THIS IS VOLUME 6 OF THIS CASE FILE.

DATE OF FIRST FILING 1-13-99

DATE OF LAST FILING 2-25-99

* * *

DO NOT FILE ANY ADDITIONAL PAPERS IN THIS FILE. DETERMINE THE LATEST ACTIVE VOLUME AND FILE ACCORDINGLY.

THANK YOU.

5074
William L. Nagle, SBN 59788
Special Master/Mediator
345 Lorton Avenue, Suite #204
Burlingame, CA 94010
(650) 579-0500
(650) 579-0623 (Fax)

FILED
SAN MATEO COUNTY
FEB 25 1999
Clerk of the Superior Court
By Sharon [illegible]
DEPUTY CLERK

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN MATEO

EDGEWATER ISLE HOMEOWNERS ASSOCIATION, et al.,

Plaintiff,

v.

THE ANDEN GROUP, et al.,

Defendants,

_____/

AND RELATED CROSS-ACTIONS

_____/

CASE NO. 388872

DECLARATION OF SERVICE BY MAIL

I am a citizen of the United States. My business address is 345 Lorton Avenue, Suite #204, Burlingame, California. I am employed in the County of San Mateo where this mailing occurs. I am over the age of eighteen years and not a party to the within cause. I served ORDER TO SHOW CASE (Endorsed-Filed February 22, 1999) on the following person(s) on the date set forth below, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in a United States post office mailbox at Burlingame, California, addressed as follows:

Please see attached list.

I, Christine L. Britton, declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on February 23, 1999 at Burlingame, California.

Christine L. Britton

RECEIVED
FEB 25 1999
CLERK OF THE SUPERIOR COURT
SAN MATEO COUNTY

02/23/99

EDGEWATER ISLE HOA v. THE ANDEN GROUP, et al.
San Mateo County Superior Court Case No. 388872
Proof of Service List

Thomas A. Miller, Esq. Law Offices of Thomas A. Miller 4685 Mac Arthur Court, Suite #220 Newport Beach, CA 92660 (949) 252-9150 (949) 442-0646 (Fax)	Plaintiff, Edgewater Isle HOA, Inc.
J. Scott Wood, Esq. Bishop, Barry, Howe, Haney & Ryder 2000 Powell Street, Suite #1425 Emeryville, CA 94608 (510) 596-0888 (515) 596-0899 (Fax)	The Anden Group, Esden Partners, MDG Associates, Ltd., ESR Corporation, TMD Corporation, and Miden Corporation
Chester G. Moore, III, Esq. Low, Ball & Lynch 10 Twin Dolphin Road, Suite #B-500 Redwood City, CA 94065 (650) 591-8822 (650) 591-8884 (Fax)	Alcal Roofing & Insulation
Philip Y. Kazan, Esq. Russell, Kazan, Brenner & Mallett 343 Sansome Street, Suite #525 San Francisco, CA 94104 (415) 956-5841 (415) 956-0708 (Fax)	C. Aparicio Cement
Donald B. Fornasier, Esq. Archer, McComas, Breslin, McMahon & Chritton 2033 N. Main Street, Suite #800 Walnut Creek, CA 94596 (510) 930-6600 (510) 930-6620 (Fax)	C. Aparicio Cement; B.L. Cohen Landscape, Inc.; and Carlos Rodriguez Painting
S. Mitchell Kaplan, Esq. Gordon & Rees 275 Battery Street, 20th Floor San Francisco, CA 94111 (415) 986-5900 (415) 986-8054 (Fax)	Daniel Smith Plastering, Inc.

Special Master
DECLARATION OF SERVICE BY MAIL

Anthony J. DeMaria, Esq.
Filice & DeMaria
1130 Burnett Avenue
Building D, Suite H
Concord, CA 94520
(925) 676-5094
(925) 676-0548 (Fax)

Gonsalves & Santucci, Inc. dba
Conco Cement Company

S. Mitchell Kaplan, Esq.
Gordon & Rees
275 Battery Street, 20th Floor
San Francisco, CA 94111
(415) 986-5900
(415) 986-8054 (Fax)

Fisk, Firenze & McLean

John Bevan, Esq.
Long & Levit
101 California Street, Suite #2300
San Francisco, CA 94111
(415) 397-2222
(415) 397-6392 (Fax)

Ruth & Going, Inc. and
Melvin Lee Associates

Donald L. Sullivan, Esq.
Clapp, Moroney, Bellagamba, Davis & Vucinich
4400 Bohannon Drive, Suite #100
Menlo Park, CA 94025
(650) 327-1300
(650) 327-3707 (Fax)

Technibuilders Iron

Howard L. Churchill, Esq.
Schofield & Schiller
100 Pringle Avenue, Suite #510
Walnut Creek, CA 94596
(925) 934-3600
(925) 934-2257 (Fax)

Sierra Lumber & Fence Company

David N. Poll, Esq.
Collins & Schlothauer
60 S. Market Street, Suite #1100
San Jose, CA 95113-2369
(408) 298-5161
(408) 297-5766 (Fax)

Silva Fence Company

Albert P. Blake, Esq.
Roger, Scott & Helmer
900 Veterans Blvd., Suite #430
Redwood City, CA 94063
(650) 365-7700
(650) 365-0677 (Fax)

Tara Coatings

Special Master
DECLARATION OF SERVICE BY MAIL

02/23/99

Norman La Force, Esq.
Law Offices of F. Ross Adkins
25 Pacific Avenue Mall
San Francisco, CA 94111
(415) 981-5200
(415) 981-2097 (Fax)

Tara Coatings

Special Master
DECLARATION OF SERVICE BY MAIL

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and Address):	TELEPHONE NO.:	FOR COURT USE ONLY
JEFFERY L. BORSUK BORSUK & ASSOCIATES 2033 N. Main Street, Suite 450 Walnut Creek, CA 94596 105069 ATTORNEY FOR (Name): Carlos Rodriguez Painting	(925) 937-4400	FILED SAN MATEO COUNTY FEB 24 1999 Clerk of the Superior Court By Sharon Rodgers DEPUTY CLERK
Insert name of court and name of judicial district and branch court, if any: SAN MATEO COUNTY SUPERIOR COURT		
PLAINTIFF/PETITIONER: EDGEWATER ISLE HOMEOWNERS ASSOCIATION, INC., et al. DEFENDANT/RESPONDENT: THE ANDEN GROUP, et al.		
NOTICE OF ENTRY OF DISMISSAL AND PROOF OF SERVICE ☐ Personal Injury, Property Damage, or Wrongful Death ☐ Motor Vehicle ☐ Other ☐ Family Law ☐ Eminent Domain ☒ Other *(specify)*: Construction Defect		CASE NUMBER: 388872

3/25
10 days

TO ATTORNEYS AND PARTIES WITHOUT ATTORNEYS: A dismissal was entered in this action by the clerk as shown on the Request for Dismissal. *(Attach a copy completed by the clerk.)*

Date: February 18, 1999

Jeffery L. Borsuk
(TYPE OR PRINT NAME OF ☒ ATTORNEY ☐ PARTY WITHOUT ATTORNEY)

▶ Jeffery L. Borsuk
(SIGNATURE)

PROOF OF SERVICE

1. I am over the age of 18 and not a party to this cause. I am a resident of or employed in the county where the mailing occurred.
   My residence or business address is:
   2033 North Main Street, Suite 450
   Walnut Creek, CA 94596
2. ☒ I served a copy of the Notice of Entry of Dismissal and Request for Dismissal by mailing them, in a sealed envelope with postage fully prepaid, as follows:
   a. ☐ I deposited the envelope with the United States Postal Service.
   b. ☒ I placed the envelope for collection and processing for mailing following this business's ordinary practice with which I am readily familiar. On the same day correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service.
   c. Date of deposit: February 18, 1999
   d. Place of deposit *(city and state)*: Walnut Creek, California
   e. Addressed as follows *(name and address)*:
      SEE ATTACHED SERVICE LIST
3. ☐ I served a copy of the Notice of Entry of Dismissal and Request for Dismissal by personally delivering copies to the person served as shown below:
   Name: Date: Time: Address:
4. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: February 18, 1999

Theodora Schrader
(TYPE OR PRINT NAME)

▶ Theodora Schrader
(SIGNATURE OF DECLARANT)

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and Address):	TELEPHONE NO.:	FOR COURT USE ONLY
JEFFERY L. BORSUK BORSUK & ASSOCIATES 2033 N. Main Street, Suite 450 Walnut Creek, CA 94596 (SBN 105069)	(925) 937-4400	(ENDORSED) FILED SAN MATEO COUNTY SEP 23 1998 Clerk of the Superior Court By DIANNE RAMUS DEPUTY CLERK
ATTORNEY FOR (Name): Carlos Rodriguez Painting		
Insert name of court and name of judicial district and branch court, if any: SAN MATEO COUNTY SUPERIOR COURT		
PLAINTIFF/PETITIONER: EDGEWATER ISLE HOMEOWNERS ASSOCIATION, INC., et al. DEFENDANT/RESPONDENT: THE ANDEN GROUP, et al.		
REQUEST FOR DISMISSAL ☐ Personal Injury, Property Damage, or Wrongful Death ☐ Motor Vehicle ☐ Other ☐ Family Law ☐ Eminent Domain ☒ Other (specify): Construction Defect	CASE NUMBER: 388872	

— A conformed copy will not be returned by the clerk unless a method of return is provided with the document. —

1. **TO THE CLERK:** Please dismiss this action as follows:
   a. (1) ☒ With prejudice (2) ☐ Without prejudice
   b. (1) ☐ Complaint (2) ☐ Petition
   (3) ☒ Cross-complaint filed by (name): O'Brien and Hicks on (date):
   (4) ☐ Cross-complaint filed by (name): on (date):
   (5) ☐ Entire action of all parties and all causes of action
   (6) ☒ Other (specify):* Any and all claims against Carlos Rodriguez Painting; each side to bear their own fees and costs.

Date: September 14, 1998

John J. Carniato
(TYPE OR PRINT NAME OF ☒ ATTORNEY ☐ PARTY WITHOUT ATTORNEY)

LAW OFFICES OF JOHN J. CARNIATO
John J. Carniato
(SIGNATURE)

Attorney or party without attorney for:
☐ Plaintiff/Petitioner ☐ Defendant/Respondent
☒ Cross-complainant

* If dismissal requested is of specified parties only, of specified causes of action only, or of specified cross-complaints only, so state and identify the parties, causes of action, or cross-complaints to be dismissed.

2. **TO THE CLERK:** Consent to the above dismissal is hereby given.**
Date:

(TYPE OR PRINT NAME OF ☐ ATTORNEY ☐ PARTY WITHOUT ATTORNEY)

(SIGNATURE)

Attorney or party without attorney for:
☐ Plaintiff/Petitioner ☐ Defendant/Respondent
☐ Cross-complainant

** If a cross-complaint - or Response (Family Law) seeking affirmative relief - is on file, the attorney for cross-complainant (respondent) must sign this consent if required by Code of Civil Procedure section 581(i) or (j).

(To be completed by clerk)

3. ☐ Dismissal entered as requested on (date):
4. ☑ Dismissal entered on (date): SEP 23 1998 as to only (name): Cross Complaint by O'Brien & Hicks as to any and all claims against Carlos Rodriguez Painting only.
5. ☐ Dismissal **not entered** as requested for the following reasons (specify):
6. ☐ a. Attorney or party without attorney notified on (date):
   b. Attorney or party without attorney not notified. Filing party failed to provide
   ☐ a copy to conform ☐ means to return conformed copy

Date: SEP 23 1998 PEGGY THOMPSON Clerk, by DIANNE RAMUS, Deputy

PROOF OF SERVICE LIST (818/97659)
Edgewater Isle HOA v. The Anden Group
San Mateo Superior Court Action No. 388872
[P&B Client: Carlos Rodriguez Painting]

SPECIAL MASTER
(415) 579-0500/fax (415) 579-0623
William L. Nagle, Esq.
345 Lorton Avenue, Suite 204
Burlingame, CA 94010-4116

PLAINTIFF Edgewater Isle HOA
(714) 252-9150/Fax (714) 442-0646
Thomas E. Miller, Esq.
Bruce Mayfield, Esq.
THE LAW OFFICES OF THOMAS E. MILLER
4685 MacArthur Court, Suite 220
Newport Beach, CA 92660

THE ANDEN GROUP
(415) 421-8550/fax (415) 362-4730
Marisa D'Amico, Esq.
BISHOP, BARRY, HOWE, HANEY & RYDER
275 Battery Street, 12th Floor
San Francisco, CA 94111-3333

THE ANDEN GROUP (PERSONAL COUNSEL)
(310) 284-5850/fax (310) 557-2193
Gregory J. Patterson, Esq.
PROSKAUER & ROSE LLP
2049 Century Park East, Suite 3200
Los Angeles, CA 90067

MELVIN LEE & ASSOC.; RUTH & GOING, INC.; C. APRICIO CEMENT
415-397-2222/Fax 415-397-6392
J. Michael Higginbotham, Esq.
LONG & LEVIT LLP
101 California Street, Suite 2300
San Francisco, CA 94111

GLORIA DEVELOP.; O'BRIEN & HICKS; BRIEN & HICKS 1988
(510) 283-1552/fax (510) 283-9830
Thorsten J. Pray, Esq.
LAW OFFICES OF JOHN J. CARNIATO
3736 Mt. Diablo Boulevard, Suite 300
Lafayette, CA 94549

O'BRIEN & HICKS, INC.
(408) 287-9501/fax (408) 287-2583
John Shinnick, Esq.
HOGE, FENTON, JONES & APPEL
60 South Market Street, 14th Floor
San Jose, CA 95113

TARA COATINGS
(415) 365-7700/fax (415) 365-0677
Albert Blake, Esq.
ROGER, SCOTT & HELMER
900 Veterens Boulevard, Suite 430
Redwood City, CA 94063

TARA COATINGS
(415) 981-5200/fax (415) 981-2097
Norman La Force, Esq.
LAW OFFICES OF F. ROSS ADKINS
25 Pacific Avenue Mall
San Francisco, CA 94111

C. APRICIO CEMENT; B.L. COHEN LANDSCAPE
(510) 930-6600/fax (510) 930-6620
Rand L. Chritton, Esq./Donald B. Fornasier, Esq.
ARCHER, McCOMAS, BRESLIN, McMAHON & CHRITTON
P. O. Box 8035
Walnut Creek, CA 94596

C. APRICIO CEMENT
(415) 956-5841/fax (415) 956-0708
Philip Y. Kazan, Esq.
RUSSELL, KASAN, BRENNER & MALLETT
343 Sansome Street, Suite 525
San Francisco, CA 94104

GONSALVES & SANTUCCI dba CONCO CEMENT
(510) 676-5094/fax (510) 676-0548
Anthony J. DeMaria, Esq.
FELICE & DEMARIA
1130 Burnett Avenue, Bldg. D, Suite H
Concord, CA 94520

FISK, FIERENZE & MCLEAN/DANIEL SMITH PLASTERING
(415) 986-5900/fax (415) 986-8054
S. Mitchell Kaplan, Esq.
GORDON & REES
275 Battery Street, 20th Floor
San Francisco, CA 94111

SIERRA LUMBER
(408) 984-8555/fax (408) 292-1061
Joe Thompson, Esq.
981 Fremont Street
Santa Clara, CA 95050

SIERRA LUMBER & FENCE COMPANY
(510) 934-3600/(510) 934-2257
Howard L. Churchill, Esq.
Tom Schofield, Esq.
SCHOFIELD & SCHILLER
100 Pringle Avenue, Suite 510
Walnut Creek, CA 94596

SACRAMENTO A-1 DOOR/
NORTH EMPIRE CONSTRUCTION
(415) 573-9500/(415) 573-9689
Kevin J. Tully, Esq.
GREENE, CHAUVEL & DESCALSO
902 Marineers Island Boulevard, Suite 400
San Mateo, CA 94404-1594

SACRAMENTO A-1 DOOR
(415) 362-1422/fax (415) 362-7054
Maria Caruana, Esq.
FORTUNE & DREVLOW
180 Montgomery Street, Suite 2100
San Francisco, CA 94104

SAN CARLOS SHEET METAL WORKS
(415) 361-1199/fax (415) 369-4984
Helen B. Baumann, Esq.
LAW OFFICES OF EUGENE L. BASS
495 Seaport Court, Suite 103
Redwood City, CA 94063

ALCAL ROOFING & INSULATION
(415) 591-8822/fax (415) 591-8884
Johnathan Margolis, Esq.
LOW, BALL & LYNCH
10 Twin Dolphin Drive, Suite B500
Redwood City, CA 94065

MISSION DRYWALL OF SAN JOSE/
SILVA FENCE COMPANY; TECHNIBUILDERS IRON
(415) 327-1300/fax (415) 327-3707
Donald L. Sullivan, Esq.
CLAPP, MORONEY, BELLAGAMBA, et al.
4400 Bohannon Drive, Suite 100
Menlo Park, CA 94025

MISSION DRYWALL
(415) 982-8955/fax (415) 982-2042
Paul Walker, Esq.
ADAMS, NYE, SINUNU & WALKER
633 Battery Street, 5th Floor
San Francisco, CA 94111

SILVA FENCE COMPANY
(408) 298-5161/fax (408) 297-5766
David N. Poll, Esq.
COLLINS & SCHOTHAUER
60 South Market Street, Suite 1100
San Jose, CA 95113-2369

SAFECO INS. CO. OF AMERICA
(510) 939-4411/(510) 939-5241
William H. Staples, Esq.
CAPPS, STAPLES, WARD, STEPHENSON, et al.
1777 Botelho Drive, Suite 100
Walnut Creek, CA 94596

PENINSULA FLOORS, INC.
415-439-8870/Fax 415-439-8822
Robert K. Phillips, Esq.
Shahab E. Fotouhi, Esq.
PHILLIPS & SPALLAS LLP
225 Bush Street, 16th Fl.
San Francisco, CA 94104

CHRISP COMPANY
213-622-9300/Fax 213-622-9394
Daniel A. Berman, Esq.
James M. Ganion
WOOD, SMITH, HENNING & BERMAN
801 South Figueroa Street, 9th Fl.
Los Angeles, CA 90017-2573

B.L. COHEN LANDSCAPE
408-288-5592/Fax 408-938-1035
Susan P. Grey, Esq.
DOMINION LAW GROUP
1155 N. First Street, Suite 101
San Jose, CA 95112

B.L. COHEN LANDSCAPE
408-298-7120/Fax 408-298-0477
David S. Henningsen, Esq.
ROBINSON & WOOD
227 North First Street
San Jose, CA 95113

TECHNIBUILDERS IRONS
415-327-1300/Fax 415-327-3707
Donald L. Sullivan, Esq.
CLAPP, MORONEY, BELLAGAMBA,
DAVIS & VUCINICH
4400 Bohannon Drive, Suite 100
Menlo Park, CA 94025

Document Depository
Jilio & Associates, Document Depository
c/o San Francisco Reporting Service
5 Third Street, Suite 815
San Francisco, CA 94103

CARLOS RODRIGUEZ PAINTING (Co-Counsel)
510/930-6600/Fax 510/930-6620
Don Fornasier, Esq.
June P. Bashant, Esq.
ARCHER, McCOMAS, BRESLIN,
McMAHON & CHRITTON
2033 North Main Street, Suite 800
Walnut Creek, CA 94596

5074
William L. Nagle, SBN 59788
Special Master/Mediator
345 Lorton Avenue, Suite #204
Burlingame, CA 94010
(650) 579-0500
(650) 579-0623 (Fax)

SPECIAL MASTER

FILED
SAN MATEO COUNTY
FEB 22 1999
Clerk of the Superior Court
By
DEPUTY CLERK

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN MATEO

EDGEWATER ISLE HOMEOWNERS ASSOCIATION, et al.,

Plaintiff,

v.

THE ANDEN GROUP, et al.,

Defendants,

_____/

AND RELATED CROSS-ACTIONS

_____/

CASE NO. 388872

ORDER TO SHOW CAUSE

DATE: **March 25, 1999**
TIME: **9:30 a.m.**
DEPT: **Presiding Judge**

The Court having appointed William L. Nagle as Special Master in this matter and good cause appearing therefor,

IT IS HEREBY ORDERED that on March 25, 1999 at 9:30 a.m., counsel and principals for the following parties shall appear before the Presiding Judge at the San Mateo County Superior Courthouse, 400 County Center, Redwood City, California to show cause why they have not yet signed the Settlement Agreement:

A. Parties Which Have Not Signed Settlement Agreement:

Edgewater Isle HOA

Melvin Lee Associates

Ruth & Going, Inc.

Conco Cement Company

Tara Coatings, Inc.

Fisk, Firenze & McLean

Daniel Smith Plastering, Inc.

Mission Drywall of San Jose

Sierra Lumber & Fence Company

B. Counsel Who Have Not Signed Settlement Agreement:

Law Offices of Thomas Miller	(Edgewater Isle HOA)
Long & Levit	(Melvin lee Associates)
Long & Levit	(Ruth & Going, Inc.)
Russell, Kazan, Brenner & Mallett	(C. Aparicio Cement)
Low, Ball & Lynch	(Alcal Roofing & Insulation)
Felice & DeMaria	(Conco Cement Company)
Roger, Scott & Helmer	(Tara Coatings, Inc.)
F. Ross Adkins	(Tara Coatings, Inc.)
Gordon & Rees	(Fisk, Firenze & McLean)
Gordon & Rees	(Daniel Smith Plastering, Inc.)
Clapp, Moroney, Bellagamba Davis & Vucinich	(Technibuilders Iron)
Collins & Schlothauer	(Silva Fence Company)
Archer, McComas, Breslin McMahon & Chritton	(Carlos Rodriguez Painting)
Archer, McComas, Breslin McMahon & Chritton	(C. Aparicio Cement)
Archer, McComas, Breslin McMahon & Chritton	(B.L. Cohen Landscape)
Schofield & Schiller	(Sierra Lumber)

Parties and counsel who have forwarded both signature pages to J. Scott Wood, Esq. at Bishop, Barry, Howe, Haney & Ryder, 2000 Powell Street, Suite #1425, Emeryville, California 94608, by March 24, 1999 shall be excused from the hearing.

///

///

IT IS HEREBY FURTHER ORDERED that on March 25, 1999 at 9:30 a.m., counsel and principals or insurance carrier representatives for the following parties shall appear before the Presiding Judge at the San Mateo County Superior Courthouse, 400 County Center, Redwood City, California to show cause why they have not paid their respective allocated shares of the Special Master's bills as follows:

Daniel Smith Plastering:

$381.96 due and owing from CNA Insurance for invoices dated September 16, 1997 and May 1, 1998.

Fisk, Firenze & McLean:

$500 due and owing from St. Paul Insurance for invoice dated May 1, 1998.

Tara Coatings:

$763.92 due and owing from Scottsdale Insurance for invoices dated September 16, 1997 and May 1, 1998.

If payments in the above amounts are received by the Special Master by March 24, 1999, those parties making the payments shall be excused from the hearing.

APPROVED AND RECOMMENDED:

DATED: February 12, 1999

William L. Nagle, Special Master

IT IS SO ORDERED:

DATED: FEB 17 1999

Judge of the Superior Court

FILED
SAN MATEO COUNTY
FEB 8 1999
Clerk of the Superior Court
By
DEPUTY CLERK

3/25/99 Law & Motion

Michael W. Bolechowski, Esq. (SB #118725)
Thomas O. Haran, Esq. (SB #76680)
J. Scott Wood, Esq. (SB #136306)
BISHOP, BARRY, HOWE, HANEY & RYDER
2000 Powell Street, Suite 1425
Emeryville, CA 94608
Telephone: (510) 596-0888
Facsimile: (510) 596-0899

Attorneys for Defendant, THE ANDEN GROUP,
a California General Partnership

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN MATEO

EDGEWATER ISLE HOMEOWNERS ASSOCIATION, INC., Plaintiff, v. THE ANDEN GROUP, et al., Defendants.	Case No. 388872 **NOTICE OF CHANGE OF ADDRESS**

TO: THE CLERK OF THE COURT, ALL PARTIES AND THEIR ATTORNEYS OF RECORD HEREIN:

PLEASE TAKE NOTICE that, effective January 25, 1999, the new address of Defendant THE ANDEN GROUP 's attorneys of record, Bishop, Barry, Howe, Haney & Ryder, is as follows:

BISHOP, BARRY, HOWE, HANEY & RYDER, APC
Watergate Tower Three
2000 Powell Street, 14th Floor
Emeryville, California 94608
Telephone: 510/596-0888; Facsimile: 510/596-0899

///

///

///

Bishop, Barry, Howe, Haney & Ryder, P.C.
2000 Powell, Suite 1425
Emeryville, California 94608
Facsimile (510) 596-0899
Telephone (510) 596-0888

RECEIV
FEB 0 8 1999
CLERK OF THE SUPER
SAN MATEO COU

Please modify your Service List to reflect this change.

BISHOP, BARRY, HOWE, HANEY & RYDER

DATED: February 3, 1999

By: J. Scott Wood
J. SCOTT WOOD
Attorneys for Defendant
THE ANDEN GROUP

Bishop, Barry, Howe, Haney & Ryder, P.C.
2000 Powell, Suite 1425
Emeryville, California 94608
Facsimile (510) 596-0899
Telephone (510) 596-0888

Edgewater Isle HOA, Inc., et al. v. The Anden Group, et al.
San Mateo County Superior Court No. 388872
Our File: 483-95105

PROOF OF SERVICE

I am a citizen of the United States and employed in San Francisco County, California. I am over the age of eighteen years and not a party to the within action. My business address is Bishop, Barry, Howe, Haney & Ryder, 275 Battery Street, 12th Floor, San Francisco, California 94111.

I am familiar with Bishop, Barry, Howe, Haney & Ryder's practice whereby each document is placed in an envelope, the envelope is sealed, the appropriate postage is placed thereon, and the sealed envelope is placed in the office mail receptacle. Each day the mail is collected and deposited in a United States Postal mailbox at or before the close of business each day.

On February 4, 1999 I served the following documents:

NOTICE OF CHANGE OF ADDRESS

_X_ (BY REGULAR MAIL) By placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the designated area for outgoing mail at San Francisco, California, addressed as set forth below:

SEE ATTACHED PROOF OF SERVICE LIST.

____ (BY PERSONAL DELIVERY) By having a messenger personally deliver a true copy thereof to the person and/or office of the person at the address set forth below:

____ (VIA EXPRESS MAIL) By delivering a true copy thereof to "Express Mail" to be delivered to the person at the address set forth below:

____ (VIA FACSIMILE) By transmitting, pursuant to C.R.C. Rule 2008, a true copy thereof via facsimile transmission to the facsimile telephone number referenced at the address set forth below. The transmission was reported as complete and without error and a copy of the transmission report, which was properly issued by the transmitting facsimile machine, is attached hereto.

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

Executed on February 4, 1999 at San Francisco, California.

Sarah K. Yoon

Bishop, Barry, Howe, Haney & Ryder, P.C.
2000 Powell, Suite 1425
Emeryville, California 94608
Facsimile (510) 596-0899
Telephone (510) 596-0888

Edgewater Isle HOA, Inc., et al. v. The Anden Group, et al.
San Mateo County Superior Court No. 388872
Our File: 483-95105

SERVICE LIST

William L. Nagle, Esq. LAW OFFICES 345 Lorton Avenue, Suite #204 Burlingame, California 94010-4116 Telephone: (415) 579-0500 Facsimile: (415) 579-0623	Special Master
Thomas E. Miller, Esq. Bruce Mayfield, Esq. LAW OFFICES 4685 MacArthur Court, Suite 220 Newport Beach, CA 92660 Telephone: (714) 252-9150 Facsimile: (714) 442-0646	Attorneys for Plaintiff EDGEWATER ISLE HOA, Inc.
John J. Carniato, Esq. Thorsten Pray, Esq. LAW OFFICES OF JOHN J. CARNIATO 3736 Mt. Diablo Blvd., Suite 300 Lafayette, CA 94549 Telephone: (510) 283-1552 Facsimile: (510) 283-9830	Attorneys for Defendants and Cross-Complainants GLORIA DEVELOPMENT CO., INC., a California corporation, O'BRIEN & HICKS, INC., a California Corporation, and O'BRIEN & HICKS 1988 & BEYOND, LTD.
Robert W. Cullen, Esq. HOGE, FENTON, JONES & APPEL, INC. Sixty South Market Street San Jose, CA 95113-2396 Telephone: (408) 287-9501 Facsimile: (408) 287-2583	Attorneys for Defendant O'BRIEN & HICKS, INC., GLORIA DEVELOPMENT CO., INC., and O'BRIEN & HICKS (S) 1988 & BEYOND, LTD.
J. Michael Higginbotham, Esq. John Bevan, Esq. LONG & LEVIT 101 California Street, Suite 2300 San Francisco, CA 94111 Telephone: (415) 397-2222 Facsimile: (415) 397-6392	Attorneys for Cross-Defendants MELVIN LEE & ASSOCIATES and RUTH & GOING, INC.
Philip Y. Kazan, Esq. RUSSELL, KAZAN, BRENNER & MALLETT 343 Sansome Street, Suite 525 San Francisco, CA 94104 Telephone: (415) 956-5841 Facsimile: (415) 956-0708	Attorneys for Cross-Defendant C. APARICIO CEMENT

Bishop, Barry, Howe, Haney & Ryder, P.C.
2000 Powell, Suite 1425
Emeryville, California 94608
Facsimile (510) 596-0899
Telephone (510) 596-0888

1	Chester Moore, Esq. LOW, BALL & LYNCH	Attorneys for Cross-Defendant AlCAL ROOFING &
2	10 Twin Dolphin Drive, Suite B-500 Redwood City, CA 94065	INSULATION
3	Telephone: (650) 591-8822 Facsimile: (650) 591-8884	
4		
	Maria Caruana, Esq. FORTUNE & DREVLOW	Attorneys for Cross-Defendant SACRAMENTO A-1
5	180 Montgomery St., Suite 2100	DOOR
6	San Francisco, CA 94104-4205 Telephone: (415) 362-1422	
7	Facsimile: (415) 362-7054	
8	Anthony J. DeMaria, Esq. FELICE & DeMARIA	Attorneys for Cross-Defendant GONSALVES &
9	1130 Burnett Ave., Bldg. D, Suite H Concord, CA 94520	SANTUCCI, INC., dba CONCO CEMENT COMPANY
10	Telephone: (510) 676-5094 Facsimile: (510) 676-0548	
11		
	Albert P. Blake, Esq. ROGER, SCOTT & HELMER	Attorneys for Cross-Defendant TARA COATINGS,
12	900 Veterans Blvd., Suite 430	INC.
13	Redwood City, CA 94063 Telephone: (650) 365-7700	
14	Facsimile: (650) 365-0677	
15	Norman La Force, Esq. LAW OFFICES OF F. ROSS ADKINS	Attorneys for Cross-Defendant TARA COATINGS
16	25 Pacific Avenue Mall San Francisco, CA 94111	
17	Telephone: (415) 981-5200 Facsimile: (415) 981-2097	
18		
	S. Mitchell Kaplan, Esq. Michael Bruno, Esq.	Attorneys for Cross-Defendants FISK, FIRENZE
19	GORDON & REES	& McCLEAN and DANIEL
20	275 Battery Street, 20th Floor San Francisco, CA 94111	SMITH PLASTERING, INC.
21	Telephone: (415) 986-5900 Facsimile: (415) 986-8054	
22		
	Donald L. Sullivan, Esq. Clapp, Moroney, Bellagamba, Davis &	Attorneys for Cross-Defendants MISSION
23	Vucinich	DRYWALL OF SAN JOSE and
24	4400 Bohannon Drive, Suite 100 Menlo Park, CA 94025	SILVA FENCE COMPANY, and Defendant TECHNIBUILDERS
25	Telephone: (650) 327-1300 Facsimile: (650) 327-3707	IRON
26		
	David N. Poll, Esq. COLLINS & SCHLOTHAULER	Attorneys for Cross-Defendant SILVA FENCE CO.
27	60 South Market Street, Suite 1100	
28	San Jose, CA 95113-2369 Telephone: (408) 298-5161 Facsimile: (408) 297-5766	

Bishop, Barry, Howe, Haney & Ryder, P.C.
2000 Powell, Suite 1425
Emeryville, California 94608
Facsimile (510) 596-0899
Telephone (510) 596-0888

Jeffrey L. Borsuk, Esq. BORSUK & ASSOCIATES 2033 N. Main Street, Suite 450 Walnut Creek, CA 94596-3722 Telephone: (925) 937-4400 Facsimile: (925) 937-4450		Attorneys for Defendant CARLOS RODRIGUEZ PAINTING
Helen Baumann, Esq. Law Offices of EUGENE L. BASS 495 Seaport Court, Suite 103 Redwood City, CA 94063 Telephone: (650) 361-1199 Facsimile: (650) 369-4984		Attorneys for Cross-Defendant SAN CARLOS SHEET METAL WORKS
Don Fornasier, Esq. Rand L. Chritton, Esq. June P. Bashant, Esq. ARCHER, McCOMAS, BRESLIN, McMAHON & CHRITTON 2033 North Main Street, Suite 800 Walnut Creek, CA 94596 Telephone: (510) 930-6600 Facsimile: (510) 930-6620		Attorneys for Cross-Defendant CARLOS RODRIQUEZ PAINTING
Susan P. Grey, Esq. DOMINION LAW GROUP 1155 N. First Street, Suite 101 San Jose, CA 95112 Telephone: (408) 288-5592 Facsimile: (408) 938-1035		Attorneys for Defendant B.L. COHEN LANDSCAPE
David S. Henningsen, Esq. ROBINSON & WOOD 227 North First Street San Jose, CA 95113 Telephone: (408) 298-7120 Facsimile: (408) 298-0477		Attorneys for Defendant B.L. COHEN LANDSCAPE
Don Fornasier, Esq. June P. Bashant, Esq. ARCHER, McCOMAS, BRESLIN, McMAHON & CHRITTON 2033 North Main Street, Suite 800 Walnut Creek, CA 94596 Telephone: (510) 930-6600 Facsimile: (510) 930-6620		Attorneys for Cross-Defendants C. APARICIO CEMENT, Defendant B.L. COHEN LANDSCAPE and CARLOS RODRIQUEZ PAINTING
Howard L. Churchill, Esq. Lynn M. Diringer, Esq. SCHOFIELD & SCHILLER 100 Pringle Avenue, Suite 510 Walnut Creek, CA 94596 Telephone: (510) 934-3600 Facsimile: (510) 934-2257		Attorneys for Defendant SIERRA LUMBER & FENCE COMPANY

Bishop, Barry, Howe, Haney & Ryder, P.C.
2000 Powell, Suite 1425
Emeryville, California 94608
Facsimile (510) 596-0899
Telephone (510) 596-0888

Alan H. Finkel, Esq.
ZIMMERMAN, KOOMER, CONNOLLY & FINKEL
10960 Wilshire Blvd., Suite 1225
Los Angeles, CA 90024
Telephone: (310) 231-6565
Facsimile: (310) 231-6566

Attorneys for Defendant and Cross-Complainant THE ANDEN GROUP (Personal Counsel)

Bishop, Barry, Howe, Haney & Ryder, P.C.
2000 Powell, Suite 1425
Emeryville, California 94608
Facsimile (510) 596-0899
Telephone (510) 596-0888

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and Address):	TELEPHONE NO.:	FOR COURT USE ONLY
JOHN J. CARNIATO, ESQ. 3736 MT. DIABLO BLVD., STE. 300 LAFAYETTE, CA 94549	(415) 986-5900	FILED SAN MATEO COUNTY OCT - 7 1998 Clerk of the Superior Court By Dianne Lamen DEPUTY CLERK
ATTORNEY FOR (Name): Cross-Complainant O'BRIEN & HICKS		
Insert name of court and name of judicial district and branch court, if any: SAN MATEO COUNTY SUPERIOR COURT		
PLAINTIFF/PETITIONER: EDGEWATER ISLE HOA DEFENDANT/RESPONDENT: THE ANDEN GROUP, et al.		
REQUEST FOR DISMISSAL ☐ **Personal Injury, Property Damage, or Wrongful Death** ☐ **Motor Vehicle** ☐ **Other** ☐ **Family Law** ☐ **Eminent Domain** ☒ **Other** *(specify)*: Construction Defect		CASE NUMBER: 388872

- A conformed copy will not be returned by the clerk unless a method of return is provided with the document. -

1. **TO THE CLERK:** Please **dismiss** this action as follows:
   a. (1) ☒ With prejudice (2) ☐ Without prejudice
   b. (1) ☐ Complaint (2) ☐ Petition
      (3) ☒ Cross-complaint filed by *(name)*: O'BRIEN & HICKS on *(date)*: deemed filed by
      (4) ☐ Cross-complaint filed by *(name)*: on *(date)*: Pre-Trial Order
      (5) ☐ Entire action of all parties and all causes of action
      (6) ☒ Other *(specify)*:* As to Defendant DANIEL SMITH PLASTERING

Date: Sept. 30th, 1998

JOHN J. CARNIATO ▶ John J. Carniato
(TYPE OR PRINT NAME OF ☒ ATTORNEY ☐ PARTY WITHOUT ATTORNEY) (SIGNATURE)

*If dismissal requested is of specified parties only, of specified causes of action only, or of specified cross-complaints only, so state and identify the parties, causes of action, or cross-complaints to be dismissed.

Attorney or party without attorney for:
☐ Plaintiff/Petitioner ☐ Defendant/Respondent
☒ Cross-complainant

2. **TO THE CLERK:** Consent to the above dismissal is hereby given.**
   Date:

▶
(TYPE OR PRINT NAME OF ☐ ATTORNEY ☐ PARTY WITHOUT ATTORNEY) (SIGNATURE)

**If a cross-complaint- or Response (Family Law) seeking affirmative relief-is on file, the attorney for cross-complainant (respondent) must sign this consent if required by Code of Civil Procedure section 581(i) (or (j).

Attorney or party without attorney for:
☐ Plaintiff/Petitioner ☐ Defendant/Respondent
☐ Cross-complainant

(To be completed by clerk)
3. ☐ Dismissal entered as requested on *(date)*:
4. ☐ Dismissal entered on *(date)*: as to only *(name)*:
5. ☑ Dismissal **not entered** as requested for the following reasons *(specify)*: entire cross complaint by O'Brien & Hicks dismissed 10-9-98
6. ☐ a. Attorney or party without attorney notified on *(date)*:
   b. Attorney or party without attorney not notified. Filing party failed to provide
      ☐ a copy to conform ☐ means to return conformed copy

Date: OCT 14 1998 PEGGY THOMPSON Clerk, by Dianne Lamen, Deputy

4

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and Address):	TELEPHONE NO.:	FOR COURT USE ONLY
JOHN J. CARNIATO, ESQ. 3736 MT. DIABLO BLVD., STE. 300 LAFAYETTE, CA 94549	(415) 986-5900	FILED SAN MATEO COUNTY OCT - 7 1998 Clerk of the Superior Court By Dianne Lemus DEPUTY CLERK
ATTORNEY FOR (Name): Cross-Complainant O'BRIEN & HICKS	RECEIVED SEP 18 1998 BY:	
Insert name of court and name of judicial district and branch court, if any: SAN MATEO COUNTY SUPERIOR COURT		
PLAINTIFF/PETITIONER: EDGEWATER ISLE HOA		
DEFENDANT/RESPONDENT: THE ANDEN GROUP, et al.		
REQUEST FOR DISMISSAL ☐ **Personal Injury, Property Damage, or Wrongful Death** ☐ **Motor Vehicle** ☐ **Other** ☐ **Family Law** ☐ **Eminent Domain** ☒ **Other** *(specify)*: Construction Defect		CASE NUMBER: 388872

- A conformed copy will not be returned by the clerk unless a method of return is provided with the document. -

1. **TO THE CLERK:** Please **dismiss** this action as follows:
   a. (1) ☒ With prejudice (2) ☐ Without prejudice
   b. (1) ☐ Complaint (2) ☐ Petition
   (3) ☒ Cross-complaint filed by *(name)*: O'BRIEN & HICKS on *(date)*: deemed filed by
   (4) ☐ Cross-complaint filed by *(name)*: on *(date)*: Pre-Trial Order
   (5) ☐ Entire action of all parties and all causes of action
   (6) ☒ Other *(specify)*:* As to Defendant FISK, FIRENZE & MCLEAN

Date: Sept. 28, 1998

JOHN J. CARNIATO
(TYPE OR PRINT NAME OF ☒ ATTORNEY ☐ PARTY WITHOUT ATTORNEY)

John Carniato
(SIGNATURE)

Attorney or party without attorney for:
☐ Plaintiff/Petitioner ☐ Defendant/Respondent
☒ Cross-complainant

*If dismissal requested is of specified parties only, of specified causes of action only, or of specified cross-complaints only, so state and identify the parties, causes of action, or cross-complaints to be dismissed.

2. **TO THE CLERK:** Consent to the above dismissal is hereby given.**
   Date:

(TYPE OR PRINT NAME OF ☐ ATTORNEY ☐ PARTY WITHOUT ATTORNEY)

(SIGNATURE)

Attorney or party without attorney for:
☐ Plaintiff/Petitioner ☐ Defendant/Respondent
☐ Cross-complainant

**If a cross-complaint- or Response (Family Law) seeking affirmative relief-is on file, the attorney for cross-complainant (respondent) must sign this consent if required by Code of Civil Procedure section 581(i) (or (j).

(To be completed by clerk)
3. ☐ Dismissal entered as requested on *(date)*:
4. ☐ Dismissal entered on *(date)*: as to only *(name)*:
5. ☑ Dismissal **not entered** as requested for the following reasons *(specify)*:
   entire cross Complaint by O'Brien & Hicks dismissed 10-9-98
6. ☐ a. Attorney or party without attorney notified on *(date)*:
   b. Attorney or party without attorney not notified. Filing party failed to provide
   ☐ a copy to conform ☐ means to return conformed copy

Date: OCT 14 1998 PEGGY THOMPSON Clerk, by Dianne Lemus, Deputy

Form Adopted by the Judicial Council of California
982(a)(5) [Rev. January 1, 1997]

REQUEST FOR DISMISSAL

Code of Civil Procedure, § 581 et seq
Cal. Rules of Court, rules 383, 1233
CEB

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and	TELEPHONE NO.:	FOR COURT USE ONLY
John J. Carniato #34567 Law Offices of John J. Carniato 3736 Mt. Diablo Blvd., Ste. 300 Lafayette, CA 94549 ATTORNEY FOR (Name): Defendant O'Brien & Hicks	(510) 283-1552	FILED SAN MATEO COUNTY OCT - 2 1998 Clerk of the Superior Court By Dianne Lemen DEPUTY CLERK
Insert name of court and name of judicial district and branch court, if any: San Mateo County Superior Court		
PLAINTIFF/PETITIONER: Edgewater Isle HOA DEFENDANT/RESPONDENT: The Anden Group, et al.		
REQUEST FOR DISMISSAL ☐ Personal Injury, Property Damage, or Wrongful Death ☐ Motor Vehicle ☐ Other ☐ Family Law ☐ Eminent Domain ☒ Other (specify): Construction Defect		CASE NUMBER: 388872

— A conformed copy will not be returned by the clerk unless a method of return is provided with the document. —

1. TO THE CLERK: Please dismiss this action as follows:
   a. (1) ☒ With prejudice (2) ☐ Without prejudice

   b. (1) ☐ Complaint (2) ☐ Petition
   (3) ☒ Cross-complaint filed by (name): O'Brien & Hicks on (date):
   (4) ☐ Cross-complaint filed by (name): on (date):
   (5) ☐ Entire action of all parties and all causes of action
   (6) ☐ Other (specify):*

Date: Sept 28 1998

John J. Carniato
(TYPE OR PRINT NAME OF ☒ ATTORNEY ☐ PARTY WITHOUT ATTORNEY)

John J. Carniato
(SIGNATURE)

Attorney or party without attorney for:
☐ Plaintiff/Petitioner ☒ Defendant/Respondent
☐ Cross-complainant

* If dismissal requested is of specified parties only, of specified causes of action only, or of specified cross-complaints only, so state and identify the parties, causes of action, or cross-complaints to be dismissed.

2. TO THE CLERK: Consent to the above dismissal is hereby given.**
Date:

(TYPE OR PRINT NAME OF ☐ ATTORNEY ☐ PARTY WITHOUT ATTORNEY)

(SIGNATURE)

Attorney or party without attorney for:
☐ Plaintiff/Petitioner ☐ Defendant/Respondent
☐ Cross-complainant

** If a cross-complaint—or Response (Family Law) seeking affirmative relief—is on file, the attorney for cross-complainant (respondent) must sign this consent if required by Code of Civil Procedure section 581(i) or (j).

(To be completed by clerk)

3. ☐ Dismissal entered as requested on (date):
4. ☑ Dismissal entered on (date): OCT - 9 1998 as to only (name): SEE ABOVE
5. ☐ Dismissal **not entered** as requested for the following reasons (specify):

6. ☐ a. Attorney or party without attorney notified on (date):
   b. Attorney or party without attorney not notified. Filing party failed to provide
   ☐ a copy to conform ☐ means to return conformed copy

Date: OCT - 9 1998

PEGGY THOMPSON Clerk, by Dianne Lemen, Deputy

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and Address):	TELEPHONE NO.:	FOR COURT USE ONLY
JEFFERY L. BORSUK BORSUK & ASSOCIATES 2033 N. Main Street, Suite 450 Walnut Creek, CA 94596 (SBN 105069) ATTORNEY FOR (Name): Carlos Rodriguez Painting	(925) 937-4400	FILED SAN MATEO COUNTY SEP 23 1998 Clerk of the Superior Court By Dianne Lomus DEPUTY CLERK
Insert name of court and name of judicial district and branch court, if any: SAN MATEO COUNTY SUPERIOR COURT		
PLAINTIFF/PETITIONER: EDGEWATER ISLE HOMEOWNERS ASSOCIATION, INC., et al. DEFENDANT/RESPONDENT: THE ANDEN GROUP, et al.		
REQUEST FOR DISMISSAL ☐ Personal Injury, Property Damage, or Wrongful Death ☐ Motor Vehicle ☐ Other ☐ Family Law ☐ Eminent Domain ☒ Other (specify): Construction Defect		CASE NUMBER: 388872

— A conformed copy will not be returned by the clerk unless a method of return is provided with the document. —

1. **TO THE CLERK:** Please dismiss this action as follows:
   a. (1) ☒ With prejudice (2) ☐ Without prejudice
   b. (1) ☐ Complaint (2) ☐ Petition
   (3) ☒ Cross-complaint filed by (name): O'Brien and Hicks on (date):
   (4) ☐ Cross-complaint filed by (name): on (date):
   (5) ☐ Entire action of all parties and all causes of action
   (6) ☒ Other (specify):* Any and all claims against Carlos Rodriguez Painting; each side to bear their own fees and costs.

Date: September 14, 1998

John J. Carniato
(TYPE OR PRINT NAME OF ☒ ATTORNEY ☐ PARTY WITHOUT ATTORNEY)

LAW OFFICES OF JOHN J. CARNIATO
John J. Carniato
(SIGNATURE)

Attorney or party without attorney for:
☐ Plaintiff/Petitioner ☐ Defendant/Respondent
☒ Cross-complainant

* If dismissal requested is of specified parties only, of specified causes of action only, or of specified cross-complaints only, so state and identify the parties, causes of action, or cross-complaints to be dismissed.

2. **TO THE CLERK:** Consent to the above dismissal is hereby given.**
Date:

(TYPE OR PRINT NAME OF ☐ ATTORNEY ☐ PARTY WITHOUT ATTORNEY)

(SIGNATURE)

Attorney or party without attorney for:
☐ Plaintiff/Petitioner ☐ Defendant/Respondent
☐ Cross-complainant

** If a cross-complaint - or Response (Family Law) seeking affirmative relief - is on file, the attorney for cross-complainant (respondent) must sign this consent if required by Code of Civil Procedure section 581(i) or (j).

(To be completed by clerk)

3. ☐ Dismissal entered as requested on (date):
4. ☑ Dismissal entered on (date): SEP 23 1998 as to only (name): Cross Complaint by O'Brien & Hicks as to
5. ☐ Dismissal **not entered** as requested for the following reasons (specify): any and all claims against Carlos Rodriguez Painting only
6. ☐ a. Attorney or party without attorney notified on (date):
   b. Attorney or party without attorney not notified. Filing party failed to provide
   ☐ a copy to conform ☐ means to return conformed copy

Date: SEP 23 1998 PEGGY THOMPSON Clerk, by Dianne Lomus, Deputy

LONG & LEVIT LLP

A Limited Liability Partnership
Offices in San Francisco and Los Angeles

Percy V. Long (1870-1953)
Bert W. Levit (1903-1980)

John B. Hook
Howard M. Garfield
Joseph P. McMonigle
Donald W. Carlson
Marsha L. Morrow
Guy D. Calladine
Robert M. Peterson
Edward F. Donohue III
Don A. Lesser
Robert C. Chiles
Randall A. Miller
Joyce C. Wang
Gerald G. Weisbach
J. Michael Higginbotham
Burton C. Allyn IV
Michael C. Cooper
Jeanette Traverso
Steven Sharafian
Cyril E. Armbrister, Jr.
Glenn A. Friedman
Richard J. Sciaroni
Jennifer W. Suzuki

Merle J. Panick
Valerie J. Wiles
Senior Counsel

Karen L. Uno
H. Douglas Galt
Mehrdad Farivar
Special Counsel

Jeffrey D. Livingston
Mark L. Nissenbaum
Mark M. Smith
Ryan T. Russell
JoLynn M. Pollard
Allison Lane Cooper
Stephen P. Randall
Lori S. Blitstien
Kathleen M. Ewins
Peter L. Isola
William E. Waddell
Jeffrey A. Evans
Douglas J. Melton
Lisa L. Loveridge
Stephen E. Ronk
Christopher R. Moore
John H. Quinn
Seth E. Watkins
Bruce N. Furukawa
Michael R. Solomon
Corey S. Cherkas
David M. Morrow
John P. Bevan
Asim K. Desai
Bridget Hopkins Ivanov
Roni L. Reed
Marc A. Eckardt
Christian A. Ameri
Richard A. Jackson
Zara Santos
Clark T. Thiel

August 10, 1998 S7994.026/027

Clerk's Office
ATTENTION: Naomi
Superior Court of California
San Mateo County
401 Marshall Street
Redwood City, CA 94063

Re: **Edgewater Isle Homeowners Association v. The Anden Group, et al., and Related Cross-Actions. Superior Court, San Mateo County Case No. 388872**

Dear Clerk of the Court:

Enclosed is our filing fee of $23.00 for Ruth & Going's Joinder With The Anden Group for Determination of Good Faith Settlement which you have filed as a courtesy to us and are holding pending this payment.

Please return a file-endorsed copy to this office in the self-addressed stamped envelope enclosed. We apologize for any inconvenience this inadvertence may have caused you. Thank you very much for your courtesy in this matter.

Very truly yours,

Susan Eldridge
Secretary to John P. Bevan

se
Enclosure

405921.COR/RITAJ/S7994/026

388872
08-18-1998/09:23 AM
$23.00/03-67438

101 California Street, Suite 2300
San Francisco, California 94111
415.397.2222 Telephone
415.397.6392 Facsimile
http://www.longlevit.com

SAN MATEO COUNTY
SUPERIOR COURT CLERK
CIVIL UNIT

REG/RCPT : 03-67438 C:08-18-1998
CASHIER ID : M 09:23 am A:08-18-1998

2030 MOTION/OSC/DEM	$23.00
388872	
TOTAL DUE	$23.00

RECEIVED FROM:
LONG & LEVIT

CHECK	$23.00
TOTAL TENDERED	$23.00
CHANGE DUE	$0.00

LAW & MOTION

FILE PREPARATION LOG

CASE NAME Edgewater Isle Etal vs The Arden Groups Etal

CASE # 388872 HRG DATE AUG 31 1998

- X Moving papers tagged with red tag x2
- X Proof of Service filed regarding moving papers x2
- ✓ File in chronological order
- ✓ Notice of hearing in file
- ✓ Minute form submitted with file
- ✓ File checked for misfilings
- ____ Documents missing (list)

FUTURE CALENDAR EVENTS DATE

AUG 24 1998

FILE VERIFIED BY: REBECCA GONZALEZ DATE

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN MATEO

JUDGE DEPT. NO. 28 G. Miram CASE NO. 388872 DATE 31 AUG 1998

DEPUTY CLERK S. Wong COURT REPORTER M. Young

TITLE OF ACTION: EDGEWATER ISLE HOMEOWNERS ASSOC. ETAL VS. THE ANDEN GROUP, ET AL

NATURE OF EVENTS: 01. DE/XCM ANDEN GROUP'S NOT OF MOT AND MOT FOR DETERMINATION OF GOOD FAITH SETTLEMENT
02. DEFT/XDEFT RUTH & GOING, INC.'S AND MELVIN LEE ASSOCS' JOINDER WITH ANDEN'S MOTION FOR DETERMINATION OF GOOD FAITH SETTLEMENT

_____ _____ APPEARANCES

_____ _____ APPEARANCES

____ OFF CALENDAR ____ MOVING PARTY'S REQUEST ✓ NONAPPEARANCE ____ STIPULATION

____ THE ABOVE MATTER IS CONTINUED/ASSIGNED TO _____

✓ SUBMITTED ON POINTS AND AUTHORITIES WITHOUT ARGUMENT.

____ MATTER ARGUED BY COUNSEL AND SUBMITTED.

____ MOTION GRANTED ____ MOTION DENIED

____ DEMURRER ____ SUSTAINED _____ DAYS TO AMEND.
____ OVERRULED _____ DAYS TO ANSWER.

____ GROUNDS _____

____ THE ABOVE MATTER IS TAKEN UNDER SUBMISSION.

____ POINTS AND AUTHORITIES TO BE SUBMITTED BY _____ NOT LATER THAN _____ AND BY _____ NOT LATER THAN _____

____ NOTICE OF RULING IS _____ WAIVED IN OPEN COURT.

✓ Tentative ruling to grant all good faith determinations pending is adopted by the court.

____ LET A WRITTEN ORDER BE PREPARED, SIGNED AND FILED.

DATE: 8/31/98

NATURE OF PROCEEDINGS: _____

OOO

LAW AND MOTION MINUTE FORM

388872

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and address):	TELEPHONE NO.:	FOR COURT USE ONLY
HOWARD L. CHURCHILL, ESQ., #79872 SCHOFIELD & SCHILLER 100 Pringle Avenue, Suite 510 Walnut Creek, CA 94596	(510) 934-3600	FILED SAN MATEO COUNTY AUG 26 1998 Clerk of the Superior Court By DEPUTY CLERK
ATTORNEY FOR (Name): SIERRA LUMBER & FENCE COMPANY		
Insert name of court and name of judicial district and branch court, if any: SAN MATEO COUNTY SUPERIOR COURT		
PLAINTIFF/PETITIONER: EDGEWATER ISLE HOMEOWNERS' ASSOCIATION, et al. DEFENDANT/RESPONDENT: THE ANDEN GROUP, et al.		

NOTICE OF ENTRY OF DISMISSAL AND PROOF OF SERVICE

CASE NUMBER: 388872

- [ ] Personal Injury, Property Damage, or Wrongful Death
  - [ ] Motor Vehicle
  - [ ] Other
- [ ] Family Law
- [ ] Eminent Domain
- [x] Other *(specify)*: Construction Defect

TO ATTORNEYS AND PARTIES WITHOUT ATTORNEYS: A dismissal was entered in this action by the clerk as shown on the Request for Dismissal. *(Attach a copy completed by the clerk.)*

Date: August 24, 1998.

HOWARD L. CHURCHILL
(TYPE OR PRINT NAME OF [x] ATTORNEY [ ] PARTY WITHOUT ATTORNEY)

(SIGNATURE)

PROOF OF SERVICE

1. I am over the age of 18 and not a party to this cause. I am a resident of or employed in the county where the mailing occurred. My residence or business address is:
   100 Pringle Avenue, Walnut Creek, CA 94596

2. [x] I served a copy of the Notice of Entry of Dismissal and Request for Dismissal by mailing them, in a sealed envelope with postage fully prepaid, as follows:
   a. [ ] I deposited the envelope with the United States Postal Service.
   b. [x] I placed the envelope for collection and processing for mailing following this business's ordinary practice with which I am readily familiar. On the same day correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service.
   c. Date of deposit: August 24, 1998.
   d. Place of deposit *(city and state)*: Walnut Creek, California
   e. Addressed as follows *(name and address)*:

   See Attached List:

3. [ ] I served a copy of the Notice of Entry of Dismissal and Request for Dismissal by personally delivering copies to the person served as shown below:
   Name: Date: Time: Address:

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

Date: August 24, 1998.

Regina Garabedian
(TYPE OR PRINT NAME)

Regina Garabedian
(SIGNATURE OF DECLARANT)

RECEIVED
SUPERIOR AND
MUNICIPAL COURTS
1998 AUG 26 P 1:5(

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and Addr	TELEPHONE NO.:	FOR COURT USE ONLY
THE LAW OFFICES OF THOMAS E. MILLER 4695 MacArthur Court Suite 1150 Newport Beach, Ca 92660	714/252-9150	(ENDORSED) FILED SAN MATEO COUNTY JUL 2 2 1998 Clerk of the Superior Court By Tarun Papi DEPUTY CLERK
ATTORNEY FOR (Name): Edgewater Isle HOA		
Insert name of court and name of judicial district and branch court, if any: SAN MATEO SUPERIOR COURT		
PLAINTIFF/PETITIONER: EDGEWATER ISLE HOMEOWNERS ASSOCIATION, DEFENDANT/RESPONDENT: THE ANDEN GROUP, etc., et al.,		

REQUEST FOR DISMISSAL

- ☐ Personal Injury, Property Damage, or Wrongful Death
  - ☐ Motor Vehicle ☐ Other
- ☐ Family Law
- ☐ Eminent Domain
- ☒ Other *(specify)*: Construction Defect

CASE NUMBER: 388872

— A conformed copy will not be returned by the clerk unless a method of return is provided with the document. —

1. **TO THE CLERK:** Please dismiss this action as follows:
   a. (1) ☒ With prejudice (2) ☐ Without prejudice
   b. (1) ☐ Complaint (2) ☐ Petition
      (3) ☐ Cross-complaint filed by *(name)*: on *(date)*:
      (4) ☐ Cross-complaint filed by *(name)*: on *(date)*:
      (5) ☐ Entire action of all parties and all causes of action
      (6) ☒ Other *(specify)*:* COMPLAINT AS TO DEFENDANT SIERRA LUMBER ONLY.

Date: April 13, 1998

Bruce Mayfield
(TYPE OR PRINT NAME OF ☒ ATTORNEY ☐ PARTY WITHOUT ATTORNEY)

LAW OFFICES OF THOMAS E. MILLER
Bruce Mayfield
(SIGNATURE)

Attorney or party without attorney for:
☒ Plaintiff/Petitioner ☐ Defendant/Respondent
☐ Cross-complainant

* If dismissal requested is of specified parties only, of specified causes of action only, or of specified cross-complaints only, so state and identify the parties, causes of action, or cross-complaints to be dismissed.

2. **TO THE CLERK:** Consent to the above dismissal is hereby given.**
Date:

(TYPE OR PRINT NAME OF ☐ ATTORNEY ☐ PARTY WITHOUT ATTORNEY)

(SIGNATURE)

Attorney or party without attorney for:
☐ Plaintiff/Petitioner ☐ Defendant/Respondent
☐ Cross-complainant

** If a cross-complaint - or Response (Family Law) seeking affirmative relief - is on file, the attorney for cross-complainant (respondent) must sign this consent if required by Code of Civil Procedure section 581(i) or (j).

(To be completed by clerk)

3. ☐ Dismissal entered as requested on *(date)*:
4. ☒ Dismissal entered on *(date)*: AUG - 7 1998 as to only *(name)*: SEE ABOVE
5. ☐ Dismissal **not entered** as requested for the following reasons *(specify)*:

6. ☐ a. Attorney or party without attorney notified on *(date)*:
   b. Attorney or party without attorney not notified. Filing party failed to provide
      ☐ a copy to conform ☐ means to return conformed copy

Date: AUG - 7 1998 PEGGY THOMPSON Clerk, by NAOMI MEKEDIAK, Deputy

PROOF OF SERVICE BY MAIL -- CCP 1013(a), 2015.5

I, the undersigned, hereby declare:

I am employed in the County of Contra Costa, over the age of eighteen years and not a party to the within cause. My business address is One Walnut Creek Center, 100 Pringle Avenue, Suite 510, Walnut Creek, CA 94596.

