

ROGER A. BROWN

Lawyer

38 North Washington Street

Post Office Box 475

Sonoma, California 95370

Phone (209) 533-7755

Fax (209) 533-7757

August 5, 2004

Amy Marshall-Sciortino  
CNA Global Specialty Lines  
40 Wall Street  
New York, NY 10005

Re: Odd Fellows v. Boy Scouts, et al.

Dear Ms. Sciortino:

This is to provide you with the narrative and back-up materials you requested to explain the amounts due for of our work on the Boy Scouts trial matter. As I explained, the treasurer writes the checks for the Odd Fellows and he/she is a volunteer whose identity may change from year to year following elections. We have been the Odd Fellows' regular attorney for some time and while we were paid by them to monitor the progress of this case prior to the time when you retained us, we have not billed you for any of that work prior to the date of retention, January 26, 2004. The Treasurer sent us checks to cover some of our invoices without distinguishing between the Boy Scouts litigation and other matters we were handling for them. As a result, while the balance due on the latest bills accurately reflects what is owed to us, it does not recognize the payments made by Odd Fellows on the Boy Scouts matter after January 26, 2004.

Our bills to Odd Fellows are divided into the different matters we may be handling for them. However, the amounts we billed to you did not include our general corporate work for the client. When our client paid funds to us, we would put the money in trust and use it to pay whatever outstanding invoices there were for all matters.

My secretary has prepared a Billing Summary which highlights the fees, costs we billed and copies of the checks we received in payment from CNA and from Odd Fellows. We have also enclosed the bills for each period so you can see what the amounts and activity were for each period. The amounts shown on the worksheet are highlighted in yellow on the actual bills. The checks in payment of the invoices are in sequence with the invoices.

In summary, we have billed a total of \$63,388.16 to date for the Boy Scouts litigation matter only. Of that sum, CNA has paid a total of \$15,780.25 (\$7513.92 + \$8,266.33). The difference is the amount which CNA currently owes us for this litigation, \$47,607.91.

Page Two  
Amy Marshall-Sciortino  
August 5, 2004

The confusion arose because the Odd Fellows made some payments during the same time and CNA may have paid the net amount owing on each bill without regard to the Odd Fellows payments. During the period of our retention, Odd Fellows has paid us \$759.20 on 2/21/04; \$754.00 on 3/20/04; \$7,513.92 on 4/17/04; \$10,801.44 on 5/16/04; and \$8,266.33 on 6/12/04; for a total paid by Odd Fellows of \$28,094.89. My secretary's Billing Summary details what portions of the Odd Fellows payments and the corresponding invoices were for the Boy Scouts matter.

The easiest way to reconcile this billing history is simply to look at the total amounts billed on the Boy Scouts matter (\$63,388.16) and reduce that amount by the sum that CNA has paid (\$15,780.25), leaving an unpaid current balance of \$47,607.91. If you will pay us this sum, it will go in trust and be credited first to any remaining amounts owed to us and the balance will be refunded to Odd Fellows to reimburse them for the amounts they paid earlier for which CNA was responsible under their defense of the lawsuit.

In addition to the Billing Summary, checks and invoices enclosed, we also enclose the briefs we spoke about on the phone. Our Trial Brief was filed before the trial began. The Boy Scouts Post Trial Brief was only filed last week and we have until August 27, 2004 to file our Post Trial Brief. We are working on that brief and will certainly have it on file by the deadline. We do not expect the court to issue its decision until at least sometime in October and it could be later.

If you have any questions about the Billing Summary or the net amount owed, please feel free to contact me or my Secretary, Nancy, for whatever information or further explanation you may require.

Very truly yours,

Roger A. Brown

RAB:nab  
Enclosures  
cc: Client (w/enc.)

Billing Summary Worksheet  
Boy Scouts v. Odd Fellows

January 26, 2004 retained as attorney for Odd Fellows

February 2, 2004 billing invoice: Charges attributable to Boy Scouts matter:

Fees  $\$87.50 + 7.50 + 35.00 + 157.50 = 287.50$   
Costs  $\$287.50 \times 4\% = \$11.50$   
Total Fees:  $287.50 + \text{Costs: } 11.50 =$   $\$299.00$

Paid by Odd Fellows as part of \$759.20 payment on 2/21/04

March 1, 2004 billing invoice: Entire invoice Boy Scouts matter:

Fees:  $\$725.00$   
Costs:  $\$29.00$   
Total Fees:  $725.00 + \text{Costs: } 29.00 =$   $\$754.00$

Paid by Odd Fellows in full on 3/20/04

March 31, 2004 billing invoice: Entire invoice Boy Scouts matter:

Fees:  $\$7,217.50$   
Costs:  $\$296.42$   
Total Fees:  $7217.50 + \text{Costs } 296.42 =$   $\$7,513.92$

Paid by Odd Fellows in full on 4/17/04

April 29, 2004 billing invoice: Charges attributable to Boy Scouts matter:

Fees:  $\$9,376.25$   
Costs:  $\$540.54 + 375.05 * = \$915.59$   
\*4% figured on 9376.25 fee amount

Total Fees:  $\$9,376.25 + \text{Costs } 915.59 =$   $\$10,291.84$

Paid by Odd Fellows as part of \$10,801.44 payment on 5/16/04

June 1, 2004 billing invoice: Entire invoice Boy Scouts matter:

Fees:  $\$12,370.00$   
Costs:  $\$3,410.25$   
Total Fees:  $12,370.00 + \text{Costs: } 3,410.25 =$   $\$15,780.25$

CNA paid  $\$7,513.92$  on 4/28/04  
leaving balance of  $\$8,266.33$

July 1, 2004 billing invoice: Entire invoice Boy Scouts matter:

Fees: \$13,230.00

Costs: \$ 4,246.13

Total Fees: 13,230.00 + Costs: 4,246.13 = \$17,476.13

Payment by Odd Fellows on 6/12/04

Of \$8,266.33

Payment by CNA on 6/14/04

Of \$8,266.33

Leaving balance of \$9,154.06

August 2, 2004 billing invoice: Attributable to Boy Scouts matter:

Fees: \$8,665.00

Costs: \$2,754.87 + 346.60\* = \$3,101.47

\*4% x Fees of 8665.00

Total Fees: \$8,665.00 + Costs: \$3,101.47 = \$11,766.47

Interest reflected of \$80.25 not added in.

Total Amounts Billed On Boy Scouts Matter:

\$ 299.00

\$ 754.00

\$ 7,513.92

\$10,291.84

\$15,780.25

\$17,476.13

\$11,766.47

Total: \$63,388.16

\$63,388.16

Payments from CNA:

\$7,513.92

\$8,266.33

Total: \$15,780.25

\$15,780.25

Balance due by CNA to Odd Fellows:

\$47,607.91

Roger A. Brown, Lawyer  
38 N. Washington Street  
Sonora CA 95370  
Tax I.D. #77-0282419, (209) 533-7755

Invoice submitted to:  
Odd Fellows Sierra Rec Association  
PO Box 116  
Long Barn CA 95335

February 02, 2004

Invoice #15019

Professional Services

Hours    Amount

BOY SCOUTS

1/9/2004	RAB	Telephone conference with Glenn Caldwell regarding lack of cooperation from insurance company and client's dis-satisfaction with insurance defense lawyers. BOY SCOUTS	0.30	52.50
	RAB	Lengthy telephone conference with insurance adjuster for CNA regarding picking up defense of this case; receipt and review 26 page guidelines for defense counsel; strongly advise adjuster of need for investigators. BOY SCOUTS	1.50	262.50
	RAB	Telephone conference with Del Wallis to advise him of status. BOY SCOUTS	0.30	52.50
1/21/2004	N	Draft letter to CNA Adjuster Sciorlino regarding engagement letter and Substitution of Attorney before we can go forward with defense of matter. BOY SCOUTS	0.30	22.50
	RAB	Review and revise correspondence to insurance adjuster regarding retainer agreement and transfer of file. BOY SCOUTS	0.30	52.50
1/26/2004	RAB	Receipt and review correspondence from CNA appointing us as attorneys for Odd Fellows and Wallis in Boy Scouts matter; prepare correspondence and Substitution of Attorneys for former law firm asking	0.50	87.50

Hours    Amount

them to send file to us with signed Substitutions.  
BOY SCOUTS

1/27/2004	N	Telephone conference with Del Wallis regarding our retention as counsel. BOY SCOUTS	0.10	7.50
1/30/2004	RAB	Email to CNA Insurance requesting authority to hire investigator. BOY SCOUTS	0.20	35.00
	RAB	Telephone conference with Tuolumne County Historical Society regarding what records may be available to prove consent over the past 70 years and to locate possible experts to help regarding same; several calls to locate an expert to help with historical and document research; contact the official County Historian regarding same. BOY SCOUTS	0.90	157.50

SUBTOTAL: *FEES # 297.50* [ 4.40 730.00]

Additional Charges :

Qty/Price

BOY SCOUTS

1/31/2004		4% Administrative Fee BOY SCOUTS <i>COGS # 11.50</i>	1 29.20	29.20
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SUBTOTAL: [ 29.20]

For professional services rendered 4.40 \$759.20

Total amount of this bill \$759.20

Previous balance \$618.80

1/19/2004 Payment - Thank you. Check No. 11023 (\$618.80)

Total payments and adjustments (\$618.80)

Balance due \$759.20

ODDFELLOWS SIERRA RECREATION ASSOC.  
PO BOX 116  
LONG BARN, CA 95335

U.S. BANK  
90-2267/1211

11042

2/21/2004

PAY TO THE ORDER OF Roger A. Brown

\$ \*\*759.20

Seven Hundred Fifty-Nine and 20/100\*\*\*\*\* DOLLARS

Roger A. Brown  
38 N. Washington St,  
Sonora, CA 95370

MEMO Inv. 15019

*Fred Colomo*  
*Richard Bonner*  
AUTHORIZED SIGNATURE

⑈0 1 104 2⑈ ⑆ 1 2 1 1 2 2 6 7 6 ⑆ 1 5 3 4 0 1 9 4 6 5 8 4 ⑈

ODDFELLOWS SIERRA RECREATION ASSOC.

Roger A. Brown  
755 · Professional Services

Boy Scouts

2/21/2004

11042

759.20

USB Checking

Inv. 15019

759.20



Roger A. Brown, Lawyer  
38 N. Washington Street  
Sonora CA 95370  
Tax I.D. #77-0282419, (209) 533-7755

Invoice submitted to:  
Odd Fellows Sierra Rec Association  
PO Box 116  
Long Barn CA 95335

March 01, 2004

Invoice #15057

Professional Services

		<u>Hours</u>	<u>Amount</u>
	<u>BOY SCOUTS</u>		
2/2/2004	RAB Receipt and review email from CNA regarding hiring investigator; telephone conference with Nadine Kossouf regarding same, obtaining \$2500.00 authority to do so; email confirmation to CNA regarding same. BOY SCOUTS	0.50	87.50
	RAB Telephone conference with Terry Brejla of Foothill Resources to interview her regarding possibly serving as expert/investigator. BOY SCOUTS	0.50	87.50
2/9/2004	N Left message for Al Costa regarding investigation. BOY SCOUTS	0.10	7.50
	RAB Instruct staff regarding search for and interview of potential investigators on issue of consent. BOY SCOUTS	0.20	35.00
2/10/2004	RAB Telephone conference with Fred Coleman asking him to research names and addresses of oldest living residents of Odd Fellows Park and to further research records for "consent issue". BOY SCOUTS	0.30	52.50
2/11/2004	RAB Correspondence to Sacramento law firm AGAIN seeking files and substitution form; confer with potential historical investigators regarding "consent" issue; lengthy telephone conference with Fred Coleman regarding finding people and records regarding consent; lengthy	0.90	157.50

		<u>Hours</u>	<u>Amount</u>
telephone conference with Del Wallis regarding same. BOY SCOUTS			
2/18/2004	RAB Lengthy telephone conference with Bob Shannon regarding transfer of file and various issues regarding same, plus his agreement to have the file in my office by end of this week. BOY SCOUTS	0.50	87.50
2/20/2004	RAB Receipt and review original file, correspondence and signed Substitution from former law firm. BOY SCOUTS	0.50	87.50
2/23/2004	RAB Draft letter to Attorney Shannon regarding discovery responses not included in file; draft letter to clients regarding signature and return of Substitutions of Attorney. BOY SCOUTS	0.30	52.50
2/27/2004	RAB Receipt and review Boy Scouts demand for exchange of experts. BOY SCOUTS	0.20	35.00
	RAB Receipt and review correspondence from Mr. Sisco regarding discovery issues; receipt and review Substitution form signed by Mr. Wallis. BOY SCOUTS	0.20	35.00
SUBTOTAL: <i>FEES</i>		[ 4.20	725.00]
Additional Charges :			
			<u>Qty/Price</u>
<u>BOY SCOUTS</u>			
3/1/2004	4% Administrative Fee BOY SCOUTS <i>COSTS</i>	1 29.00	29.00
SUBTOTAL:		[	29.00]
For professional services rendered		4.20	\$754.00
Total amount of this bill			\$754.00
Previous balance			\$759.20
2/21/2004	Payment - Thank you. Check No. 11042		(\$759.20)

	<u>Amount</u>
Total payments and adjustments	<u>(\$759.20)</u>
Balance due	<u><u>\$754.00</u></u>

ODDFELLOWS SIERRA RECREATION ASSOC.  
PO BOX 116  
LONG BARN, CA 95335

U.S. BANK  
90-2267/1211

11084

3/20/2004

PAY TO THE ORDER OF Roger A. Brown

\$ \*\*754.00

Seven Hundred Fifty-Four and 00/100\*\*\*\*\* DOLLARS

Roger A. Brown  
38 N. Washington St,  
Sonora, CA 95370

MEMO Inv. 15057

*Neil Selman*  
*Richard Bonner*  
AUTHORIZED SIGNATURE

⑈011084⑈ ⑆121122676⑆153401946584⑈

Details on Back.  
Security Features Included

Roger A. Brown, Lawyer  
38 North Washington Street  
Sonora CA 95370  
Tax I.D. #77-0282419, (209) 533-7755

Invoice submitted to:  
Odd Fellows Sierra Rec Association  
PO Box 116  
Long Barn CA 95335

March 31, 2004

In Reference To: CNA Claim No. NP 001507  
Insured: Odd Fellows Sierra Recreation Association  
Claimant: Alameda Boy Scouts  
Taxpayer ID# 77-0282419                      Billing Rate:  
\$175.00/hour

Invoice #15100

Professional Services

Hours    Amount

BOY SCOUTS

3/2/2004	N	Research and begin drafting discovery responses. BOY SCOUTS	2.50	187.50
	RAB	Receipt and review Scouts Motion to Compel Discovery responses. BOY SCOUTS	0.50	87.50
3/3/2004	N	Finish drafting responses to discovery BOY SCOUTS	2.00	150.00
	N	Prepare Proof of Service on Substitution of Attorneys, send copy to all parties and file with Court. BOY SCOUTS	0.10	7.50
	N	Telephone conference with Fred Coleman regarding production of documents and files he has recently located. BOY SCOUTS	0.10	7.50
3/4/2004	N	Research hearsay evidence. BOY SCOUTS	1.00	75.00

		<u>Hours</u>	<u>Amount</u>
3/5/2004	RAB Telephone conference with investigator Ed Hinton to brief him on the tasks we want him to perform to investigate the issue of "consent" regarding prescriptive easement. BOY SCOUTS	0.40	70.00
	RAB Brief review of client documents received from Mr. Coleman yesterday. BOY SCOUTS	0.30	52.50
	RAB Review staff research regarding exceptions to hearsay rule for ancient documents and community reputation for purposes of trial preparation. BOY SCOUTS	0.50	87.50
	RAB Further review of client documents from the 1940s and instruct staff regarding same. BOY SCOUTS	0.50	87.50
	N Begin review of client documents for information relevant to Boy Scout case. BOY SCOUTS	1.50	112.50
3/8/2004	N Dictate letter to the Smiths regarding discovery propounded on them and requesting them to respond; preparation of Verifications for the Smiths to sign and return. BOY SCOUTS	0.20	15.00
	N Review Boy Scouts responses to discovery to see if we need to take anyone's deposition prior to discovery cut-off. BOY SCOUTS	1.00	75.00
	N Continue review of client documents for information to be produced in response to discovery. BOY SCOUTS	2.00	150.00
	RAB Lengthy telephone conference with Fred Coleman regarding historical research; further telephone conference with Mr. Coleman regarding Requests For Admissions; receipt and review voluminous new written discovery demands; telephone conference with Bob Shannon at Lewis, Brisboe law firm; prepare demand for Scouts supplemental discovery; review package of documents for investigator. BOY SCOUTS	2.10	367.50
3/9/2004	N Review and revise our responses to discovery to include documents recently provided by client; telephone message to Fred Coleman regarding missing June 26, 1996 letter from Grayhill Land Survey. BOY SCOUTS	1.10	82.50
	RAB Telephone conference with Del Wallis regarding investigation of consent issue and his deposition and related issues; telephone conference with investigator regarding his analysis of client documents; further fact	1.50	262.50

		<u>Hours</u>	<u>Amount</u>
	research. BOY SCOUTS		
3/9/2004	N Draft declaration of Roger A. Brown in support of opposition to motion to compel discovery; locate exhibits in support of opposition. BOY SCOUTS	1.00	75.00
3/10/2004	RAB Lengthy telephone conference with Fred Coleman regarding changing proposed responses to Request for Admissions and make changes; also discuss possible settlement scenario and ultimate impact if the case is lost; telephone message for Scouts attorney Mr. Sisco. BOY SCOUTS	0.70	122.50
	RAB Review, revise and edit my declaration and points and authorities in opposition to motion to compel and for sanctions. BOY SCOUTS	0.80	140.00
	RAB Detailed review of client documents for production to Scouts. BOY SCOUTS	2.20	385.00
	N Draft points and authorities in opposition to motion to compel discovery. BOY SCOUTS	1.00	75.00
	RAB Meet and confer with Mr. Wallis. BOY SCOUTS	0.30	52.50
3/11/2004	N Research deposition with document production objection vs. protective order. BOY SCOUTS	1.00	75.00
	RAB Receipt and review new deposition notice for "person most knowledgeable"; telephone conference with Ed Hinton regarding his investigation; research evidentiary issues; further review of discovery documents. BOY SCOUTS	0.80	140.00
	RAB Telephone conference with investigator Hinton regarding his visit to property and my request for him to video tape the access routes to Boy Scouts camp. BOY SCOUTS	0.30	52.50
3/12/2004	N Letter to clients forwarding a copy of the Mandatory Settlement Conference Statement. BOY SCOUTS	0.10	7.50
	RAB Research for trial brief and settlement conference regarding prescriptive easements and easements by implication and necessity; copy to file. BOY SCOUTS	1.30	227.50

