
LIMITED LIABILITY COMPANY; TRIPLE
M PROPERTY F.K.A. 3M PROPERTY
INVESTMENT CO; U.S. BORAX, INC.;
WAGAS LAND COMPANY LLC;

1 ANTELOPE VALLEY GROUND WATER
2 AGREEMENT ASSOCIATION; ENXCO
3 DEVELOPMENTS CORPORATION; B.J.
4 CALANDRI; JOHN CALANDRI; JOHN
5 CALANDRI AS TRUSTEE OF THE JOHN
6 AND B.J. CALANDRI 2001 TRUST;
7 FORREST G. GODDE; FORREST G.
8 GODDE, AS TRUSTEE OF THE FORREST
9 G. GODDE TRUST; LAWRENCE A.
10 GODDE; LAWRENCE A. GODDE AND
11 GODDE TRUST; KOOTENAI PROPERTIES,
12 INC.; GAILEN KYLE; GAILEN KYLE, AS
13 TRUSTEE OF THE KYLE TRUST; JAMES
14 W. KYLE; JAMES W. KYLE, AS TRUSTEE
15 OF THE KYLE FAMILY TRUST; JULIA
16 KYLE; WANDA E. KYLE; EUGENE B.
17 NEBEKER; R AND M RANCH, INC.;
18 EDGAR C. RITTER; PAULA E. RITTER;
19 PAULA E. RITTER, AS TRUSTEE OF THE
20 RITTER FAMILY TRUST; HINES FAMILY
21 TRUST; MALLOY FAMILY PARTNERS;
22 CONSOLIDATED ROCK PRODUCTS;
23 CALMAT LAND COMPANY;
24 MARYGRACE H. SANTORO;
25 MARYGRACE H. SANTORO, AS TRUSTEE
26 FOR THE MARYGRACE H. SANTORO
27 REV TRUST; HELEN STATHATOS; SAVAS
28 STATHATOS; SAVAS STATHATOS, AS
TRUSTEE FOR THE STATHATOS FAMILY
TRUST; DENNIS L. AND MARJORIE E.
GROVEN TRUST; SCOTT S. AND KAY B.
HARTER; HABOD JAVADI; EUGENE V.,
BEVERLY A. AND PAUL S. KINDIG;
PAUL S. AND SHARON R. KINDIG; JOSE
MARITORENA LIVING TRUST; RICHARD
H. MINER; JEFFRY L. AND NANCEE J.
SIEBERT; BARRY S. MUNZ; TERRY A.
MUNZ AND KATHLEEN M. MUNZ;
BEVERLY TOBIAS; LEO L. SIMI; WHITE
FENCE FARMS MUTUAL WATER CO. NO.
3; WILLIAM R. BARNES AND ELDORA M.
BARNES FAMILY TRUST OF 1989; DEL
SUR RANCH LLC; HEALY ENTERPRISES,
INC.; JOHN AND ADRIENNE RECA;
SAHARA NURSERY; SAL AND CONNIE L.
CARDILE; GENE T. BAHLMAN; THE
UNITED STATES OF AMERICA; AND
AGAINST EACH AND EVERY PARTY
WHO SUBSEQUENTLY FILES A CROSS-
COMPLAINT; AND DOES 100,001 through
200,000, INCLUSIVE,

Cross-Defendants.

1 Comes now, Cross-Defendant, **SERVICE ROCK PRODUCTS CORPORATION**
2 ("Service Rock" or "this Answering Cross-Defendant"), and answers the *Cross-Complaint for*
3 *Declaratory, Injunctive and Other Equitable Relief Including a Physical Solution Against All*
4 *Parties* (the "*Cross Complaint*") filed by Cross-Complainant, **PHELAN PIÑON HILLS**
5 **COMMUNITY SERVICES DISTRICT** ("Phelan Piñon Hills CSD" or "Cross-Complainant"),
6 and for itself and for no other, admits, denies, and alleges as follows:

7
8 **ANSWER**

9 1. On or about November 13, 2006, this Answering Cross-Defendant filed a
10 complex answer to the Cross-Complaint of Los Angeles County Waterworks District No. 40, et
11 al. Pursuant to the subsequent directive of the Honorable Jack Komar, this Answering Cross-
12 Defendant requests that its complex answer to the Cross-Complaint of Los Angeles County
13 Waterworks District No. 40, et al., constitute its answer to the *Cross-Complaint*, except as
14 otherwise stated herein below.

15 2. Further answering the *Cross-Complaint*, pursuant to California *Code of Civil*
16 *Procedure* § 431.30(d), this Answering Cross-Defendant denies, generally and specifically,
17 jointly and severally, each and every allegation contained therein, except as expressly admitted
18 in Paragraph 1, above, and Paragraphs 3 and 4, below.

19 3. Further answering the *Cross-Complaint*, this Answering Cross-Defendant admits
20 that it is the fee owner and/or lessee of the following described real properties (collectively
21 "Service Rock's Properties") that are situated in that portion of the State of California comprised
22 of portions of the Counties of Los Angeles and Kern that is generally described as the Antelope
23 Valley Basin:

24 The South ½ of the Southeast ¼ of the Southeast ¼ of Section 3,
25 Township 4 North, Range 8 West, San Bernardino Base and
Meridian [APN: 3064 003 031 05 000], in fee;

26 and

27 116.92 acres, more or less, being exclusive of streets, the East ½ of
28 the Southwest ¼ and the East ½ of the East ½ of Lots 1 and 2 in
the Northwest ¼ of Section 3, Township 4 North, Range 8 West,