I am readily familiar with our business's practice for collection and processing of documents for mailing with the U.S. Postal Service, and that the below-named document will be deposited with the U.S. Postal Service with fully prepaid postage thereon on the date set forth below at Walnut Creek, California.

On the date set forth below, I served the within:

NOTICE OF ENTRY OF DISMISSAL AND PROOF OF SERVICE

by placing a true copy in an envelope, sealing and placing it for collection and mailing, following ordinary practices addressed as follows:

SEE ATTACHED SERVICE LIST

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

Executed on August 24, 1998, at Walnut Creek, California.

Regina Garabedian

REGINA GARABEDIAN

Case Name: **Edgewater Isle Homes, et al. v. The Anden Group, et al.**
San Mateo County Superior Court Case No. 388872

SERVICE LIST

Thomas E. Miller, Esq. LAW OFFICES OF THOMAS E. MILLER 4685 MacArthur Court, Suite 220 Newport Beach, CA 92660	**Pltf., Edgewater Isle Homes** Tel: (800) 403-3332 Fax: (714) 442-0646 (714) 252-9150
Marisa D'Amico, Esq. BISHOP, BARRY, HOWE, et al. 275 Battery Street, 12th Floor San Francisco, CA 94111	**Def./X-Def., The Anden Group** **Esden Partners, MDG Assoc., Ltd.** **ESR Corp., TMD Corp., and Miden Corp.** Tel: (415) 421-8550 Fax: (415) 362-4730
John J. Carniato, Esq. LAW OFFICES OF JOHN J. CARNIATO 3736 Mt. Diablo Blvd., Suite 300 Lafayette, CA 94549	**Defs. Gloria Develop. Co.,** **O'Brien & Hicks and 1988 & Beyond** Tel: (510) 283-1552 Fax: (510) 283-9830
Donald B. Fornasier, Esq. ARCHER, McCOMAS, BRESLIN, et al. P. O. Box 8035 Walnut Creek, CA 94596	**C. Aparicio Cement** Tel: (510) 930-6600 Fax: (510) 930-6620
Helen Baumann, Esq LAW OFFICES OF EUGENE L. BASS 495 Seaport Court, Suite 103 Redwood City, CA 94063	**San Carlos Sheet Metal Works** Tel: (415) 361-1199 Fax: (415) 369-4984
Jonathan Margolis, Esq. LOW, BALL & LYNCH 10 Twin Dolphin Drive, Suite B-500 Redwood City, CA 94065	**AlCal Roofing & Insulation** Tel: (415) 591-8822 Fax: (415) 591-8884
Kevin J. Tully, Esq. GREEN, CHAUVEL, DESCALSO & TULLY 901 Mariner's Island Blvd., Suite 400 San Mateo, CA 94404	**Sacramento A-1 Door and** **North Empire Construction** Tel: (415) 573-9500 Fax: (415) 573-9689
Maria Caruana, Esq. FORTUNE & DREVLOW 180 Montgomery Street, Suite 2100 San Francisco, CA 94104-4205	**Sacramento A-1 Door** Tel: (415) 362-1422 Fax: (415) 362-7054
Anthony J. DeMaria, Esq. FELICE & DeMARIA 1130 Burnett Ave., Bldg. D, Suite H Concord, CA 94520	**Gonsalves & Santucci, Inc.** **dba Conco Cement Company** Tel: (510) 676-5094 Fax: (510) 676-0548
Paul E. Stephan, Esq. STEPHAN & CONROY 444 Market Street, Suite 2675 San Francisco, CA 94111	**T&D Tile Company, Inc.** Tel: (415) 983-4740 Fax: (415) 296-1043

Service List - Continued

Albert P. Blake, Esq. ROGER, SCOTT & HELMER 900 Veterans Blvd., Suite 430 Redwood City, CA 94063	**Tara Coatings, Inc.** Tel: (650) 365-7700 Fax: (650) 365-0677
Donald L. Sullivan, Esq. CLAPP, MARONEY, BELLAGAMBA, DAVIS & VUCINICH 4400 Bohannon Drive, Suite 100 Menlo Park, CA 94025	**Mission Drywall of San Jose and Silva Fence Company** Tel: (415) 327-1300 Fax: (415) 327-3707
Josh M. Shinnick, Esq. HOGE, FENTON, JONES & APPEL, INC. 60 South Market Street San Jose, CA 95113-2396	**O'Brien & Hicks** Tel: (408) 287-9501 Fax: (408) 287-2583
Norman La Force, Esq. LAW OFFICES OF F. ROSS ADKINS 25 Pacific Avenue Mall San Francisco, CA 94111	**Tara Coatings** Tel: (415) 981-5200 Fax: (415) 981-2097
William L. Nagle, Esq. NAGLE, KRUG & WINTERS 345 Lorton Avenue, Suite 204 Burlingame, CA 94010-4116	**Special Master** Tel: (415) 579-1422 Fax: (415) 579-1852
David N. Poll, Esq. COLLINS & SCHLOTHAUER 60 South Market Street, Suite 1100 San Jose, CA 95113-2369	**Silva Fence Company** Tel: (408) 298-5161 Fax: (408) 297-5766
Joseph H. Huber, Esq. GASSETT, PERRY & FRANK 210 North Fourth Street, Suite 400 San Jose, CA 95112	**Crowley Company** Tel: (408) 295-7034 Fax: (408) 295-5799
Jeffery L. Borsuk, Esq. Lisa G. Schlittner, Esq. BORSUK & ASSOCIATES 2033 N. Main Street, Suite 450 Walnut Creek, CA 94596-3722	**Carlos Rodriguez Painting** (510) 746-8800 Fax: (510) 746-8898
S. Mitchell Kaplan, Esq. Michael D. Bruno, Esq. GORDON & REES 275 Battery Street, 20th Floor San Francisco, CA 94111	**Daniel Smith Plastering, Fisk, Firenze & McClean** (415) 986-5900 Fax: (415) 986-8054
Gregory J. Patterson, Esq. PROSKAUER ROSE 2049 Century Park East, Suite 3200 Los Angeles, CA 90067	Personal Counsel **The Anden Group** (310) 284-5650 Fax: (310) 557-2193

Service List Continued

J. Michael Higginbotham, Esq. LONG & LEVIT, LLP 101 California Street, Suite 2300 San Francisco, CA 94111	**Melvin Lee & Associates, Ruth & Going, Inc.** (415) 397-2222 Fax: (415) 397-6392
David S. Henningsen, Esq. ROBINSON & WOOD, INC. 227 North First Street San Jose, CA 95113	**B.L. Cohen Landscape, Inc.** (408) 298-7120 Fax: (408) 298-0477
Susan P. Grey, Esq. DOMINION LAW GROUP, LLP 1155 North First Street, Suite 101 San Jose, CA 95112	**B.L. Cohen Landscape, Inc.** (408) 288-5592 Fax: (408) 938-1035 Co-counsel w/Robinson & Wood
Philip Y. Kazan, Esq. RUSSELL, KAZAN 343 Sansome Street, Suite 525 San Francisco, CA 94111	**C. Aparacio Cement** (415) 956-5841 Fax: (415) 956-0708
Michael P. Quinlivan, Esq. KOUNS, QUINLIVAN & SEVERSON 101 Park Center Plaza, Suite 1007 San Jose, CA 95113	**Sierra Precast** (408) 278-0125 Fax: (408) 292-1257
Paul Walker, Esq. ADAMS, NYE, SINUNU & WALKER 633 Battery Street, 5th Floor San Francisco, CA 94111	**Mission Drywall** (415) 982-8955 Fax: (415) 982-2042
William H. Staples, Esq. CAPPS, STAPLES, et al. 1777 Botelho Drive, Suite 100 Walnut Creek, CA 94596	**Safeco Ins. Co. of America** (925) 939-4411 Fax: (925) 939-5241

J. MICHAEL HIGGINBOTHAM (SBN 61499)
JOHN P. BEVAN (SBN 172588)
LONG & LEVIT LLP
101 California Street, Suite 2300
San Francisco, CA 94111
Telephone: (415) 397-2222
Facsimile: (415) 397-6392

Attorneys for Defendants/Cross-Defendants
RUTH & GOING, INC.
and MELVIN LEE ASSOCIATES

FILED
SAN MATEO COUNTY
AUG 10 1998
Clerk of the Superior Court
By [signature]
DEPUTY CLERK

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN MATEO

ORIGINAL

EDGEWATER ISLE HOMEOWNERS ASSOCIATION, INC. Plaintiff, v. THE ANDEN GROUP, et al., Defendants. AND RELATED CROSS-ACTIONS.	CASE NO. 388872 **DEFENDANTS'/CROSS-DEFENDANTS' RUTH & GOING, INC.'S AND MELVIN LEE ASSOCIATES' JOINDER WITH ANDEN'S MOTION FOR DETERMINATION OF GOOD FAITH SETTLEMENT** DATE : ~~July 29, 1998~~ AUG 31, 1998 OK TIME : 11:00 a.m. DEPT. : 10

TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

Defendants/cross-defendants RUTH & GOING, INC. and MELVIN LEE ASSOCIATES hereby join with defendant/cross-complainant, THE ANDEN GROUP ("Anden"), in seeking a good faith determination of the global settlement as reflected in Anden's moving papers filed in the above-captioned matter.

According to the factors set forth in **Tech-Bilt v. Woodward-Clyde Associates** (1985) 38 Cal.3d 488, the facts set forth in Anden's moving papers, and the facts known to these two joining parties, Ruth & Going, Inc. and Melvin Lee Associates

are entitled to a good faith determination of their settlement with all other settling parties, and such determination should be made by this court.

July 28, 1998.

LONG & LEVIT LLP

By: John P. Bevan
J. MICHAEL HIGGINBOTHAM
JOHN P. BEVAN
Attorneys for Defendant
RUTH & GOING, INC.

LONG & LEVIT LLP
101 CALIFORNIA STREET
SUITE 2300
SAN FRANCISCO
CALIFORNIA 94111
(415) 397-2222

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

Re: **EDGEWATER ISLE HOMEOWNERS ASSOCIATION v. THE ANDEN GROUP, and Related Cross-Actions**
Superior Court, San Mateo County Case No. 388872

I, Susan Eldridge, certify and declare as follows:

I am over the age of 18 years and not a party to this action. My business address is 101 California Street, Suite 2300, San Francisco, California 94111, which is located in the county where the mailing described below took place.

I am readily familiar with the business practice at my place of business for collection and processing of correspondence for mailing with the United States Postal Service. Correspondence so collected and processed is deposited with the United States Postal Service that same day in the ordinary course of business.

On July 28, 1998, at my place of business at San Francisco, California, copies of the following document(s):

DEFENDANTS'/CROSS-DEFENDANTS' RUTH & GOING, INC.'S AND MELVIN LEE ASSOCIATES' JOINDER WITH ANDEN'S MOTION FOR DETERMINATION OF GOOD FAITH SETTLEMENT

was/were placed for deposit in the United States Postal Service in a sealed envelope, with postage fully prepaid, addressed to:

[see attached list]

and that envelope was placed for collection and mailing on that date following ordinary business practices.

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

Executed on July 28, 1998.

Susan Eldridge

LONG & LEVIT LLP
101 CALIFORNIA STREET
SUITE 2300
SAN FRANCISCO
CALIFORNIA 94111
(415) 397-2222

SERVICE LIST

Re: **EDGEWATER ISLE HOMEOWNERS ASSOCIATION v. THE ANDEN GROUP, and Related Cross-Actions**
Superior Court, San Mateo County Case No. 388872

William L. Nagle
SPECIAL MASTER
345 Lorton Avenue, #204
Burlingame, CA 94010-4116
Tel: (415) 579-0500
Fax: (415) 579-0623

Thomas E. Miller
LAW OFFICES OF THOMAS E. MILLER
4685 MacArthur Court, #1150
Newport Beach, CA 92660
Tel: (714) 252-9150
Fax: (714) 442-0646
Plaintiff EDGEWATER ISLE HOA

Sandra L. Fulmer
Marisa D'Amico
BISHOP, BARRY, HOWE, HANEY & RYDER
275 Battery Street,
12th Floor
San Francisco, CA 94111-3333
Tel: (415) 421-8550
Fax: (415) 362-4730
Defendant and X-Complainant THE ANDEN GROUP

Alan H. Finkle
Proskauer, Rose, Goetz & Mendelsohn
2121 Avenue of the Stars
Suite 2700
Los Angeles, CA 90067
Tel. (310) 284-5650
Fax (310) 557-2193
Personal Counsel for THE ANDEN GROUP

Thorsten J. Pray
LAW OFFICES OF JOHN J. CARNIATO
3736 Mt. Diablo Blvd., #300
Lafayette, CA 94549
Tel: (510) 283-1552
Fax: (510) 283-9830
Defendants and X-Complainants
GLORIA DEVELOPMENT CO., INC.; O'BRIEN & HICKS 1988 & BEYOND, LTD.

Josh Shinnick
HOGE, FENTON, JONES & APPEL
60 South Market St., 14th Fl.
San Jose, CA 95113
Tel: (408) 287-9501
Fax: (408) 287-2583
Defendant O'BRIEN & HICKS

Anthony B. Varni, Esq.
Varni, Fraser, Hartwell & Rogers
22771 Main Street
Hayward, CA 94543-0570
Tel: (510) 538-8797
Fax: (510) 443-7831
PERSONAL COUNSEL, Defendant O'BRIEN & HICKS

Albert Blake
ROGER, SCOTT & HELMER
900 Veterans Blvd., #430
Redwood City, CA 94063
Tel: (415) 365-7700
Fax: (415) 365-0677
X-Defendant TARA COATINGS

Norman La Force
LAW OFFICES OF F. ROSS ADKINS
25 Pacific Avenue Mall
San Francisco, CA 94111
Tel: (415) 981-5200
Fax: (415) 981-2097
X-Defendant TARA COATINGS

Donald B. Fornasier
ARCHER, MCCOMAS, BRESLIN, MCMAHON & CHRITTON
Post Office Box 8035
Walnut Creek, CA 94596
Tel: (510) 930-6600
Fax: (510) 930-6620
X-Defendant C. APARICIO CEMENT and Defendant B.L. COHEN LANDSCAPE, INC.

Service List - Page Two

Philip Y. Kazan
RUSSELL, KAZAN, BRENNER & MALLETT
343 Sansome Street, Suite 525
San Francisco, CA 94104
Tel: (415) 956-5841
Fax: (415) 956-0708
X-Defendant C. APARICIO CEMENT

Anthony J. DeMaria
Mark Pappas
FELICE & DeMARIA
1130 Burnett Ave.
Bldg. D, Suite H
Concord, CA 94520
Tel: (510) 676-5094
Fax: (510) 676-0548
X-Defendant GONSALVES & SANTUCCI, INC. dba CONCO CEMENT COMPANY

S. Mitchell Kaplan
Michael Bruno
GORDON & REES
275 Battery Street, 20th fl.
San Francisco, CA 94111
Tel: (415) 986-5900
Fax: (415) 986-8054
X-Defendants FISK, FIRENZE & McLEAN; and DANIEL SMITH PLASTERING, INC.

Joe Thompson
Attorney at Law
981 Fremont Street
Santa Clara, CA 95050
Tel: (408) 984-8555
Fax: (408) 293-2093
X-Defendant SIERRA LUMBER

Kevin J. Tully
GREENE, CHAUVEL & DESCALSO
901 Mariners Island Blvd., #400
San Mateo, CA 94404-1594
Tel: (415) 573-9500
Fax: (415) 573-9689
X-Defendants SACRAMENTO A-1 DOOR; and NORTH EMPIRE CONSTRUCTION

Maria Caruana
FORTUNE & DREVLOW
180 Montgomery Street, #2100
San Francisco, CA 94104
Tel: (415) 362-1422
Fax: (415) 362-7054
X-Defendant SACRAMENTO A-1 DOOR

Helen B. Baumann
LAW OFFICES OF EUGENE L. BASS
495 Seaport Court, #103
Redwood City, CA 94063
Tel: (415) 361-1199
Fax: (415) 369-4984
X-Defendant SAN CARLOS SHEET METAL WORKS, INC.

Jonathan Margolis
LOW, BALL & LYNCH
10 Twin Dolphin Drive, #B-500
Redwood City, CA 94065
Tel: (415) 591-8822
Fax: (415) 591-8884
X-Defendant ALCAL ROOFING & INSULATION

Donald L. Sullivan
CLAPP, MORONEY, BELLAGAMBA, DAVIS & VUCINICH
4400 Bohannon Drive, #100
Menlo Park, CA 94025
Tel: (415) 327-1300
Fax: (415) 327-3707
X-Defendants MISSION DRYWALL OF SAN JOSE; and SILVA FENCE COMPANY

Timothy Fogarty
PANDELL & BORSUK LLP
2033 N. Main Street, #450
Walnut Creek, CA 94596
Tel: (510) 746-8800
Fax: (510) 746-8898
Defendant CARLOS RODRIGUEZ PAINTING

Service List - Page Three

Don Fornasier
June P. Bashant
ARCHER, McCOMAS, BRESLIN,
McMAHON & CHRITTON
2033 North Main St., #800
Walnut Creek, CA 94596
Associate Counsel for Defendant CARLOS RODRIGUEZ PAINTING

David N. Poll
COLLINS & SCHLOTHAUER
60 South Market Street, #1100
San Jose, CA 95113-2369
Tel: (408) 298-5161
Fax: (408) 297-5766
Co-Counsel for SILVA FENCE COMPANY

Susan P. Grey
DOMINION LAW GROUP, LLP
1155 N. First Street, #101
San Jose, CA 95112
Tel: (408) 288-5592
Fax: (408) 938-1035
Defendant B.L. COHEN LANDSCAPE, INC.

David S. Henningsen, Esq.
ROBINSON & WOOD, INC.
227 North First Street
San Jose, CA 95113
Telephone: (408) 298-7120
Facsimile: (408) 298-0477
Co-Counsel for defendant
B.L. COHEN LANDSCAPE, INC.

Robert K. Phillips
Shahab E. Fotouhi
PHILLIPS & SPALLAS LLP
225 Bush Street, 16th Floor
San Francisco, CA 94104
Tel: (415) 439-8870
Fax: (415) 439-8822
Defendant PENINSULA FLOORS, INC.

Howard L. Churchill
Lynn M. Diringer
SCHOFIELD & SCHILLER
100 Pringle Avenue, Suite 510
Walnut Creek, CA 94596
Tel: (510) 934-3600
Fax: (510) 934-2257

Defendant SIERRA LUMBER & FENCE CO.

Joseph H. Huber
GASSETT, PERRY & FRANK
210 North Fourth Street, #400
San Jose, CA 95112
Tel: (408) 295-7034
Fax: (408) 295-5799
X-Defendant CROWLEY COMPANY

Karen Wentzel
RITCHIE, FISHER, WHITMAN
& KLEIN
1717 Embarcadero Road
Palo Alto, CA 94303
Tel: (415) 857-1717
Fax: (415) 857-1288
SOIL FOUNDATION SYSTEMS

Paul E. Stephan
STEPHAN & CONROY
444 Market Street, Suite 2675
San Francisco, CA 94111
Tel: (415) 983-3740
Fax: (415) 296-1043
T & D TILE COMPANY, INC.

Clay A. Cohlho
LAW OFFICES OF CHARLOTTE
VENNER
50 Fremont Street, Suite 2550
San Francisco, CA 94105
Tel. (415) 778-4680
Fax (415) 778-4689
T & D TILE COMPANY, INC.

William H. Staples
CAPPS, STAPLES, WARD, et al.
1777 Bothelho Drive,
Suite 100
Walnut Creek, CA 94596
Tel. (510) 939-4411
Fax (510) 939-5241
SAFECO INS. CO. OF AMERICA

Paul Walker
ADAMS, NYE, SINUNU & WALKER
633 Battery Street, 5th Floor
San Francisco, CA 94111
Tel. (415) 982-8955
Fax (415) 982-2042
MISSION DRYWALL

Nancy A. McPherson
HOLMES, DREVLOW, CARMODY, SCHMIDT & NAKANO
180 Montgomery Street, Suite 2100
San Francisco, CA 94104
Tel. (415) 362-1422
FAX (415) 362-7054
SACRAMENTO A-1 DOOR

aug 7 conc

JEFFERY L. BORSUK - SBN 105069
PANDELL & BORSUK LLP
2033 N. Main Street, Suite 450
Walnut Creek, CA 94596-3722
Telephone: (510) 746-8800
Facsimile: (510) 746-8898

Attorneys for Defendant
CARLOS RODRIGUEZ PAINTING

FILED
SAN MATEO COUNTY
AUG 10 1998
Clerk of the Superior Court
By Jamal Agnayo
DEPUTY CLERK

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN MATEO

EDGEWATER ISLE HOMEOWNERS ASSOCIATION, INC., et al.,

Plaintiffs,

vs.

THE ANDEN GROUP, et al.,

Defendants.

AND RELATED CROSS-ACTIONS.

NO. 388872

NOTICE OF PENDING SUBSTITUTION OF COUNSEL

TO: ALL COUNSEL OF RECORD:

PLEASE TAKE NOTICE that effective August 1, 1998, Jeffery L. Borsuk of Borsuk & Associates will be substituting in as counsel of record for CARLOS RODRIGUEZ PAINTING in the above-entitled matter. Pending completion of the substitution, please amend your proof of service as follows:

Borsuk & Associates
2033 North Main Street, Suite 450
Walnut Creek, CA 94596-3722
Telephone: (925) 937-4400
Facsimile: (925) 937-4450

PANDELL & BORSUK LLP

DATED July 31, 1998.

By Jeffery L. Borsuk
Jeffery L. Borsuk

f:\doc\jlb\00818\99968.1

PROOF OF SERVICE

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is PANDELL & BORSUK LLP, 2033 N. Main Street, Suite 450, Walnut Creek, California 94596-3722. On July 31, 1998, I served the within documents:

NOTICE OF PENDING SUBSTITUTION OF COUNSEL

☐ by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m.

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

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

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

SEE ATTACHED SERVICE LIST

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

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

☐ *(Federal)* I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on July 31, 1998, at Walnut Creek, California.

Sheila R. Rafert

PANDELL & BORSUK
ATTORNEYS AT LAW
2033 N. Main Street, Suite 450
Walnut Creek, CA 94596-3722

PROOF OF SERVICE LIST (818/97659)
Edgewater Isle HOA v. The Anden Group
San Mateo Superior Court Action No. 388872
[P&B Client: Carlos Rodriguez Painting]

SPECIAL MASTER
(415) 579-0500/fax (415) 579-0623
William L. Nagle, Esq.
345 Lorton Avenue, Suite 204
Burlingame, CA 94010-4116

PLAINTIFF Edgewater Isle HOA
(714) 252-9150/Fax (714) 442-0646
Thomas E. Miller, Esq.
Bruce Mayfield, Esq.
THE LAW OFFICES OF THOMAS E. MILLER
4685 MacArthur Court, Suite 220
Newport Beach, CA 92660

THE ANDEN GROUP
(415) 421-8550/fax (415) 362-4730
Marisa D'Amico, Esq.
BISHOP, BARRY, HOWE, HANEY & RYDER
275 Battery Street, 12th Floor
San Francisco, CA 94111-3333

THE ANDEN GROUP (PERSONAL COUNSEL)
(310) 284-5850/fax (310) 557-2193
Gregory J. Patterson, Esq.
PROSKAUER & ROSE LLP
2049 Century Park East, Suite 3200
Los Angeles, CA 90067

MELVIN LEE & ASSOC.; RUTH & GOING, INC.; C. APRICIO CEMENT
415-397-2222/Fax 415-397-6392
J. Michael Higginbotham, Esq.
LONG & LEVIT LLP
101 California Street, Suite 2300
San Francisco, CA 94111

GLORIA DEVELOP.; O'BRIEN & HICKS; BRIEN & HICKS 1988
(510) 283-1552/fax (510) 283-9830
Thorsten J. Pray, Esq.
LAW OFFICES OF JOHN J. CARNIATO
3736 Mt. Diablo Boulevard, Suite 300
Lafayette, CA 94549

O'BRIEN & HICKS, INC.
(408) 287-9501/fax (408) 287-2583
John Shinnick, Esq.
HOGE, FENTON, JONES & APPEL
60 South Market Street, 14th Floor
San Jose, CA 95113

TARA COATINGS
(415) 365-7700/fax (415) 365-0677
Albert Blake, Esq.
ROGER, SCOTT & HELMER
900 Veterens Boulevard, Suite 430
Redwood City, CA 94063

TARA COATINGS
(415) 981-5200/fax (415) 981-2097
Norman La Force, Esq.
LAW OFFICES OF F. ROSS ADKINS
25 Pacific Avenue Mall
San Francisco, CA 94111

C. APRICIO CEMENT; B.L. COHEN LANDSCAPE
(510) 930-6600/fax (510) 930-6620
Rand L. Chritton, Esq./Donald B. Fornasier, Esq.
ARCHER, McCOMAS, BRESLIN, McMAHON & CHRITTON
P. O. Box 8035
Walnut Creek, CA 94596

C. APRICIO CEMENT
(415) 956-5841/fax (415) 956-0708
Philip Y. Kazan, Esq.
RUSSELL, KASAN, BRENNER & MALLETT
343 Sansome Street, Suite 525
San Francisco, CA 94104

GONSALVES & SANTUCCI dba CONCO CEMENT
(510) 676-5094/fax (510) 676-0548
Anthony J. DeMaria, Esq.
FELICE & DEMARIA
1130 Burnett Avenue, Bldg. D, Suite H
Concord, CA 94520

FISK, FIERENZE & MCLEAN/DANIEL SMITH PLASTERING
(415) 986-5900/fax (415) 986-8054
S. Mitchell Kaplan, Esq.
GORDON & REES
275 Battery Street, 20th Floor
San Francisco, CA 94111

SIERRA LUMBER
(408) 984-8555/fax (408) 292-1061
Joe Thompson, Esq.
981 Fremont Street
Santa Clara, CA 95050

SACRAMENTO A-1 DOOR/
NORTH EMPIRE CONSTRUCTION
(415) 573-9500/(415) 573-9689
Kevin J. Tully, Esq.
GREENE, CHAUVEL & DESCALSO
902 Marineers Island Boulevard, Suite 400
San Mateo, CA 94404-1594

SAN CARLOS SHEET METAL WORKS
(415) 361-1199/fax (415) 369-4984
Helen B. Baumann, Esq.
LAW OFFICES OF EUGENE L. BASS
495 Seaport Court, Suite 103
Redwood City, CA 94063

MISSION DRYWALL OF SAN JOSE/
SILVA FENCE COMPANY; TECHNIBUILDERS IRON
(415) 327-1300/fax (415) 327-3707
Donald L. Sullivan, Esq.
CLAPP, MORONEY, BELLAGAMBA, et al.
4400 Bohannon Drive, Suite 100
Menlo Park, CA 94025

SILVA FENCE COMPANY
(408) 298-5161/fax (408) 297-5766
David N. Poll, Esq.
COLLINS & SCHOTHAUER
60 South Market Street, Suite 1100
San Jose, CA 95113-2369

PENINSULA FLOORS, INC.
415-439-8870/Fax 415-439-8822
Robert K. Phillips, Esq.
Shahab E. Fotouhi, Esq.
PHILLIPS & SPALLAS LLP
225 Bush Street, 16th Fl.
San Francisco, CA 94104

B.L. COHEN LANDSCAPE
408-288-5592/Fax 408-938-1035
Susan P. Grey, Esq.
DOMINION LAW GROUP
1155 N. First Street, Suite 101
San Jose, CA 95112

SIERRA LUMBER & FENCE COMPANY
(510) 934-3600/(510) 934-2257
Howard L. Churchill, Esq.
Tom Schofield, Esq.
SCHOFIELD & SCHILLER
100 Pringle Avenue, Suite 510
Walnut Creek, CA 94596

SACRAMENTO A-1 DOOR
(415) 362-1422/fax (415) 362-7054
Maria Caruana, Esq.
FORTUNE & DREVLOW
180 Montgomery Street, Suite 2100
San Francisco, CA 94104

ALCAL ROOFING & INSULATION
(415) 591-8822/fax (415) 591-8884
Johnathan Margolis, Esq.
LOW, BALL & LYNCH
10 Twin Dolphin Drive, Suite B500
Redwood City, CA 94065

MISSION DRYWALL
(415) 982-8955/fax (415) 982-2042
Paul Walker, Esq.
ADAMS, NYE, SINUNU & WALKER
633 Battery Street, 5th Floor
San Francisco, CA 94111

SAFECO INS. CO. OF AMERICA
(510) 939-4411/(510) 939-5241
William H. Staples, Esq.
CAPPS, STAPLES, WARD, STEPHENSON, et al.
1777 Botelho Drive, Suite 100
Walnut Creek, CA 94596

CHRISP COMPANY
213-622-9300/Fax 213-622-9394
Daniel A. Berman, Esq.
James M. Ganion
WOOD, SMITH, HENNING & BERMAN
801 South Figueroa Street, 9th Fl.
Los Angeles, CA 90017-2573

B.L. COHEN LANDSCAPE
408-298-7120/Fax 408-298-0477
David S. Henningsen, Esq.
ROBINSON & WOOD
227 North First Street
San Jose, CA 95113

TECHNIBUILDERS IRONS
415-327-1300/Fax 415-327-3707
Donald L. Sullivan, Esq.
CLAPP, MORONEY, BELLAGAMBA,
DAVIS & VUCINICH
4400 Bohannon Drive, Suite 100
Menlo Park, CA 94025

Document Depository
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5 Third Street, Suite 815
San Francisco, CA 94103

CARLOS RODRIGUEZ PAINTING (Co-Counsel)
510/930-6600/Fax 510/930-6620
Don Fornasier, Esq.
June P. Bashant, Esq.
ARCHER, McCOMAS, BRESLIN,
McMAHON & CHRITTON
2033 North Main Street, Suite 800
Walnut Creek, CA 94596

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and Address):	TELEPHONE NO.:	FOR COURT USE ONLY
THORSTEN J. PRAY LONG & LEVIT LLP 101 California St., Suite 2300 San Francisco, CA 94111	(415) 397-2222	FILED SAN MATEO COUNTY AUG - 7 1998 Clerk of the Superior Court By _____ DEPUTY CLERK
ATTORNEY FOR (Name): O'BRIEN & HICKS 1998 & BEYOND, LTD.		
Insert name of court and name of judicial district and branch court, if any: SUPERIOR COURT OF THE STATE OF CALIFORNIA COUNTY OF SAN MATEO		
PLAINTIFF/PETITIONER: EDGEWATER ISLE HOMEOWNERS ASSOCIATION, INC. DEFENDANT/RESPONDENT: THE ANDEN GROUP, ET AL.		
REQUEST FOR DISMISSAL ☐ Personal Injury, Property Damage, or Wrongful Death ☐ Motor Vehicle ☐ Other ☐ Family Law ☐ Eminent Domain ☒ Other *(specify)*: CONSTRUCTION DEFECT		CASE NUMBER: 388872

— A conformed copy will not be returned by the clerk unless a method of return is provided with the document. —

1. **TO THE CLERK:** Please **dismiss** this action as follows:
   a. (1) ☒ With prejudice (2) ☐ Without prejudice
   b. (1) ☐ Complaint (2) ☐ Petition
   (3) ☐ Cross-complaint filed by *(name)*: on *(date)*:
   (4) ☐ Cross-complaint filed by *(name)*: on *(date)*:
   (5) ☐ Entire action of all parties and all causes of action
   (6) ☒ Other *(specify)*:* DEEMED (BY PTO #2) AND ACTUAL CROSS-COMPLAINTS OF O'BRIEN & HICKS, ET AL., AS AGAINST RUTH & GOING, INC. AND MELVIN LEE ASSOCIATES

Date: JUNE 24 1998

THORSTEN J. PRAY
(TYPE OR PRINT NAME OF ☒ ATTORNEY ☐ PARTY WITHOUT ATTORNEY)

LAW OFFICES OF JOHN J. CARNIATO
(SIGNATURE)
Attorney or party without attorney for: O'BRIEN & HICKS 1988 & BEYOND
☐ Plaintiff/Petitioner ☐ Defendant/Respondent
☒ Cross-complainant

* If dismissal requested is of specified parties only, of specified causes of action only, or of specified cross-complaints only, so state and identify the parties, causes of action, or cross-complaints to be dismissed.

2. **TO THE CLERK:** Consent to the above dismissal is hereby given.**
Date:

(TYPE OR PRINT NAME OF ☐ ATTORNEY ☐ PARTY WITHOUT ATTORNEY)

(SIGNATURE)
Attorney or party without attorney for:
☐ Plaintiff/Petitioner ☐ Defendant/Respondent
☐ Cross-complainant

** If a cross-complaint - or Response (Family Law) seeking affirmative relief - is on file, the attorney for cross-complainant (respondent) must sign this consent if required by Code of Civil Procedure section 581(i) or (j).

(To be completed by clerk)

3. ☐ Dismissal entered as requested on *(date)*:
4. ☒ Dismissal entered on *(date)*: AUG 11 1998 as to only *(name)*: see above
5. ☐ Dismissal **not entered** as requested for the following reasons *(specify)*:

6. ☐ a. Attorney or party without attorney notified on *(date)*:
   b. Attorney or party without attorney not notified. Filing party failed to provide
   ☐ a copy to conform ☐ means to return conformed copy

Date: AUG 11 1998 PEGGY THOMPSON Clerk, by _____, Deputy

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William L. Nagle, SBN 59788
Special Master/Mediator
345 Lorton Avenue, Suite #204
Burlingame, CA 94010
(650) 579-0500
(650) 579-0623 (Fax)

8-31-98 9am Law

FILED
SAN MATEO COUNTY
AUG 6 1998
Clerk of the Superior Court
By Sharon Treadwell
DEPUTY CLERK

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN MATEO

EDGEWATER ISLE HOMEOWNERS ASSOCIATION, et al.,

Plaintiff,

v.

THE ANDEN GROUP, et al.,

Defendants,

_____/

AND RELATED CROSS-ACTIONS

_____/

CASE NO. 388872

DECLARATION OF SERVICE BY MAIL

I am a citizen of the United States. My business address is 345 Lorton Avenue, Suite #204, Burlingame, California. I am employed in the County of San Mateo where this mailing occurs. I am over the age of eighteen years and not a party to the within cause. I served PRE-TRIAL ORDER NO. 58 (Endorsed-Filed July 31, 1998) on the following person(s) on the date set forth below, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in a United States post office mailbox at Burlingame, California, addressed as follows:

Please see attached list.

I, Christine L. Britton, declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on August 3, 1998 at Burlingame, California.

Christine L. Britton

08/03/98

EDGEWATER ISLE HOA v. THE ANDEN GROUP, et al.
San Mateo County Superior Court Case No. 388872

Proof of Service List

William L. Nagle, Esq. Special Master/Mediator 345 Lorton Avenue, Suite #204 Burlingame, CA 94010 (650) 579-0500 (650) 579-0623 (Fax)	SPECIAL MASTER
Thomas A. Miller, Esq. Law Offices of Thomas A. Miller 4685 Mac Arthur Court, Suite #220 Newport Beach, CA 92660 (714) 252-9150 (714) 442-0646 (Fax)	Plaintiff, Edgewater Isle HOA, Inc. (in 7/28/97)
Marisa D'Amico, Esq. Bishop, Barry, Howe, Haney & Ryder Embarcadero Center West 275 Battery Street, 12th Floor San Francisco, CA 94111 (415) 421-8550 (415) 362-4730 (Fax)	The Anden Group, Esden Partners, MDG Associates, Ltd., ESR Corporation, TMD Corporation, and Miden Corporation
Alan H. Finkel, Esq. Zimmerman, Koomer & Connolly 10960 Wilshire Blvd., Suite #1225 Los Angeles, CA 90024 (310) 231-6565 (310) 231-6566 (Fax)	The Anden Group (personal counsel)
Alec M. Barinholtz, Esq. Ross, Dixon & Masback Five Park Plaza, Suite #1200 Irvine, CA 92614-8529 (714) 622-2700 (714) 622-2739 (Fax)	International Insurance Company (Anden Group)
Lewis K. Loss, Esq. Ross, Dixon & Masback 601 Pennsylvania Avenue, N.W. North Building Washington, D.C. 20004-2688 (202) 662-2000 (202) 662-2190 (Fax)	International Insurance Company (Anden Group)

Mr. Alan Freudenheim International Insurance Company 181 W. Madison Street, 26th Floor Chicago, IL 60602 (312) 849-5150 (312) 849-5293 (Fax)	International Insurance Company (Anden Group)
Thomas A. Foster, Esq. Marrone, Robinson, Frederick & Foster 111 N. 1st Street, Suite #300 Burbank, CA 91502 (818) 841-1144 (818) 841-0746 (Fax)	
A. Raymond Hammerick, III, Esq. Law Offices of A. Raymond Hammerick, III 10 Universal City Plaza, Suite #2055 Universal City, CA 91608 (818) 763-5295 (818) 763-2308 (Fax)	
Amy Dantzler, Esq. Quisenberry & Barbanel, LLP 2049 Century Park East, Suite #2200 Los Angeles, CA 90067 (310) 785-7966 (310) 785-0254 (Fax)	
John J. Carniato, Esq. Law Offices of John J. Carniato 3736 Mt. Diablo Blvd., Suite #300 Lafayette, CA 94549 (510) 283-1552 (510) 283-9830 (Fax)	O'Brien & Hicks, Inc., O'Brien & Hicks 1988 & Beyond, Ltd., and Gloria Development co., Inc.
Josh Shinnick, Esq. Hoge, Fenton, Jones & Appel, Inc. 60 S. Market Street San Jose, CA 95113 (408) 287-9501 (408) 287-2583 (Fax)	O'Brien & Hicks, Inc.
Anthony B. Varni, Esq. Varni, Fraser, Hartwell & Rodgers 22771 Main Street Hayward, CA 94543 (510) 886-5000 (510) 538-8797 (Fax)	O'Brien & Hicks, Inc.

Chester G. Moore, III, Esq. Low, Ball & Lynch 10 Twin Dolphin Road, Suite #B-500 Redwood City, CA 94065 (650) 591-8822 (650) 591-8884 (Fax)	Alcal Roofing & Insulation
Susan P. Grey, Esq. Dominion Law Group 1155 N. First Street, Suite #101 San Jose, CA 95112 (408) 288-5592 (408) 938-1035 (Fax)	B.L. Cohen Landscape, Inc. (in 9/97)
David S. Henningsen, Esq. Robinson & Wood 227 N. First Street San Jose, CA 95113 (408) 298-7120 (408) 298-0477 (Fax)	B.L. Cohen Landscape, Inc. (in 10/97)
Donald B. Fornasier, Esq. Archer, McComas, Breslin, McMahon & Chritton 2033 N. Main Street, Suite #800 Walnut Creek, CA 94596 (510) 930-6600 (510) 930-6620 (Fax)	B.L. Cohen Landscape, Inc. (in 11/97)
Philip Y. Kazan, Esq. Russell, Kazan, Brenner & Mallett 343 Sansome Street, Suite #525 San Francisco, CA 94104 (415) 956-5841 (415) 956-0708 (Fax)	C. Aparicio Cement
Donald B. Fornasier, Esq. Archer, McComas, Breslin, McMahon & Chritton 2033 N. Main Street, Suite #800 Walnut Creek, CA 94596 (510) 930-6600 (510) 930-6620 (Fax)	C. Aparicio Cement and Carlos Rodriguez Painting (in 3/98)
Jeffrey L. Borsuk, Esq. Borsuk & Associates 2033 N. Main Street, Suite #450 Walnut Creek, CA 94596-3722 (510) 746-8800 (510) 746-8898 (Fax)	Carlos Rodriguez Painting (in 9/97)

David Brault, Esq. 5160 Birch Street, Suite #200 Newport Beach, CA 92660 (714) 752-2450 (714) 851-8188 (Fax)	Cell-Crete Corporation (in 3/98)
S. Mitchell Kaplan, Esq. Gordon & Rees 275 Battery Street, 20th Floor San Francisco, CA 94111 (415) 986-5900 (415) 986-8054 (Fax)	Daniel Smith Plastering, Inc.
Anthony J. DeMaria, Esq. Filice & DeMaria 1130 Burnett Avenue Building D, Suite H Concord, CA 94520 (510) 676-5094 (510) 676-0548 (Fax)	Gonsalves & Santucci, Inc. dba Conco Cement Company
S. Mitchell Kaplan, Esq. Gordon & Rees 275 Battery Street, 20th Floor San Francisco, CA 94111 (415) 986-5900 (415) 986-8054 (Fax)	Fisk, Firenze & McLean
J. Michael Higginbotham, Esq. Long & Levit 101 Califonria Street, Suite #2300 San Francisco, CA 94111 (415) 397-2222 (415) 397-6392 (Fax)	Ruth & Going, Inc. and Melvin Lee Associates
Donald L. Sullivan, Esq. Clapp, Moroney, Bellagamba, Davis & Vucinich 4400 Bohannon Drive, Suite #100 Menlo Park, CA 94025 (650) 327-1300 (650) 327-3707 (Fax)	Mission Drywall of San Jose (in 5/96); Silva Fence Company (in 10/97); and Technibuilders Iron (in 1/98)
Kevin J. Tully, Esq. Greene, Chauvel, Descalso & Tully 901 Mariner's Island Blvd., Suite #400 San Mateo, CA 94404-1594 (650) 573-9500 (650) 573-9689 (Fax)	North Empire Construction and and Sacramento A-1 Door

Robert K. Phillips, Esq. Phillips & Spallas, LLP 225 Bush Street, 16th Floor San Francisco, CA 94104 (415) 439-8870 (415) 439-882 (Fax)	Peninsula Floors, Inc. (in 9/97; out 12/97)
Nancy A. McPherson, Esq. Holmes, Drevlow, Carmody, Schmidt & Nakano 180 Montgomery Street, Suite #2100 San Francisco, CA 94104 (415) 362-1422 (415) 362-7054 (Fax)	Sacramento A-1 Door
Helen B. Baumann, Esq. Law Office of Eugene L. Bass 495 Seaport Court, Suite #103 Redwood City, CA 94063 (650) 361-1199 (650) 369-4984 (Fax)	San Carlos Sheet Metal Works, Inc.
Howard L. Churchill, Esq. Schofield & Schiller 100 Pringle Avenue, Suite #510 Walnut Creek, CA 94596 (510) 934-3600 (510) 934-2257 (Fax)	Sierra Lumber & Fence Company (in 9/97)
Michael P. Quinlivan, Esq. Kouns, Quinlivan & Severson 101 Park Center Plaza, Suite #1007 San Jose, CA 95113 (408) 278-0125 (408) 292-1257 (Fax)	Sierra Precast, Inc. (in 8/97; dismissed 12/97)
David N. Poll, Esq. Collins & Schlothauer 60 S. Market Street, Suite #1100 San Jose, CA 95113-2369 (408) 298-5161 (408) 297-5766 (Fax)	Silva Fence Company (in 5/96)
Karen Wentzel, Esq. Ritchie, Fisher, Whitman & Klein 1717 Embarcadero Road Palo Alto, CA 94303 (650) 857-1717 (650) 857-1288 (Fax)	Soil Foundation Systems (out 5/96)

Albert P. Blake, Esq. Roger, Scott & Helmer 900 Veterans Blvd., Suite #430 Redwood City, CA 94063 (650) 365-7700 (650) 365-0677 (Fax)	Tara Coatings
Norman La Force, Esq. Law Offices of F. Ross Adkins 25 Pacific Avenue Mall San Francisco, CA 94111 (415) 981-5200 (415) 981-2097 (Fax)	Tara Coatings
Mr. Donald W. Simons, Jr., Esq. Frank Pinto Adjusters, Inc. 1504 Franklin Street, Suite #308 Oakland, CA 94612 (510) 834-1474 (510) 834-7032 (Fax) (510) 654-1425 (Hm Fax)	Courtesy Copy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN MATEO

EDGEWATER ISLE HOMEOWNERS ASSOCIATION, Plaintiff, vs. THE ANDEN GROUP, et al., Defendants. AND RELATED CROSS-ACTIONS.	CASE NO. 388872 **ORDER DENYING SUMMARY JUDGMENT** Date: February 2, 1998 Time: 9:00 a.m. Dept: 14, Room 8B Trial Date: March 2, 1998

The motion of defendant SIERRA LUMBER for summary judgment came on regularly for hearing before this Court in Department No. 14, Honorable Rosemary P. Pfeiffere presiding, and Bruce Mayfield appeared as attorney for plaintiff and _____ appeared as attorney for SIERRA LUMBER.

After full consideration of the evidence and points and authorities and Separate Statement submitted by both parties, and oral arguments of counsel, it appears and the Court finds that

there is a triable issue as to the following material facts raised by said motion and as shown by the following evidence:

Material Facts as to Which Triable Issues Exist	References to Evidence Indicating Controversy
4. SIERRA was brought back into the case as a defendant by the Edgewater Homeowners Association on August 23, 1997	Disputed. See Proof of Service filed August 7, 1997 attached as Exhibit "A" to Plaintiff's Points and Authorities.
9. The Final Defect List is also a Final Statement of Claims	Disputed. The defect list is explained in depositions. See Robert Powell's deposition transcript, pages 110 through 116 attached as Exhibit "B" to the Declaration of Bruce Mayfield.
10. No further claims should be added to the Final Defect List/Statement of Claims "without good cause shown."	Disputed. The defect list is explained in depositions. See Robert Powell's deposition transcript, pages 110 through 116 attached as Exhibit "B" to the Declaration of Bruce Mayfield.
13. None of the work done by SIERRA is referenced in the HOA's Final Defect List.	Disputed. See Robert Powell's deposition transcript, pages 110 through 116 attached as Exhibit "B" to the Declaration of Bruce Mayfield.

IT IS THEREFORE ORDERED that the said motion for summary judgment be, and it hereby is, DENIED.

Dated: _____

_____
Judge of the Superior Court

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN MATEO

JUDGE/DEPT. NO. 02 CASE NO.: 000388872 DATE: 07 AUG 1998
DEPUTY CLERK L Sandberg COURT REPORTER C Lee
HONORABLE ARAM SERVERIAN

TITLE OF ACTION: EDGEWATER ISLE HOMEOWNERS ASSOC. ETAL VS. THE ANDEN GROUP

NATURE OF EVENTS: STATUS REVIEW/CASE MANAGEMENT CONF

Don Fonasier for Cross-Complainants Aparicio Cement APPEARANCES
Rodriguez Painting & Calbo Landscape APPEARANCES
Mark Thierer for Meeuwsen Drywall, Technibuilders & Silva Fence

( ) OFF CALENDAR ( ) NON APPEARANCE BY PARTIES.

~~UNREPORTED~~ CONFERENCE HELD IN ~~CHAMBERS~~ WITH THE COURT (AND ABOVE COUNSEL) (~~AND PLAINTIFF/DEFENDANT~~) (AND _____).

( ) THIS CASE ~~WAS BEEN DISMISSED. SEE ATTACHMENT.~~ is dropped from calendar. It may be recalendared at such time.

( ) THIS MATTER IS CONTINUED FOR FURTHER SETTLEMENT/CASE MANAGEMENT CONFERENCE IN DEPT. _____ ON _____ AT _____ A.M./P.M.

( ) THIS CASE IS DEEMED AT-ISSUE AND: _____ SENT TO ARBIRTATION (JUDICIAL/BINDING); _____ SET FOR TRIAL: _____

( ) SETTLEMENT CONFERENCE: ( ) TO BE ASSIGNED ( ) MAY BE ASSIGNED ( ) REASSIGN

( ) DISMISSAL - ENTIRE ACTION AS TO _____ WAS ENTERED ON _____.

( ) THE CASE IS EXCEPTED FROM THE CASE MANAGEMENT GUIDELINES BECAUSE: _____

( ) THIS CASE IS TRANSFERRED TO _____. _____ TO PAY FOR COSTS OF TRANSFER.

( ) THIS CASE IS SETTLED FOR _____

that Special Master Richard Nagle sees fit.

( ) THE CASE IS DESIGNATED AS AN UNINSURED MOTORIST ARBITRATION CASE UNDER CALIFORNIA RULES OF COURT NO. 2103(C) AND CONTINUED TO _____ IN DEPT. _____ AT _____ A.M./P.M. FOR REVIEW.

( ) THIS MATTER IS SET FOR A HEARING ON AN ORDER TO SHOW CAUSE RE: CASE MANAGEMENT CONFERENCE IN DEPT. _____ ON _____ AT _____ A.M./P.M.

( ) OTHER ORDERS MADE: _____

( ) LET A WRITTEN ORDER BE PREPARED, SIGNED AND FILED. _____ TO PREPARE ORDER.

DATE: 8-7-98
NATURE OF PROCEEDINGS: _____

CASE MANAGEMENT CONFERENCE MINUTE FORM

388872

Drop

FILE PREPARATION LOG

CMC / SET / TRI

CASE NAME Edgewater Isle Homeowners Assoc vs. The Anden Grp et al

CASE # 388872 HRG DATE 8/7 DEPT 3

✓ FILE IN CHRONOLOGICAL ORDER

✓ NOTICE OF HEARING ON FILE

✓ MINUTE FORM SUBMITTED WITH FILE

✓ FILE CHECKED FOR MISFILINGS

____ DOCUMENTS MISSING

____ NOTICE OF STAY OF ACTION

✓ DISMISSALS

see left side of file

FILE VERIFIED BY _____ DATE AUG - 4 1998

5074
William L. Nagle, SBN 59788
Special Master/Mediator
345 Lorton Avenue, Suite #204
Burlingame, CA 94010
(650) 579-0500
(650) 579-0623 (Fax)

FILED
SAN MATEO COUNTY
JUL 3 1 1998
Clerk of the Superior Court
By
DEPUTY CLERK

SPECIAL MASTER

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN MATEO

EDGEWATER ISLE HOMEOWNERS ASSOCIATION, et al.,

Plaintiff,

v.

THE ANDEN GROUP, et al.,

Defendants,

_____/

AND RELATED CROSS-ACTIONS

_____/

CASE NO. 388872

PRE-TRIAL ORDER NO. 58

The Court having appointed William L. Nagle as Special Master in this matter and good cause appearing therefor,

IT IS HEREBY ORDERED:

1. By July 20, 1998, the Anden Group, on behalf of all settling parties, shall file and serve a Motion for Good Faith Settlement. The hearing date of the Motion for Good Faith Settlement is July 29, 1998 at 11:00 a.m. in Dept. 10.

By July 23, 1998, any Opposition to the Motion shall be filed and served.

By July 24, 1998, the Reply shall be filed and served.

Service of the Motion, Opposition, and Reply on all counsel and the Special Master shall be by facsimile and shall be faxed no later than 5:00 p.m. on the applicable due date.

///

///

2. By July 24, 1998, the final draft of the Settlement Agreement shall be signed by all settling parties. O'Brien & Hicks has agreed to issue Dismissals with prejudice as to all settling cross-defendants in lieu of signing the Settlement Agreement.

3. On August 6, 1998 at 11:00 a.m., counsel and/or insurance claims representatives for the following parties shall appear before the Presiding Judge at the San Mateo County Superior Courthouse, 400 County Center, Redwood City, California to show cause why they have not complied with Order Re Settlement (Endorsed-Filed May 8, 1998), Amendment to Order Re Settlement (Endorsed-Filed June 18, 1998), and Pre-Trial Order No. 56 (Endorsed-Filed May 15, 1998):

Settlement Contributions:

Party	Amount Due
The Anden Group	$2,099,798.00
Daniel Smith Plastering	60,000.00
Fisk, Firenzi & McLean	180,000.00
Tara Coatings	39,730.77

Reimbursement of Mediation Fees:

O'Brien & Hicks	3,500.00
B.L. Cohen	269.23
Carlos Rodriguez	269.23
Daniel Smith Plastering	269.23
Mission Drywall	269.23
Silva Fence	269.23
Tara Coatings	215.38
Technibuilders Iron	269.23

Parties who are in compliance with the Orders by August 5, 1998 shall be excused from the hearing.

APPROVED AND RECOMMENDED:

DATED: July 24, 1998

William L. Nagle, Special Master

IT IS SO ORDERED:

DATED: JUL 29 1998

Judge of the Superior Court

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN MATEO

JUDGE DEPT. NO. 10 S. Kozloski CASE NO. 388872 DATE 29 JUL 1998
DEPUTY CLERK L. Fitzgibbon COURT REPORTER P. Fisk

TITLE OF ACTION: EDGEWATER ISLE HOMEOWNERS ASSOC. ETAL VS. THE ANDEN GROUP, ET AL

NATURE OF EVENTS: JOINT MOTION FOR GOOD FAITH SETTLEMENT

Brandon Bickel / Appearances for Plaintiffs

Marisa DeMarco Appearances for Defendant

APPEARANCES

____ OFF CALENDAR ____ MOVING PARTY'S REQUEST ____ NONAPPEARANCE ____ STIPULATION
____ THE ABOVE MATTER IS CONTINUED/ASSIGNED TO_____
____ SUBMITTED ON POINTS AND AUTHORITIES WITHOUT ARGUMENT.
____ MATTER ARGUED BY COUNSEL AND SUBMITTED.
__✓__ MOTION GRANTED ____ MOTION DENIED
____ DEMURRER ____ SUSTAINED_____DAYS TO AMEND.
____ OVERRULED_____DAYS TO ANSWER.
____ GROUNDS_____

____ THE ABOVE MATTER IS TAKEN UNDER SUBMISSION.
____ POINTS AND AUTHORITIES TO BE SUBMITTED BY_____NOT LATER THAN_____ AND BY _____NOT LATER THAN_____
____ NOTICE OF RULING IS_____WAIVED IN OPEN COURT.

____

__✓__ LET A WRITTEN ORDER BE PREPARED, SIGNED AND FILED.
DATE: 7-29-98
NATURE OF PROCEEDINGS: _____

LAW AND MOTION MINUTE FORM

10

MOT 8-31-98

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and address): TELEPHONE NO.: 714/252-9150

THE LAW OFFICES OF THOMAS E. MILLER
4695 MacArthur Court
Suite 1150
Newport Beach, Ca 92660

ATTORNEY FOR (Name): Edgewater Isle HOA

FOR COURT USE ONLY

FILED
SAN MATEO COUNTY
JUL 28 1998
Clerk of the Superior Court
By J. Lap DEPUTY CLERK

Insert name of court and name of judicial district and branch court, if any:
SAN MATEO SUPERIOR COURT

PLAINTIFF/PETITIONER: EDGEWATER ISLE HOMEOWNERS ASSOCIATION,
DEFENDANT/RESPONDENT: THE ANDEN GROUP, etc., et al.,

CASE NUMBER: 388872

REQUEST FOR DISMISSAL

- ☐ Personal Injury, Property Damage, or Wrongful Death
  - ☐ Motor Vehicle ☐ Other
- ☐ Family Law
- ☐ Eminent Domain
- ☒ Other *(specify)*: Construction Defect

— A conformed copy will not be returned by the clerk unless a method of return is provided with the document. —

1. **TO THE CLERK:** Please **dismiss** this action as follows:
   a. (1) ☒ With prejudice (2) ☐ Without prejudice
   b. (1) ☐ Complaint (2) ☐ Petition
   (3) ☐ Cross-complaint filed by *(name)*: on *(date)*:
   (4) ☐ Cross-complaint filed by *(name)*: on *(date)*:
   (5) ☐ Entire action of all parties and all causes of action
   (6) ☒ Other *(specify)*:* COMPLAINT AS TO DEFENDANT SIERRA LUMBER ONLY.

Date: April 13, 1998

Bruce Mayfield
(TYPE OR PRINT NAME OF ☒ ATTORNEY ☐ PARTY WITHOUT ATTORNEY)

LAW OFFICES OF THOMAS E. MILLER
Bruce Mayfield
(SIGNATURE)

Attorney or party without attorney for:
☒ Plaintiff/Petitioner ☐ Defendant/Respondent
☐ Cross-complainant

* If dismissal requested is of specified parties only, of specified causes of action only, or of specified cross-complaints only, so state and identify the parties, causes of action, or cross-complaints to be dismissed.

2. **TO THE CLERK:** Consent to the above dismissal is hereby given.**
Date:

(TYPE OR PRINT NAME OF ☐ ATTORNEY ☐ PARTY WITHOUT ATTORNEY)

(SIGNATURE)

Attorney or party without attorney for:
☐ Plaintiff/Petitioner ☐ Defendant/Respondent
☐ Cross-complainant

** If a cross-complaint - or Response (Family Law) seeking affirmative relief - is on file, the attorney for cross-complainant (respondent) must sign this consent if required by Code of Civil Procedure section 581(i) or (j).

(To be completed by clerk)

3. ☐ Dismissal entered as requested on *(date)*:
4. ☒ Dismissal entered on *(date)*: AUG - 7 1998 as to only *(name)*: SEE ABOVE
5. ☐ Dismissal **not entered** as requested for the following reasons *(specify)*:

6. ☐ a. Attorney or party without attorney notified on *(date)*:
   b. Attorney or party without attorney not notified. Filing party failed to provide
   ☐ a copy to conform ☐ means to return conformed copy

Date: AUG - 7 1998 PEGGY THOMPSON Clerk, by Naomi Mekedeke, Deputy

Thomas O. Haran, Esq. (SB #76680)
Marisa L. D'Amico, Esq. (SB #152132)
BISHOP, BARRY, HOWE, HANEY & RYDER
275 Battery Street, Twelfth Floor
San Francisco, CA 94111-3333
Telephone: (415) 421-8550

Attorneys for Defendants and Cross-Complainants THE ANDEN GROUP, ESDEN PARTNERS, MDG ASSOCIATES, LTD., ESR CORPORATION, TMD CORPORATION and MIDEN CORPORATION

FILED
SAN MATEO COUNTY
JUL 20 1998
Clerk of the Superior Court
By _____ DEPUTY CLERK

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN MATEO

EDGEWATER ISLE HOMEOWNERS ASSOCIATION, INC., Plaintiff, v. THE ANDEN GROUP, et al., Defendants. AND RELATED CROSS-ACTIONS.	Case No. 388872 **DEFENDANT/CROSS-COMPLAINANT THE ANDEN GROUP'S NOTICE OF MOTION AND MOTION FOR DETERMINATION OF GOOD FAITH SETTLEMENT; MEMORANDUM OF POINTS & AUTHORITIES AND DECLARATION OF MARISA L. D'AMICO [C.C.P. §877.6]** Date: To Be Assigned Time: To Be Assigned Dept.: 10

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

YOU ARE HEREBY NOTIFIED that on 8-31, 1998, at 9 a.m. in Department 10 of this Court, the Honorable Judith Whitmer Kozloski presiding, located at 401 Marshall Street, Redwood City, California 94063, Defendant/Cross-complainant, THE ANDEN GROUP, will move, and hereby does move, this Court for an Order pursuant to Code of Civil Procedure §877.6 confirming that the settlement entered into by and between plaintiff, THE EDGEWATER ISLE HOMEOWNERS ASSOCIATION, defendant/cross-complainant THE ANDEN GROUP and the SUBCONTRACTOR CROSS-DEFENDANTS are in good faith

BISHOP, BARRY, HOWE, HANEY & RYDER
A PROFESSIONAL CORPORATION
275 BATTERY STREET, TWELFTH FLOOR
SAN FRANCISCO, CALIFORNIA 94111-3333
TELEPHONE (415) 421-8550

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within the meaning of C.C.P. §877.6 and the California Supreme Court decision, Tech-Bilt v. Woodward-Clyde Associates, (1985) 38 Cal.3d 488, and that all cross-complaints for equitable indemnity and/or equitable comparative contribution be dismissed and forever barred against ANDEN and all settling parties.

This motion is based on the fact that the settlement, and valuations were reached in good faith; and, further, that the application of the six (6) Tech-Bilt factors to the settlement demonstrate that it is in good faith as a matter of law. This motion will be further based upon this Notice, the accompanying Memorandum of Points and Authorities, and the Declaration of Marisa L. D'Amico, filed concurrently herewith, as well as all the files and records of this case.