			<u>Hours</u>	<u>Amount</u>
3/12/2004	RAB	Review, revise, edit and supplement my declaration and points and authorities in opposition to motion to compel and for sanctions BOY SCOUTS	0.70	122.50
	RAB	Review, revise, edit and supplement responses to request for admissions; special and form interrogatories. BOY SCOUTS	1.80	315.00
	RAB	Prepare Settlement Conference Statement. BOY SCOUTS	0.80	140.00
	RAB	Research available objections to Boy Scouts discovery request; mark and identify client documents protected from discovery by attorney-client privilege and instruct staff regarding privilege log. BOY SCOUTS	2.10	367.50
	RAB	Carefully review all prior pleadings (3 versions of Complaint) for allegations against Del Wallis and finding none, consider Motion for Judgment on the pleadings. BOY SCOUTS	0.90	157.50
3/15/2004	RAB	Telephone conference with Fred Coleman regarding discovery issues and related items. BOY SCOUTS	0.30	52.50
	RAB	Receipt and review Scouts settlement conference statement. BOY SCOUTS	0.20	35.00
	N	Letter to Del Wallis regarding the April 2, 2004 deposition of "person most knowledgeable" BOY SCOUTS	0.10	7.50
	N	Draft objection to notice of taking deposition and production of documents of person most knowledgeable. BOY SCOUTS	0.20	15.00
	RAB	Receipt and review fax declaration from Mary Melton regarding delay in discovery. BOY SCOUTS	0.20	35.00
3/16/2004	N	Draft Disclosure of Expert Witness BOY SCOUTS	0.20	15.00
	N	Begin drafting Evidentiary Brief. BOY SCOUTS	2.00	150.00
3/17/2004	N	Further research of case law and finalize draft of Evidentiary Brief. BOY SCOUTS	2.00	150.00



		<u>Hours</u>	<u>Amount</u>
3/17/2004	RAB Research expert witness exchange and begin preparing same. BOY SCOUTS	0.30	52.50
3/18/2004	RAB Instruct staff regarding finding experts for Trial; prepare for Settlement Conference; lengthy telephone conference with Amy Marshall at CNA regarding settlement authority and related issues. BOY SCOUTS	1.50	262.50
	RAB Attend Settlement Conference and settle case as to Defendants Freitas and Smith; continue Trial and settlement dates; research tentative agreement to settle Wallis with a dismissal, if insurance coverage is not compromised and discuss relaxing discovery deadlines. BOY SCOUTS	2.00	350.00
3/19/2004	N Research Boy Scouts answers to discovery regarding persons with knowledge of hostility and consent. BOY SCOUTS	1.00	75.00
	RAB Telephone conference with attorney for Scouts, Stacy Sisco, and agree to continue depositions, extend some discovery deadlines and related issues; status report to Amy Marshall at CNA with request for more authority for investigator and experts; receipt and review Scouts reply to our opposition to their request for sanctions; receipt and review correspondence from Mr. Sisco regarding experts. BOY SCOUTS	1.80	315.00
	RAB Return telephone call from Bob Shannon; receipt and review correspondence from Scout's attorney, telephone conference with Sharon Marovich regarding historical research. BOY SCOUTS	0.40	70.00
3/23/2004	RAB Receipt and review March 19th letter from Attorney Sisco. BOY SCOUTS	0.10	17.50
3/24/2004	RAB Telephone conference with Mr. Shannon at Lewis firm regarding tomorrow's hearing regarding sanctions and fax papers to him at his request. BOY SCOUTS	0.40	70.00
3/25/2004	RAB Lengthy telephone conference with investigator Ed Hinton to review status of his investigation and memo to file. BOY SCOUTS	0.50	87.50
	RAB Prepare for and attend Motion for Discovery Sanctions. BOY SCOUTS	1.00	175.00
	RAB Meet and confer with investigator regarding locating and interviewing witnesses and to discuss documents and evidence he has located and to confirm he is still under budget, request written progress report; instruct	0.60	105.00

Hours    Amount

staff regarding locating real estate title expert and surveyor.  
BOY SCOUTS

3/29/2004	RAB	Receipt and review correspondence and draft Order denying Plaintiff's request for sanctions; sign and return to Scout's attorney. BOY SCOUTS	0.20	35.00
	N	Review property descriptions to determine road use permission. BOY SCOUTS	1.00	75.00
	RAB	Several telephone calls to colleagues looking for title expert for consult and trial; review 1929 Deed from Sylvester to Moyer which appears to grant an easement; research whether there are exceptions or defenses to same; finding no defenses, place call to client advising purchase of Scout's property to settle. BOY SCOUTS	1.80	315.00
3/30/2004	RAB	Lengthy telephone conference with Del Wallis regarding possible deeded easement and how to resolve the case by settlement; lengthy telephone conference with title expert, Mr. Barnum of Sterling Title and review with him the important deeds; telephone conference with Fred Coleman regarding same. BOY SCOUTS	1.20	210.00
	RAB	Lengthy telephone conference with Amy Marshall-Sciortino at CNA regarding possible deeded easement and settlement strategies. BOY SCOUTS	0.40	70.00
	RAB	Telephone conference with Del Wallis regarding settlement issues. BOY SCOUTS	0.40	70.00
3/31/2004	RAB	Lengthy telephone conference with Fred Coleman regarding settlement issues. BOY SCOUTS	0.40	70.00

SUBTOTAL: *FEES* [ 53.30    7,217.50]

Additional Charges :

Qty/Price

BOY SCOUTS

3/11/2004		Copy charges for duplicates of maps BOY SCOUTS	1 7.72	7.72
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	<u>Qty/Price</u>	<u>Amount</u>
3/31/2004 4% Administrative Fee BOY SCOUTS	1 288.70	288.70
<b>SUBTOTAL: <i>Costs</i></b>		<u>[ 296.42]</u>
	<u>Hours</u>	<u></u>
For professional services rendered	53.30	\$7,513.92
Total amount of this bill		<u>\$7,513.92</u>
Previous balance		\$754.00
3/20/2004 Payment - Thank you. Check No. 11084		<u>(\$754.00)</u>
Total payments and adjustments		<u>(\$754.00)</u>
Balance due		<u><u>\$7,513.92</u></u>

ODDFELLOWS SIERRA RECREATION ASSOC.  
PO BOX 116  
LONG BARN, CA 95335

U.S. BANK  
90-2267/1211

11112

4/17/2004

PAY TO THE ORDER OF Roger A. Brown

\$ \*\*7,513.92

Seven Thousand Five Hundred Thirteen and 92/100\*\*\*\*\* DOLLARS

Roger A. Brown  
38 N. Washington St,  
Sonora, CA 95370

MEMO  
Inv. 15100

*Neil Selman*  
*Richard Bonner*  
AUTHORIZED SIGNATURE

⑈011112⑈ ⑆121122676⑆153401946584⑈

Details on Back. Security Features Included

Roger A. Brown, Lawyer  
38 North Washington Street  
Sonora CA 95370  
Tax I.D. #77-0282419, (209) 533-7755

Invoice submitted to:  
Odd Fellows Sierra Rec Association  
PO Box 116  
Long Barn CA 95335

April 29, 2004

In Reference To: CNA Claim No. NP 001507  
Insured: Odd Fellows Sierra Recreation Association  
Claimant: Alameda Boy Scouts  
Taxpayer ID# 77-0282419                      Billing Rate:  
\$175.00/hour

Invoice #15131

Professional Services

		<u>Hours</u>	<u>Amount</u>
<u>BOY SCOUTS</u>			
3/31/2004	RAB Receipt and review message regarding dates and location of various depositions of persons most knowledgeable; review objection to production notice and edit same. BOY SCOUTS	0.30	52.50
4/1/2004	RAB Lengthy telephone conference with Amy Marshall regarding settlement, trial and reporting issues and her offer of \$20,000 to \$30,000 toward settlement. BOY SCOUTS	0.40	70.00
	RAB Telephone conference with Scout's attorney George Rodarakis to get settlement discussions moving BOY SCOUTS	0.20	35.00
	RAB Further telephone conference with George Rodarakis offering \$400,000.00 to purchase property subject to inspections and ultimate approval by Board of Directors and to inquire regarding appraisal and access to property. BOY SCOUTS	0.30	52.50
	RAB Email to Amy Marshall regarding getting dismissal for Del Wallis. BOY SCOUTS	0.20	35.00

		<u>Hours</u>	<u>Amount</u>
4/5/2004	RAB Receipt and review supplemental written discovery demands from Scouts and forward to Mr. Coleman for response, confer with staff to retrieve documents relating to voluntary access to creek crossing for Scouts; telephone conference with Fred Coleman responding to his inquiry. BOY SCOUTS	0.80	140.00
	RAB Exchange of emails with Amy Marshall. BOY SCOUTS	0.20	35.00
	RAB Lengthy telephone conference with Ed Hinton regarding status of investigation and costs to date (within budget) and request a written report. BOY SCOUTS	0.60	105.00
	RAB Prepare for Dick Anderson deposition; telephone conference with Fred Coleman. BOY SCOUTS	1.50	262.50
4/6/2004	RAB Review documents and prepare for tomorrow's deposition of Richard Anderson; make copies of documents for exhibits. BOY SCOUTS	3.50	612.50
4/7/2004	RAB Travel to/from Modesto (116 miles) to take deposition of Dick Anderson, President of Alameda Boy Scouts Foundation, Inc. BOY SCOUTS	7.50	1,312.50
4/8/2004	RAB Lengthy telephone conference with Del Wallis to prepare him for tomorrow's deposition and assemble materials to bring regarding same. BOY SCOUTS	0.80	140.00
	RAB Begin preparing status/budget/settlement report to CNA as requested by Ms. Marshall-Sciortino. BOY SCOUTS	0.40	70.00
4/9/2004	RAB First day of Del Wallis deposition; travel to/from Twain Harte-Modesto (146 miles) BOY SCOUTS	11.75	2,056.25
4/12/2004	N Telephone message to Attorney Rodarakis regarding date for continued deposition of Del Wallis. BOY SCOUTS	0.10	7.50
	RAB Telephone conference with Ed Hinton regarding investigation; lengthy telephone conference with Fred Coleman regarding status and settlement. BOY SCOUTS	0.80	140.00

		<u>Hours</u>	<u>Amount</u>
4/13/2004	N Telephone conference with Attorney Rodarakis office regarding continuation of Del Wallis' deposition; telephone conference with Del Wallis regarding proposed April 20th date. BOY SCOUTS	0.10	7.50
	RAB Telephone conference with Mr. Wallis regarding his continued deposition. BOY SCOUTS	0.20	35.00
	RAB Telephone conference with Damrell firm regarding expert witness disclosure and related issues; consult with staff regarding our own expert disclosure and review law regarding same. BOY SCOUTS	0.40	70.00
	N Draft letter to Del Wallis regarding confirmation of April 20th deposition BOY SCOUTS	0.10	7.50
	RAB Further work on status report and budget estimate. BOY SCOUTS	1.50	262.50
	RAB Meet and confer with Fred Coleman and review new discovery demands from Scouts and agree on responses to same; discuss settlement issues and difficulty we have had in retaining a surveyor as expert. BOY SCOUTS	0.70	122.50
	RAB Telephone message for surveyors George Hill and Frank Walter. BOY SCOUTS	0.20	35.00
4/14/2004	RAB Lengthy telephone conference with investigator Ed Hinton regarding status and budget of his investigation; research discoverability of Mr. Hinton's report and whether protected by work product doctrine. BOY SCOUTS	0.90	157.50
	RAB Telephone conference with Fred Coleman regarding toxic issues; telephone conference with Dave Wood, environmental consultant regarding toxic's issue and urge him to contact Mr. Coleman. BOY SCOUTS	0.20	35.00
	RAB Lengthy telephone conference with Frank Walter (licensed surveyor) regarding existence of old maps, aerial photographs and his prior work in the area and to inquire whether he would be willing to serve as a retained expert, review documents regarding same. BOY SCOUTS	0.70	122.50
4/15/2004	RAB Review revised court rules regarding trials in Tuolumne County; lengthy telephone conference with Fred Coleman regarding aerial photos, surveyor and settlement issues. BOY SCOUTS	0.60	105.00

		<u>Hours</u>	<u>Amount</u>
4/15/2004	RAB Prepare, revise and edit expert witness disclosure and declaration regarding same. BOY SCOUTS	0.40	70.00
4/16/2004	RAB Meet and confer with surveyor Frank Walter and get his agreement to serve as expert at \$90.00 per hour. BOY SCOUTS	0.30	52.50
4/19/2004	RAB Review, revise and edit expert witness disclosure and declaration; lengthy telephone conference with Fred Coleman regarding his settlement ideas. BOY SCOUTS	0.60	105.00
	RAB Telephone conference with Del Wallis regarding tomorrow's continuation of his deposition; telephone conference with Fred Coleman regarding various issues regarding this litigation. BOY SCOUTS	0.50	87.50
4/20/2004	RAB Receipt and review detailed investigative report from Central Sierra Claims & Investigations (Ed Hinton) and analysis of same noting that I must personally interview Ed Smith and Loren Hosmer prior to trial; instruct staff to obtain 2 copies of photos and video tape for discovery and pretrial preparation. BOY SCOUTS	0.60	105.00
	RAB Receipt and review email authority from Amy Marshall increasing authority to pay investigator an additional \$1000; respond to same with additional update of settlement dynamics. BOY SCOUTS	0.30	52.50
	RAB Meet witness Del Wallis in Twain Harte and travel to and from Modesto to defend his deposition (140 miles); 2 telephone conferences with Fred Coleman regarding toxics and related issues. BOY SCOUTS	8.50	1,487.50
4/21/2004	RAB Lengthy telephone conference with Ed Hinton regarding his investigation and request copies of photos and video; receipt and review Scouts expert disclosure; receipt and brief review of Richard Anderson deposition transcript. BOY SCOUTS	1.20	210.00
	RAB Exchange emails with Amy Marshall BOY SCOUTS	0.10	17.50
	RAB Meet and confer with environmental consultant regarding possible toxics on Scouts' property as potential barrier to purchase. BOY SCOUTS	0.30	52.50



			<u>Hours</u>	<u>Amount</u>
4/21/2004	RAB	Draft notice of taking deposition of Boy Scouts expert Kenneth Blakemore. BOY SCOUTS	0.30	52.50
4/22/2004	RAB	Telephone conference with Ed Hinton regarding his follow-up conversation with key witness Loren Hosmer and my instructions for him to interview him in person and report back. BOY SCOUTS	0.30	52.50
4/23/2004	RAB	Telephone conference with Del Wallis regarding his conversation with Rick Welch, a neighboring property owner regarding his contacts with Scouts and documents he provided them. BOY SCOUTS	0.30	52.50
	RAB	Receipt and review correspondence from Scout's law firm and telephone message from Mr. Sisco regarding his expert's access to property. BOY SCOUTS	0.30	52.50
4/26/2004	RAB	Telephone conference with investigator regarding his interview with original Odd Fellows Board member from 1949 regarding consent to Scouts for access. BOY SCOUTS	0.30	52.50
4/27/2004	RAB	Receipt and review revised settlement conference statement from Scouts attorney; prepare supplemental settlement conference statement for Odd Fellows regarding same. BOY SCOUTS	0.80	140.00
	RAB	Meet and confer with investigator and receipt of photos and video tape of Scouts access over roads other than Odd Fellows' roads. BOY SCOUTS	0.40	70.00
	RAB	Receipt of Del Wallis' deposition transcript, copy same for witness review and telephone conference with Mr. Wallis regarding same and regarding settlement conference. BOY SCOUTS	0.60	105.00
4/28/2004	RAB	Receipt and review deposition notice for taking Ed Smith's deposition and research whether failure to serve deposition subpoena makes the notice defective. BOY SCOUTS	0.60	105.00
	RAB	Prepare responses to special interrogatories, set #2, request for production of documents, set #2 and supplemental responses to initial set of form and special interrogatories and request for production of documents. BOY SCOUTS	2.10	367.50

Hours    Amount

SUBTOTAL: *FEES*

[    53.75    9,376.25]

GENERAL FILE

<del>4/19/2004</del>	<del>RAB</del>	<del>Telephone conference with Fred regarding his request for general information about duties of directors regarding confidentiality and fiduciary duty. GENERAL FILE</del>	<del>0.30</del>	<del>52.50</del>
4/22/2004	RAB	Begin research for directors duties overview requested by Mr. Coleman. GENERAL FILE	0.50	87.50
4/23/2004	RAB	Further research and drafting of summary of directors and officers fiduciary duties for Board of Directors. GENERAL FILE	1.70	297.50
4/27/2004	RAB	Review, revise and edit correspondence to Mr. Coleman regarding fiduciary duties of officers and directors of corporation. GENERAL FILE	0.30	52.50

*Not Boy Scouts*

SUBTOTAL:

[    2.80    490.00]

Additional Charges :

Qty/Price

BOY SCOUTS

4/7/2004	Mileage to/from Modesto for depositions (116 X .36) BOY SCOUTS	1 41.76	41.76
	Lunch (Modesto depositions) BOY SCOUTS	1 15.00	15.00
4/9/2004	Mileage to/from Twain Harte-Modesto (146 miles @ \$.036) BOY SCOUTS	1 52.56	52.56
	Lunch - Del Wallis deposition (first day) BOY SCOUTS	1 32.83	32.83
4/12/2004	Computer research BOY SCOUTS	1 72.91	72.91
4/19/2004	140 mile at \$0.36 @ for continuation of Wallis deposition BOY SCOUTS	1 50.40	50.40

Qty/Price    Amount

4/19/2004 Lunch - deposition of Del Wallis BOY SCOUTS	1 25.08	25.08
4/27/2004 Expert deposition fee for Kenneth W. Blakemore. Appraiser (\$125 per hour) BOY SCOUTS	1 250.00	250.00

SUBTOTAL: *COSTS* [ 540.54]

MISCELLANEOUS EXPENSES

4/29/2004 4% Administrative Fee MISCELLANEOUS EXPENSES	1 394.65	394.65
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*\$ 375.05*

SUBTOTAL: [ 394.65]

Hours \_\_\_\_\_

For professional services rendered 56.55 \$10,801.44

Total amount of this bill \$10,801.44

Previous balance \$7,513.92

4/17/2004 Payment - Thank you. Check No. 11112 (\$7,513.92)

Total payments and adjustments (\$7,513.92)

Balance due \$10,801.44

ODDFELLOWS SIERRA RECREATION ASSOC.  
PO BOX 116  
LONG BARN, CA 95335


U.S. BANK  
90-2267/1211

11149

5/16/2004


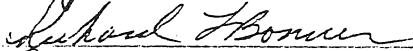

PAY TO THE  
ORDER OF Roger A. Brown

\$ \*\*10.801.44

Ten Thousand Eight Hundred One and 44/100\*\*\*\*\* DOLLARS 

Roger A. Brown  
38 N. Washington St,  
Sonora, CA 95370

MEMO

  
  
AUTHORIZED SIGNATURE 

⑈011149⑈ ⑆121122676⑆153401946584⑈

Details on Back.  
Security Features Included

Roger A. Brown, Lawyer  
38 North Washington Street  
Sonora CA 95370  
Tax I.D. #77-0282419, (209) 533-7755

Invoice submitted to:  
Odd Fellows Sierra Rec Association  
PO Box 116  
Long Barn CA 95335