-4-

1 San Bernardino Base and Meridian [APN: 3064 003 064 05 000],
in fee;

2 and

3 38.75 acres, more or less, being exclusive of streets, the West ½ of
4 the East ½ of Lots 1 and 2 in the Northwest ¼ of Section 3,
Township 4 North, Range 8 West, San Bernardino Base and
5 Meridian [APN: 3064 003 065 05 000], in fee;

6 and

7 40 acres, more or less, the Southwest ¼ of the Southeast ¼ of
8 Section 3, Township 4 North, Range 8 West, San Bernardino Base
and Meridian [APN: 3064 003 066 05 000], in fee;

9 and

10 39.09 acres, more or less, being exclusive of streets, the Northwest
11 ¼ of the Southeast ¼ of Section 3, Township 4 North, Range 8
West, San Bernardino Base and Meridian [APN: 3064 003 067 05
000], in fee;

12 and

13 36.7 acres, more or less, being exclusive of streets, the West ½ of
14 the West ½ of Lots 1 and 2 in the Northeast ¼ of Section 3,
Township 4 North, Range 8 West, San Bernardino Base and
15 Meridian [APN: 3064 003, 068 05 000], in fee;

16 and

17 38.5 acres, more or less, being exclusive of streets, the East ½ of
18 the West ½ of Lots 1 and 2 in the Northeast ¼ of Section 3,
Township 4 North, Range 8 West, San Bernardino Base and
Meridian [APN: 3064 003 069 05 000], in fee;

19 and

20 the West ½ of the Northeast ¼ of Section 36, Township 6 North,
21 Range 11 West, San Bernardino Base and Meridian [APN: 3024
015 055], under lease;

22 and

23 the West ½ of the Northwest ¼ of Section 1, Township 5 North,
24 Range 11 West, San Bernardino Base and Meridian [APNS: 3051
008 004 and 3051 008 006], under lease;

25 and

26 the West ½ of the Southeast ¼ of Section 36, Township 6 North,
27 Range 11 West, San Bernardino Base and Meridian [APN: 3024
016 001], under lease;

28 and

1 The West 80 acres of the aggregate of Lots 1 and 2 of the
2 Northeast Quarter of Section 2, Township 5 North, Range 11 West,
San Bernardino Base and Meridian [APN: 3051 008 002], under
lease.

3 4. Further answering the *Cross-Complaint*, this Answering Cross-Defendant admits
4 that it claims some right, title or interest in and to some of the water in the groundwater basins
5 and/or sub-basins underlying Service Rock's Properties, and to the underflow of the washes to
6 which Service Rock's Properties are riparian, and that it produces water from said groundwater
7 basins and/or sub-basins, and from the underflow of said washes.

8
9 **AFFIRMATIVE DEFENSES**

10 As and for affirmative defenses to the causes of action purported to be set forth against it
11 in the *Cross-Complaint*, this Answering Cross-Defendant alleges as follows:

12
13 **FIRST AFFIRMATIVE DEFENSE**

14 (Failure to State Cause of Action)

15 As and for a first separate and affirmative defense to said *Cross-Complaint*, and each and
16 every cause of action thereof, whether considered separately or collectively, this Answering
17 Cross-Defendant alleges that the *Cross-Complaint*, and each and every cause of action thereof,
18 fails to state a cause of action against this Answering Cross-Defendant upon which the Court can
19 grant relief.

20
21 **SECOND AFFIRMATIVE DEFENSE**

22 (Jurisdiction)

23 As and for a second separate and affirmative defense to said *Cross-Complaint*, and each
24 and every cause of action thereof, whether considered separately or collectively, this Answering
25 Cross-Defendant alleges that the Court lacks subject matter jurisdiction over some or all of the
26 matters alleged in the *Cross-Complaint*.

27 ///

28 ///

1 **SIXTH AFFIRMATIVE DEFENSE**

2 (Riparian Rights)

3 As and for a sixth separate and affirmative defense to said *Cross-Complaint*, and each
4 and every cause of action thereof, whether considered separately or collectively, this Answering
5 Cross-Defendant claims riparian rights to the underflow of the Little Rock Wash, as to

6 the West ½ of the Northeast ¼ of Section 36, Township 6 North,
7 Range 11 West, San Bernardino Base and Meridian [APN: 3024
015 055], under lease;

8 and

9 the West ½ of the Northwest ¼ of Section 1, Township 5 North,
10 Range 11 West, San Bernardino Base and Meridian [APNS: 3051
008 004 and 3051 008 006], under lease;

11 and

12 the West ½ of the Southeast ¼ of Section 36, Township 6 North,
13 Range 11 West, San Bernardino Base and Meridian [APN: 3024
016 001], under lease;

14 and

15 The West 80 acres of the aggregate of Lots 1 and 2 of the
16 Northeast Quarter of Section 2, Township 5 North, Range 11 West,
17 San Bernardino Base and Meridian [APN: 3051 008 002] under
lease,

18 consistent with the provisions of *Water Code* § 101; and that some or all of its production is from
19 said underflow of the Little Rock Wash; and to that extent, this Answering Cross-Defendant
20 alleges that Cross-Complainant is barred from the relief sought on each and every cause of action
21 against this Answering Cross-Defendant.