BISHOP, BARRY, HOWE, HANEY & RYDER

Date: July 20, 1998

By: _____
Marisa L. D'Amico
Attorneys for Defendants and Cross-Complainants THE ANDEN GROUP, ESDEN PARTNERS, MDG ASSOCIATES, LTD., ESR CORPORATION, TMD CORPORATION and MIDEN CORPORATION

BISHOP, BARRY, HOWE, HANEY & RYDER
A PROFESSIONAL CORPORATION
275 BATTERY STREET, TWELFTH FLOOR
SAN FRANCISCO, CALIFORNIA 94111-3333
TELEPHONE (415) 421-8550

BISHOP, BARRY, HOWE, HANEY & RYDER
A PROFESSIONAL CORPORATION
275 BATTERY STREET, TWELFTH FLOOR
SAN FRANCISCO, CALIFORNIA 94111-3333
TELEPHONE (415) 421-8550

Edgewater Isle HOA, Inc., et al. v. The Anden Group, et al.
San Mateo County Superior Court No. 388872
Our File: 483-95105

PROOF OF SERVICE

I am a citizen of the United States and employed in San Francisco County, California. I am over the age of eighteen years and not a party to the within action. My business address is Bishop, Barry, Howe, Haney & Ryder, 275 Battery Street, 12th Floor, San Francisco, California 94111.

I am familiar with Bishop, Barry, Howe, Haney & Ryder's practice whereby each document is placed in an envelope, the envelope is sealed, the appropriate postage is placed thereon, and the sealed envelope is placed in the office mail receptacle. Each day the mail is collected and deposited in a United States Postal mailbox at or before the close of business each day.

On July 20, 1998 I served the following documents:

1. **DEFENDANT/CROSS-COMPLAINANT THE ANDEN GROUP'S NOTICE OF MOTION AND MOTION FOR DETERMINATION OF GOOD FAITH SETTLEMENT; MEMORANDUM OF POINTS & AUTHORITIES AND DECLARATION OF MARISA L. D'AMICO [C.C.P. §877.6];**

2. **DEFENDANT/CROSS-COMPLAINANT THE ANDEN GROUP'S MEMORANDUM OF POINTS & AUTHORITIES IN SUPPORT THEREOF;**

3. **DECLARATION OF MARISA L. D'AMICO; and**

4. **(Proposed) ORDER**

X (BY REGULAR MAIL) By placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the designated area for outgoing mail at San Francisco, California, addressed as set forth below:

SEE ATTACHED PROOF OF SERVICE LIST.

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

Executed on July 20, 1998 at San Francisco, California.

Sarah K. Yoon

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A PROFESSIONAL CORPORATION
275 BATTERY STREET, TWELFTH FLOOR
SAN FRANCISCO, CALIFORNIA 94111-3333
TELEPHONE (415) 421-6556

Edgewater Isle HOA, Inc., et al. v. The Anden Group, et al.
San Mateo County Superior Court No. 388872
Our File: 483-95105

SERVICE LIST

William L. Nagle, Esq. LAW OFFICES 345 Lorton Avenue, Suite #204 Burlingame, California 94010-4116 Telephone: (415) 579-0500 Facsimile: (415) 579-0623	Special Master
Thomas E. Miller, Esq. Bruce Mayfield, Esq. LAW OFFICES 4685 MacArthur Court, Suite 220 Newport Beach, CA 92660 Telephone: (714) 252-9150 Facsimile: (714) 442-0646	Attorneys for Plaintiff EDGEWATER ISLE HOA, Inc.
John J. Carniato, Esq. Thorsten Pray, Esq. LAW OFFICES OF JOHN J. CARNIATO 3736 Mt. Diablo Blvd., Suite 300 Lafayette, CA 94549 Telephone: (510) 283-1552 Facsimile: (510) 283-9830	Attorneys for Defendants and Cross-Complainants GLORIA DEVELOPMENT CO., INC., a California corporation, O'BRIEN & HICKS, INC., a California Corporation, and O'BRIEN & HICKS 1988 & BEYOND, LTD.
Robert W. Cullen, Esq. HOGE, FENTON, JONES & APPEL, INC. Sixty South Market Street San Jose, CA 95113-2396 Telephone: (408) 287-9501 Facsimile: (408) 287-2583	Attorneys for Defendant O'BRIEN & HICKS, INC., GLORIA DEVELOPMENT CO., INC., and O'BRIEN & HICKS (S) 1988 & BEYOND, LTD.
J. Michael Higginbotham, Esq. John Bevan, Esq. LONG & LEVIT 101 California Street, Suite 2300 San Francisco, CA 94111 Telephone: (415) 397-2222 Facsimile: (415) 397-6392	Attorneys for Cross-Defendants MELVIN LEE & ASSOCIATES and RUTH & GOING, INC.
Philip Y. Kazan, Esq. RUSSELL, KAZAN, BRENNER & MALLETT 343 Sansome Street, Suite 525 San Francisco, CA 94104 Telephone: (415) 956-5841 Facsimile: (415) 956-0708	Attorneys for Cross-Defendant C. APARICIO CEMENT

1	Helen Baumann, Esq. Law Offices of EUGENE L. BASS	Attorneys for Cross-Defendant SAN CARLOS SHEET METAL WORKS
2	495 Seaport Court, Suite 103 Redwood City, CA 94063	
3	Telephone: (650) 361-1199 Facsimile: (650) 369-4984	
4		
	Chester Moore, Esq.	Attorneys for Cross-Defendant AlCAL ROOFING & INSULATION
5	LOW, BALL & LYNCH 10 Twin Dolphin Drive, Suite B-500	
6	Redwood City, CA 94065 Telephone: (650) 591-8822	
7	Facsimile: (650) 591-8884	
8	Maria Caruana, Esq. FORTUNE & DREVLOW	Attorneys for Cross-Defendant SACRAMENTO A-1 DOOR
9	180 Montgomery St., Suite 2100 San Francisco, CA 94104-4205	
10	Telephone: (415) 362-1422 Facsimile: (415) 362-7054	
11		
	Anthony J. DeMaria, Esq.	Attorneys for Cross-Defendant GONSALVES & SANTUCCI, INC., dba CONCO CEMENT COMPANY
12	FELICE & DeMARIA 1130 Burnett Ave., Bldg. D, Suite H	
13	Concord, CA 94520 Telephone: (510) 676-5094	
14	Facsimile: (510) 676-0548	
15	Albert P. Blake, Esq. ROGER, SCOTT & HELMER	Attorneys for Cross-Defendant TARA COATINGS, INC.
16	900 Veterans Blvd., Suite 430 Redwood City, CA 94063	
17	Telephone: (650) 365-7700 Facsimile: (650) 365-0677	
18		
	Norman La Force, Esq.	Attorneys for Cross-Defendant TARA COATINGS
19	LAW OFFICES OF F. ROSS ADKINS 25 Pacific Avenue Mall	
20	San Francisco, CA 94111 Telephone: (415) 981-5200	
21	Facsimile: (415) 981-2097	
22	S. Mitchell Kaplan, Esq. GORDON & REES	Attorneys for Cross-Defendants FISK, FIRENZE & McCLEAN and DANIEL SMITH PLASTERING, INC.
23	275 Battery Street, 20th Floor San Francisco, CA 94111	
24	Telephone: (415) 986-5900 Facsimile: (415) 986-8054	
25		
	Donald L. Sullivan, Esq.	Attorneys for Cross-Defendants MISSION DRYWALL OF SAN JOSE and SILVA FENCE COMPANY, and Defendant TECHNIBUILDERS IRON
26	Clapp, Moroney, Bellagamba, Davis & Vucinich	
27	4400 Bohannon Drive, Suite 100 Menlo Park, CA 94025	
28	Telephone: (650) 327-1300 Facsimile: (650) 327-3707	

BISHOP, BARRY, HOWE, HANEY & RYDER
A PROFESSIONAL CORPORATION
275 BATTERY STREET, TWELFTH FLOOR
SAN FRANCISCO, CALIFORNIA 94111-3333
TELEPHONE (415) 421-9550

David N. Poll, Esq. COLLINS & SCHLOTHAULER 60 South Market Street, Suite 1100 San Jose, CA 95113-2369 Telephone: (408) 298-5161 Facsimile: (408) 297-5766	Attorneys for Cross-Defendant SILVA FENCE CO.
Jeffrey L. Borsuk, Esq. James F. Blake, Esq. Timothy Fogarty, Esq. PANDELL & BORSUK 2033 N. Main Street, Suite 450 Walnut Creek, CA 94596-3722 Telephone: (510) 746-8800 Facsimile: (510) 746-8898	Attorneys for Defendant CARLOS RODRIGUEZ PAINTING
Don Fornasier, Esq. June P. Bashant, Esq. ARCHER, McCOMAS, BRESLIN, McMAHON & CHRITTON 2033 North Main Street, Suite 800 Walnut Creek, CA 94596 Telephone: (510) 930-6600 Facsimile: (510) 930-6620	Attorneys for Cross-Defendant CARLOS RODRIQUEZ PAINTING
Susan P. Grey, Esq. DOMINION LAW GROUP 1155 N. First Street, Suite 101 San Jose, CA 95112 Telephone: (408) 288-5592 Facsimile: (408) 938-1035	Attorneys for Defendant B.L. COHEN LANDSCAPE
David S. Henningsen, Esq. ROBINSON & WOOD 227 North First Street San Jose, CA 95113 Telephone: (408) 298-7120 Facsimile: (408) 298-0477	Attorneys for Defendant B.L. COHEN LANDSCAPE
Rand L. Chritton, Esq. Donald B. Fornasier, Esq. ARCHER, McCOMAS, BRESLIN, McMAHON & CHRITTON 2033 North Main Street, Suite 800 P.O. Box 8035 Walnut Creek, CA 94596 Telephone: (510) 930-6600 Facsimile: (510) 930-6620	Attorneys for Cross-Defendant C. APARICIO CEMENT and Defendant B.L. COHEN LANDSCAPE
David L. Brault, Esq. LAW OFFICES 5160 Birch Street, Suite 200 Newport Beach, CA 92660 Telephone: (714) 752-2450 Facsimile: (714) 851-8188	Attorneys for Defendant CELL-CRETE CORPORATION

BISHOP, BARRY, HOWE, HANEY & RYDER
A PROFESSIONAL CORPORATION
275 BATTERY STREET, TWELFTH FLOOR
SAN FRANCISCO, CALIFORNIA 94111-3333
TELEPHONE (415) 421-6550

Alan H. Finkel, Esq.
ZIMMERMAN, KOOMER & CONNOLLY
10960 Wilshire Blvd., Suite 1225
Los Angeles, CA 90024
Telephone: (310) 231-6565
Facsimile: (310) 231-6566

Attorneys for Defendant and Cross-Complainant THE ANDEN GROUP (Personal Counsel)

BISHOP, BARRY, HOWE, HANEY & RYDER
A PROFESSIONAL CORPORATION
275 BATTERY STREET, TWELFTH FLOOR
SAN FRANCISCO, CALIFORNIA 94111-3333
TELEPHONE (415) 421-8550

Thomas O. Haran, Esq. (SB #76680)
Marisa L. D'Amico, Esq. (SB #152132)
BISHOP, BARRY, HOWE, HANEY & RYDER
275 Battery Street, Twelfth Floor
San Francisco, CA 94111-3333
Telephone: (415) 421-8550

Attorneys for Defendants and Cross-Complainants THE ANDEN GROUP, ESDEN PARTNERS, MDG ASSOCIATES, LTD., ESR CORPORATION, TMD CORPORATION and MIDEN CORPORATION

FILED
SAN MATEO COUNTY
JUL 20 1998
Clerk of the Superior Court
By
DEPUTY CLERK

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN MATEO

EDGEWATER ISLE HOMEOWNERS ASSOCIATION, INC., Plaintiff, v. THE ANDEN GROUP, et al., Defendants. AND RELATED CROSS-ACTIONS.	Case No. 388872 **DEFENDANT/CROSS-COMPLAINANT THE ANDEN GROUP'S MEMORANDUM OF POINTS & AUTHORITIES IN SUPPORT OF MOTION FOR GOOD FAITH DETERMINATION [C.C.P. §877.6]** Date: To Be Assigned Time: 9:00 a.m. Dept.: 10 Hon. Judith W. Kozloski, Judge Presiding

BISHOP, BARRY, HOWE, HANEY & RYDER
A PROFESSIONAL CORPORATION
275 BATTERY STREET, TWELFTH FLOOR
SAN FRANCISCO, CALIFORNIA 94111-3333
TELEPHONE (415) 421-8550

MEMORANDUM OF POINTS & AUTHORITIES

Defendant/Cross Complainant, THE ANDEN GROUP (hereinafter "ANDEN"), hereby submits the following Memorandum of Points & Authorities in support of its Motion for Determination that the global settlement as between Plaintiff, EDGEWATER ISLE HOMEOWNERS ASSOCIATION, Defendant/Cross-Complainant THE ANDEN GROUP and SUBCONTRACTOR/CROSS-DEFENDANTS in the above-captioned case is in good faith.

///

///

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A PROFESSIONAL CORPORATION
275 BATTERY STREET, TWELFTH FLOOR
SAN FRANCISCO, CALIFORNIA 94111-3333
TELEPHONE (415) 421-6550

I.
INTRODUCTION

Factual Background:

This litigation concerns alleged design and construction defects existing at a 224-unit condominium complex, known as "Edgewater Isle" and located near where the 92 and 101 freeways meet, in San Mateo, California. Edgewater Isle Homeowners Association is the Plaintiff (hereinafter "PLAINTIFF"). Defendant/Cross-complainant, The Anden Group (hereinafter "ANDEN"), is the builder/developer of the project. Other settling parties are the "subcontractor cross-defendants", and consist of subcontractors, materialmen, suppliers and design entities for the project.

Procedural Background:

This project was substantially completed in 1987. The complaint was timely filed in 1994, and an answer and cross-complaint was filed by the developer, ANDEN, which cross-complaint named all the other settling parties as cross-defendants. William L. Nagle, was assigned as Special Master for all settlement and discovery purposes, and the protocol for same was accomplished through the issuance of a case Management Order and subsequent Pre-Trial Orders.

Both Plaintiff and the defense undertook extensive and exhaustive investigation of the alleged defects, including weeks of destructive testing and site inspections, document reviews, laboratory analysis of results, etc. In addition, the discovery in this matter was, for all intents and purposes, completed, in that all percipient and expert depositions were taken and

completed. This includes all of plaintiffs experts, homeowner depositions, ANDEN percipients and experts, subcontractor and other settling parties persons most knowledgeable depositions and experts depositions. In fact, due to the fact that PLAINTIFF obtained new counsel three (3) years into this case, the investigation into the alleged claims involved in this case actually took place twice.

As part of the investigation herein, both PLAINTIFF's and ANDEN's experts in the various fields prepared cost estimates and allocations of responsibility, etc. Joint expert meetings were held, and experts were invited to attend the mediation and settlement conference sessions. A third party independent bid was even ordered by the Special Master and prepared by Robert Brown.

The number of status conferences, mediation and settlement conference sessions held in this matter are too numerous to even count. Many settlement conferences were held before Special Master William L. Nagle over the pendency of this litigation, each one getting closer to resolution, albeit at a painfully slow pace. Nonetheless, there were both defense and coverage sessions, and many, many settlement conferences since the inception of this litigation. The case was quite close to settlement two (2) years ago, but this settlement fell through due to primary versus excess carrier problems with the ANDEN insurers, and an eventual interpleader action having been filed by the primary carrier for ANDEN. Finally, on April 15 and 16, 1998, all parties submitted to two (2) full days of intensive settlement conferences before Randall W. Wulff, of Farella, Braun & Martell, which culminated years of settlement efforts, at which time this case globally

BISHOP, BARRY, HOWE, HANEY & RYDER
A PROFESSIONAL CORPORATION
275 BATTERY STREET, TWELFTH FLOOR
SAN FRANCISCO, CALIFORNIA 94111-3333
TELEPHONE (415) 421-6550

settled.

II.
THE SETTLEMENT

The total settlement as to ANDEN and other settling parties, which are part of this good faith motion, is $4,733,202.00. Prior settlement amounts, not part of this motion, are $35,000.00 on behalf of cross-defendant CROWLEY PLUMBING and $800,000.00 on behalf of NORTH EMPIRE FRAMING.

This settlement includes the following contributions:

Settlement Contributions:

The Anden Group:	
International Insurance Company: - $2.1 million of Home Insurance Company's interpleaded funds, guaranteed by International Insurance Company, as set forth in paragraph 2.4 of the Settlement Agreement	$2,100,000.00
United National Insurance Company: - on behalf of The Anden Group and O'Brien & Hicks	807,702.00
Fireman's Fund; Scottsdale; on behalf of O'Brien & Hicks:	750,000.00
Mission Drywall of San Jose:	325,000.00
Silva Fence:	30,000.00
San Carlos Sheet Metal Works:	65,000.00
Tara Coatings:	50,000.00
Technibuilders Iron:	35,000.00
Alcal Roofing:	40,000.00
Carlos Rodriguez Painting:	45,000.00
Daniel Smith Plastering:	60,000.00
Conco Cement Company:	45,000.00
B.L. Cohen Landscape:	35,000.00

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275 BATTERY STREET, TWELFTH FLOOR
SAN FRANCISCO, CALIFORNIA 94111-3333
TELEPHONE (415) 421-6550

Melvin Lee Associates:	15,000.00
Fisk, Firenze & McLean:	180,000.00
Ruth & Going:	125,000.00
Ash Roofing:	1,500.00
C. Aparicio Cement Contractors:	20,000.00
Sierra Lumber:	4,000.00
Total Settlement:	**$4,733,202.00**

The Settlement & Mutual Release Agreement is attached to the Declaration of Marisa L. D'Amico, filed concurrently herewith, and contains all the terms and conditions of the settlement.

III.
LEGAL ARGUMENT

A. CRITERIA FOR DETERMINATION OF GOOD FAITH SETTLEMENT

In deciding the good faith nature of a settlement between a plaintiff and other alleged tortfeasors, the court is to be guided by the principles set forth in California Code of Civil Procedure §877.6, which states, in pertinent part:

> a. Any party to an action wherein it is alleged that two or more parties are joint tortfeasors shall be entitled to a hearing on the issue of the good faith settlement entered into by plaintiff or other claimant and one or more alleged tortfeasors...
>
> b. The issue of the good faith of the settlement may be determined by the court on the basis of affidavits served with notice of hearing, and any counter-affidavits filed in response thereto, or the court may, in its discretion, receive other evidence at the hearing...
>
> d. The parties **asserting the lack of good faith shall have the burden of proof on that issue**. (Emphasis added.)

California courts have consistently held that a non-settling

BISHOP, BARRY, HOWE, HANEY & RYDER
A PROFESSIONAL CORPORATION
275 BATTERY STREET, TWELFTH FLOOR
SAN FRANCISCO, CALIFORNIA 94111-3333
TELEPHONE (415) 421-6550

BISHOP, BARRY, HOWE, HANEY & RYDER
A PROFESSIONAL CORPORATION
275 BATTERY STREET, TWELFTH FLOOR
SAN FRANCISCO, CALIFORNIA 94111-3333
TELEPHONE (415) 421-6550

defendant bears the burden of coming forward with evidence of bad faith. In addition, the non-settling defendant bears the burden of proof by a preponderance of the evidence that the settlement was made in bad faith at the hearing on the good faith issues. Fisher v. Superior Court (1980) 103 Cal.App.3d 434, 447; Schulz v. Superior Court (1980) 104 Cal.App.3d 250, 252.

The Supreme Court stated that the purpose behind section 877.6 is to balance between the objectives of "equitable sharing of costs among the parties involved" and "the encouragement of settlements." Tech-Bilt, Inc. v. Woodward Clyde & Assoc. (1985) 38 Cal.3d 488, 494; River Garden Farms, Inc. v. Superior Court (1972) 26 Cal.App.3d 986, 993.

In Tech-Bilt, the Supreme Court acknowledged that the trial court should be allowed to inquire, among other things, "whether the amount of the settlement is within the reasonable range of the settling tortfeasor's proportional share of comparative liability for the plaintiff's injuries." Tech-Bilt, supra, 38 Cal.3d at p.499; reaffirmed in Far West Financial Corp. v. D & S Co., Inc. (1988) 46 Cal.3d 814.

The Supreme Court, in Tech-Bilt, also set forth various factors which should be taken into account in determining good faith settlements, including (1) a rough approximation of plaintiff's total recovery and the settlers' proportionate liability; (2) the amount paid in settlement; (3) the allocation of settlement proceeds among plaintiffs; and (4) a recognition that a settler should pay less in settlement than he would if he were found liable after a trial. Id., at p.499. Other relevant

BISHOP, BARRY, HOWE, HANEY & RYDER
A PROFESSIONAL CORPORATION
275 BATTERY STREET, TWELFTH FLOOR
SAN FRANCISCO, CALIFORNIA 94111-3333
TELEPHONE (415) 421-6550

factors which the court should consider include the financial conditions and insurance policy limits of settling defendants, as well as the existence of collusion, fraud or tortious conduct and potential prejudice to the interests of non-settling defendants.

Practical considerations require that the evaluation be made on the basis of information available to the settling parties at the time of settlement. "Defendant's settlement figure must not be grossly disproportionate to what a reasonable person, at the time of settlement, would estimate the settling defendant's liability to be." Torres v. Union Pacific Railroad Co. (1984) 157 Cal.App.3d 499, 509.

Finally, California courts have held that the settlement should be broken down into issues to the best of the settling parties' abilities so that the terms are sufficient to allow a determination to be made that the settlement was made in good faith. Alcal Roofing and Installation v. Superior Court (1992) 8 Cal.App.4th 1121; Erreca's v. Superior Court (1993) 19 Cal.App.4th 1475.

B. APPLICATION OF CODE OF CIVIL PROCEDURE SECTION 877.6 AND CASE LAW DEMONSTRATES THAT THIS SETTLEMENT WAS MADE IN GOOD FAITH.

The $4,733,202.00 million settlement between Plaintiff, ANDEN and the settling parties represents the parties' desire to end this expensive and protracted litigation without incurring further investigative, expert and trial preparation costs. The settlement was arrived at through extensive negotiations with Special Masters William L. Nagle and Randall W. Wulff, including, at least, fifteen (15) mediation sessions. All parties to the action were

present at these mediation sessions. There has been no fraud, collusion or tortious conduct aimed at injuring the interests of the non-settling defendants in this action.

The negotiated settlement amount reflects consideration of ANDEN and the settling parties' financial condition; the amount of ANDEN and the settling parties' insurance policies available to satisfy any judgment; the likely percentage responsibility of ANDEN and the settling parties for the claimed defects, and the likelihood of Plaintiff's recovery at trial. Based upon all of these factors, the overall amount is well "within the ball park."

C. THERE ARE NO TRUE NON-SETTLING PARTIES LEFT IN THIS MATTER.

Defendant/Cross-defendant and Cross-Complainant O'BRIEN & HICKS, the Construction Site Manager/General Contractor for this project is not a signatory to the Settlement & Mutual Release Agreement. However, the insurance carriers for O'BRIEN & HICKS, Firemens Fund and Scottsdale Insurance Company, have paid $750,000.00 on behalf of O'BRIEN & HICKS so as to extricate their insured from this litigation and to obtain releases of O'BRIEN & HICKS. In addition, O'BRIEN & HICKS has agreed to execute Dismissals With Prejudice of all other settling parties in this matter. Therefore, in essence, O'BRIEN is not a true "non-settling party" in the traditional sense, such that a discussion of any off-set or allocation is necessary. Furthermore, the $750,000.00 is also well within the ball park for that party's liability.

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BISHOP, BARRY, HOWE, HANEY & RYDER
A PROFESSIONAL CORPORATION
275 BATTERY STREET, TWELFTH FLOOR
SAN FRANCISCO, CALIFORNIA 94111-3333
TELEPHONE (415) 421-6500

D. THE COURT'S DETERMINATION THAT THE SETTLEMENT WAS MADE IN GOOD FAITH BARS CROSS-COMPLAINTS FOR INDEMNITY AND EQUITABLE COMPARATIVE CONTRIBUTION

California Code of Civil Procedure §877.6 provides in pertinent part as follows:

> (c) A determination by the court that the settlement was made in good faith shall bar any other joint tortfeasor or co-obligor from any further claims against the settling tortfeasor or co-obligor for equitable comparative contribution or partial or comparative indemnity, based on comparative negligence or comparative fault.
>
> The policy of §877.6 is to encourage settlement by providing the settling defendant insurance of finality of the litigation. American Motorcycle Association v. Superior Court (1978) 20 Cal.3d 578.

The Court's determination that the settlement was made in good faith bars any all cross-complaints, present and future, regarding indemnity based on comparative negligence or comparative fault. This court is respectfully requested to dismiss any and all cross-complaints for equitable indemnity and contribution against ANDEN and the SETTLING PARTIES.

CONCLUSION

It is respectfully submitted that this Court should grant this motion and determine that the settlement entered into between PLAINTIFF, ANDEN and settling parties is in good faith. ANDEN has provided the Court with an adequate evidentiary basis to determine that the settlement contributions of the settling parties are in good faith and meet all the Tech-Bilt criteria.

Based on all of the foregoing, PLAINTIFF, ANDEN, and settling parties respectfully request the Court enter an Order for the following:

BISHOP, BARRY, HOWE, HANEY & RYDER
A PROFESSIONAL CORPORATION
275 BATTERY STREET, TWELFTH FLOOR
SAN FRANCISCO, CALIFORNIA 94111-3333
TELEPHONE (415) 421-6500

1. That the settlement between PLAINTIFF, ANDEN and settling parties is made in good faith pursuant to C.C.P. §877.6;

2. That the complaint of PLAINTIFF be dismissed with prejudice pursuant to C.C.P. §877.6 as to ANDEN and settling parties when the terms and conditions of the settlement are fully executed between the settling parties and all signatures are obtained thereto, and that the Court retain jurisdiction over the parties, pursuant to C.C.P. §664.6 until said time;

3. That any and all Cross-Complaints filed or deemed to have been filed in the within action be dismissed as to ANDEN and all settling parties;

4. That the "good faith" settlement bars any claim for equitable indemnity or contribution by any present or future cross-complainant against ANDEN and all settling parties.

BISHOP, BARRY, HOWE, HANEY & RYDER

Date: July 20, 1998

By: _____
Marisa L. D'Amico
Attorneys for Defendants and Cross-Complainants THE ANDEN GROUP, ESDEN PARTNERS, MDG ASSOCIATES, LTD., ESR CORPORATION, TMD CORPORATION and MIDEN CORPORATION

BISHOP, BARRY, HOWE, HANEY & RYDER
A PROFESSIONAL CORPORATION
275 BATTERY STREET, TWELFTH FLOOR
SAN FRANCISCO, CALIFORNIA 94111-3333
TELEPHONE (415) 421-6550

Thomas O. Haran, Esq. (SB #76680)
Marisa L. D'Amico, Esq. (SB #152132)
BISHOP, BARRY, HOWE, HANEY & RYDER
275 Battery Street, Twelfth Floor
San Francisco, CA 94111-3333
Telephone: (415) 421-8550

Attorneys for Defendants and Cross-Complainants THE ANDEN GROUP, ESDEN PARTNERS, MDG ASSOCIATES, LTD., ESR CORPORATION, TMD CORPORATION and MIDEN CORPORATION

FILED
SAN MATEO COUNTY
JUL 20 1998
Clerk of the Superior Court
By _____ DEPUTY CLERK

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN MATEO

EDGEWATER ISLE HOMEOWNERS ASSOCIATION, INC., Plaintiff, v. THE ANDEN GROUP, et al., Defendants. AND RELATED CROSS-ACTIONS.	Case No. 388872 **DECLARATION OF MARISA L. D'AMICO IN SUPPORT OF MOTION FOR GOOD FAITH DETERMINATION C.C.P. §877.6** Hearing Date: To be Assigned Time: To Be Assigned Dept.: 10 Hon. Judith W. Kozloski, Presiding

I, Marisa L. D'Amico, declare and state as follows:

1. I am an attorney at law duly licensed to practice before all courts of the State of California. I am an associate with the law firm of Bishop, Barry, Howe, Haney & Ryder, attorneys for Defendant/Cross-complainant, THE ANDEN GROUP, in the above entitled matter.

2. This Declaration is made in support of the Motion for Good Faith determination by and between PLAINTIFF, ANDEN and all SETTLING PARTIES.

/ / /

BISHOP, BARRY, HOWE, HANEY & RYDER
A PROFESSIONAL CORPORATION
275 BATTERY STREET, TWELFTH FLOOR
SAN FRANCISCO, CALIFORNIA 94111-3333
TELEPHONE (415) 421-8550

3. I have personal knowledge of the matters set forth in this Declaration, except as to those matters which are stated on information and belief, which matters I believe to be true. If called upon as a witness, I could, and would, competently testify to the following:

4. I, along with plaintiffs counsel, negotiated the settlement described in this motion for confirmation of good faith settlement between PLAINTIFF, Edgewater Isle Homeowners Association, defendant/cross-complainant, THE ANDEN GROUP, and all the SETTLING PARTIES. The settlement is the result of arms length negotiations between all parties, and is not designed in any way, shape or form to injure any possible non-settling partis, (at which time there are none of which ANDEN is aware). There is no collusion or fraud in the settlement.

5. On behalf of ANDEN, and with the assistance of Special Master William L. Nagle and Mediator Randall W. Wulff, a protocol and pre-trial order case management plan was devised to accomplish a global settlement in this case.

6. Pursuant to the Pre-Trial Orders, both plaintiff and defense experts prepared repair recommendations and cost estimates based thereon. Attached to this Declaration as Exhibit "A" is a true and correct copy of the Plaintiff and Defense Comparison Cost Estimates for Repairs.

7. Attached to this Declaration as Exhibit "B" is a true and correct copy of the Settlement & Mutual Release Agreement in the above-referenced matter.

8. At least 15 settlement conferences took place over the pendency of this litigation, with the assistance of William L.

BISHOP, BARRY, HOWE, HANEY & RYDER
A PROFESSIONAL CORPORATION
275 BATTERY STREET, TWELFTH FLOOR
SAN FRANCISCO, CALIFORNIA 94111-3333
TELEPHONE (415) 421-9550

Nagle, the last of which took place on April 15 and 16, 1998 before Randall W. Wulff, and which culminated in the global settlement of this matter.

9. Several parties, including The Anden Group, who had problems with its primary insurance coverage, had applicable insurance policies with either aggregate problems, deductibles, special exclusions and coverages, etc., which impacted the global settlement of this case, and which in fact, underline the good faith nature of this settlement.

10. There are no true non-settling parties of which ANDEN is aware. Firemens Fund and Scottsdale paid amounts on behalf of O'BRIEN & HICKS. The amount paid is well within a Tech-Bilt ballpark analysis.

11. For all settling parties involved in only one issue, the entire settlement contribution is allocated to that issue.

12. For all settling parties involved in more than one issue, the settlement was allocated based on a fair and equitable division of that party's liability on each issue, vis-a-vis the other party's share.

13. ANDEN's settlement contribution was made on an issue by issue basis and was also made based on insurance concerns.

14. The Settlement & Release Agreement, a copy of which is attached hereto, has been signed by most, but not all, of the settling parties. Per Pre-Trial order of the Special Master and the Court, the final deadline for signing of the Settlement & Mutual Release Agreement is July 24, 1998. The agreement shall, thus, be fully executed by the time of hearing of the Motion for Good Faith Determination.

BISHOP, BARRY, HOWE, HANEY & RYDER
A PROFESSIONAL CORPORATION
275 BATTERY STREET, TWELFTH FLOOR
SAN FRANCISCO, CALIFORNIA 94111-3333
TELEPHONE (415) 421-6550

I declare under penalty of perjury under the laws of State of California that the foregoing is true and correct and that, if called as a witness, I could testify competently thereto.

Executed on July 20, 1998 at San Francisco, California.

MARISA L. D'AMICO

BISHOP, BARRY, HOWE, HANEY & RYDER
A PROFESSIONAL CORPORATION
275 BATTERY STREET, TWELFTH FLOOR
SAN FRANCISCO, CALIFORNIA 94111-3333
TELEPHONE (415) 421-6550

EDGEWATER ISLE NORTH

San Mateo, CA

Preliminary Repair Estimate

(Based on Defendant's Preliminary Repair Report of 11.25.97)

JKA No: 95-733-21
Prepared by: G.Z.&G.K.
Checked by: A.J.K.
File : 9573321-edgewater

Item No.	Description	Total Hard Cost	Prorates (Burden) 43.45%	Total
	SUMMARY			
1.0	SITE : Sections 1, 12, 13, 14, 15 & 17	266,953	115,994	382,947
2.0	STRUCTURAL	1,057,196	459,362	1,516,558
3.0	FIRE RESISTIVE CONSTRUCTION	339,659	147,585	487,244
4.0	ROOFING	53,094	23,070	76,164
5.0	MOISTURE AND CONDENSATION CONTROL	16,660	7,239	23,899
6.0	2 ND. LEVEL ENTRY DECKS	1,378	599	1,976
7.0	STAIRS	99,100	43,060	142,160
8.0	EXTERIOR WALLS	6,269	2,724	8,994
9.0	WINDOWS AND DOORS	129,638	56,329	185,967
10.0	ACOUSTIC	No repair recommended		
11.0	MISCELLANEOUS	7,804	3,391	11,195
12.0	POOL	Currently under investigation		
13.0	POOL BUILDING	Included in Section 1.0		
14.0	GARAGE BUILDINGS	Included in Section 1.0		
15.0	GEOTECHNICAL	Included in Section 1.0		
16.0	WOOD RELATED DEFECTS	52,381	22,760	75,141
17.0	CIVIL DEFICIENCIES	Included in Section 1.0		
	SUB -TOTAL	**2,030,132**	**882,113**	**2,912,245**
	CONTINGENCY 8%	162,411		
	SUB - TOTAL	2,192,543		
	GENERAL REQUIREMENTS 10%	219,254		
	SUB -TOTAL	2,411,797		
	CONTRACTOR'S FEE 15%	361,770		
	SUB -TOTAL	2,773,567		
	ARCHITECTURAL AND ENGINEERING FEE 5%	138,678		
	TOTAL	**2,912,245**		**2,912,245**
	RELOCATION EXPENSE	292,500		292,500
	TOTAL ESTIMATED COST	**3,204,745**		**3,204,745**

PRELIMINARY

EDGEWATER ISLE NORTH

San Mateo, CA

Preliminary Repair Estimate

(Based on Plaintiff's Preliminary Repair Report of 11.25.97)

JKA No: 95-733-21
Prepared by: G.Z.&G.K.
Checked by: A.J.K.
File : 9573321-edgewater

Item No.	Description	Total Hard Cost	Prorates (Burden) 43.45%	Total
	SUMMARY			
1.0	SITE	60,449	26,266	86,714
2.0	STRUCTURAL	1,167,529	507,303	1,674,832
3.0	FIRE RESISTIVE CONSTRUCTION	1,009,356	438,575	1,447,931
4.0	ROOFING	161,845	70,323	232,168
5.0	MOISTURE AND CONDENSATION CONTROL	51,178	22,237	73,415
6.0	2 ND. LEVEL ENTRY DECKS	254,950	110,778	365,728
7.0	STAIRS	98,708	42,890	141,597
8.0	EXTERIOR WALLS	171,340	74,449	245,789
9.0	WINDOWS AND DOORS	656,020	285,047	941,067
10.0	ACOUSTIC	59,123	25,689	84,812
11.0	MISCELLANEOUS	132,374	57,518	189,892
12.0	POOL	Currently under investigation		
13.0	POOL BUILDING	2,669	1,160	3,828
14.0	GARAGE BUILDINGS	21,242	9,230	30,472
15.0	GEOTECHNICAL	No scope of repair work at Report of 11.25.97		
16.0	WOOD RELATED DEFECTS	879,114	381,984	1,261,098
17.0	CIVIL DEFICIENCIES	106,994	46,490	153,484
	SUB -TOTAL	**4,832,889**	**2,099,939**	**6,932,827**
	CONTINGENCY 8%	386,631		
	SUB - TOTAL	5,219,520		
	GENERAL REQUIREMENTS 10%	521,952		
	SUB -TOTAL	5,741,472		
	CONTRACTOR'S FEE 15%	861,221		
	SUB -TOTAL	6,602,693		
	ARCHITECTURAL AND ENGINEERING FEE 5%	330,135		
	TOTAL	**6,932,827**		**6,932,827**
	RELOCATION EXPENSE	354,375		354,375
	TOTAL ESTIMATED COST	**7,287,202**		**7,287,202**

PRELIMINARY

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

This Settlement Agreement and General Release (hereinafter, "AGREEMENT") is entered into, by and between, Plaintiff EDGEWATER ISLE NORTH HOMEOWNERS ASSOCIATION, INC., pursuant to California Code of Civil Procedure Section 383, their respective heirs, successors-in-interest and assigns (hereinafter "ASSOCIATION"); THE ANDEN GROUP, a California Limited partnership, ESDEN PARTNERS, MDG ASSOCIATES, LTD., ESR CORPORATION, TMD CORPORATION and MIDEN CORPORATION (hereinafter collectively referred to as "THE ANDEN GROUP"), MISSION DRYWALL OF SAN JOSE, SILVA FENCE COMPANY, SAN CARLOS SHEET METAL WORKS, TARA COATINGS, INC., TECHNIBUILDERS IRON, PACIFIC COAST BUILDING PRODUCTS dba ALCAL ROOFING & INSULATION, CARLOS RODRIGUEZ PAINTING, DANIEL SMITH PLASTERING, INC., GONSALVES & SANTUCCI, INC., doing business as CONCO CEMENT COMPANY, B.L. COHEN LANDSCAPE, MELVIN LEE ASSOCIATES, FISK, FIRENZE & McLEAN, RUTH & GOING, INC., ASH ROOFING, C. APARICIO CEMENT, and SIERRA LUMBER ("SETTLING SUB-CONTRACTORS").

Each on behalf of themselves and their respective principals, agents, attorneys, insurers, officers, directors, shareholders, servants, representatives, employees, members, partners, subsidiaries, affiliated companies, predecessors, successors-in-interest and assigns (hereinafter, collectively "SETTLING PARTIES"), enters into this AGREEMENT and all terms of this AGREEMENT with respect to the litigation and claims described herein.

That GLORIA DEVELOPMENT CO., INC., a California corporation, O'BRIEN & HICKS, INC., a California corporation, and O'BRIEN & HICKS 1988 & BEYOND, LTD. (hereinafter collectively referred to as "O'BRIEN & HICKS"), has refused to enter into this Settlement Agreement, however, as more fully set forth herein, the carriers for O'BRIEN & HICKS have agreed to contribute $750,000.00 on the condition that O'BRIEN & HICKS and its carriers be released by all of the parties set forth above, including, but not limited

EXHIBIT B

to, the plaintiff EDGEWATER ISLE NORTH HOMEOWNERS ASSOCIATION, and THE ANDEN ENTITIES.

RECITALS

WHEREAS, the ASSOCIATION has commenced a lawsuit, entitled Edgewater Isle North Homeowners Association vs. The Anden Group, et al., San Mateo County Superior Court No. 388872 (hereinafter the "ACTION"), which is now pending in the San Mateo County Superior Court. The ASSOCIATION's operative Complaint consists, inter alia, of causes of action for breach of implied warranties, strict liability, negligence, and negligence per se, arising out of any and all claims, demands, losses, damages, written contracts, costs, attorney's fees, actions, causes of action, and liabilities of whatever kind and nature, whether known or unknown, suspected or claimed, which arise from, or are directly or indirectly related to, or are connected with, or caused by, the subject project, including, but not limited to, the design, construction, repair and sale of the PROJECT, the cost of repair associated therewith and all issues related hereto.

WHEREAS, Plaintiff in said Complaint alleges defects and deficiencies in the design, development and construction of the Edgewater Isle North project (hereinafter "PROJECT"), a condominium development consisting of 224 condominium units, common areas and appurtenances located in the City of San Mateo, County of San Mateo, State of California, and seeks recovery of damages resulting from said alleged defects and deficiencies.

WHEREAS the SETTLING SUBCONTRACTORS are as follows: MISSION DRYWALL OF SAN JOSE, SILVA FENCE COMPANY, SAN CARLOS SHEET METAL WORKS, TARA COATINGS, INC., TECHNIBUILDERS IRON, PACIFIC COAST BUILDING PRODUCTS dba ALCAL ROOFING & INSULATION, CARLOS RODRIGUEZ PAINTING, DANIEL SMITH PLASTERING, INC., GONSALVES & SANTUCCI, INC., doing business as CONCO CEMENT COMPANY, B.L. COHEN LANDSCAPE, MELVIN LEE ASSOCIATES, FISK, FIRENZE & McLEAN, RUTH & GOING, INC., ASH ROOFING, C. APARICIO CEMENT, and SIERRA LUMBER.

WHEREAS, THE ANDEN GROUP and KLINGBEIL, having been sued as

a defendant by the ASSOCIATION and THE ANDEN GROUP, have filed a Cross-Complaint against the SETTLING SUBCONTRACTORS, and others, in the ACTION pleading causes of action for, inter alia, breach of written contract to indemnify, breach of written contract to defend, breach of oral contract to indemnify, to obtain insurance, and to defend, total equitable indemnity, partial equitable indemnity, contribution and repayment, and declaratory relief, based on their involvement in, and potential liability for deficiencies and defects in the design, development and construction of the PROJECT, or portions thereof.

WHEREAS, O'BRIEN & HICKS, INC., and GLORIA DEVELOPMENT CO., INC. (hereinafter collectively "O'BRIEN & HICKS"), having been sued as defendants by the ASSOCIATION, has filed a Cross-Complaint against THE ANDEN GROUP and KLINGBEIL in the ACTION pleading causes of action for, inter alia, deemed implied equitable indemnity, deemed express indemnity for comparative negligence, breach of written agreement for indemnification, breach of oral agreement to name cross-complainants as named insureds on its policies of insurance with various carriers, declaration of rights and liabilities, and contribution, based on their involvement in, and potential liability for deficiencies and defects in the design, development, sales and construction of the PROJECT, or portions thereof.

WHEREAS, it is the intent of the SETTLING PARTIES to finally resolve all of the claims in issue between and among them in the ACTION, as well as any and all past, present or future claims, demands, actions, causes of action, and liability of whatever kind and nature, whether known or unknown, suspected or claimed, relating to the design, development and construction of the PROJECT, and in order to preclude any potential future litigation between and among the SETTLING PARTIES relating to the PROJECT, all terms of this AGREEMENT are to be construed so that their meaning will effectuate this intent, except as to the limitations and reservations applicable to THE ANDEN GROUP, KLINGBEIL, and O'BRIEN & HICKS as hereinafter set forth.

TERMS

WHEREFORE, in consideration of the covenants and agreements expressed herein, and the recitals set forth above, which form a part of, and are incorporated into this AGREEMENT, the parties hereto agree as follows:

1.0 Settlement Contingencies

The Settlement that is the subject of this AGREEMENT is expressly conditioned upon the following contingencies: (1) confirmation of a good faith settlement determination by the trial court pursuant to C.C.P. § 877.6, (2) Plaintiff's, THE ANDEN GROUP's and all SETTLING SUBCONTRACTORS' signatures on the Settlement Agreement, and (3) Plaintiff providing counsel for THE ANDEN GROUP and KLINGBEIL, with a signed Request for Dismissal, with prejudice, of its entire complaint.

This Settlement that is the subject of this AGREEMENT is expressly conditioned on the satisfaction of the SETTLEMENT CONTINGENCIES. The ASSOCIATION and ANDEN agree that they will exercise the utmost good faith in removing these SETTLEMENT CONTINGENCIES.

2.0 Payments

2.1 (a) Defendants and Cross-Defendants, by and through their respective insurers, shall pay to HOA the aggregate sum of Four Million Seven Hundred Thirty-Three Thousand Seven Hundred Seventy-Two dollars and no cents ($4,733,772.00), the "Settlement Amount", in full and final settlement, and as an accord and satisfaction of all claims advanced by the ASSOCIATION.

2.1 (b) The above payments will hereinafter by collectively referred to as the "Settlement Sum". The contributions of THE ANDEN GROUP and KLINGBEIL's carriers, and the SETTLING SUB-CONTRACTORS and their respective carriers to the Settlement Sum are set forth in Exhibit "A", which is attached hereto and incorporated herein by reference.

2.2 The ASSOCIATION agrees that the Settlement Sum, less the $2.1 million amount that is to be guaranteed by International Insurance Company, as set forth in 2.4 below, will be held in an

interest bearing trust account and shall not be withdrawn by or disbursed to the ASSOCIATION, or any other individual or entity, until such time as an authorized representative(s) of the ASSOCIATION executes the Settlement Agreement and Mutual Release, Plaintiff's counsel delivers a signed Request for Dismissal, with prejudice, to THE ANDEN GROUP and KLINGBEIL's counsel and the court has approved the Good Faith Settlement motion.

2.3 Excepting THE ANDEN GROUP and KLINGBEIL, and parties with foreign based carriers, all Defendants and Cross-Defendants, by and through their respective insurers, shall each pay that portion of the Settlement Amount as is specified in Exhibit "A" attached hereto. Each such payment shall be made by check payable to the order of "THE LAW OFFICES OF THOMAS E. MILLER IN TRUST FOR THE EDGEWATER ISLE NORTH HOMEOWNERS ASSOCIATION", and shall be delivered no later than close of business on Friday, May 15, 1998 to the attention of Thomas E. Miller, Esq., c/o The Law Offices of Thomas E. Miller, 4685 MacArthur Court, Suite 220, Newport Beach, CA 92660. The funding deadline for foreign based carriers is sixty(60) days from April 15, 1998 or June 15, 1998.

2.4 The parties understand that with regard to the total settlement contribution of THE ANDEN GROUP and KLINGBEIL, INC. the sum of Two Million One Hundred Thousand dollars and no/cents ($2,100,000.00) shall be guaranteed by International Insurance Company. Counsel for Plaintiff, THE ANDEN GROUP and International Insurance Company shall use their best cooperative efforts to collect the Two Million One Hundred Thousand dollars and no/cents ($2,100,000.00) in settlement monies from the Federal Court Interpleader action entitled The Home Insurance Company of Illinois v. The Anden Group, et al., U.S. District Court Case No. CV-97-4697 KMW (Ex.). For a sixty (60) day period commencing April 8, 1998, there shall be no interest accruing on settlement monies guaranteed by International Insurance Company. From day sixty one (61) through day two-hundred forty (240), simple interest shall accrue on any outstanding settlement funds at the rate of five percent (5%) per annum. Plaintiff and

International further agree that accrued interest will be capped in the amount of Fifty Thousand dollars and no/cents ($50,000.00).

If, at the conclusion of 240 days, Plaintiff has not received Two Million One Hundred Thousand dollars and no/cents ($2,100,000.00) from The Home Interpleader action, then International Insurance Co., (The excess carrier for THE ANDEN GROUP and KLINGBEIL) will pay the partial settlement amount of $1,600,000.00 less any sum previously paid to the ASSOCIATION from the Federal Interpleader action, subject to a hold back provision of $500,000.00 until the conclusion of the federal interpleader action, including any appeals.

2.5 Nothing in this agreement is intended to alter International Insurance Company's status as excess to The Home policy that is the subject of The Home Interpleader action. Any payment made by International Insurance Company pursuant to this provision before the final disposition of the interpleaded funds is intended as an advancement only to facilitate this settlement. Any such recovery from interpleaded amounts shall be applied first to provide the ASSOCIATION with any portion of the $2.1 million then owing to the ASSOCIATION, and the balance shall be returned to International Insurance Company in repayment of amounts advanced pursuant to this provision. Any amounts advanced by International pursuant to this agreement and not recovered by International in the interpleader action shall reduce the then-remaining limit of liability on International Commercial Umbrella Policy No. 531-002320-2.

3.0 Agreement Contingent upon Court's Good Faith Determination

3.1 The Settlement that is the subject of this AGREEMENT is expressly contingent upon a judicial determination of good faith pursuant to the provision of California Code of Civil Procedure Section 877.6 and Tech-Bilt, Inc., v. Woodward-Clyde & Associates (1985) 38 Cal.3d 488. In the event that a Motion for Good Faith Settlement is not granted, any settling party, in its sole and absolute discretion, may thereafter withdraw from this AGREEMENT

without penalty. Any settlement funds paid by such withdrawing party shall be returned in full to that party.

4.0 Release and Dismissals

In consideration of the payments set forth above and upon satisfaction of the SETTLEMENT CONTINGENCIES, and for other valuable consideration contained herein, the Settling Parties agree as follows:

4.1 The ASSOCIATION does hereby fully and forever completely release, acquit and discharge THE ANDEN GROUP, its carriers, KLINGBEIL and its carriers, O'BRIEN & HICKS, its carriers, and the SETTLING SUB-CONTRACTORS and their respective carriers from any and all claims, demands, losses, damages, written contract, costs, attorney's fees, actions, causes of action, and liabilities of whatever kind and nature, whether known or unknown, suspected or claimed, which arise from, or are directly or indirectly related to, or are connected with, or caused by, the subject PROJECT including, but not limited to, the design, construction, repair and sale of the PROJECT, the cost of repair associated therewith and all issues related thereto.

4.2 THE ANDEN GROUP fully and forever completely releases, acquits and discharges the SETTLING SUB-CONTRACTORS and their respective carriers from any and all claims, demands, losses, damages, actions, causes of action, and liabilities of whatever kind and nature, whether known or unknown, suspected or claimed, which arise from, or are directly or indirectly related to, or are connected with, or caused by, the subject PROJECT including, but not limited to, the design, construction, repair and sale of the PROJECT, the cost of repair associated therewith and all issues related thereto.

4.3 The SETTLING SUB-CONTRACTORS and their respective carriers hereby fully and forever completely release, acquit and discharge THE ANDEN GROUP, KLINGBEIL and O'BRIEN & HICKS, and their respective carriers, and each other from any and all claims, demands, losses, damages, costs, attorney's fees, actions, causes of action, and liabilities of whatever kind and

nature, whether known or unknown, suspected or claimed, which arise from, or are directly or indirectly related to, or are connected with, or caused by, the subject PROJECT including, but not limited to, the design, construction, repair and sale of the PROJECT, the cost of repair associated therewith and all issues related thereto.

4.4 THE ANDEN GROUP and the SETTLING SUB-CONTRACTORS do hereby fully and forever completely release, acquit and discharge the ASSOCIATION from any and all claims, demands, losses, damages, written contracts, costs, attorney's fees, actions, causes of action, and liabilities of whatever kind and nature, whether known or unknown, suspected or claimed, which arise from, or are directly or indirectly related to, or are connected with, or caused by, the subject PROJECT including, but not limited to, the design, construction, repair and sale of the PROJECT, the cost of repair associated therewith and all issues related thereto.

4.5 There is a risk that, after the execution of this AGREEMENT, the subject PROJECT will exhibit or manifest new damage, the scope, location, and character of which are unknown and/or not discovered at the time this AGREEMENT is signed. There is a risk that the damage presently known may now be or may become more serious than is now known, understood, expected or anticipated. Accordingly, the ASSOCIATION shall, and does hereby assume the above-mentioned risks. All releases in this AGREEMENT are expressly intended to cover and include all future damages, defects and discoveries, including all rights and causes of action arising therefrom. The parties are aware, and have been advised by their attorneys, of the provisions of California Civil Code section 1542, which provides:

> A general release does not extend to the claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

The parties hereby expressly waive the provisions of said section 1542 as to all matters within the scope of the claims released hereby. The parties hereby warrant and guarantee that each has full and complete authority to release all such claims on behalf of themselves, their heirs, insurers, assigns and successors-in-interest, provided however and notwithstanding any to the contrary herein contained, THE ANDEN GROUP and its insurance carriers, KLINGBEIL and its insurance carriers, and O'BRIEN & HICKS and its insurance carriers are not releasing, waiving, extinguishing or settling any claims, liens, damages, causes of actions, rights, duties and/or obligations that they may have, directly or indirectly, for or against each other resulting from any express contractual agreements by and between THE ANDEN GROUP, KLINGBEIL and O'BRIEN & HICKS, any insurance issues including, but not limited to, obligation to obtain insurance, obligation to name the other on a policy of insurance as a named insured and/or as an additional insured, allocation of insurance benefits or payments, failure to properly exhaust primary policies, duty to defend, duty to pay liability dollars and bad faith claims, and any claims, demands, damages, liabilities, causes of action, judgments, costs, losses or profits, resulting from the business relationship by and between THE ANDEN GROUP, KLINGBEIL and O'BRIEN & HICKS on the subject PROJECT and/or any other real estate development projects they were involved with, including their respective rights, duties and obligations on the subject PROJECT and/or any other real estate development projects.

4.6 Upon receipt from each of the SETTLING SUB-CONTRACTORS of the settlement monies that each is obligated to pay as set forth herein in satisfaction of the SETTLEMENT CONTINGENCIES, and upon execution of this AGREEMENT by each such party, the ASSOCIATION hereby agrees to dismiss, with prejudice, each SETTLING SUB-CONTRACTOR from its Complaint.

4.7 Upon receipt of the settlement money from each of the SETTLING SUB-CONTRACTORS as set forth herein in satisfaction of

the SETTLEMENT CONTINGENCIES, THE ANDEN GROUP hereby agrees to dismiss, with prejudice, its Cross-Complaint against each of the SETTLING SUB-CONTRACTORS, and the SETTLING SUB-CONTRACTORS hereby agree to dismiss, with prejudice, their Cross-Complaints, if applicable.

4.8 Hold Harmless and Indemnity: THE ASSOCIATION agrees to defend, indemnify, and hold the SETTLING SUB-CONTRACTORS harmless from any and all claims which may be brought by the ASSOCIATION which in some way relate to, are connected with, or arise out of the PROJECT, including, but not limited to, the design, construction, repair and sale of the PROJECT, the cost of repair associated therewith and all issues related thereto. The ASSOCIATION further agrees to indemnify, defend and hold harmless the SETTLING SUB-CONTRACTORS against any challenge by any person or entity to the status, capacity, standing, power or authority of the ASSOCIATION to bring the ACTION, to enter into this AGREEMENT, or to compromise or settle the claims which are the subject of the ACTION and the related cross-actions. The ASSOCIATION also agrees to indemnity, defend and hold harmless the SETTLING SUB-CONTRACTORS from and against all claims, demands, damages or causes of action, real or alleged, arising out of or relating to repair of the PROJECT, failure to perform repairs or improper repairs.

5.0 No Admission of Liability

In entering into this AGREEMENT, no party herein is admitting the sufficiency of any claims, allegations, assertions, contentions or positions of any other party, nor the sufficiency of the defense to any such claims, allegations, assertions, contentions or positions. This AGREEMENT is executed by the Parties for the sole purpose of compromising and settling the claims in issue in the Action, as well as all past, present or potential future claims relating to the design, development and construction of the PROJECT, and it is expressly understood and agreed, as a condition hereof, that this AGREEMENT or its terms or any payment made or to be made hereunder, whether this

instrument becomes effective or not, shall not constitute or be construed to be an admission by any party of the truth of any claims or causes of actions asserted by any other party to this AGREEMENT. The Parties desire to resolve the Action in an amicable fashion, and pursuant to Code of Civil Procedure Section 877, the Parties have entered into this AGREEMENT in good faith.

6.0 General Conditions

6.1 Entire Agreement: This AGREEMENT constitutes the full and entire agreement between the Parties and such Parties acknowledge that there is no other agreement, oral and/or written, between the Parties hereto.

6.2 Waiver of Fees and Costs: The Settling Parties agree to a waiver of fees and costs in consideration of the settlement entered into in this ACTION. The ASSOCIATION is responsible for payment of the fees and investigation costs (including attorneys' fees and costs, expert fees and costs, and other fees and costs) incurred in prosecution of the Action, and THE ANDEN GROUP and all other settling parties are responsible for payment of the fees and costs incurred in their respective defense(s) of the ACTION.

6.3 Authority to Enter Agreement: This AGREEMENT is the result of arms-length negotiations. Each party to this AGREEMENT represents and warrants to the others that the person executing this AGREEMENT on behalf of such party are duly and fully authorized to do so, that each party, where applicable, is acting pursuant to the power and authority granted by its respective Board of Directors, and/or principals, and that no further approvals are required to be obtained from any persons or entities.

6.4 Final Agreement: The parties to this AGREEMENT and each of them acknowledge that (1) this AGREEMENT and its reduction to final form is the result of extensive good faith negotiations between the parties through their respective counsel; (2) said counsel has carefully reviewed and examined this AGREEMENT for execution by said parties, or any of them; and

(3) any statute or rule of construction that ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this AGREEMENT.

6.5 Binding Agreement: This AGREEMENT is and shall be binding upon and shall inure to the benefit of the predecessors, subsidiaries, successors, assigns, parties, agents, officers, employees, associates, legal representatives, heirs, executive, and/or administrators of each of the parties hereto.

6.6 Attorneys' Fees for Future Action: In the event that any party should bring an action or other proceeding against another party for the enforcement of, or seek a declaration as to, or assert by way of defense, any term or provision of this AGREEMENT, there shall be an award of reasonable attorney's fees and costs to the prevailing party or parties as the case may be.

6.7 Interpretative Law: This AGREEMENT is made and entered into in the State of California and shall, in all respects be interpreted, enforced and governed by and under the laws of the State of California.

6.8 Modifications: This AGREEMENT may be amended or modified only by a writing signed by all the parties to this AGREEMENT that are affected by the amendment or modification.

6.9 Paragraph Headings: Paragraph headings are for reference only and shall not affect the interpretation of any paragraph hereto.

6.10 No Inducement: Each of the parties to this AGREEMENT warrants that no promise or inducement has been made or offered by any of the parties, except as set forth herein, and that this AGREEMENT is not executed in reliance upon any statement or representation of any of the parties or their representatives or their experts, concerning the nature and extent of the injuries, damages or legal liability thereof. The parties further represent that they have been represented by legal counsel during the course of the negotiations leading to the signing of this agreement, and that they have been advised by legal counsel with respect to the meaning of this AGREEMENT and its legal affect.

6.11 Counterparts: This AGREEMENT may be executed in counter-parts with the same effect as if all original signatures were placed on one document, and all of which together shall be one and the same Agreement.

6.12 Effective Date: The Parties hereto deem this AGREEMENT to be effective as of June 15, 1998.

6.13 Agreement Considered as a Whole: The language of this Settlement Agreement shall be construed as a whole according to this fair, reasonable and plain meaning and not strictly for or against any of the settling parties.

6.14 Continuing Jurisdiction: The SETTLING PARTIES to this AGREEMENT agree that the Court and Special Master William Nagle shall have continuing jurisdiction over the SETTLING PARTIES to the AGREEMENT, this ACTION and the related cross-actions, pursuant to Code of Civil Procedure § 664.6, in order to finalize, execute, and enforce the terms and conditions of this AGREEMENT.

IN WITNESS WHEREOF, the undersigned have executed this Settlement Agreement and Mutual Release on the date affixed by their signature.

The following are settling parties:

SETTLING PARTIES

EDGEWATER ISLE HOMEOWNERS ASSOCIATION, INC.

DATED: _____, 1998 By: _____

Its: _____

///

///

///

///

THE ANDEN GROUP, ESDEN PARTNERS, MDG ASSOCIATES, LTD., ESR CORPORATION, TMD CORPORATION, MIDEN CORPORATION

DATED: _____, 1998 By: _____
Its: _____

MELVIN LEE ASSOCIATES

DATED: _____, 1998 By: _____
Its: _____

RUTH & GOING, INC.

DATED: _____, 1998 By: _____
Its: _____

C. APARICIO CEMENT

DATED: _____, 1998 By: _____
Its: _____

SAN CARLOS SHEET METAL WORKS

DATED: _____, 1998 By: _____
Its: _____

PACIFIC COAST BUILDING PRODUCTS
dba AlCAL ROOFING & INSULATION

DATED: _____, 1998 By: _____
Its: _____

GONSALVES & SANTUCCI, INC., dba CONCO CEMENT COMPANY

DATED: _____, 1998 By: _____
Its: _____

TARA COATINGS, INC.

DATED: _____, 1998 By: _____
Its: _____

FISK, FIRENZE & McCLEAN

DATED: _____, 1998 By: _____
Its: _____

DANIEL SMITH PLASTERING, INC.

DATED: _____, 1998 By: _____
Its: _____

MISSION DRYWALL OF SAN JOSE

DATED: _____, 1998 By: _____
Its: _____

DATED: _____, 1998 By: _____
Its: _____

SILVA FENCE COMPANY

DATED: _____, 1998 By: _____
Its: _____

TECHNIBUILDERS IRON

DATED: _____, 1998 By: _____
Its: _____

CARLOS RODRIGUEZ PAINTING

DATED: _____, 1998 By: _____
Its: _____

B.L. COHEN LANDSCAPE

DATED: _____, 1998 By: _____
Its: _____

APPROVED AS TO FORM:

LAW OFFICES OF THOMAS MILLER

DATED: _____, 1998 By: _____
Thomas E. Miller, Esq.
Bruce Mayfield, Esq.
Attorneys for Plaintiff
EDGEWATER ISLE HOA, Inc.