June 01, 2004

In Reference To: CNA Claim No. NP 001507  
Insured: Odd Fellows Sierra Recreation Association  
Claimant: Alameda Boy Scouts  
Taxpayer ID# 77-0282419                      Billing Rate:  
\$175.00/hour

Invoice #15205

Professional Services

		<u>Hours</u>	<u>Amount</u>
	<u>BOY SCOUTS</u>		
4/29/2004	RAB Telephone conference with environmental consultant Dave Wood asking him to stop work until more progress is made toward settlement; meet and confer with Fred Coleman and Del Wallis and go to mandatory settlement conference; receipt and review appraisal report from 2001 and note numerous deficiencies; obtain Mr. Coleman's verifications on new and updated discovery responses; discuss settlement issues with Mr. Coleman after settlement conference fails to make progress. BOY SCOUTS	2.90	507.50
	RAB Begin trial planning witness identification, issue plotting and research references and triage tasks. BOY SCOUTS	0.50	87.50
	RAB Prepare for today's settlement conference; email adjuster to remind her to be available by phone; receipt and review notice of trial from Court. BOY SCOUTS	1.20	210.00
4/30/2004	RAB Receipt and transmit copy of Del Wallis deposition transcript to Mr. Wallis for review. BOY SCOUTS	0.20	35.00

			<u>Hours</u>	<u>Amount</u>
4/30/2004	RAB	Email status report to Ms. Marshall-Sciortino at CNA regarding settlement conference and appraisal report; correspondence to Mr. Sisco demanding dismissal of Mr. Wallis from lawsuit. BOY SCOUTS	0.60	105.00
	RAB	Work on trial brief BOY SCOUTS	2.00	350.00
5/3/2004	N	Draft letter to Ed Smith regarding his deposition on May 7, 2004. BOY SCOUTS	0.10	7.50
	N	Prepare amended notice of taking of deposition of Kenneth Blakemore, time was changed to accommodate Mr. Blakemore; call court reporter with new time. BOY SCOUTS	0.20	15.00
	RAB	Further work on trial brief; telephone conference with investigator Ed Hinton regarding his contact with possible witness Richard Welch; meet and confer with investigator Ed Hinton and receipt and review of investigative reports regarding his interviews of prospective witnesses; instruct staff regarding preparation of trial subpoenas and cover letter agreement for witnesses to be on call. BOY SCOUTS	3.20	560.00
5/4/2004	N	Prepare 6 subpoena to appear at trial; 6 "will call" letters regarding date and time of trial appearance; prepare 1 subpoena duces tecum with supporting declaration and "will call" letter. BOY SCOUTS	2.00	150.00
	N	Prepare cover letter for subpoena to Fred Coleman, Del Wallis, Ed Smith, Ed Hinton and Frank Walter. BOY SCOUTS	0.50	37.50
	RAB	Multiple telephone calls to Ed Smith leaving message to call; telephone conference with Fred Coleman regarding fact that Mr. Smith is in Missouri; receipt and review recorded documents regarding 1961 record of survey showing old road and deeded easement to Odd Fellows across Scouts' property; review and execute multiple trial subpoenas and letters of agreement to place witness on call. BOY SCOUTS	1.00	175.00
	RAB	Meet and confer with staff regarding trial notebook, organization, issues and general trial preparation; telephone message for Scouts' lawyer that Mr. Smith is out of town and may not be back in time for his deposition on May 7, 2004; supplemental document production to Scouts. BOY SCOUTS	0.60	105.00

		<u>Hours</u>	<u>Amount</u>
5/4/2004	RAB Lengthy telephone conference with Frank Walter (our surveyor) regarding various maps, photos, surveys and documents and his expected testimony at trial. BOY SCOUTS	0.50	87.50
5/5/2004	N Research expert deposition definition and statutes. BOY SCOUTS	0.50	37.50
	N Letter to Rich Waters, process server, regarding service of subpoena on Loren Hosmer and Michael Wright. BOY SCOUTS	0.10	7.50
	RAB Draft objection to notice of deposition of Walter, Wright and Hill. BOY SCOUTS	0.50	87.50
	RAB Lengthy telephone conference with Ed Smith regarding his deposition this week. BOY SCOUTS	0.50	87.50
	RAB Telephone conference with Del Wallis regarding appraisal report and related issues. BOY SCOUTS	0.30	52.50
	RAB Receipt and review deposition notices for all experts we disclosed; review with legal assistant and confirm their notice is defective and agree on how to handle same. BOY SCOUTS	0.40	70.00
5/6/2004	RAB Prepare for tomorrow's deposition of Ed Smith. BOY SCOUTS	1.50	262.50
5/7/2004	RAB Pick up Ed Smith and travel to and from Modesto to defend his deposition (147 miles) and lunch. BOY SCOUTS	8.00	1,400.00
5/10/2004	RAB Telephone conference with Fred Coleman regarding trial preparation and related issues. BOY SCOUTS	0.30	52.50
5/11/2004	RAB Telephone conference with Fred Coleman regarding other settlement options and agree to pursue same. BOY SCOUTS	0.20	35.00
5/12/2004	RAB Two telephone conferences with Del Wallis regarding his review and correction of transcript, his review of Scout's appraisal report and related settlement issues. BOY SCOUTS	0.50	87.50

			<u>Hours</u>	<u>Amount</u>
5/12/2004	RAB	Meet and confer with Ed Hinton; receipt and review additional investigative report. BOY SCOUTS	0.30	52.50
	RAB	Draft notice to appear and produce documents at trial to Richard Anderson. BOY SCOUTS	0.50	87.50
5/13/2004	RAB	Several attempts to reach Stacy Sisco by telephone with no return call; email Mr. Sisco regarding Mr. Coleman's settlement proposal. BOY SCOUTS	0.30	52.50
5/14/2004	RAB	Several lengthy telephone conferences with Frank Walter, our surveyor; receipt and review several faxes from him. BOY SCOUTS	1.20	210.00
	RAB	Correspondence to Damrell firm regarding documents they have concealed from us in discovery. BOY SCOUTS	0.30	52.50
	RAB	Receipt and review email response from Mr. Sisco regarding further settlement talks. BOY SCOUTS	0.20	35.00
	RAB	Telephone conference with Mike Wright regarding his deposition and his trial subpoena refusing to talk to him about substance - only process. BOY SCOUTS	0.30	52.50
5/17/2004	RAB	Receipt and review telephone message from stacy Sisco regarding expert deposition notices; research same and confirm defect in notice. BOY SCOUTS	0.60	105.00
	RAB	Receipt and review notice to appear at trial for Del Wallis and to bring documents. BOY SCOUTS	0.10	17.50
	RAB	Receipt and review correspondence from environmental consultant regarding estimate of sampling and laboratory fees if client chooses to do same; receipt and review Fred Coleman's agreement to appear at trial. BOY SCOUTS	0.30	52.50
	RAB	Receipt and review two more faxes from Stacy Sisco regarding deposition of experts; respond to same; lengthy telephone conference with Frank Walter regarding his work and his efforts to form opinions and instructing him to be here at the time of his deposition and to bring maps; research how to preserve objections to notice and decide to let it go	1.80	315.00



		<u>Hours</u>	<u>Amount</u>
	forward. BOY SCOUTS		
5/17/2004	RAB Meet and confer with Walt Kruz, County Environmental Health Director regarding water sampling in Sugar Pine Creek; prepare for tomorrow's depositions. BOY SCOUTS	0.80	140.00
5/18/2004	N Letter to Ed Smith forwarding condensed version of his deposition transcript for his review and revision, if any; call Court Reporter with regard to original transcript. BOY SCOUTS	0.20	15.00
	RAB Prepare for expert deposition today. BOY SCOUTS	1.00	175.00
	RAB Attend deposition of expert, George Hill. BOY SCOUTS	3.00	525.00
	RAB Attend deposition of Frank Walter. BOY SCOUTS	4.00	700.00
	RAB Receipt and review copy of voluminous maps and files from George Hill and prepare for his continued deposition. BOY SCOUTS	2.00	370.00
5/19/2004	N Prepare a subpoena for trial for George Hill, along with a cover letter regarding telephone standby. BOY SCOUTS	0.30	22.50
	RAB Prepare for deposition of Mr. Hill and Mr. Blakemore as experts and prepare documents for exhibits to same. BOY SCOUTS	1.80	315.00
	RAB Take continued deposition of Mr. Hill as surveying expert and then discuss settlement ideas with Scout's attorney and offer to meet with our clients at his office next week to try and settle the case before trial. BOY SCOUTS	4.00	700.00
5/20/2004	RAB Receipt and review message that Scouts are willing to meet regarding settlement again on May 26th in last effort to find a way to settle case without a trial; telephone conference with Fred Coleman and Del Wallis regarding same. BOY SCOUTS	0.50	87.50
	RAB Telephone conference with Del Wallis regarding settlement issues; telephone conference with attorney for valuation expert Mike Wright regarding his deposition tomorrow; prepare for depositions of two appraiser experts; telephone conference with Del Wallis regarding	1.80	315.00

		<u>Hours</u>	<u>Amount</u>
	corrections to his deposition transcript and correspondence to court reporter regarding same. BOY SCOUTS		
5/20/2004	RAB Go to County Surveyor's office and review road files and old government plat maps and field notes regarding existence of road thru Camp Cedarbrook in 1870s to disprove claim of no access when they purchased. BOY SCOUTS	1.50	262.50
5/21/2004	RAB Prepare and take depositions of Scouts valuation experts, Mr. Wright and Mr. Blakemore. BOY SCOUTS	7.00	1,225.00
	RAB Receipt and review proof of service on Loren Hosmer with trial subpoena; receipt and review telephone message from Ed Smith regarding his deposition transcript. BOY SCOUTS	0.30	52.50
5/24/2004	RAB Lengthy telephone conference with Fred Coleman regarding this week's further settlement conference negotiations and review of last week's depositions. BOY SCOUTS	0.60	105.00
	RAB Receipt and review correspondence from Mr. Sisco confirming settlement conference discussions and meeting for May 26; telephone to confirm same. BOY SCOUTS	0.20	35.00
	RAB Respond to Scouts request for earlier meeting with approval and telephone message for Fred Coleman regarding confirmed meeting. BOY SCOUTS	0.20	35.00
5/25/2004	RAB Review Code for service of subpoena on County employee; prepare subpoena for Cyrus Hoblitt. BOY SCOUTS	0.50	87.50
5/26/2004	RAB Meet with Fred Coleman and drive to Modesto in last effort to settle case with Scouts directors, meet and negotiate regarding possible purchase without success and return home (120 miles) BOY SCOUTS	4.50	787.50
	RAB Receipt and review correspondence from Mr. Sisco regarding experts and consider response to same. BOY SCOUTS	0.20	35.00
	RAB Lengthy telephone conference with Frank Walter regarding his opinions; telephone conference with County Surveyor Peter Rei regarding public roads and access to Scouts' property; telephone conference with former	0.50	87.50

Hours    Amount

County Surveyor Newell Egger regarding same.  
BOY SCOUTS

5/27/2004	RAB	Lengthy telephone conference with Newell Egger, former Deputy Director of Public Works, Road Division regarding Long Barn/Sugar Pine road and public access and get him to agree to testify at trial; telephone conference with Stacy Sisco regarding access to Camp Cedarbrook for expert to complete his work; telephone conference with Frank Walter regarding access and asking him to prepare trial exhibits to illustrate his testimony. BOY SCOUTS	1.30	227.50
	RAB	Instruct staff to obtain documents from County Supervisor's Clerk and to prepare trial subpoena for Newell Egger. BOY SCOUTS	0.20	35.00
	RAB	Lengthy telephone conference with Peter Rei, Tuolumne County Director of Public Works and County Surveyor. BOY SCOUTS	0.50	87.50
	RAB	Review Frank Walter's deposition transcript and telephone Mr. Walter regarding same. BOY SCOUTS	1.50	262.50
	RAB	Receipt and review correspondence from Mr. Sisco. BOY SCOUTS	0.20	35.00

SUBTOTAL: *FEES* [ 72.80 12,370.00]

Additional Charges :

Qty/Price

BOY SCOUTS

5/3/2004	Central Sierra Claims & Investigations BOY SCOUTS	1 1,702.00	1,702.00
5/4/2004	Tuolumne County Recorder fee for copy of recorded documents BOY SCOUTS	1 5.00	5.00
5/5/2004	Witness fee for Loren Hosmer for June 7th Trial; \$35.00 per day and \$0.20 per mile (103.68 miles) BOY SCOUTS	1 55.74	55.74

	<u>Qty/Price</u>	<u>Amount</u>
5/5/2004 Witness fee to June 7th Trial, \$35.00 per day and \$0.20 per mile - \$1.00 minimum. BOY SCOUTS	1 36.00	36.00
5/6/2004 Al Cala & Assoc. Del Wallis deposition BOY SCOUTS	1 341.40	341.40
5/7/2004 Mileage to/from Modesto for deposition of Ed Smith 147 X \$0.36 BOY SCOUTS	1 52.92	52.92
Lunch - Deposition of Ed Smith BOY SCOUTS	1 19.31	19.31
5/13/2004 Deposition of Del Wallis on 4/20/2004 BOY SCOUTS	1 181.60	181.60
Service of Trial Subpoena on Michael Wright BOY SCOUTS	1 30.00	30.00
5/14/2004 Service of Process of Objection to Deposition of Experts (\$25.00) Mileage for service (126.26 miles at \$0.36 - \$45.45) BOY SCOUTS	1 70.45	70.45
5/16/2004 Service of Trial Subpoena on Loren Hosmer BOY SCOUTS	1 40.00	40.00
5/21/2004 Expert fee of Kenneth Blakemore for deposition testimony. BOY SCOUTS	1 65.00	65.00
5/25/2004 Witness fee for Cyrus Hoblitt, Deputy County Surveyor of Tuolumne County BOY SCOUTS	1 150.00	150.00
Copy of Tuolumne County Dept. of Works road maps and correspondence. BOY SCOUTS	1 3.00	3.00
5/26/2004 Lunch after settlement meeting. BOY SCOUTS	1 7.70	7.70
120 miles to/from Modesto for settlement meeting. BOY SCOUTS	1 43.20	43.20
6/1/2004 4% Administrative Fee BOY SCOUTS	1 606.93	606.93

SUBTOTAL: *COSTS*

[ 3,410.25 ]

	<u>Hours</u>	<u>Amount</u>
For professional services rendered	72.80	\$15,780.25
Total amount of this bill		<u>\$15,780.25</u>
Previous balance		\$10,801.44
5/16/2004 Payment - Thank you. Check No. 11149		(\$10,801.44)
6/1/2004 Payment from trust account		(\$7,513.92)
Total payments and adjustments		<u>(\$18,315.36)</u>
Balance due		<u><u>\$8,266.33</u></u>
Previous balance of Default		\$0.00
4/28/2004 CNA payment on behalf of Odd Fellows. Check No. 001507		\$7,513.92
6/1/2004 Payment from trust account		(\$7,513.92)
New balance of Default		<u><u>\$0.00</u></u>



Continental Casualty Company  
Chicago, IL 60685

UNDERWRITTEN BY:  
CONTINENTAL CASUALTY COMPANY

100155293  
Date Issued 04/28/04  
56-1544  
441  
Bank Acct. 630505956

VOID IF PURPLE BACKGROUND IS ABSENT

THIS DOCUMENT CONTAINS A WATERMARK - HOLD UP TO LIGHT TO VIEW

Claim Number NP 001507	Desk Code NK	Insured/Client ODD FELLOWS SIERRA RECREATION	Issuing Off. No. NP
Prefix & Contract No. NFP -250684848	Claimant ALAMENDA BOY SCOUTS FOUNDAT	Date of Loss 05/21/03	
From-thru (Dates) In Payment of	DEF. FEES INVOICE #15100		

PAY SEVEN THOUSAND FIVE HUNDRED THIRTEEN AND 92/100THS ----- Dollars

TO ROGER A. BROWN  
THE 38 N. WASHINGTON ST.  
ORDER SONORA CA 95370  
OF

Dollars • Cents  
\*\*\*\*\*\$7,513.92

*W. Seeger*

VOID IF NOT CASHED IN SIX  
MONTHS FROM MONTH OF ISSUE

Bank One, NA Ohio

⑈0100155293⑈ ⑈044115443⑈

630505956⑈

GT15472-E

Roger A. Brown, Lawyer  
38 North Washington Street  
Sonora CA 95370  
Tax I.D. #77-0282419, (209) 533-7755

Invoice submitted to:  
Odd Fellows Sierra Rec Association  
PO Box 116  
Long Barn CA 95335

July 01, 2004

In Reference To: CNA Claim No. NP 001507  
Insured: Odd Fellows Sierra Recreation Association  
Claimant: Alameda Boy Scouts  
Taxpayer ID# 77-0282419                      Billing Rate:  
\$175.00/hour

Invoice #15274

Professional Services

		<u>Hours</u>	<u>Amount</u>
	<u>BOY SCOUTS</u>		
6/1/2004	RAB Receipt and review message regarding continued deposition of Scouts' expert Mr. Blakemore. BOY SCOUTS	0.10	17.50
	RAB Telephone conference with County Surveyor Cy Hoblitt regarding his expected trial testimony; telephone message for Loren Hosmer regarding same. BOY SCOUTS	0.50	87.50
	RAB Go to Court and determine that we have a courtroom for June 7-8 and perhaps June 9 as well. BOY SCOUTS	0.30	52.50
	RAB Trial preparation regarding document selection for cross-examination of Scouts' witnesses. BOY SCOUTS	1.20	210.00
	RAB Detailed reading of deposition transcript of opposing witness Richard Anderson for cross-examination purposes. BOY SCOUTS	1.40	245.00

		<u>Hours</u>	<u>Amount</u>
6/1/2004	RAB Receipt and review telephone message from Stacy Sisco regarding still no permission for Frank Walter to go on property to finish his expert work. BOY SCOUTS	0.10	17.50
6/2/2004	RAB Receipt and review correspondence from Mr. Sisco. BOY SCOUTS	0.10	17.50
	RAB Telephone conference with Fred Coleman regarding another new witness, Ed Cole and obtain his telephone number to interview for trial. BOY SCOUTS	0.20	35.00
	RAB Telephone conference with new witness, Ron Hawke and interview him regarding permission issue regarding Boy Scouts use of roads and agree to send trial subpoena by mail; prepare and send trial subpoena. BOY SCOUTS	0.80	140.00
	RAB Telephone conference with Mr. Hinton regarding trial, his expected testimony and his need to bring original evidence to court. BOY SCOUTS	0.20	35.00
	RAB Meet and confer with Mr. Coleman, review his answers to interrogatories and review original documents which were subpoenaed for trial from him; prepare him for his trial testimony. BOY SCOUTS	1.20	210.00
	RAB Telephone conference with Mr. Sisco regarding his refusal to allow our expert onto Camp Cedarbrook property; telephone conference with Mr. Walter regarding his ability to complete his work without visiting the property (yes) and his availability for further deposition tomorrow; fax correspondence to Mr. Sisco offering to make Mr. Walter available for deposition tomorrow. BOY SCOUTS	0.80	140.00
	RAB Telephone conference with Del Wallis regarding his availability to meet late Friday to prepare him for trial and to discuss fact that Scouts continue to refuse to dismiss against him. BOY SCOUTS	0.30	52.50
	RAB Telephone conference with County Surveyor Cy Hoblitt regarding his agreement to testify that roads leading to Camp Cedarbrook are in County maintained road system. BOY SCOUTS	0.40	70.00
	RAB Place call to former Odd Fellows' Board member Ron Hawke regarding his recollections and interview as possible trial witness. BOY SCOUTS	0.40	70.00