22
23 **SEVENTH AFFIRMATIVE DEFENSE**

24 (Prior and Paramount Overlying Rights)

25 As and for a seventh separate and affirmative defense to said *Cross-Complaint*, and each
26 and every cause of action thereof, whether considered separately or collectively, this Answering
27 Cross-Defendant claims it is the owner and/or lessee of certain real properties that overlie the
28 groundwater Basin described in the *Cross-Complaint* and therefore has the superior, prior and

1 paramount rights, presently and in the future, to extract groundwater from this Answering Cross-
2 Defendant's following described Properties:

3 The South ½ of the Southeast ¼ of the Southeast ¼ of Section 3,
4 Township 4 North, Range 8 West, San Bernardino Base and
Meridian [APN: 3064 003 031 05 000], in fee;

5 and

6 116.92 acres, more or less, being exclusive of streets, the East ½ of
7 the Southwest ¼ and the East ½ of the East ½ of Lots 1 and 2 in
8 the Northwest ¼ of Section 3, Township 4 North, Range 8 West,
San Bernardino Base and Meridian [APN: 3064 003 064 05 000],
in fee;

9 and

10 38.75 acres, more or less, being exclusive of streets, the West ½ of
11 the East ½ of Lots 1 and 2 in the Northwest ¼ of Section 3,
12 Township 4 North, Range 8 West, San Bernardino Base and
Meridian [APN: 3064 003 065 05 000], in fee;

13 and

14 40 acres, more or less, the Southwest ¼ of the Southeast ¼ of
15 Section 3, Township 4 North, Range 8 West, San Bernardino Base
and Meridian [APN: 3064 003 066 05 000], in fee;

16 and

17 39.09 acres, more or less, being exclusive of streets, the Northwest
18 ¼ of the Southeast ¼ of Section 3, Township 4 North, Range 8
West, San Bernardino Base and Meridian [APN: 3064 003 067 05
19 000], in fee;

20 and

21 36.7 acres, more or less, being exclusive of streets, the West ½ of
22 the West ½ of Lots 1 and 2 in the Northeast ¼ of Section 3,
Township 4 North, Range 8 West, San Bernardino Base and
Meridian [APN: 3064 003, 068 05 000], in fee;

23 and

24 38.5 acres, more or less, being exclusive of streets, the East ½ of
25 the West ½ of Lots 1 and 2 in the Northeast ¼ of Section 3,
26 Township 4 North, Range 8 West, San Bernardino Base and
Meridian [APN: 3064 003 069 05 000], in fee;

27 and
28

1 the West ½ of the Northeast ¼ of Section 36, Township 6 North,
2 Range 11 West, San Bernardino Base and Meridian [APN: 3024
015 055], under lease;

3 and

4 the West ½ of the Northwest ¼ of Section 1, Township 5 North,
5 Range 11 West, San Bernardino Base and Meridian [APNS: 3051
008 004 and 3051 008 006], under lease;

6 and

7 the West ½ of the Southeast ¼ of Section 36, Township 6 North,
8 Range 11 West, San Bernardino Base and Meridian [APN: 3024
016 001], under lease;

9 and

10 The West 80 acres of the aggregate of Lots 1 and 2 of the Northeast
11 Quarter of Section 2, Township 5 North, Range 11 West, San
Bernardino Base and Meridian [APN: 3051 008 002], under lease.

12 **EIGHTH AFFIRMATIVE DEFENSE**

13 (Appropriative Rights)

14 As and for an eighth separate and affirmative defense to said *Cross-Complaint*, and each
15 and every cause of action thereof, whether considered separately or collectively, this Answering
16 Cross-Defendant claims the appropriative rights to produce water from the basins and sub-basins
17 over which this Answering Cross-Defendant's Properties and water production facilities are
18 situated; and, to the extent that the basins and sub-basins over which Cross-Complainant's water
19 production facilities are situated are separate and independent from the basins and sub-basins
20 over which this Answering Cross-Defendant's Properties and water production facilities are
21 situated, this Answering Cross-Defendant alleges that Cross-Complainant are barred from the
22 relief sought on each and every cause of action against this Answering Cross-Defendant.

23
24 **NINTH AFFIRMATIVE DEFENSE**

25 (Appurtenant Rights)

26 As and for a ninth separate and affirmative defense to said *Cross-Complaint*, and each
27 and every cause of action thereof, whether considered separately or collectively, this Answering
28 Cross-Defendant alleges that it has an appurtenant right to pump and reasonably use groundwater

-10-

1 on its properties which is superior to the rights of Cross-Complainant so as to bar the claims
2 therein.

3 **TENTH AFFIRMATIVE DEFENSE**

4 (Permitted Rights to Extract)

5 As and for a tenth separate and affirmative defense to said *Cross-Complaint*, and each
6 and every cause of action thereof, whether considered separately or collectively, this Answering
7 Cross-Defendant alleges that it has permitted rights to extract water from the basins and sub-
8 basins over which this Answering Cross-Defendant's Properties and water production facilities
9 are situated, with the Division of Water Rights of the State Water Resources Control Board for
10 the State of California.

11
12 **ELEVENTH AFFIRMATIVE DEFENSE**

13 (Actions as a Matter of Right)

14 As and for an eleventh separate and affirmative defense to said *Cross-Complaint*, and
15 each and every cause of action thereof, whether considered separately or collectively, this
16 Answering Cross-Defendant alleges that the *Cross-Complaint* and each of the alleged causes of
17 action therein fails due to Cross-Defendants having duly acted within their rights as to the
18 matters stated in the *Cross- Complaint* so as to bar the claims herein.

19
20 **TWELFTH AFFIRMATIVE DEFENSE**

21 (Permissive Production and Use)

22 As and for a twelfth separate and affirmative defense to said *Cross-Complaint*, and each
23 and every cause of action thereof, whether considered separately or collectively, this Answering
24 Cross-Defendant alleges that it was permissively producing and using water at all times.

25 ///

26 ///

27 ///

28 ///

1 Answering Cross-Defendant alleges that Cross-Complainant's activities have not augmented the
2 safe yield of the relevant groundwater aquifer sufficient to support any water right claimed by
3 Cross-Complainant.

