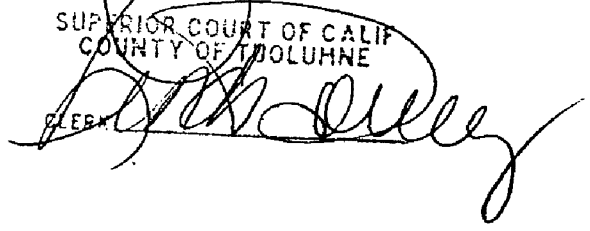


FILED

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SUPERIOR COURT OF CALIF  
COUNTY OF TUOLUMNE



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

11 ODD FELLOWS SIERRA RECREATION	)	Case No. CV 48735
12 ASSN, INC.,	)	HEARING BRIEF
13 Plaintiff,	)	DATE: July 9, 2002
14 v.	)	TIME: 2:00 p.m.
15 MANUEL SOARES, JR., et al.,	)	DEPT: One
16 Defendants.	)	

17 I  
INTRODUCTION

18 Plaintiff, ODD FELLOWS SIERRA RECREATION ASSOCIATION, INC., filed this  
19 Quiet Title action after having purchased the subject property formerly owned by Manual Soares,  
20 Jr., at a trustee sale conducted in 1996. Plaintiff obtained title from the Trustee, Cimarron Service  
21 Company, by Trustee's Deed dated April 5, 1996.

22 After the trustee sale, plaintiff realized that the Internal Revenue Service and California  
23 Franchise Tax Board had recorded tax liens on the property. This action was filed to put to rest  
24 any claims the taxing authorities, Mr. Soares, or anyone else might have to the property so  
25 Plaintiff could have confidence that they owned the property unencumbered by any other claims  
26 or liens.

27 Mr. Soares was personally served with complaint and summons and his default has been  
28 entered. Both the IRS and the Franchise Tax Board were personally served and each of them has

1 filed a Disclaimer of Interest in the property. All unknown claimants were served by publication  
2 in a newspaper of general circulation as required by law and the order of this honorable court and  
3 the time for filing responsive papers has passed.

4 This Hearing Brief is intended to assist the court in resolving the claim of Plaintiff and its  
5 entitlement to a judgment quieting title as against the claims of all persons whether known or  
6 unknown.

7 II.  
8 PLAINTIFF'S CLAIM IS VALID

9 The court may not render judgment by default, but must determine plaintiff's title against  
10 the claims of all defendants. (Code of Civil Procedure section 764.010.) The court may not  
11 simply award a default judgment to Plaintiff without examining the evidence in support of their  
12 claim of title. However, since all defendants have either defaulted or disclaimed any interest in the  
13 property, there are no claims of any defendant before the court. Accordingly, the court may  
14 proceed upon the evidence presented by Plaintiff.

15 The evidence will show that Plaintiff acquired its title to the real property by purchasing  
16 the same at a trustee sale conducted on or about April 3, 1996. Plaintiff will present a certified  
17 copy of the Trustee's Deed Upon Sale, dated April 5, 1996, and recorded in the official records of  
18 the County of Tuolumne.

19 There is a common law presumption that a foreclosure sale has been conducted regularly  
20 and fairly. (*Stevens v. Plumas Eureka Annex Mining Co.* (1935) 2 Cal.2d 493, 497.)

21 In addition to the common law presumption, there is a statutory presumption of validity  
22 where the trustee's deed recites that all statutory requirements for notices of default and sale have  
23 been satisfied. (Civ. Code 2924) In relevant part, Civil Code section 2924 states:

24 A recital in the deed executed pursuant to the power of sale of compliance with all  
25 requirements of law regarding the mailing of copies of notices or the publication of  
26 a copy of the notice of default or the posting of copies of the notice of sale or the  
27 publication of a copy thereof shall constitute *prima facie evidence of compliance*  
with these requirements and *conclusive evidence thereof in favor of bona fide*  
*purchasers* and encumbrancers for value and without notice. (Emphasis added.)

28 The certified copy of the subject trustee's deed herein contains the following recitation:

1 All requirements of law regarding the mailings of copies of notices or the  
2 publication of a copy of the Notice of Default or the personal delivery of the copy  
3 of the Notice of Default and the posting and publication of copies of the Notice of  
4 Sale have been complied with.

5 Other code provisions supply additional presumptions which may apply. Evidence Code  
6 section 622 states, "The facts recited in a written instrument are conclusively presumed to be true  
7 as between the parties thereto, or their successors in interest; but this rule does not apply to the  
8 recital of a consideration."