		<u>Hours</u>	<u>Amount</u>
6/2/2004	RAB Prepare trial subpoena and witness letter for Newell Egger; forward to process server for service. BOY SCOUTS	0.30	52.50
	RAB Telephone conference with new Vice President of Odd Fellows, Bob Cloak and arrange for him to be client representative at trial and interview him regarding being a possible trial witness. BOY SCOUTS	0.50	87.50
	RAB Telephone conference with new Odd Fellows President, Mike Rainwater regarding summary of case and trial preparation and discover additional possible witnesses. BOY SCOUTS	0.50	87.50
	RAB Telephone conference with Fred Coleman regarding fact he was subpoenaed by Scouts and agree to meet and discuss same today. BOY SCOUTS	0.20	35.00
6/3/2004	RAB Take continued deposition of Mr. Blakemore (appraiser expert) BOY SCOUTS	2.50	437.50
	RAB Detailed preparation for cross-examination of Scouts' executives and annotate with documents, depositions and related materials. BOY SCOUTS	2.00	350.00
	RAB Prepare and send email status report to CNA adjuster. BOY SCOUTS	0.20	35.00
	RAB Go to Planning Dept and review ariel photos of the property and obtain certified copies of file materials regarding Scouts application for conditional use permit and prepare subpoena duces tecum for planner who worked on it and his file regarding same. BOY SCOUTS	2.10	367.50
	RAB Receipt and review correspondence from Stacy Sisco regarding his decision declining to depose Frank Walter BOY SCOUTS	0.30	52.50
	RAB Telephone conference with Newell Egger regarding his trial subpoena and my refusal to pay for his testimony since he is not an expert witness. BOY SCOUTS	0.30	52.50
6/4/2004	RAB Receipt and review opposition's trial brief, several motions-in-limine, motion to exclude trial witnesses and testimony and research same. BOY SCOUTS	2.50	437.50
	RAB Meet and confer with Del Wallis regarding his trial testimony. BOY SCOUTS	1.00	175.00

		<u>Hours</u>	<u>Amount</u>
6/4/2004	RAB Telephone conference with Ed Smith to go over his expected trial testimony and to ask him to review some documents to prepare for same. BOY SCOUTS	0.40	70.00
	RAB Telephone conference with possible witness, Ed Coles regarding his recollection of the road usage and decide against using him at trial. BOY SCOUTS	0.40	70.00
	RAB Receipt and review deposition transcript for their expert, Ken Blakemore and prepare for his examination at trial. BOY SCOUTS	1.80	315.00
	RAB Several telephone conferences with process server. BOY SCOUTS	0.20	35.00
	RAB Meet and confer with Bob Cloak (current V.P. of Client) to discuss his testimony and service as client representative at trial. BOY SCOUTS	0.50	87.50
	RAB Telephone message for County Planner Larry Houseberg. BOY SCOUTS	0.10	17.50
	RAB Telephone conference with Mrs. Elsie Manning regarding her recollection and possible testimony at trial and decide not to use her. BOY SCOUTS	0.40	70.00
	RAB Telephone conference with Mrs. Ed Cole regarding her husband appearance and trial testimony. BOY SCOUTS	0.30	52.50
	RAB Telephone conference with Mrs. Bert Johnson regarding her husband possible testimony. BOY SCOUTS	0.30	52.50
	RAB Telephone conference with Mrs. Loren Hosmer about her husband's appearance and testimony at trial. BOY SCOUTS	0.40	70.00
	RAB Continue preparing for direct and cross-examination of witnesses. BOY SCOUTS	1.50	262.50
	RAB Receipt and review fax of timber survey from Boy Scouts. BOY SCOUTS	0.60	105.00
6/5/2004	RAB General trial preparation; outline cross-examination plans for various witnesses; document organization and exhibits preparation. BOY SCOUTS	2.50	437.50

		<u>Hours</u>	<u>Amount</u>
6/5/2004	RAB Telephone conference with Bert Johnson regarding his recollections and decide against using him at trial. BOY SCOUTS	0.40	70.00
	RAB Telephone conference with Ed Hinton regarding documents he obtained from hostile witness and meet and confer with Mr. Hinton; receipt and review documents regarding same. BOY SCOUTS	0.80	140.00
	RAB Careful review of voluminous appraisal report from Mr. Blakemore. BOY SCOUTS	1.80	315.00
	RAB Research transcripts regarding expert opinions and prepare opposition to motions in limine and motions to exclude testimony of witnesses. BOY SCOUTS	2.80	490.00
6/6/2004	RAB Further work on trial preparation; read deposition transcripts, prepare examination and cross-examination plans, research evidence, code provisions for official records, business records and reputation in the community. BOY SCOUTS	7.00	1,225.00
	RAB Lengthy interview with witness Loren Hosmer Sunday night; telephone conference with investigator regarding inconsistent statements. BOY SCOUTS	0.90	157.50
	RAB Telephone conference with Del Wallis regarding witness recanting. BOY SCOUTS	0.30	52.50
	RAB Further preparation for trial and confer with Mr. Wallis and Mr. Cloak prior to trial. BOY SCOUTS	1.50	262.50
6/7/2004	RAB Prepare for tomorrow's session. BOY SCOUTS	1.50	262.50
	RAB Attend Court trial 8:00-4:45 and spend lunch preparing for afternoon session. BOY SCOUTS	8.70	1,522.50
6/8/2004	RAB Attend trial and spend lunch preparing for afternoon session going till 5:00pm. BOY SCOUTS	9.00	1,575.00
6/9/2004	RAB Reorganize trial exhibits, notes and records to prepare for continuation of trial on July 6, 2004; instruct staff to obtain certified copies of official records and plat maps, records of surveys and associated documents for	1.50	262.50

			<u>Hours</u>	<u>Amount</u>
		continued trial. BOY SCOUTS		
6/9/2004	RAB	Email status report to CNA Amy Marshall. BOY SCOUTS	0.20	35.00
	RAB	Receipt and review correspondence from Mr. Sisco. BOY SCOUTS	0.10	17.50
	RAB	Lengthy email status report to CNA Amy Marshall and request for renewed settlement authority. BOY SCOUTS	0.40	70.00
	RAB	Review and print to file new case on prescriptive easements. BOY SCOUTS	0.40	70.00
	RAB	Lengthy telephone conference with surveyor expert, Frank Walter, regarding his availability and expected testimony at resumption of trial on July 6, 2004. BOY SCOUTS	0.40	70.00
6/10/2004	RAB	Receipt and review certified copy of Board of Supervisors resolution abandoning road from county maintained road system and place order for transcript of first two days of trial proceedings. BOY SCOUTS	0.20	35.00
6/21/2004	RAB	Telephone conference with Larry Houseberg regarding his review of Camp Cedarbrook use permit file, map and his potential testimony at trial. BOY SCOUTS	0.40	70.00
6/22/2004	RAB	Receipt and review certified copies of maps from County Surveyor's office for continued trial. BOY SCOUTS	0.20	35.00
6/24/2004	RAB	Telephone conference with County Planner, Larry Houseberg regarding his nearly total lack of memory about Scout's conditional use permit and alternative access issue and agree to leave message on his house phone whether he will be needed at continued trial. BOY SCOUTS	0.30	52.50
6/28/2004	RAB	Receipt of transcript of first day of trial and discuss with Court Reporter when next volume will be ready. BOY SCOUTS	0.20	35.00
6/29/2004	RAB	Telephone conference with Fred Coleman regarding his subpoena. BOY SCOUTS	0.30	52.50

		<u>Hours</u>	<u>Amount</u>
6/30/2004	RAB Review and summarize first trial day's testimony from reporter's transcript. BOY SCOUTS	3.50	612.50
	RAB Prepare for continued trial and closing argument. BOY SCOUTS	2.10	367.50
	RAB Telephone conference with Stacy Sisco regarding continued trial and his subpoena of Fred Coleman; go to Court regarding whether we will have a judge and courtroom next week (yes); telephone conference with Fred Coleman regarding same to inform him he must comply with subpoena. BOY SCOUTS	0.90	157.50

SUBTOTAL: *FEES*

[ 75.60 13,230.00]

Additional Charges :

Qty/Price

<u>BOY SCOUTS</u>			
5/27/2004	Deposition transcript of M. Wright and K. Blakemore BOY SCOUTS	1 1,140.62	1,140.62
	Deposition transcript of F. Walters, G. Hill Vol.1 BOY SCOUTS	1 600.40	600.40
5/31/2004	Copy of George Hill's documents and blueprints BOY SCOUTS	1 70.00	70.00
6/1/2004	Deposition of Ed Smith BOY SCOUTS	1 159.40	159.40
	Deposition of Richard Anderson BOY SCOUTS	1 579.19	579.19
6/2/2004	Service of trial subpoena on Newell Egger BOY SCOUTS	1 52.00	52.00
	Deposition transcript of G. Hill, Vol 2. BOY SCOUTS	1 371.70	371.70
6/3/2004	Continued deposition of K. Blakemore BOY SCOUTS	1 250.00	250.00
	Certified copy Community Development Department records BOY SCOUTS	1 4.20	4.20

	<u>Qty/Price</u>	<u>Amount</u>
6/3/2004 Witness fee for Larry Houseberg Tuolumne Community Development Dept. BOY SCOUTS	1 150.00	150.00
6/7/2004 Sonora Blue Print copies of trial exhibits BOY SCOUTS	1 36.04	36.04
6/8/2004 Court Reporter fee to two days of trial BOY SCOUTS	1 270.00	270.00
Service of trial subpoena on Larry Houseberg BOY SCOUTS	1 30.00	30.00
6/10/2004 Computer research of case law. BOY SCOUTS	1 3.38	3.38
7/1/2004 4% Administrative Fee BOY SCOUTS	1 529.20	529.20
 SUBTOTAL: <i>Costs</i>		<hr/> [ 4,246.13]
	<hr/> <u>Hours</u>	
For professional services rendered	75.60	\$17,476.13
 Total amount of this bill		<hr/> \$17,476.13
Previous balance		\$8,266.33
6/12/2004 Payment - Thank you. Check No. 11182		(\$8,266.33)
6/17/2004 Credit witness fee return from Loren Hosmer		(\$55.74)
7/1/2004 Payment from trust account		(\$8,266.33)
 Total payments and adjustments		<hr/> (\$16,588.40)
 Balance due		<hr/> <hr/> \$9,154.06
 Previous balance of Default		\$0.00
6/14/2004 Client payment to trust acct by CNA insurance. Check No. 100160808		\$8,266.33
7/1/2004 Payment from trust account		(\$8,266.33)
 New balance of Default		<hr/> <hr/> \$0.00

ODDFELLOWS SIERRA RECREATION ASSOC.  
PO BOX 116  
LONG BARN, CA 95335

U.S. BANK  
90-2267/1211

11182

6/12/2004

PAY TO THE  
ORDER OF Roger A. Brown

\$ \*\*8,266.33

Eight Thousand Two Hundred Sixty-Six and 33/100\*\*\*\*\* DOLLARS

Roger A. Brown  
38 N. Washington St,  
Sonora, CA 95370

MEMO

*Michael Rainwater*  
AUTHORIZED SIGNATURE  
*Roger A. Brown*

⑈01182⑈ ⑆121122676⑆153401946584⑈

Details on Back.  
Security Features Included



Continental Casualty Company  
Chicago, IL 60685

UNDERWRITTEN BY:  
CONTINENTAL CASUALTY COMPANY

100160808  
Date Issued  
06/14/04

56-1544  
441  
Bank Acct.  
630505956

VOID IF PURPLE BACKGROUND IS ABSENT		THIS DOCUMENT CONTAINS A WATERMARK - HOLD UP TO LIGHT TO VIEW	
Claim Number NP 001507	Desk Code NK	Insured/Client ODD FELLOWS SIERRA RECREATION	Issuing Off. No. NP
Prefix & Contract No. NFP -250684848		Claimant ALAMENDA BOY SCOUTS FOUNDAT	Date of Loss 05/21/03
From-thru (Dates)	In Payment of	INVOICE 15167	

PAY EIGHT THOUSAND TWO HUNDRED SIXTYSIX AND 33/100THS Dollars

TO ROGER A. BROWN, LAWYER  
THE 38 N. WASHINGTON ST.  
ORDER SONORA CA 95370  
OF

Dollars • Cents  
\*\*\*\*\*\$8,266.33

*W. J. [Signature]*

VOID IF NOT CASHED IN SIX  
MONTHS FROM MONTH OF ISSUE

Bank One, NA Ohio

⑈0100160808⑈ ⑈044115443⑈ 630505956⑈

G115472-E



Roger A. Brown, Lawyer  
38 North Washington Street  
Sonora CA 95370  
Tax I.D. #77-0282419, (209) 533-7755

Invoice submitted to:  
Odd Fellows Sierra Rec Association  
PO Box 116  
Long Barn CA 95335

August 02, 2004

In Reference To: CNA Claim No. NP 001507  
Insured: Odd Fellows Sierra Recreation Association  
Claimant: Alameda Boy Scouts  
Taxpayer ID# 77-0282419                      Billing Rate:  
\$175.00/hour

Invoice #15306

Professional Services

Hours    Amount

BOY SCOUTS

7/1/2004 RAB	Receipt and review correspondence from Mr. Sisco regarding his proposed witness list for continued trial. BOY SCOUTS	0.20	35.00
RAB	Telephone conference with Fred Coleman and Ed Smith regarding their having been served with a subpoena to appear and bring records. BOY SCOUTS	0.50	87.50
RAB	Prepare exhibits for continued trial. BOY SCOUTS	0.80	140.00
RAB	Prepare correspondence to Mr. Sisco regarding my intended witnesses and to object to his list. BOY SCOUTS	0.30	52.50
RAB	Telephone conference with Del Wallis regarding subpoena from Scouts; telephone conference with Ed Smith (3 times) regarding subpoena, documents and his discovery of alternative access to Scout's property. BOY SCOUTS	1.20	210.00

		<u>Hours</u>	<u>Amount</u>
7/1/2004	RAB Telephone conference with County Surveyor's office regarding more records they found; go to Surveyor's office and obtain copies of additional records. BOY SCOUTS	0.80	140.00
	RAB Telephone conference with Cy Hoblitt County Surveyor) regarding his subpoena and expected testimony. BOY SCOUTS	0.40	70.00
	RAB Go to Court and review trial exhibits and get a copy of Clerk's list of exhibits informing them of our needs regarding easel and video playback gear for continued trial. BOY SCOUTS	0.70	122.50
	RAB Get word to Mr. Houseberg that he will not be needed at continued Court trial. BOY SCOUTS	0.10	17.50
	RAB Telephone conference with Frank Walter reminding him of continued trial and agreeing to talk in more detail tomorrow. BOY SCOUTS	0.20	35.00
7/2/2004	RAB Telephone conference with George Hill regarding his expected testimony at trial on Tuesday. BOY SCOUTS	0.30	52.50
	RAB Telephone conference with Robert Cloak regarding Scouts attempt to serve him with subpoena and probable subject matter and his return from vacation late the night before trial resumes. BOY SCOUTS	0.40	70.00
	RAB Prepare arguments to object to new and previously undisclosed witnesses and their effort to call previously excused witnesses who have attended the trial. BOY SCOUTS	0.70	122.50
	RAB Review Del Wallis' deposition testimony to prepare for resumption of trial. BOY SCOUTS	0.60	105.00
	RAB Receipt and review 40+ pages of Scout's motion for leave to file 3rd Amended Complaint to conform to proof and several telephone conferences with Stacy Sisco regarding same; review and research law regarding same. BOY SCOUTS	2.30	402.50
7/3/2004	RAB Review and index trial transcript for second day of trial. BOY SCOUTS	3.00	525.00

		<u>Hours</u>	<u>Amount</u>
7/3/2004	RAB Research law regarding amendments to conform to proof and print to file; carefully analyze motion and proposed amendment; prepare points and authorities in opposition to motion. BOY SCOUTS	4.80	840.00
7/5/2004	RAB Two telephone conferences with Frank Walter regarding his testimony; telephone conference with Del Wallis, George Hill and Fred Coleman regarding their testimony. BOY SCOUTS	1.30	227.50
	RAB Further work on Brief opposing motion to amend complaint to conform to proof. BOY SCOUTS	2.30	402.50
	RAB Further work on closing argument. BOY SCOUTS	1.50	262.50
	RAB Trial preparation and document organization. BOY SCOUTS	3.30	577.50
	N Shepardize cases for opposition to motion to amend. BOY SCOUTS	0.50	37.50
7/6/2004	RAB Prepare for trial. BOY SCOUTS	1.50	262.50
	RAB Conduct continued trial and confer with clients after Court; prepare for continuation of trial tomorrow. BOY SCOUTS	10.00	1,750.00
7/7/2004	RAB Attend resumption of trial and complete same. BOY SCOUTS	4.50	787.50
	RAB Prepare for trial today. BOY SCOUTS	1.50	262.50
7/8/2004	RAB Receipt and review two letters from opposing counsel. BOY SCOUTS	0.20	35.00
7/12/2004	RAB Lengthy status report to Amy Marshall regarding submission of trial evidence and my impressions of our chances for success. BOY SCOUTS	0.40	70.00
7/13/2004	RAB Receipt and review Amy Marshall's (CNA) response to my email regarding status report. BOY SCOUTS	0.20	35.00

		<u>Hours</u>	<u>Amount</u>
7/28/2004	RAB Receipt and begin review and indexing of transcript of last 2 days of trial. BOY SCOUTS	1.70	297.50
7/29/2004	RAB Further review of trial transcripts and begin work on written closing argument. BOY SCOUTS	2.80	490.00
7/30/2004	RAB Receipt and review Scout's post trial brief. BOY SCOUTS	0.80	140.00

SUBTOTAL: *FEES* [ 49.80 8,665.00]

GENERAL FILE

<del>7/21/2004</del>	<del>RAB Telephone conference with Mike Rainwater regarding whether liens may be imposed for non-payment of fines. (No.) GENERAL FILE</del>	<del style="text-align: right;">0.20</del>	<del style="text-align: right;">35.00</del>
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*Not Boy Scouts*

SUBTOTAL: [ 0.20 35.00]

Additional Charges :

Qty/Price

BOY SCOUTS

6/24/2004	Frank Walter & Associates research, analysis and boundary research. BOY SCOUTS	1 1,152.00	1,152.00
7/12/2004	Computer research on Lexis Nexis BOY SCOUTS	1 41.89	41.89
	Trial Transcripts BOY SCOUTS	1 1,212.98	1,212.98
8/2/2004	4% Administrative Fee BOY SCOUTS	1 348.00	348.00

SUBTOTAL: *Costs* [ 2,754.87]

For professional services rendered 50.00 \$11,454.87

Interest on overdue balance \$80.25

	<u>Amount</u>
Total amount of this bill	\$11,535.12
Previous balance	\$9,154.06
Balance due	<u><u>\$20,689.18</u></u>

<u>Current</u>	<u>30 Days</u>	<u>60 Days</u>	<u>90 Days</u>	<u>120 Days</u>
11,535.12	9,154.06	0.00	0.00	0.00

1 ROGER A. BROWN  
STATE BAR NO. 053235  
2 Post Office Box 475  
Sonora CA 95370  
3 209-533-7755  
209-533-7757 (Facsimile)  
4

5 Attorney for ODD FELLOWS SIERRA RECREATION  
ASSOCIATION, INC., OF TUOLUMNE COUNTY,  
DEL WALLIS  
6

7  
8  
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
10 IN AND FOR THE COUNTY OF TUOLUMNE

11 ALAMEDA BOY SCOUTS FOUNDATION, ) Case No. CV 49802  
a California Nonprofit Benefit Corporation, )  
12 Plaintiff, )  
13 v. ) DEFENDANTS' TRIAL BRIEF  
14 ODD FELLOWS SIERRA RECREATION ) Date: June 7 & 8, 2004  
ASSOCIATION, INC., OF TUOLUMNE ) Time: 8:15 a.m.  
15 COUNTY, et al., ) Dept. 1  
16 Defendants. )  
17

18 INTRODUCTION

19 The Alameda Boy Scouts Foundation and their predecessors in interest (hereafter "Boy  
20 Scouts") have been adjoining landowners and neighbors of defendant Odd Fellows Sierra  
21 Recreation Association, Inc. (hereafter "Odd Fellows") since the Odd Fellows purchased  
22 approximately 740 acres in the area in 1949. The Boy Scouts call their property "Camp  
23 Cedarbrook." Defendant, Del Wallis, was the President of Odd Fellows at one time, but at  
24 present he is neither a director nor an officer of the corporation.