LONG & LEVIT

DATED: _____, 1998 By: _____
J. Michael Higginbotham, Esq.
John Bevan, Esq.
Attorneys for Cross-Defendants
MELVIN LEE ASSOCIATES and RUTH & GOING, INC.

RUSSELL, KAZAN, BRENNER & MALLETT

DATED: _____, 1998 By: _____
Philip Y. Kazan, Esq.
Attorneys for Cross-Defendant
C. APARICIO CEMENT

LAW OFFICES OF EUGENE L. BASS

DATED: _____, 1998 By: _____
Helen Baumann, Esq.
Attorneys for Cross-Defendant
SAN CARLOS SHEET METAL WORKS

LOW, BALL & LYNCH

DATED: _____, 1998 By: _____
Chester Moore, Esq.
Attorneys for Cross-Defendant
PACIFIC COAST BUILDING
PRODUCTS dba AlCAL ROOFING &
INSULATION

FELICE & DeMARIA

DATED: _____, 1998 By: _____
Anthony J. DeMaria, Esq.
Attorneys for Cross-Defendant
GONSALVES & SANTUCCI, INC.,
dba CONCO CEMENT COMPANY

ROGER, SCOTT & HELMER

DATED: _____, 1998 By: _____
Albert P. Blake, Esq.
Attorneys for Cross-Defendant
TARA COATINGS, INC.

LAW OFFICES OF F. ROSS ADKINS

DATED: _____, 1998 By: _____
Norman La Force, Esq.
Attorneys for Cross-Defendant
TARA COATINGS

GORDON & REES

DATED: _____, 1998 By: _____
S. Mitchell Kaplan, Esq.
Attorneys for Cross-Defendants
FISK, FIRENZE & McCLEAN and
DANIEL SMITH PLASTERING, INC.

CLAPP, MORONEY, BELLAGAMBA, DAVIS
& VUCINICH

DATED: _____, 1998 By: _____
Donald L. Sullivan, Esq.
Attorneys for Cross-Defendants
MISSION DRYWALL OF SAN JOSE
and SILVA FENCE COMPANY, and
Defendant TECHNIBUILDERS IRON

COLLINS & SCHLOTHAULER

DATED: _____, 1998 By: _____
David N. Poll, Esq.
Attorneys for Cross-Defendant
SILVA FENCE CO.

PANDELL & BORSUK

DATED: _____, 1998 By: _____
Jeffrey L. Borsuk, Esq.
James F. Blake, Esq.
Attorneys for Defendant
CARLOS RODRIGUEZ PAINTING

ARCHER, McCOMAS, BRESLIN, McMAHON
& CHRITTON

DATED: _____, 1998 By: _____
Don Fornasier, Esq.
Attorneys for Cross-Defendant
CARLOS RODRIQUEZ PAINTING

DOMINION LAW GROUP

DATED: _____, 1998 By: _____
Susan P. Grey, Esq.
Attorneys for Defendant
B.L. COHEN LANDSCAPE

ROBINSON & WOOD

DATED: _____, 1998 By: _____
David S. Henningsen, Esq.
Attorneys for Defendant
B.L. COHEN LANDSCAPE

ARCHER, McCOMAS, BRESLIN, McMAHON
& CHRITTON

DATED: _____, 1998 By: _____
Rand L. Chritton, Esq.
Donald B. Fornasier, Esq.
Attorneys for Cross-Defendant
C. APARICIO CEMENT and
Defendant B.L. COHEN LANDSCAPE

ZIMMERMAN, KOOMER & CONNOLLY

DATED: _____, 1998 By: _____
Alan H. Finkel, Esq.
Personal Counsel for Defendant
and Cross-Complainant
THE ANDEN GROUP

BISHOP, BARRY, HOWE, HANEY & RYDER

DATED: _____, 1998

By: _____
Marisa L. D'Amico, Esq.
Attorneys for Defendants and Cross-Complainants THE ANDEN GROUP, ESDEN PARTNERS, MDG ASSOCIATES, LTD., ESR CORPORATION, TMD CORPORATION, MIDEN CORPORATION

SETTLEMENT AGREEMENT AND MUTUAL RELEASE
Exhibit A

Settlement Contributions:

The Anden Group:	
International Insurance Company: - $2.1 million of Home Insurance Company's interpleaded funds, guaranteed by International Insurance Company, as set forth in paragraph 2.4 of the Settlement Agreement	$2,100,000.00
United National Insurance Company: - on behalf of The Anden Group and O'Brien & Hicks	807,702.00
Fireman's Fund; Scottsdale; on behalf of O'Brien & Hicks:	750,000.00
Mission Drywall of San Jose:	325,000.00
Silva Fence:	30,000.00
San Carlos Sheet Metal Works:	65,000.00
Tara Coatings:	50,000.00
Technibuilders Iron:	35,000.00
Alcal Roofing:	40,000.00
Carlos Rodriguez Painting:	45,000.00
Daniel Smith Plastering:	60,000.00
Conco Cement Company:	45,000.00
B.L. Cohen Landscape:	35,000.00
Melvin Lee Associates:	15,000.00
Fisk, Firenze & McLean:	180,000.00
Ruth & Going:	125,000.00
Ash Roofing:	1,500.00
C. Aparicio Cement Contractors:	20,000.00
Sierra Lumber:	4,000.00
Total Settlement:	**$4,733,202.00**

Thomas O. Haran, Esq. (SB #76680)
Marisa L. D'Amico, Esq. (SB #152132)
BISHOP, BARRY, HOWE, HANEY & RYDER
275 Battery Street, Twelfth Floor
San Francisco, CA 94111-3333
Telephone: (415) 421-8550

Attorneys for Defendants and Cross-Complainants THE ANDEN GROUP, ESDEN PARTNERS, MDG ASSOCIATES, LTD., ESR CORPORATION, TMD CORPORATION and MIDEN CORPORATION

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN MATEO

EDGEWATER ISLE HOMEOWNERS ASSOCIATION, INC., Plaintiff, v. THE ANDEN GROUP, et al., Defendants. AND RELATED CROSS-ACTIONS.	Case No. 388872 [Proposed] ORDER DETERMINING GOOD FAITH SETTLEMENT [C.C.P. §877.6] Date: To Be Assigned Time: To Be Assigned Dept.: 10 Hon. Judith W. Kozloski, Presiding

The Motion for Determination of Good Faith Settlement of Plaintiff EDGEWATER ISLE NORTH HOMEOWNERS ASSOCIATION, INC., pursuant to California Code of Civil Procedure Section 383, their respective heirs, successors-in-interest and assigns (hereinafter "ASSOCIATION"); THE ANDEN GROUP, a California Limited partnership, ESDEN PARTNERS, MDG ASSOCIATES, LTD., ESR CORPORATION, TMD CORPORATION and MIDEN CORPORATION (hereinafter collectively referred to as "THE ANDEN GROUP"), MISSION DRYWALL OF SAN JOSE, SILVA FENCE COMPANY, SAN CARLOS SHEET METAL WORKS, TARA COATINGS, INC., TECHNIBUILDERS IRON, PACIFIC COAST BUILDING PRODUCTS dba

BISHOP, BARRY, HOWE, HANEY & RYDER
A PROFESSIONAL CORPORATION
275 BATTERY STREET, TWELFTH FLOOR
SAN FRANCISCO, CALIFORNIA 94111-3333
TELEPHONE (415) 421-8550

ALCAL ROOFING & INSULATION, CARLOS RODRIGUEZ PAINTING, DANIEL SMITH PLASTERING, INC., GONSALVES & SANTUCCI, INC., doing business as CONCO CEMENT COMPANY, B.L. COHEN LANDSCAPE, MELVIN LEE ASSOCIATES, FISK, FIRENZE & McLEAN, RUTH & GOING, INC., ASH ROOFING, C. APARICIO CEMENT, and SIERRA LUMBER ("SETTLING PARTIES"), having been presented to this Court; and IT APPEARING TO THE SATISFACTION OF THE COURT that the motion is made pursuant to Code of Civil Procedure § 877.6; that the settlement was made in good faith and within the Tech-Bilt ballpark; that the valuations and allocations are fair and equitable; and considering all declarations and affidavits in support of same; and considering the signed Settlement & Mutual Release Agreement, the Court's entire file, and oral argument having been heard, that there is good cause for determining the settlement to be in good faith;

NOW, THEREFORE, IT IS ORDERED that the settlement between the plaintiff EDGEWATER ISLE HOMEOWNERS ASSOCIATION, the defendant/cross-complainant THE ANDEN GROUP, and all SETTLING PARTIES hereinabove listed, was made and entered into in good faith between the parties, within the meaning and effect of Code of Civil Procedure § 877.6; and that all parties thereto are entitled to the protection of Code of Civil Procedure § 877, et seq.

IT IS FURTHER ORDERED that the settlement between the aforesaid parties bars any pending and future claims by alleged joint tortfeasors or co-obligors against defendant/cross-complainant, THE ANDEN GROUP, et al., or any other SETTLING PARTIES for equitable comparative contribution, or partial

BISHOP, BARRY, HOWE, HANEY & RYDER
A PROFESSIONAL CORPORATION
275 BATTERY STREET, TWELFTH FLOOR
SAN FRANCISCO, CALIFORNIA 94111-3333
TELEPHONE (415) 421-6500

comparative indemnity, based on comparative negligence or comparative fault; and all cross-complaints against ANDEN and SETTLING PARTIES, and any deemed complaints and/or cross-complaints in this action, asserting such barred claims are dismissed with prejudice.

Date: _____

_____
Judge of the Superior Court

BISHOP, BARRY, HOWE, HANEY & RYDER
A PROFESSIONAL CORPORATION
275 BATTERY STREET, TWELFTH FLOOR
SAN FRANCISCO, CALIFORNIA 94111-3333
TELEPHONE (415) 421-8550

William L. Nagle
345 Lorton Avenue, Suite 204
Burlingame, CA 94010-4116
650/579-0500\Fax 650/579-0623

Special Master

FILED
SAN MATEO COUNTY
JUL 01 1998
Clerk of the Superior Court
By _____ DEPUTY CLERK

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN MATEO

EDGEWATER ISLE HOMEOWNERS ASSOCIATION, Plaintiff, vs. THE ANDEN GROUP, et al., Defendants. AND RELATED CROSS-ACTIONS.	CASE NO. 388872 **AMENDMENT TO ORDER RE SETTLEMENT**

The Court having appointed William L. Nagle as Special Master/Mediator in this case and subject to the recorded settlement hearings on April 15 and 16, 1998, and good cause appearing therefore,

IT IS HEREBY ORDERED that the Order Re Settlement filed May 8, 1998 is amended as follows:

1. Counsel for The Anden Group shall provide all parties with a draft of the proposed Settlement Agreement and Mutual Release by June 16, 1998. If any party has any comments or proposed revisions

to said agreement they should provide them to counsel for Plaintiff and The Anden Group on or before June 23, 1998.

2. A final version of the Settlement Agreement shall be circulated to all parties by The Anden Group by close of business on June 23, 1998. If the parties are unable to reach an agreement concerning any provision of the Settlement Agreement a conference will be scheduled with the Special Master to resolve any disputes.

3. All parties are further ordered that in accordance with the May 8, 1998 order, that settlement contributions from all parties, except The Anden Group, were due on May 16, 1998. Any party that has not yet remitted it settlement contribution to Plaintiff's counsel shall due so immediately, without regard to the obligation to sign the Settlement agreement.

4. Settlement drafts shall be held in trust by Plaintiff's counsel. No funds will be withdrawn by or disbursed to Plaintiff or any other person or entity unless and until:

(a). The Settlement agreement has been fully executed by all parties;

(b). The Court has approved the Good Faith Settlement Motion;

(c). The Anden Group entities, the O'Brien & Hicks entities and settling subcontractors have been dismissed with prejudice from the subject lawsuit by Plaintiff; and

(d). Or, upon further order of the Court.

IT IS SO RECOMMENDED:

Dated: 6/12/98

William Nagle, Special Master

IT IS SO ORDERED:

Dated: JUN 22 1998

Judge of the Superior Court

5074
William L. Nagle, SBN 59788
Special Master/Mediator
345 Lorton Avenue, Suite #204
Burlingame, CA 94010
(650) 579-0500
(650) 579-0623 (Fax)

FILED
SAN MATEO COUNTY
JUN 23 1998
Clerk of the Superior Court
By _____ DEPUTY CLERK

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN MATEO

EDGEWATER ISLE HOMEOWNERS ASSOCIATION, et al.,

Plaintiff,

v.

THE ANDEN GROUP, et al.,

Defendants,

_____/

AND RELATED CROSS-ACTIONS

_____/

CASE NO. 388872

DECLARATION OF SERVICE BY MAIL

I am a citizen of the United States. My business address is 345 Lorton Avenue, Suite #204, Burlingame, California. I am employed in the County of San Mateo where this mailing occurs. I am over the age of eighteen years and not a party to the within cause. I served AMENDMENT TO ORDER RE SETTLEMENT (Endorsed-Filed June 18, 1998) on the following person(s) on the date set forth below, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in a United States post office mailbox at Burlingame, California, addressed as follows:

Please see attached list.

I, Christine L. Britton, declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on June 19, 1998 at Burlingame, California.

Christine L. Britton

06/19/98

EDGEWATER ISLE HOA v. THE ANDEN GROUP, et al.
San Mateo County Superior Court Case No. 388872

Proof of Service List

William L. Nagle, Esq. Special Master/Mediator 345 Lorton Avenue, Suite #204 Burlingame, CA 94010 (650) 579-0500 (650) 579-0623 (Fax)	SPECIAL MASTER
Thomas A. Miller, Esq. Law Offices of Thomas A. Miller 4685 Mac Arthur Court, Suite #220 Newport Beach, CA 92660 (714) 252-9150 (714) 442-0646 (Fax)	Plaintiff, Edgewater Isle HOA, Inc. (in 7/28/97)
Marisa D'Amico, Esq. Bishop, Barry, Howe, Haney & Ryder Embarcadero Center West 275 Battery Street, 12th Floor San Francisco, CA 94111 (415) 421-8550 (415) 362-4730 (Fax)	The Anden Group, Esden Partners, MDG Associates, Ltd., ESR Corporation, TMD Corporation, and Miden Corporation
Alan H. Finkel, Esq. Zimmerman, Koomer & Connolly 10960 Wilshire Blvd., Suite #1225 Los Angeles, CA 90024 (310) 231-6565 (310) 231-6566 (Fax)	The Anden Group (personal counsel)
Alec M. Barinholtz, Esq. Ross, Dixon & Masback Five Park Plaza, Suite #1200 Irvine, CA 92614-8529 (714) 622-2700 (714) 622-2739 (Fax)	International Insurance Company (Anden Group)
Lewis K. Loss, Esq. Ross, Dixon & Masback 601 Pennsylvania Avenue, N.W. North Building Washington, D.C. 20004-2688 (202) 662-2000 (202) 662-2190 (Fax)	International Insurance Company (Anden Group)

Mr. Alan Freudenheim International Insurance Company 181 W. Madison Street, 26th Floor Chicago, IL 60602 (312) 849-5150 (312) 849-5293 (Fax)	International Insurance Company (Anden Group)
Thomas A. Foster, Esq. Marrone, Robinson, Frederick & Foster 111 N. 1st Street, Suite #300 Burbank, CA 91502 (818) 841-1144 (818) 841-0746 (Fax)	
A. Raymond Hammerick, III, Esq. Law Offices of A. Raymond Hammerick, III 10 Universal City Plaza, Suite #2055 Universal City, CA 91608 (818) 763-5295 (818) 763-2308 (Fax)	
Amy Dantzler, Esq. Quisenberry & Barbanel, LLP 2049 Century Park East, Suite #2200 Los Angeles, CA 90067 (310) 785-7966 (310) 785-0254 (Fax)	
John J. Carniato, Esq. Law Offices of John J. Carniato 3736 Mt. Diablo Blvd., Suite #300 Lafayette, CA 94549 (510) 283-1552 (510) 283-9830 (Fax)	O'Brien & Hicks, Inc., O'Brien & Hicks 1988 & Beyond, Ltd., and Gloria Development co., Inc.
Josh Shinnick, Esq. Hoge, Fenton, Jones & Appel, Inc. 60 S. Market Street San Jose, CA 95113 (408) 287-9501 (408) 287-2583 (Fax)	O'Brien & Hicks, Inc.
Anthony B. Varni, Esq. Varni, Fraser, Hartwell & Rodgers 22771 Main Street Hayward, CA 94543 (510) 886-5000 (510) 538-8797 (Fax)	O'Brien & Hicks, Inc.

Chester G. Moore, III, Esq. Low, Ball & Lynch 10 Twin Dolphin Road, Suite #B-500 Redwood City, CA 94065 (650) 591-8822 (650) 591-8884 (Fax)	Alcal Roofing & Insulation
Susan P. Grey, Esq. Dominion Law Group 1155 N. First Street, Suite #101 San Jose, CA 95112 (408) 288-5592 (408) 938-1035 (Fax)	B.L. Cohen Landscape, Inc. (in 9/97)
David S. Henningsen, Esq. Robinson & Wood 227 N. First Street San Jose, CA 95113 (408) 298-7120 (408) 298-0477 (Fax)	B.L. Cohen Landscape, Inc. (in 10/97)
Donald B. Fornasier, Esq. Archer, McComas, Breslin, McMahon & Chritton 2033 N. Main Street, Suite #800 Walnut Creek, CA 94596 (510) 930-6600 (510) 930-6620 (Fax)	B.L. Cohen Landscape, Inc. (in 11/97)
Philip Y. Kazan, Esq. Russell, Kazan, Brenner & Mallett 343 Sansome Street, Suite #525 San Francisco, CA 94104 (415) 956-5841 (415) 956-0708 (Fax)	C. Aparicio Cement
Donald B. Fornasier, Esq. Archer, McComas, Breslin, McMahon & Chritton 2033 N. Main Street, Suite #800 Walnut Creek, CA 94596 (510) 930-6600 (510) 930-6620 (Fax)	C. Aparicio Cement and Carlos Rodriguez Painting (in 3/98)
Timothy Fogarty, Esq. Pandell & Borsuk, LLP 2033 N. Main Street, Suite #450 Walnut Creek, CA 94596-3722 (510) 746-8800 (510) 746-8898 (Fax)	Carlos Rodriguez Painting (in 9/97)

David Brault, Esq.
5160 Birch Street, Suite #200
Newport Beach, CA 92660
(714) 752-2450
(714) 851-8188 (Fax)

Cell-Crete Corporation (in 3/98)

S. Mitchell Kaplan, Esq.
Gordon & Rees
275 Battery Street, 20th Floor
San Francisco, CA 94111
(415) 986-5900
(415) 986-8054 (Fax)

Daniel Smith Plastering, Inc.

Anthony J. DeMaria, Esq.
Filice & DeMaria
1130 Burnett Avenue
Building D, Suite H
Concord, CA 94520
(510) 676-5094
(510) 676-0548 (Fax)

Gonsalves & Santucci, Inc. dba
Conco Cement Company

S. Mitchell Kaplan, Esq.
Gordon & Rees
275 Battery Street, 20th Floor
San Francisco, CA 94111
(415) 986-5900
(415) 986-8054 (Fax)

Fisk, Firenze & McLean

J. Michael Higginbotham, Esq.
Long & Levit
101 Califonria Street, Suite #2300
San Francisco, CA 94111
(415) 397-2222
(415) 397-6392 (Fax)

Ruth & Going, Inc. and
Melvin Lee Associates

Donald L. Sullivan, Esq.
Clapp, Moroney, Bellagamba, Davis
& Vucinich
4400 Bohannon Drive, Suite #100
Menlo Park, CA 94025
(650) 327-1300
(650) 327-3707 (Fax)

Mission Drywall of San Jose (in 5/96);
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Kevin J. Tully, Esq.
Greene, Chauvel, Descalso & Tully
901 Mariner's Island Blvd., Suite #400
San Mateo, CA 94404-1594
(650) 573-9500
(650) 573-9689 (Fax)

North Empire Construction and
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Robert K. Phillips, Esq. Phillips & Spallas, LLP 225 Bush Street, 16th Floor San Francisco, CA 94104 (415) 439-8870 (415) 439-882 (Fax)	Peninsula Floors, Inc. (in 9/97; out 12/97)
Nancy A. McPherson, Esq. Holmes, Drevlow, Carmody, Schmidt & Nakano 180 Montgomery Street, Suite #2100 San Francisco, CA 94104 (415) 362-1422 (415) 362-7054 (Fax)	Sacramento A-1 Door
Helen B. Baumann, Esq. Law Office of Eugene L. Bass 495 Seaport Court, Suite #103 Redwood City, CA 94063 (650) 361-1199 (650) 369-4984 (Fax)	San Carlos Sheet Metal Works, Inc.
Howard L. Churchill, Esq. Schofield & Schiller 100 Pringle Avenue, Suite #510 Walnut Creek, CA 94596 (510) 934-3600 (510) 934-2257 (Fax)	Sierra Lumber & Fence Company (in 9/97)
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Albert P. Blake, Esq.
Roger, Scott & Helmer
900 Veterans Blvd., Suite #430
Redwood City, CA 94063
(650) 365-7700
(650) 365-0677 (Fax)

Tara Coatings

Norman La Force, Esq.
Law Offices of F. Ross Adkins
25 Pacific Avenue Mall
San Francisco, CA 94111
(415) 981-5200
(415) 981-2097 (Fax)

Tara Coatings

Mr. Donald W. Simons, Jr., Esq.
Frank Pinto Adjusters, Inc.
1504 Franklin Street, Suite #308
Oakland, CA 94612
(510) 834-1474
(510) 834-7032 (Fax)
(510) 654-1425 (Hm Fax)

Courtesy Copy

William L. Nagle
345 Lorton Avenue, Suite 204
Burlingame, CA 94010-4116
650/579-0500\Fax 650/579-0623

Special Master

FILED
SAN MATEO COUNTY

JUN 18 1998

Clerk of the Superior Court
By Dianne Ramus
DEPUTY CLERK

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN MATEO

EDGEWATER ISLE HOMEOWNERS ASSOCIATION, Plaintiff, vs. THE ANDEN GROUP, et al., Defendants. AND RELATED CROSS-ACTIONS.	CASE NO. 388872 **AMENDMENT TO ORDER RE SETTLEMENT**

The Court having appointed William L. Nagle as Special Master/Mediator in this case and subject to the recorded settlement hearings on April 15 and 16, 1998, and good cause appearing therefore,

IT IS HEREBY ORDERED that the Order Re Settlement filed May 8, 1998 is amended as follows:

1. Counsel for The Anden Group shall provide all parties with a draft of the proposed Settlement Agreement and Mutual Release by June 16, 1998. If any party has any comments or proposed revisions

SENT BY: 6-17-98 ; 5:09PM ; THOMAS E. MILLER- 6505790623:# 2/ 4

to said agreement they should provide them to counsel for Plaintiff and The Anden Group on or before June 23, 1998.

2. A final version of the Settlement Agreement shall be circulated to all parties by The Anden Group by close of business on June 23, 1998. If the parties are unable to reach an agreement concerning any provision of the Settlement Agreement a conference will be scheduled with the Special Master to resolve any disputes.

3. All parties are further ordered that in accordance with the May 8, 1998 order, that settlement contributions from all parties, except The Anden Group, were due on May 16, 1998. Any party that has not yet remitted it settlement contribution to Plaintiff's counsel shall due so immediately, without regard to the obligation to sign the Settlement agreement.

4. Settlement drafts shall be held in trust by Plaintiff's counsel. No funds will be withdrawn by or disbursed to Plaintiff or any other person or entity unless and until:

(a). The Settlement agreement has been fully executed by all parties;

(b). The Court has approved the Good Faith Settlement Motion;

(c). The Anden Group entities, the O'Brien & Hicks entities and settling subcontractors have been dismissed with prejudice from the subject lawsuit by Plaintiff; and

(d). Or, upon further order of the Court.

5. In the event there is a failure to comply with the terms in paragraph 4, subsections (a) through (c), then all settlement contributions shall be returned to the contributing parties or their carrier(s) together with their proportionate share of interest.

SENT BY: 6-17-98 ; 5:09PM ; THOMAS E. MILLER→ 6505790623:# 3/ 4

IT IS SO RECOMMENDED:

Dated: 6/18/98

William Nagle, Special Master

IT IS SO ORDERED:

Dated: JUN 18 1998

Judge of the Superior Court

SENT BY: 6-17-98 ; 5:10PM ; THOMAS E. MILLER→ 6505790623;# 4/ 4

OMG 8-7-98

5074
William L. Nagle, SBN 59788
Special Master/Mediator
345 Lorton Avenue, Suite #204
Burlingame, CA 94010
(650) 579-0500
(650) 579-0623 (Fax)

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JUN - 9 1998
Clerk of the Superior Court
By _____ DEPUTY CLERK

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN MATEO

EDGEWATER ISLE HOMEOWNERS ASSOCIATION, et al.,

Plaintiff,

v.

THE ANDEN GROUP, et al.,

Defendants,

_____/

AND RELATED CROSS-ACTIONS

_____/

CASE NO. 388872

DECLARATION OF SERVICE BY MAIL

I am a citizen of the United States. My business address is 345 Lorton Avenue, Suite #204, Burlingame, California. I am employed in the County of San Mateo where this mailing occurs. I am over the age of eighteen years and not a party to the within cause. I served ORDER RE SETTLEMENT (Endorsed-Filed May 8, 1998) on the following person(s) on the date set forth below, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in a United States post office mailbox at Burlingame, California, addressed as follows:

Please see attached list.

I, Christine L. Britton, declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on June 5, 1998 at Burlingame, California.

Christine L. Britton

06/05/98

EDGEWATER ISLE HOA v. THE ANDEN GROUP, et al.
San Mateo County Superior Court Case No. 388872

Proof of Service List

William L. Nagle, Esq. Special Master/Mediator 345 Lorton Avenue, Suite #204 Burlingame, CA 94010 (650) 579-0500 (650) 579-0623 (Fax)	SPECIAL MASTER
Thomas A. Miller, Esq. Law Offices of Thomas A. Miller 4685 Mac Arthur Court, Suite #220 Newport Beach, CA 92660 (714) 252-9150 (714) 442-0646 (Fax)	Plaintiff, Edgewater Isle HOA, Inc. (in 7/28/97)
Marisa D'Amico, Esq. Bishop, Barry, Howe, Haney & Ryder Embarcadero Center West 275 Battery Street, 12th Floor San Francisco, CA 94111 (415) 421-8550 (415) 362-4730 (Fax)	The Anden Group, Esden Partners, MDG Associates, Ltd., ESR Corporation, TMD Corporation, and Miden Corporation
Alan H. Finkel, Esq. Zimmerman, Koomer & Connolly 10960 Wilshire Blvd., Suite #1225 Los Angeles, CA 90024 (310) 231-6565 (310) 231-6566 (Fax)	The Anden Group (personal counsel)
Alec M. Barinholtz, Esq. Ross, Dixon & Masback Five Park Plaza, Suite #1200 Irvine, CA 92614-8529 (714) 622-2700 (714) 622-2739 (Fax)	International Insurance Company (Anden Group)
Lewis K. Loss, Esq. Ross, Dixon & Masback 601 Pennsylvania Avenue, N.W. North Building Washington, D.C. 20004-2688 (202) 662-2000 (202) 662-2190 (Fax)	International Insurance Company (Anden Group)

Mr. Alan Freudenheim
International Insurance Company
181 W. Madison Street, 26th Floor
Chicago, IL 60602
(312) 849-5150
(312) 849-5293 (Fax)

International Insurance Company
(Anden Group)

Thomas A. Foster, Esq.
Marrone, Robinson, Frederick & Foster
111 N. 1st Street, Suite #300
Burbank, CA 91502
(818) 841-1144
(818) 841-0746 (Fax)

A. Raymond Hammerick, III, Esq.
Law Offices of A. Raymond Hammerick, III
10 Universal City Plaza, Suite #2055
Universal City, CA 91608
(818) 763-5295
(818) 763-2308 (Fax)

Amy Dantzler, Esq.
Quisenberry & Barbanel, LLP
2049 Century Park East, Suite #2200
Los Angeles, CA 90067
(310) 785-7966
(310) 785-0254 (Fax)

John J. Carniato, Esq.
Law Offices of John J. Carniato
3736 Mt. Diablo Blvd., Suite #300
Lafayette, CA 94549
(510) 283-1552
(510) 283-9830 (Fax)

O'Brien & Hicks, Inc., O'Brien & Hicks 1988 & Beyond, Ltd., and Gloria Development co., Inc.

Josh Shinnick, Esq.
Hoge, Fenton, Jones & Appel, Inc.
60 S. Market Street
San Jose, CA 95113
(408) 287-9501
(408) 287-2583 (Fax)

O'Brien & Hicks, Inc.

Anthony B. Varni, Esq.
Varni, Fraser, Hartwell & Rodgers
22771 Main Street
Hayward, CA 94543
(510) 886-5000
(510) 538-8797 (Fax)

O'Brien & Hicks, Inc.

Chester G. Moore, III, Esq. Low, Ball & Lynch 10 Twin Dolphin Road, Suite #B-500 Redwood City, CA 94065 (650) 591-8822 (650) 591-8884 (Fax)	Alcal Roofing & Insulation
Susan P. Grey, Esq. Dominion Law Group 1155 N. First Street, Suite #101 San Jose, CA 95112 (408) 288-5592 (408) 938-1035 (Fax)	B.L. Cohen Landscape, Inc. (in 9/97)
David S. Henningsen, Esq. Robinson & Wood 227 N. First Street San Jose, CA 95113 (408) 298-7120 (408) 298-0477 (Fax)	B.L. Cohen Landscape, Inc. (in 10/97)
Donald B. Fornasier, Esq. Archer, McComas, Breslin, McMahon & Chritton 2033 N. Main Street, Suite #800 Walnut Creek, CA 94596 (510) 930-6600 (510) 930-6620 (Fax)	B.L. Cohen Landscape, Inc. (in 11/97)
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Donald B. Fornasier, Esq. Archer, McComas, Breslin, McMahon & Chritton 2033 N. Main Street, Suite #800 Walnut Creek, CA 94596 (510) 930-6600 (510) 930-6620 (Fax)	C. Aparicio Cement and Carlos Rodriguez Painting (in 3/98)
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David Brault, Esq.
5160 Birch Street, Suite #200
Newport Beach, CA 92660
(714) 752-2450
(714) 851-8188 (Fax)

Cell-Crete Corporation (in 3/98)

S. Mitchell Kaplan, Esq.
Gordon & Rees
275 Battery Street, 20th Floor
San Francisco, CA 94111
(415) 986-5900
(415) 986-8054 (Fax)

Daniel Smith Plastering, Inc.

Anthony J. DeMaria, Esq.
Filice & DeMaria
1130 Burnett Avenue
Building D, Suite H
Concord, CA 94520
(510) 676-5094
(510) 676-0548 (Fax)

Gonsalves & Santucci, Inc. dba
Conco Cement Company

S. Mitchell Kaplan, Esq.
Gordon & Rees
275 Battery Street, 20th Floor
San Francisco, CA 94111
(415) 986-5900
(415) 986-8054 (Fax)

Fisk, Firenze & McLean

J. Michael Higginbotham, Esq.
Long & Levit
101 Califonria Street, Suite #2300
San Francisco, CA 94111
(415) 397-2222
(415) 397-6392 (Fax)

Ruth & Going, Inc. and
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Albert P. Blake, Esq.
Roger, Scott & Helmer
900 Veterans Blvd., Suite #430
Redwood City, CA 94063
(650) 365-7700
(650) 0677 (Fax)

Tara Coatings

Norman La Force, Esq.
Law Offices of F. Ross Adkins
25 Pacific Avenue Mall
San Francisco, CA 94111
(415) 981-5200
(415) 981-2097 (Fax)

Tara Coatings

Mr. Donald W. Simons, Jr., Esq.
Frank Pinto Adjusters, Inc.
1504 Franklin Street, Suite #308
Oakland, CA 94612
(510) 834-1474
(510) 834-7032 (Fax)
(510) 654-1425 (Hm Fax)

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E

5074
William L. Nagle, SBN 59788
Special Master/Mediator
345 Lorton Avenue, Suite #204
Burlingame, CA 94010
(650) 579-0500
(650) 579-0623 (Fax)

FILED
SAN MATEO COUNTY
MAY 21 1998
Clerk of the Superior Court
By _____ DEPUTY CLERK

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN MATEO

EDGEWATER ISLE HOMEOWNERS ASSOCIATION, et al.,

Plaintiff,

v.

THE ANDEN GROUP, et al.,

Defendants,

_____/

AND RELATED CROSS-ACTIONS

_____/

CASE NO. 388872

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I am a citizen of the United States. My business address is 345 Lorton Avenue, Suite #204, Burlingame, California. I am employed in the County of San Mateo where this mailing occurs. I am over the age of eighteen years and not a party to the within cause. I served PRE-TRIAL ORDER NO. 56 RE ALLOCATION OF FEES FOR CO-MEDIATOR RANDALL W. WULFF, ESQ. and PRE-TRIAL ORDER NO. 57 (both Endorsed-Filed May 15, 1998) on the following person(s) on the date set forth below, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in a United States post office mailbox at Burlingame, California, addressed as follows:

Please see attached list.

I, Christine L. Britton, declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on May 19, 1998 at Burlingame, California.

Christine L. Britton

EDGEWATER ISLE HOA v. THE ANDEN GROUP, et al.
San Mateo County Superior Court Case No. 388872

Proof of Service List

William L. Nagle, Esq. Special Master/Mediator 345 Lorton Avenue, Suite #204 Burlingame, CA 94010 (650) 579-0500 (650) 579-0623 (Fax)	SPECIAL MASTER
Thomas A. Miller, Esq. Law Offices of Thomas A. Miller 4685 Mac Arthur Court, Suite #220 Newport Beach, CA 92660 (714) 252-9150 (714) 442-0646 (Fax)	Plaintiff, Edgewater Isle HOA, Inc. (in 7/28/97)
Marisa D'Amico, Esq. Bishop, Barry, Howe, Haney & Ryder Embarcadero Center West 275 Battery Street, 12th Floor San Francisco, CA 94111 (415) 421-8550 (415) 362-4730 (Fax)	The Anden Group, Esden Partners, MDG Associates, Ltd., ESR Corporation, TMD Corporation, and Miden Corporation
Alan H. Finkel, Esq. Zimmerman, Koomer & Connolly 10960 Wilshire Blvd., Suite #1225 Los Angeles, CA 90024 (310) 231-6565 (310) 231-6566 (Fax)	The Anden Group (personal counsel)
Alec M. Barinholtz, Esq. Ross, Dixon & Masback Five Park Plaza, Suite #1200 Irvine, CA 92614-8529 (714) 622-2700 (714) 622-2739 (Fax)	International Insurance Company (Anden Group)
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Mr. Alan Freudenheim
International Insurance Company
181 W. Madison Street, 26th Floor
Chicago, IL. 60602
(312) 849-5150
(312) 849-5293 (Fax)

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Thomas A. Foster, Esq.
Marrone, Robinson, Frederick & Foster
111 N. 1st Street, Suite #300
Burbank, CA 91502
(818) 841-1144
(818) 841-0746 (Fax)

A. Raymond Hammerick, III, Esq.
Law Offices of A. Raymond Hammerick, III
10 Universal City Plaza, Suite #2055
Universal City, CA 91608
(818) 763-5295
(818) 763-2308 (Fax)

Amy Dantzler, Esq.
Quisenberry & Barbanel, LLP
2049 Century Park East, Suite #2200
Los Angeles, CA 90067
(310) 785-7966
(310) 785-0254 (Fax)

John J. Carniato, Esq.
Law Offices of John J. Carniato
3736 Mt. Diablo Blvd., Suite #300
Lafayette, CA 94549
(510) 283-1552
(510) 283-9830 (Fax)

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Josh Shinnick, Esq.
Hoge, Fenton, Jones & Appel, Inc.
60 S. Market Street
San Jose, CA 95113
(408) 287-9501
(408) 287-2583 (Fax)

O'Brien & Hicks, Inc.

Anthony B. Varni, Esq.
Varni, Fraser, Hartwell & Rodgers
22771 Main Street
Hayward, CA 94543
(510) 886-5000
(510) 538-8797 (Fax)

O'Brien & Hicks, Inc.

Chester G. Moore, III, Esq. Low, Ball & Lynch 10 Twin Dolphin Road, Suite #B-500 Redwood City, CA 94065 (650) 591-8822 (650) 591-8884 (Fax)	Alcal Roofing & Insulation
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David Brault, Esq.
5160 Birch Street, Suite #200
Newport Beach, CA 92660
(714) 752-2450
(714) 851-8188 (Fax)

Cell-Crete Corporation (in 3/98)

S. Mitchell Kaplan, Esq.
Gordon & Rees
275 Battery Street, 20th Floor
San Francisco, CA 94111
(415) 986-5900
(415) 986-8054 (Fax)

Daniel Smith Plastering, Inc.

Anthony J. DeMaria, Esq.
Filice & DeMaria
1130 Burnett Avenue
Building D, Suite H
Concord, CA 94520
(510) 676-5094
(510) 676-0548 (Fax)

Gonsalves & Santucci, Inc. dba
Conco Cement Company

S. Mitchell Kaplan, Esq.
Gordon & Rees
275 Battery Street, 20th Floor
San Francisco, CA 94111
(415) 986-5900
(415) 986-8054 (Fax)

Fisk, Firenze & McLean

J. Michael Higginbotham, Esq.
Long & Levit
101 Califonria Street, Suite #2300
San Francisco, CA 94111
(415) 397-2222
(415) 397-6392 (Fax)

Ruth & Going, Inc. and
Melvin Lee Associates

Donald L. Sullivan, Esq.
Clapp, Moroney, Bellagamba, Davis
& Vucinich
4400 Bohannon Drive, Suite #100
Menlo Park, CA 94025
(650) 327-1300
(650) 327-3707 (Fax)

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Kevin J. Tully, Esq.
Greene, Chauvel, Descalso & Tully
901 Mariner's Island Blvd., Suite #400
San Mateo, CA 94404-1594
(650) 573-9500
(650) 573-9689 (Fax)

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Helen B. Baumann, Esq. Law Office of Eugene L. Bass 495 Seaport Court, Suite #103 Redwood City, CA 94063 (650) 361-1199 (650) 369-4984 (Fax)	San Carlos Sheet Metal Works, Inc.
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Albert P. Blake, Esq.
Roger, Scott & Helmer
900 Veterans Blvd., Suite #430
Redwood City, CA 94063
(650) 365-7700
(650) 0677 (Fax)

Tara Coatings

Norman La Force, Esq.
Law Offices of F. Ross Adkins
25 Pacific Avenue Mall
San Francisco, CA 94111
(415) 981-5200
(415) 981-2097 (Fax)

Tara Coatings

Mr. Donald W. Simons, Jr., Esq.
Frank Pinto Adjusters, Inc.
1504 Franklin Street, Suite #308
Oakland, CA 94612
(510) 834-1474
(510) 834-7032 (Fax)
(510) 654-1425 (Hm Fax)

Courtesy Copy

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LAW OFFICES OF THOMAS E. MILLER
Thomas E. Miller / Bar #057821
Bruce Mayfield / Bar #057730
4685 MacArthur Court, Suite 220
Newport Beach, CA 92660
(714) 252-9150 FAX (714) 442-0646

Attorneys for Plaintiff

FILED
SAN MATEO COUNTY
MAY 19 1998
Clerk of the Superior Court
By Dionne Lamus
DEPUTY CLERK

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN MATEO

EDGEWATER ISLE HOMEOWNERS ASSOCIATION, Plaintiff, vs. THE ANDEN GROUP, et al., Defendants. AND RELATED CROSS-ACTIONS.	CASE NO. 388872 **NOTICE OF VACATION OF MAY 14, 1998 MANDATORY SETTLEMENT CONFERENCE; AND SETTING OF STATUS REVIEW HEARING** DATE: August 7, 1998 TIME: 9:00 a.m. DEPT: 3 Trial Date: March 2, 1998

TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that the Mandatory Settlement Conference scheduled for May 14, 1998 in Department 3 of the San Mateo Superior Court has been vacated.

PLEASE TAKE FURTHER NOTICE that the court has set a Status Review Hearing to be heard August 7, 1998, at 9:00 a.m. in Department 3 located at 401 Marshall, Redwood City, California. If a Request for Dismissal has been filed prior to the August 7, 1998,

the hearing will be taken off calendar.

DATED: May 12, 1998

LAW OFFICES OF THOMAS E. MILLER

Thomas E. Miller
Attorneys for Plaintiff EDGEWATER ISLE NORTH HOMEOWNERS ASSOCIATION

PROOF OF SERVICE
[C.C.P. Section 1013A(3)]

STATE OF CALIFORNIA, COUNTY OF ORANGE

I am employed in the County of Orange, State of California. I am over the age of 18 and not a party to the within action; my business address is 4695 MacArthur Court, Suite 1150, Newport Beach, California 92660.

On May 12, 1998, I served the documents described as:

NOTICE OF VACATION OF MAY 14, 1998 MANDATORY SETTLEMENT CONFERENCE AND SETTING OF STATUS REVIEW HEARING

on other parties in this action by placing a true copy in a sealed envelope addressed as follows:

SEE ATTACHED SERVICE LIST

XX BY U.S. MAIL - As follows: I placed a true copy in a sealed envelope addressed as indicated above. I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on the same day with postage thereon fully prepaid at Claremont, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

PERSONAL SERVICE - I placed the copies in a sealed envelope addressed as indicated above and caused such envelope to be delivered by hand to the offices of the addressee.

_XX_ **BY TELECOPIER** - I personally sent to the addressees' telecopier numbers attached hereto a true copy of the above-described document via facsimile transmission. Each transmission was reported as complete and without error. Copies of each transmission report are attached to this proof of service. Each report was properly issued by the transmitting facsimile machine.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on May 12, 1998 at Newport Beach, California

Penny Simpkins

Edgewater Isle Homeowners Association v. The Anden Group, et al.

San Mateo Superior Court Case No. 388872

SERVICE LIST

William L. Nagle 345 Lorton Avenue, Suite 204 Burlingame, CA 94010-4116 (650) 579-0500\(650) 579-0623 (FAX) **SPECIAL MASTER**	Robert K. Phillips Shahab E. Fotouhi **Phillips & Spallas** 225 Bush Street, 16th Floor San Francisco, CA 94104 415/439-8840\Fax 415/439-8822 Attorneys for Defendant **PENINSULA FLOORS, INC.**
Marisa D'Amico Thomas O. Haran **Bishop, Barry, Howe, Haney & Ryder** A Professional Corporation Embarcadero Center West 275 Battery Street, 12th Floor San Francisco, CA 94111-3333 (415) 421-8550\(415) 362-4730 (FAX) Defendants and Cross-Complainants **THE ANDEN GROUP**	Donald B. Fornasier **Archer, McComas, Breslin, McMahon & Chritton** Post Office Box 8035 Walnut Creek, CA 94596 (510) 930-6600\(510) 930-6620 (FAX) Cross-Defendant **C. APRICIO CEMENT CONTRACTORS**
Thorsten J. Pray **Law Offices of John J. Carniato** 3736 Mt. Diablo Blvd., Suite 300 Lafayette, CA 94549 (510) 283-1552\(510) 283-9830 (FAX) Defendants and Cross-Complainants **GLORIA DEVELOPMENT CO., INC. and O'BRIEN & HICKS, INC., O'BRIEN & HICKS 1988 & BEYOND, LTD.**	Anthony J. DeMaria **Felice & DeMaria** 1130 Burnett Ave., Bld. D, Suite H Concord, CA 94520 (510) 676-5094\(510) 676-0548 (FAX) Cross-Defendant **GONSALVES & SANTUCCI, INC. dba CONCO CEMENT COMPANY**
John Shinnick **Hoge, Fenton, Jones & Appel** 60 South Market Street, 14th Floor San Jose, CA 95113 (408) 287-9501\(408) 287-2583 (FAX) Defendant **O'BRIEN & HICKS, INC.**	Michael Bruno, Esq. **Gordon & Rees** 275 Battery Street, 20th Floor San Francisco, CA 94111 (415) 986-5900\(415) 986-8054 (FAX) Cross-Defendant **FISK, FIRENZE & McLEAN; DANIEL SMITH PLASTERING, INC. and ASH ROOFING**
Albert Blake **Roger, Scott & Helmer** 900 Veterans Blvd., Suite 430 Redwood City, CA 94063 (415) 365-7700\(415) 365-0677 (FAX) Cross-Defendant **TARA COATINGS**	Joe Thompson Attorney at Law 981 Fremont Street Santa Clara, CA 95050 (408) 984-8555\(408) 292-1061 (FAX) Cross-Defendant **SIERRA LUMBER**
Norman La Force **Law Offices of F. Ross Adkins** 25 Pacific Avenue Mall San Francisco, CA 94111 (415) 981-5200\(415) 981-2097 (FAX) Co-Counsel Cross-Defendant **TARA COATINGS**	Howard L. Churchill **Schofield & Schiller** 100 Pringle Avenue, #510 Walnut Creek, CA 94596 (510) 934-3600\(510) 934-2257 (FAX) Cross-Defendant **SIERRA LUMBER**

Kevin J. Tully **Greene, Chauvel & Descalso** 902 Mariners Island Blvd., Suite 400 San Mateo, CA 94404-1594 (415) 573-9500\(415) 573-9689 (FAX) Cross-Defendants **SACRAMENTO A-1 DOOR**	Donald L. Sullivan **Clapp, Moroney, Bellagamba, Davis & Vucinich** 4400 Bohannon Drive, Suite 100 Menlo Park, CA 94025 (650) 327-1300\(650) 327-3707 (FAX) Cross-Defendant **MISSION DRYWALL OF SAN JOSE; SILVA FENCE COMPANY1and TECHNIBUILDERS IRON, INC.**
Maria Caruana, Esq. **Fortune & Drevlow** 180 Montgomery Street, Suite 2100 San Francisco, CA 94104 (650) 362-1422\(650) 362-7054 (FAX) Co-Counsel for Cross-Defendant **SACRAMENTO A-1 DOOR**	David N. Poll **Collins & Schlothauer** 60 South Market Street, Suite 1100 San Jose, CA 95113-2369 (408) 298-5161\(408) 297-5766 (FAX) Co-Counsel for Cross-Defendant **SILVA FENCE COMPANY**
Helen B. Baumann **Law Offices of Eugene L. Bass** 495 Seaport Court, Suite 103 Redwood City, CA 94063 (650) 361-1199\(650) 369-4984 (FAX) Cross-Defendant **SAN CARLOS SHEET METAL WORKS, INC.**	Johnathan Margolis Chet Moore **Low, Ball & Lynch** 10 Twin Dolphin Drive, Suite B-500 Redwood City, CA 94065 (650) 591-8822\(650) 591-8884 Cross-Defendant **ALCAL ROOFING & INSULATION**
Gregory J. Patterson **Proskauer Rose** 2049 Century Park East, Suite 3200 Los Angeles, CA 90067 (310) 284-5650\(310) 557-2193 (FAX) Direct: (310) 284-5676 (Personal Counsel) **THE ANDEN GROUP**	J. Michael Higginbotham, Esq. **Long & Levit** 101 California Street, Suite 2300 San Francisco, CA 94111 415/397-2222\415/397-6392 (FAX) Attorneys for Cross-Defendant **RUTH & GOING and MELVIN LEE**
Philip Y. Kazan, Esq. **Russell, Kazan, Brenner & Mallett** 343 Sansome Street, Suite 525 San Francisco, CA 94104 415/956-5841\415/956-0708 (FAX) Attorneys for Cross-Defendant **C. APARICIO CEMENT**	Michael P. Quinlivan, Esq. **Kouns, Quinlivan & Severson** 101 Park Center Plaza, Suite 1007 San Jose, CA 95113 408/278-0125\408/292-1257 Attorneys for Defendant **SIERRA PRECAST**
Clay A. Coelho, Esq. **Law Offices of Charlotte Venner** 50 Fremont Street, Suite 801 San Francisco, CA 94105 415/778-4660\415/778-4690 (FAX) Attorneys for Cross-Defendant **T & D TILE COMPANY, INC.**	Paul E. Stephan, Esq. **Stephan & Conroy** 444 Market Street, Suite 2675 San Francisco, CA 94111 415/983-4740\Fax 415/296-1043 Co-Counsel for **T & D TILE COMPANY, INC.**
Paul Walker, Esq. **Adams, Nye, Sinunu & Walker** 633 Battery Street, 5th Floor San Francisco, CA 94111 415/982-8955\415/982-2042 (FAX) Attorneys for Cross-Defendant **MISSION DRYWALL**	

Jolly, Herlhy & Helper 275 Battery Street, Suite 600 San Francisco, CA 94111 415/658-3100\Fax 415/658-3094 Attorneys for **M & H ELECTRIC**	Susan P. Grey **Dominion Law Group** 1155 N. First Street, Suite 101 San Jose, CA 95112 408/288-5592\Fax 408/938-1035 Attorneys for Defendant **B. L. COHEN LANDSCAPE**
Jeffery L. Borsuk James F. Blake **Pandell & Borsuk** 2033 N. Main Street, Suite 450 Walnut Creek, CA 94596-3722 510/746-8800\Fax 510/746-8898 Attorneys for Defendant **CARLOS RODRIGUEZ PAINTING**	David S. Henningsen, Esq. **Robinson & Wood, Inc.** 227 North First Street San Jose, CA 95113 408/298-7120\Fax 408/298-0477 Associate Attorneys for Defendant **B.L. COHEN LANDSCAPE, INC.**
William H. Staples, Esq. **Capps, Staples, Ward, Stephenson & Dodson** 1777 Botelho Drive, Suite 100 Walnut Creek, CA 94596 510/939-4411\510/939-5241 (FAX) Attorneys for Cross-Defendant **SAFECO INSURANCE COMPANY OF AMERICA**	Rand L. Chritton, Esq. Donald B. Fornasier, Esq. **Archer, McComas, Breslin, McMahon & Chritton** 2033 North Main Street, Suite 800 Peri Executive Centre P. O. Box 8035 Walnut Creek, CA 94596 510/930-6600\Fax 510/930-6620 Associate counsel for Defendant **B. L. COHEN LANDSCAPE**
Anthony Varni, Esq. **Varni Fraser Hartwell & Rodgers** 22771 Main Street Hayward, CA 94543-0570 510/886-5000\Fax 510/538-8797	Jilio & Associates, Document Depository c/o San Francisco Reporting Service 5 Third Street, Suite 815 San Francisco, CA 94103

DROPPED 5/12

E

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and Address): 79559	TELEPHONE NO.:	FOR COURT USE ONLY
Kevin J. Tully, Esq. Greene, Chauvel, Descalso & Tully 901 Mariner's Island Blvd., Suite 400 San Mateo, CA 94404	650-573-9500	FILED SAN MATEO COUNTY MAY 18 1998 Clerk of the Superior Court By _____ DEPUTY CLERK
ATTORNEY FOR (Name): Defendant SACRAMENTO A-1 DOOR		
Insert name of court and name of judicial district and branch court, if any: SAN MATEO COUNTY SUPERIOR COURT		
PLAINTIFF/PETITIONER: EDGEWATER ISLE HOMEOWNERS ASSOCIATION, INC., et al. DEFENDANT/RESPONDENT: THE ANDEN GROUP, et al.		
NOTICE OF ENTRY OF DISMISSAL AND PROOF OF SERVICE ☐ **Personal Injury, Property Damage, or Wrongful Death** ☐ **Motor Vehicle** ☐ **Other** ☐ **Family Law** ☐ **Eminent Domain** ☒ **Other** *(specify)*: Construction Defect		CASE NUMBER: 388872

TO ATTORNEYS AND PARTIES WITHOUT ATTORNEYS: A dismissal was entered in this action by the clerk as shown on the Request for Dismissal. *(Attach a copy completed by the clerk.)*

Date: May 8, 1998

Kevin J. Tully, Esq.
(TYPE OR PRINT NAME OF ☒ ATTORNEY ☐ PARTY WITHOUT ATTORNEY)

▶ Kevin Tully DJH
(SIGNATURE)

PROOF OF SERVICE

1. I am over the age of 18 and not a party to this cause. I am a resident of or employed in the county where the mailing occurred. My residence or business address is: 901 Mariner's Island Blvd., Suite 400, San Mateo, CA 94404

2. ☒ I served a copy of the Notice of Entry of Dismissal and Request for Dismissal by mailing them, in a sealed envelope with postage fully prepaid, as follows:
   a. ☒ I deposited the envelope with the United States Postal Service.
   b. ☐ I placed the envelope for collection and processing for mailing following this business's ordinary practice with which I am readily familiar. On the same day correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service.
   c. Date of deposit: May 13, 1998
   d. Place of deposit *(city and state)*: San Mateo, CA
   e. Addressed as follows *(name and address)*: SEE ATTACHED LIST.

3. ☐ I served a copy of the Notice of Entry of Dismissal and Request for Dismissal by personally delivering copies to the person served as shown below:
   Name: Date: Time: Address:

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

Date: May 13, 1998

Danielle Hogan
(TYPE OR PRINT NAME)

▶ _____
(SIGNATURE OF DECLARANT)

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and Address): 79559	TELEPHONE NO.:	FOR COURT USE ONLY
Kevin J. Tully, Esq. Greene, Chauvel, Descalso & Tully 901 Mariner's Island Blvd., Suite 400 San Mateo, CA 94404	650-573-9500	(ENDORSED) FILED SAN MATEO COUNTY APR 23 1998 Clerk of the Superior Court By Maria Salazar DEPUTY CLERK
ATTORNEY FOR (Name): Defendant SACRAMENTO A-1 DOOR		
Insert name of court and name of judicial district and branch court, if any: SAN MATEO COUNTY SUPERIOR COURT		
PLAINTIFF/PETITIONER: EDGEWATER ISLE HOMEOWNERS ASSOCIATION, INC., et al. DEFENDANT/RESPONDENT: THE ANDEN GROUP, et al.		
REQUEST FOR DISMISSAL ☐ **Personal Injury, Property Damage, or Wrongful Death** ☐ **Motor Vehicle** ☐ **Other** ☐ **Family Law** ☐ **Eminent Domain** ☒ **Other** *(specify)*: Construction Defect		CASE NUMBER: 388872

- A conformed copy will not be returned by the clerk unless a method of return is provided with the document. -

1. **TO THE CLERK:** Please **dismiss** this action as follows:
   a. (1) ☐ With prejudice (2) ☒ Without prejudice
   b. (1) ☒ Complaint (2) ☐ Petition
      (3) ☐ Cross-complaint filed by *(name)*: on *(date)*:
      (4) ☐ Cross-complaint filed by *(name)*: on *(date)*:
      (5) ☐ Entire action of all parties and all causes of action
      (6) ☒ Other *(specify)*:* Please dismiss the Complaint of Plaintiff EDGEWATER ISLE HOMEOWNERS ASSOCIATION, INC. as against SACRAMENTO A-1 DOOR, only, each side to bear its own costs and attorneys' fees.

Date: March 22, 1998

BRUCE MAYFIELD, ESQ.
(TYPE OR PRINT NAME OF ☒ ATTORNEY ☐ PARTY WITHOUT ATTORNEY)

Bruce Mayfield
(SIGNATURE)

*If dismissal requested is of specified parties only, of specified causes of action only, or of specified cross-complaints only, so state and identify the parties, causes of action, or cross-complaints to be dismissed.

Attorney or party without attorney for: EDGEWATER ISLE HOA
☒ Plaintiff/Petitioner ☐ Defendant/Respondent
☐ Cross-complainant

2. **TO THE CLERK:** Consent to the above dismissal is hereby given.**
   Date:

(TYPE OR PRINT NAME OF ☐ ATTORNEY ☐ PARTY WITHOUT ATTORNEY)

(SIGNATURE)

**If a cross-complaint or Response (Family Law) seeking affirmative relief is on file, the attorney for cross-complainant (respondent) must sign this consent if required by Code of Civil Procedure section 581(i) (or (j)).

Attorney or party without attorney for:
☐ Plaintiff/Petitioner ☐ Defendant/Respondent
☐ Cross-complainant

(To be completed by clerk)
3. ☐ Dismissal entered as requested on *(date)*:
4. ☑ Dismissal entered on *(date)*: MAY - 8 1998 as to only *(name)*: SEE ABOVE
5. ☐ Dismissal **not entered** as requested for the following reasons *(specify)*:
6. ☐ a. Attorney or party without attorney notified on *(date)*:
   b. Attorney or party without attorney not notified. Filing party failed to provide
      ☐ a copy to conform ☐ means to return conformed copy

Date: MAY - 8 1998 PEGGY THOMPSON Clerk, by MARIA SALAZAR, Deput

William R. Nagle, Esq.
Special Master
345 Lorton Avenue, Suite 204
Burlingame, CA 94010-4116
650-579-0500
FAX 650-579-0623

Law Offices of Thomas E. Miller
4685 MacArthur Court, Suite 220
Newport Beach, CA 92660
714-252-9150
FAX 714-442-0646
Attorneys for Plaintiff Edgewater Isle North Homeowners Association

Sandra L. Fulmer, Esq.
Marisa D'Amico, Esq.
Thomas O. Haran
Bishop, Barry, Howe, Haney & Ryder
Embarcadero Center West
275 Battery Street, 12th Fl.
San Francisco, CA 94111-3333
415-421-8550
FAX 415-362-4730
Attorneys for Defendants and Cross-complainants The Anden Group

John J. Carniato
Thorsten J. Pray
Law Offices of John J. Carniato
3736 Mt. Diablo Blvd., Suite 300
Lafayette, CA 94549
510-283-1552
FAX 510-283-9830
Attorneys for Defendants and Cross-complainants Gloria Development Co., Inc. and O'Brien & Hicks, Inc., O'Brien & Hicks 1998 & Beyond, Ltd.

John Shinnick
Hoge, Fenton, Jones & Appel
60 South Market Street, 14th Floor
San Jose, CA 95113
408-287-9501
FAX 408-287-2583
Attorneys for Defendant O'Brien & Hicks, Inc.

Albert Blake, Esq.
Roger, Scott & Helmer
900 Veterans Blvd., Suite 430
Redwood City, CA 94063
650-365-7700
FAX 650-365-0677
Attorneys for Defendant Tara Coatings

Albert Blake, Esq.
Owens & Melbye
700 Jefferson Avenue, 2nd Fl.
Redwood City, CA 94063

Norman La Force
Law Offices of F. Ross Adkins
25 Pacific Avenue Mall
San Francisco, CA 94111
415-981-5200
FAX 415-981-2097
Co-counsel for Cross-defendant Tara Coatings

Robert K. Phillips
Shahab E. Fotouhi
Phillips & Spallas
225 Bush Street, 16th Floor
San Francisco, CA 94104
415-439-8840
FAX 415-439-8822
Attorneys for Defendant Peninsula Floors, Inc.

Donald B. Fornasier, Esq.
Archer, McComas, Breslin, McMahon & Chritton
2033 N. Main Street, Suite 800
P.O. Box 8035
Walnut Creek, CA 94596
510-930-6600
FAX 510-930-6620
Attorneys for Cross-defendant C. Apricio Cement Contractors; associate counsel for Defendant B. L. Cohen Landscape

Anthony J. DeMaria, Esq.
Felice & DeMaria
1130 Burnett Ave., Bldg. D., Ste. H
Concord, CA 94520
510-676-5094
FAX 510-676-0548
Attorneys for Cross-defendant Gonsalves & Santucci, Inc. dba Conco Cement Company

S. Mitchell Kaplan
Gordon & Rees
275 Battery Street, 20th Floor
San Francisco, CA 94111
415-986-5900
FAX 415-986-8054
Attorneys for Cross-defendant Fisk, Firenze & McLean and Daniel Smith Plastering, Inc.

Joe Thompson, Esq.
981 Fremont Street
Santa Clara, CA 95050
408-984-8555
FAX 408-292-1061
Attorneys for Cross-defendant Sierra Lumber

Howard L. Churchill
Schofield & Schiller
100 Pringle Avenue, #510
Walnut Creek, CA 94596
510-934-3600
FAX 510-934-2257
Attorneys for Cross-defendant Sierra Lumber

Maria Caruana, Esq.
Fortune & Drevlow
180 Montgomery Street, Ste. 2100
San Francisco, CA 94104
415-362-1422
FAX 415-362-7054
Co-counsel for Cross-defendant Sacramento A-1 Door

Helen Baumann, Esq.
Law Offices of Eugene Bass
495 Seaport Court, Suite 103
Redwood City, CA 94063
650-361-1199
FAX 650-369-4984
Attorneys for Cross-defendant San Carlos Sheet Metal Works, Inc.