4
5 **NINETEENTH AFFIRMATIVE DEFENSE**

6 (No Intent to Store / Bank Water)

7 As and for a nineteenth separate and affirmative defense to said *Cross-Complaint*, and
8 each and every cause of action thereof, whether considered separately or collectively, this
9 Answering Cross-Defendant alleges that any water imported, developed, salvaged or otherwise
10 being claimed as a priority right, credit or other water right by Cross-Complainant, was not
11 imported, developed, salvaged or otherwise introduced into the fractured bedrock or alluvial
12 basin with the intent of storing or banking such water so as to bar the claims herein.

13
14 **TWENTIETH AFFIRMATIVE DEFENSE**

15 (Insufficient or Non-Existent Groundwater Management Plan/Water Assessment)

16 As and for a twentieth separate and affirmative defense to said *Cross-Complaint*, and
17 each and every cause of action thereof, whether considered separately or collectively, this
18 Answering Cross-Defendant alleges that Cross-Complainant did not comply with the California
19 requirements for Groundwater Management Plans and/or Water Assessments, so as to bar the
20 claims made and the relief sought in the *Cross-Complaint*.

21
22 **TWENTY-FIRST AFFIRMATIVE DEFENSE**

23 (Res Judicata and Collateral Estoppel)

24 As and for a twenty-first separate and affirmative defense to said *Cross-Complaint*, and
25 each and every cause of action thereof, whether considered separately or collectively, this
26 Answering Cross-Defendant alleges that the *Cross-Complaint*, and each and every cause of
27 action therein, is barred by the equitable Doctrines of Res Judicata and Collateral Estoppel.

28 ///

1 **TWENTY-SECOND AFFIRMATIVE DEFENSE**

2 (Waiver)

3 As and for a twenty-second separate and affirmative defense to said *Cross-Complaint*,
4 and each and every cause of action thereof, whether considered separately or collectively, this
5 Answering Cross-Defendant alleges that even if the facts alleged in the *Cross-Complaint* are
6 true, and this Answering Cross-Defendant denies the same, Cross-Complainant has engaged in
7 conduct and activities that it knew or should have known that this Answering Cross-Defendant
8 would, in fact, rely upon to its prejudice and detriment, sufficient to constitute a waiver of any
9 claims and demands against this Answering Cross-Defendant; and, accordingly, Cross-
10 Complainant is barred from the relief sought on each and every cause of action against this
11 Answering Cross-Defendant.

12
13 **TWENTY-THIRD AFFIRMATIVE DEFENSE**

14 (Failure to Exhaust Administrative Remedies)

15 As and for a twenty-third separate and affirmative defense to said *Cross-Complaint*, and
16 each and every cause of action thereof, whether considered separately or collectively, this
17 Answering Cross-Defendant alleges that the *Cross-Complaint*, and each and every cause of
18 action therein, is barred by the Cross-Complainant's failure to exhaust all available
19 administrative remedies.

20
21 **TWENTY-FOURTH AFFIRMATIVE DEFENSE**

22 (Failure to Mitigate Damages)

23 As and for a twenty-fourth separate and affirmative defense to said *Cross-Complaint*, and
24 each and every cause of action thereof, whether considered separately or collectively, this
25 Answering Cross-Defendant alleges that Cross-Complainant failed to take reasonable, prudent,
26 and necessary steps to diminish, control and/or mitigate the damages allegedly suffered by
27 Cross-Complainant, if any.

28 ///

1 **TWENTY-FIFTH AFFIRMATIVE DEFENSE**

2 (Offset)

3 As and for a twenty-fifth separate and affirmative defense to said *Cross-Complaint*, and
4 each and every cause of action thereof, whether considered separately or collectively, this
5 Answering Cross-Defendant seeks a judicial determination that any imported water purchased by
6 Cross-Complainant for recharge into the Basin for any purpose, either through direct recharge or
7 through return flows, must first be used to offset Cross-Complainant's wrongful pumping from
8 the Basin. This Answering Cross-Defendants seeks a further judicial declaration that any
9 imported water that has heretofore been purchased by Cross-Complainant and recharged into the
10 Basin either through direct recharge or through return flows, must be considered as an offset
11 against any past wrongful pumping by Cross-Complainant from the Basin.

12
13 **TWENTY-SIXTH AFFIRMATIVE DEFENSE**

14 (Doctrine of Self Help)

15 As and for a twenty-sixth separate and affirmative defense to said *Cross-Complaint*, and
16 each and every cause of action thereof, whether considered separately or collectively, this
17 Answering Cross-Defendant alleges that Cross-Complainant is not entitled to the relief requested
18 in that, by virtue of the Doctrine of Self-Help.

19
20 **TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

21 (Failure to Do Equity – Unclean Hands)

22 As and for a twenty-seventh separate and affirmative defense to said *Cross-Complaint*,
23 and each and every cause of action thereof, whether considered separately or collectively, this
24 Answering Cross-Defendant alleges that the allegations in the *Cross-Complaint* constitute willful
25 misconduct by a public agency in violation of public trust and public policy so as to bar the
26 claims herein.

27 ///

28 ///

1 **TWENTY-EIGHTH AFFIRMATIVE DEFENSE**

2 (Negligent Misrepresentation)

3 As and for a twenty-eighth separate and affirmative defense to said *Cross-Complaint*, and
4 each and every cause of action thereof, whether considered separately or collectively, this
5 Answering Cross-Defendant alleges that Cross-Complainant negligently misrepresented the
6 water supply in order to induce Cross-Defendants to justifiably rely on such representations
7 causing Cross-Defendants to take no action to stop actions on the part of Cross-Complainant and
8 that Cross-Complainant should be estopped from asserting a claim inconsistent with such entities
9 representations.