25 In 1949, when Odd Fellows purchased their property, there was, and still is a road called  
26 "Long Barn Sugar Pine Road" which ran through both Odd Fellows and Boy Scouts property.  
27 The portion of the road which runs through Odd Fellows Park was closed to public use by the  
28 Tuolumne County Board of Supervisors in the 1990's. As with many roads in this area, Long

1 Barn Sugar Pine Road was named for the villages at each end of the road. Access to Camp  
2 Cedarbrook has always been available from what is now Highway 108 via Long Barn Sugar Pine  
3 Road from Mi Wuk Village to Camp Cedarbrook. Access has also been available from Highway  
4 108 via Bottini Apple Ranch Road to its intersection with Long Barn Sugar Pine Road into Camp  
5 Cedarbrook. There will be testimony that both roads are still in the County Maintained Road  
6 System.

7       There will also be testimony that a road has bisected what is now Camp Cedarbrook since  
8 at least 1876 and that road is in the same general location as what is now called Long Barn Sugar  
9 Pine Road. In 1992, the Tuolumne County Board of Supervisors authorized the closure of the  
10 portion of Long Barn Sugar Pine Road which goes through the Odd Fellows Park subdivision.  
11 Each summer since the mid 1980's the Boy Scouts have petitioned the County Board of  
12 Supervisors to authorize the *temporary* closure of Long Barn Sugar Pine Road through the Camp  
13 Cedarbrook property, but our investigation fails to reveal any permanent closure of this public  
14 roadway approaching Camp Cedarbrook from the West or through the camp itself.

15       The Boy Scouts claim to own an easement by necessity, by implication and by prescription  
16 to pass over the roads of Odd Fellows to get to their Camp Cedarbrook. Odd Fellows denies this  
17 claim and while they have offered to give the Boy Scouts a license to use these roads by consent  
18 for as long as the Boy Scouts own their property as a scouting camp, the Scouts have rejected this  
19 offer.

20       The Boy Scouts claim that their long use of the Odd Fellows' roads is enough to create  
21 the right to use these roads forever and to pass this right on to their successors in interest. The  
22 Odd Fellows deny these claims on numerous grounds.

23       First, the Odd Fellows contend that they have always given permission to the Scouts and  
24 their predecessors to use the Odd Fellows roads and that this consent goes back to the earliest  
25 days of their ownership. Of course, use by permission negates an essential element of a  
26 prescriptive easement and defeats the claim.

27       Next, Odd Fellows contends that there is no easement by necessity because the Boy  
28 Scouts' property is not landlocked and it has a proper and legal access. The legal access route is

1 from Highway 108 to Bottini Apple Ranch Road, then to Long Barn Sugar Pine Road and into  
2 Camp Cedarbrook itself. Our research convinces us that this route has been in the county road  
3 system and a public roadway for as long as the Scouts and their predecessors in interest have  
4 owned their property. Licensed surveyor, Frank Walter is expected to testify that in his opinion,  
5 from his examination of old maps and other resources, an access road has existed in the same  
6 general location as Long Barn Sugar Pine Road since at least 1876. Thus, we believe the  
7 evidence will show that the Boy Scouts and their predecessors have had legal access to the Camp  
8 Cedarbrook property since the parcel was first severed from its initial common ownership in about  
9 1930.

10           Odd Fellows will present witnesses and a video tape to demonstrate that this access route  
11 still exists and is passable. An easement by necessity requires proof that the claimed easement  
12 route is *the only possible* access and that the property is landlocked. Accordingly, an easement by  
13 necessity cannot be shown.

14           Odd Fellows contends that an easement by implication cannot be proved for a number of  
15 reasons. First, no witnesses and no information or evidence has been produced in discovery to  
16 show what, if any, roads existed in the area at the time when the Odd Fellows and Boy Scouts  
17 parcels were split off from common ownership. No evidence has been produced to show what  
18 routes of travel, if any, the common ancestor owner may have used to get from one part of the  
19 larger parcel to another. Without this kind of evidence, the claim fails.

20           Next, no witnesses have been identified who might have been present or knowledgeable  
21 about the intent of the original grantor at the time he parted with the property. Since an easement  
22 by implication is intended to capture the original intent of the grantor, there must be some  
23 evidence of that intent or the claim will fail.

24           Furthermore, the original route of Wheeler Road in 1949 has long since been abandoned  
25 and is blocked off from through travel. That road was abandoned when the Odd Fellows built a  
26 new road, but gave it the same name as the old road. The new road has a different path than the  
27 old road. Thus, even if there was an easement by implication over the old road (which we deny),  
28 it was abandoned when the road was abandoned and blocked from further travel. Any rights to



1 the new road would have to stand on their own from the date the new road was created. Since  
2 the road was created long after the properties were severed from common ownership, there can  
3 be no claim to an easement by implication.

4 Finally, the route of the claimed easement by implication must be reasonably necessary to  
5 the beneficial use of the Scouts' property. While the Odd Fellows route may be the most  
6 desirable route *today* because it is paved, maintained, improved and plowed of snow by the Odd  
7 Fellows, that road did not exist when the parcels were severed from common ownership and thus,  
8 it cannot qualify as a possible easement by implication. Unless the alleged easement route existed  
9 and was used by the common ancestral owner at the time the parcels were severed from common  
10 ownership, the court will never get to the question of whether the route is reasonably necessary.  
11 Since the route did not exist when the parcels were severed, it is immaterial that a *road built later*  
12 by the Odd Fellows could offer a more desirable route for the Scouts.

13 The Scouts have a lawful and adequate access along the route described above. The real  
14 difference in the routes is the difference in who must pay to maintain, improve and protect the  
15 routes. There is no good reason why the Boy Scouts should not use their own funds to maintain  
16 their own access to their camp. There are many good reasons why the Boy Scouts should not be  
17 permitted to transfer these road maintenance costs to Odd Fellows because then it would  
18 constitute a virtual charitable tax on the Odd Fellows some of whom may actually not wish to  
19 contribute to Boy Scouts from Alameda.

20 For all of these reasons, the legal basis for which will be developed herein, the Odd  
21 Fellows contend this suit lacks merit and that judgment should be rendered for the defendants.

22 Moreover, the action against Mr. Wallis should never have been filed and he is entitled to  
23 a dismissal or a judgment for the defense on the face of the complaint. That is because the  
24 complaint fails to allege any wrongdoing of any kind by Mr. Wallis. In addition, the complaint  
25 fails to allege or seek any damages of any kind against Mr. Wallis. He should be dismissed from  
26 the case outright.

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## THE PLEADINGS

2 The case is going to trial on the Boy Scouts' verified Second Amended Complaint filed on  
3 or about September 26, 2003 (hereafter "the Complaint"). The Complaint states causes of action  
4 to quiet title to a prescriptive easement (1<sup>st</sup> Cause), an easement by way of necessity (2<sup>nd</sup> Cause),  
5 an easement by implication (3<sup>rd</sup> Cause), a Fourth Cause of Action denominated "Quiet Title" and  
6 a Fifth Cause of Action for Declaratory Relief. The Prayer seeks to establish the Boy Scouts'  
7 claims to an easement by necessity, implication and prescription and to quiet their claims against  
8 all other competing claims. In addition, the Boy Scouts pray for damages of not less than  
9 \$400,000 for "diminution in value of property, loss of revenue from encampments, timber  
10 harvesting and insurance reimbursements" and for attorneys fees and costs of suit. The trial of  
11 this action has been bifurcated with the first phase dealing with the equitable issues to be tried to  
12 the Court sitting without a jury.

13 Odd Fellows and Mr. Wallis filed a verified Answer to the Second Amended Complaint on  
14 November 4, 2003 in which they specifically denied most of the material allegations in the  
15 Complaint and asserted seven affirmative defenses, including failure to state a cause of action,  
16 statute of limitations, laches, estoppel, waiver, failure to mitigate damages and reserved the right  
17 to plead additional defenses which may be discovered at a later time.

18

## THE FACTS

19 The Boy Scouts acquired Camp Cedarbrook from the Camp Cedarbrook Foundation, Inc.  
20 as a gift when the foundation dissolved a few years ago. The property had been in the hands of  
21 one or another owner and devoted to scouting purposes for scouts (either girl or boy scouts)  
22 since the 1930's. Current Alameda Boy Scouts Foundation, Inc. President, Richard Anderson  
23 testified at his deposition that the Boy Scouts have been using the property as a camp since the  
24 early 1970's when they began building permanent structures on the property.

25 The Odd Fellows purchased their property in 1949. The Odd Fellows formed a  
26 corporation to purchase and develop the property for the benefit of their members, but eventually,  
27 the right to own lots in the development spread to non-members as well. In 1949 there was a  
28 county road, Long Barn Sugar Pine Road, which ran through both the Boy Scouts and the Odd

1 Fellows property. That road still exists, although the County relinquished maintenance on the  
2 portion of the road through Odd Fellows Park subdivision. While the Boy Scouts claim the road  
3 has been abandoned by the County, we have been provided no documents or other writings to  
4 confirm this claim and our independent research has likewise failed to reveal evidence to support  
5 this contention.

6 In 1949 the only other routes on the Odd Fellows property were really just dirt paths or  
7 trails in various states of disrepair. The property was once part of the "Wheeler Ranch" and one  
8 of the dirt paths was named, "Wheeler Road." This road no longer exists in its original route, but  
9 was abandoned and replaced by a new and different road, in a different route, but which kept the  
10 old name. It is over this new "Wheeler Road" that the Boy Scouts seek access over the Odd  
11 Fellows property. All of the roads, streets and drives in Odd Fellows Park have been developed,  
12 improved, paved, maintained and protected by the defendant, Odd Fellows Sierra Recreation  
13 Association, Inc.

14 The oldest known surviving member of the original board of directors of Odd Fellows, is  
15 an elderly man named Loren Hosmer. Mr. Hosmer is expected to testify at trial about the history  
16 of the relationship between Odd Fellows and Boy Scouts over the use of the roads. We expect  
17 Mr. Hosmer to testify that the Boy Scouts use of the Odd Fellows roads was always by consent as  
18 a neighborly accommodation. Other former and present board members of Odd Fellows,  
19 including Del Wallis and Ed Smith and perhaps others are expected to testify. We expect these  
20 witnesses to testify that the Boy Scouts use of Odd Fellows roads was always permissive.

21 We expect one or more maps may be introduced in evidence to show the relationship of  
22 each parcel to the other and to the features around them. The county road, Long Barn Sugar Pine  
23 Road will be very clearly shown as an access route to both properties. We also expect direct  
24 testimony from more than one witness who has driven roads other than the Odd Fellows' roads to  
25 access Camp Cedarbrook over the years. We expect to offer in evidence a video tape showing  
26 the route a vehicle took to access the Boy Scouts Camp Cedarbrook on March 12, 2004 over  
27 Bottini Apple Ranch Road and Long Barn Sugar Pine Road to help the court visualize the route  
28 as it exists today.

1 As a result of the direct and photographic evidence, we expect to prove false, the Boy  
2 Scouts allegations that: a) Odd Fellows' roads are the only reasonable access (Comp. ¶9);  
3 b) access to Camp Cedarbrook over Odd Fellows' roads was continuous and uninterrupted for 72  
4 years (Comp. ¶12); c) access to Camp Cedarbrook was completely prevented by denying the  
5 Scouts access through the roads of Odd Fellows (Comp. ¶12); d) there is no other access to  
6 Camp Cedarbrook other than Odd Fellows' roads (Comp. ¶ 25) it is impossible to travel Long  
7 Barn Sugar Pine Road at all times (Comp. ¶25); e) and the Camp Cedarbrook property is  
8 "landlocked" (Comp. ¶33), among other things.

9 We expect to present expert testimony from Frank Walter, a licensed surveyor, to the  
10 effect that what is now known as Long Barn Sugar Pine Road has been in existence through the  
11 Camp Cedarbrook location for over a century. Mr. Walter is expected to present a demonstrative  
12 exhibit which he prepared from maps, originally drawn and surveyed as early as 1876 which  
13 showed the road traversing generally parallel to Sugar Pine Creek directly through what Mr.  
14 Walter plotted as the current Camp Cedarbrook property. Accordingly, we expect evidence to  
15 establish that Camp Cedarbrook had legal access when the parcel was severed from the common  
16 ancestral owner of the larger parcel.

17 Since damages is not at issue in the first phase of this trial, we will not address them  
18 herein, but leave that subject to a later brief, if the case ever gets that far.

19 **THE LAW**

20 **Easement by Necessity**

21 The elements of an easement by necessity are fairly simple. The easement by necessity  
22 arises by operation of law when both: (1) There is a strict necessity for the right-of-way; and (2)  
23 the dominant and servient tenements were under the same ownership at the time of the  
24 conveyance giving rise to the necessity. (*Reese v. Borghi* (1963) 216 Cal.App.2d 324, 332.) The  
25 facts will not support either element.

26 There was no strict necessity at the time the Boy Scouts' parcel was conveyed away from  
27 the original owner because the county road, Long Barn Sugar Pine Road was the normal access  
28 to the property. The county road was a public highway at the time the parcel was severed from

1 common ownership and any roads built thereafter are immaterial to this claim.

2 Strict necessity means the proposed right-of-way is the *only possible* means of access to  
3 the property. It is not enough for the plaintiff to claim its own land is too steep, narrow, or  
4 difficult or even that access is only available by waterway. (*Los Angeles County v. Bartlett* (1962)  
5 203 Cal.App.2d 523, 528.) In the *Bartlett* case, supra, the court held there was no easement by  
6 necessity nor by implication where a parcel was landlocked on three sides by other parcels but  
7 which had a canal on the fourth side. The court found the canal to be a street and legal access  
8 that defeated the claim of necessity.

9 [T]he following language from *Kripp v. Curtis*, 71 Cal.62 [11 P. 879] is quoted  
10 with approval: "The right of way from necessity must be in fact what the term  
11 naturally imports, and cannot exist except in cases of strict necessity....That the  
12 way over his land is too steep, or too narrow, or that other and like difficulties  
13 exist, does not alter the case, and it is only when there is no way through his own  
14 land that a grantee can claim a right over that of his grantor. It must also appear  
15 that the grantee has no other way." (*Los Angeles County v. Bartlett*, supra p.528.)

16 The evidence will show that there is not now, and never has been an easement by necessity  
17 across the property which is now owned by Odd Fellows. There has always been access to the  
18 Boy Scouts' property by way of the county road, Long Barn Sugar Pine Road. Accordingly, this  
19 cause of action fails.

### 20 Easement by Implication

21 An implied easement arises when all of the following elements are present:

- 22 (1) There is a separation or severance of title which implies a unity  
23 of ownership at some time in the past;
- 24 (2) Before the separation took place, the use which gives rise to the  
25 easement must have continued for so long and in such an obvious  
26 manner as to show that it was intended to be permanent; *and*
- 27 (3) The easement must be reasonably necessary to the beneficial  
28 enjoyment of the land granted. (*Kytasty v. Godwin* (1980) 102  
Cal.App.3d 762, 769[emphasis added].)

Discovery to date has failed to yield any evidence of the obvious or apparent use which  
might have been visible on the claimed servient tenement (Odd Fellows) without which, the  
claimed implied easement cannot be established. (*Warfield v. Basich* (1958) 161 Cal.App.2d 493,  
499.) The Boy Scouts must prove, by admissible evidence, what use was made of the claimed  
servient tenement *before the separation of title*. (*Piazza v. Schaefer* (1967) 255 Cal.App.2d 328,

1 334.) Thus, the important facts will be whether there was any “obvious or apparent use” of what  
2 is now Odd Fellows property by the former common owner To date, discovery has failed to  
3 disclose any evidence of the use of the Odd Fellows property prior to the date when it was  
4 separated from common ownership of what is now the Boy Scouts property.<sup>1</sup> Without such  
5 evidence, there can be no proof of an easement by implication and this cause of action must also  
6 fail. Moreover, since the roads and drives within Odd Fellows were built *after* Odd Fellows  
7 purchased the property in 1949, any proof of use in the 1930's would be ineffectual unless the  
8 same roads existed in the same place.

9       The person claiming ownership of an easement has the burden of proving its exact  
10 location. However, special rules also apply to easements by implication because of the unique  
11 method of their creation. Civil Code section 1104 provides that an easement created by  
12 implication entitles the owner to use the servient tenement “in the same manner and to the same  
13 extent as such property was obviously and permanently used” by the grantor at the time of the  
14 conveyance. “Therefore, unless there are additional circumstances that indicate that the parties  
15 intended a different location, the statute limits the location of an implied easement to the area of  
16 the servient tenement used by the grantor prior to the conveyance.” (Miller & Starr, 6 California  
17 Real Estate (3<sup>rd</sup> Ed. 2000) §15:51, Location of Implied Easements, p. 162.)

18       The purpose of recognizing an easement by implication is to give effect to the presumed  
19 intent of the original parties to the conveyance which first severed the dominant tenement from  
20 the servient tenement.

21       The law does not favor the implication of easements....Whether an easement arises  
22 by implication on a conveyance of real estate depends on the intent of the parties,  
23 which must clearly appear in order to sustain an easement by implication. In order  
24 to determine the intent, the court will take into consideration the circumstances  
25 attending the transaction, the particular situation of the parties, and the state of the  
26 thing granted.[Citation] The purpose of the doctrine of implied easements is to  
27 give effect to the actual intent of the parties as shown by all the facts and  
28 circumstances. (*Los Angeles County v. Bartlett* (1962) 203 Cal.App.2d 523, 530.)