Jonathan Margolis, Esq.
Low, Ball & Lynch
10 Twin Dolphin Drive, Suite B-500
Redwood City, CA 94065
650-591-8822
FAX 650-591-8884
Attorneys for Cross-defendant Alcal Roofing & Insulation

Gregory J. Patterson
Proskauer Rose
2049 Century Park East, Suite 3200
Los Angeles, CA 90067
310-284-5650
FAX 310-557-2193
Personal counsel for The Anden Group

Philip Y. Kazan, Esq.
Russell, Kazan, Brenner & Mallott
343 Sansome St., Ste. 525
San Francisco, CA 94104
415-956-5841
FAX 415-956-0708
Attorneys for Cross-defendant C. Aparicio Cement

Donald L. Sullivan
Clapp, Moroney, et al.
4400 Bohannon Drive, Ste. 100
Menlo Park, CA 94025
650-327-1300
FAX 650-327-3707
Attorneys for Cross-defendant Mission Drywall of San Jose and Silva Fence Company

David N. Poll
Collins & Schlothauer
60 South Market Street, Ste. 1100
San Jose, CA 95113-2369
408-298-5161
FAX 408-297-5766
Co-counsel for Cross-defendant Silva Fence Company

Joseph H. Huber
Gassett, Perry & Frank
210 North Fourth Street, Ste. 400
San Jose, CA 95112
408-295-7034
FAX 408-295-5799
Attorneys for Cross-defendant Crowley Company

Scott C. Finch
Melissa A. Bruzzano
Larson & Burnham
P. O. Box 119
Oakland, CA 94604
510-444-6800
FAX 510-835-6666
Attorneys for Cross-defendant Hanson's Masonry, Inc.

J. Michael Higginbotham, Esq.
Long & Levit
101 California Street, Ste. 2300
San Francisco, CA 94111
415-397-2222
FAX 415-397-6392
Attorneys for Cross-defendant Ruth & Going and Melvin Lee

Michael P. Quinlivan, Esq.
Kouns, Quinlivan & Severson
101 Park Center Plaza, Suite 1007
San Jose, CA 95113
408-278-0125
FAX 408-292-1257
Attorneys for Defendant Sierra Precast

Paul Walker, Esq.
Adams, Nye, Sinunu & Walker
633 Battery Street, 5th Floor
San Francisco, CA 94111
415-982-8955
FAX 415-982-2042
Attorneys for Cross-defendant Mission Drywall

Jolly, Herlhy & Helper
275 Battery Street, Ste. 600
San Francisco, CA 94111
415-658-3100
FAX 415-658-3094
Attorneys for M&H Electric

Jeffrey L. Borsuk
James F. Blake
Pandell & Borsuk
2033 N. Main Street, Ste. 450
Walnut Creek, CA 94596-3722
510-746-8800
FAX 510-746-8898
Attorneys for Defendant Carlos Rodriguez Painting

William H. Staples, Esq.
Capps, Staples, Ward, et al.
1777 Botelho Drive, Ste. 100
Walnut Creek, CA 94596
510-939-4411
FAX 510-939-5241
Attorneys for Cross-defendant Safeco Insurance Company of America

Anthony Varni, Esq.
Varni Fraser Hartwell & Rodgers
22771 Main Street
Hayward, CA 94543-0570
510-886-5000
FAX 510-538-8797

Daniel A. Berman
James M. Ganion
Wood, Smith, Henning & Berman
801 South Figueroa St., 9th Fl.
Los Angeles, CA 90017-2573
213-622-9300
FAX 213-622-9394
Attorneys for Defendant Chrisp Company

Susan P. Grey
Dominion Law Group
1155 N. First Street, Ste. 101
San Jose, CA 95112
408-288-5592
FAX 408-938-1035
Attorneys for Defendant B. L. Cohen Landscape

David S. Henningsen, Esq.
Robinson & Wood, Inc.
227 North First Street
San Jose, CA 95113
408-298-7120
FAX 408-298-0477
Associate attorneys for Defendant B. L. Cohen Landscape, Inc.

Jilio & Associates
c/o San Francisco Reporting Service
5 Third Street, Ste. 815
San Francisco, CA 94103
Document Depository

Michael B. Allen, Esq.
Law Offices of Michael B. Allen
411 Borel Avenue, Suite 445
San Mateo, CA 94402-3519

Karen Wentzel, Esq.
Ritchie Fisher Whitman & Klein
1717 Embarcadero Road
P.O. Box 51050
Palo Alto, CA 94303

Kenneth Cooper
Sequoia Insurance
4301 Hacienda Drive, Suite 200
Pleasanton, CA 94588

CMC 8-7

FILED
SAN MATEO COUNTY
MAY 15 1998
Clerk of the Superior Court
By Marie Salazar
DEPUTY CLERK

William L. Nagle
345 Lorton Avenue, Suite 204
Burlingame, CA 94010-4116
(650) 579-0500
(650) 579-0623 (FAX)

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN MATEO

EDGEWATER ISLE HOMEOWNERS ASSOCIATION, Plaintiff, vs. THE ANDEN GROUP, et al., Defendants. AND RELATED CROSS-ACTIONS.	CASE NO. 388872 **PRE-TRIAL ORDER NO. 56 RE ALLOCATION OF FEES FOR CO-MEDIATOR RANDALL W. WULFF, ESQ.**

The Court having appointed William L. Nagle as Special Master/Mediator in this case and by power vested to the Special Master by the Presiding Judge of the San Mateo Superior Court,

IT IS HEREBY ORDERED that:

1. Due to the complex nature of this case and significant insurance coverage issues Randall W. Wulff, Esq. was appointed as Co-mediator and conducted two days of mediations on April 7th and 8th, 1998.

///

2. As a result of mediation efforts of the undersigned and the co-mediator this case was settled on April 8, 1998.

3. Plaintiff's counsel advanced the $14,000.00 payment of the co-mediator's fees and has petitioned the Special Master for a re-allocation of these fees between all parties.

4. Based on the previous allocation of Special Master fees and the mediation time spent between the various parties and their respective insurance carriers the following re-allocation of Randall W. Wulff's fees is hereby ordered.

Party	Allocation of Co-Mediator's Fees
Plaintiff Association (1/4th share)	$ 3,500.00
Defendant The Anden Group (1/4th share)	$ 3,500.00
Defendant O'Brien & Hicks (1/4th share)	$ 3,500.00
The following participating subcontractors shall pay a pro-rata share of the remaining 1/4th share or $269.23 each:	$ 3,500.00 $14,000.00

Tara Coatings
San Carlos Sheet Metal Works, Inc.
Technibuilders Iron
AlCal Roofing
Carlos Rodriguez Painting
Mission Drywall of San Jose
Daniel Smith Plastering, Inc.
B.L. Cohen Landscape
Silva Fence Company
Conco Cement Co.
Melvin Lee & Associates
Fisk, Firenzi & McLean
Ruth & Going

5. Since Plaintiff's counsel advanced the co-mediator's fees all parties are ordered to make their checks payable to "THE LAW OFFICES OF THOMAS E. MILLER".

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///

///

6. All parties are further ordered to remit payment to Plaintiff's counsel within thirty (30) days from the date of this Recommendation and Order.

APPROVED AND RECOMMENDED.

Dated: 4/16/98

William L. Nagle, Special Master

IT IS SO ORDERED:

Dated: ~~APR 28 1998~~ MAY 14 1998

Judge of the Superior Court

CMC 8-7

5074
William L. Nagle, SBN 59788
Special Master/Mediator
345 Lorton Avenue, Suite #204
Burlingame, CA 94010
(650) 579-0500
(650) 579-0623 (Fax)

FILED
SAN MATEO COUNTY
MAY 15 1998
Clerk of the Superior Court
By Marisa Salazar
DEPUTY CLERK

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN MATEO

EDGEWATER ISLE HOMEOWNERS ASSOCIATION, et al.,

Plaintiff,

v.

THE ANDEN GROUP, et al.,

Defendants,

_____/

AND RELATED CROSS-ACTIONS

_____/

CASE NO. 388872

PRE-TRIAL ORDER NO. 57

The Court having appointed William L. Nagle as Special Master in this matter and good cause appearing therefor,

IT IS HEREBY ORDERED that counsel for plaintiff, O'Brien & Hicks, and The Anden Group shall appear before the Special Master on April 16, 1998 at 1:30 p.m. at the San Mateo County Courthouse (Central Branch), 800 N. Humboldt Street, San Mateo, California. The following counsel shall personally appear: Bruce Mayfield, John Carniato, Robert Cullen, Anthony Varni, Marisa D'Amico, and John Pray. Alan Finkle and Amy Dantzler shall appear via telephone standby. Principals and carriers for The Anden Group and O'Brien & Hicks shall be on telephone standby. Subcontractors need not appear.

APPROVED AND RECOMMENDED:

DATED: April 16, 1998

William L. Nagle, Special Master

IT IS SO ORDERED:

DATED: MAY 14 1998

Judge of the Superior Court

BOX

2710-199

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN MATEO

HONORABLE: ARAM SERVERIAN JUDGE DEPT. NO.: LORNA SANNDBERG DEPUTY CLERK
DATE: May 12, 1998 3 UNREPORTED COURT REPORTER
FILE NO.: 388872

(TITLE OF ACTION)
EDGEWATER ISLE HOA

VS.

THE ANDEN GROUP

(APPEARANCES)
No appearances

NATURE OF PROCEEDINGS: MINUTE ENTRY

Pursuant to a telephone call from Chris at Special Master William Nagle's office, this matter has settled. Mandatory settlement conference date of May 14, 1998 and trial date of May 26, 1998 are vacated. This matter is set for status review/case management conference in Dept. 3 on August 7, 1998 at 9:00 a.m. Mr. Nagle's office will give notice.

DATE: May 12, 1998

NATURE OF PROCEEDINGS: MINUTE ENTRY
388872

GENERAL AND TRIAL MINUTE FORM

FILE PREPARATION LOG

CMC / SET / TRI

CASE NAME Edgewater Isle Homeowners Assoc vs The Anden Group

CASE # 388872 HRG DATE MAY 14 1998 DEPT 3

✓ FILE IN CHRONOLOGICAL ORDER

✓ NOTICE OF HEARING ON FILE (Pre-Trial Order filed 2/25/98)

____ MINUTE FORM SUBMITTED WITH FILE

✓ FILE CHECKED FOR MISFILINGS

____ DOCUMENTS MISSING

____ NOTICE OF STAY OF ACTION

✓ DISMISSALS

Attached to left side of file

FILE VERIFIED BY I. P. HINES DATE MAY 12 1998

5074

William L. Nagle, SBN 59788
Special Master/Mediator
345 Lorton Avenue, Suite #204
Burlingame, CA 94010
(650) 579-0500
(650) 579-0623 (Fax)

FILED
SAN MATEO COUNTY
MAY - 8 1998
Clerk of the Superior Court
By _____
DEPUTY CLERK

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN MATEO

EDGEWATER ISLE HOMEOWNERS ASSOCIATION, et al.,

Plaintiff,

v.

THE ANDEN GROUP, et al.,

Defendants,

_____/

AND RELATED CROSS-ACTIONS

_____/

CASE NO. 388872

ORDER RE SETTLEMENT

The Court having appointed William L. Nagle as Special Master in this matter and subject to the recorded settlement hearings on April 15, and 16, 1998, and good cause appearing therefor,

IT IS HEREBY ORDERED:

1. Settlement Agreement. By April 28,1998, plaintiff counsel shall provide to all parties a draft Settlement Agreement and Mutual Release. By May 4, 1998, comments and/or requested changes to the Settlement Agreement and Mutual Release shall be provided to plaintiff counsel. By May 12, 1998 the final draft of the Settlement Agreement and Mutual Release shall be distributed to all parties for signature.

If any disagreements exist between the parties with respect to the wording of the Settlement Agreement after May 13, 1998, plaintiff counsel shall so advise the Special Master, who shall set a conference to discuss closing papers.

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It is anticipated that by June 1, 1998, the Settlement Agreement and Mutual Release shall be fully executed.

In addition, it is anticipated that a Good Faith Settlement Motion will be brought by The Anden Group within 15 days after the Settlement Agreement and Mutual Release is fully executed.

3. Settlement Contributions. Settlement contributions are as follows:

The Anden Group	$2,907,500
O'Brien & Hicks	750,000
Mission Drywall of San Jose	325,000
Silva Fence	30,000
San Carlos Sheet Metal Works	65,000
Tara Coatings	50,000
Technibuilders Iron	35,000
Alcal Roofing	40,000
Carlos Rodriguez Painting	45,000
Daniel Smith Plastering	60,000
Conco Cement Company	45,000
B.L. Cohen Landscape	35,000
Melvin Lee & Associates	15,000
Fisk, Firenze & McLean	180,000
Ruth & Going	125,000
*Ash Roofing	1,500
*C. Aparicio Cement Contractors	20,000
*Sierra Lumber	4,000
	=======
Total Settlement:	**$4,733,000**

*Parties' settlement contributions previously paid and not included in global Settlement Agreement.

4. Payment of Settlement Sums. All parties, except The Anden Group and parties with foreign based carriers, shall deposit settlement drafts in trust with plaintiff counsel, Thomas E. Miller, Esq., Law Offices of Thomas E. Miller, 4685 MacArthur Court, Suite #220, Newport Beach, CA 92660 by May 15, 1998. The funding deadline for foreign based carriers is sixty days or June 15, 1998. Settlement drafts shall be made payable to *"The Law Offices of Thomas E. Miller In Trust For The Edgewater Isle North HOA."*

///

///

Any party, except for The Anden Group and parties with foreign based carriers, that fails to deposit their respective settlement funds with The Law Offices of Thomas E. Miller by May 16, 1998 shall pay interest on the settlement amount at a rate of 10% per annum accruing from May 16, 1998 until that party has paid the full amount of its settlement contribution, except for good cause shown.

5. Payment of Settlement Sums by The Anden Group. Counsel for plaintiff and The Anden Group shall use their best cooperative efforts to collect the $2,100,000 in settlement monies from the Federal Court Interpleader action entitled *The Home Insurance Company of Illinois v. The Anden Group, et al.*, U.S. District Court Case No. CV-97-4697 KMW (Ex). For a 60 day period commencing April 8, 1998, there shall be no interest accruing on settlement monies owing from The Anden Group. From day 61 through day 240, simple interest shall accrue on any outstanding settlement funds at the rate of 5% per annum. Accrued interest shall be capped in the amount of $50,000.

If at the conclusion of 240 days plaintiff has not recovered $2,100,000 from The Home Interpleader action, then International Insurance Company shall pay the partial settlement amount of $1,600,000, subject to a hold back provision of $500,000.

APPROVED AND RECOMMENDED:

DATED: April 23, 1998

William L. Nagle, Special Master

IT IS SO ORDERED:

DATED: MAY 07 1998

Judge of the Superior Court

E

MSC 5-14-98

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and Address): 79559	TELEPHONE NO.:	FOR COURT USE ONLY
Kevin J. Tully, Esq. Greene, Chauvel, Descalso & Tully 901 Mariner's Island Blvd., Suite 400 San Mateo, CA 94404	650-573-9500	FILED SAN MATEO COUNTY APR 23 1998 Clerk of the Superior Court By Maria Melgoza DEPUTY CLERK
ATTORNEY FOR (Name): Defendant SACRAMENTO A-1 DOOR		
Insert name of court and name of judicial district and branch court, if any: SAN MATEO COUNTY SUPERIOR COURT		
PLAINTIFF/PETITIONER: EDGEWATER ISLE HOMEOWNERS ASSOCIATION, INC., et al. DEFENDANT/RESPONDENT: THE ANDEN GROUP, et al.		
REQUEST FOR DISMISSAL ☐ **Personal Injury, Property Damage, or Wrongful Death** ☐ **Motor Vehicle** ☐ **Other** ☐ **Family Law** ☐ **Eminent Domain** ☒ **Other** *(specify)*: Construction Defect		CASE NUMBER: 388872

- A conformed copy will not be returned by the clerk unless a method of return is provided with the document. -

1. **TO THE CLERK:** Please **dismiss** this action as follows:
   a. (1) ☐ With prejudice (2) ☒ Without prejudice
   b. (1) ☒ Complaint (2) ☐ Petition
      (3) ☐ Cross-complaint filed by *(name)*: on *(date)*:
      (4) ☐ Cross-complaint filed by *(name)*: on *(date)*:
      (5) ☐ Entire action of all parties and all causes of action
      (6) ☒ Other *(specify)*:* Please dismiss the Complaint of Plaintiff EDGEWATER ISLE HOMEOWNERS ASSOCIATION, INC. as against SACRAMENTO A-1 DOOR, only, each side to bear its own costs and attorneys' fees.

Date: March 27, 1998

BRUCE MAYFIELD, ESQ. ▶ Bruce Mayfield
(TYPE OR PRINT NAME OF ☒ ATTORNEY ☐ PARTY WITHOUT ATTORNEY) (SIGNATURE)

*If dismissal requested is of specified parties only, of specified causes of action only, or of specified cross-complaints only, so state and identify the parties, causes of action, or cross-complaints to be dismissed.

Attorney or party without attorney for: EDGEWATER ISLE HOA
☒ Plaintiff/Petitioner ☐ Defendant/Respondent
☐ Cross-complainant

2. **TO THE CLERK:** Consent to the above dismissal is hereby given.**
   Date:

▶
(TYPE OR PRINT NAME OF ☐ ATTORNEY ☐ PARTY WITHOUT ATTORNEY) (SIGNATURE)

**If a cross-complaint or Response (Family Law) seeking affirmative relief is on file, the attorney for cross-complainant (respondent) must sign this consent if required by Code of Civil Procedure section 581(i) (or (j)).

Attorney or party without attorney for:
☐ Plaintiff/Petitioner ☐ Defendant/Respondent
☐ Cross-complainant

(To be completed by clerk)
3. ☐ Dismissal entered as requested on *(date)*:
4. ☑ Dismissal entered on *(date)*: MAY - 8 1998 as to only *(name)*: SEE ABOVE
5. ☐ Dismissal **not entered** as requested for the following reasons *(specify)*:
6. ☐ a. Attorney or party without attorney notified on *(date)*:
   b. Attorney or party without attorney not notified. Filing party failed to provide
      ☐ a copy to conform ☐ means to return conformed copy

Date: MAY - 8 1998 PEGGY THOMPSON Clerk, by Maria Melgoza, Deputy

RECEIVED
MAR 2 0 1998

LAW OFFICES OF
LARSON & BURNHAM
A PROFESSIONAL CORPORATION
1901 HARRISON STREET, 11TH FLOOR
OAKLAND, CALIFORNIA 94612-3501
TELEPHONE: (510) 444-6800

Please reply to:
POST OFFICE BOX 119
OAKLAND, CALIFORNIA 94604-0119
TELECOPIER NUMBER: (510) 835-6666

DAVID O. LARSON
GREGORY DAVID BROWN
ROBERT J. LYMAN
SCOTT C. FINCH
RALPH A. ZAPPALA
PETER DIXON
SUSAN FELDSTED HALMAN
H. WAYNE GOODROE
DAVID R. PINELLI
RICHARD J. FINN
CATHY L. ARIAS
MICHAEL K. JOHNSON
SHAWN A. TOLIVER
CLARK J. BURNHAM
GEORGE J. ZISER
ERIC R. HAAS
STEVEN M. MARDEN
MONICA DELL'OSSO*
JEFFERY G. BAIREY
GARY SELVIN
ROBERT A. FORD
JAMES L. WRAITH
JOHN J. VERBER
THOMAS M. DOWNEY
PAUL D. CALEO
DAVID H. WATERS

A.J. MOORE, JR. (1918-1984)

FRAYDA L. BRUTON (OF COUNSEL)*

*Certified Specialist, Probate, Estate Planning and Trust Law
The State Bar of California Board of Legal Specialization

JULIE M. AZEVEDO
LISA E. BARNETT
CARYN BORTNICK
LISA M. CAPPELLUTI
CARRIE L. DAUGHTERS
PAMELA FASTIFF ELLMAN
DANTE FORONDA
ANNE COBBLEDICK GRITZER
PETER L. LAGASSE
PELAYO A. LLAMAS, JR.
MARK F. MASCOTTE
GUSTAVO PEÑA
NOREEN N. QUAN
WALTER C. RUNDIN
ANJALI TALWAR
MERCEDES TORO
DAVID S. WEBSTER
BARRY ZOLLER
STEPHANIE BARCLAY
KIMBERLY A. BLAKE
MELISSA A. BRUZZANO
KATHERINE S. CATLOS
MATTHEW G. DUDLEY
SUSAN E. FIRTCH
ALISON F. GREENE
JAMES F. HODGKINS
JASON E. LEE
JOANNA MacQUEEN
JILL A. PASSALACQUA
DEAN POLLACK
STEPHEN Q. ROWELL
JENNIFER J. SARKOZY
DARRELL T. THOMPSON
MICHAEL S. TREPPA
BRADLEY M. ZAMCZYK

WRITER'S DIRECT DIAL NO.
(510) 869-6419

WRITER'S EMAIL ADDRESS
mbruzzano@larson-burnham.com

April 20, 1998

TO ALL COUNSEL:

Re: *Edgewater Isle HOA v. The Anden Group, et al.*
San Mateo County Superior Court No. 388872

Dear Counsel:

We represent defendant Hanson's Masonry who was dismissed from this action some months ago. Please remove us from your proofs of service and facsimile lists.

Thank you.

Very truly yours,

LARSON & BURNHAM

Melissa A. Bruzzano

MAB:imh

824301!/375987

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN MATEO

HONORABLE: JOHN W. RUNDE **JUDGE DEPT.NO.:** 15 M. WAGGENER **CLERK**
DATE: April 15 1998 CINDY DEL ROSARIO **REPORTER**
FILE NO: 388872

(TITLE OF ACTION)	**(APPEARANCES)**
EDGEWATER ISLE HOMEOWNERS ASSOC.,ET AL	Bruce Mayfield
Plaintiff	Mr. DeMaria
	Thorsten Pray
vs.	Jill Hillman
	Mark Howitson
ANDEN, ET AL	John Bevan
	Don Fornasier
Defendant	Al Blake
	Tim Fogarey

Lew Loss, Amy Danteller, Don Sullivan, David Poll, Paul Walker, Mah Urdan, Marisa D'Amico, Chester Moore

NATURE OF PROCEEDINGS Settlement

Court convened after all counsel had reached a settlement with Special Master, William Nagle. The following settlement was placed on the record by Mr. Mayfield: Term #1, there will be no admission of liability, #2, the parties acknowledge each term is subject to specific enforcement. The Court will retain jurisdiction over specific enforcement following dismissal. #3, the Association will file a dismissal without prejudice. Counsel shall hold the dismissal until all sums have been paid to the Association, all parties are to bear their own fees and costs,#4, pursuant to CCP 1542, all parties except Anden and O'Brien waive rights and benefits under CCP 1542. Payments are to be made to the Homeowners Assoc., defendant and cross defendants are to pay the Homeowners Assoc $4,733,000 as full and final settlement. Thomas E. Miller is to hold the money in an interest bearing account for Edgwater Homeowners Assoc. until released by a representative of the Homeowners Assoc. All money is to be received no later that the close of business, May 15, 1998. Apportionment-except for Anden and foreign based carriers, all defendants and cross defendants are to pay that portion of the settlement as recited. Checks are to be made payable as follows:

Anden Group - $2,907,772
O'Brien and Hicks- $750,000
Mission Drywall-$325,000
Silva Fence- $30,000
San Carlos Sheet Metal - $65,000
Tera Coatings Inc.- $50,000
Technic Builders- $35,000
Pacific Coast Bldg.- $35,000
A-Cal Roofing- $35,000
Carlos Rodriguez Painting- $45,000
Conco Cement-$45,000
Daniel Smith Plastering Inc.-$60,000
B.L. Cohen Landscaping-$35,000
Melvin Lee Assoc.-$15,000

Fisk,et al -$180,000
Ruth & Going-$125,000
Ash Roofing-$1,500
Sierra Lumber-$4,000
C. Aparacio-$20,000

Plaintiff's counsel and counsel for the Anden Group are to cooperate to collect $2,100,000 from Federal Court. For a 60 day period, no interest is to be collected. From day 61-140, simple interest, 5% per annum accrued interest to be capped at $50,000. If at the end of 120 days, $2,000,000 is not paid, the insurance carrier pays $1,600,000. There will be a hold over of $500,000 until the conclusion of the interpleader action. Further stipulation recited as to the recovery of amounts owing. Interest to be assessed on late payments recited for the record. Failure of any party to pay tender payment shall not affect this settlement. Plaintiff may obtain a judgment from the Court. The Court may order attorneys fees plus the amount for judgment. There is no confidentialty re this settlement. The agreement is to be executed in full within 45 days from this date. If not, an Order to Show Cause shall be set before the Special Master. Kerry Kane was sworn and testified and accepted the settlement on behalf of the Homeownders Assoc. Matter was referred back to Special Master, William Nagle due to non acceptance of settlement as stated by Mr. Pray.

2:09 PM Court convened, all present except Mr. DeMaria. General 1542 release by Mr. Pray on behalf of his clients upon payments by the sub contractors. Counsel for each party respondend and agreed to the settlement with certain contingencies as stated on the record. The global settlement is contingent on Plaintiffs and Anden and O'Brien settlement tomorrow with the Special Master. United National contribute $760,000 and United National will contribute $47,772, contingent on the global settlement as stated on the record(two separate policies). Counsel for Conco Cement is not present and an OSC is to issue against Conco and counsel Mr. DiMaria. Said OSC is to be set before the Special Master.

5074
William L. Nagle, SBN 59788
Special Master/Mediator
345 Lorton Avenue, Suite #204
Burlingame, CA 94010
(650) 579-0500
(650) 579-0623 (Fax)

FILED
SAN MATEO COUNTY
MAR 27 1998
Clerk of the Superior Court
By _____ DEPUTY CLERK

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN MATEO

EDGEWATER ISLE HOMEOWNERS ASSOCIATION, et al.,

Plaintiff,

v.

THE ANDEN GROUP, et al.,

Defendants,

_____/

AND RELATED CROSS-ACTIONS

_____/

CASE NO. 388872

DECLARATION OF SERVICE BY MAIL

I am a citizen of the United States. My business address is 345 Lorton Avenue, Suite #204, Burlingame, California. I am employed in the County of San Mateo where this mailing occurs. I am over the age of eighteen years and not a party to the within cause. I served PRE-TRIAL ORDER NO. 55 (Endorsed-Filed March 20, 1998) on the following person(s) on the date set forth below, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in a United States post office mailbox at Burlingame, California, addressed as follows:

Please see attached list.

I, Christine L. Britton, declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on March 25, 1998 at Burlingame, California.

Christine L. Britton

EDGEWATER ISLE HOA v. THE ANDEN GROUP, et al.
San Mateo County Superior Court Case No. 388872

Proof of Service List

William L. Nagle, Esq. Special Master/Mediator 345 Lorton Avenue, Suite #204 Burlingame, CA 94010 (650) 579-0500 (650) 579-0623 (Fax)	SPECIAL MASTER
Thomas A. Miller, Esq. Law Offices of Thomas A. Miller 4685 Mac Arthur Court, Suite #220 Newport Beach, CA 92660 (714) 252-9150 (714) 442-0646 (Fax)	Plaintiff, Edgewater Isle HOA, Inc. (in 7/28/97)
Marisa D'Amico, Esq. Bishop, Barry, Howe, Haney & Ryder Embarcadero Center West 275 Battery Street, 12th Floor San Francisco, CA 94111 (415) 421-8550 (415) 362-4730 (Fax)	The Anden Group, Esden Partners, MDG Associates, Ltd., ESR Corporation, TMD Corporation, and Miden Corporation
Alan H. Finkel, Esq. Zimmerman, Koomer & Connolly 10960 Wilshire Blvd., Suite #1225 Los Angeles, CA 90024 (310) 231-6565 (310) 231-6566 (Fax)	The Anden Group (personal counsel)
Alec M. Barinholtz, Esq. Ross, Dixon & Masback Five Park Plaza, Suite #1200 Irvine, CA 92614-8529 (714) 622-2700 (714) 622-2739 (Fax)	International Insurance Company (Anden Group)
Lewis K. Loss, Esq. Ross, Dixon & Masback 601 Pennsylvania Avenue, N.W. North Building Washington, D.C. 20004-2688 (202) 662-2000 (202) 662-2190 (Fax)	International Insurance Company (Anden Group)

Mr. Alan Freudenheim International Insurance Company 181 W. Madison Street, 26th Floor Chicago, IL 60602 (312) 849-5150 (312) 849-5293 (Fax)	International Insurance Company (Anden Group)
Thomas A. Foster, Esq. Marrone, Robinson, Frederick & Foster 111 N. 1st Street, Suite #300 Burbank, CA 91502 (818) 841-1144 (818) 841-0746 (Fax)	
A. Raymond Hammerick, III, Esq. Law Offices of A. Raymond Hammerick, III 10 Universal City Plaza, Suite #2055 Universal City, CA 91608 (818) 763-5295 (818) 763-2308 (Fax)	
Amy Dantzler, Esq. Quisenberry & Barbanel, LLP 2049 Century Park East, Suite #2200 Los Angeles, CA 90067 (310) 785-7966 (310) 785-0254 (Fax)	
John J. Carniato, Esq. Law Offices of John J. Carniato 3736 Mt. Diablo Blvd., Suite #300 Lafayette, CA 94549 (510) 283-1552 (510) 283-9830 (Fax)	O'Brien & Hicks, Inc., O'Brien & Hicks 1988 & Beyond, Ltd., and Gloria Development co., Inc.
Josh Shinnick, Esq. Hoge, Fenton, Jones & Appel, Inc. 60 S. Market Street San Jose, CA 95113 (408) 287-9501 (408) 287-2583 (Fax)	O'Brien & Hicks, Inc.
Anthony B. Varni, Esq. Varni, Fraser, Hartwell & Rodgers 22771 Main Street Hayward, CA 94543 (510) 886-5000 (510) 538-8797 (Fax)	O'Brien & Hicks, Inc.

Chester G. Moore, III, Esq. Low, Ball & Lynch 10 Twin Dolphin Road, Suite #B-500 Redwood City, CA 94065 (650) 591-8822 (650) 591-8884 (Fax)	Alcal Roofing & Insulation
Susan P. Grey, Esq. Dominion Law Group 1155 N. First Street, Suite #101 San Jose, CA 95112 (408) 288-5592 (408) 938-1035 (Fax)	B.L. Cohen Landscape, Inc. (in 9/97)
David S. Henningsen, Esq. Robinson & Wood 227 N. First Street San Jose, CA 95113 (408) 298-7120 (408) 298-0477 (Fax)	B.L. Cohen Landscape, Inc. (in 10/97)
Donald B. Fornasier, Esq. Archer, McComas, Breslin, McMahon & Chritton 2033 N. Main Street, Suite #800 Walnut Creek, CA 94596 (510) 930-6600 (510) 930-6620 (Fax)	B.L. Cohen Landscape, Inc. (in 11/97)
Philip Y. Kazan, Esq. Russell, Kazan, Brenner & Mallett 343 Sansome Street, Suite #525 San Francisco, CA 94104 (415) 956-5841 (415) 956-0708 (Fax)	C. Aparicio Cement
Donald B. Fornasier, Esq. Archer, McComas, Breslin, McMahon & Chritton 2033 N. Main Street, Suite #800 Walnut Creek, CA 94596 (510) 930-6600 (510) 930-6620 (Fax)	C. Aparicio Cement and Carlos Rodriguez Painting (in 3/98)
Timothy Fogarty, Esq. Pandell & Borsuk, LLP 2033 N. Main Street, Suite #450 Walnut Creek, CA 94596-3722 (510) 746-8800 (510) 746-8898 (Fax)	Carlos Rodriguez Painting (in 9/97)

David Brault, Esq. 5160 Birch Street, Suite #200 Newport Beach, CA 92660 (714) 752-2450 (714) 851-8188 (Fax)	Cell-Crete Corporation (in 3/98)
S. Mitchell Kaplan, Esq. Gordon & Rees 275 Battery Street, 20th Floor San Francisco, CA 94111 (415) 986-5900 (415) 986-8054 (Fax)	Daniel Smith Plastering, Inc.
Anthony J. DeMaria, Esq. Filice & DeMaria 1130 Burnett Avenue Building D, Suite H Concord, CA 94520 (510) 676-5094 (510) 676-0548 (Fax)	Gonsalves & Santucci, Inc. dba Conco Cement Company
S. Mitchell Kaplan, Esq. Gordon & Rees 275 Battery Street, 20th Floor San Francisco, CA 94111 (415) 986-5900 (415) 986-8054 (Fax)	Fisk, Firenze & McLean
Melissa A. Bruzzano, Esq. Larson & Burnham P.O. Box 119 Oakland, CA 94604 (510) 444-6800 (510) 835-6666 (Fax)	Hanson's Masonry, Inc. (in 7/96)
J. Michael Higginbotham, Esq. Long & Levit 101 Californria Street, Suite #2300 San Francisco, CA 94111 (415) 397-2222 (415) 397-6392 (Fax)	Ruth & Going, Inc. and Melvin Lee Associates
Donald L. Sullivan, Esq. Clapp, Moroney, Bellagamba, Davis & Vucinich 4400 Bohannon Drive, Suite #100 Menlo Park, CA 94025 (650) 327-1300 (650) 327-3707 (Fax)	Mission Drywall of San Jose (in 5/96); Silva Fence Company (in 10/97); and Technibuilders Iron (in 1/98)

Kevin J. Tully, Esq. Greene, Chauvel, Descalso & Tully 901 Mariner's Island Blvd., Suite #400 San Mateo, CA 94404-1594 (650) 573-9500 (650) 573-9689 (Fax)	North Empire Construction and and Sacramento A-1 Door
Robert K. Phillips, Esq. Phillips & Spallas, LLP 225 Bush Street, 16th Floor San Francisco, CA 94104 (415) 439-8870 (415) 439-882 (Fax)	Peninsula Floors, Inc. (in 9/97; out 12/97)
Nancy A. McPherson, Esq. Holmes, Drevlow, Carmody, Schmidt & Nakano 180 Montgomery Street, Suite #2100 San Francisco, CA 94104 (415) 362-1422 (415) 362-7054 (Fax)	Sacramento A-1 Door
Helen B. Baumann, Esq. Law Office of Eugene L. Bass 495 Seaport Court, Suite #103 Redwood City, CA 94063 (650) 361-1199 (650) 369-4984 (Fax)	San Carlos Sheet Metal Works, Inc.
Howard L. Churchill, Esq. Schofield & Schiller 100 Pringle Avenue, Suite #510 Walnut Creek, CA 94596 (510) 934-3600 (510) 934-2257 (Fax)	Sierra Lumber & Fence Company (in 9/97)
Michael P. Quinlivan, Esq. Kouns, Quinlivan & Severson 101 Park Center Plaza, Suite #1007 San Jose, CA 95113 (408) 278-0125 (408) 292-1257 (Fax)	Sierra Precast, Inc. (in 8/97; dismissed 12/97)
David N. Poll, Esq. Collins & Schlothauer 60 S. Market Street, Suite #1100 San Jose, CA 95113-2369 (408) 298-5161 (408) 297-5766 (Fax)	Silva Fence Company (in 5/96)

Karen Wentzel, Esq.
Ritchie, Fisher, Whitman & Klein
1717 Embarcadero Road
Palo Alto, CA 94303
(650) 857-1717
(650) 857-1288 (Fax)

Soil Foundation Systems (out 5/96)

Albert P. Blake, Esq.
Roger, Scott & Helmer
900 Veterans Blvd., Suite #430
Redwood City, CA 94063
(650) 365-7700
(650) 0677 (Fax)

Tara Coatings

Norman La Force, Esq.
Law Offices of F. Ross Adkins
25 Pacific Avenue Mall
San Francisco, CA 94111
(415) 981-5200
(415) 981-2097 (Fax)

Tara Coatings

Mr. Donald W. Simons, Jr., Esq.
Frank Pinto Adjusters, Inc.
1504 Franklin Street, Suite #308
Oakland, CA 94612
(510) 834-1474
(510) 834-7032 (Fax)
(510) 654-1425 (Hm Fax)

Courtesy Copy

5-14-98 SCH

E

DON FORNASIER, ESQ., (SBN 135237)
JUNE P. BASHANT, ESQ. (SBN: 188496)
ARCHER, McCOMAS, BRESLIN, McMAHON & CHRITTON
A Professional Law Corporation
2033 North Main Street, Suite 800
Walnut Creek, CA 94596
Telephone: 510-930-6600
Facsimile: 510-930-6620

Attorneys for CARLOS RODRIQUEZ PAINTING

FILED
SAN MATEO COUNTY
MAR 26 1998
Clerk of the Superior Court
By _____ DEPUTY CLERK

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN MATEO

EDGEWATER ISLE Plaintiff, vs. THE ANDEN GROUP, et al. Defendants.	No. 388872 **ASSOCIATION OF COUNSEL**
AND RELATED CROSS-ACTIONS.	

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

The law firm of Archer, McComas, Breslin, McMahon, & Chritton, 2033 North Main Street, Suite 800, Walnut Creek, California, 94596, is herby associated with Timothy Fogarty of the law firm of Pandell & Borsuk on behalf of CARLOS RODRIGUEZ PAINTING in the above entitled action.

DATED: March 13, 1998

PANDELL & BORSUK

By: Timothy J. Fogarty
TIMOTHY FOGARTY

Janice caption

DATED: March 17, 1998

ARCHER, McCOMAS,
BRESLIN, McMAHON & CHRITTON

By: _____
DON FORNASIER
Associated Counsel for CARLOS RODRIQUEZ PAINTING

Janice caption

Re: ***Edgewood Isle HOA v. The Anden Group, et al. (and related cross-actions)***
San Mateo Superior Court No. 388872

PROOF OF SERVICE

I am a citizen of the United States and employed in San Mateo County, California; I am over the age of eighteen (18) years and not a party to the within action; my business address is 2033 N. Main Street, Suite 800, Walnut Creek, CA 94596; on this date I served:

ASSOCIATION OF COUNSEL

__X___ by placing a true copy, enclosed in a sealed envelope addressed as set forth below, for collection and mailing on the date and at the business address shown above following our ordinary business practices. I am readily familiar with this business' practice for collection and processing of correspondence for mailing with the United States Postal Service. On the same day that a sealed envelope is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service with postage fully prepaid.

_____ by personal service delivering a true copy thereof in a sealed envelope to the persons whose addresses are set forth below.

SEE ATTACHED LIST

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

Executed on **March 16, 1998** Walnut Creek, California.

JANICE P. ANDERSON

Re: ***Edgewood Isle HOA v. The Anden Group, et al. (and related cross-actions)***
San Mateo Superior Court No. 388872

SERVICE LIST

William L. Nagle, Esq. 345 Lorton Ave., #204 Burlingame, CA 94010 (650) 579-0500 (650) 579-0623 FAX	Special Master
Michael B. Allen, Esq. 411 Borel Ave., #445 San Mateo, CA 94402 (650) 341-0800 (650) 341-1147 FAX	Plaintiff, Edgewater Isle HOA, Inc.
Thomas A. Miller, Esq. 4685 MacArthur Court, #220 Newport Beach, CA 92660 (714) 252-9150 (714) 442-0646 FAX	Plaintiff, Edgewater Isle HOA, Inc. (in 7/28/97)
Marisa D'Amico, Esq. Bishop, Barry, Howe, Haney & Ryder Embarcadero Center West 275 Battery St., 12th Fl. San Francisco, CA 94111 (415) 421-8550 (415) 362-4730 FAX	The Anden Group, Anden Partners, MDG Associates, Ltd., ESR Corporation, TMD Corporation, and Miden Corporation
Alan H. Finkel, Esq. Zimmerman, Koomer & Connolly 10960 Wilshire Blvd., #1225 Los Angeles, CA 90024 (310) 231-6565 (310) 231-6566 FAX	The Anden Group (Personal Counsel)
Alec M. Barinholtz, Esq. Ross, Dixon & Masback Five Park Plaza, #1200 Irvine, CA 92614-8529 (714) 622-2700 (714) 622-2739 FAX	International Ins. Co. (Anden Group)
Lewis K. Loss, Esq. Ross, Dixon & Masback 601 Pennsylvania Ave., N.W., North Building Washington, D.C. 20004-2688 (202) 662-2190 FAX	International Ins. Co. (Anden Group)
Mr. Alan Freudenheim, Esq. International Insurance Co. 181 W. Madison Street, 26th Fl. Chicago, IL 60602 (312) 849-5150 (312) 849-5293 FAX	International Ins. Co. (Anden Group)

Thomas A. Foster, Esq.
Marrone, Robinson, Frederick & Foster
111 N. 1st St., #300
Burbank, CA 91502
(818) 841-1144
(818) 841-0746 FAX

Raymond Hammerick, III, Esq.
10 Universal City Plaza, Suite 2055
Universal City, CA 91608
(818) 763-5295
(818) 763-2308 FAX

Amy Dantzler, Esq.
Quisenberry & Barbanel, LLP
2049 Century Park East, #2200
Los Angeles, CA 90067
(310) 785-7966
(310) 785-0254 FAX

John J. Carniato, Esq.
3736 Mt. Diablo Blvd., #300
Lafayette, CA 94549
(510) 283-1552
(510) 283-9830 FAX

O'Brien & Hicks, Inc., O'Brien & Hicks 1988 & Beyond, Ltd., and Gloria Development Co., Inc.

Josh Shinnick, Esq.
Hoge, Fenton, Jones & Appel, Inc.
60 S. Market St.
San Jose, CA 95113
(408) 287-9501
(408) 287-2583 FAX

O'Brien & Hicks, Inc.

Anthony B. Varni, Esq.
Varni, Fraser, Hartwell & Rodgers
22771 Main Street
Hayward, CA 94543
(510) 886-5000
(510) 538-8797 FAX

O'Brien & Hicks, Inc.

Chester G. Moore, III, Esq.
Low, Ball & Lynch
10 Twin Dolphin Rd., #B-500
Redwood City, CA 94065
(650) 591-8822
(650) 591-8884 FAX

Alcal Roofing & Insulation

Philip Y. Kazan, Esq.
Russell, Kazan, Brenner & Mallett
343 Sansome St., #525
San Francisco, CA 94104
(415) 956-5841
(415) 956-0708 FAX

C. Aparacio Cement

S. Mitchell Kaplan, Esq. Gordon & Rees 275 Battery St., 20th Fl. San Francisco, CA 94111 (415) 986-5900 (415) 986-8054 FAX	Daniel Smith Plastering, Inc.
Anthony J. DeMaria, Esq. Felice & DeMaria 1130 Burnett Ave., Bldg. D, #H Concord, CA 94520 (510) 676-5094 (510) 767-0548 FAX	Gonsalves & Santucci, Inc. dba Conco Cement Co.
S. Mitchell Kaplan, Esq. Gordon & Rees 275 Battery St., 20th Fl. San Francisco, CA 94111 (415) 986-5900 (415) 986-8054 FAX	Fisk, Firenze & McLean
Scott C. Finch, Esq. Melissa A. Bruzzano Larson & Burnham P.O. Box 119 Oakland, CA 94604 (510) 444-6800 (510) 835-6666 FAX	Hanson's Masonry, Inc. (in 7/96)
J. Michael Higginbotham, Esq. Long & Levit 101 California Street, #2300 San Francisco, CA 94111 (415) 397-2222 (415) 397-6392 FAX	C. Aparicio Cement
Robert P. Jolly, Esq. Jolly, Herlihy & Hepler 275 Battery St., #600 San Francisco, CA 94111 (415) 658-3100 (415) 658-3094 FAX	M&H Electric (in 8/97)
Donald L. Sullivan, Esq. Clapp, Moroney, Bellagamba, Davis & Vucinich 4400 Bohannon Dr., #100 Menlo Park, CA 94025 (650) 327-1300 (650) 327-3707 FAX	Mission Drywall of San Jose and San Jose and Silva Fence Co. (in 5/96)
Kevin J. Tully, Esq. Greene, Chauvel, Descalso & Tully 901 Mariner's Island Blvd., #400 San Mateo, CA 94404-1594 (650) 573-5900 (650) 573-9689 FAX	North Empire Construction and Sacramento A-1 Door
Nancy A. McPherson, Esq.	Sacramento A-1 Door

Homes, Drevlow, Carmody, Schmidt
& Nakano
180 Montgomery Street, #2100
San Francisco, CA 94104
(415) 362-1422
(415) 362-7054 (FAX)

Helen B. Baumann, Esq.
Law Office of Eugene L. Bass
495 Seaport Court, #103
Redwood City, CA 94063
(650) 361-1199
(650) 369-4984 FAX

San Carlos Sheet Metal Works, Inc.

David N. Poll, Esq.
Collins & Schlothauer
60 S. Market St., #1100
San Jose, CA 95113-2369
(408) 298-5161
(408) 297-5766 FAX

Silva Fence Co. (in 5/96)

Karen Wentzel, Esq.
Ritchie, Fisher, Whitman & Klein
1717 Embarcadero Rd.
Palo Alto, CA 94303
(650) 857-1717
(650) 857-1288 (FAX)

Soil Foundation Systems

Albert P. Blake, Esq.
Roger, Scott & Helmer
900 Veterans Blvd., #430
Redwood City, CA 94063
(650) 365-7700
(650) 365-0677 FAX

Tara Coatings

Norman LaForce, Esq.
Law offices of F. Ross Adkins
25 Pacific Avenue Mall
San Francisco, CA 94111
(415) 981-5200
(415) 981-2097 FAX

Tara Coatings

Donald W. Simons, Jr., Esq.
Frank Pinto Adjusters, Inc.
1504 Franklin St., #308
Oakland, CA 94612
(510) 834-1474
(510) 834-7032 FAX

Courtesy Copy

Howard L. Churchill, Esq.
Schofield & Schiller
100 Pringle Ave., #510
Walnut Creek, CA 94596
(510) 934-3600
(510) 934-2257 FAX

Sierra Lumber

Joe Thompson, Esq. 981 Fremont Street Santa Clara, CA 95050 (408) 984-8555 (408) 292-1061 FAX	Sierra Lumber
Gregory J. Patterson Proskauer Rose, LLP 2049 Century Park East, #3200 Los Angeles, CA 90067	The Anden Group
Jeffery J. Borsuk, Esq. Lisa G. Schlittner, Esq. Pandell & Borsuk LLP 2033 N. Main St., #450 Walnut Creek, CA 94596	Carlos Rodriguez Painting
Robert K. Phillips, Esq. Shahab E. Fotouhi, Esq. 225 Bush Street, 16th Fl. San Francisco, CA 94104	Peninsula Floors, Inc.
Susan P. Grey, Esq. Dominion Law Group, LLP 1155 N. First Street, #101 San Jose, CA 95112	B.L. Cohen Landscape
Daniel A. Berman, Esq. James M. Ganion, Esq. Wood, Smith, Henning & Berman, LLP 801 South Figueroa St., Ninth Floor Los Angeles, CA 90017-2573	Chrisp Co.
Maria Caruana, Esq. Fortune & Drevlow 180 Montgomery Street, #2100 San Francisco, CA 94104	Sacramento A-1 Door
Joseph H. Huber, Esq. Gassett, Perr & Frank 210 N. Fourth Street, #400 San Jose, CA 95112	Crowley Co.
William H. Staples, Esq. Capps, Staples, Ward, Stephenson & Dodson 1777 Botelho Dr., #100 Walnut Creek, CA 94596	Safeco Insurance Co. of America
Paul Walker, Esq. Adams, Nye, Sinunu & Walker 633 Battery St., 5th Fl. San Francisco, CA 94111	Mission Drywall
John P. Bevan, Esq. Long & Levit, LLP 101 California Street, #2300 San Francisco, CA 94111	Ruth Going and Melvin Lee

5074
William L. Nagle, SBN 59788
Special Master/Mediator
345 Lorton Avenue, Suite #204
Burlingame, CA 94010
(650) 579-0500
(650) 579-0623 (Fax)

SC 5-14

FILED
SAN MATEO COUNTY
MAR 2 5 1998
Clerk of the Superior Court
By
DEPUTY CLERK

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN MATEO

EDGEWATER ISLE HOMEOWNERS ASSOCIATION, et al.,

Plaintiff,

v.

THE ANDEN GROUP, et al.,

Defendants,

_____/

AND RELATED CROSS-ACTIONS

_____/

CASE NO. 388872

DECLARATION OF SERVICE BY MAIL

I am a citizen of the United States. My business address is 345 Lorton Avenue, Suite #204, Burlingame, California. I am employed in the County of San Mateo where this mailing occurs. I am over the age of eighteen years and not a party to the within cause. I served PRE-TRIAL ORDER NO. 54 (Endorsed-Filed March 16, 1998) on the following person(s) on the date set forth below, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in a United States post office mailbox at Burlingame, California, addressed as follows:

Please see attached list.

I, Christine L. Britton, declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on March 19, 1998 at Burlingame, California.

Christine L. Britton

EDGEWATER ISLE HOA v. THE ANDEN GROUP, et al.
San Mateo County Superior Court Case No. 388872

Proof of Service List

William L. Nagle, Esq. Special Master/Mediator 345 Lorton Avenue, Suite #204 Burlingame, CA 94010 (650) 579-0500 (650) 579-0623 (Fax)	SPECIAL MASTER
Thomas A. Miller, Esq. Law Offices of Thomas A. Miller 4685 Mac Arthur Court, Suite #220 Newport Beach, CA 92660 (714) 252-9150 (714) 442-0646 (Fax)	Plaintiff, Edgewater Isle HOA, Inc. (in 7/28/97)
Marisa D'Amico, Esq. Bishop, Barry, Howe, Haney & Ryder Embarcadero Center West 275 Battery Street, 12th Floor San Francisco, CA 94111 (415) 421-8550 (415) 362-4730 (Fax)	The Anden Group, Esden Partners, MDG Associates, Ltd., ESR Corporation, TMD Corporation, and Miden Corporation
Alan H. Finkel, Esq. Zimmerman, Koomer & Connolly 10960 Wilshire Blvd., Suite #1225 Los Angeles, CA 90024 (310) 231-6565 (310) 231-6566 (Fax)	The Anden Group (personal counsel)
Alec M. Barinholtz, Esq. Ross, Dixon & Masback Five Park Plaza, Suite #1200 Irvine, CA 92614-8529 (714) 622-2700 (714) 622-2739 (Fax)	International Insurance Company (Anden Group)
Lewis K. Loss, Esq. Ross, Dixon & Masback 601 Pennsylvania Avenue, N.W. North Building Washington, D.C. 20004-2688 (202) 662-2000 (202) 662-2190 (Fax)	International Insurance Company (Anden Group)

Mr. Alan Freudenheim
International Insurance Company
181 W. Madison Street, 26th Floor
Chicago, IL 60602
(312) 849-5150
(312) 849-5293 (Fax)

International Insurance Company
(Anden Group)

Thomas A. Foster, Esq.
Marrone, Robinson, Frederick & Foster
111 N. 1st Street, Suite #300
Burbank, CA 91502
(818) 841-1144
(818) 841-0746 (Fax)

A. Raymond Hammerick, III, Esq.
Law Offices of A. Raymond Hammerick, III
10 Universal City Plaza, Suite #2055
Universal City, CA 91608
(818) 763-5295
(818) 763-2308 (Fax)

Amy Dantzler, Esq.
Quisenberry & Barbanel, LLP
2049 Century Park East, Suite #2200
Los Angeles, CA 90067
(310) 785-7966
(310) 785-0254 (Fax)

John J. Carniato, Esq.
Law Offices of John J. Carniato
3736 Mt. Diablo Blvd., Suite #300
Lafayette, CA 94549
(510) 283-1552
(510) 283-9830 (Fax)

O'Brien & Hicks, Inc., O'Brien & Hicks 1988 & Beyond, Ltd., and Gloria Development co., Inc.

Josh Shinnick, Esq.
Hoge, Fenton, Jones & Appel, Inc.
60 S. Market Street
San Jose, CA 95113
(408) 287-9501
(408) 287-2583 (Fax)

O'Brien & Hicks, Inc.

Anthony B. Varni, Esq.
Varni, Fraser, Hartwell & Rodgers
22771 Main Street
Hayward, CA 94543
(510) 886-5000
(510) 538-8797 (Fax)

O'Brien & Hicks, Inc.

Chester G. Moore, III, Esq. Low, Ball & Lynch 10 Twin Dolphin Road, Suite #B-500 Redwood City, CA 94065 (650) 591-8822 (650) 591-8884 (Fax)	Alcal Roofing & Insulation
Susan P. Grey, Esq. Dominion Law Group 1155 N. First Street, Suite #101 San Jose, CA 95112 (408) 288-5592 (408) 938-1035 (Fax)	B.L. Cohen Landscape, Inc. (in 9/97)
David S. Henningsen, Esq. Robinson & Wood 227 N. First Street San Jose, CA 95113 (408) 298-7120 (408) 298-0477 (Fax)	B.L. Cohen Landscape, Inc. (in 10/97)
Donald B. Fornasier, Esq. Archer, McComas, Breslin, McMahon & Chritton 2033 N. Main Street, Suite #800 Walnut Creek, CA 94596 (510) 930-6600 (510) 930-6620 (Fax)	B.L. Cohen Landscape, Inc. (in 11/97)
Philip Y. Kazan, Esq. Russell, Kazan, Brenner & Mallett 343 Sansome Street, Suite #525 San Francisco, CA 94104 (415) 956-5841 (415) 956-0708 (Fax)	C. Aparicio Cement
Donald B. Fornasier, Esq. Archer, McComas, Breslin, McMahon & Chritton 2033 N. Main Street, Suite #800 Walnut Creek, CA 94596 (510) 930-6600 (510) 930-6620 (Fax)	C. Aparicio Cement and Carlos Rodriguez Painting (in 3/98)
Timothy Fogarty, Esq. Pandell & Borsuk, LLP 2033 N. Main Street, Suite #450 Walnut Creek, CA 94596-3722 (510) 746-8800 (510) 746-8898 (Fax)	Carlos Rodriguez Painting (in 9/97)

David Brault, Esq. 5160 Birch Street, Suite #200 Newport Beach, CA 92660 (714) 752-2450 (714) 851-8188 (Fax)	Cell-Crete Corporation (in 3/98)
S. Mitchell Kaplan, Esq. Gordon & Rees 275 Battery Street, 20th Floor San Francisco, CA 94111 (415) 986-5900 (415) 986-8054 (Fax)	Daniel Smith Plastering, Inc.
Anthony J. DeMaria, Esq. Filice & DeMaria 1130 Burnett Avenue Building D, Suite H Concord, CA 94520 (510) 676-5094 (510) 676-0548 (Fax)	Gonsalves & Santucci, Inc. dba Conco Cement Company
S. Mitchell Kaplan, Esq. Gordon & Rees 275 Battery Street, 20th Floor San Francisco, CA 94111 (415) 986-5900 (415) 986-8054 (Fax)	Fisk, Firenze & McLean
Melissa A. Bruzzano, Esq. Larson & Burnham P.O. Box 119 Oakland, CA 94604 (510) 444-6800 (510) 835-6666 (Fax)	Hanson's Masonry, Inc. (in 7/96)
J. Michael Higginbotham, Esq. Long & Levit 101 Califonria Street, Suite #2300 San Francisco, CA 94111 (415) 397-2222 (415) 397-6392 (Fax)	Ruth & Going, Inc. and Melvin Lee Associates
Donald L. Sullivan, Esq. Clapp, Moroney, Bellagamba, Davis & Vucinich 4400 Bohannon Drive, Suite #100 Menlo Park, CA 94025 (650) 327-1300 (650) 327-3707 (Fax)	Mission Drywall of San Jose (in 5/96); Silva Fence Company (in 10/97); and Technibuilders Iron (in 1/98)

Kevin J. Tully, Esq. Greene, Chauvel, Descalso & Tully 901 Mariner's Island Blvd., Suite #400 San Mateo, CA 94404-1594 (650) 573-9500 (650) 573-9689 (Fax)	North Empire Construction and and Sacramento A-1 Door
Robert K. Phillips, Esq. Phillips & Spallas, LLP 225 Bush Street, 16th Floor San Francisco, CA 94104 (415) 439-8870 (415) 439-882 (Fax)	Peninsula Floors, Inc. (in 9/97; out 12/97)
Nancy A. McPherson, Esq. Holmes, Drevlow, Carmody, Schmidt & Nakano 180 Montgomery Street, Suite #2100 San Francisco, CA 94104 (415) 362-1422 (415) 362-7054 (Fax)	Sacramento A-1 Door
Helen B. Baumann, Esq. Law Office of Eugene L. Bass 495 Seaport Court, Suite #103 Redwood City, CA 94063 (650) 361-1199 (650) 369-4984 (Fax)	San Carlos Sheet Metal Works, Inc.
Howard L. Churchill, Esq. Schofield & Schiller 100 Pringle Avenue, Suite #510 Walnut Creek, CA 94596 (510) 934-3600 (510) 934-2257 (Fax)	Sierra Lumber & Fence Company (in 9/97)
Michael P. Quinlivan, Esq. Kouns, Quinlivan & Severson 101 Park Center Plaza, Suite #1007 San Jose, CA 95113 (408) 278-0125 (408) 292-1257 (Fax)	Sierra Precast, Inc. (in 8/97; dismissed 12/97)
David N. Poll, Esq. Collins & Schlothauer 60 S. Market Street, Suite #1100 San Jose, CA 95113-2369 (408) 298-5161 (408) 297-5766 (Fax)	Silva Fence Company (in 5/96)

Karen Wentzel, Esq.
Ritchie, Fisher, Whitman & Klein
1717 Embarcadero Road
Palo Alto, CA 94303
(650) 857-1717
(650) 857-1288 (Fax)

Soil Foundation Systems (out 5/96)

Albert P. Blake, Esq.
Roger, Scott & Helmer
900 Veterans Blvd., Suite #430
Redwood City, CA 94063
(650) 365-7700
(650) 0677 (Fax)

Tara Coatings

Norman La Force, Esq.
Law Offices of F. Ross Adkins
25 Pacific Avenue Mall
San Francisco, CA 94111
(415) 981-5200
(415) 981-2097 (Fax)

Tara Coatings

Mr. Donald W. Simons, Jr., Esq.
Frank Pinto Adjusters, Inc.
1504 Franklin Street, Suite #308
Oakland, CA 94612
(510) 834-1474
(510) 834-7032 (Fax)
(510) 654-1425 (Hm Fax)

Courtesy Copy

BOX FR

E

5074
William L. Nagle, SBN 59788
Special Master/Mediator
345 Lorton Avenue, Suite #204
Burlingame, CA 94010
(650) 579-0500
(650) 579-0623 (Fax)

1998 MAR 20 A 9:08

FILED
CLERK OF THE SUPERIOR COURT
DEPUTY CLERK

Set 5-14-98

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN MATEO

EDGEWATER ISLE HOMEOWNERS ASSOCIATION, et al.,

Plaintiff,

v.

THE ANDEN GROUP, et al.,

Defendants,

_____/

AND RELATED CROSS-ACTIONS

_____/

CASE NO. 388872

PRE-TRIAL ORDER NO. 55

The Court having appointed William L. Nagle as Special Master in this matter and good cause appearing therefor,

IT IS HEREBY ORDERED that a two-day Settlement Conference/Mediation shall be conducted by Randall W. Wulff, Esq., on April 7, and 8, 1998 at Mr. Wulff's offices at 235 Montgomery Street, 30th Floor, San Francisco, telephone (415) 954-4400. Plaintiff shall advance the fee for the Settlement Conference/Mediation. In the event that the Settlement Conference/Mediation successfully resolves the case, then the Special Mater may apportion Mr. Wulff's fees among the parties subject to Court approval.

APPROVED AND RECOMMENDED:

DATED: March 12, 1998

William L. Nagle, Special Master

IT IS SO ORDERED:

DATED: MAR 17 1998

Judge of the Superior Court

5074
William L. Nagle, SBN 59788
Special Master/Mediator
345 Lorton Avenue, Suite #204
Burlingame, CA 94010
(650) 579-0500
(650) 579-0623 (Fax)

FILED
SAN MATEO COUNTY
MAR 16 1998
Clerk of the Superior Court
DEPUTY CLERK

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN MATEO

EDGEWATER ISLE HOMEOWNERS ASSOCIATION, et al.,

Plaintiff,

v.