10 **TWENTY-NINTH AFFIRMATIVE DEFENSE**

11 (Intentional Misrepresentation)

12 As and for a twenty-ninth separate and affirmative defense to said *Cross-Complaint*, and
13 each and every cause of action thereof, whether considered separately or collectively, this
14 Answering Cross-Defendant alleges that Cross-Complainant intentionally misrepresented the
15 water supply in order to induce Cross-Defendants to justifiably rely on such representations to
16 cause Cross-Defendants to take no action to stop actions on the part of Cross-Complainant
17 knowing that such representations were untrue and that Cross-Complainant should be estopped
18 from asserting a claim inconsistent with such entities representations.

19
20 **THIRTIETH AFFIRMATIVE DEFENSE**

21 (Negligent Filing of Water Supply Documents)

22 As and for a thirtieth separate and affirmative defense to said *Cross-Complaint*, and each
23 and every cause of action thereof, whether considered separately or collectively, this Answering
24 Cross-Defendant alleges that Cross-Complainant negligently filed water supply documents,
25 including, but not limited to, Water Supply Assessments, Environmental Impact Reports, Will
26 Serve Letters, etc., resulting in justifiable reliance by Cross-Defendants that the water supply was
27 sufficient and that no taking could occur which would give rise to a claim of adverse possession
28 or prescription and that Cross-Complainant should be estopped from asserting a claim

-17-

1 inconsistent with such entities representations.

2
3 **THIRTY-FIRST AFFIRMATIVE DEFENSE**

4 (Fraudulent Filing of Water Supply Documents)

5 As and for a thirty-first separate and affirmative defense to said *Cross-Complaint*, and
6 each and every cause of action thereof, whether considered separately or collectively, this
7 Answering Cross-Defendant alleges that Cross-Complainant deceitfully and/or fraudulently filed
8 water supply documents, including, but not limited to, Water Supply Assessments,
9 Environmental Impact Reports, Will Serve Letters, etc., causing and resulting in justifiable
10 reliance by this Answering Cross-Defendants that the water supply was sufficient and that no
11 taking could occur which would give rise to a claim of adverse possession or prescription and
12 that Cross-Complainant should be estopped from asserting a claim inconsistent with such entities
13 representations.

14
15 **THIRTY-SECOND AFFIRMATIVE DEFENSE**

16 (Consent by Cross-Complainant)

17 As and for a thirty-second separate and affirmative defense to said *Cross-Complaint*, and
18 each and every cause of action thereof, whether considered separately or collectively, this
19 Answering Cross-Defendant alleges that Cross-Complainant consented to the matters and things
20 alleged in the *Cross-Complaint* so as to bar the claims herein.

21
22 **THIRTY-THIRD AFFIRMATIVE DEFENSE**

23 (Claims Not Ripe)

24 As and for a thirty-third separate and affirmative defense to said *Cross-Complaint*, and
25 each and every cause of action thereof, whether considered separately or collectively, this
26 Answering Cross-Defendant alleges that each and every cause of action contained in the *Cross-*
27 *Complaint* is barred in whole or in part because Cross-Complainant's claims are not ripe for
28 adjudication.

1 **THIRTY-FOURTH AFFIRMATIVE DEFENSE**

2 (*Civil Code* Section 811)

3 As and for a thirty-fourth separate and affirmative defense to said *Cross-Complaint*, and
4 each and every cause of action thereof, whether considered separately or collectively, this
5 Answering Cross-Defendant alleges that the prescriptive rights claimed by Cross-Complainant
6 have been extinguished through disuse thereof as set forth in *Civil Code* § 811.

7
8 **THIRTY-FIFTH AFFIRMATIVE DEFENSE**

9 (*Civil Code* Section 1009)

10 As and for a thirty-fifth separate and affirmative defense to said *Cross-Complaint*, and
11 each and every cause of action thereof, whether considered separately or collectively, this
12 Answering Cross-Defendant alleges that Cross-Complainant's claims are barred by the
13 provisions of *Civil Code* § 1009.

14
15 **THIRTY-SIXTH AFFIRMATIVE DEFENSE**

16 (*Civil Code* Section 1214)

17 As and for a thirty-sixth separate and affirmative defense to said *Cross-Complaint*, and
18 each and every cause of action thereof, whether considered separately or collectively, this
19 Answering Cross-Defendant alleges that the prescriptive claims asserted by governmental entity
20 Cross-Complainant is barred by operation of law as set forth in *Civil Code* Section 1214.

21
22 **THIRTY-SEVENTH AFFIRMATIVE DEFENSE**

23 (Adequate Legal Remedies)

24 As and for a thirty-seventh separate and affirmative defense to said *Cross-Complaint*, and
25 each and every cause of action thereof, whether considered separately or collectively, this
26 Answering Cross-Defendant alleges that Cross-Complainant's equitable claims are barred in that
27 it has adequate legal remedies for the injury alleged.

28 ///

1 **THIRTY-EIGHTH AFFIRMATIVE DEFENSE**

2 (Irreparable Harm to Cross-Defendants Outweighs Irreparable Harm to Cross-Complainant)

3 As and for a thirty-eighth separate and affirmative defense to said *Cross-Complaint*, and
4 each and every cause of action thereof, whether considered separately or collectively, this
5 Answering Cross-Defendant alleges that the *Cross-Complaint*, and each purported cause of
6 action, is barred, in whole or in part, because any irreparable harm Cross-Complainant has
7 allegedly suffered are outweighed by the irreparable harm to this Answering Cross-Defendants.

8
9 **THIRTY-NINTH AFFIRMATIVE DEFENSE**

10 (Unjust Enrichment)

11 As and for a thirty-ninth separate and affirmative defense to said *Cross-Complaint*, and
12 each and every cause of action thereof, whether considered separately or collectively, this
13 Answering Cross-Defendant alleges that the relief sought in each and every cause of action
14 contained in the *Cross-Complaint* would constitute an unjust enrichment of Cross-Complainant
15 to the detriment of this Answering Cross-Defendant.