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27       <sup>1</sup> Of course, Odd Fellows acknowledges the existence of the county road which traversed through both parcels  
28 for many years before the severance. However, in 1992, the County Board of Supervisors by resolution, abandoned  
Long Barn Sugar Pine Road through the Odd Fellows Park subdivision. Thus, even if the road was once a public  
highway through Odd Fellows, that status has now changed and it is a private roadway in Odd Fellows Park.

1 **Easement by Prescription**

2 In order to establish an easement by prescription, the Boy Scouts must prove their use of a  
3 specific way was open and notorious, continuous and uninterrupted for a period of five years or  
4 more, hostile to the true owner, and under a claim of right. (*Taormino v. Denny* (1970) 1 Cal.3d  
5 679, 686.)

6 In this case, the various roads on which the Boy Scouts claim an easement were built at  
7 different times and for different purposes. Wheeler Road is in a different alignment than it was  
8 when the Odd Fellows first developed their land. Jordan Way has a newer spur of a gravel road  
9 which goes adjacent to Sugar Pine Creek and then continues around the meadow on Odd Fellows  
10 property. Thus, the evidence will be somewhat different depending upon which road is examined.

11 The Boy Scouts must prove the elements of prescription as to each road and drive over  
12 which they wish to establish such an easement. As to Wheeler Road, even if the Boy Scouts were  
13 able to show the elements of prescription on the original road (and we contend they cannot), that  
14 road has been abandoned for more than five years and the new road was clearly used by  
15 permission.

16 It is true that the case law provides that the use of an easement over a long period of time  
17 without interference gives rise to a presumption that such use was hostile for purposes of  
18 establishing that element of a prescriptive easement. However, the presumption is rebuttable.  
19 Once such evidence is admitted, the burden shifts to the Odd Fellows to show permission.  
20 (*Applegate v. Ota* (1983) 146 Cal.App.3d 702, 708-709.)

21 Odd Fellows contends that the Boy Scouts use of Odd Fellows' roads has always been  
22 permissive. One of the original members of the Odd Fellows board of directors, Loren Hosmer, is  
23 expected to testify that Odd Fellows gave consent to the Boy Scouts to use their roads because  
24 Odd Fellows wanted to be a "good neighbor." Others will testify to the same effect. This  
25 testimony will be sufficient to overcome the presumption of hostility which may arise if the Boy  
26 Scouts are able to prove long use of the Odd Fellows' roads.

27 **EVIDENTIARY ISSUES**

28 No particular evidentiary issues are expected by the defense at this time. While it is true

1 that the case requires proof of the uses to which what is now Odd Fellows property was put over  
2 70 years ago, we have no idea what form of proof or evidence Plaintiff may attempt to introduce  
3 to prove these issues.

4 Since Plaintiff has not produced any evidence of ancient use of the property in discovery,  
5 it may be that the Odd Fellows would object to all such evidence if it was concealed from the  
6 defense during discovery.

7 Further, during a recent deposition, the Boy Scouts' attorney presented documents for  
8 examination by a witness when such documents had never been disclosed in discovery. If  
9 additional previously undisclosed documents find their way into the trial, there may be motions to  
10 exclude such evidence for abuse of discovery. Of course, we have no idea at this time whether  
11 any such documents may exist or be offered in evidence.

#### 12 WITNESSES EXPECTED TO BE CALLED

13 At this time, the defense expects to call the following witnesses at trial, although  
14 depending upon developments at trial the list could change:

15 Fred Coleman	Bert Johnson
16 Del Wallis	Ed Cole
17 Ed Smith	
18 Loren Hosmer	
19 Frank Walter	
20 George Hill	
21 Cyrus Hoblett	
22 Newell Egger	
23 Mike Wright	
24 Ed Hinton	
25 Robert Cloak	
26 Ron Hawke	
27 Ed Cole	
28 Larry Houseberg	

#### 23 CONCLUSION

24 The essence of the Boy Scouts' claim is that since they have used Odd Fellows' roads for  
25 many years, that use has ripened into the absolute right to continue using the Odd Fellows' roads  
26 and to convey the same right to anyone who might purchase the property if they sell. We expect  
27 that there will be witnesses who testify that permission was never sought nor obtained and there  
28 will be witnesses who will testify that the Boy Scouts' use has always been by permission. Thus,

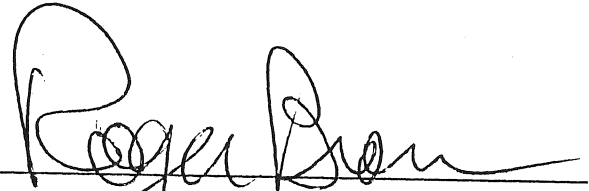


1 on the question of whether the Boy Scouts can prove sufficient hostility to satisfy that prong of  
2 the prescriptive easement claim, the Court will be called upon to carefully weigh conflicting  
3 evidence.

4         However, on the claims of an easement by necessity or implication, we believe the  
5 evidence will be insufficient to establish either kind of easement. Unless the Boy Scouts are able  
6 to prove the obvious and apparent uses to which what is now the Odd Fellows property was put  
7 in 1930, they cannot establish the elements of either an easement by necessity or by implication.  
8 To date, no such evidence has been revealed by the Boy Scouts in discovery and none is expected  
9 to surface at trial.

10         The evidence will show that the Alameda Boy Scouts Foundation, Inc. has not and cannot  
11 establish the essential elements of their easement claims. On the face of the pleadings, there are  
12 no allegations of wrongdoing and no prayer for damages against Del Wallis and accordingly, he  
13 should be dismissed from the case at the outset. The Court will be respectfully asked to deny all  
14 of the Alameda Boy Scouts Foundation's claims and render a judgment for the defense on all  
15 counts.

16  
17 Dated: June 3, 2004

18  
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21 

22 ROGER A. BROWN, Lawyer for Defendants  
23 ODD FELLOWS SIERRA RECREATION  
24 ASSOCIATION, INC., OF TUOLUMNE  
25 COUNTY, and DEL WALLIS  
26  
27  
28

PROOF OF SERVICE BY MAIL - CCP 1013a(3)

STATE OF CALIFORNIA, COUNTY OF TUOLUMNE

I am employed in the County of Tuolumne, State of California. I am over the age of 18 years and not a party to the within action; my business address is 38 North Washington Street, Sonora, CA 95370. On June 4, 2004, I served the following:

TRIAL BRIEF

on the parties to be noticed in said action by placing a true copy in a sealed envelope addressed as follows:

Stacy L. Sisco, Esq.  
Damrell, Nelson, Schrimp,  
Pallios, Pacher & Silva  
1601 "I" Street, Fifth Floor  
Modesto CA 95354

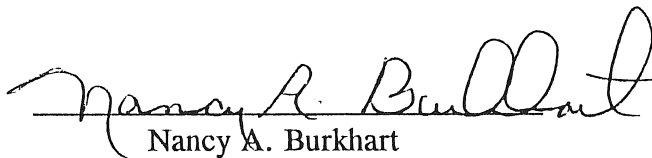
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By facsimile, I caused said document to be transmitted to the telephone number(s) of the addressee(s) designated.

By handing said envelope to

Executed on June 4, 2004, at Sonora, California.

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

  
Nancy A. Burkhart

Facsimile  
Transmittal

---

DAMRELL, NELSON, SCHRIMP,  
PALLIOS, PACHER & SILVA  
1601 I Street, Fifth Floor  
Modesto, CA 95354  
(209) 526-3500  
(209) 526-3534 - FAX

July 30, 2004

Please forward to: Roger A. Brown, Esq.  
Fax No.: (209) 533-7757  
From: Roger M. Schrimp  
RE: *Alameda Boy Scouts Foundation vs. Odd Fellows, et al.*  
Operator: sandy  
Number of pages (including this cover sheet): 33

Message:

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File #14535

1 Roger Schrimp, State Bar No. 39379  
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5 Attorneys for Plaintiff Alameda Boy Scouts Foundation, a  
 6 California Non-profit Public Benefit Corporation

7 **SUPERIOR COURT OF CALIFORNIA**  
 8 **COUNTY OF TUOLUMNE**

9 ALAMEDA BOY SCOUTS  
 10 FOUNDATION, a California Nonprofit  
 Benefit Corporation

Case No. CV49802

11 Plaintiff,  
 12 vs.

**PLAINTIFF ALAMEDA BOY SCOUTS  
 FOUNDATION'S POST-TRIAL BRIEF**

13 ODD FELLOWS SIERRA RECREATION  
 14 ASSOCIATION, INC., OF TUOLUMNE  
 COUNTY, DEL WALLIS, an individual,  
 15 and ALL PERSONS UNKNOWN,  
 CLAIMING ANY LEGAL OR  
 16 EQUITABLE RIGHT, TITLE, ESTATE,  
 LIEN, OR INTEREST IN THE PROPERTY  
 DESCRIBED IN THE COMPLAINT  
 17 ADVERSE TO PLAINTIFF'S TITLE OR  
 ANY CLOUD ON PLAINTIFF'S TITLE  
 18 THERETO, WILLIAM H. SMITH,  
 FLOELLEN W. SMITH, JOSEPH  
 19 FREITAS, & GLADYS FREITAS and  
 DOES 1 through 50,

*Date: July 30, 2004*  
*Dept.: 1*  
*Complaint Filed: May 22, 2003*

20 Defendants.  
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17

18 Moores v. Walsh  
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19 O'Barton v. Borba  
32 Cal.2d 145, 152-153 (1948) ..... 7

20

21 Owsley v. Hamner  
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22 Reese v. Borghi  
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23

24 Roemer v. Pappas  
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25 Safway Steel Products, Inc. v Lefver  
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26

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28 Serrano v. Grissom  
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1 Thomson v. International Alliance of Stage Employees  
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2

3 Transport Clearings-Bay Area v. Simmonds  
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4 Twin Peaks Land Co. v. Briggs  
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5

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7 Weidman v. Staheli  
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8

9 **Statutes**

10 California Code of Civil Procedure §321 ..... 2

11 California Code of Civil Procedure §1007 ..... 2

12 California Evidence Code § 623 ..... 20

13 California Rules of Court 375 ..... 2

14 **Additional Authorities**

15 6 Miller & Starr California Real Estate (3d ed. 2000)  
§15.38, p. 138 (citing 46 A.L.R. 792, 72 A.L.R. 648) ..... 2

16

17 6 Miller & Starr California Real Estate (3d ed. 2000)  
§15.35, p. 126 ..... 7

18 6 Miller & Starr California Real Estate (3d ed. 2000)  
§15.20, p. 82 ..... 13

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20 6 Miller & Starr California Real Estate (3d ed. 2000)  
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21 6 Miller & Starr California Real Estate (3d ed. 2000)  
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22

23 5 Miller & Starr California Real Estate (3d ed. 1989)  
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24 2 Thompson on Real Property (1961 Replacement),  
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25

26 Matthew Bender  
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27

28 Matthew Bender  
California Real Estate Law and Practice, Ch. 343,  
§ 343.15, *Easements and Licenses* ..... 10

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SCHRIMP, PALLIOS  
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v

PLAINTIFF ALAMEDA BOY SCOUTS FOUNDATION'S POST-TRIAL BRIEF

1 Matthew Bender  
 California Real Estate Law and Practice, Ch. 343,  
 2 § 343.15, p. 343-50 *Easements and Licenses*  
 Citing Powell on Real Estate Property, ¶ 411 ..... 15  
 3  
 4 Witkin (1987)  
 Summary 9th, Contracts § 248, p. 249-50 ..... 16  
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 6 California Non-profit Public Benefit Corporation

7 SUPERIOR COURT OF CALIFORNIA  
 8 COUNTY OF TUOLUMNE

9 ALAMEDA BOY SCOUTS  
 10 FOUNDATION, a California Nonprofit  
 Benefit Corporation

Case No. CV49802

11 Plaintiff,  
 12 vs.

**PLAINTIFF ALAMEDA BOY SCOUTS  
 FOUNDATION'S POST-TRIAL BRIEF**

13 ODD FELLOWS SIERRA RECREATION  
 ASSOCIATION, INC., OF TUOLUMNE  
 14 COUNTY, DEL WALLIS, an individual,  
 and ALL PERSONS UNKNOWN,  
 15 CLAIMING ANY LEGAL OR  
 EQUITABLE RIGHT, TITLE, ESTATE,  
 16 LIEN, OR INTEREST IN THE PROPERTY  
 DESCRIBED IN THE COMPLAINT  
 17 ADVERSE TO PLAINTIFF'S TITLE OR  
 ANY CLOUD ON PLAINTIFF'S TITLE  
 18 THERETO, WILLIAM H. SMITH,  
 FLOELLEN W. SMITH, JOSEPH  
 19 FREITAS, & GLADYS FREITAS and  
 DOES 1 through 50,

*Date: July 30, 2004*  
*Dept.: 1*  
*Complaint Filed: May 22, 2003*

20 Defendants.  
 21

22 I.

23 INTRODUCTION

24 Plaintiff Alameda Boy Scouts Foundation, and its predecessors-in-interest (hereinafter  
 25 referred to as "Boy Scouts") have for many years operated a property known as "Camp  
 26 Cedarbrook" for the benefit of Boy Scout troops and other non-profit youth groups since  
 27 approximately 1929. In 1949 Defendant Odd Fellows Sierra Recreation Association, Inc.  
 28 (hereinafter "Odd Fellows") purchased real property contiguous to Camp Cedarbrook. The Boy

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1 Scouts contend that the evidence established their entitlement to an easement by way of  
 2 prescription, necessity, and implication over Wheeler Road and Jordan Way across the Odd  
 3 Fellows property. Additionally, Boy Scouts contend that the evidence established that the Odd  
 4 Fellows are barred from denying the Boy Scouts' easement rights by way of promissory and  
 5 equitable estoppel.

6 II.

7 LEGAL ARGUMENT

8 A. THE BOY SCOUTS ARE ENTITLED TO AN EASEMENT BY PRESCRIPTION  
 9 OVER THE ODD FELLOWS' PROPERTY

10 The Boy Scouts have obtained an easement by prescription over Wheeler Road and  
 11 Jordan Way. To establish a prescriptive easement, a claimant must have (1) used the subject  
 12 property for a period of five years, (2) in a manner that was open and notorious, and (3) in a  
 13 manner that was hostile and adverse to the interests of the owner of the burdened land. Cal. Civ.  
 14 Code § 1007; Cal. Code Civ. Proc. § 321; Warsaw v. Chicago Metallic Ceilings, Inc., 35 Cal.3d  
 15 564, 570 (1984). The fact that an easement is, or is not, necessary as a means of access to the  
 16 user's property is irrelevant in determining whether the use has been sufficient to create a  
 17 prescriptive right. Jordan v. Worthen, 68 Cal.App.3d 310, 326 (1977). Additionally, the fact  
 18 that the claimant has utilized alternative routes to access his/her property does not preclude the  
 19 creation of a prescriptive right to use another route. Guerra v. Peckard, 236 Cal.App.2d 272, 293  
 20 (1965).

21 1. The Evidence Presented Shows that the Boy Scouts' Continuously Accessed  
 22 Camp Cedarbrook on Wheeler Road And Jordan Way For A Period in  
 Excess Of Five Years.

23 The Boy Scouts have continuously accessed Camp Cedarbrook via Wheeler Road and  
 24 Jordan Way for a period exceeding five years. The prescriptive period is measured from the time  
 25 that the adverse use begins. Guerra at 291. The period in which the burdened property is used by  
 26 the claimant's predecessors in a similar manner may be "tacked" onto the time it is used by the  
 27 claimant. 6 Miller & Starr, Cal. Real Estate (3d ed. 2000) § 15.38, p. 138 (citing 46 A.L.R. 792,  
 28 72 A.L.R. 648).

1 Testimony elicited during trial shows that the Boy Scouts have utilized Wheeler Road and  
2 Jordan Way for a period far in excess of five years. Richard Anderson, former President of the  
3 Alameda Boy Scouts Foundation, testified that he and the Boy Scouts have used Wheeler Road  
4 and Jordan Way since at least 1972 (Record at 16: 5; 71:10-12; 73: 15-20; 75: 13-17). John  
5 Pearl, Scout Executive of the Alameda Boy Scouts Council since 1994, also testified that the Boy  
6 Scouts have used such roads for a period in excess of five years (R. at 294 19-25, 295: 1-3; 345:  
7 7-16). Furthermore, Richard Welch, an owner of property near Camp Cedarbrook, testified that  
8 he had observed the Boy Scouts continuous use the roads through the Odd Fellows' property  
9 during the twenty years he has owned a neighboring parcel of land (R. at 97: 13-25, 98: 1-8).  
10 Moreover, when questioned by Roger Schrimp, Edward Smith, an owner of property in the Odd  
11 Fellows' subdivision for thirty-two years and former president of the Odd Fellows, testified that  
12 the Boy Scouts have "always" used Wheeler Road and Jordan Way:

13 Q. So as you sit here today, is it your testimony that you don't know whether the  
14 Scouts have been allowed to use Wheeler and Jordan Road or not to get into the  
15 Scout camp?

16 A. They always did, yeah.

17 Q. They always have used those roads?

18 A. As far as I know. (Emphasis added.)

19 (R. at 400: 17-23).

20 Documentary evidence also establishes that the Boy Scouts have utilized Wheeler Road  
21 and Jordan Way for a period far in excess of five years. The minutes from a July 14, 1957 Odd  
22 Fellows board meeting (See Exhibit 4) show that the Girl Scouts had used roads through the Odd  
23 Fellows property nearly fifty years ago. A letter from the Odd Fellows to the Boy Scouts, dated  
24 August 6, 1973, (See Exhibit 18) and the minutes from an Odd Fellows board meeting dated  
25 December 2, 1973 (See Exhibit 19) show that the Boy Scouts have used Wheeler Road since at  
26 least 1973 because the Odd Fellows expected the Boy Scouts to contribute their share in the costs  
27 of repairing that road. A letter from Edward Smith to Alvin Kidder, former president of the  
28 Camp Cedarbrook Trustees, dated February 7, 1992 (See Exhibit 23) shows that the Boy Scouts

1 had been using Wheeler Road and Jordan Way in 1992 and before because Smith asserts they the  
2 Odd Fellows had no intention of denying such usage.

3 To acquire a prescriptive easement, the easement must be used in the required manner  
4 continuously and without interruption for the full prescriptive period. It need not be used every  
5 day during the prescriptive period; use is sufficient if it occurs on those occasions when it is  
6 necessary for the convenience of the user. Scott v. Henry, 196 Cal. 666, 670 (1925). Use of a  
7 roadway is sufficient if it is used only three times a week, once each week, 20 times a year,  
8 sporadically, or occasionally as needed Gaut v. Farmer, 215 Cal.App.2d 278, 284 (1963);  
9 Crimmins v. Gould, 149 Cal.App.2d 383, 397 (1957); Weideman v. Staheli, 149 Cal.App.2d  
10 613, 616 (1948); Warsaw at 570. Moreover, in the absence of facts to the contrary, testimony of  
11 use at different times throughout the prescriptive period is sufficient to establish the regularity  
12 and continuity of use during the interim period. Cleary v. Trimble, 229 Cal.App.2d 1, 10 (1964).