THE ANDEN GROUP, et al.,

Defendants,

_____/

AND RELATED CROSS-ACTIONS

_____/

CASE NO. 388872

PRE-TRIAL ORDER NO. 54

The Court having appointed William L. Nagle as Special Master in this matter and good cause appearing therefor,

IT IS HEREBY ORDERED:

1. Pursuant to Pre-Trial Order No. 51, the Special Master shall hold a two-day Settlement Conference on March 16, 1998 and March 17, 1998 commencing at 9:00 a.m. on each day at the San Mateo County Superior Court (Central Branch), 800 N. Humboldt Street, San Mateo, California.

On March 16, 1998, the participants shall be plaintiff, The Anden Group, and O'Brien & Hicks, Inc., their counsel, principals, coverage counsel, and insurance carrier representatives. In addition, each party shall have the person most knowledgeable of that party's insurance profile, and with respect to each insurer, the party or principals with ultimate settlement authority.

The first day of the Settlement Conference (March 16, 1998) the following issues shall be discussed with all participants:

(a) Plaintiff's demand for damages as to each The Anden Group and O'Brien & Hicks);

(b) Separate summaries by The Anden Group and O'Brien & Hicks' of their defenses, exposure to verdict and judgment, and settlement offers;

(c) Expectations of The Anden Group and O'Brien & Hicks' regarding coverage, including named and additional insureds, "other insurance," and allocation issues;

(d) The respective coverage positions of The Anden Group and O'Brien & Hicks' insurers, including named and additional insureds, "other insurance," and allocation issues; and

(e) Respective brokers' coverage positions and expectations for The Anden Group and O'Brien & Hicks'.

2. The second day of the Settlement Conference (March 17, 1998) shall consist of settlement discussions with the same participants as the first day. Counsel and claimspeople for subcontractors shall appear at 1:00 p.m. on the second day of the Settlement Conference.

3. By March 11, each party and insurer shall serve on the Special Master a confidential position statement of no more than five pages.

(a) Plaintiff shall include a statement of liability and damages as to each defendant, including each general contractor, developer, and subcontractor. The statement shall include a settlement demand for each individual defendant.

(b) Each general contractor and/or developer shall include a statement of liability and damages as to each subcontractor. The statement shall include a settlement demand for each subcontractor.

///

///

///

(c) Each party seeking coverage shall set forth the basis on which coverage is being sought, from what parties and/or insurers coverage is being sought, and the evidence supporting such contentions.

APPROVED AND RECOMMENDED:

DATED: March 6, 1998

William L. Nagle, Special Master

IT IS SO ORDERED:

DATED: MAR 10 1998

Judge of the Superior Court

5074
William L. Nagle, SBN 59788
Special Master/Mediator
345 Lorton Avenue, Suite #204
Burlingame, CA 94010
(650) 579-0500
(650) 579-0623 (Fax)

FILED
SAN MATEO COUNTY
MAR 0 9 1998
Clerk of the Superior Court
By
DEPUTY CLERK

SC
3-16

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN MATEO

EDGEWATER ISLE HOMEOWNERS ASSOCIATION, et al.,

Plaintiff,

v.

THE ANDEN GROUP, et al.,

Defendants,

_____/

AND RELATED CROSS-ACTIONS

_____/

CASE NO. 388872

DECLARATION OF SERVICE BY MAIL

I am a citizen of the United States. My business address is 345 Lorton Avenue, Suite #204, Burlingame, California. I am employed in the County of San Mateo where this mailing occurs. I am over the age of eighteen years and not a party to the within cause. I served PRE-TRIAL ORDER NO. 53 (Endorsed-Filed March 4, 1998) on the following person(s) on the date set forth below, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in a United States post office mailbox at Burlingame, California, addressed as follows:

Please see attached list.

I, Christine L. Britton, declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on March 5, 1998 at Burlingame, California.

Christine L. Britton

03/05/98

EDGEWATER ISLE HOA v. THE ANDEN GROUP, et al.
San Mateo County Superior Court Case No. 388872

Proof of Service List

William L. Nagle, Esq. Special Master/Mediator 345 Lorton Avenue, Suite #204 Burlingame, CA 94010 (650) 579-0500 (650) 579-0623 (Fax)	SPECIAL MASTER
Thomas A. Miller, Esq. Law Offices of Thomas A. Miller 4685 Mac Arthur Court, Suite #220 Newport Beach, CA 92660 (714) 252-9150 (714) 442-0646 (Fax)	Plaintiff, Edgewater Isle HOA, Inc. (in 7/28/97)
Marisa D'Amico, Esq. Bishop, Barry, Howe, Haney & Ryder Embarcadero Center West 275 Battery Street, 12th Floor San Francisco, CA 94111 (415) 421-8550 (415) 362-4730 (Fax)	The Anden Group, Esden Partners, MDG Associates, Ltd., ESR Corporation, TMD Corporation, and Miden Corporation
Alan H. Finkel, Esq. Zimmerman, Koomer & Connolly 10960 Wilshire Blvd., Suite #1225 Los Angeles, CA 90024 (310) 231-6565 (310) 231-6566 (Fax)	The Anden Group (personal counsel)
Alec M. Barinholtz, Esq. Ross, Dixon & Masback Five Park Plaza, Suite #1200 Irvine, CA 92614-8529 (714) 622-2700 (714) 622-2739 (Fax)	International Insurance Company (Anden Group)
Lewis K. Loss, Esq. Ross, Dixon & Masback 601 Pennsylvania Avenue, N.W. North Building Washington, D.C. 20004-2688 (202) 662-2000 (202) 662-2190 (Fax)	International Insurance Company (Anden Group)

Mr. Alan Freudenheim
International Insurance Company
181 W. Madison Street, 26th Floor
Chicago, IL 60602
(312) 849-5150
(312) 849-5293 (Fax)

International Insurance Company
(Anden Group)

Thomas A. Foster, Esq.
Marrone, Robinson, Frederick & Foster
111 N. 1st Street, Suite #300
Burbank, CA 91502
(818) 841-1144
(818) 841-0746 (Fax)

A. Raymond Hammerick, III, Esq.
Law Offices of A. Raymond Hammerick, III
10 Universal City Plaza, Suite #2055
Universal City, CA 91608
(818) 763-5295
(818) 763-2308 (Fax)

Amy Dantzler, Esq.
Quisenberry & Barbanel, LLP
2049 Century Park East, Suite #2200
Los Angeles, CA 90067
(310) 785-7966
(310) 785-0254 (Fax)

John J. Carniato, Esq.
Law Offices of John J. Carniato
3736 Mt. Diablo Blvd., Suite #300
Lafayette, CA 94549
(510) 283-1552
(510) 283-9830 (Fax)

O'Brien & Hicks, Inc., O'Brien & Hicks 1988 & Beyond, Ltd., and Gloria Development co., Inc.

Josh Shinnick, Esq.
Hoge, Fenton, Jones & Appel, Inc.
60 S. Market Street
San Jose, CA 95113
(408) 287-9501
(408) 287-2583 (Fax)

O'Brien & Hicks, Inc.

Anthony B. Varni, Esq.
Varni, Fraser, Hartwell & Rodgers
22771 Main Street
Hayward, CA 94543
(510) 886-5000
(510) 538-8797 (Fax)

O'Brien & Hicks, Inc.

Chester G. Moore, III, Esq.
Low, Ball & Lynch
10 Twin Dolphin Road, Suite #B-500
Redwood City, CA 94065
(650) 591-8822
(650) 591-8884 (Fax)

Alcal Roofing & Insulation

Susan P. Grey, Esq.
Dominion Law Group
1155 N. First Street, Suite #101
San Jose, CA 95112
(408) 288-5592
(408) 938-1035 (Fax)

B.L. Cohen Landscape, Inc. (in 9/97)

David S. Henningsen, Esq.
Robinson & Wood
227 N. First Street
San Jose, CA 95113
(408) 298-7120
(408) 298-0477 (Fax)

B.L. Cohen Landscape, Inc. (in 10/97)

Donald B. Fornasier, Esq.
Archer, McComas, Breslin, McMahon
& Chritton
2033 N. Main Street, Suite #800
Walnut Creek, CA 94596
(510) 930-6600
(510) 930-6620 (Fax)

B.L. Cohen Landscape, Inc. (in 11/97)

Philip Y. Kazan, Esq.
Russell, Kazan, Brenner & Mallett
343 Sansome Street, Suite #525
San Francisco, CA 94104
(415) 956-5841
(415) 956-0708 (Fax)

C. Aparicio Cement

Donald B. Fornasier, Esq.
Archer, McComas, Breslin, McMahon
& Chritton
2033 N. Main Street, Suite #800
Walnut Creek, CA 94596
(510) 930-6600
(510) 930-6620 (Fax)

C. Aparicio Cement

Jeffery L. Borsuk, Esq.
Pandell & Borsuk, LLP
2033 N. Main Street, Suite #450
Walnut Creek, CA 94596-3722
(510) 746-8800
(510) 746-8898 (Fax)

Carlos Rodriguez Painting (in 9/97)

S. Mitchell Kaplan, Esq. Gordon & Rees 275 Battery Street, 20th Floor San Francisco, CA 94111 (415) 986-5900 (415) 986-8054 (Fax)	Daniel Smith Plastering, Inc.
Anthony J. DeMaria, Esq. Filice & DeMaria 1130 Burnett Avenue Building D, Suite H Concord, CA 94520 (510) 676-5094 (510) 676-0548 (Fax)	Gonsalves & Santucci, Inc. dba Conco Cement Company
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Melissa A. Bruzzano, Esq. Larson & Burnham P.O. Box 119 Oakland, CA 94604 (510) 444-6800 (510) 835-6666 (Fax)	Hanson's Masonry, Inc. (in 7/96)
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Helen B. Baumann, Esq. Law Office of Eugene L. Bass 495 Seaport Court, Suite #103 Redwood City, CA 94063 (650) 361-1199 (650) 369-4984 (Fax)	San Carlos Sheet Metal Works, Inc.
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Albert P. Blake, Esq. Roger, Scott & Helmer 900 Veterans Blvd., Suite #430 Redwood City, CA 94063 (650) 365-7700 (650) 0677 (Fax)	Tara Coatings
Norman La Force, Esq. Law Offices of F. Ross Adkins 25 Pacific Avenue Mall San Francisco, CA 94111 (415) 981-5200 (415) 981-2097 (Fax)	Tara Coatings
Mr. Donald W. Simons, Jr., Esq. Frank Pinto Adjusters, Inc. 1504 Franklin Street, Suite #308 Oakland, CA 94612 (510) 834-1474 (510) 834-7032 (Fax) (510) 654-1425 (Hm Fax)	Courtesy Copy

William L. Nagle
345 Lorton Avenue, Suite 204
Burlingame, CA 94010-4116
650/579-0500\Fax 650/579-0623

Special Master

FILED
SAN MATEO COUNTY
MAR - 4 1998
Clerk of the Superior Court
DEPUTY CLERK

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN MATEO

EDGEWATER ISLE HOMEOWNERS ASSOCIATION, Plaintiff, vs. THE ANDEN GROUP, et al., Defendants. AND RELATED CROSS-ACTIONS.	CASE NO. 388872 **PRE-TRIAL ORDER NO. 53** **RE COMPELLING DEPOSITION OF DENNIS O'BRIEN**

The Court having appointed William L. Nagle as Special Master/Mediator in this case and by power vested to the Special Master by the Presiding Judge of the San Mateo Superior Court,

IT IS HEREBY ORDERED that:

1. The deposition of Dennis O'Brien, person most knowledgeable for Defendant O'Brien & Hicks, shall be conducted during two days during the time period of March 2nd through 6th, 1998.

///

2. Counsel for O'Brien and Hicks shall notify Plaintiff's counsel in writing no later than 12:00 p.m. on Wednesday, February 25, 1998, of the two days that Dennis O'Brien will be produced for deposition.

IT IS SO RECOMMENDED:

Dated: 2/20/98

William Nagle, Special Master

IT IS SO ORDERED:

Dated: MAR 02 1998

Judge of the Superior Court

4

TRI 5-26-98

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and address): TELEPHONE NO.: 714/252-9150

THE LAW OFFICES OF THOMAS E. MILLER
4695 MacArthur Court
Suite 1150
Newport Beach, Ca 92660

ATTORNEY FOR (Name): Edgewater Isle HOA

FOR COURT USE ONLY

FILED
SAN MATEO COUNTY
MAR 0 4 1998
Clerk of the Superior Court
By Deanne Lamus
DEPUTY CLERK

Insert name of court and name of judicial district and branch court, if any:
SAN MATEO SUPERIOR COURT

PLAINTIFF/PETITIONER: EDGEWATER ISLE NORTH HOMEOWNERS ASSOCIATION,
DEFENDANT/RESPONDENT: THE ANDEN GROUP, etc., et al.,

CASE NUMBER: 388872

REQUEST FOR DISMISSAL

- ☐ Personal Injury, Property Damage, or Wrongful Death
  - ☐ Motor Vehicle ☐ Other
- ☐ Family Law
- ☐ Eminent Domain
- ☒ Other *(specify)*: CONSTRUCTION DEFECT

— A conformed copy will not be returned by the clerk unless a method of return is provided with the document. —

1. **TO THE CLERK:** Please **dismiss** this action as follows:
   a. (1) ☐ With prejudice (2) ☒ Without prejudice
   b. (1) ☐ Complaint (2) ☐ Petition
   (3) ☐ Cross-complaint filed by *(name)*: on *(date)*:
   (4) ☐ Cross-complaint filed by *(name)*: on *(date)*:
   (5) ☐ Entire action of all parties and all causes of action
   (6) ☒ Other *(specify)*:* COMPLAINT AS TO DEFENDANT R. D. MOORE CONSTRUCTION CO., INC. EACH PARTY TO BEAR THEIR OWN COSTS AND FEES.

Date: January 26, 1998

Thomas E. Miller
(TYPE OR PRINT NAME OF ☒ ATTORNEY ☐ PARTY WITHOUT ATTORNEY)

LAW OFFICES OF THOMAS E. MILLER
Bruce Mayfield
(SIGNATURE)

Attorney or party without attorney for:
☒ Plaintiff/Petitioner ☐ Defendant/Respondent
☐ Cross-complainant

* If dismissal requested is of specified parties only, of specified causes of action only, or of specified cross-complaints only, so state and identify the parties, causes of action, or cross-complaints to be dismissed.

2. **TO THE CLERK:** Consent to the above dismissal is hereby given.**
Date:

(TYPE OR PRINT NAME OF ☐ ATTORNEY ☐ PARTY WITHOUT ATTORNEY)

(SIGNATURE)

Attorney or party without attorney for:
☐ Plaintiff/Petitioner ☐ Defendant/Respondent
☐ Cross-complainant

** If a cross-complaint - or Response (Family Law) seeking affirmative relief - is on file, the attorney for cross-complainant (respondent) must sign this consent if required by Code of Civil Procedure section 581(i) or (j).

(To be completed by clerk)

3. ☐ Dismissal entered as requested on *(date)*:
4. ☑ Dismissal entered on *(date)*: MAR - 4 1998 as to only *(name)*: SEE ABOVE
5. ☐ Dismissal **not entered** as requested for the following reasons *(specify)*:

6. ☐ a. Attorney or party without attorney notified on *(date)*:
   b. Attorney or party without attorney not notified. Filing party failed to provide
   ☐ a copy to conform ☐ means to return conformed copy

Date: MAR - 4 1998 PEGGY THOMPSON Clerk, by Maria Gallegos, Deputy

5074
William L. Nagle, SBN 59788
Special Master/Mediator
345 Lorton Avenue, Suite #204
Burlingame, CA 94010
(650) 579-0500
(650) 579-0623 (Fax)

FILED
SAN MATEO COUNTY
MAR - 3 1998
Clerk of the Superior Court
By [signature]
DEPUTY CLERK

Sut 3-16-98

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN MATEO

EDGEWATER ISLE HOMEOWNERS ASSOCIATION, et al.,

Plaintiff,

v.

THE ANDEN GROUP, et al.,

Defendants,

_____/

AND RELATED CROSS-ACTIONS

_____/

CASE NO. 388872

DECLARATION OF SERVICE BY MAIL

I am a citizen of the United States. My business address is 345 Lorton Avenue, Suite #204, Burlingame, California. I am employed in the County of San Mateo where this mailing occurs. I am over the age of eighteen years and not a party to the within cause. I served PRE-TRIAL ORDER NO. 51 (Endorsed-Filed February 25, 1998) on the following person(s) on the date set forth below, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in a United States post office mailbox at Burlingame, California, addressed as follows:

Please see attached list.

I, Christine L. Britton, declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on February 27, 1998 at Burlingame, California.

Christine L. Britton

02/27/98

EDGEWATER ISLE HOA v. THE ANDEN GROUP, et al.
San Mateo County Superior Court Case No. 388872

Proof of Service List

William L. Nagle, Esq. Special Master/Mediator 345 Lorton Avenue, Suite #204 Burlingame, CA 94010 (650) 579-0500 (650) 579-0623 (Fax)	SPECIAL MASTER
Thomas A. Miller, Esq. Law Offices of Thomas A. Miller 4685 Mac Arthur Court, Suite #220 Newport Beach, CA 92660 (714) 252-9150 (714) 442-0646 (Fax)	Plaintiff, Edgewater Isle HOA, Inc. (in 7/28/97)
Marisa D'Amico, Esq. Bishop, Barry, Howe, Haney & Ryder Embarcadero Center West 275 Battery Street, 12th Floor San Francisco, CA 94111 (415) 421-8550 (415) 362-4730 (Fax)	The Anden Group, Esden Partners, MDG Associates, Ltd., ESR Corporation, TMD Corporation, and Miden Corporation
Alan H. Finkel, Esq. Zimmerman, Koomer & Connolly 10960 Wilshire Blvd., Suite #1225 Los Angeles, CA 90024 (310) 231-6565 (310) 231-6566 (Fax)	The Anden Group (personal counsel)
Alec M. Barinholtz, Esq. Ross, Dixon & Masback Five Park Plaza, Suite #1200 Irvine, CA 92614-8529 (714) 622-2700 (714) 622-2739 (Fax)	International Insurance Company (Anden Group)
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International Insurance Company
181 W. Madison Street, 26th Floor
Chicago, IL 60602
(312) 849-5150
(312) 849-5293 (Fax)

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Marrone, Robinson, Frederick & Foster
111 N. 1st Street, Suite #300
Burbank, CA 91502
(818) 841-1144
(818) 841-0746 (Fax)

A. Raymond Hammerick, III, Esq.
Law Offices of A. Raymond Hammerick, III
10 Universal City Plaza, Suite #2055
Universal City, CA 91608
(818) 763-5295
(818) 763-2308 (Fax)

Amy Dantzler, Esq.
Quisenberry & Barbanel, LLP
2049 Century Park East, Suite #2200
Los Angeles, CA 90067
(310) 785-7966
(310) 785-0254 (Fax)

John J. Carniato, Esq.
Law Offices of John J. Carniato
3736 Mt. Diablo Blvd., Suite #300
Lafayette, CA 94549
(510) 283-1552
(510) 283-9830 (Fax)

O'Brien & Hicks, Inc., O'Brien & Hicks 1988 & Beyond, Ltd., and Gloria Development co., Inc.

Josh Shinnick, Esq.
Hoge, Fenton, Jones & Appel, Inc.
60 S. Market Street
San Jose, CA 95113
(408) 287-9501
(408) 287-2583 (Fax)

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Anthony B. Varni, Esq.
Varni, Fraser, Hartwell & Rodgers
22771 Main Street
Hayward, CA 94543
(510) 886-5000
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Chester G. Moore, III, Esq.
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10 Twin Dolphin Road, Suite #B-500
Redwood City, CA 94065
(650) 591-8822
(650) 591-8884 (Fax)

Alcal Roofing & Insulation

Susan P. Grey, Esq.
Dominion Law Group
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San Jose, CA 95112
(408) 288-5592
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Robinson & Wood
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San Jose, CA 95113
(408) 298-7120
(408) 298-0477 (Fax)

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Donald B. Fornasier, Esq.
Archer, McComas, Breslin, McMahon
& Chritton
2033 N. Main Street, Suite #800
Walnut Creek, CA 94596
(510) 930-6600
(510) 930-6620 (Fax)

B.L. Cohen Landscape, Inc. (in 11/97)

Philip Y. Kazan, Esq.
Russell, Kazan, Brenner & Mallett
343 Sansome Street, Suite #525
San Francisco, CA 94104
(415) 956-5841
(415) 956-0708 (Fax)

C. Aparicio Cement

Donald B. Fornasier, Esq.
Archer, McComas, Breslin, McMahon
& Chritton
2033 N. Main Street, Suite #800
Walnut Creek, CA 94596
(510) 930-6600
(510) 930-6620 (Fax)

C. Aparicio Cement

Jeffery L. Borsuk, Esq.
Pandell & Borsuk, LLP
2033 N. Main Street, Suite #450
Walnut Creek, CA 94596-3722
(510) 746-8800
(510) 746-8898 (Fax)

Carlos Rodriguez Painting (in 9/97)

S. Mitchell Kaplan, Esq. Gordon & Rees 275 Battery Street, 20th Floor San Francisco, CA 94111 (415) 986-5900 (415) 986-8054 (Fax)	Daniel Smith Plastering, Inc.
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Melissa A. Bruzzano, Esq. Larson & Burnham P.O. Box 119 Oakland, CA 94604 (510) 444-6800 (510) 835-6666 (Fax)	Hanson's Masonry, Inc. (in 7/96)
J. Michael Higginbotham, Esq. Long & Levit 101 Califonria Street, Suite #2300 San Francisco, CA 94111 (415) 397-2222 (415) 397-6392 (Fax)	Ruth & Going, Inc. and Melvin Lee Associates
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Donald L. Sullivan, Esq. Clapp, Moroney, Bellagamba, Davis & Vucinich 4400 Bohannon Drive, Suite #100 Menlo Park, CA 94025 (650) 327-1300 (650) 327-3707 (Fax)	Mission Drywall of San Jose (in 5/96); Silva Fence Company (in 10/97); and Technibuilders Iron (in 1/98)

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Nancy A. McPherson, Esq. Holmes, Drevlow, Carmody, Schmidt & Nakano 180 Montgomery Street, Suite #2100 San Francisco, CA 94104 (415) 362-1422 (415) 362-7054 (Fax)	Sacramento A-1 Door
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Albert P. Blake, Esq. Roger, Scott & Helmer 900 Veterans Blvd., Suite #430 Redwood City, CA 94063 (650) 365-7700 (650) 0677 (Fax)	Tara Coatings
Norman La Force, Esq. Law Offices of F. Ross Adkins 25 Pacific Avenue Mall San Francisco, CA 94111 (415) 981-5200 (415) 981-2097 (Fax)	Tara Coatings
Mr. Donald W. Simons, Jr., Esq. Frank Pinto Adjusters, Inc. 1504 Franklin Street, Suite #308 Oakland, CA 94612 (510) 834-1474 (510) 834-7032 (Fax) (510) 654-1425 (Hm Fax)	Courtesy Copy

5074
William L. Nagle, SBN 59788
Special Master/Mediator
345 Lorton Avenue, Suite #204
Burlingame, CA 94010
(650) 579-0500
(650) 579-0623 (Fax)

FILED
SAN MATEO COUNTY
MAR - 2 1998
Clerk of the Superior Court
By
DEPUTY CLERK

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN MATEO

EDGEWATER ISLE HOMEOWNERS ASSOCIATION, et al.,

Plaintiff,

v.

THE ANDEN GROUP, et al.,

Defendants,

_____/

AND RELATED CROSS-ACTIONS

_____/

CASE NO. 388872

DECLARATION OF SERVICE BY MAIL

I am a citizen of the United States. My business address is 345 Lorton Avenue, Suite #204, Burlingame, California. I am employed in the County of San Mateo where this mailing occurs. I am over the age of eighteen years and not a party to the within cause. I served PRE-TRIAL ORDER NO. 52 (Endorsed-Filed February 20, 1998) on the following person(s) on the date set forth below, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in a United States post office mailbox at Burlingame, California, addressed as follows:

Please see attached list.

I, Christine L. Britton, declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on February 25, 1998 at Burlingame, California.

Christine L Britton

EDGEWATER ISLE HOA v. THE ANDEN GROUP, et al.
San Mateo County Superior Court Case No. 388872

Proof of Service List

William L. Nagle, Esq. Special Master/Mediator 345 Lorton Avenue, Suite #204 Burlingame, CA 94010 (650) 579-0500 (650) 579-0623 (Fax)	SPECIAL MASTER
Thomas A. Miller, Esq. Law Offices of Thomas A. Miller 4685 Mac Arthur Court, Suite #220 Newport Beach, CA 92660 (714) 252-9150 (714) 442-0646 (Fax)	Plaintiff, Edgewater Isle HOA, Inc. (in 7/28/97)
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Thomas A. Foster, Esq. Marrone, Robinson, Frederick & Foster 111 N. 1st Street, Suite #300 Burbank, CA 91502 (818) 841-1144 (818) 841-0746 (Fax)	
A. Raymond Hammerick, III, Esq. Law Offices of A. Raymond Hammerick, III 10 Universal City Plaza, Suite #2055 Universal City, CA 91608 (818) 763-5295 (818) 763-2308 (Fax)	
Amy Dantzler, Esq. Quisenberry & Barbanel, LLP 2049 Century Park East, Suite #2200 Los Angeles, CA 90067 (310) 785-7966 (310) 785-0254 (Fax)	
John J. Carniato, Esq. Law Offices of John J. Carniato 3736 Mt. Diablo Blvd., Suite #300 Lafayette, CA 94549 (510) 283-1552 (510) 283-9830 (Fax)	O'Brien & Hicks, Inc., O'Brien & Hicks 1988 & Beyond, Ltd., and Gloria Development co., Inc.
Josh Shinnick, Esq. Hoge, Fenton, Jones & Appel, Inc. 60 S. Market Street San Jose, CA 95113 (408) 287-9501 (408) 287-2583 (Fax)	O'Brien & Hicks, Inc.
Anthony B. Varni, Esq. Varni, Fraser, Hartwell & Rodgers 22771 Main Street Hayward, CA 94543 (510) 886-5000 (510) 538-8797 (Fax)	O'Brien & Hicks, Inc.

Chester G. Moore, III, Esq. Low, Ball & Lynch 10 Twin Dolphin Road, Suite #B-500 Redwood City, CA 94065 (650) 591-8822 (650) 591-8884 (Fax)	Alcal Roofing & Insulation
Susan P. Grey, Esq. Dominion Law Group 1155 N. First Street, Suite #101 San Jose, CA 95112 (408) 288-5592 (408) 938-1035 (Fax)	B.L. Cohen Landscape, Inc. (in 9/97)
David S. Henningsen, Esq. Robinson & Wood 227 N. First Street San Jose, CA 95113 (408) 298-7120 (408) 298-0477 (Fax)	B.L. Cohen Landscape, Inc. (in 10/97)
Donald B. Fornasier, Esq. Archer, McComas, Breslin, McMahon & Chritton 2033 N. Main Street, Suite #800 Walnut Creek, CA 94596 (510) 930-6600 (510) 930-6620 (Fax)	B.L. Cohen Landscape, Inc. (in 11/97)
Philip Y. Kazan, Esq. Russell, Kazan, Brenner & Mallett 343 Sansome Street, Suite #525 San Francisco, CA 94104 (415) 956-5841 (415) 956-0708 (Fax)	C. Aparicio Cement
Donald B. Fornasier, Esq. Archer, McComas, Breslin, McMahon & Chritton 2033 N. Main Street, Suite #800 Walnut Creek, CA 94596 (510) 930-6600 (510) 930-6620 (Fax)	C. Aparicio Cement
Jeffery L. Borsuk, Esq. Pandell & Borsuk, LLP 2033 N. Main Street, Suite #450 Walnut Creek, CA 94596-3722 (510) 746-8800 (510) 746-8898 (Fax)	Carlos Rodriguez Painting (in 9/97)

S. Mitchell Kaplan, Esq.
Gordon & Rees
275 Battery Street, 20th Floor
San Francisco, CA 94111
(415) 986-5900
(415) 986-8054 (Fax)

Daniel Smith Plastering, Inc.

Anthony J. DeMaria, Esq.
Filice & DeMaria
1130 Burnett Avenue
Building D, Suite H
Concord, CA 94520
(510) 676-5094
(510) 676-0548 (Fax)

Gonsalves & Santucci, Inc. dba
Conco Cement Company

S. Mitchell Kaplan, Esq.
Gordon & Rees
275 Battery Street, 20th Floor
San Francisco, CA 94111
(415) 986-5900
(415) 986-8054 (Fax)

Fisk, Firenze & McLean

Melissa A. Bruzzano, Esq.
Larson & Burnham
P.O. Box 119
Oakland, CA 94604
(510) 444-6800
(510) 835-6666 (Fax)

Hanson's Masonry, Inc. (in 7/96)

J. Michael Higginbotham, Esq.
Long & Levit
101 Califonria Street, Suite #2300
San Francisco, CA 94111
(415) 397-2222
(415) 397-6392 (Fax)

Ruth & Going, Inc. and
Melvin Lee Associates

Robert P. Jolly, Esq.
Jolly, Herlihy & Hepler
275 Battery Street, Suite #600
San Francisco, CA 94111
(415) 658-3100
(415) 658-3094 (Fax)

M&H Electric (in 8/97)

Donald L. Sullivan, Esq.
Clapp, Moroney, Bellagamba, Davis
& Vucinich
4400 Bohannon Drive, Suite #100
Menlo Park, CA 94025
(650) 327-1300
(650) 327-3707 (Fax)

Mission Drywall of San Jose (in 5/96);
Silva Fence Company (in 10/97); and
Technibuilders Iron (in 1/98)

Kevin J. Tully, Esq. Greene, Chauvel, Descalso & Tully 901 Mariner's Island Blvd., Suite #400 San Mateo, CA 94404-1594 (650) 573-9500 (650) 573-9689 (Fax)	North Empire Construction and and Sacramento A-1 Door
Robert K. Phillips, Esq. Phillips & Spallas, LLP 225 Bush Street, 16th Floor San Francisco, CA 94104 (415) 439-8870 (415) 439-882 (Fax)	Peninsula Floors, Inc. (in 9/97; out 12/97)
Nancy A. McPherson, Esq. Holmes, Drevlow, Carmody, Schmidt & Nakano 180 Montgomery Street, Suite #2100 San Francisco, CA 94104 (415) 362-1422 (415) 362-7054 (Fax)	Sacramento A-1 Door
Helen B. Baumann, Esq. Law Office of Eugene L. Bass 495 Seaport Court, Suite #103 Redwood City, CA 94063 (650) 361-1199 (650) 369-4984 (Fax)	San Carlos Sheet Metal Works, Inc.
Howard L. Churchill, Esq. Schofield & Schiller 100 Pringle Avenue, Suite #510 Walnut Creek, CA 94596 (510) 934-3600 (510) 934-2257 (Fax)	Sierra Lumber & Fence Company (in 9/97)
Michael P. Quinlivan, Esq. Kouns, Quinlivan & Severson 101 Park Center Plaza, Suite #1007 San Jose, CA 95113 (408) 278-0125 (408) 292-1257 (Fax)	Sierra Precast, Inc. (in 8/97; dismissed 12/97)
David N. Poll, Esq. Collins & Schlothauer 60 S. Market Street, Suite #1100 San Jose, CA 95113-2369 (408) 298-5161 (408) 297-5766 (Fax)	Silva Fence Company (in 5/96)

Karen Wentzel, Esq.
Ritchie, Fisher, Whitman & Klein
1717 Embarcadero Road
Palo Alto, CA 94303
(650) 857-1717
(650) 857-1288 (Fax)

Soil Foundation Systems (out 5/96)

Albert P. Blake, Esq.
Roger, Scott & Helmer
900 Veterans Blvd., Suite #430
Redwood City, CA 94063
(650) 365-7700
(650) 0677 (Fax)

Tara Coatings

Norman La Force, Esq.
Law Offices of F. Ross Adkins
25 Pacific Avenue Mall
San Francisco, CA 94111
(415) 981-5200
(415) 981-2097 (Fax)

Tara Coatings

Mr. Donald W. Simons, Jr., Esq.
Frank Pinto Adjusters, Inc.
1504 Franklin Street, Suite #308
Oakland, CA 94612
(510) 834-1474
(510) 834-7032 (Fax)
(510) 654-1425 (Hm Fax)

Courtesy Copy

5074
William L. Nagle, SBN 59788
Special Master/Mediator
345 Lorton Avenue, Suite #204
Burlingame, CA 94010
(650) 579-0500
(650) 579-0623 (Fax)

5-14 MSC

FILED
SAN MATEO COUNTY
FEB 25 1998
Clerk of the Superior Court
DEPUTY CLERK

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN MATEO

EDGEWATER ISLE HOMEOWNERS ASSOCIATION, et al.,

Plaintiff,

v.

THE ANDEN GROUP, et al.,

Defendants,

_____/

AND RELATED CROSS-ACTIONS

_____/

CASE NO. 388872

PRE-TRIAL ORDER NO. 51

The Court having appointed William L. Nagle as Special Master in this matter and good cause appearing therefor,

IT IS HEREBY ORDERED:

1. The trial date of March 2, 1998 is continued to May 26, 1998 at 9:00 a.m. in the Department of the Presiding Judge.

2. The Mandatory Settlement Conference on February 20, 1998 at 9:30 a.m. is continued to May 14, 1998 at 10:00 a.m. in Dept. 3.

3. The Special Master shall hold a two-day Settlement Conference on March 16, 1998 and March 17, 1998 commencing at 9:00 a.m. on each day at the San Mateo County Superior Court (Central Branch), 800 N. Humboldt Street, San Mateo, California. Principals with authority, including insurance claims representatives, shall attend.

///

APPROVED AND RECOMMENDED:

DATED: February 12, 1998

William L. Nagle, Special Master

IT IS SO ORDERED:

DATED: FEB 24 1998

Judge of the Superior Court

5074
William L. Nagle, SBN 59788
Special Master/Mediator
345 Lorton Avenue, Suite #204
Burlingame, CA 94010
(650) 579-0500
(650) 579-0623 (Fax)

Set 3-16-98

FILED
SAN MATEO COUNTY
FEB 23 1998
Clerk of the Superior Court
By
DEPUTY CLERK

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN MATEO

EDGEWATER ISLE HOMEOWNERS ASSOCIATION, et al.,

Plaintiff,

v.

THE ANDEN GROUP, et al.,

Defendants,

_____/

AND RELATED CROSS-ACTIONS

_____/

CASE NO. 388872

DECLARATION OF SERVICE BY MAIL

I am a citizen of the United States. My business address is 345 Lorton Avenue, Suite #204, Burlingame, California. I am employed in the County of San Mateo where this mailing occurs. I am over the age of eighteen years and not a party to the within cause. I served PRE-TRIAL ORDER NO. 49 and PRE-TRIAL ORDER NO. 50 (both Endorsed-Filed February 11, 1998) on the following person(s) on the date set forth below, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in a United States post office mailbox at Burlingame, California, addressed as follows:

Please see attached list.

I, Christine L. Britton, declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on February 19, 1998 at Burlingame, California.

Christine L. Britton

EDGEWATER ISLE HOA v. THE ANDEN GROUP, et al.
San Mateo County Superior Court Case No. 388872

Proof of Service List

William L. Nagle, Esq. Special Master/Mediator 345 Lorton Avenue, Suite #204 Burlingame, CA 94010 (650) 579-0500 (650) 579-0623 (Fax)	SPECIAL MASTER
Thomas A. Miller, Esq. Law Offices of Thomas A. Miller 4685 Mac Arthur Court, Suite #220 Newport Beach, CA 92660 (714) 252-9150 (714) 442-0646 (Fax)	Plaintiff, Edgewater Isle HOA, Inc. (in 7/28/97)
Marisa D'Amico, Esq. Bishop, Barry, Howe, Haney & Ryder Embarcadero Center West 275 Battery Street, 12th Floor San Francisco, CA 94111 (415) 421-8550 (415) 362-4730 (Fax)	The Anden Group, Esden Partners, MDG Associates, Ltd., ESR Corporation, TMD Corporation, and Miden Corporation
Alan H. Finkel, Esq. Zimmerman, Koomer & Connolly 10960 Wilshire Blvd., Suite #1225 Los Angeles, CA 90024 (310) 231-6565 (310) 231-6566 (Fax)	The Anden Group (personal counsel)
Alec M. Barinholtz, Esq. Ross, Dixon & Masback Five Park Plaza, Suite #1200 Irvine, CA 92614-8529 (714) 622-2700 (714) 622-2739 (Fax)	International Insurance Company (Anden Group)
Lewis K. Loss, Esq. Ross, Dixon & Masback 601 Pennsylvania Avenue, N.W. North Building Washington, D.C. 20004-2688 (202) 662-2000 (202) 662-2190 (Fax)	International Insurance Company (Anden Group)

Mr. Alan Freudenheim
International Insurance Company
181 W. Madison Street, 26th Floor
Chicago, IL 60602
(312) 849-5150
(312) 849-5293 (Fax)

International Insurance Company
(Anden Group)

Thomas A. Foster, Esq.
Marrone, Robinson, Frederick & Foster
111 N. 1st Street, Suite #300
Burbank, CA 91502
(818) 841-1144
(818) 841-0746 (Fax)

A. Raymond Hammerick, III, Esq.
Law Offices of A. Raymond Hammerick, III
10 Universal City Plaza, Suite #2055
Universal City, CA 91608
(818) 763-5295
(818) 763-2308 (Fax)

Amy Dantzler, Esq.
Quisenberry & Barbanel, LLP
2049 Century Park East, Suite #2200
Los Angeles, CA 90067
(310) 785-7966
(310) 785-0254 (Fax)

John J. Carniato, Esq.
Law Offices of John J. Carniato
3736 Mt. Diablo Blvd., Suite #300
Lafayette, CA 94549
(510) 283-1552
(510) 283-9830 (Fax)

O'Brien & Hicks, Inc., O'Brien & Hicks 1988 & Beyond, Ltd., and Gloria Development co., Inc.

Josh Shinnick, Esq.
Hoge, Fenton, Jones & Appel, Inc.
60 S. Market Street
San Jose, CA 95113
(408) 287-9501
(408) 287-2583 (Fax)

O'Brien & Hicks, Inc.

Anthony B. Varni, Esq.
Varni, Fraser, Hartwell & Rodgers
22771 Main Street
Hayward, CA 94543
(510) 886-5000
(510) 538-8797 (Fax)

O'Brien & Hicks, Inc.

Chester G. Moore, III, Esq.
Low, Ball & Lynch
10 Twin Dolphin Road, Suite #B-500
Redwood City, CA 94065
(650) 591-8822
(650) 591-8884 (Fax)

Alcal Roofing & Insulation

Susan P. Grey, Esq.
Dominion Law Group
1155 N. First Street, Suite #101
San Jose, CA 95112
(408) 288-5592
(408) 938-1035 (Fax)

B.L. Cohen Landscape, Inc. (in 9/97)

David S. Henningsen, Esq.
Robinson & Wood
227 N. First Street
San Jose, CA 95113
(408) 298-7120
(408) 298-0477 (Fax)

B.L. Cohen Landscape, Inc. (in 10/97)

Donald B. Fornasier, Esq.
Archer, McComas, Breslin, McMahon
& Chritton
2033 N. Main Street, Suite #800
Walnut Creek, CA 94596
(510) 930-6600
(510) 930-6620 (Fax)

B.L. Cohen Landscape, Inc. (in 11/97)

Philip Y. Kazan, Esq.
Russell, Kazan, Brenner & Mallett
343 Sansome Street, Suite #525
San Francisco, CA 94104
(415) 956-5841
(415) 956-0708 (Fax)

C. Aparicio Cement

Donald B. Fornasier, Esq.
Archer, McComas, Breslin, McMahon
& Chritton
2033 N. Main Street, Suite #800
Walnut Creek, CA 94596
(510) 930-6600
(510) 930-6620 (Fax)

C. Aparicio Cement

Jeffery L. Borsuk, Esq.
Pandell & Borsuk, LLP
2033 N. Main Street, Suite #450
Walnut Creek, CA 94596-3722
(510) 746-8800
(510) 746-8898 (Fax)

Carlos Rodriguez Painting (in 9/97)

S. Mitchell Kaplan, Esq. Gordon & Rees 275 Battery Street, 20th Floor San Francisco, CA 94111 (415) 986-5900 (415) 986-8054 (Fax)	Daniel Smith Plastering, Inc.
Anthony J. DeMaria, Esq. Filice & DeMaria 1130 Burnett Avenue Building D, Suite H Concord, CA 94520 (510) 676-5094 (510) 676-0548 (Fax)	Gonsalves & Santucci, Inc. dba Conco Cement Company
S. Mitchell Kaplan, Esq. Gordon & Rees 275 Battery Street, 20th Floor San Francisco, CA 94111 (415) 986-5900 (415) 986-8054 (Fax)	Fisk, Firenze & McLean
Melissa A. Bruzzano, Esq. Larson & Burnham P.O. Box 119 Oakland, CA 94604 (510) 444-6800 (510) 835-6666 (Fax)	Hanson's Masonry, Inc. (in 7/96)
J. Michael Higginbotham, Esq. Long & Levit 101 Califonria Street, Suite #2300 San Francisco, CA 94111 (415) 397-2222 (415) 397-6392 (Fax)	Ruth & Going, Inc. and Melvin Lee Associates
Robert P. Jolly, Esq. Jolly, Herlihy & Hepler 275 Battery Street, Suite #600 San Francisco, CA 94111 (415) 658-3100 (415) 658-3094 (Fax)	M&H Electric (in 8/97)
Donald L. Sullivan, Esq. Clapp, Moroney, Bellagamba, Davis & Vucinich 4400 Bohannon Drive, Suite #100 Menlo Park, CA 94025 (650) 327-1300 (650) 327-3707 (Fax)	Mission Drywall of San Jose (in 5/96); Silva Fence Company (in 10/97); and Technibuilders Iron (in 1/98)

Kevin J. Tully, Esq. Greene, Chauvel, Descalso & Tully 901 Mariner's Island Blvd., Suite #400 San Mateo, CA 94404-1594 (650) 573-9500 (650) 573-9689 (Fax)	North Empire Construction and and Sacramento A-1 Door
Robert K. Phillips, Esq. Phillips & Spallas, LLP 225 Bush Street, 16th Floor San Francisco, CA 94104 (415) 439-8870 (415) 439-882 (Fax)	Peninsula Floors, Inc. (in 9/97; out 12/97)
Nancy A. McPherson, Esq. Holmes, Drevlow, Carmody, Schmidt & Nakano 180 Montgomery Street, Suite #2100 San Francisco, CA 94104 (415) 362-1422 (415) 362-7054 (Fax)	Sacramento A-1 Door
Helen B. Baumann, Esq. Law Office of Eugene L. Bass 495 Seaport Court, Suite #103 Redwood City, CA 94063 (650) 361-1199 (650) 369-4984 (Fax)	San Carlos Sheet Metal Works, Inc.
Howard L. Churchill, Esq. Schofield & Schiller 100 Pringle Avenue, Suite #510 Walnut Creek, CA 94596 (510) 934-3600 (510) 934-2257 (Fax)	Sierra Lumber & Fence Company (in 9/97)
Michael P. Quinlivan, Esq. Kouns, Quinlivan & Severson 101 Park Center Plaza, Suite #1007 San Jose, CA 95113 (408) 278-0125 (408) 292-1257 (Fax)	Sierra Precast, Inc. (in 8/97; dismissed 12/97)
David N. Poll, Esq. Collins & Schlothauer 60 S. Market Street, Suite #1100 San Jose, CA 95113-2369 (408) 298-5161 (408) 297-5766 (Fax)	Silva Fence Company (in 5/96)

Karen Wentzel, Esq. Ritchie, Fisher, Whitman & Klein 1717 Embarcadero Road Palo Alto, CA 94303 (650) 857-1717 (650) 857-1288 (Fax)	Soil Foundation Systems (out 5/96)
Albert P. Blake, Esq. Roger, Scott & Helmer 900 Veterans Blvd., Suite #430 Redwood City, CA 94063 (650) 365-7700 (650) 0677 (Fax)	Tara Coatings
Norman La Force, Esq. Law Offices of F. Ross Adkins 25 Pacific Avenue Mall San Francisco, CA 94111 (415) 981-5200 (415) 981-2097 (Fax)	Tara Coatings
Mr. Donald W. Simons, Jr., Esq. Frank Pinto Adjusters, Inc. 1504 Franklin Street, Suite #308 Oakland, CA 94612 (510) 834-1474 (510) 834-7032 (Fax) (510) 654-1425 (Hm Fax)	Courtesy Copy

TRI 3-16-98 #41

William L. Nagle
345 Lorton Avenue, Suite 204
Burlingame, CA 94010-4116
650/579-0500\Fax 650/579-0623

Special Master

FILED
SAN MATEO COUNTY
FEB 20 1998
Clerk of the Superior Court
DEPUTY CLERK

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN MATEO

EDGEWATER ISLE HOMEOWNERS ASSOCIATION, Plaintiff, vs. THE ANDEN GROUP, et al., Defendants. AND RELATED CROSS-ACTIONS.	CASE NO. 388872 **PRE-TRIAL ORDER NO. 52** **RE EXPERT & PMK DEPOSITION SCHEDULE**

The Court having appointed William L. Nagle as Special Master/Mediator in this case and by power vested to the Special Master by the Presiding Judge of the San Mateo Superior Court,

IT IS HEREBY ORDERED that:

1. The parties are ordered to produce their respective PMK's or Experts for deposition in accordance with the schedule that is attached hereto as Exhibit "A" and is incorporated hereby by this reference.

///

SENT BY:Law Offices Of : 2-13-98 ; 11:38AM ; Thomas E. Miller- 6505790623:# 3/ 6

2. If a party is unable to produce their PMK or Expert as scheduled they must first obtain leave from the Special Master upon a showing of good cause, and provide two (2) alternative availability dates in writing at the time of their request that are within ten (10) days of the original deposition date.

IT IS SO RECOMMENDED:

Dated: 2/13/98

William Nagle, Special Master

IT IS SO ORDERED:

Dated: ~~FEB 19 1998~~

Judge of the Superior Court

SENT BY:Law Offices Of : 2-13-98 :11:38AM : Thomas E. Miller- 6505790623:# 4/ 6

EXHIBIT "A"

DEPOSITION SCHEDULE - FEBRUARY 16th through MARCH 13th, 1998

DATE/TIME	DEPONENT
Monday, Feb. 16th	Schedule Dark - President's Day Holiday
Tuesday, Feb. 17th 9:00 a.m. - 5:00 p.m.	Albert Buchignani - Plaintiff's Soils Consultant
Wednesday, Feb. 18th 9:00 a.m. - 5:00 p.m.	Albert Buchignani - Day Two
Thursday, Feb. 19th 9:00 a.m. - 5:00 p.m.	Dennis O'Brien O'Brien & Hicks
Friday, Feb. 20th 9:00 a.m. - 5:00 p.m.	Dennis O'Brien - Day Two
Monday, Feb. 23rd 11:00 a.m. - 6:00 p.m.	Rob McElhiney PMK for Sierra Lumber
Tuesday, Feb. 24th 9:00 a.m. - 5:00 p.m.	Jax Kneppers, Developer's Architectural Consultant
Wednesday, Feb. 25th 9:00 a.m. - 5:00 p.m.	Jax Kneppers, Day Two
Thursday, Feb. 26th 9:00 a.m. - 5:00 p.m.	Wulf Clemens, Developer's Structural Expert
Friday, Feb. 27th 9:00 a.m. - 5:00 p.m.	Wulf Clemens, Day Two
Monday, March 2nd 11:00 a.m. - 6:00 p.m.	Don Hillebrandt, Developer's Civil/Soils Expert
Tuesday, March 3rd 9:00 a.m. - 5:00 p.m.	Don Hillebrandt, Day Two
Wednesday, March 4th 9:00 a.m. - 5:00 p.m.	John Mendes, PMK for Mission Drywall
Thursday, March 5th 9:00 a.m. - 5:00 p.m.	Jeff Beam, Structural Expert for O'Brien & Hicks
Friday, March 6th 9:00 a.m. - 5:00 p.m.	Jeff Beam, Day Two
Monday, March 9th 11:00 a.m. - 6:00 p.m.	Doug Curtis, Plaintiff's Cost Estimator
Tuesday, March 10th 9:00 a.m. - 5:00 p.m.	Doug Curtis, Day Two

SENT BY:Law Offices Of ; 2-13-98 ;11:39AM ; Thomas E. Miller→ 6505790623:# 5/ 6

DATE/TIME	DEPONENT
Wednesday, March 11th 9:00 a.m. - 5:00 p.m.	Doug Curtis, Day Three
Thursday, March 12th 9:00 a.m. - 5:00 p.m.	Glenn R. Taylor, Developer's Cost Estimator
Friday, March 13th 9:00 a.m. - 5:00 p.m.	Glenn R. Taylor, Day Two

SENT BY:Law Offices Of : 2-13-98 :11:39AM : Thomas E. Miller→ 6505790623:# 6/ 6

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN MATEO

JUDGE DEPT. NO 14 R. Pfeiffer CASE NO. 388872 DATE 13 FEB 1998
DEPUTY CLERK M. Hennessy COURT REPORTER L. Duran

TITLE OF ACTION: EDGEWATER ISLE HOMEOWNERS ASSOC. ETAL VS. THE ANDEN GROUP, ET AL

NATURE OF EVENTS: DEFT SIERRA LUMBER & FENCE COMPANY MOTION FOR SUMMARY JUDGMENT

Bruce Mansfield — For Pltf — APPEARANCES
Lynn Desmond — For Deft — APPEARANCES

____ OFF CALENDAR ____ MOVING PARTY'S REQUEST ____ NONAPPEARANCE ____ STIPULATION
____ THE ABOVE MATTER IS CONTINUED/ASSIGNED TO ____
____ SUBMITTED ON POINTS AND AUTHORITIES WITHOUT ARGUMENT.
✓ MATTER ARGUED BY COUNSEL AND SUBMITTED.
____ MOTION GRANTED ____ MOTION DENIED
____ DEMURRER ____ SUSTAINED ____ DAYS TO AMEND.
____ OVERRULED ____ DAYS TO ANSWER.
____ GROUNDS ____

____ THE ABOVE MATTER IS TAKEN UNDER SUBMISSION.
____ POINTS AND AUTHORITIES TO BE SUBMITTED BY ____ NOT LATER THAN ____ AND BY ____ NOT LATER THAN ____
____ NOTICE OF RULING IS ____ WAIVED IN OPEN COURT.
____ Motion denied - Disputed Facts 4, 9 and 12 Only Material facts raised in Pleadings relevant

____ LET A WRITTEN ORDER BE PREPARED, SIGNED AND FILED.
DATE: 2/13/98
NATURE OF PROCEEDINGS: ____

LAW AND MOTION MINUTE FORM

388872

5074
William L. Nagle, SBN 59788
Special Master/Mediator
345 Lorton Avenue, Suite #204
Burlingame, CA 94010
(650) 579-0500
(650) 579-0623 (Fax)

SET 3-16-98

FILED
SAN MATEO COUNTY
FEB 11 1998
Clerk of the Superior Court
DEPUTY CLERK

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN MATEO

EDGEWATER ISLE HOMEOWNERS ASSOCIATION, et al.,

Plaintiff,

v.

THE ANDEN GROUP, et al.,

Defendants,

_____/

AND RELATED CROSS-ACTIONS

_____/

CASE NO. 388872

PRE-TRIAL ORDER NO. 50

The Court having appointed William L. Nagle as Special Master in this matter and good cause appearing therefor,

IT IS HEREBY ORDERED that the following depositions shall be taken:

	Date/Time	**Deponent**
1.	February 4, 1998 9:00 a.m. - 5:00 p.m.	Dennis O'Brien O'Brien & Hicks PMK
2.	February 9, 1998 11:00 a.m. - 6:00 p.m.	James F. (Bo) Meyersieck Anden roofing consultant
3.	February 10, 1998 9:00 a.m. - 5:00 p.m.	Joel Baldwin
4.	February 11, 1998 9:00 a.m. - 5:00 p.m.	T.A. Barnebey Anden and O'Brien & Hicks acoustical consultant

5.	February 17, and 18, 1998 9:00 a.m. - 5:00 p.m.	Albert Buchignani Plaintiff soils consultant

APPROVED AND RECOMMENDED:

DATED: February 3, 1998

William L. Nagle, Special Master

IT IS SO ORDERED:

DATED: FEB 09 1998

Judge of the Superior Court

FILED
SAN MATEO COUNTY
FEB 11 1998
Clerk of the Superior Court
DEPUTY CLERK

SET 3/17/98

William L. Nagle
345 Lorton Avenue, Suite 204
Burlingame, CA 94010-4116
(650) 579-0500
(650) 579-0623 (FAX)

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN MATEO

EDGEWATER ISLE HOMEOWNERS ASSOCIATION, Plaintiff, vs. THE ANDEN GROUP, et al., Defendants. AND RELATED CROSS ACTIONS.	CASE NO. 388872 **PRE-TRIAL ORDER NO. 49** **ORDER TO APPEAR AT MEDIATION JANUARY 29 AND 30, 1998**

The Court having appointed William L. Nagle as Special Master/Mediator in this case and having ordered a two-day Settlement Conference, has issued the following orders:

1. A continued mediation session has been scheduled in the above-captioned case on January 29 and 30, 1998 beginning at 9:00 a.m. to 5:00 p.m. at the offices of the Special Master located at 345 Lorton Avenue, Suite 204, Burlingame, California, telephone number (650) 579-0500 in accordance with the following schedule.

///

SENT BY:Law Offices Of ; 1-27-98 ;10:32AM ; Thomas E. Miller→ 6505790623;# 2/ 5

All counsel, defending insurance carriers and non-defending insurance carriers which may have a duty to defend or indemnify any of the parties listed below shall appear as scheduled; the only exception from the requirement of personal attendance is for carriers having no office or representative in the State of California. To the extent any carrier takes the position that any significant portion of the claim against the insured is not covered under the terms of the policy, counsel should arrange to have the carrier representative and coverage counsel present at the mediation.

All parties that were given a demand by Plaintiff at the last mediation session are ordered to have authority to present a counter-offer to the mediator at the January 29th session.

All claims adjusters and parties listed below shall appear on the date and times indicated. The adjuster appearing must have full settlement authority.

The mediation agenda is set forth below. Only the following parties, counsel and insurance carrier representatives should attend:

THURSDAY, JANUARY 29, 1998

9:00-9:30 a.m. Mediations between Plaintiff and Developer Defendant The Anden Group only

9:30 a.m. - 11:00 a.m. SUBCONTRACTOR MEDIATIONS:

Decking Group

O'Brien & Hicks
Tara Coatings - Deck Surfacing
San Carlos Sheet Metal Works, Inc. - Sheet Metal
Techna Builders

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SENT BY:Law Offices Of : 1-27-98 :10:33AM : Thomas E. Miller- 6505790623:# 3/ 5

11:00 a.m. - 12:00 p.m. Roofing Group

O'Brien & Hicks
AlCal Roofing - Roofs

12:00 - 1:30 p.m. LUNCH BREAK

1:30 - 3:00 p.m. Stucco, Drywall and Painting Group

O'Brien & Hicks
Carlos Rodriguez - Painting
Mission Drywall of San Jose - Drywall
Daniel Smith Plastering, Inc. - Exterior Stucco

3:00 - 4:00 p.m. Peripheral Party Group

C. Aparicio Cement Contractors - Concrete curbs, gutters and sidewalks
Sierra Lumber - Landscape Specialty Carpentry
Sacramento A-1 Door - Millwork & Trim

4:00 - 5:00 p.m. Misc. Party Group

B.L. Cohen Landscape - Landscaping (Models)
Silva Fence Company - Fences (Buildings 16 thru 28)

FRIDAY, JANUARY 30, 1998

The session on Friday morning will be a combined civil/soils experts meeting and mediation. Counsel for all subcontractors in the civil/soils group shall attend with their carrier representative and experts.

9:00 a.m. - 12:00 p.m. Civil/Soils Group

Plaintiff HOA
The Anden Group
O'Brien & Hicks
Conco Cement Co. - Concrete foundations/slabs, walks and drives
Melvin Lee & Associates - Landscape Engineer
Fisk, Firenzi & McLean - Grading and Paving
Ruth & Going

12:00 - 12:30 p.m. Lunch Break

SENT BY:Law Offices Of : 1-27-98 :10:33AM : Thomas E. Millet- 6505790623:# 4/ 5

12:30 - 2:30 p.m. MEDIATIONS BETWEEN PLAINTIFF, THE ANDEN GROUP AND O'BRIEN & HICKS ONLY

Defense counsel must notify all of their insureds of the following mediation schedule immediately, in writing.

Counsel for Plaintiff and The Anden Group have advised the Special Master that they will seek sanctions and other appropriate orders against any party or insurance carrier if this Order is violated.

APPROVED AND RECOMMENDED.

Dated: 1/27/98

William L. Nagle, Special Master

IT IS SO ORDERED:

Dated: FEB 09 1998

Judge of the Superior Court

SENT BY:Law Offices Of ; 1-27-98 ;10:33AM ; Thomas E. Miller→ 6505790623:# 5/ 5

HOWARD L. CHURCHILL, ESQ., #79872
LYNN M. DIRINGER, ESQ., #165626
SCHOFIELD & SCHILLER
100 Pringle Avenue, Suite 510
Walnut Creek, CA 94596
(510) 934-3600

Attorneys for Defendant
SIERRA LUMBER & FENCE COMPANY

FILED
SAN MATEO COUNTY
FEB 06 1998
Clerk of the Superior Court
By Dianne Ramus
DEPUTY CLERK

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN MATEO

EDGEWATER ISLE HOMEOWNERS ASSOCIATION, INC., a non-profit mutual benefit corporation, on behalf of itself and as representative of all EDGEWATER ISLE homeowners,

Plaintiffs,

vs.

THE ANDEN GROUP, a California general partnership, THE ANDEN CORPORATION, a California corporation, et al.,

Defendants.

AND RELATED CROSS-ACTIONS.

No. 388872

SIERRA LUMBER & FENCE COMPANY'S REPLY TO PLAINTIFF'S OPPOSITION TO MOTION FOR SUMMARY JUDGMENT

Date: **February 13, 1998**
Time: **9:00 a.m.**
Dept: **14**
Room: **8B**

Trial Date: **May 26, 1998**

THIS MOTION WAS PROPERLY SERVED

We have been continuously reassured by Special Master Nagle that the trial date in this matter was going to be re-calendered for a later date, as it has been. As such, the motion has been properly noticed based on the new trial date.

Plaintiff does not overcome its burden to demonstrate that a triable issue of fact exists.

Code of Civil Procedure §437c has been modified to provide that once a

defendant shows that one or more of a plaintiff's causes of action cannot be established, the plaintiff bears the burden of demonstrating that a triable issue of fact exists. The HOA fails to establish that it has evidence supporting its claim that it was damaged through acts or omissions by SIERRA. As a result, summary judgment for SIERRA is proper.

THE HOA IS PRECLUDED FROM ADDING NEW DEFECTS TO ITS FINAL Defect List

The HOA disputes two material facts in its Separate Statement in Opposition to Motion for Summary Judgment.[1] First, the HOA's disputes focus on whether the Final Defect List is also a Final Statement of Claims and whether it can be added to "without good cause shown."[2] The HOA contends that the "Defect List is explained in deposition." Id.

Whether the Final Defect List may be explained in deposition is immaterial to the issue before the court. The issue is whether the HOA is permitted to **add** items to its Defect List. The evidence provided to this court by SIERRA in its Separate Statement of Material Facts unequivocally support the position that the HOA is **not permitted** to add new items to its Defect List. The Special Master clearly states that the Final Defect List is also a Final Statement of Claims. No further claims should be added to the Final Defect List/Statement of Claims "without good cause shown."[3]

It should be noted by the court that the HOA had over two-and-a-half years to perfect its Defect List. The first due date of the HOA's Preliminary Defect List was April 3, 1995 and the HOA served its Notice of Compliance and deposit of its Final Defect List in the document depository on October 13, 1997.[4] The HOA's urging that it did not

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[1] See Separate Statement in Opposition to Motion for Summary Judgment, Facts 9 and 10.

[2] See HOA's Separate Statement in Opposition to Motion for Summary Judgment, Nos. 9 and 10.

[3] See Exhibit "E" to the Diringer Declaration in Support of SIERRA's Motion for Summary Judgment.