16
17 **FORTIETH AFFIRMATIVE DEFENSE**

18 (Lack of Damages)

19 As and for a fortieth separate and affirmative defense to said *Cross-Complaint*, and each
20 and every cause of action thereof, whether considered separately or collectively, this Answering
21 Cross-Defendant alleges that the *Cross-Complaint*, and each purported cause of action, is barred,
22 in whole or in part, because Cross-Complainant has not suffered any actual or legally cognizable
23 damages.

24
25 **FORTY-FIRST AFFIRMATIVE DEFENSE**

26 (Comparative Fault)

27 As and for a forty-first separate and affirmative defense to said *Cross-Complaint*, and
28 each and every cause of action thereof, whether considered separately or collectively, this

-20-

1 Answering Cross-Defendant alleges that Cross-Complainant failed to exercise ordinary care,
2 caution and prudence in connection with its water production and the use of water by its
3 customers; and that Cross-Complainant's lack of care, caution and prudence was independent of
4 and unrelated to the actions, if any, of this Answering Cross-Defendant; and to that extent,
5 Cross-Complainant's production and uses are unreasonable and not beneficial, and Cross-
6 Complainant's remedies and recovery, if any, should be proportionately reduced.

7
8 **FORTY-SECOND AFFIRMATIVE DEFENSE**

9 (Doctrine of Laches)

10 As and for a forty-second separate and affirmative defense to said *Cross-Complaint*, and
11 each and every cause of action thereof, whether considered separately or collectively, this
12 Answering Cross-Defendant alleges that some or all of Cross-Complainant's claims are barred
13 by the doctrine of laches.

14
15 **FORTY-THIRD AFFIRMATIVE DEFENSE**

16 (Excuse)

17 As and for a forty-third separate and affirmative defense to said *Cross-Complaint*, and
18 each and every cause of action thereof, whether considered separately or collectively, this
19 Answering Cross-Defendant alleges that any purported misconduct on its part, which is denied
20 but alleged herein solely for the purpose of asserting this affirmative defense, has been excused
21 by some or all of Cross-Complainant's own misconduct.

22
23 **FORTY-FOURTH AFFIRMATIVE DEFENSE**

24 (Justification)

25 As and for a forty-fourth separate and affirmative defense to said *Cross-Complaint*, and
26 each and every cause of action thereof, whether considered separately or collectively, this
27 Answering Cross-Defendant alleges that this Answering Cross-Defendant's productions and use
28 of water is and has been justified.

1 **FORTY-FIFTH AFFIRMATIVE DEFENSE**

2 (Good Faith)

3 As and for a forty-fifth separate and affirmative defense to said *Cross-Complaint*, and
4 each and every cause of action thereof, whether considered separately or collectively, this
5 Answering Cross-Defendant alleges a good faith belief that it had the rights to produce and use
6 the water it has produced and used.

7 **FORTY-SIXTH AFFIRMATIVE DEFENSE**

8 (Lack of Good Faith)

9 As and for a forty-sixth separate and affirmative defense to said *Cross-Complaint*, and
10 each and every cause of action thereof, whether considered separately or collectively, this
11 Answering Cross-Defendant alleges that Cross-Complainant failed to act in good faith and to
12 deal fairly with this Answering Cross-Defendant and on that basis, is precluded from obtaining
13 some or all of the relief sought in its *Cross-Complaint*.

14
15 **FORTY-SEVENTH AFFIRMATIVE DEFENSE**

16 (Representation of Condition of Aquifer)

17 As and for a forty-seventh separate and affirmative defense to said *Cross-Complaint*, and
18 each and every cause of action thereof, whether considered separately or collectively, this
19 Answering Cross-Defendant alleges that Cross-Complainant, directly through the issuance of
20 will-serve letters or other documents or indirectly through approvals of land uses, represented
21 that the relevant groundwater aquifers were adequate for new groundwater pumping and thus
22 may not now seek prescriptive rights during periods when Cross-Complainant was making such
23 direct or indirect representations.

24
25 **FORTY-EIGHTH AFFIRMATIVE DEFENSE**

26 (Condition of Supply not Presently Known or Ascertainable)

27 As and for a forty-eighth separate and affirmative defense to said *Cross-Complaint*, and
28 each and every cause of action thereof, whether considered separately or collectively, this

-22-

1 Answering Cross-Defendant alleges that Cross-Complainant is not entitled to declaratory relief
2 or injunctive relief because the actual condition of the groundwater supply is not presently
3 known and is not presently ascertainable to the degree of certainty required for declaratory relief
4 or injunctive relief.

5
6 **FORTY-NINTH AFFIRMATIVE DEFENSE**

7 (No Overdraft)

8 As and for a forty-ninth separate and affirmative defense to said *Cross-Complaint*, and
9 each and every cause of action thereof, whether considered separately or collectively, this
10 Answering Cross-Defendant alleges that the Basin at issue is not in a state of overdraft and that
11 the amounts withdrawn from it have not been non-surplus supplies in excess of the safe yield.

12
13 **FIFTIETH AFFIRMATIVE DEFENSE**

14 (No Basis for Physical Solution)

15 As and for a fiftieth separate and affirmative defense to said *Cross-Complaint*, and each
16 and every cause of action thereof, whether considered separately or collectively, this Answering
17 Cross-Defendant alleges that Cross-Complainant has failed to prove a basis for injunctive relief
18 against all parties, have failed to prove *inter se* appropriative rights, have failed to prove the
19 nature and extent of appropriative pumping and the nature and extent of overlying pumping and
20 have failed to prove all facts necessary to provide an appropriate basis for the Court to impose a
21 physical solution which allocates water production rights based upon the California water
22 allocation priority system so as to bar the claims herein.