13 The Boy Scouts' use of Wheeler Road and Jordan Way meets this continuous  
14 requirement. Richard Anderson testified that he drove on Wheeler Road and Jordan Way many  
15 times annually to access Camp Cedarbrook (R. at 85: 24-25, 86: 1). Service vehicles, including  
16 trucks bringing supplies and propane, used Wheeler Road and Jordan Way to access Camp  
17 Cedarbrook during the summer seasons (R. at 300: 22-25, 301: 1-4). Camp Cedarbrook was  
18 used approximately twelve weekends per year during the winter season (R. at 330: 8-13).  
19 Furthermore, Mr. Anderson testified that the Boy Scouts used Camp Cedarbrook for non-summer  
20 camp and non-winter camp activities as well (R. at 335: 11-14). Campers and their parents  
21 accessed Camp Cedarbrook via Wheeler Road and Jordan Way (R. at 97: 22-25, 98: 1-8). Such  
22 continuous usage by the Boy Scouts of Wheeler Road and Jordan Way is more than sufficient to  
23 establish the continuous use requirement for an easement by prescription. Thus, it is clear that  
24 the Boy Scouts have continuously used Wheeler Road and Jordan Way for a period far in excess  
25 of five years.

26 **2. The Evidence Establishes That the Boy Scouts' Use of Wheeler Road And**  
27 **Jordan Way Was At All Times Open, Notorious, And Visible.**

28 The Boy Scouts satisfy the second element of an easement by prescription because the

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1 Odd Fellows had actual notice of the Boy Scouts' continuous use of their roads. To obtain an  
2 easement by prescription, the claimant must show that his or her use has been "open,"  
3 "notorious," and "visible." Warsaw at 570. This requirement operates to "insure that the owner  
4 of real property ... has actual or constructive notice of the adverse use and to provide sufficient  
5 time to take necessary action to prevent that use from ripening into a prescriptive easement."  
6 Field-Escandon v. Demann, 204 Cal.App.3d 228, 235 (1988). Open and notorious use is  
7 characterized as use that notifies the landowner that a use inconsistent with his or her rights is  
8 being made. Kerr Land & Timber Co. v. Emmerson, 268 Cal.App.2d 628, 634 (1969). An  
9 owner of property acquires actual knowledge if the owner is informed of the property's use or if  
10 the owner observes the use. Adequate open, notorious and visible use of the property raises an  
11 inference that the owner has notice—either actual or constructive—of the claimant's use.  
12 Applegate v. Ota, 146 Cal.App.3d 702, 709 (1983).

13 The record shows that the Odd Fellows had actual notice of the Boy Scouts' use of their  
14 roads. The Odd Fellows' former president, Edward Smith, testified that he had knowledge of the  
15 Boy Scouts' use of Wheeler Road and Jordan Way since at least the 1970s (R. at 893: 7-16; 400:  
16 17-23). Fred Coleman, another former president of the Odd Fellows, testified that he had  
17 knowledge of the Boy Scouts' use of Wheeler Road and Jordan Way in 1995 (R. at 839: 11-20).  
18 Moreover, the minutes from a July 14, 1957 Odd Fellows board meeting (See Exhibit 4) show  
19 that the Odd Fellows had actual knowledge of the Boy Scouts' predecessor in interest, the Girl  
20 Scouts,' use of the Odd Fellows' roads as early as 1957. A letter from the Odd Fellows asking  
21 the Boy Scouts to contribute to the repair costs associated with Wheeler Road, dated August 6,  
22 1973 (See Exhibit 18), and the minutes from an Odd Fellow board meeting acknowledging  
23 receipt of such contribution, dated December 2, 1973 (See Exhibit 19), demonstrate that the Odd  
24 Fellows had actual knowledge of the Boy Scouts' use of Wheeler Road in 1973. The Odd  
25 Fellows also received a letter, dated April 18, 1990 (See Exhibit 7), from Alvin Kidder, former  
26 president of Camp Cedarbrook Trustees, stating that the Boy Scouts have used the Odd Fellows'  
27 roads "continuously for over 30 years without any restrictions placed on us by the Odd  
28 Fellows," thus indicating, once again, that the Odd Fellows had actual notice of the Boy Scouts'

PLAINTIFF ALAMEDA BOY SCOUTS FOUNDATION'S POST-TRIAL BRIEF

1 use of their roads (Emphasis added.) Actual notice by the Odd Fellows of the Boy Scouts' use of  
2 their roads is also found in a letter from the Odd Fellows to the Boy Scouts, dated February 7,  
3 1992 (See Exhibit 23) and in a letter from the Odd Fellows to the Boy Scouts dated November  
4 20, 1995 (See Exhibit 10). Such testimony and exhibits clearly show that the Odd Fellows  
5 clearly had actual notice of the Boy Scouts' use of their roads.

6 Assuming arguendo that the Odd Fellows did not have *actual* notice of the Boy Scouts'  
7 use of their roads, the Odd Fellows had, at last, constructive notice because such use was open,  
8 notorious, and visible to the Odd Fellows. Richard Anderson testified that the Boy Scouts' use  
9 of Wheeler Road and Jordan Way was clearly visible to the homes in the overlooking Odd  
10 Fellows subdivision (R. at 23: 3-12). After all, approximately one hundred campers would come  
11 to Camp Cedarbrook (R. at 85: 4-6) via the roads through the Odd Fellows property (R. at 98: 7-  
12 8). Similarly, Richard Welsh testified that residents of the Odd Fellows' subdivision were able  
13 to observe those who went to Camp Cedarbrook via Wheeler Road and Jordan Way (R. at 100:  
14 8-13). Thus, the Boy Scouts' use of the roads on the Odd Fellows' property was open, notorious,  
15 and visible to the Odd Fellows.

16 The testimony and documentary evidence clearly establishes that the Odd Fellows had  
17 actual notice of the Boy Scouts' use of Wheeler Road and Jordan Way, and even if they did not,  
18 the Boy Scouts' use of such roads was open, notorious, and visible so that the Odd Fellows had  
19 constructive knowledge.

20 **3. The Boy Scouts' Use Was Hostile And Adverse To The Odd Fellows'**  
21 **Interest, Under Claim Of Right, And Non-Permissive.**

22 The Boy Scouts have satisfied the third element of an easement by prescription because  
23 their use of Wheeler Road and Jordan Way was hostile and adverse to the Odd Fellows' interest,  
24 under claim of right, and non-permissive. A claimant's use of property is "adverse" if it is not in  
25 subordination to the rights of the owner of the burdened land, is undertaken without the owner's  
26 permission and is wrongful and open. Use of servient land is considered "hostile" under the law  
27 if it is adverse and is made without express or implied recognition of the owner's rights. Clery  
28 at 6-7. The claimant need not verbally declare a hostile intent to the owner of the burdened land.



1 Instead, use of property in a way that displays the user's claim of right establishes a prima facie  
2 case that the use is adverse and hostile to the rights of the owner of the property, and that the  
3 owner has constructive notice of the adverse claim. 6 Milier & Starr, Cal. Real Estate (3d ed.  
4 2000) § 15.35, p. 126. California courts have consistently ruled that open, notorious, and visible  
5 use creates a presumption that the claimant's use is hostile and adverse. Gates Rubber Co. v.  
6 Ulman, 214 Cal.App.3d 356, 366 (1989); Kerr Land & Timber Co. at 634-635. As the previous  
7 section makes clear, the Boy Scouts' use of the roads in question was open, notorious, and visible  
8 (See § A. 2.).

9 Although the Odd Fellows will may argue that the Boy Scouts' use of their roads was at  
10 all times permissive, and therefore, not hostile, adverse, and under claim of right, under  
11 California law, it is well-established that a claimant's failure to request permission to use  
12 burdened land is sufficient to prove the use was under a claim of right and thereby hostile. Twin  
13 Peaks Land Co. v. Briggs, 130 Cal.App.3d 587, 594 (1982); O'Banion v. Borba, 32 Cal.2d 145,  
14 152-153 (1948). As the Odd Fellows correctly point-out in their Trial Brief (Defendants' Trial  
15 Brief), use of an easement for a long period of time without interference gives rise to a  
16 presumption that such use was hostile. Once such evidence has been presented, the burden shifts  
17 to the owner of the burdened property to show that the use was permissive rather than hostile.  
18 Applegate v. Ota, 146 Cal.App.3d 702, 708-709 (1983). The Odd Fellows have clearly not met  
19 this burden.

20 Although the Odd Fellows claim that the Boy Scouts were required to ask the Odd  
21 Fellows for permission to use their roads, the Odd Fellows have failed to produce a single  
22 document that memorializes such a requirement. Representatives from the Odd Fellows testified  
23 that the organization considered the use of its roads a very important matter (R. at 473: 11-20);  
24 they claimed that the Boy Scouts would ask for permission to use its roads at board meetings and  
25 by way of yearly application (R. at 448: 21-24, 449: 3-114; 465: 18-22; 542: 13-17; 544: 1-4, 13-  
26 20; 545: 20-25; 549: 5-9, 551: 7-13); they even testified that such important discussions at board  
27 meetings would, as a matter of course, be reflected in the minutes of those meetings (R. at 200:  
28 15-22; 401: 16-18; 552: 8-16; 879: 23-25, 880: 1-2); that they spent considerable time looking

1 for all documents in their possession relating to the Boy Scouts' use of their roads (R. at 196: 14-  
2 21; 843: 8-17; 845: 15-21, 879: 12-19), and had produced all such documents (R. at 474: 18-25,  
3 475: 1-6; 829: 17-25, 830: 1-9; 831: 6-7; 845: 15-25, 846: 1-23). Yet, the Odd Fellows have  
4 produced no evidence showing that the Boy Scouts had ever asked for permission to use its  
5 roads: such a request is not apparent in any board meeting minutes, any application, or in any  
6 letter from the Boy Scouts. Edward Smith testified that the Odd Fellows required the Boy Scouts  
7 to ask for permission to use its roads "in order to not give them the permanent right" to use such  
8 roads (R. at 443: 20-25). Yet, Smith has produced no such writing or application. Moreover, the  
9 representatives from the Odd Fellows cannot recall the alleged conversations they had with  
10 representatives from the Boy Scouts regarding the use of their roads, the time frame during which  
11 these conversations allegedly occurred, or even the persons to whom they spoke about this matter  
12 (R. at 466: 7-17; 470: 12-21; 471: 9-14; 544: 5-12). Instead, the Odd Fellows have provided the  
13 Court with unsupported claims. The Boy Scouts, however have, provided testimony denying the  
14 existence of such claims for permission (R. at 19: 1-5; 297: 5-17; 310: 4-17).

15 The use of Wheeler Road and Jordan Way by Camp Cedarbrook campers also provides  
16 support to the premise that the use of the roads was hostile, adverse, and non-permissive. "The  
17 fact that a roadway is used by family, guests, relatives and business invitees is evidence that  
18 supports the inference that use was adverse and not permissive." Castillo v. Celaya, 155  
19 Cal.App. 469, 473 (1957). Camp Cedarbrook, at times, accommodated over one-hundred  
20 campers (R. 85: 4-6). It is undisputed that such campers accessed Camp Cedarbrook via Wheeler  
21 Road and Jordan Way (R. 97: 21-25, 98: 1-8).

22 The Boy Scouts' financial contribution to the repairs of such road on the Odd Fellows  
23 property also supports the claim that the use of the roads was hostile, adverse, and non-  
24 permissive. Sharing of such expenses has been recognized by several courts as a tacit  
25 recognition of a claimant's easement rights, which defeats a claim that use was non-permissive.  
26 Serrano v. Grissom, 213 Cal.App. 300, 302-303 (1963); Marangi v. Domenici 161 Cal.App.2d  
27 552, 554 (1958). In 1973, the Odd Fellows asked the Boy Scouts to share in the expense of  
28 repairing Wheeler Road (See Exhibit 18). The Boy Scouts responded affirmatively by sending a

1 check for \$300.00 for such repair (See Exhibits 19, 24).

2 Such evidence shows that the Boy Scouts' use of the roads on the Odd Fellows property  
3 was adverse, hostile, and under claim of right. The evidence also shows that the Odd Fellows  
4 have not met their burden to demonstrate that the Boy Scouts' use of their roads was by express  
5 permission. Accordingly, the Boy Scouts satisfy the final element of an easement by  
6 prescription.

7 **B. THE BOY SCOUTS ARE ENTITLED TO AN EASEMENT BY NECESSITY**  
8 **OVER THE ODD FELLOW'S PROPERTY**

9 To establish an easement by necessity, a claimant must show (1) that the dominant and  
10 servient tenements were once in common ownership and (2) that there is a strict necessity for the  
11 right-of-way as when the claimant's property is landlocked. Reese v. Borghi, 216 Cal.App.2d  
12 324, 332-333 (1963). The Boy Scouts' property is landlocked by the property of the Odd  
13 Fellows and others (See Exhibits 1, 2). Whenever a landowner sells one of two or more parcels,  
14 and the parcel sold is landlocked by the remaining property of the grantor or partly by the land of  
15 the grantor and partly by the land of others, the law implies that the parties intend to create an  
16 easement across the remaining land of the grantor to benefit the property conveyed. Mesner v.  
17 Uharriet, 174 Cal. 110, 112 (1916). The public policy behind an easement by necessity is "to  
18 prevent any man-made efforts to hold land in perpetual idleness as would result if it were cut off  
19 from all access by being completely surrounded by lands privately owned." Reese at 331 (citing  
20 2 Thompson on Real Property (1961 Replacement), § 362, p. 410).

21 Several courts have ruled that the mere landlocking of a parcel after the conveyance by a  
22 common owner is sufficient to create the easement as a matter of law. 6 Miller & Starr, Cal.  
23 Real Estate (3d ed. 2000) § 15.27, p. 98. The general rule is that "the creation of an easement by  
24 necessity depends on the presumed intent of the parties as determined from the physical  
25 condition of the respective parcels of property, the agreements between the parties, the contracts  
26 and instruments of conveyance and all of the surrounding facts and circumstances." Id. at 98-99  
27 (citing Roemer v. Pappas, 203 Cal.App.3d 201, 207-208 (1988)). Evidence produced at trial has  
28 clearly shows that the Boy Scouts are entitled to an easement by necessity.

1           **1.     The Boy Scouts Meet The Common Ownership Requirement For Easement**  
2           **By Necessity.**

3           The Boy Scouts satisfy the common ownership element of an easement by necessity  
4 because their property and the Odd Fellows' property were both owned by the same individual,  
5 E.O. Sylvester (See Exhibit 35). "One of the elements of an easement by necessity is that the  
6 dominant and servient tenements were under the same ownership at the time of the conveyance  
7 that gave rise to the necessity." Kellogg v. Garcia, 102 Cal.App.4th 796, 804 (2002).

8           Furthermore, at the time of division, the original owner may or may not have retained a part of  
9 the divided property, as easements by necessity may arise from simultaneous conveyance of the  
10 severed portions as well as by piecemeal conveyance or conveyance of only part. (Powell on  
11 Real Property, Ch. 34, *Easements and Licenses* (Matthew Bender); California Real Estate Law  
12 and Practice, Ch. 343, §343.15, *Easements and Licenses* (Matthew Bender)).

13           Michael Azzaro, Chief Title Officer and Vice-President of Yosemite Title Company,  
14 testified that the Boy Scouts' property and the Odd Fellows' property were owned by E.O.  
15 Sylvester from 1923 to 1929 (See Exhibit 35). Mr. Azzaro further testified that the parcel was  
16 severed in 1929, and the resulting two parcels were subsequently, and respectively, transferred to  
17 the Boy Scouts in 1930 and the Odd Fellows in 1949 (R. at 88: 19-25, 89: 1-23; See Exhibit 35).  
18 Thus, the common ownership element is met by the Boy Scouts.

19           **2.     The Boy Scouts Meet The Strict Necessity Requirement For An Easement By**  
20           **Necessity.**

21           The Boy Scouts also satisfy the strict necessity element of an easement by necessity  
22 because, without the use of Wheeler Road and Jordan Way, they (1) cannot access their property  
23 via other routes. Strict necessity must be shown in order to establish an easement by necessity.  
24 County of Los Angeles v. Bartlett, 203 Cal.App.2d 523, 528-526 (1962). Furthermore, contrary  
25 to the requirements of an easement by implication, "a way of necessity does not rest on a pre-  
26 existing use but on the need for a way across the granted or reserved premises." Kellogg at 810  
27 (citing Reese at 331).

28           At trial, it was shown that access by Long Barn Sugar Pine Road to Camp Cedarbrook

1 camp to the south-east of the creek is Jordan Way (R. at 18: 5-15). The Boy Scouts cannot  
 2 utilize Camp Cedarbrook without such access (R. at 311: 18-22). Service vehicles, including  
 3 trucks carrying necessary supplies and propane, must use Jordan Way to get to Camp Cedarbrook  
 4 south of the creek (R. at 300: 22-25, 301: 1-4). More importantly, the roads on the Odd Fellows'  
 5 property are also the only means by which emergency vehicles, such as ambulances and fire  
 6 trucks, can get to Camp Cedarbrook (R. at 164: 7-11; 305: 2-15). Accordingly, the Boy Scouts  
 7 must necessarily use Wheeler Road and Jordan Way to access their property south of Sugar Pine  
 8 Creek.

9 The evidence shows that the Boy Scouts' and Odd Fellows' properties were under  
 10 common ownership by E.O. Sylvester in 1929. The Boy Scouts have also shown that their use of  
 11 Wheeler Road and Jordan Way is strictly necessary to access Camp Cedarbrook, both during the  
 12 winter, and year-round access vital, important portions of the camp. Therefore, the Boy Scouts  
 13 have satisfied the elements of easement by necessity and are entitled to such an easement.

14 **C. THE BOY SCOUTS ARE ENTITLED TO AN EASEMENT BY IMPLICATION**  
 15 **OVER THE ODD FELLOWS' PROPERTY**

16 To establish an easement by implication, a claimant must show (1) that there was a  
 17 separation or severance of title which implies a unity of ownership at some time in the past, (2)  
 18 that prior to the division of title, the use which gives rise to the easement must have continued for  
 19 so long and in such an obvious manner as to show that it was intended to be permanent, and (3)  
 20 that the easement is reasonably necessary to the use and benefit of the quasi-dominant tenement.  
 21 Mopres v. Walsh, 38 Cal.App.4th 1046, 1050 (1995) citing (5 Miller & Starr, Cal. Real Estate  
 22 (2d ed. 1989) § 15.20, p. 454); Mickels v. Rager, 232 Cal.App.3d 334, 357 (1991); Kytasty v.  
 23 Godwin, 102 Cal.App.3d 762, 76 (1980).

24 **1. The Boy Scouts' And Odd Fellows' Properties Were At One Time In**  
 25 **Common Ownership**

26 The Boy Scouts have satisfied the common ownership element of an easement by  
 27 implication because their property and the property of the Odd Fellows were under the same  
 28 ownership. An easement by implication will not arise unless the common owner of both the  
 servient and the dominant tenements conveys or transfers a portion of the property to another.