[4] See Exhibits "D" and "J" to the Diringer Declaration in Support of SIERRA's Motion for Summary Judgment.

have sufficient time within which to investigate any and all possible defects is specious and unsupported on this record.

The HOA fails to establish good cause in support of its position to augment the Final Defect List. The intent of the Special Master is clear. The Final Defect List was intended to be the Final Defect List, not just the "next to final" list or the "almost" final list. The HOA's wish to expand on its Final Defect List is only that--wishful thinking.

THE HOA CAN NOT LINK SIERRA TO THE ALLEGEDLY DEFECTIVE BOLLARD

The HOA has failed to link SIERRA and the allegedly defective bollard. Accordingly, there is no issue of fact to try. The testimony of Robert Powell does not create a triable issue of fact for several reasons.

The HOA does not state where this alleged wood bollard is located. The bollard is, accordingly, not properly authenticated. The testimony of the HOA's expert Robert Powell is based on guesswork, not personal knowledge. There are two problems with the evidence relied on by Mr. Powell in his finding of a defect with a bollard. First, Mr. Powell testified during his deposition that he had three photographs by William Dost of the top of the a bollard.[5] The photographs appear to be hearsay as Mr. Powell did not take the photographs himself. In addition, the photographs to not appear to have been authenticated. Mr. Powell admits that he does not know where the bollard at issue is located.[6] Powell later states that the bollard depicted in the referenced photographs is one of the pipe bollards for the Fire Access Road.[7] The basis for this opinion is that it would "explain the ring bolt through the side of it."[8] Clearly, Mr. Powell does not know with any certainty where the allegedly defective bollard is located.

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[5] Robert Powell's deposition on November 11, 1997, pp. 110-116, attached as Exhibit "B" to Declaration of Bruce Mayfield in Support of Plaintiff's Opposition to Motion for Summary Judgment.

[6] Powell's deposition, supra, 211:2-11.

[7] Id. at 215:23-216:16.

[8] Id. at 216:7-8.

The HOA has not linked the wood bollard represented in the photographs referenced by Mr. Powell in his deposition to the bollards installed by SIERRA. Mr. Powell believes the pictures at issue depict "one of the pipe bollards for the fire access road."[9] This unrefuted fact establishes, as a matter of law, no liability on SIERRA. See McElhiney Declaration filed and served herewith.

SUMMARY JUDGMENT SHOULD BE FOUND FOR SIERRA

The HOA barred from expanding on its Final Defect List. Should this court allow the HOA to expand its list, the HOA has still failed to link SIERRA to any defect at the Edgewater Isle North development. The picture of an allegedly defective bollard is insufficient evidence to overcome the plaintiff's burden of proof under CCP §437c. They have not provided any evidence detailing where this bollard is located within the Edgewater Isle North development, assuming that it is within the development. Nor has the HOA provided any evidence that the allegedly defective bollard was installed by SIERRA or that whom ever cut off the top of the bollard and failed to treat it was a SIERRA employee. Clearly, there is no disputed material fact as the HOA has not provided any evidence supporting its contention that SIERRA is responsible for any of the alleged defects at the Edgewater Isle North development.

For the foregoing reasons, we respectfully request this court grant SIERRA's motion for summary judgment.

DATED: February 6, 1998.

SCHOFIELD & SCHILLER

By: _____
HOWARD L. CHURCHILL
Attorneys for Defendant
SIERRA LUMBER & FENCE COMPANY

M:\CASES\HLC\SIERRA\CASES\EDGEWATE\REPLY.MSJ

[9] Id. at 216:5-8.

PROOF OF SERVICE BY MAIL -- CCP 1013(a), 2015.5

I, the undersigned, hereby declare:

I am employed in the County of Contra Costa, over the age of eighteen years and not a party to the within cause. My business address is One Walnut Creek Center, 100 Pringle Avenue, Suite 510, Walnut Creek, CA 94596.

I am readily familiar with our business's practice for collection and processing of documents for mailing with the U.S. Postal Service, and that the below-named document will be deposited with the U.S. Postal Service with fully prepaid postage thereon on the date set forth below at Walnut Creek, California.

On the date set forth below, I served the within:

1. **SIERRA LUMBER & FENCE COMPANY'S REPLY TO PLAINTIFF'S OPPOSITION TO MOTION FOR SUMMARY JUDGMENT**
2. **DECLARTION OF ROB McELHINEY IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT**

by placing a true copy in an envelope, sealing and placing it for collection and mailing, following ordinary practices addressed as follows:

Thomas E. Miller, Esq.
LAW OFFICES OF THOMAS E. MILLER
4685 MacArthur Court, Suite 220
Newport Beach, CA 92660

Pltf., Edgewater Isle Homes
Tel: (800) 403-3332
Fax: (714) 442-0646
(714) 252-9150

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

Executed on February 6, 1998, at Walnut Creek, California.

Regina Garabedian

REGINA GARABEDIAN

Case Name: **Edgewater Isle Homes, et al. v. The Anden Group, et al.**
San Mateo County Superior Court, Case No. 388872

LAW & MOTION

FILE PREPARATION LOG

CASE NAME Edgewater Lake vs The Arden Group

CASE # 388872 HRG DATE 02-13-98

- ✓ Moving papers tagged with red tag
- ✓ Proof of Service filed regarding moving papers
- ✓ File in chronological order
- ✓ Notice of hearing in file
- ✓ Minute form submitted with file
- ✓ File checked for misfilings
- ____ Documents missing (list)

FUTURE CALENDAR EVENTS	DATE
Set TRI	05-14-98
	05-26-98

MARIA FERNANDEZ

FILE VERIFIED BY: _____ DATE FEB 9 - 1998

WILLIAM L. NAGLE
Special Master
NAGLE, KRUG & WINTERS
345 Lorton Avenue, Suite 204
Burlingame, CA 94010-4116
Telephone: (650) 579-0500
Facsimile: (650) 579-0623

LAM 2-13 #14

FILED
SAN MATEO COUNTY
FEB 5 - 1998
Clerk of the Superior Court
By DEPUTY CLERK

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN MATEO

EDGEWATER ISLE HOMEOWNERS ASSOCAITION, INC., et al.,

Plaintiff,

v.

THE ANDEN GROUP,. et al.,

Defendants.

AND RELATED CROSS-ACTIONS

No. 388872

DECLARATION OF SERVICE BY MAIL OF PRE-TRIAL ORDER NO. 48

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Re: Edgewater Isle HOA v. The Anden Group, et al.
Court: San Mateo County Superior
Action No.: 388872

DECLARATION OF SERVICE BY MAIL
[Code Civ. Proc. §§ 1013a(3), 2015.5]

I declare:

I am over age 18, not a party to this action, and am employed in Alameda County at 1901 Harrison Street, 11th Floor, Oakland, California 94612 (mailing address: Post Office Box 119, Oakland, California 94604).

On February 3, 1998, following ordinary business practices, I placed for collection and mailing at the office of LARSON & BURNHAM, located at 1901 Harrison Street, 11th Floor, Oakland, California 94612, a copy(ies) of the attached:

PRE-TRIAL ORDER NO. 48

in a sealed envelope(s), with postage fully prepaid, addressed to:

SEE ATTACHED SERVICE LIST

I am familiar with the business practice for collection and processing of correspondence for mailing with the United States Postal Service and, in the ordinary course of business, the correspondence would be deposited with the United States Postal Service on the day on which it is collected at the business.

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

DATED: February 3, 1998

I. MARIA HUDSON

#188124

Re: Edgewater Isle HOA v. The Anden Group, et al.
Court: San Mateo County Superior
Action No.: 388872

- SERVICE LIST -

William L. Nagle, Esq. 345 Lorton Avenue, Suite 204 Burlingame, CA 94010-4116 650-579-0500 Fax: (650) 579-0623	Special Master
Thomas E. Miller LAW OFFICES OF THOMAS MILLER 4695 Mac Arthur Court, Suite 1150 Newport Beach, CA 92660 Fax: (714) 442-0646	Attorneys for Plaintiff EDGEWATER ISLE HOA, INC.
Thomas O. Haran, Esq. Marisa L. D'Amico, Esq. BISHOP, BARRY, HOWE, HANEY & RYDER 275 Battery Street, 12th Floor San Francisco, CA 94111 (415) 421-8550 Fax: (415) 362-4730	Attorneys for THE ANDEN GROUP
John F. Carniato, Esq. LAW OFFICES/JOHN J. CARNIATO 3736 Mt. Diablo Blvd., Suite 300 Lafayette, CA 94549 (510) 283-1552 Fax: (510) 283-9830	Attorneys for Defendants GLORIA DEVELOPMENT CO., INC., O'BRIEN & HICKS, INC., and O'BRIEN & HICKS(s) 1988 & BEYOND, LTD.
Josh M. Shinnick, Esq. HOGE, FENTON, JONES & APPEL 60 South Market Street San Jose, CA 95113-2396 (408) 287-9501 Fax: (408) 287-2583	Attorneys for O'BRIEN & HICKS
J. Michael Higginbotham, Esq. LONG & LEVIT LLP 101 California Street, Suite 2300 San Francisco, CA 94111 (415) 397-2222 Fax: (415) 397-6392	Attorneys for MELVIN LEE & ASSOCIATES and RUTH & GOING, INC.

Donald B. Fornasier, Esq.
ARCHER, McCOLMAS, BRESLIN, McMAHON & CHRITTON
P.O. Box 8035
Walnut Creek, CA 94596
(510) 930-6600
Fax: (510) 930-6620

Attorneys for
APRICIO CEMENT and B.L. COHEN LANDSCAPE

Helen Baumann, Esq.
LAW OFFICES OF EUGENE L. BASS
495 Seaport Court, Suite 103
Redwood City, CA 94063
(415) 361-1199
Fax: (415) 369-4984

Attorneys for
SAN CARLOS SHEET METAL WORKS

Jonathan Margolis, Esq.
LOW, BALL & LYNCH
10 Twin Dolphin Drive
Suite B-500
Redwood City, CA 94065
(415) 591-8822
Fax: (415) 591-8884

Attorneys for
AL CAL ROOFING & INSULATION

Karen Wentzel, Esq.
RITCHIE, FISHER, WHITMAN & KLEIN
1717 Embarcadero Road
P.O. Box 51050
Palo Alto, CA 94303
(415) 857-1717
Fax: (415) 857-1288

Attorneys for
SOIL FOUNDATION SYSTEMS

Kevin J. Tully, Esq.
GREENE, CHAUVEL, DESCALSO & TULLY
901 Mariner's Island Blvd.
Suite 400
San Mateo, CA 94404
(415) 573-9500
Fax: (415) 573-9689

Attorneys for
SACRAMENTO A-1 DOOR and NORTH EMPIRE CONSTRUCTION

Nancy A. McPherson, Esq.
HOLMES, DREVLOW, et al.
180 Montgomery Street
Suite 2100
San Francisco, CA 94104-4205
(415) 362-1422
Fax: (415) 362-7054

Attorneys for
SACRAMENTO A-1 DOOR

Anthony J. DeMaria, Esq.
FELICE & DeMARIA
1130 Burnett Avenue
Building D, Suite H
Concord, CA 94520
(510) 676-5094
Fax: (510) 676-0548

Attorneys for
GONSALVES & SANTUCCI, INC. d/b/a
CONCO CEMENT COMPANY

Ara Shirinian, Esq.
Paul E. Stephan, Esq.
CONROY, SHIRINIAN & MAHONEY
444 Market Street, Suite 2675
San Francisco, CA 94111
(415) 983-4740
Fax: (415) 296-1043

Attorneys for
T&D TILE

Albert P. Blake, Esq.
ROGER, SCOTT & HELMER
900 Veterans Blvd., #430
Redwood City, CA 94063
(650) 365-7700
Fax:

Attorneys for
TARA COATINGS, INC.

Norman La Force, Esq.
LAW OFFICES OF F. ROSS ADKINS
25 Pacific Avenue Mall
San Francisco, CA 94111
(415) 981-5200
Fax: (415) 981-2097

Attorneys for Defendant
TARA COATINGS

S. Mitchell Kaplan, Esq.
GORDON & REES
275 Battery Street, 20th Floor
San Francisco, CA 94111
(415) 986-5900
Fax: (415) 986-8054

Attorneys for
FISK, FIRENZE & McCLEAN

Howard L. Churchill, Esq.
Lynn M. Diringer, Esq.
SCHOFIELD & SCHILLER
One Walnut Creek Center
100 Pringle Avenue, Suite 510
Walnut Creek, CA 94596
(510) 934-3600
Fax: (510) 934-2257

Attorneys for
SIERRA LUMBER

Donald L. Sullivan, Esq.
CLAPP, MORONEY, BELLEGAMBA,
DAVIS & VUCINICH
4400 Bohannon Drive, Suite 100
Menlo Park, CA 94025
(415) 327-1300
Fax: (415) 327-3707

Attorneys for Cross-Defendant
MISSION DRYWALL OF SAN JOSE and
SILVA FENCE COMPANY

David N. Poll, Esq.
COLLINS & SCHLOTHAULER
60 South Market Street, Suite 1100
San Jose, CA 95113-2369
(408) 298-5161
Fax: (408) 297-5766

Attorneys for Defendant
SILVA FENCE COMPANY

Robert K. Phillips, Esq.
Shahab E. Fotouhi
PHILLIPS & SPALLAS LLP
225 Bush Street, 16th Floor
San Francisco, CA 94104
(415) 439-8870
Fax: (415) 439-8822

Attorneys for Defendant
PENINSULA FLOORS, INC.
(erroneously sued as Peninsula Floors)

Ms. Susan P. Grey
DOMINION LAW GROUP, LLP
1155 N. First Street, Suite 101
San Jose, California 95112
(408) 288-5592
Fax: (408) 938-1035

Attorneys for Defendant B.L. COHEN
LANDSCAPE

Mr. David S. Henningsen
ROBINSON & WOOD, INC.
227 North First Street
San Jose, CA 95113
(408) 298-7120
Fax: (408) 298-0477

Attorneys for Defendant B.L. COHEN
LANDSCAPE

Jeffery L. Borsuk
PANDELL & BORSUK LLP
2033 North Main Street, Suite 450
Walnut Creek, CA 94596
(510) 746-8800
Fax: (510) 746-8898

Attorneys for CARLOS RODRIGUEZ
PAINTING

David L. Brault
State Bar No.: 136749
Law Offices of David L. Brault
5160 Birch Street, Suite 200
Newport Beach, California 92660
(714) 752-2450

Attorney for Defendant
Cell-Crete Corporation.

FILED
SAN MATEO COUNTY
JAN 27 1998
Clerk of the Superior Court
By DEPUTY CLERK

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN MATEO

EDGEWATER ISLE HOMEOWNERS ASSOCIATION,

Plaintiff,

v.

THE ANDEN GROUP, et al.,

Defendants.

AND RELATED CROSS-ACTIONS.

CASE NO.: 388 872

ANSWER OF DEFENDANT CELL-CRETE CORPORATION TO EDGEWATER ISLE HOMEOWNERSASSOCIATION'S COMPLAINT

ANSWERING DEFENDANT, CELL-CRETE CORPORATION, Sued as Doe Defendant No. 37 answers for itself alone the unverified second amended complaint of EDGEWATER ISLE HOMEOWNERS ASSOCIATION (hereinafter "plaintiff") as follows.

Pursuant to Code of Civil Procedure Section 431.3 Defendant, CELL-CRETE CORP. (hereinafter "Defendant") generally denies each and every allegation contained in plaintiff's unverified complaint.

Defendant states the following as separate affirmative defenses to Plaintiff's Complaint.

FIRST AFFIRMATIVE DEFENSE

1. This answering Defendant affirmatively alleges that Plaintiff is not properly licensed to maintain this action.

SECOND AFFIRMATIVE DEFENSE

2. This answering Defendant affirmatively alleges that Plaintiff's complaint on file herein fails to state facts sufficient to constitute a cause of action against this answering Defendant.

THIRD AFFIRMATIVE DEFENSE

3. This answering Defendant affirmatively alleges that Plaintiff herein does not have the legal capacity to bring suit.

FOURTH AFFIRMATIVE DEFENSE

4. This answering Cross-Defendant affirmatively alleges that other entities are responsible for the damages complained of by Plaintiff if any are deemed to exist, and the Defendant is entitled to equitable indemnity from such entities.

FIFTH AFFIRMATIVE DEFENSE

5. This answering Defendant affirmatively alleges that Plaintiff has received payment in full for any and all alleged obligations of this answering Defendant.

SIXTH AFFIRMATIVE DEFENSE

6. This answering Defendant affirmatively alleges that Plaintiff is indebted to it in a sum not yet ascertained and that said sums are an offset against any claim by Plaintiff .

SEVENTH AFFIRMATIVE DEFENSE

7. This answering Defendant affirmatively alleges that Plaintiff has failed to mitigate its alleged damages or losses.

EIGHTH AFFIRMATIVE DEFENSE

8. This answering Defendant affirmatively alleges that Plaintiff's actions are barred by the applicable statute of limitations.

NINTH AFFIRMATIVE DEFENSE

9. This answering Defendant affirmatively alleges that the sums claimed by Plaintiff

are not yet due and owing and such a claim is premature.

TENTH AFFIRMATIVE DEFENSE

10. This answering Defendant affirmatively alleges that Plaintiff's claim is barred by the doctrine of unclean hands, estoppel, waiver, and by each of the doctrines independent of the other.

ELEVENTH AFFIRMATIVE DEFENSE

11. This answering Defendant affirmatively alleges that Plaintiff's claim is barred by the failure of consideration and full performance.

TWELFTH AFFIRMATIVE DEFENSE

12. This answering Defendant affirmatively alleges that Plaintiff's claim is barred by the doctrine of unclean hands, estoppel, waiver, and by each of the doctrines independent of the other.

THIRTEENTH AFFIRMATIVE DEFENSE

13. This answering Defendant affirmatively alleges that Plaintiff herein is barred from any and all relief requested because it has failed to timely follow all the requirements of the contract prior to bringing this lawsuit.

WHEREFORE, Defendant, CELL-CRETE CORPORATION, respectfully request judgment as follows:

1. That Plaintiff be denied all relief and take nothing by its Complaint herein;
2. That Defendants recover their costs of suit incurred herein;
3. For such other and further relief as the Court may deem just and proper.

Dated: January 19, 1998

LAW OFFICES OF DAVID L. BRAULT

BY: _____
DAVID L. BRAULT
ATTORNEY FOR DEFENDANT

PROOF OF SERVICE BY MAIL

STATE OF CALIFORNIA)
) SS:
COUNTY OF ORANGE)

I am a resident of or employed in the county aforesaid. I am over the age of eighteen years, and not a party to this action. My business address is:

5160 Birch Street, Suite 200
Newport Beach, California 92660

On January 19, 1998 I served Cell-Crete's answer to Edgewater Isle HOA's complaint on file herein, on the interested parties in this action, by placing a true copy thereof, enclosed in a sealed envelope, with first-class postage thereon fully prepaid, in the United States mail at Newport Beach, California, addressed as follows, or as shown on the attached service list.

Thomas E. Miller, Esq.
LAW OFFICES OF THOMAS E. MILLER
4695 MacArthur Court, Suite 1150
Newport Beach, California 92660

Tom Fier, Esq.
LAW OFFICES OF TOM FIER
675 Mariners Island Blvd., Suite 106
San Mateo, California 94404

I declare that I am a member of the bar of this court, and that I made this service myself, or that I am employed in the office of a member of the bar of this court, at whose direction the service was made.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and is executed on January 19, 1998.

David L. Brault

SET 2-20-98

5074
William L. Nagle, SBN 59788
Special Master/Mediator
345 Lorton Avenue, Suite #204
Burlingame, CA 94010
(650) 579-0500
(650) 579-0623 (Fax)

FILED
SAN MATEO COUNTY
JAN 26 1998
Clerk of the Superior Court
By [signature] DEPUTY CLERK

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN MATEO

EDGEWATER ISLE HOMEOWNERS ASSOCIATION, et al.,

Plaintiff,

v.

THE ANDEN GROUP, et al.,

Defendants,

_____/

AND RELATED CROSS-ACTIONS

_____/

CASE NO. 388872

DECLARATION OF SERVICE BY MAIL

I am a citizen of the United States. My business address is 345 Lorton Avenue, Suite #204, Burlingame, California. I am employed in the County of San Mateo where this mailing occurs. I am over the age of eighteen years and not a party to the within cause. I served PRE-TRIAL ORDER NO. 47 ORDER TO APPEAR AT MEDIATION JANUARY 13 AND 16, 1998 (Endorsed-Filed January 12, 1998) on the following person(s) on the date set forth below, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in a United States post office mailbox at Burlingame, California, addressed as follows:

Please see attached list.

I, Christine L. Britton, declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on January 19, 1998 at Burlingame, California.

Christine L. Britton

01/19/98

EDGEWATER ISLE HOA v. THE ANDEN GROUP, et al.
San Mateo County Superior Court Case No. 388872

Proof of Service List

William L. Nagle, Esq. Special Master/Mediator 345 Lorton Avenue, Suite #204 Burlingame, CA 94010 (650) 579-0500 (650) 579-0623 (Fax)	SPECIAL MASTER
Thomas A. Miller, Esq. Law Offices of Thomas A. Miller 4685 Mac Arthur Court, Suite #220 Newport Beach, CA 92660 (714) 252-9150 (714) 442-0646 (Fax)	Plaintiff, Edgewater Isle HOA, Inc. (in 7/28/97)
Marisa D'Amico, Esq. Bishop, Barry, Howe, Haney & Ryder Embarcadero Center West 275 Battery Street, 12th Floor San Francisco, CA 94111 (415) 421-8550 (415) 362-4730 (Fax)	The Anden Group, Esden Partners, MDG Associates, Ltd., ESR Corporation, TMD Corporation, and Miden Corporation
Alan H. Finkel, Esq. Zimmerman, Koomer & Connolly 10960 Wilshire Blvd., Suite #1225 Los Angeles, CA 90024 (310) 231-6565 (310) 231-6566 (Fax)	The Anden Group (personal counsel)
Alec M. Barinholtz, Esq. Ross, Dixon & Masback Five Park Plaza, Suite #1200 Irvine, CA 92614-8529 (714) 622-2700 (714) 622-2739 (Fax)	International Insurance Company (Anden Group)
Lewis K. Loss, Esq. Ross, Dixon & Masback 601 Pennsylvania Avenue, N.W. North Building Washington, D.C. 20004-2688 (202) 662-2000 (202) 662-2190 (Fax)	International Insurance Company (Anden Group)

Mr. Alan Freudenheim
International Insurance Company
181 W. Madison Street, 26th Floor
Chicago, IL 60602
(312) 849-5150
(312) 849-5293 (Fax)

International Insurance Company
(Anden Group)

Thomas A. Foster, Esq.
Marrone, Robinson, Frederick & Foster
111 N. 1st Street, Suite #300
Burbank, CA 91502
(818) 841-1144
(818) 841-0746 (Fax)

A. Raymond Hammerick, III, Esq.
Law Offices of A. Raymond Hammerick, III
10 Universal City Plaza, Suite #2055
Universal City, CA 91608
(818) 763-5295
(818) 763-2308 (Fax)

Amy Dantzler, Esq.
Quisenberry & Barbanel, LLP
2049 Century Park East, Suite #2200
Los Angeles, CA 90067
(310) 785-7966
(310) 785-0254 (Fax)

John J. Carniato, Esq.
Law Offices of John J. Carniato
3736 Mt. Diablo Blvd., Suite #300
Lafayette, CA 94549
(510) 283-1552
(510) 283-9830 (Fax)

O'Brien & Hicks, Inc., O'Brien & Hicks 1988 & Beyond, Ltd., and Gloria Development co., Inc.

Josh Shinnick, Esq.
Hoge, Fenton, Jones & Appel, Inc.
60 S. Market Street
San Jose, CA 95113
(408) 287-9501
(408) 287-2583 (Fax)

O'Brien & Hicks, Inc.

Anthony B. Varni, Esq.
Varni, Fraser, Hartwell & Rodgers
22771 Main Street
Hayward, CA 94543
(510) 886-5000
(510) 538-8797 (Fax)

O'Brien & Hicks, Inc.

Chester G. Moore, III, Esq.
Low, Ball & Lynch
10 Twin Dolphin Road, Suite #B-500
Redwood City, CA 94065
(650) 591-8822
(650) 591-8884 (Fax)

Alcal Roofing & Insulation

Susan P. Grey, Esq.
Dominion Law Group
1155 N. First Street, Suite #101
San Jose, CA 95112
(408) 288-5592
(408) 938-1035 (Fax)

B.L. Cohen Landscape, Inc. (in 9/97)

David S. Henningsen, Esq.
Robinson & Wood
227 N. First Street
San Jose, CA 95113
(408) 298-7120
(408) 298-0477 (Fax)

B.L. Cohen Landscape, Inc. (in 10/97)

Donald B. Fornasier, Esq.
Archer, McComas, Breslin, McMahon
& Chritton
2033 N. Main Street, Suite #800
Walnut Creek, CA 94596
(510) 930-6600
(510) 930-6620 (Fax)

B.L. Cohen Landscape, Inc. (in 11/97)

Philip Y. Kazan, Esq.
Russell, Kazan, Brenner & Mallett
343 Sansome Street, Suite #525
San Francisco, CA 94104
(415) 956-5841
(415) 956-0708 (Fax)

C. Aparicio Cement

Donald B. Fornasier, Esq.
Archer, McComas, Breslin, McMahon
& Chritton
2033 N. Main Street, Suite #800
Walnut Creek, CA 94596
(510) 930-6600
(510) 930-6620 (Fax)

C. Aparicio Cement

Jeffery L. Borsuk, Esq.
Pandell & Borsuk, LLP
2033 N. Main Street, Suite #450
Walnut Creek, CA 94596-3722
(510) 746-8800
(510) 746-8898 (Fax)

Carlos Rodriguez Painting (in 9/97)

S. Mitchell Kaplan, Esq.
Gordon & Rees
275 Battery Street, 20th Floor
San Francisco, CA 94111
(415) 986-5900
(415) 986-8054 (Fax)

Daniel Smith Plastering, Inc.

Anthony J. DeMaria, Esq.
Filice & DeMaria
1130 Burnett Avenue
Building D, Suite H
Concord, CA 94520
(510) 676-5094
(510) 676-0548 (Fax)

Gonsalves & Santucci, Inc. dba
Conco Cement Company

S. Mitchell Kaplan, Esq.
Gordon & Rees
275 Battery Street, 20th Floor
San Francisco, CA 94111
(415) 986-5900
(415) 986-8054 (Fax)

Fisk, Firenze & McLean

Melissa A. Bruzzano, Esq.
Larson & Burnham
P.O. Box 119
Oakland, CA 94604
(510) 444-6800
(510) 835-6666 (Fax)

Hanson's Masonry, Inc. (in 7/96)

J. Michael Higginbotham, Esq.
Long & Levit
101 Califonria Street, Suite #2300
San Francisco, CA 94111
(415) 397-2222
(415) 397-6392 (Fax)

Ruth & Going, Inc. and
Melvin Lee Associates

Robert P. Jolly, Esq.
Jolly, Herlihy & Hepler
275 Battery Street, Suite #600
San Francisco, CA 94111
(415) 658-3100
(415) 658-3094 (Fax)

M&H Electric (in 8/97)

Donald L. Sullivan, Esq.
Clapp, Moroney, Bellagamba, Davis
& Vucinich
4400 Bohannon Drive, Suite #100
Menlo Park, CA 94025
(650) 327-1300
(650) 327-3707 (Fax)

Mission Drywall of San Jose and
Silva Fence Company (in 5/96)

Kevin J. Tully, Esq. Greene, Chauvel, Descalso & Tully 901 Mariner's Island Blvd., Suite #400 San Mateo, CA 94404-1594 (650) 573-9500 (650) 573-9689 (Fax)	North Empire Construction and and Sacramento A-1 Door
Robert K. Phillips, Esq. Phillips & Spallas, LLP 225 Bush Street, 16th Floor San Francisco, CA 94104 (415) 439-8870 (415) 439-882 (Fax)	Peninsula Floors, Inc. (in 9/97; out 12/97)
Nancy A. McPherson, Esq. Holmes, Drevlow, Carmody, Schmidt & Nakano 180 Montgomery Street, Suite #2100 San Francisco, CA 94104 (415) 362-1422 (415) 362-7054 (Fax)	Sacramento A-1 Door
Helen B. Baumann, Esq. Law Office of Eugene L. Bass 495 Seaport Court, Suite #103 Redwood City, CA 94063 (650) 361-1199 (650) 369-4984 (Fax)	San Carlos Sheet Metal Works, Inc.
Howard L. Churchill, Esq. Schofield & Schiller 100 Pringle Avenue, Suite #510 Walnut Creek, CA 94596 (510) 934-3600 (510) 934-2257 (Fax)	Sierra Lumber & Fence Company (in 9/97)
Michael P. Quinlivan, Esq. Kouns, Quinlivan & Severson 101 Park Center Plaza, Suite #1007 San Jose, CA 95113 (408) 278-0125 (408) 292-1257 (Fax)	Sierra Precast, Inc. (in 8/97; dismissed 12/97)
David N. Poll, Esq. Collins & Schlothauer 60 S. Market Street, Suite #1100 San Jose, CA 95113-2369 (408) 298-5161 (408) 297-5766 (Fax)	Silva Fence Company (in 5/96)
Donald L. Sullivan, Esq.	Silva Fence Company (in 10/97)

Clapp, Moroney, Bellagamba, Davis & Vucinich 4400 Bohannon Drive, Suite #100 Menlo Park, CA 94025 (650) 327-1300 (650) 327-3707 (Fax)	
Karen Wentzel, Esq. Ritchie, Fisher, Whitman & Klein 1717 Embarcadero Road Palo Alto, CA 94303 (650) 857-1717 (650) 857-1288 (Fax)	Soil Foundation Systems (out 5/96)
Paul E. Stephan, Esq. Stephan & Conroy 444 Market Street, Suite #2675 San Francisco, CA 94111 (415) 983-4740 (415) 296-1043 (Fax)	T&D Tile Company, Inc. (in 8/97; out 12/97)
Clay A. Coehlo, Esq. Law Offices of Charlotte M. Venner 50 Fremont Street, Suite #2550 San Francisco, CA 94105 (415) 243-4950 (415) 778-4689 (Fax)	T&D Tile Company, Inc. (in 10/97; out 12/97)
Albert P. Blake, Esq. Roger, Scott & Helmer 900 Veterans Blvd., Suite #430 Redwood City, CA 94063 (650) 365-7700 (650) 0677 (Fax)	Tara Coatings
Norman La Force, Esq. Law Offices of F. Ross Adkins 25 Pacific Avenue Mall San Francisco, CA 94111 (415) 981-5200 (415) 981-2097 (Fax)	Tara Coatings
Mr. Donald W. Simons, Jr., Esq. Frank Pinto Adjusters, Inc. 1504 Franklin Street, Suite #308 Oakland, CA 94612 (510) 834-1474 (510) 834-7032 (Fax) (510) 654-1425 (Hm Fax)	Courtesy Copy

DONALD L. SULLIVAN, ESQ. (BAR #: 131941)
CLAPP, MORONEY, BELLAGAMBA,
DAVIS and VUCINICH
A PROFESSIONAL CORPORATION
4400 Bohannon Drive, Suite 100
Menlo Park, California 94025
(415) 327-1300
(415) 327-3707 Fax

Attorneys for Defendant
TECHNIBUILDERS IRON

FILED
SAN MATEO COUNTY
JAN 22 1998
Clerk of the Superior Court
By DEPUTY CLERK

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN MATEO

EDGEWATER ISLE HOMEOWNERS ASSOCIATION, INC., Plaintiff, vs. THE ANDEN GROUP, a California general partnership, THE ANDEN CORPORATION, a California corporation, et al., Defendants. AND RELATED CROSS-ACTIONS.	No. 388872 NOTICE OF APPEARANCE IN LIEU OF AN ANSWER

Pursuant to Pre-Trial Order No. 2, please take notice that Donald L. Sullivan, Esq., of Clapp, Moroney, Bellagamba, Davis and Vucinich, A Professional Corporation, 4400 Bohannon Drive, Suite 100, Menlo Park, California, 94025, hereby appears as counsel

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of record for defendant TECHNIBUILDERS IRON in the above-entitled matter.

Dated: January 13, 1998

CLAPP, MORONEY, BELLAGAMBA, DAVIS & VUCINICH

By _____
Donald L. Sullivan
Attorneys for Defendant
TECHNIBUILDERS IRON

Edgewater Isle HOA v. The Anden Group
Superior Court, San Mateo County: Case No. 388872

PROOF OF SERVICE BY MAIL

I, the undersigned, hereby declare that I am over the age of eighteen years and not a party to the within action. My business address is 4400 Bohannon Drive, Suite 100, Menlo Park, California 94025.

On the date indicated below, I served by mail a true copy of the following documents:

NOTICE OF APPEARANCE IN LIEU OF AN ANSWER

I am readily familiar with the practice of this business for collection and processing of documents for mailing with the United States Postal Service. Documents so collected and processed are placed for collection and deposit with the United States Postal Service that same day in the ordinary course of business. The above-referenced document(s) were placed in (a) sealed envelope(s) with postage thereon fully prepaid, addressed to each of the below listed parties and such envelope(s) was (were) placed for collection and deposit with the United States Postal Service on the date listed below at 4400 Bohannon Drive, Suite 100, Menlo Park, California 94025.

SEE ATTACHED LIST.

Executed on January 20, 1998 at Menlo Park, California. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Loraine Pereira

Loraine Pereira

Special Master
William L. Nagle, Esq.
Special Master/Mediator
345 Lorton Avenue, #204
Burlingame, CA 94010-4116
650/579-0500
Fax 650/579-0623

Attys for Plf., Edgewater Isle HOA
Thomas E. Miller/Bruce Mayfield
LAW OFFICES OF THOMAS E. MILLER
4685 MacArthur Court, #220
Newport Beach, CA 92660
714/252-9150
Fax 714/442-0646

Assoc. Counsel for Silva Fence Co.
David N. Poll, Esq.
COLLINS & SCHLOTHAUER
60 So. Market Street, #1100
San Jose, CA 95113-2369
408/298-5161
Fax 408/297-5766

Attys for Defs./X-Comps., The Anden Group, Esden Partners, MDG Associates, Ltd., ESR Corporation, TMD Corporation and Miden Corporation
Marissa D'Amico, Esq.
BISHOP, BARRY, HOWE, et al.
275 Battery Street, 12th Flr.
San Francisco, CA 94111
415/421-8550
Fax 415/362-4730

Attys for Defs., Gloria Development Co., Inc., O'Brien & Hicks, Inc. and O'Brien & Hicks (s) 1988 & Beyond, Ltd.
John J. Carniato, Esq.
LAW OFFICES OF JOHN J. CARNIATO
3736 Mt. Diablo Blvd., #300
Lafayette, CA 94549
510/283-1552
Fax 510/283-9830

Attys for Def., B. L. Cohen Landscape
David S. Henningsen, Esq.
ROBINSON & WOOD
227 No. First Street
San Jose, CA 95113
408/298-7120
Fax 408/298-0477

Attys for Def., B. L. Cohen Landscape
Susan P. Grey, Esq.
DOMINION LAW GROUP, LLP
1155 No. First Street, #101
San Jose, CA 95112
408/288-5592
Fax 408/938-1035

Attys for Defs., C. Aparicio Cement and B.L. Cohen Landscape
Donald B. Fornasier, Esq.
ARCHER, McCOMAS, BRESLIN, et al.
Post Office Box 8035
Walnut Creek, CA 94596
510/930-6600
Fax 510/930-6620

Attys for Def., C. Aparicio Cement
Philip Y. Kazan, Esq.
RUSSELL, KAZAN, et al.
343 Sansome Street, #525
San Francisco, CA 94104
415/956-5841
Fax 415/956-0708

Attys for San Carlos Sheet Metal Works
Helen Baumann, Esq.
LAW OFFICES OF EUGENE L. BASS
495 Seaport Court, #103
Redwood City, CA 94063
650/361-1199
Fax 650/369-4984

Attys for AlCal Roofing & Insulation
Jonathan Margolis, Esq.
LOW, BALL & LYNCH
10 Twin Dolphin Dr., #B-500
Redwood City, CA 94065
650/591-8822
Fax 650/591-8884

Attys for Soil Foundation Systems
Karen Wentzel, Esq.
RITCHIE, FISHER, WHITEMAN & KLEIN
1717 Embarcadero Road
Palo Alto, CA 94303
650/857-1717
Fax 650/857-1288

Attys for Sacramento A-1 Door and North Empire Construction
Kevin J. Tully, Esq.
GREEN,.CHAUVEL, DESCALSO & TULLY
901 Mariner's Island Blvd., #400
San Mateo, CA 94404
650/573-9500
Fax 650/573-9689

Attys for Sacramento A-1 Door
Nancy A. McPherson, Esq.
HOLMES, DREVLOW, et al.
180 Montomgery Street, #2100
San Francisco, CA 94104
415/362-1422
Fax 415/362-7054

Attys for Gonsalves & Santucci, Inc. dba Conco Cement Company
Anthony J. DeMaria, Esq.
FELICE & DeMARIA
1130 Burnett Ave., Bldg.D, Ste. H
Concord, CA 94520
510/676-5094
Fax 510/676-0548

Attys for T & D Tile Company, Inc.
Paul E. Stephan, Esq.
STEPHAN & CONROY
444 Market Street, #2675
San Francisco, CA 94111
415/983-4740
Fax 415/296-1043

Attys for Def. T & D Tile Company, Inc.
Clay A. Coelho, Esq.
L/O of CHARLOTTE M. VENNER
50 Fremont Street, #2550
San Francisco, CA 94105
415/778-4680
Fax 415/778-4690

Attys for Tara Coatings, Inc.
Albert P. Blake, Esq.
ROGER, SCOTT & HELMER
900 Veterans Blvd., #430
Redwood City, CA 94063
650/365-7700
Fax 650/365-0677

Attys for Fisk, Firenze & McClean and Def./X-Def., Daniel Smith Plastering, Inc.
S. Mitchell Kaplan, Esq.
GORDON & REES
275 Battery Street, 20th Flr.
San Francisco, CA 94111
415/986-5900
Fax 415/986-8054

Attys for Sierra Lumber
Joe Thompson
Attorney at Law
981 Fremont Street
Santa Clara, CA 95050
408/984-8555
Fax 408/292-1061 or 293-9093

Attys for X-Def., Hanson's Masonry, Inc.
Scott C. Finch/Melissa A. Bruzzano
LARSON & BURNHAM
Post Office Box 119
Oakland, CA 94604
510/444-6800
Fax 510/835-6666

Attys for Defs/X-Defs., Ruth & Going, Inc. and Melvin Lee Associates, Inc.
J. Michael Higgenbotham, Esq.
LONG & LEVIT
101 California Street, #2300
San Francisco, CA 94111
415/397-2222
Fax 415/397-6392

Attys for Def., M & H Electric
Robert P. Jolly, Esq.
JOLLY, HERLIHY & HEPLER
275 Battery Street, #600
San Francisco, CA 94111
415/658-3100
Fax 415/658-3094

Attys for Def., Sierra Precast, Inc.
Michael P. Quinlivan, Esq.
KOUNS, QUINLIVAN & SEVERSON
101 Park Center Plaza, #1007
San Jose, CA 95113
408/278-0125
Fax 408/292-1257

Attys for Def., Carlos Rodriguez Painting
Jeffery L. Borsuk, Esq.
PANDELL & BORSUK
2033 No. Main Street, #450
Walnut Creek, CA 94596-3722
510/746-8800
Fax 510/746-8898

Attys for The Anden Group (Personal Counsel)
Gregory J. Patterson, Esq.
PROSKAUER ROSE LLP
2049 Century Park East, #3200
Los Angeles, CA 90067-3206
310/557-2900
Fax 310/557-2193

Attys for Def. Peninsula Floors, Inc.
Shahab E. Fotouhi, Esq.
PHILLIPS & SPALLAS, LLP
225 Bush Street, 16th Flr.
San Francisco, CA 94104
415/439-8870
Fax 415/439-8822

Attys for Def., Chrisp Company
Daniel A. Berman, Esq.
WOOD, SMITH, et al.
801 So. Figueroa St., 9th Flr.
Los Angeles, CA 90017-2573
213/622-9300
Fax 213/622-9394

LAW OFFICES OF THOMAS E. MILLER
Thomas E. Miller / Bar #057821
Bruce Mayfield / Bar #057730
4695 MacArthur Court, Suite 1150
Newport Beach, CA 92660
(714) 252-9150 FAX (714) 442-0646

Attorneys for Plaintiff

FILED
SAN MATEO COUNTY
JAN 22 1998
Clerk of the Superior Court
By [signature]
DEPUTY CLERK

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN MATEO

FILED BY FAX

EDGEWATER ISLE HOMEOWNERS ASSOCIATION, Plaintiff, vs. THE ANDEN GROUP, et al., Defendants. AND RELATED CROSS-ACTIONS.	CASE NO. 388872 **PLAINTIFF'S OPPOSITION TO MOTION FOR SUMMARY JUDGMENT BY DEFENDANT SIERRA LUMBER & FENCE; MEMORANDUM OF POINTS AND AUTHORITIES** Date: February 3, 1998 Time: 9:00 a.m. Dept: 14, Room 8B Tentative Trial Date: 3/2/97

COMES NOW plaintiff, EDGEWATER ISLE HOMEOWNERS ASSOCIATION, (hereinafter, "plaintiff"), in opposition to the Motion for Summary Judgment by defendant SIERRA LUMBER & FENCE COMPANY (hereinafter "defendant").

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MEMORANDUM OF POINTS AND AUTHORITIES

1. STATEMENT OF FACTS.

On July 27, 1994, plaintiff brought an action in San Mateo Superior Court for construction defects against the developer of a 224-unit condominium project located in San Mateo (hereinafter the "project"). The project was developed by a California general partnership -- The Anden Group -- who entered into a contract with a California corporation, O'Brien & Hicks, to supervise all aspects of the development and construction of the project. These developer entities were originally named by plaintiff in addition to Does 1 through 200. At the commencement of the action, plaintiff did not know the identities of the subcontractors responsible for actual construction of the project.

Due to the complex nature of the case, William L. Nagle was appointed as Special Master/Mediator. Plaintiff and developer defendants proceeded, with the guidance of the Special Master, to investigate the significant construction defects at the project in order to permit all parties to engage in meaningful settlement negotiations. This investigation process was facilitated by Pre-Trial Orders recommended by the Special Master and adopted by the Court. These orders provided for the production of all documents, (which between plaintiff and developer totalled approximately 70 banker boxes), non-invasive site inspections, destructive testing to document the actual as-built condition of the project, exchange of insurance information, facilitated expert meetings, promulgation of a preliminary defect list and cost-of-repair, numerous expert

meetings between plaintiff and developer experts regarding areas of agreement concerning the extent and type of repairs and approximately eight (8) days of mediation. The tasks outlined above required the coordination of approximately 15 experts and multiple firms of attorneys and insurance company representatives. The goal throughout this pre-trial period was to obtain a mediated resolution of the case prior to the expense of formal discovery and without the necessity of bringing all of the subcontractors into the lawsuit. Despite the constant attention of the Special Master this task stretched beyond the two-year anniversary of the commencement of the lawsuit.

Throughout the summer and fall of 1996, it appeared as if the named parties would be able to reach a resolution of the action. Unfortunately, due to inter-insurance disputes among the carriers for defendant Anden, Anden's primary carrier commenced an interpleader action in Federal District Court in Los Angeles on June 26, 1997 and interpled the remaining proceeds of their policies. At this point settlement negotiations broke down and all parties' attention focused on the need to commence formal discovery.

With the probability that the matter either would proceed to trial, or at a minimum to the steps of the courthouse before resolution, and in light of the impairment of Anden's insurance, plaintiff elected to serve the subcontractors responsible for construction at the project whose identities were learned during the investigation and mediation with the developer.

Sierra Lumber & Fence was personally served by this office as DOE 6 on July 28, 1997, within the three year period for service.

2. **THE DEFENDANT FAILED TO PROPERLY SERVE ITS MOTION FOR SUMMARY JUDGEMENT.**

California *Code of Civil Procedure* section 437c requires that, "[N]otice of the motion and supporting papers shall be served on all other parties to the action at least 28 days before the time appointed for the hearing. However, if the notice is served by mail, the required 28-day period of notice shall be increased by five days if the place is within the State of California."

Hearing of defendants motion for summary judgment is scheduled for February 2, 1998, in order to be heard before the 30-day cut-off date prior to trial, which is scheduled for March 2, 1998. Accordingly, the defendant should have served plaintiff with notice of the motion by December 31, 1997. In fact, the defendant served plaintiff with notice of its motion for summary judgment on January 7, 1998, which is late service by seven (7) days. Accordingly, the defendant's motion for summary judgment should be denied.

3. **PLAINTIFF PROPERLY SERVED DEFENDANT WITH SUMMONS AND COMPLAINT**

California *Code of Civil Procedure* section 583.210 allows plaintiff three years within which to serve the summons and complaint upon defendant. Since the action was filed on July 27, 1994, plaintiff would have until midnight July 27, 1997 to serve defendant. Since July 27, 1997 fell on a Sunday, a legal holiday, plaintiff had Monday, July 28, 1997 within which to complete service on the defendant. See California *Code of Civil Procedure* section 10.

Plaintiff served defendant Sierra Lumber & Fence at 2:50 p.m. on Monday, July 28, 1997, before the deadline of midnight July

28th. (See Proof of Service attached here as Exhibit "A".)

This identical issue was raised in Tilden Lumber Company v. M. Perino (1934) 2 Cal.App.2d 133. The plaintiff in Tilden had four years in which to commence an action against defendant for breach of contract, and the last day of that four year period fell on a Sunday. The court ruled that "the plaintiff had all day Monday to commence its action." (Id. at p. 134.)

Plaintiff is entitled to the full statutory period of three years to serve defendant, which includes Monday, July 28, 1997; therefore, plaintiff properly served the summons and complaint on defendant Sierra Lumber & Fence, and defendant's motion for summary judgment should be denied.

4. **PLAINTIFF'S EXPERT HAS PROVIDED EVIDENCE OF CONSTRUCTION DEFECTS CAUSED BY DEFENDANT, SUPPORTING THE CAUSES OF ACTION CONTAINED IN THE COMPLAINT.**

Defendant contends that plaintiff has failed to provide any evidence of damage through acts or omissions by SIERRA including the final defect list, thereby supporting a motion for summary judgment.

On October 17, 1997, plaintiff served a final defect list on all parties. The defect list was explained and discussed in the depositions of various experts, including the deposition of plaintiff's expert Robert M. Powell, taken on November 11, 1997. In his deposition, Mr. Powell was asked by counsel for defendant SIERRA whether he had any opinions about defects in a structure described as bridge ballard columns and wood railing, and he replied, "Yes. I have three photographs that were taken by Bill

Dost of the top of the ballards which indicate that while the ballards were treated, the cut ends at the top were not treated and the untreated wood was exposed to the weather, and decay took place in the top of the ballards." (See page 210 of Powell's deposition attached here as Exhibit "B".) Mr. Powell went on to explain that "[i]t is a violation of the standard of care for somebody to not treat the cut surfaces that went through the preservative treatment." (See page 211, line 15 of Powell's deposition attached here as Exhibit "B".)

While the individuals erroneously referred to "ballards" instead of "bollards", the defects caused by defendant SIERRA were discussed in Mr. Powell's deposition, and constitute evidence of construction defects caused by defendant SIERRA at the Edgewater development thereby supporting the causes of action in plaintiff's complaint. Accordingly, defendant's motion for summary judgment should be denied.

5. **CONCLUSION**

The policy favoring trial on the merits is favored over the policy for granting summary judgment motions. Plaintiff properly served defendant with the summons and complaint within the three year statutory period, and plaintiff provided defendant with evidence supporting the causes of action alleged in its complaint;

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therefore, plaintiff respectfully requests that the court deny defendant's motion for summary judgment.

DATED: January 21, 1998

LAW OFFICES OF THOMAS E. MILLER

By: Bruce Mayfield
Thomas E. Miller, Esq.
Bruce Mayfield, Esq.
Attorneys for Plaintiff,
EDGEWATER ISLE HOMEOWNERS ASSOCIATION

PROOF OF SERVICE
[C.C.P. Section 1013A(3)]

STATE OF CALIFORNIA, COUNTY OF ORANGE

I am employed in the County of Orange, State of California. I am over the age of 18 and not a party to the within action; my business address is 4695 MacArthur Court, Suite 1150, Newport Beach, California 92660.

On January 21, 1998, I served the documents described as:

1. PLAINTIFF'S OPPOSITION TO MOTION FOR SUMMARY JUDGMENT BY SIERRA LUMBER;
2. SEPARATE STATEMENT IN OPPOSITION TO MOTION FOR SUMMARY JUDGMENT;
3. DECLARATION OF BRUCE MAYFIELD IN SUPPORT OF PLAINTIFF'S OPPOSITION TO MOTION FOR SUMMARY JUDGMENT BY SIERRA LUMBER; and
4. [PROPOSED] ORDER DENYING SUMMARY JUDGMENT

on other parties in this action by placing a true copy in a sealed envelope addressed as follows:

SEE ATTACHED SERVICE LIST

XX BY U.S. MAIL - As follows: I placed a true copy in a sealed envelope addressed as indicated above. I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on the same day with postage thereon fully prepaid at Claremont, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

PERSONAL SERVICE - I placed the copies in a sealed envelope addressed as indicated above and caused such envelope to be delivered by hand to the offices of the addressee.

____ **BY TELECOPIER** - I personally sent to the addressees' telecopier numbers attached hereto a true copy of the above-described document via facsimile transmission. Each transmission was reported as complete and without error. Copies of each transmission report are attached to this proof of service. Each report was properly issued by the transmitting facsimile machine.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on January 21, 1998 at Newport Beach, California

Penny Simpkins

Edgewater [redacted] Homeowners Association v. The A[redacted]n Group, et al.

San Mateo Superior Court Case No. 388872

SERVICE LIST

William L. Nagle 345 Lorton Avenue, Suite 204 Burlingame, CA 94010-4116 (650) 579-0500\(650) 579-0623 (FAX) **SPECIAL MASTER**	Robert K. Phillips Shahab E. Fotouhi **Phillips & Spallas** 225 Bush Street, 16th Floor San Francisco, CA 94104 415/439-8840\Fax 415/439-8822 Attorneys for Defendant **PENINSULA FLOORS, INC.**
Marisa D'Amico Thomas O. Haran **Bishop, Barry, Howe, Haney & Ryder** A Professional Corporation Embarcadero Center West 275 Battery Street, 12th Floor San Francisco, CA 94111-3333 (415) 421-8550\(415) 362-4730 (FAX) Defendants and Cross-Complainants **THE ANDEN GROUP**	Donald B. Fornasier **Archer, McComas, Breslin, McMahon & Chrittion** Post Office Box 8035 Walnut Creek, CA 94596 (510) 930-6600\(510) 930-6620 (FAX) Cross-Defendant **C. APRICO CEMENT CONTRACTORS**
Thorsten J. Pray **Law Offices of John J. Carniato** 3736 Mt. Diablo Blvd., Suite 300 Lafayette, CA 94549 (510) 283-1552\(510) 283-9830 (FAX) Defendants and Cross-Complainants **GLORIA DEVELOPMENT CO., INC. and O'BRIEN & HICKS, INC., O'BRIEN & HICKS 1988 & BEYOND, LTD.**	Anthony J. DeMaria **Felice & DeMaria** 1130 Burnett Ave., Bld. D, Suite H Concord, CA 94520 (510) 676-5094\(510) 676-0548 (FAX) Cross-Defendant **GONSALVES & SANTUCCI, INC. dba CONCO CEMENT COMPANY**
John Shinnick **Hoge, Fenton, Jones & Appel** 60 South Market Street, 14th Floor San Jose, CA 95113 (408) 287-9501\(408) 287-2583 (FAX) Defendant **O'BRIEN & HICKS, INC.**	Michael Bruno, Esq. **Gordon & Rees** 275 Battery Street, 20th Floor San Francisco, CA 94111 (415) 986-5900\(415) 986-8054 (FAX) Cross-Defendant **FISK, FIRENZE & McLEAN; DANIEL SMITH PLASTERING, INC. and ASH ROOFING**
Albert Blake **Roger, Scott & Helmer** 900 Veterans Blvd., Suite 430 Redwood City, CA 94063 (415) 365-7700\(415) 365-0677 (FAX) Cross-Defendant **TARA COATINGS**	Joe Thompson Attorney at Law 981 Fremont Street Santa Clara, CA 95050 (408) 984-8555\(408) 292-1061 (FAX) Cross-Defendant **SIERRA LUMBER**
Norman La Force **Law Offices of F. Ross Adkins** 25 Pacific Avenue Mall San Francisco, CA 94111 (415) 981-5200\(415) 981-2097 (FAX) Co-Counsel Cross-Defendant **TARA COATINGS**	Howard L. Churchill **Schofield & Schiller** 100 Pringle Avenue, #510 Walnut Creek, CA 94596 (510) 934-3600\(510) 934-2257 (FAX) Cross-Defendant **SIERRA LUMBER**

Kevin J. Tully **Greene, Chauvel & Doscalso** 902 Mariners Island Blvd., Suite 400 San Mateo, CA 94404-1594 (415) 573-9500\(415) 573-9689 (FAX) Cross-Defendants **SACRAMENTO A-1 DOOR and NORTH EMPIRE CONSTRUCTION**	Donald L. Sullivan **Clapp, Moroney, Bellagamba, Davis & Vucinich** 4400 Bohannon Drive, Suite 100 Menlo Park, CA 94025 (415) 327-1300\(415) 327-3707 (FAX) Cross-Defendant **MISSION DRYWALL OF SAN JOSE; SILVA FENCE COMPANY1and TECHNIBUILDERS IRON, INC.**
Maria Caruana, Esq. **Fortune & Dreview** 180 Montgomery Street, Suite 2100 San Francisco, CA 94104 (415) 362-1422\(415) 362-7054 (FAX) Co-Counsel for Cross-Defendant **SACRAMENTO A-1 DOOR**	David N. Poll **Collins & Schlothauer** 60 South Market Street, Suite 1100 San Jose, CA 95113-2369 (408) 298-5161\(408) 297-5766 (FAX) Co-Counsel for Cross-Defendant **SILVA FENCE COMPANY**
Helen B. Baumann **Law Offices of Eugene L. Bass** 495 Seaport Court, Suite 103 Redwood City, CA 94063 (415) 361-1199\(415) 369-4984 (FAX) Cross-Defendant **SAN CARLOS SHEET METAL WORKS, INC.**	Joseph H. Huber **Gassett, Perry & Frank** 210 North Fourth Street, Suite 400 San Jose, CA 95112 (408) 295-7034\(408) 295-5799 (FAX) Cross-Defendant **CROWLEY COMPANY**
Johnathan Margolis **Low, Ball & Lynch** 10 Twin Dolphin Drive, Suite B-500 Redwood City, CA 94065 (415) 591-8822\(415) 591-8884 (FAX) Cross-Defendant **ALCAL ROOFING & INSULATION**	Scott C. Finch Melissa A. Bruzzano **Larsen & Burnham** Post Office Box 119 Oakland, CA 94604 (510) 444-6800\(510) 835-6666 (FAX) Cross-Defendant **HANSON'S MASONRY, INC.**
Gregory J. Patterson **Proskauer Rose** 2049 Century Park East, Suite 3200 Los Angeles, CA 90067 (310) 284-5650\(310) 557-2193 (FAX) Direct: (310) 284-5676 (Personal Counsel) **THE ANDEN GROUP**	J. Michael Higginbotham, Esq. **Long & Levit** 101 California Street, Suite 2300 San Francisco, CA 94111 415/397-2222\415/397-6392 (FAX) Attorneys for Cross-Defendant **RUTH & GOING and MELVIN LEE**
Philip Y. Kazan, Esq. **Russell, Kazan, Brenner & Mallott** 343 Sansome Street, Suite 525 San Francisco, CA 94104 415/956-5841\415/956-0708 (FAX) Attorneys for Cross-Defendant **C. APARICIO CEMENT**	Michael P. Quinlivan, Esq. **Kouns, Quinlivan & Severson** 101 Park Center Plaza, Suite 1007 San Jose, CA 95113 408/278-0125\408/292-1257 Attorneys for Defendant **SIERRA PRECAST**
Clay A. Coelho, Esq. **Law Offices of Charlotte Venner** 50 Fremont Street, Suite 801 San Francisco, CA 94105 415/778-4660\415/778-4690 (FAX) Attorneys for Cross-Defendant **T & D TILE COMPANY, INC.**	Paul E. Stephan, Esq. **Stephan & Conroy** 444 Market Street, Suite 2675 San Francisco, CA 94111 415/983-4740\Fax 415/296-1043 Co-Counsel for **T & D TILE COMPANY, INC.**

Paul Walker, Esq. **Adams, Nye, Simuno & Walker** 633 Battery Street, 5th Floor San Francisco, CA 94111 415/982-8955\415/982-2042 (FAX) Attorneys for Cross-Defendant **MISSION DRYWALL**	Daniel A. Berman James M. Ganion **Wood, Smith, Henning & Berman** 801 South Figueroa Street, 9th Floor Los Angeles, CA 90017-2573 213/622-9300\Fax 213/622-9394 Attorneys for Defendant **CHRISP COMPANY**
Jolly, Herlihy & Helper 275 Battery Street, Suite 600 San Francisco, CA 94111 415/658-3100\Fax 415/658-3094 Attorneys for **M & H ELECTRIC**	Susan P. Grey **Dominion Law Group** 1155 N. First Street, Suite 101 San Jose, CA 95112 408/288-5592\Fax 408/938-1035 Attorneys for Defendant **B. L. COHEN LANDSCAPE**
Jeffery L. Borsuk James F. Blake **Pandell & Borsuk** 2033 N. Main Street, Suite 450 Walnut Creek, CA 94596-3722 510/746-8800\Fax 510/746-8898 Attorneys for Defendant **CARLOS RODRIGUEZ PAINTING**	David S. Henningsen, Esq. **Robinson & Wood, Inc.** 227 North First Street San Jose, CA 95113 408/298-7120\Fax 408/298-0477 Associate Attorneys for Defendant **B.L. COHEN LANDSCAPE, INC.**
William H. Staples, Esq. **Capps, Staples, Ward, Stephenson & Dodson** 1777 Botelho Drive, Suite 100 Walnut Creek, CA 94596 510/939-4411\510/939-5241 (FAX) Attorneys for Cross-Defendant **SAFECO INSURANCE COMPANY OF AMERICA**	Rand L. Chritton, Esq. Donald B. Fornasier, Esq. **Archer, McComas, Breslin, McMahon & Chritton** 2033 North Main Street, Suite 800 Peri Executive Centre P. O. Box 8035 Walnut Creek, CA 94596 510/930-6600\Fax 510/930-6620 Associate counsel for Defendant **B. L. COHEN LANDSCAPE**
Anthony Varni, Esq. **Varni Fraser Hartwell & Rodgers** 22771 Main Street Hayward, CA 94543-0570 510/886-5000\Fax 510/538-8797	Jilio & Associates, Document Depository c/o San Francisco Reporting Service 5 Third Street, Suite 815 San Francisco, CA 94103

LAW OFFICES OF THOMAS E. MILLER
Thomas E. Miller / Bar #057821
Bruce Mayfield / Bar #057730
4695 MacArthur Court, Suite 1150
Newport Beach, CA 92660
(714) 252-9150 FAX (714) 442-0646

Attorneys for Plaintiff

FILED
SAN MATEO COUNTY
JAN 22 1998
Clerk of the Superior Court
By [signature]
DEPUTY CLERK

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN MATEO

FILED BY FAX

EDGEWATER ISLE HOMEOWNERS ASSOCIATION, Plaintiff, vs. THE ANDEN GROUP, et al., Defendants. AND RELATED CROSS-ACTIONS.	CASE NO. 388872 **DECLARATION OF BRUCE MAYFIELD IN SUPPORT OF PLAINTIFF'S OPPOSITION TO MOTION FOR SUMMARY JUDGMENT BY SIERRA LUMBER** Date: February 2, 1998 Time: 9:00 a.m. Dept: 14, Room 8B Trial Date: 3/2/97

DECLARATION OF BRUCE MAYFIELD

I, Bruce Mayfield, declare:

1. I am an attorney at law duly licensed to practice before all the courts of the State of California and am associated with the Law Offices of Thomas E. Miller, attorneys of record for Plaintiff, EDGEWATER ISLE HOMEOWNERS ASSOCIATION. I am one of the attorneys principally responsible for the handling of this litigation, and as such, unless otherwise stated, have personal

first-hand knowledge of the facts contained herein, and if called upon to testify in a court of law regarding these facts, I could and would competently do so.