23
24 **FIFTY-FIRST AFFIRMATIVE DEFENSE**

25 (*Water Code* Sections 22456, 31040 and 55370)

26 As and for a fifty-first separate and affirmative defense to said *Cross-Complaint*, and
27 each and every cause of action thereof, whether considered separately or collectively, this
28 Answering Cross-Defendant alleges that the prescriptive claims asserted by governmental entity

-23-

1 Cross-Complainant are *ultra vires* and exceed the statutory authority by which said governmental
2 entity may acquire property as set forth in *Water Code* §§ 22456, 31040 and 55370.

3
4 **FIFTY-SECOND AFFIRMATIVE DEFENSE**

5 (California Constitution, Article 1, Section 7)

6 As and for a fifty-second separate and affirmative defense to said *Cross-Complaint*, and
7 each and every cause of action thereof, whether considered separately or collectively, this
8 Answering Cross-Defendant alleges that the prescriptive claims asserted by governmental entity
9 Cross-Complainant are barred by the applicable provisions of Article 1, Section 7 of the
10 *California Constitution*.

11
12 **FIFTY-THIRD AFFIRMATIVE DEFENSE**

13 (California Constitution, Article 1, Section 19)

14 As and for a fifty-third separate and affirmative defense to said *Cross-Complaint*, and
15 each and every cause of action thereof, whether considered separately or collectively, this
16 Answering Cross-Defendant alleges that the prescriptive claims asserted by governmental entity
17 Cross-Complainant are barred by the applicable provisions of Article 1, Section 19 of the
18 *California Constitution*.

19
20 **FIFTY-FOURTH AFFIRMATIVE DEFENSE**

21 (United States Constitution, Fifth and Fourteenth Amendments)

22 As and for a fifty-fourth separate and affirmative defense to said *Cross-Complaint*, and
23 each and every cause of action thereof, whether considered separately or collectively, this
24 Answering Cross-Defendant alleges that the prescriptive claims asserted by governmental entity
25 Cross-Complainant are barred by the applicable provisions of the Fifth Amendment to the *United*
26 *States Constitution* as applied to the States under the Fifth and Fourteenth Amendments of the
27 *United States Constitution*.

28 ///

1 **FIFTY-FIFTH AFFIRMATIVE DEFENSE**

2 (Ambiguous, Uncertain and Defective – Nature of Water Rights)

3 As and for a fifty-fifth separate and affirmative defense to said *Cross-Complaint*, and
4 each and every cause of action thereof, whether considered separately or collectively, this
5 Answering Cross-Defendant alleges that the *Cross-Complaint* is defective, ambiguous and
6 uncertain in that it cannot be ascertained therefrom the nature of the water rights that Cross-
7 Complainant is claiming and the nature of the water rights that Cross-Complainant claims that
8 this Answering Cross-Defendant is asserting.

9
10 **FIFTY-SIXTH AFFIRMATIVE DEFENSE**

11 (Ambiguous, Uncertain and Defective – Prescriptive Period)

12 As and for a fifty-sixth separate and affirmative defense to said *Cross-Complaint*, and
13 each and every cause of action thereof, whether considered separately or collectively, this
14 Answering Cross-Defendant alleges that the *Cross-Complaint* is defective, ambiguous and
15 uncertain in that it cannot be ascertained therefrom when the alleged prescriptive period, if any,
16 commenced and ended.

17
18 **FIFTY-SEVENTH AFFIRMATIVE DEFENSE**

19 (Ambiguous, Uncertain and Defective – Overdraft and Use)

20 As and for a fifty-seventh separate and affirmative defense to said *Cross-Complaint*, and
21 each and every cause of action thereof, whether considered separately or collectively, this
22 Answering Cross-Defendant alleges that the *Cross-Complaint* is defective, ambiguous and
23 uncertain in that it cannot be ascertained therefrom that the alleged condition of overdraft and
24 use of groundwater by Cross-Complainant, was actual, notorious, hostile and adverse to this
25 Answering Cross-Defendant for a continuous and uninterrupted period of time required by law.

26 ///

27 ///

28 ///

1 **FIFTY-EIGHTH AFFIRMATIVE DEFENSE**

2 (Ambiguous, Uncertain and Defective – Quantification of Prescription)

3 As and for a fifty-eighth separate and affirmative defense to said *Cross-Complaint*, and
4 each and every cause of action thereof, whether considered separately or collectively, this
5 Answering Cross-Defendant alleges that the *Cross-Complaint* is defective, ambiguous and
6 uncertain in that the quantification of the prescriptive water rights that Cross-Complainant claims
7 to have acquired cannot be ascertained therefrom.

8
9 **FIFTY-NINTH AFFIRMATIVE DEFENSE**

10 (Ambiguous, Uncertain and Defective – Properties Prescribed Against)

11 As and for a fifty-ninth separate and affirmative defense to said *Cross-Complaint*, and
12 each and every cause of action thereof, whether considered separately or collectively, this
13 Answering Cross-Defendant alleges that the *Cross-Complaint* is defective, ambiguous and
14 uncertain in that the legal descriptions of this Answering Cross-Defendant's Properties, as to
15 which Cross-Complainants claim to have acquired prescriptive rights, are not set out in the
16 *Cross-Complaint*, and because it cannot be ascertained from the *Cross- Complaint* against which
17 of this Answering Cross-Defendant's Properties the Cross-Complainant claims to have acquired
18 prescriptive rights.