9 Evidence Code section 642 states, "A trustee or other person, whose duty it was to  
10 convey real property to a particular person, is presumed to have actually conveyed to him when  
11 such presumption is necessary to perfect title of such person or his successor."

12 Taken together, the certified copy of the Trustee's Deed which triggers these  
13 presumptions, unless contradicted by sufficient evidence, clearly establishes the plaintiff's good  
14 title to the subject property.

15 **III.**  
16 **ALL DEFENDANTS, KNOWN AND UNKNOWN, HAVE BEEN**  
17 **PROPERLY SERVED WITH PROCESS AND HAVE EITHER**  
18 **DISCLAIMED ANY INTEREST OR DEFAULTED**

19 Plaintiff asks the court to take judicial notice of its own records and the court file in this  
20 case pursuant to Evidence Code sections 450 and 452(2). The court file shows that the  
21 Complaint herein was filed on February 13, 2002. The complaint named as defendants, Manuel  
22 Soares, Jr., the State of California Franchise Tax Board, the Internal Revenue Service, and All  
23 Persons Unknown, Claiming Any Legal or Equitable Right, Title, Estate, Lien or Interest in the  
24 Property Described in the Complaint Adverse to Plaintiff's Title, or any Cloud on Plaintiff's Title  
25 Thereto.

26 The court file also shows that a Lis Pendens was filed on February 13, 2002, and recorded  
27 in the official records of the County of Tuolumne on February 13, 2002 as Document Number  
28 3202, Book 1857, Page 0087.

The court file shows that on May 2, 2002, plaintiff filed their return on the Summons with  
proofs of service on all named defendants, including the IRS, Franchise Tax Board and Manuel

1 Soares, Jr.

2 The Franchise Tax Board filed and served a document entitled "Disclaimer of the  
3 Franchise Tax Board to the Complaint to Quiet Title" on or about March 6, 2002. By this  
4 document, the Franchise Tax Board disclaimed and relinquished any right, title or interest they  
5 might have had in the property.

6 The Internal Revenue Service also filed and served a document entitled "Disclaimer of  
7 Interest by United States of America for Internal Revenue Service" on or about March 19, 2002,  
8 by which they also disclaimed and relinquished any right, title or interest they might have had in  
9 the property.

10 Manuel Soares, Jr. did not file an answer or any other responsive pleading and his default  
11 was thereafter entered on May 2, 2002.

12 Upon the motion of plaintiff, the court issued an Order for Publication of Summons on  
13 March 22, 2002. The Order for Publication was intended to give notice and to effect service of  
14 process upon all unknown persons who may claim some right, title or interest in the property.  
15 The Summons was duly published in the Union Democrat, a newspaper of general circulation, on  
16 May 9, May 16, May 23, and May 30 as required by Code of Civil Procedure Section 415.50. A  
17 Proof of Publication of Summons was filed with this court on June 2, 2002.

18 The plaintiff complied with the provisions of Code of Civil Procedure section 763.020 by  
19 posting a copy of the summons in a conspicuous place on the property, recording the notice of  
20 pendency of the action and by describing in the publication the property involved. The only  
21 element required by Section 763.020 which cannot be established by reference to the court file is  
22 the requirement of posting. As to that element, plaintiff will present the testimony of Delwyn  
23 Wallis, the President of the Odd Fellows Sierra Recreation Association.

24  
25 IV.  
CONCLUSION

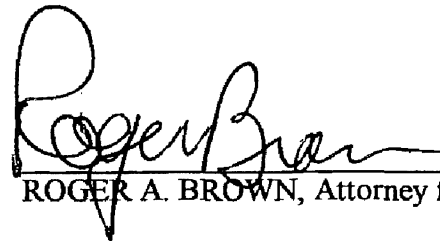
26 Plaintiff has complied in all respects with the requirements of the Code of Civil Procedure  
27 governing actions to quiet title to real property. While the code prohibits awarding judgment in a  
28 quiet title action by default, there are absolutely no claims by anyone of which we are aware that

1 could be adverse to plaintiff's claim of title.

2 Plaintiff claims title by virtue of its purchase of the property at a trustee sale, which is  
3 presumed to be valid pursuant to statutory and common law. There are no parties before the  
4 court in a position to challenge the presumption of validity. Accordingly, the court should find  
5 that the plaintiff has good title to the subject property and quiet plaintiff's title accordingly as  
6 against all named defendants and all unknown and unnamed persons as well.

7 Plaintiff has submitted herewith a proposed form of judgment for the court's consideration  
8 in granting the relief prayed.

9 Dated: July 2, 2002

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12 ROGER A. BROWN, Attorney for Plaintiff  
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