1 Leonard v. Haydon, 110 Cal.App.3d 263, 266 (1980). The conveyance may be accomplished in  
2 any manner that transfers an interest in real property (including a contract of sale; severance of  
3 cotenancy; leases; death of an owner; encumbrances). Laux v. Freed, 53 Cal.2d 512, 521 (1960);  
4 Cheda v. Bodkin, 173 Cal. 7, 16 (1916).

5 As stated above, Camp Cedarbrook and the Odd Fellows' properties were both owned by  
6 E.O. Sylvester from 1923 to 1929. The parcel was severed in 1929, and the individual parcels  
7 were subsequently transferred to the Boy Scouts and the Odd Fellows (R. at 88: 19-25, 89: 1-23;  
8 See Exhibit 35). Accordingly, the element of common ownership has been satisfied.

9 **2. The Use Of Roads Over The Odd Fellows' Property Existed, And Was**  
10 **Intended To Be Permanent, When The Boy Scouts And The Odd Fellows**  
11 **Property Was Initially Served.**

12 The Boy Scouts have satisfied the second element of an easement by implication because  
13 the use of roads over Odd Fellows property to access Camp Cedarbrook existed, and was  
14 intended to be permanent, at the time the two parcels were severed. The doctrine of easement by  
15 implication has been applied by the courts to carry out the intention of the parties as manifested  
16 by the facts and circumstances of the transaction. 6 Miller & Starr, Cal. Real Estate (3d ed. 2000)  
17 § 15.20, p. 82. In Fristoe v. Drapeau, 35 Cal.2d 5, 9-10 (1950), the California Supreme Court  
18 held that prior existing and known use is one factor to be used in determining the creation of an  
19 easement by implication, but also found that "consideration must be given not only to the actual  
20 uses being made at the time of severance, but also to such uses as the facts and circumstances  
21 show were within the reasonable contemplation of the parties at the time of the conveyance."  
22 Additionally, California Courts of Appeal have ruled that, if the subject parcels are conveyed to  
23 two or more grantees, the likelihood an easement was intended is greater than in other situations,  
24 as a reasonable inference can be made that a grantor who has divided land among several  
25 grantees intends the privileges of use to be shared by them all. McCarthy v. Watson, 212  
26 Cal.App.2d 39, 43-44 (1963); Gagnon v. Adamson, 122 Cal.App.2d 253, 260 (1953).

27 During trial, Edward Smith testified that he had visited the Odd Fellows property in 1948  
28 with his father (R. at 374: 12-14). To access the property, and to get to the area where the eastern  
and the western portions of Jordan Way split, Smith took the current Wheeler Road, which had

1 been built recently at the time (R. at 375: 13-22). Smith also testified that there was another road  
2 that existed on the property at that time: Old Wheeler Road (R. at 378: 1-11; See Exhibits 48-56)  
3 It is quite likely that when the Boy Scouts' property and the Odd Fellows' property were severed  
4 in 1929, the parties to the transaction intended that Old Wheeler Road be used by the owner of  
5 the Boy Scout property to access his/her property from Highway 108. Testimony at trial shows  
6 that the Boy Scouts property was transferred to a Boy Scout group shortly after the severance of  
7 the two parcels (R. at 89: 6-11; See Exhibit 35). This group undoubtedly used the property for  
8 camping purposes, and would have accessed the campgrounds from Highway 108 via Old  
9 Wheeler Road. When the Odd Fellows purchased their property in 1949, they constructed the  
10 current version of Wheeler Road (R. at 410: 6-9) and eventually put berms to block usage of Old  
11 Wheeler Road at a time no earlier than 1972 (R. at 414: 16-25; See Exhibits 48-51). Such  
12 blockage did not concern the Boy Scouts because they had been using the current Wheeler Road  
13 and Jordan Way to access their property by that time (R. at 400: 17-23; 893: 7-16).

14 It is clear that, at the time of the severance of the two parcels owned by the Boy Scouts  
15 and the Odd Fellows, a road existed, Old Wheeler Road, on what is now the Odd Fellows  
16 property. Old Wheeler Road was used to access what is now Camp Cedarbrook both before and  
17 after the severance of the two parcels in 1929. The surrounding facts and circumstances lead to  
18 the conclusion that when E.O. Sylvester severed the two parcels in question in 1929, he must  
19 have necessarily intended that the means by which the future owners of what is now Camp  
20 Cedarbrook would have access to their property would have been via Old Wheeler Road.  
21 Subsequently, the Boy Scouts relied on the current Wheeler Road for access when the Odd  
22 Fellows blocked it with berms and, thereby, acquiesced to the usage of Wheeler Road. Thus, the  
23 Boy Scouts satisfy the requirement that the roads by which they access their property were  
24 intended for such access when the original property was severed.

25 **3. Use Of Wheeler Road And Jordan Way Is Reasonably Necessary To The**  
26 **Enjoyment Of The Boy Scouts Property.**

27 The Boy Scouts also satisfy the third element of an easement by implication because  
28 Wheeler Road and Jordan Way are reasonably necessary to the enjoyment of Camp Cedarbrook.

1 An easement will be implied in a sale or division of property when it is reasonably necessary for  
2 the beneficial enjoyment of the quasi-dominant tenement. Leonard v. Haydon at 266. The  
3 requirement of reasonable necessity for use and enjoyment of the dominant tenement is  
4 equivalent to the statutory requirement that the easement be "for the benefit of" the dominant  
5 tenement. 6 Miller & Starr, Cal. Real Estate (3d ed. 2000) § 15.22, p. 88. Thus, an easement  
6 may be implied even though it is not essential to the dominant tenement and even though there is  
7 other suitable access or easement, or where the grantee could easily establish a substitute for the  
8 easement on his or her own property. Owsley v. Hamner, 36 Cal.2d 710, 717 (1951).

9 The concept of reasonable necessity has also been framed by the courts in terms of the  
10 "importance" of the claimed access to a property. California Real Estate Law and Practice, Ch.  
11 343, §343.15, p. 343-50, *Easements and Licenses* (Matthew Bender) (citing Powell on Real  
12 Property, ¶ 411.) Under this test, a use will be found to be reasonably necessary if it is  
13 "important" to the enjoyment of the conveyed land.

14 In addition to being strictly necessary to the use of Camp Cedarbrook (See § B. 2.), the  
15 use of Wheeler Road and Jordan Way is important, and thus, "reasonably" necessary, to the use  
16 of Camp Cedarbrook because it is the means by which campers and camp staff access the camp  
17 (R. at 97: 17-25, 98: 1-8). At times, the camp was occupied by upwards of one hundred campers  
18 (R. at 85: 4-6). While Wheeler Road and Jordan Way are paved and in good condition (R. at 98:  
19 16-22), the only other potential means of access to Camp Cedarbrook, Long Barn Sugar Pine  
20 Road, is in poor condition, with ruts, has not been maintained for years (R. at 568: 7-17; 639: 15-  
21 18; 522: 9-11), is not passable in the winter (R. at 99: 11-14; 334: 16-24), and does not provide  
22 access to the most vital portions of the camp (See Exhibit 2) Use of Wheeler Road and Jordan  
23 Way provides a substantially shorter drive time from Highway 108 as well (R. at 166: 2-14). In  
24 fact, without the use of Wheeler Road and Jordan Way, a contractor employed by the Boy Scouts  
25 was not able to complete his work on one of the buildings on Camp Cedarbrook (R. at 20: 15-  
26 25). Testimony also shows that the value of Camp Cedarbrook would be diminished without  
27 such use (R. at 166: 15-19). Thus, the Boy Scouts' use of Wheeler Road and Jordan Way  
28 satisfies the "reasonable necessity" requirement.



1 The Boy Scouts have shown that their property and the Odd Fellows' property were under  
 2 common ownership, that roads over what is now Odd Fellow property were used prior to the  
 3 severance of the parcels and were intended to be used in the future to access what is now Camp  
 4 Cedarbrook. Furthermore, the evidence establishes that the use of the Odd Fellows' roads is  
 5 reasonably necessary to the Boy Scouts. Therefore, the Boy Scouts have satisfied all of the  
 6 elements of an easement by necessity.

7 **D. THE DOCTRINE OF PROMISSORY ESTOPPEL BARS THE ODD FELLOWS**  
 8 **FROM DENYING THE BOY SCOUTS' EASEMENT RIGHTS OVER THEIR**  
 9 **PROPERTY**

10 As to the doctrine of promissory estoppel, 1 Witkin, Summary 9<sup>th</sup> (1987) Contracts § 248,  
 11 p. 249-50 states:

12 In its usual application, estoppel is based upon a representation of fact which the party is  
 13 not permitted to deny. The doctrine of *promissory estoppel* is distinct, and applies even  
 14 though there is no misrepresentation: One who makes a promise upon which another  
 15 justifiable relies may be bound to perform it, despite lack of consideration, i.e., the  
 16 estoppel is a substitute for consideration.

17 As to the same, Restatement (Second) of Contracts § 90 states:  
 18 A promise which the promisor should reasonably expect to induce action or  
 19 forbearance on the part of the promisee or a third person and which does induce such  
 20 action or forbearance is binding if injustice can be avoided only by enforcement of the  
 21 promise. The remedy granted for breach may be limited as justice requires.

22 Courts have interpreted this rule as having four elements: (1) a promise clear and  
 23 unambiguous in its terms; (2) reliance by the party to whom the promise is made, (3) the  
 24 promisee's reliance must be both reasonable and foreseeable; and (4) the promisee must be  
 25 injured by his or her reliance. Maria B. v. Superior Court, 118 Cal.App.4<sup>th</sup> 966, 980 (2004)  
 26 (citing Laks v. Coast Fed. Sav. & Loan Assn., 60 Cal.App 3d 885, 890 (1976)); Thomson v.  
 27 International Alliance of Stage Employees, 232 Cal.App.2d 446, 454 (1965).

28 **1. The Odd Fellows Promised The Boy Scouts That They Would Not Interfere**  
**With Their Easement Rights Over Wheeler Road And Jordan Way If The**  
**Boy Scouts Supported The Odd Fellows' Efforts to Abandon Long Barn**  
**Sugar Pine Road.**

The Odd Fellows made a clear and unambiguous promise to the Boy Scouts that the Odd  
 Fellows would not interfere with the Boy Scouts' easement rights across Odd Fellow property if  
 the Boy Scouts supported the Odd Fellows' petition to abandon the portion of Long Barn Sugar

1 Pine Road that crosses Odd Fellows' property. In 1991, the Odd Fellows, led by their president  
2 Edward Smith, petitioned the County of Tuolumne to abandon the portion of Long Barn Sugar  
3 Pine Road that crossed its property (See Exhibits 42, 76). The Odd Fellows asked the Boy  
4 Scouts if they would join their petition to abandon the roadway (R. at 689: 15-24; 765: 20-25;  
5 766: 5-11; 767: 13-16). The Boy Scouts, led by their president Gary Thomas, sent a letter, dated  
6 December 18, 1991, to the Odd Fellows stating that "...the Alameda Council has no objection to  
7 your proposal [i.e., abandonment of a the portion of Long Barn Sugar Pine Road] providing that  
8 we can maintain easement rights through the property to access our camp facility" (See Exhibit  
9 28). In a letter to Allen Roberts, Acting Director, Engineering Services, County of Tuolumne,  
10 dated February 1, 1992, Alvin Kidder, President of Camp Cedarbrook Trustees, stated that "[t]he  
11 Trustees of Camp Cedarbrook favor the abandonment of the Bottine Apple Road [sic.] as long as  
12 we continue to have access to our Camp thru [sic.] the Odd Fellows Park, which we have used  
13 without restriction for over fifty (50) years" (See Exhibit 76). Edward Smith of the Odd Fellows  
14 sent a letter to Alvin Kidder dated February 7, 1992, stating that "[i]t has never been our  
15 position to deny the scouts access to their property, via our roads" (See Exhibit 23)  
16 (Emphasis Added.). Minutes from the County of Tuolumne Board of Supervisors meeting of  
17 February 11, 1992 show that, accordingly, Kidder attended the meeting and spoke in favor of the  
18 Odd Fellows' request to abandon (See Exhibit 85). The Board of Supervisors granted the  
19 request, as memorialized in Resolution No. 33-92 (See Exhibit 71). It is clear, particularly in the  
20 letters of December 18, 1991 and February 7, 1992, that the Odd Fellows promised not to  
21 interfere with the Boy Scouts easement rights over their property in exchange for the Boy Scouts'  
22 assistance in petitioning for abandonment of the portion of Long Barn Sugar Pine Road that  
23 crosses the Odd Fellows' property. Thus, the Odd Fellow made a clear and unambiguous  
24 promise to the Boy Scouts.

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2           **2. The Boy Scouts Justifiably Relied On The Odd Fellows' Promise Not To Interfere With The Boy Scouts' Easement Rights Over Wheeler Road And Jordan Way.**

3  
4           The Boy Scouts justifiably relied on the Odd Fellows' promise to not interfere with the  
5 Boy Scouts' easement rights in exchange for the Boy Scouts' assistance in petitioning for  
6 abandonment of a portion of Long Barn Sugar Pine Road. The Boy Scouts' former president,  
7 Gary Thomas, testified that he would not have supported the Odd Fellows' application to  
8 abandon the portion of Long Barn Sugar Pine Road that went through the Odd Fellows' property  
9 if he knew that the Odd Fellows would later claim that the Boy Scouts did not have easement  
10 rights to access Camp Cedarbrook:

11           Q. If you knew that the Odd Fellows were going to later claim that the Boy Scouts  
12 did not have an easement right through its property to Camp Cedarbrook, would  
13 you have written the letter which is Exhibit 28, sir?

14           A. If I had any inclination in any way, shape or form, I would have never signed the  
15 letter. Absolutely no.

16 (R. at 772: 2-6, 22-24). The Boy Scouts not only did not object to the Odd Fellows' request for  
17 the road abandonment, but went so far as to support the request (See Exhibits 28, 85). This was  
18 clearly done in reliance on the Odd Fellows' promise not to interfere with the Boy Scouts'  
19 easement rights across their property.

20           **3. The Boy Scouts' Reliance on the Odd Fellows' Promise To Not Interfere With The Boy Scouts' Easement Rights Over Wheeler Road And Jordan Way Was Reasonable and Foreseeable.**

21  
22           The Boy Scouts' reliance on the Odd Fellows' promise to not interfere with the Boy  
23 Scouts' easement rights was reasonable and foreseeable. Edward Smith testified that the Boy  
24 Scouts and the Girl Scouts had used Wheeler Road and Jordan Way for as long as he had been  
25 involved in the Odd Fellows property (R. at 893: 7-16). He also testified that the Boy Scouts had  
26 used Wheeler Road and Jordan Way both before and after the Odd Fellows had requested and  
27 were granted the abandonment of a portion of Long Barn Sugar Pine Road (R. at 895: 2-9).  
28 Furthermore, Gary Thomas' letter, dated December 18, 1991, to Edward Smith indicates that the

1 would have known that the Odd Fellows would renege on its promise and later deny it access to  
2 Camp Cedarbrook. Thus, the third element of equitable estoppel is satisfied.

3 **4. The Boy Scouts Relied Upon The Conduct Of The Odd Fellows To Their**  
4 **Injury.**

5 The Boy Scouts have been injured by their reliance upon the Odd Fellows' promise to not  
6 interfere with their easement rights. As stated above, the Boy Scouts would not have consented  
7 to the abandonment of the County road over the Odd Fellows' property that provided them with  
8 access to Camp Cedarbrook had they known that the Odd Fellows would later deny them their  
9 rightful easement rights over Wheeler Road and Jordan Way (R. at 772: 2-6, 22-24). Now that  
10 the Odd Fellows have reneged on their promise to not interfere with the Boy Scouts' easement  
11 rights over their property, the Boy Scouts have not been able to: (1) use Camp Cedarbrook for  
12 camping purposes (R. at 311: 18-22), (2) access their camp in the winter (R. at 99: 11-14; 334:  
13 16-24), (3) access the important structures on their camp (R. 292: 2-6; 311: 18-22), (4) repair and  
14 maintain the structures on their camp (R. at 20: 15-25), and (5) have a full-time ranger living and  
15 working on their camp (R. at 17: 10-19; 76: 3-7). The value of Camp Cedarbrook has  
16 diminished as well (R. at 166: 15-25, 167: 1-11). Thus, the fourth element of equitable estoppel  
17 is satisfied.

18 The Boy Scouts have shown that: (1) the Odd Fellows were apprised of all the facts  
19 relating to the Boy Scouts' easement rights and Odd Fellows' promise not to interfere with such  
20 rights in exchange for the Boy Scouts' promise to support the Odd Fellows' petition for  
21 abandonment, (2) the Odd Fellows intended that the conduct, by way of their promise to the Boy  
22 Scouts, be acted upon, (3) the Boy Scouts were ignorant of the fact that the Odd Fellows would  
23 later deny the Boy Scouts' easement rights, and (4) the Boy Scouts relied on the Boy Scouts'  
24 promise to their injury. Therefore, the Boy Scouts have satisfied all of the necessary elements of  
25 equitable estoppel and are entitled to an easement over Wheeler Road and Jordan Way.

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**PROOF OF SERVICE**

I am a citizen of the United States and am employed in Stanislaus County, California. I am over the age of eighteen (18) years and not a party to this action; my business address is 1601 I Street, Fifth Floor, Modesto, California 95354.

On July 30, 2004, I served the following document: **PLAINTIFF ALAMEDA BOY SCOUTS FOUNDATION'S CLOSING BRIEF** by placing a true copy thereof enclosed in a sealed envelope and served in the manner and/or manners described below to each of the parties herein and addressed as follows:

Roger A. Brown, Esq.  
38 North Washington Street  
P.O. Box 475  
Sonora, CA 95370  
Fax: (209) 533-7757

Honorable William H. Polley  
Department One  
41 West Yaney Street  
Sonora, CA 95370  
Telephone: (209) 533-5555

X **BY MAIL:** I caused such envelope(s) to be deposited in the mail at my business address, addressed to the addressee(s) designated. I am readily familiar with Damrell, Nelson, Schrimp, Pallios, Pacher & Silva's practice for collection and processing of correspondence and pleadings for mailing. It is deposited with the United States Postal Service on that same day in the ordinary course of business.

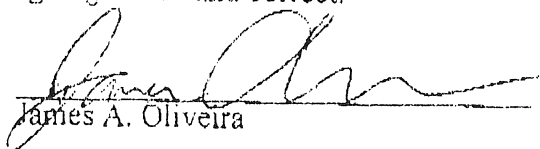
XXX **BY HAND DELIVERY:** I caused such envelope(s) to be delivered by hand to the addressee(s) designated above.

       **BY OVERNIGHT COURIER SERVICE (Federal Express):** I caused such envelope(s) to be delivered via overnight courier service to the addressee(s) designated.

X **BY FACSIMILE:** I caused said document to be transmitted to the telephone number(s) of the addressee(s) designated.

Executed at Modesto, California on July 30, 2004

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

  
James A. Oliveira