19
20 **SIXTIETH AFFIRMATIVE DEFENSE**

21 (Ambiguous, Uncertain and Defective – Claim of Prescriptive Rights)

22 As and for a sixtieth separate and affirmative defense to said *Cross-Complaint*, and each
23 and every cause of action thereof, whether considered separately or collectively, this Answering
24 Cross-Defendant alleges that the *Cross-Complaint* is defective and uncertain in that it asserts
25 prescriptive water rights, but fails to allege: (a) when the alleged prescriptive rights commenced
26 and ended; (b) the specific amount of water that the Cross-Complainant pumped continuously
27 during the alleged prescriptive period; (c) the manner in which Cross-Complainant pumped
28 water under a claim of right; and (d) how Cross-Complainant gave, and this Answering Cross-

1 Defendant received actual, or constructive notice of Cross-Complainant's allegedly wrongful
2 pumping during the alleged prescriptive period.

3
4 **SIXTY-FIRST AFFIRMATIVE DEFENSE**

5 (Unlawful Taking)

6 As and for a sixty-first separate and affirmative defense to said *Cross-Complaint*, and
7 each and every cause of action thereof, whether considered separately or collectively, this
8 Answering Cross-Defendant alleges that the relief sought by Cross-Complainant would
9 constitute an illegal taking of this Answering Defendant's Properties and/or property rights
10 without compensation in violation of applicable provisions of the *United States Constitution* and
11 the *California Constitution*; and that Cross-Complainant lacks the authority to acquire the rights
12 sought in the manner alleged in the *Cross-Complaint*.

13
14 **SIXTY-SECOND AFFIRMATIVE DEFENSE**

15 (Lack of Standing)

16 As and for a sixty-second separate and affirmative defense to said *Cross-Complaint*, and
17 each and every cause of action thereof, whether considered separately or collectively, this
18 Answering Cross-Defendant alleges that Cross-Complainant lacks standing to bring the claims
19 that are set forth in the *Cross-Complaint*.

20
21 **SIXTY-THIRD AFFIRMATIVE DEFENSE**

22 (Failure to Name Indispensible and/or Necessary Parties)

23 As and for a sixty-third separate and affirmative defense to said *Cross-Complaint*, and
24 each and every cause of action thereof, whether considered separately or collectively, this
25 Answering Cross-Defendant alleges that each and every cause of action contained in the *Cross-*
26 *Complaint* is barred in whole or in part in accordance with *Code of Civil Procedure* § 389 on the
27 ground that Cross-Complainant has failed to name, join, and have subject matter jurisdiction
28 over an indispensable and/or necessary party or parties.

-27-

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8

2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8

3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8

1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8

2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8

3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18

9
0
1
2
3
4
5
6
7
8

0
1
2
3
4
5
6
7
8

1
2
3
4
5
6
7
8

6
7
8

7
8

8

1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8

2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8

3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8

0
1
2
3
4
5
6
7
8
9
20
21
22
23
24
25
26
27
28

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

4
5
6
7
8
9
20
21
22
23
24
25
26
27
28

8
9
20
21
22
23
24
25
26
27
28

20
21
22
23
24
25
26
27
28

22
23
24
25
26
27
28

23
24
25
26
27
28

24
25
26
27
28

25
26
27
28

26
27
28

27
28

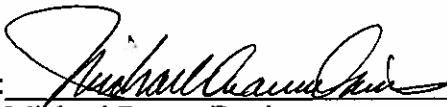
28

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

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

Dated: February 9, 2009.

GRESHAM SAVAGE NOLAN & TILDEN,
A Professional Corporation

By: 
Michael Duane Davis
Marlene Allen-Hammarlund
Attorneys for Cross-Defendant, Service Rock
Products Corporation

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

PROOF OF SERVICE
STATE OF CALIFORNIA, COUNTY OF RIVERSIDE

Re: *ANTELOPE VALLEY GROUNDWATER CASES*
Los Angeles County Superior Court Judicial Council Coordinated
Proceedings No. 4408; Santa Clara County Superior Court Case No. 1-05-CV-049053

I am employed in the County of Riverside, State of California. I am over the age of 18 years and not a party to the within action; my business address is: 3750 University Avenue, Suite 250, Riverside, CA 92501-3335.

On February 9, 2009, I served the foregoing document(s) described as **ANSWER OF SERVICE ROCK PRODUCTS CORPORATION TO PHELAN PIÑON HILLS COMMUNITY SERVICES DISTRICT'S CROSS-COMPLAINT FOR DECLARATORY, INJUNCTIVE AND OTHER EQUITABLE RELIEF INCLUDING A PHYSICAL SOLUTION AGAINST ALL PARTIES** on the interested parties in this action in the following manner:

(X) **BY ELECTRONIC SERVICE** - I posted the document(s) listed above to the Santa Clara County Superior Court website, <http://www.scefiling.org>, in the action of the Antelope Valley Groundwater Cases,

(X) **BY MAIL** - I served a true copy of the document(s) listed above in a sealed envelope and placed for collection and mailing following the usual business practice of the Firm. I am "readily familiar" with the Firm's practice of collection and processing correspondence for mailing. Under that practice, it would be deposited with the United States Postal Service with postage thereon fully prepaid at Riverside, California, on the same day in the ordinary course of business, addressed as follows:

Honorable Jack Komar
Santa Clara County Superior Court
191 North First Street, Dept. 17C
San Jose, CA 95113

Superior Court of California **[Original Documents to be filed at this location]**
County of Los Angeles
Stanley Mosk Courthouse, Dept. 1, Room 534
111 North Hill Street
Los Angeles, CA 90012

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

Executed on February 9, 2009, at Riverside, California.


TERI D. GALLAGHER