2. I am informed and believe and based thereon allege that William L. Nagle, Esq. was appointed Special Master/Mediator in this complex litigation case, and he has issued 43 Pre-Trial Orders. The Court is requested pursuant to Evidence Code section 452 (d)(1) to take judicial notice of Pre-Trial Orders 1 through 43 signed by Special Master/Mediator William L. Nagle, and signed by the Court.

3. I am informed and believe and based thereon allege that approximately fifteen (15) experts retained by plaintiff and the developer defendants were involved in the investigation of the construction defects at the project.

4. I am informed and believe that Special Master/Mediator William L. Nagle held approximately eight (8) settlement conferences with counsel for plaintiff and the developer defendants in an effort to settle the case and avoid litigation.

5. I am informed and believe and based thereon allege that following the filing of The Home Insurance Company's Complaint for Interpleader, settlement negotiations between the parties broke down.

6. A true and accurate copy of the Proof of Service as to Sierra Lumber is attached as Exhibit "A."

7. A true and accurate copy of excerpts [Pages 210 through 216] of the deposition transcript of Robert Powell are attached as Exhibit "B."

/ / /

/ / /

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 21st day of January, 1998 at Newport Beach, California.

Bruce Mayfield

Bruce Mayfield

EXHIBIT "A"

OC 714.432.1711
LA 310.615.0870
FAX 714.432.7713

CERTIFIED COPY

SUPERIOR COURT OF THE STATE OF CALIFORNIA

CITY AND COUNTY OF SAN MATEO

--oOo--

EDGEWATER ISLE HOMEOWNERS ASSOCIATION,

Plaintiff,

vs. No. 388872

THE ANDEN GROUP, et al.,

Defendants.

----------//

AND RELATED CROSS-ACTIONS.

DEPOSITION OF ROBERT M. POWELL

November 11, 1997

REPORTED BY:

YVONNE FENNELLY, CSR NO. 5495

JILIO & ASSOCIATES
CERTIFIED COURT REPORTERS

LAW OFFICES OF THOMAS M. [illegible]ER (714) 252-9150
4695 Mac Arthur Court, Suite 1150
Newport Beach, California 92660
ATTORNEY FOR (Name): PLAINTIFF
Ref. No.: 238058.JM

COPY

(ENDORSED)
FILED
SAN MATED COUNTY
AUG - 7 1997
Clerk of the Superior Court
By WENDY K. PAIGE
DEPUTY CLERK

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN MATEO

EDGEWATER ISLE HOMEOWNERS ASSOCIATION, INC., et al. vs THE ANDEN GROUP, et al.

PROOF OF SERVICE	HEARING DATE	TIME	DEPT./DIV.	CASE NUMBER
				388872

1. At the time of service I was at least 18 years of age and not a party to this action, and I served copies of the: SUMMONS ON SECOND AMENDED COMPLAINT; PRE-TRIAL ORDER NO. 25; SUMMONS ON DOE AMENDMENT; PLAINTIFF'S DOE AMENDMENT TO COMPLAINT; PROOF OF SERVICE BY MAIL; SERVICE LIST; SECOND AMENDED COMPLAINT

2. a. Party served: SIERRA LUMBER
   b. Person served: ROGER BURCH, AUTHROIZED TO ACCEPT SERVICE OF PROCESS
   c. Address: 1711 SENTER RD.
      SAN JOSE, CA

3. I served the party in item 2
   b. by leaving the copies with or in the presence of:(*name and title or relationship to person indicated in item 2b):* VIVIAN HOUNSHELL, CONTRACT ADMINISTRATOR

      (1) (business) a person at least 18 years of age apparently in charge at the office or usual place of business of the person served. I informed him or her of the general nature of the papers.
      (3) on *(date)*: 7/28/97 (4) at (time): 2:50 P.M.

   d. by causing copies to be mailed to the address in item 2c.
      a declaration of mailing is attached

4. The "Notice to the Person Served" (on the summons) was completed as follows:
   b. as the person sued under the fictitious name of (specify): DOE 6
   c. on behalf of (*specify*): SIERRA LUMBER
      under: CCP 416.10 (corporation)

5. Person Serving (*name, address, and telephone No.):*
   B. PONCURAK

   EXPRESS NETWORK, INC.
   451 Hayes Street
   San Francisco, California 94102
   (415) 552-9900

   a. Fee for service: $

   d. Registered California process server.
      (1) Employee or independent contractor.
      (2) Registration No.: 393
      (3) County: San Francisco

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

Date: August 4, 1997

Ben Poncurak

Form Adopted by Rule
Judicial Council of California
982(a)(23) (New July 1, 1987)

PROOF OF SERVICE

Code civ. Proc., §417.10 (f)

8-7-97

PROOF OF MAILING

STATE OF CALIFORNIA, COUNTY OF SAN FRANCISCO

I am employed in the County of San Francisco, State of California. I am over the age of eighteen and not a party to the within action; my business address is c/o Express Network, Inc., 451 Hayes Street, 2nd Floor, San Francisco, California 94102; my business phone number is (415) 552-9900. Express Network, Inc., is a registered process serving company whose registration is in San Francisco County #393.

On July 28, 1997, I mailed true and correct copies of the following document(s):

SUMMONS ON SECOND AMENDED COMPLAINT; PRETRIAL ORDER NO. 25; SUMMONS ON DOE AMENDMENT; PLAINTIFF'S DOE AMENDMENT TO COMPLAINT; PROOF OF SERVICE; SERVICE LIST; SECOND AMENDED COMPLAINT

to the office/residence of the addressed as follows:

SIERRA LUMBER
1711 SENTER RD.
SAN JOSE, CA

by mailing the copies to the person served, addressed as shown above, by first-class mail, postage prepaid, on July 28, 1997 from San Francisco, California.

Executed on July 31, 1997 San Francisco, California.

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

H. Peck, Process Manager

EXHIBIT "B"

MR. SULLIVAN: Thank you. That's all I have.

MS. D'AMICO: Anybody else?

MR. SCHOFIELD: I can go tomorrow.

MS. D'AMICO: Can we finish today? If we need to go to 6:00 to do it, let's do it.

--oOo--

EXAMINATION BY MR. SCHOFIELD

MR. SCHOFIELD: Q. Mr. Powell, my name is Bob Schofield. I represent the defendant Sierra Lumber and Fence Company and I have a few questions.

My client had a contract for work that was generally described as landscape specialty carpentry, and I wanted to ask you whether you had any opinions about defects in a structure described as bridge ballard columns and wood railing?

A. Yes. I have three photographs that were taken by Bill Dost of the top of the ballards which indicate that while the ballards were treated, the cut ends at the top were not treated and the untreated wood was exposed to the weather, and decay took place in the top of the ballards.

Q. Could you identify those photographs?

A. Yes. They are photographs No. 7, 8 and 9 in roll No. 3 in the report by William A. Dost,

dated October 14th, 1997.

Q. Do you know where those ballards are located in the project?

A. No, I do not.

Q. So you do not know whether they are associated with the bridge?

A. From the photographs, they appear to be isolated.

Q. So is it correct that you don't know whether they were associated with the bridge?

A. That is right.

Q. Is it your opinion that that is beneath the standard of care, not to coat or treat the tops of the ballards?

A. It is a standard of care -- it is a violation of the standard of care for somebody to not treat the cut surfaces that went through the preservative treatment.

Q. Where do you observe the standard of care for not treating the bottom of the ballard?

A. It's under AWPA, American Wood Preservative Association specification M-4 which deals with the field handling of preservative treated wood components?

A. And no, I don't have that standard with

me.

Q. Is it a violation of the UBC not to treat the ends of these ballards?

A. The UBC refers to M-4 as the document for guidelines in handling treated pieces in the field that deals with cut surfaces, drilled holes. They go through the preservative treated membrane.

Q. You mentioned the UBC refers to M-4. Do you know in what section UBC refers to it?

A. It's in the standards portion of the code. It's the second edition. It's called the UBC standards as opposed to --

Q. Is that part of the Uniform Building Code?

A. It's part of the Uniform Building Code. In fact, they refer to it in each one of the basic editions. It would be underneath UBC standard No. 25-12, and that would be in the book of standards.

Q. What edition of the UBC are you looking at?

A. 1979.

Q. Did that remain the same in the 1982 and 1988 edition?

A. Yes.

Q. Can you ascertain from the photographs

the depth of the decay?

A. Photograph seven shows the tapered awl buried clear to the top. And the tapered awl is approximately four inches deep.

And photograph eight is actually a tear-out of the decay encountered in photograph seven.

Photograph nine indicates a screwdriver is driven into the top of the ballard for approximately something on the order of four inch depth penetration.

Photograph seven and eight are the same ballard.

Q. Do you have a repair recommendation?

A. Cut the top of the member until you run out of decay. Put a sheet metal -- put the two percent copper napthanate coating. Put a sheet metal cap on top of it with a half-inch air space between the underside of the sheet metal and the top of the new surface for air circulation.

Q. What was the distance again?

A. Half an inch.

You don't want to put the sheet metal directly down on the wood because you potentially would have condensate on the underside of the sheet

metal, and that would particularly occur in an area of high humidity close to the coast.

Q. Do you have an opinion as to who would be responsible for this defect?

A. Whoever cut the surface.

Q. In your opinion, how should the person who cut this surface treat it?

A. If he cut the surface, he should have thoroughly coated the end grain of the ballard with a two percent copper napthanate solution, probably two heavy coats, and then put a sheet metal cap on top of it with a half-inch air gap.

Q. In your opinion, is this a permanent structure?

A. It appears to me to be, in these photographs, a single ballard embedded in concrete.

Q. Does that indicate to you that it is intended to be permanent?

A. I don't know what purpose it serves other than it does have an eye bolt coming out of one side of it. Maybe it served as a rail wire rope.

Q. In your opinion, should this have been detailed in the landscape designs?

A. It would be preferred, yes.

Q. In your opinion, would it have been beneath the standard of care for a landscape architect not to detail the treatment of the end grain of cut pieces of pressure treated wood in the manner you've described?

A. Landscape architect, yes.

Q. Are there any other parties you believe might have been negligent for not having seen this was treated in the manner you just described?

A. Whoever installed it.

Q. Do you have any opinions about any defects in a structure described as a bench at the lake area?

A. No comment.

Q. Do you have any opinions about defects in a structure described as a trap fence at model building?

A. No.

Q. Do you have any opinions about any defects existing at a structure described as sales office arbor?

A. No.

Q. Do you have any opinions as to defects at the structure described as six-pipe ballards removable at fire access road under Highway 92?

A. That's what served as a road barrier.
Q. Are you referring to the ballard in picture seven through nine?
A. Yes.
Q. So you believe now that that ballard was one of the pipe ballards for the fire access road?
A. Yes. That would explain the ring bolt through the side of it.
Q. You're basing that solely on the fact of the ring bolt, correct?
A. Yes. It would be to actually tie a rope or a chain through there.
Q. Do you know whether those pipe ballards serve a purpose?
A. I have no idea whatsoever. There is no line through the eye hooks.
Q. Do you have any opinions regarding defects at a structure described as a sales office trellis?
A. Not based on descriptions in our file. I have pool area building and I have a spa area.
Q. Both with trellises?
A. With trellises.
Q. Do you have any opinions regarding

LAW OFFICES OF THOMAS E. MILLER
Thomas E. Miller / Bar #057821
Bruce Mayfield / Bar #057730
4685 MacArthur Court, Suite 220
Newport Beach, CA 92660
(714) 252-9150 FAX (714) 442-0646

Attorneys for Plaintiff

FILED
SAN MATEO COUNTY
JAN 22 1998
Clerk of the Superior Court
By _____ DEPUTY CLERK

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN MATEO

FILED BY FAX

EDGEWATER ISLE HOMEOWNERS ASSOCIATION, Plaintiff, vs. THE ANDEN GROUP, et al., Defendants. AND RELATED CROSS-ACTIONS.	CASE NO. 388872 **SEPARATE STATEMENT IN OPPOSITION TO MOTION FOR SUMMARY JUDGMENT** Date: February 2, 1998 Time: 9:00 a.m. Dept: 14, Room 8B Trial Date: March 2, 1998

Plaintiff submits this Separate Statement in response to Defendant's Separate Statement of undisputed material facts dated January 7, 1998, pursuant to C.C.P. Section 437c(b).

Defendants's Material Fact:	Plaintiff's Position and Supporting Evidence if Disputed:
1. The initial complaint in this matter was filed on July 27, 1994	Undisputed

2.	SIERRA was first served on September 17, 1995 by The Anden Group as a cross-defendant	Undisputed
3.	SIERRA was dismissed without prejudice on February 13, 1997	Undisputed
4.	SIERRA was brought back into the case as a defendant by the Edgewater Homeowners Association on August 23, 1997	Disputed. See Proof of Service filed August 7, 1997 attached as Exhibit "A" to Plaintiff's Points and Authorities.
5.	Pre-trial Order No. 35 required the HOA serve a Final Defect List on all parties	Undisputed
6.	Pre-trial Order No. 34 listed the information the Special Master required be contained in Plaintiff's Final Defect List.	Undisputed
7.	The HOA served the Final Defect List on October 17, 1997	Undisputed
8.	The HOA was first given the deadline of April 3, 1995 to serve its "Preliminary Statement of Claims, Defects, and Damages".	Undisputed
9.	The Final Defect List is also a Final Statement of Claims	Disputed. The defect list is explained in depositions. See Robert Powell's deposition transcript, pages 110 through 116 attached as Exhibit "B" to the Declaration of Bruce Mayfield.
10.	No further claims should be added to the Final Defect List/Statement of Claims "without good cause shown."	Disputed. The defect list is explained in depositions. See Robert Powell's deposition transcript, pages 110 through 116 attached as Exhibit "B" to the Declaration of Bruce Mayfield.
11.	A discovery stay is still in effect.	Undisputed

12. SIERRA installed the following items at the Edgewater North development: (1) Bridge bollards, columns, and railings (no iron railing); (2) Trap fence at model building; (3) Arbor at sales office; (4) Bench at lake area; (5) Removed and chain link fence including posts and concrete; (6) Supply and installed end posts and braces at the sound barrier wall; (7) Install 6 bollards (removable) at Fire Access Road under Hwy 92; (8) Install deck at model building 1, units 2 and 5; (9) install arbor at model building 1, unit 3; (10) Install bench in spa area to match existing bench; (11) Moved trap fence from model building 1, unit 3 to unit 5; (12) Install bench in spa area to match existing bench; (13) Install perimeter fence; (14) Install retaining wall along fire trial; (15) Install temporary closed louver fence at area from sales trial area to power line tower and screen field from landscaped area.	Undisputed

13. None of the work done by SIERRA is referenced in the HOA's Final Defect List.	Disputed. See Robert Powell's deposition transcript, pages 110 through 116 attached as Exhibit "B" to the Declaration of Bruce Mayfield.

DATED: January 21, 1998

LAW OFFICES OF THOMAS E. MILLER

Bruce Mayfield
Attorneys for Plaintiff EDGEWATER ISLE NORTH HOMEOWNERS ASSOCIATION

WILLIAM L. NAGLE
Special Master
NAGLE, KRUG & WINTERS
345 Lorton Avenue, Suite 204
Burlingame, CA 94010-4116
Telephone: (650) 579-0500
Facsimile: (650) 579-0623

FILED
SAN MATEO COUNTY
JAN 22 1998
Clerk of the Superior Court
DEPUTY CLERK

1-13-98

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN MATEO

EDGEWATER ISLE HOMEOWNERS ASSOCAITION, INC., et al.,

Plaintiff,

v.

THE ANDEN GROUP,. et al.,

Defendants.

AND RELATED CROSS-ACTIONS

No. 388872

PRE-TRIAL ORDER NO. 48

The court having appointed William L. Nagle as Special Master in this matter and good cause appearing therefore,

Plaintiff and The Anden Group having dismissed their claims against Hanson's Masonry, and no party having indicated an intention to pursue a cross-complaint against Hanson's Masonry,

IT IS HEREBY ORDERED that all deemed cross-complaints against Hanson's Masonry as set forth in Pre-Trial Order No. 2 are hereby dismissed, each party to bear their own costs.

APPROVED AND RECOMMENDED:

DATED: 1/13/98

WILLIAM L. NAGLE
Special Master

IT IS SO ORDERED:

DATED: JAN 14 1998

JUDGE OF THE SUPERIOR COURT

7_4601!/357846

MOT 2-13-98

CLAY A. COELHO, STATE BAR NO. 161205
LAW OFFICES OF CHARLOTTE M. VENNER
50 Fremont Street, Suite 2550
San Francisco, CA 94105
Main Telephone: (415) 778-4680
Direct Telephone: (415) 778-4639
Facsimile Number: (415) 778-4690

Attorneys for Defendant
and Cross-Defendant
T & D TILE COMPANY, INC.

FILED
SAN MATEO COUNTY
JAN 21 1998
Clerk of the Superior Court
By Deanne Ramirez
DEPUTY CLERK

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN MATEO

EDGEWATER ISLE HOMEOWNERS ASSOCIATION, INC., et al.,

Plaintiff,

vs.

THE ANDEN GROUP, et al.,

Defendants.

AND RELATED CROSS-ACTIONS.

Case No. 388872

PROOF OF SERVICE BY MAIL OF ENDORSED-FILED REQUEST FOR DISMISSAL OF DEFENDANT T & D TILE CO., INC.

I declare that:

I am employed in the County of San Francisco, State of California. I am over the age of 18 years and not a party to the within cause. My business address is 50 Fremont Street, Suite 2550, San Francisco, California 94105.

On the 19th day of January, 1998, I caused to be served the following document:

1. ENDORSED-FILED COPY OF THE REQUEST FOR DISMISSAL, WITHOUT PREJUDICE, OF PLAINTIFF'S COMPLAINT AGAINST DEFENDANT T & D TILE ONLY, WHICH WAS FILED BY THE COURT ON DECEMBER 18, 1997.

The above document was served on the parties in this action, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States mail at San Francisco, California, addressed as follows:

SEE ATTACHED SERVICE LIST

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

Executed on the 19th day of January, 1998 at San Francisco, California.

Linnea C. Smedley

Linnea C. Smedley

SERVICE LIST

Re: **Edgewater Isle HOA v. The Anden Group, et al.**
San Mateo County Superior Court No. 388872

William L. Nagle, Esq. 345 Lorton Avenue, Suite 204 Burlingame, CA 94010-4116 TEL: (415) 579-1422 FAX: (415) 579-0623	SPECIAL MASTER
Thomas E. Miller, Esq. L/O OF THOMAS E. MILLER 4685 MacArthur Court, Suite 220 Newport Beach, CA 92660 TEL: (714) 252-9150 FAX: (714) 442-0646	Attorneys for EDGEWATER ISLE HOA
Marisa L. D'Amico, Esq. BISHOP, BARRY, HOWE, HANEY & RYDER Embarcadero Center West 275 Battery Street, 12th Floor San Francisco, CA 94111-3333 TEL: (415) 421-8550 FAX: (415) 362-4730	Attorneys for THE ANDEN GROUP; ESDEN PARTNERS; MDG ASSOCIATES, LTD.; ESR CORPORATION; TMD CORPORATION; and MIDEN CORPORATION
Alan H. Finkel, Esq. PROSKAUER, ROSE, GOETZ, et al. 2121 Avenue of the Stars, Suite 2700 Los Angeles, CA 90067-5010 TEL: (310) 284-5850 FAX: (310) 557-2193	Personal Counsel for THE ANDEN GROUP
John J. Carniato, Esq. L/O OF JOHN J. CARNIATO 3736 Mt. Diablo Boulevard, Suite 300 Lafayette, CA 94549 TEL: (510) 283-1552 FAX: (510) 283-9830	Attorneys for GLORIA DEVELOPMENT CO., INC., a California corporation, O'BRIEN & HICKS, INC., a California corporation, and O'BRIEN & HICKS (s) 1988 AND BEYOND, LTD.

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Josh M. Shinnick, Esq. HOGE, FENTON, JONES & APPEL, INC. Sixty South Market Street San Jose, CA 95113 TEL: (408) 287-9501 FAX: (408) 287-2583	Attorneys for O'BRIEN & HICKS, INC.
J. Michael Higginbotham, Esq. John P. Bevan, Esq. LONG & LEVIT 101 California Street, Suite 2300 San Francisco, CA 94111 TEL: (415) 397-2222 FAX: (415) 397-6392	Attorneys for MELVIN LEE ASSOCIATES and RUTH & GOING, INC.
Donald B. Fornasier, Esq. ARCHER, McCOMAS, BRESLIN, McMAHON & CHRITTON P.O. Box 8035 Walnut Creek, CA 94596 TEL: (510) 930-6600 FAX: (510) 930-6620	Attorneys for C. APARICIO CEMENT and B.L. COHEN LANDSCAPE
J. Michael Higginbotham, Esq. LONG & LEVIT 101 California Street, Suite 2300 San Francisco, CA 94111 TEL: (415) 397-2222 FAX: (415) 397-6392	Attorneys for C. APARICIO CEMENT
Philip Y. Kazan, Esq. RUSSELL, KAZAN, BRENNER & MALLETT 343 Sansome Street, Suite 525 San Francisco, CA 94104 TEL: (415) 956-5841 FAX: (415) 956-0708	Attorneys for C. APARICIO CEMENT
Helen Baumann, Esq. L/O OF EUGENE L. BASS 495 Seaport Court, Suite 103 Redwood City, CA 94063 TEL: (415) 361-1199 FAX: (415) 369-4984	Attorneys for SAN CARLOS SHEET METAL WORKS

////

Jonathan Margolis, Esq. LOW, BALL & LYNCH 10 Twin Dolphin Drive, Suite B-500 Redwood City, CA 94065 TEL: (415) 591-8822 FAX: (415) 591-8884	Attorneys for ALCAL ROOFING & INSULATION
Kevin J. Tully, Esq. GREENE, CHAUVEL, DESCALSO & TULLY 901 Mariner's Island Boulevard, Suite 400 San Mateo, CA 94404 TEL: (415) 573-9500 FAX: (415) 573-9689	Attorneys for SACRAMENTO A-1 DOOR and NORTH EMPIRE CONSTRUCTION
Maria Caruana, Esq. FORTUNE & DREVLOW 180 Montgomery Street, Suite 2100 San Francisco, CA 94104-4205 TEL: (415) 362-1422 FAX: (415) 362-7054	Attorneys for SACRAMENTO A-1 DOOR
Anthony J. DeMaria, Esq. FELICE & DeMARIA 1130 Burnett Avenue, Bldg. D, Suite H Concord, CA 94520 TEL: (510) 676-5094 FAX: (510) 676-0548	Attorneys for GONSALVES & SANTUCCI, INC. dba CONCO CEMENT COMPANY
Paul E. Stephan, Esq. STEPHAN & CONROY 444 Market Street, Suite 2675 San Francisco, CA 94111 TEL: (415) 983-4740 FAX: (415) 296-1043	Co-Counsel for T & D TILE COMPANY, INC.
Albert P. Blake, Esq. ROGER, SCOTT & HELMER 900 Veterans Boulevard, Suite 430 Redwood City, CA 94063 TEL: (415) 365-7700 FAX: (415) 365-0677	Attorneys for TARA COATINGS, INC.

////

Norman La Force, Esq. L/O OF F. ROSS ADKINS 25 Pacific Avenue Mall San Francisco, CA 94111 TEL: (415) 981-5200 FAX: (415) 981-2097	Attorneys for TARA COATINGS, INC.
S. Mitchell Kaplan, Esq. GORDON & REES 275 Battery Street, 20th Floor San Francisco, CA 94111 TEL: (415) 986-5900 FAX: (415) 986-8054	Attorneys for FISK, FIRENZE & McCLEAN and DANIEL SMITH PLASTERING, INC.
Howard L. Churchill, Esq. SCHOFIELD & SCHILLER One Walnut Creek Center 100 Pringle Avenue, Suite 510 Walnut Creek, CA 94596 TEL: (510) 934-3600 FAX: (510) 934-2257	Attorneys for SIERRA LUMBER & FENCE CO.
Joe Thompson, Esq. 981 Fremont Street Santa Clara, CA 95050 TEL: (408) 984-8555 FAX: (408) 292-1061	Attorneys for SIERRA LUMBER & FENCE CO.
Paul Walker, Esq. ADAMS, NYE, SINUNU & WALKER 633 Battery Street, 5th Floor San Francisco, CA 94111 TEL: (415) 982-8955 FAX: (415) 982-2042	Attorneys for MISSION DRYWALL
Donald L. Sullivan, Esq. CLAPP, MORONEY, BELLAGAMBA, DAVIS & VUCINICH 4400 Bohannon Drive, Suite 100 Menlo Park, CA 94025 TEL: (415) 327-1300 FAX: (415) 327-3707	Attorneys for MISSION DRYWALL OF SAN JOSE; and SILVA FENCE COMPANY

////

David N. Poll, Esq. COLLINS & SCHLOTHAUER 60 South Market Street, Suite 1100 San Jose, CA 95113-2369 TEL: (408) 298-5161 FAX: (408) 297-5766	Co-Counsel for SILVA FENCE COMPANY
Joseph H. Huber, Esq. GASSETT, PERRY & FRANK 210 North Fourth Street, Suite 400 San Jose, CA 95112 TEL: (408) 295-7034 FAX: (408) 295-5799	Attorneys for CROWLEY COMPANY
Scott C. Finch, Esq. LARSON & BURNHAM P.O. Box 119 Oakland, CA 94604 TEL: (510) 444-6800 FAX: (510) 835-6666	Attorneys for HANSON'S MASONRY, INC.
William H. Staples, Esq. CAPPS, STAPLES, WARD, STEPHENSON, et al. 1777 Botelho Drive, Suite 100 Walnut Creek, CA 94596 TEL: (510) 939-4411 FAX: (510) 939-5241	Attorneys for SAFECO INSURANCE COMPANY OF AMERICA
Jeffrey L. Borsuk, Esq. PANDELL & BORSUK 2033 N. Main Street, Suite 450 Walnut Creek, CA 94596-3722 TEL: (510) 746-8800 FAX: (510) 746-8898	Attorneys for CARLOS RODRIGUEZ PAINTING
Robert K. Phillips, Esq. Shahab E. Fotouhi, Esq. PHILLIPS & SPALLAS 225 Bush Street, 16th Floor San Francisco, CA 94104 TEL: (415) 439-8870 FAX: (415) 439-8822	Attorneys for PENINSULA FLOORS, INC.

////

Robert P. Jolly, Esq. JOLLY, HERLIHY & HEPLER 275 Battery Street, Suite 600 San Francisco, CA 94111 TEL: (415) 658-3100 FAX: (415) 658-3094	Attorneys for M&H ELECTRIC
Susan P. Grey, Esq. DOMINION LAW GROUP 1155 North First Street, Suite 101 San Jose, CA 95112 TEL: (408) 288-5592 FAX: (408) 938-1035	Attorneys for B.L. COHEN LANDSCAPE
David S. Henningsen, Esq. ROBINSON & WOOD 227 North First Street San Jose, CA 95113 TEL: (408) 298-7120 FAX: (408) 298-0477	Co-Counsel for B.L. COHEN LANDSCAPE

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and A[redacted]	TELEPHONE NO.:	FOR COURT USE ONLY
THE LAW OFFICES OF THOMAS E. MILLER 4695 MacArthur Court Suite 1150 Newport Beach, Ca 92660	714/252-9150	(ENDORSED) FILED SAN MATEO COUNTY DEC 18 1997 Clerk of the Superior Court By Margaret Mills DEPUTY CLERK
ATTORNEY FOR (Name): Edgewater Isle HOA		
Insert name of court and name of judicial district and branch court, if any: SAN MATEO SUPERIOR COURT		
PLAINTIFF/PETITIONER: EDGEWATER ISLE HOMEOWNERS ASSOCIATION, DEFENDANT/RESPONDENT: THE ANDEN GROUP, etc., et al.,		

REQUEST FOR DISMISSAL

- ☐ Personal Injury, Property Damage, or Wrongful Death
  - ☐ Motor Vehicle ☐ Other
- ☐ Family Law
- ☐ Eminent Domain
- ☒ Other (*specify*): Construction Defect

CASE NUMBER: 388872

— A conformed copy will not be returned by the clerk unless a method of return is provided with the document. —

1. **TO THE CLERK:** Please dismiss this action as follows:
   a. (1) ☐ With prejudice (2) ☒ Without prejudice
   b. (1) ☐ Complaint (2) ☐ Petition
   (3) ☐ Cross-complaint filed by (*name*): on (*date*):
   (4) ☐ Cross-complaint filed by (*name*): on (*date*):
   (5) ☐ Entire action of all parties and all causes of action
   (6) ☒ Other (*specify*):* COMPLAINT AS TO DEFENDANT T & D TILE ONLY, WITH WAIVER OF COSTS.

Date: December 3, 1997

Thomas E. Miller
(TYPE OR PRINT NAME OF ☒ ATTORNEY ☐ PARTY WITHOUT ATTORNEY)

LAW OFFICES OF THOMAS E. MILLER
(SIGNATURE)

Attorney or party without attorney for:
☒ Plaintiff/Petitioner ☐ Defendant/Respondent
☐ Cross-complainant

* If dismissal requested is of specified parties only, of specified causes of action only, or of specified cross-complaints only, so state and identify the parties, causes of action, or cross-complaints to be dismissed.

2. **TO THE CLERK:** Consent to the above dismissal is hereby given.**
Date:

(TYPE OR PRINT NAME OF ☐ ATTORNEY ☐ PARTY WITHOUT ATTORNEY)

(SIGNATURE)

Attorney or party without attorney for:
☐ Plaintiff/Petitioner ☐ Defendant/Respondent
☐ Cross-complainant

** If a cross-complaint - or Response (Family Law) seeking affirmative relief - is on file, the attorney for cross-complainant (respondent) must sign this consent if required by Code of Civil Procedure section 581(i) or (j).

(*To be completed by clerk*)

3. ☐ Dismissal entered as requested on (*date*):
4. ☑ Dismissal entered on (*date*): DEC 23 1997 as to only (*name*): SEE ABOVE
5. ☐ Dismissal **not entered** as requested for the following reasons (*specify*):

6. ☐ a. Attorney or party without attorney notified on (*date*):
   b. Attorney or party without attorney not notified. Filing party failed to provide
   ☐ a copy to conform ☐ means to return conformed copy

Date: DEC 23 1997 PEGGY THOMPSON Clerk, by MARGARET MILLS, Deputy

DEC 26 1997

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mot
2-13-98

HOWARD L. CHURCHILL, ESQ., #79872
LYNN M. DIRINGER, ESQ., #165626
SCHOFIELD & SCHILLER
100 Pringle Avenue, Suite 510
Walnut Creek, CA 94596
(510) 934-3600

Attorneys for Defendant
SIERRA LUMBER & FENCE COMPANY

FILED
SAN MATEO COUNTY

JAN 21 1998

Clerk of the Superior Court
By Dianne Ramos
DEPUTY CLERK

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN MATEO

EDGEWATER ISLE HOMEOWNERS ASSOCIATION, INC., a non-profit mutual benefit corporation, on behalf of itself and as representative of all EDGEWATER ISLE homeowners,

Plaintiffs,

vs.

THE ANDEN GROUP, a California general partnership, THE ANDEN CORPORATION, a California corporation, et al.,

Defendants.
_____/

AND RELATED CROSS-ACTIONS.
_____/

No. 388872

CERTIFICATE OF SERVICE

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PROOF OF SERVICE BY MAIL -- CCP 1013(a), 2015.5

I, the undersigned, hereby declare:

I am employed in the County of Contra Costa, over the age of eighteen years and not a party to the within cause. My business address is One Walnut Creek Center, 100 Pringle Avenue, Suite 510, Walnut Creek, CA 94596.

I am readily familiar with our business's practice for collection and processing of documents for mailing with the U.S. Postal Service, and that the below-named document will be deposited with the U.S. Postal Service with fully prepaid postage thereon on the date set forth below at Walnut Creek, California.

On the date set forth below, I served the within:

CAPTION PAGES OF:

1. **NOTICE OF MOTION AND MOTION FOR SUMMARY JUDGMENT BY DEFENDANT SIERRA LUMBER & FENCE COMPANY;**
2. **MEMORANDUM OF POINTS AND AUTHORITIES SUPPORTING MOTION FOR SUMMARY JUDGMENT BY DEFENDANT SIERRA LUMBER & FENCE COMPANY;**
3. **SEPARATE STATEMENT OF UNDISPUTED FACTS SUPPORTING MOTION FOR SUMMARY JUDGMENT BY DEFENDANT SIERRA LUMBER & FENCE COMPANY;**
4. **DECLARATION OF LYNN M. DIRINGER SUPPORTING MOTION FOR SUMMARY JUDGMENT BY DEFENDANT SIERRA LUMBER & FENCE COMPANY;**
5. **"PROPOSED" ORDER GRANTING SUMMARY JUDGMENT IN FAVOR OF DEFENDANT SIERRA LUMBER & FENCE COMPANY**

by placing a true copy in an envelope, sealing and placing it for collection and mailing, following ordinary practices addressed as follows:

Thomas E. Miller, Esq.
LAW OFFICES OF THOMAS E. MILLER
4685 MacArthur Court, Suite 220
Newport Beach, CA 92660

Pltf., Edgewater Isle Homes
Tel: (800) 403-3332
Fax: (714) 442-0646
(714) 252-9150

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

Executed on January 15, 1998, at Walnut Creek, California.

Regina Garabedian
REGINA GARABEDIAN

Case Name: **Edgewater Isle Homes, et al. v. The Anden Group, et al.**
San Mateo County Superior Court, Case No. 388872

HOWARD L. CHURCHILL, ESQ., #79872
LYNN M. DIRINGER, ESQ., #165626
SCHOFIELD & SCHILLER
100 Pringle Avenue, Suite 510
Walnut Creek, CA 94596
(510) 934-3600

Attorneys for Defendant
SIERRA LUMBER & FENCE COMPANY

(ENDORSED)
FILED
SAN MATEO COUNTY
JAN 13 1998
Clerk of the Superior Court
By UNA FINAU
DEPUTY CLERK

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN MATEO

EDGEWATER ISLE HOMEOWNERS ASSOCIATION, INC., a non-profit mutual benefit corporation, on behalf of itself and as representative of all EDGEWATER ISLE homeowners,

Plaintiffs,

vs.

THE ANDEN GROUP, a California general partnership, THE ANDEN CORPORATION, a California corporation, et al.,

Defendants.

_____/

AND RELATED CROSS-ACTIONS.

_____/

No. 388872

NOTICE OF MOTION AND MOTION FOR SUMMARY JUDGMENT BY DEFENDANT SIERRA LUMBER & FENCE COMPANY

Date: February 13, 1998
Time: 9:00 a.m.
Dept: 14
Room: 8B

Trial Date: **March 2, 1998**

Accompanying documents:

1. Separate Statement of Facts;
2. Points and Authorities;
3. Declaration of Lynn M. Diringer
4. Proposed Order

TO PLAINTIFFS AND THEIR ATTORNEYS OF RECORD HEREIN:

PLEASE TAKE NOTICE that on February 13, 1998, at 9:00 a.m., or as soon thereafter as the matter may be heard in Department 14 of the above-referenced Court, defendant SIERRA LUMBER & FENCE COMPANY, will, and hereby does, move for entry of summary judgment pursuant to Code of Civil Procedure §437(c).

This motion is brought upon the grounds that there is no triable issue as to any material fact and that moving party, defendant, SIERRA LUMBER & FENCE COMPANY,

HOWARD L. CHURCHILL, ESQ., #79872
LYNN M. DIRINGER, ESQ., #165626
SCHOFIELD & SCHILLER
100 Pringle Avenue, Suite 510
Walnut Creek, CA 94596
(510) 934-3600

Attorneys for Defendant
SIERRA LUMBER & FENCE COMPANY

(ENDORSED)
FILED
COUNTY
JAN 13 1998
Clerk of the Superior Court
By UNA FINAU
DEPUTY CLERK

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN MATEO

EDGEWATER ISLE HOMEOWNERS ASSOCIATION, INC., a non-profit mutual benefit corporation, on behalf of itself and as representative of all EDGEWATER ISLE homeowners,

Plaintiffs,

vs.

THE ANDEN GROUP, a California general partnership, THE ANDEN CORPORATION, a California corporation, et al.,

Defendants.

AND RELATED CROSS-ACTIONS.

No. 388872

MEMORANDUM OF POINTS AND AUTHORITIES SUPPORTING MOTION FOR SUMMARY JUDGMENT BY DEFENDANT SIERRA LUMBER & FENCE COMPANY

Date: February 13, 1998
Time: 9:00 a.m.
Dept: 14
Room: 8B

Trial Date: March 2, 1998

I. INTRODUCTION

The initial complaint in this matter was filed by the Edgewater Isle Homeowners' Association (hereinafter "HOA") on July 27, 1994. SIERRA LUMBER & FENCE COMPANY (hereinafter "SIERRA") was first served on September 17, 1995 by THE ANDEN GROUP. SIERRA was dismissed without prejudice on February 13, 1997. Over five (5) months later, SIERRA was again served in this matter. This time the service was by the HOA on August 23, 1997.

HOWARD L. CHURCHILL, ESQ., #79872
LYNN M. DIRINGER, ESQ., #165626
SCHOFIELD & SCHILLER
100 Pringle Avenue, Suite 510
Walnut Creek, CA 94596
(510) 934-3600

Attorneys for Defendant
SIERRA LUMBER & FENCE COMPANY

(ENDORSED)
FILED
SAN MATEO COUNTY
JAN 13 1998
Clerk of the Superior Court
By UNA FINAU
DEPUTY CLERK

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN MATEO

EDGEWATER ISLE HOMEOWNERS ASSOCIATION, INC., a non-profit mutual benefit corporation, on behalf of itself and as representative of all EDGEWATER ISLE homeowners,

Plaintiffs,

vs.

THE ANDEN GROUP, a California general partnership, THE ANDEN CORPORATION, a California corporation, et al.,

Defendants.

_____/

AND RELATED CROSS-ACTIONS.

_____/

No. 388872

SEPARATE STATEMENT OF UNDISPUTED FACTS SUPPORTING MOTION FOR SUMMARY JUDGMENT BY DEFENDANT SIERRA LUMBER & FENCE COMPANY

Date: February 13, 1998
Time: 9:00 a.m.
Dept: 14
Room: 8B

Trial Date: **March 2, 1998**

Pursuant to CCP §437(b), defendant SIERRA LUMBER & FENCE COMPANY (hereinafter "SIERRA"), hereby submits its separate statement of undisputed facts:

No.	UNDISPUTED FACTS	SUPPORTING EVIDENCE
1	The initial complaint in this matter was filed on July 27, 1994.	Complaint is on file with this court.
2	SIERRA was first served on September 17, 1995 by The Anden Group as a cross-defendant.	Complaint is on file with this court.

HOWARD L. CHURCHILL, ESQ., #79872
LYNN M. DIRINGER, ESQ., #165626
SCHOFIELD & SCHILLER
100 Pringle Avenue, Suite 510
Walnut Creek, CA 94596
(510) 934-3600

Attorneys for Defendant
SIERRA LUMBER & FENCE COMPANY

(ENDORSED)
FILED
SAN MATEO COUNTY
JAN 13 1998
Clerk of the Superior Court
By UNA FINAU
DEPUTY CLERK

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN MATEO

EDGEWATER ISLE HOMEOWNERS ASSOCIATION, INC., a non-profit mutual benefit corporation, on behalf of itself and as representative of all EDGEWATER ISLE homeowners,

Plaintiffs,

vs.

THE ANDEN GROUP, a California general partnership, THE ANDEN CORPORATION, a California corporation, et al.,

Defendants.

AND RELATED CROSS-ACTIONS.

No. 388872

DECLARATION OF LYNN M. DIRINGER SUPPORTING MOTION FOR SUMMARY JUDGMENT BY DEFENDANT SIERRA LUMBER & FENCE COMPANY

Date: February 13, 1998
Time: 9:00 a.m.
Dept: 14
Room: 8B

Trial Date: **March 2, 1998**

I, LYNN M. DIRINGER, declare:

1. I am an attorney at law, licensed by the State of California, and am one of the attorneys for defendant SIERRA LUMBER & FENCE COMPANY (hereinafter "SIERRA"). The following facts are known to me personally, and if called to testify, I could competently testify thereto.

2. Attached hereto as Exhibit "A" is a true and correct copy of Pre-Trial Order No. 35.

HOWARD L. CHURCHILL, ESQ., #79872
LYNN M. DIRINGER, ESQ., #165626
SCHOFIELD & SCHILLER
100 Pringle Avenue, Suite 510
Walnut Creek, CA 94596
(510) 934-3600

Attorneys for Defendant
SIERRA LUMBER & FENCE COMPANY

RECEIVED
JAN 13 1998
CLERK OF THE SUPERIOR COURT
SAN MATEO COUNTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN MATEO

EDGEWATER ISLE HOMEOWNERS ASSOCIATION, INC., a non-profit mutual benefit corporation, on behalf of itself and as representative of all EDGEWATER ISLE homeowners,

Plaintiffs,

vs.

THE ANDEN GROUP, a California general partnership, THE ANDEN CORPORATION, a California corporation, et al.,

Defendants.

AND RELATED CROSS-ACTIONS.

No. 388872

"PROPOSED" ORDER GRANTING SUMMARY JUDGMENT IN FAVOR OF DEFENDANT SIERRA LUMBER & FENCE COMPANY

Date: February 13, 1998
Time: 9:00 a.m.
Dept: 14
Room: 8B

Trial Date: March 2, 1998

The motion by defendant SIERRA LUMBER & FENCE COMPANY for summary judgment came on for hearing on February 13, 1998. Having read, heard and considered all of the arguments and evidence submitted, and having considered only that evidence which is relevant and admissible,

The court finds that there is no triable issue as to any material fact and that the moving party, defendant SIERRA LUMBER & FENCE COMPANY is entitled to a judgment as a matter of law.

JOHN J. CARNIATO (SB# 34567)
THORSTEN J. PRAY (SB# 158034)
LAW OFFICES OF JOHN J. CARNIATO
3736 Mt. Diablo Blvd., Suite 300
Lafayette, CA 94549
Telephone: (510) 283-1552
FAX #: (510) 283-9830

Attorneys for Defendants and Cross-Complainants GLORIA DEVELOPMENT CO., INC., a California corporation, O'BRIEN & HICKS, INC., a California corporation, O'BRIEN & HICKS(S) 1988 & BEYOND, LTD.

FILED
SAN MATEO COUNTY
JAN 21 1998
Clerk of the Superior Court
By Rosario Ibarra
DEPUTY CLERK

CALIFORNIA OFFICE
3736 Mt. Diablo Blvd., Suite 300
Lafayette, California 94549
Telephone: (510) 283-1552
Facsimile: (510) 283-9830
E-Mail carniato@ccnet.com

LAW OFFICES OF JOHN J. CARNIATO

NEVADA OFFICE
2920 Green Valley Parkway
Building 3, Suite 321
Henderson, NV 89014
Telephone: (702) 898-7116
Facsimile: (702) 898-7158

mot
2/13

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN MATEO

EDGEWATER ISLE HOMEOWNERS ASSOCIATION,

Plaintiff,

v.

THE ANDEN GROUP, et al.,

Defendants.

_____/

NO. 388872

ANSWER TO AMENDMENT TO DEEMED CROSS-COMPLAINT FOR EXPRESS INDEMNITY, DECLARATORY RELIEF AND CONTRIBUTION

RUTH & GOING, INC.,

Cross-Complainants,

v.

THE ANDEN GROUP, a California general partnership, THE ANDEN CORPORATION, a California corporation, KLINGBEIL GROUP,

LAW OFFICES OF JOHN J. CARNIATO

CALIFORNIA OFFICE
3736 Mt. Diablo Blvd., Suite 300
Lafayette, California 94549
Telephone: (510) 283-1552
Facsimile: (510) 283-9830
E-Mail carniato@ccnet.com

NEVADA OFFICE
2920 Green Valley Parkway
Building 3, Suite 321
Henderson, NV 89014
Telephone: (702) 898-7116
Facsimile: (702) 898-7158

INC., an Ohio corporation, ESDEN PARTNERS, a California Limited Partnership, MDG ASSOCIATES, LTD., a California Limited Partnership, ESR CORPORATION, a California corporation, TMD CORPORATION, a California corporation, GLORIA DEVELOPMENT CO., INC., a California corporation, O'BRIEN & HICKS, INC., a California corporation, O'BRIEN & HICKS(S) 1988 & BEYOND, LTD., a business organization unknown, MIDEN CORPORATION, a California corporation, and ROES 1 to 30, inclusive,

Cross-Defendants.

_____/

Defendants and Cross-Complainants GLORIA DEVELOPMENT CO., INC., a California corporation, O'BRIEN & HICKS, INC., a California corporation, O'BRIEN & HICKS(S) 1988 & BEYOND, LTD. answer to Defendant, Cross-Defendant and Cross-Complainant RUTH & GOING, INC.'s Amendment to Deemed Cross-Complaint for Express Indemnity, Declaratory Relief and Contribution, as follows:

GENERAL DENIAL

These Answering Cross-Defendants deny each and every, all and singular, generally and specifically, the allegations contained in the Cross-Complaint, and further deny that Cross-Complainant has been damaged in any sum or sums, or in any manner whatsoever, by reason of any act or omission on the part of these Answering Cross-Defendants.

LAW OFFICES OF JOHN J. CARNIATO

CALIFORNIA OFFICE
3736 Mt. Diablo Blvd., Suite 300
Lafayette, California 94549
Telephone: (510) 283-1552
Facsimile: (510) 283-9830
E-Mail carniato@ccnet.com

NEVADA OFFICE
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Building 3, Suite 321
Henderson, NV 89014
Telephone: (702) 898-7116
Facsimile: (702) 898-7158

AFFIRMATIVE DEFENSES

AS AND FOR A FIRST, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE TO THE CROSS-COMPLAINT, these Answering Cross-Defendants allege that Cross-Complainant is estopped from recovering on its Complaint against these Cross-Defendants.

AS AND FOR A SECOND, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE TO THE CROSS-COMPLAINT, this Cross-Complaint, and each cause of action thereof, fails to state facts sufficient to constitute a cause of action against these Answering Cross-Defendants.

AS AND FOR A THIRD, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE TO THE CROSS-COMPLAINT, this Cross-Complaint, and each cause of action thereof, is barred by the statutes of limitation set forth in the California Code of Civil Procedure, commencing with section 335 and continuing through section 349.4, more particularly, but not limited to, the following: section 337(1), section 337.1, section 337.15, section 338, section 339, section 340, and section 343; and by sections 2607(3)(a), and 2725(1) and (2) of the Uniform Commercial Code of the State of California.

AS AND FOR A FOURTH, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE TO THE CROSS-COMPLAINT, Plaintiff has unreasonably delayed in bringing this action to the prejudice of these Answering Cross-Defendants, and is therefore barred from bringing this action by the doctrine of laches.

///

///

LAW OFFICES OF JOHN J. CARNIATO

CALIFORNIA OFFICE
3736 Mt. Diablo Blvd., Suite 300
Lafayette, California 94549
Telephone: (510) 283-1552
Facsimile: (510) 283-9830
E-Mail carniato@ccnet.com

NEVADA OFFICE
2920 Green Valley Parkway
Building 3, Suite 321
Henderson, NV 89014
Telephone: (702) 898-7116
Facsimile: (702) 898-7158

AS AND FOR A FIFTH, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE TO THE CROSS-COMPLAINT, Plaintiff is at fault in and about the matters referred to in the Cross-Complaint, and such fault on the part of Plaintiff proximately caused and contributed to the damages complained of, if any there are. These Answering Cross-Defendants further allege that any fault not attributable to Cross-Complainant was a result of negligence or fault on the part of persons and/or entities other than these answering Cross-Defendants. Such fault bars and/or proportionately reduces any recovery by Cross-Complainants against these Answering Cross-Defendants.

AS AND FOR A SIXTH, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE TO THE CROSS-COMPLAINT, should Cross-Complainant recover damages from these Answering Cross-Defendants, these Answering Cross-Defendants are entitled to indemnification, either in whole or in part, from all persons or entities whose negligence and/or fault proximately contributed to Cross-Complainant's damages, if any there were.

AS AND FOR A SEVENTH, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE TO THE CROSS-COMPLAINT, Cross-Complainants directed, ordered, approved, and/or ratified Cross-Defendants' and/or others' conduct, and Cross-Complainants are therefore estopped from asserting any claim based thereon.

AS AND FOR AN EIGHTH, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE TO THE CROSS-COMPLAINT, Cross-Complainant has failed and neglected to use reasonable care to minimize and mitigate the losses, injuries, and damages complained of, if any there were.

LAW OFFICES OF JOHN J. CARNIATO

CALIFORNIA OFFICE
3736 Mt. Diablo Blvd., Suite 300
Lafayette, California 94549
Telephone: (510) 283-1552
Facsimile: (510) 283-9830
E-Mail carniato@ccnet.com

NEVADA OFFICE
2920 Green Valley Parkway
Building 3, Suite 321
Henderson, NV 89014
Telephone: (702) 898-7116
Facsimile: (702) 898-7158

AS AND FOR A NINTH, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE TO THE CROSS-COMPLAINT, these Answering Cross-Defendants are not responsible for the method or means of construction used by the general or other contractors, nor are these Answering Cross-Defendants responsible for any contractor's failure to carry out the work in accordance with the contract documents, if any such failure occurred.

AS AND FOR AN ELEVENTH, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE TO THE CROSS-COMPLAINT, Cross-Complainants acted with full knowledge of all of the facts and circumstances surrounding their alleged injuries and damages, and thus assumed the risks of their injuries and damages, if any there are.

WHEREFORE, Cross-Defendants pray that:

1. Cross-Complainant takes nothing by way of its Cross-Complaint;

2. Attorneys' fees;

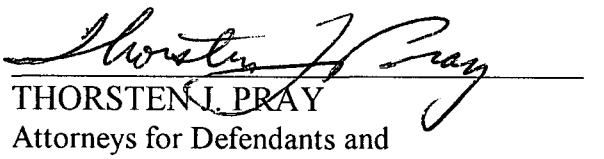
3. For costs of suit incurred herein; and

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

DATED: January 14, 1998

RESPECTFULLY SUBMITTED,

LAW OFFICES OF JOHN J. CARNIATO

BY: 

THORSTEN J. PRAY
Attorneys for Defendants and
Cross-Complainants
GLORIA DEVELOPMENT CO., INC.,
a California corporation, O'BRIEN & HICKS,
INC., a California corporation, O'BRIEN &
HICKS(S) 1988 & BEYOND, LTD.

LAW OFFICES OF JOHN J. CARNIATO

CALIFORNIA OFFICE
3736 Mt. Diablo Blvd., Suite 300
Lafayette, California 94549
Telephone: (510) 283-1552
Facsimile: (510) 283-9830
E-Mail carniato@ccnet.com

NEVADA OFFICE
2920 Green Valley Parkway
Building 3, Suite 321
Henderson, NV 89014
Telephone: (702) 898-7116
Facsimile: (702) 898-7158

PROOF OF SERVICE
[CCP Section 2015.5]

I am employed in the County of Contra Costa, State of California. I am over the age of 18 years and not a party to the within action. My business address is 3736 Mt. Diablo Blvd., Suite 300, Lafayette, California 94549.

On this date, I served the within document[s]:

1. **ANSWER TO AMENDMENT TO DEEMED CROSS-COMPLAINT FOR EXPRESS INDEMNITY, DECLARATORY RELIEF AND CONTRIBUTION**

INDIVIDUAL[S] SERVED:

☼☼SEE ATTACHED SERVICE LIST☼☼

/√/ **[BY MAIL]** I caused each such envelope, with postage thereon fully prepaid, to be placed in the United States mail at Lafayette, California.

/ / **[BY PERSONAL SERVICE]** I caused each such envelope to be delivered by hand to the offices of each addressee above.

/ / **[BY FACSIMILE]** I caused each such document to be transmitted by facsimile to the above- mentioned office.

I declare under penalty of perjury under the laws of the state of California that the foregoing is true and correct and that this declaration was executed at Lafayette, California on January 15, 1998.

MICHELINE F. REEDER

SERVICE LIST

Re: **EDGEWATER ISLE HOMEOWNERS ASSOCIATION v. THE ANDEN GROUP, and Related Cross-Actions**
Superior Court, San Mateo County Case No. 388872

William L. Nagle
SPECIAL MASTER
345 Lorton Avenue, #204
Burlingame, CA 94010-4116
Tel: (415) 579-0500
Fax: (415) 579-0623

Thomas E. Miller
LAW OFFICES OF THOMAS E. MILLER
4685 MacArthur Court, #220
Newport Beach, CA 92660
Tel: (714) 252-9150
Fax: (714) 442-0646
Plaintiff EDGEWATER ISLE HOA

Josh Shinnick
HOGE, FENTON, JONES & APPEL
60 South Market St., 14th Fl.
San Jose, CA 95113
Tel: (408) 287-9501
Fax: (408) 287-2583
Defendant O'BRIEN & HICKS, INC.

Albert Blake
ROGER, SCOTT & HELMER
900 Veterans Blvd., #430
Redwood City, CA 94063
Tel: (415) 365-7700
Fax: (415) 365-0677
X-Defendant TARA COATINGS

Norman La Force
LAW OFFICES OF F. ROSS ADKINS
25 Pacific Avenue Mall
San Francisco, CA 94111
Tel: (415) 981-5200
Fax: (415) 981-2097
X-Defendant TARA COATINGS

Rand L. Chritton
Donald B. Fornasier
ARCHER, MCCOMAS, BRESLIN, MCMAHON & CHRITTON
Post Office Box 8035
Walnut Creek, CA 94596
Tel: (510) 930-6600
Fax: (510) 930-6620
X-Defendant C. APARICIO CEMENT and Defendant B.L. COHEN LANDSCAPE, INC.

Philip Y. Kazan
RUSSELL, KAZAN, BRENNER & MALLETT
343 Sansome Street, Suite 525
San Francisco, CA 94104
Tel: (415) 956-5841
Fax: (415) 956-0708
X-Defendant C. APARICIO CEMENT

Anthony J. DeMaria
FELICE & DeMARIA
1130 Burnett Ave.,
Bldg. D, Suite H
Concord, CA 94520
Tel: (510) 676-5094
Fax: (510) 676-0548
X-Defendant GONSALVES & SANTUCCI, INC. dba CONCO CEMENT COMPANY

Service List - Page Two

S. Mitchell Kaplan
GORDON & REES
275 Battery Street, 20th fl.
San Francisco, CA 94111
Tel: (415) 986-5900
Fax: (415) 986-8054
X-Defendants FISK, FIRENZEW & McLEAN; and DANIEL SMITH PLASTERING, INC.

Joe Thompson
ATTORNEY AT LAW
981 Fremont Street
Santa Clara, CA 95050
Tel: (408) 984-8555
Fax: (408) 293-2093
X-Defendant SIERRA LUMBER

Kevin J. Tully
GREENE, CHAUVEL & DESCALSO
901 Mariners Island Blvd., #400
San Mateo, CA 94404-1594
Tel: (415) 573-9500
Fax: (415) 573-9689
X-Defendants SACRAMENTO A-1 DOOR; and NORTH EMPIRE CONSTRUCTION

Maria Caruana
FORTUNE & DREVLOW
180 Montgomery Street, #2100
San Francisco, CA 94104
Tel: (415) 362-1422
Fax: (415) 362-7054
X-Defendant SACRAMENTO A-1 DOOR

Helen B. Baumann
LAW OFFICES OF EUGENE L. BASS
495 Seaport Court, #103
Redwood City, CA 94063
Tel: (415) 361-1199
Fax: (415) 369-4984
X-Defendant SAN CARLOS SHEET METAL WORKS, INC.

Jonathan Margolis
LOW, BALL & LYNCH
10 Twin Dolphin Drive, #B-500
Redwood City, CA 94065
Tel: (415) 591-8822
Fax: (415) 591-8884
X-Defendant ALCAL ROOFING & INSULATION

Donald L. Sullivan
CLAPP, MORONEY, BELLAGAMBA, DAVIS & VUCINICH
4400 Bohannon Drive, #100
Menlo Park, CA 94025
Tel: (415) 327-1300
Fax: (415) 327-3707
X-Defendants MISSION DRYWALL OF SAN JOSE; and SILVA FENCE COMPANY

Jeffrey L. Borsuk
PANDELL & BORSUK LLP
2033 N. Main Street, #450
Walnut Creek, CA 94596
Tel: (510) 746-8800
Fax: (510) 746-8898
Defendant CARLOS RODRIGUEZ PAINTING

David N. Poll
COLLINS & SCHLOTHAUER
60 South Market Street, #1100
San Jose, CA 95113-2369
Tel: (408) 298-5161
Fax: (408) 297-5766
Co-Counsel for SILVA FENCE COMPANY

Joseph H. Huber
GASSETT, PERRY & FRANK
210 North Fourth Street, #400
San Jose, CA 95112
Tel: (408) 295-7034
Fax: (408) 295-5799
X-Defendant CROWLEY COMPANY

Scott C. Finch
LARSON & BURNHAM
Post Office Box 119
Oakland, CA 94604
Tel: (510) 444-6800
Fax: (510) 835-6666
X-Defendant HANSON'S MASONRY,

Susan P. Grey
DOMINION LAW GROUP, LLP
1155 N. First Street, #101
San Jose, CA 95112
Tel: (408) 288-5592
Fax: (408) 938-1035
Defendant B.L. COHEN LANDSCAPE, INC.

David S. Henningsen, Esq.
ROBINSON & WOOD, INC.
227 North First Street
San Jose, CA 95113
Telephone: (408) 298-7120
Facsimile: (408) 298-0477
Co-Counsel for defendant
B.L. COHEN LANDSCAPE, INC.

Robert K. Phillips
Shahab E. Fotouhi
PHILLIPS & SPALLAS LLP
225 Bush Street, 16th Floor
San Francisco, CA 94104
Tel: (415) 439-8870
Fax: (415) 439-8822
Defendant PENINSULA FLOORS, INC.

Howard L. Churchill
Lynn M. Diringer
SCHOFIELD & SCHILLER
100 Pringle Avenue, Suite 510
Walnut Creek, CA 94596
Tel: (510) 934-3600
Fax: (510) 934-2257
Defendant SIERRA LUMBER & FENCE CO.

Robert P. Jolly
JOLLY, HERLIHY & HEPLER
275 Battery Street, Suite 600
San Francisco, CA 94111
Tel: (415) 658-3100
Fax: (415) 658-3094
Defendant M&H Electric

Michael P. Quinlivan
KOUNS, QUINLIVAN & SEVERSON
101 Park Center Plaza, #1007
San Jose, CA 95113
Tel: (408) 278-0125
Fax: (408) 292-1257
SIERRA PRECAST, INC.

Karen Wentzel
RITCHIE, FISHER, WHITMAN & KLEIN
1717 Embarcadero Road
Palo Alto, CA 94303
Tel: (415) 857-1717
Fax: (415) 857-1288
SOIL FOUNDATION SYSTEMS

Ara Shirinian
CONROY, SHIRINIAN & MAHONEY
444 Market Street, Ste. 2675
San Francisco, CA 94111
Tel: (415) 983-4740
Fax: (415) 296-1043
T&D TILE COMPANY, INC.

Paul E. Stephan
STEPHAN & CONROY
444 Market Street, Suite 2675
San Francisco, CA 94111
Tel: (415) 983-3740
Fax: (415) 296-1043
T & D TILE COMPANY, INC.

Clay A. Cohlho
LAW OFFICES OF CHARLOTTE VENNER
50 Fremont Street, Suite 2550
San Francisco, CA 94105
Tel. (415) 778-4680
Fax (415) 778-4689
T & D TILE COMPANY, INC.

William H. Staples
CAPPS, STAPLES, WARD, et al.
1777 Bothelho Drive,
Suite 100
Walnut Creek, CA 94596
Tel. (510) 939-4411
Fax (510) 939-5241
SAFECO INS. CO. OF AMERICA

Paul Walker
ADAMS, NYE, SINUNU & WALKER
633 Battery Street, 5th Floor
San Francisco, CA 94111
Tel. (415) 982-8955
Fax (415) 982-2042
MISSION DRYWALL

Nancy A. McPherson
Holmes, Drevlow, Carmody, Schmidt & Nakano
180 Montgomery Street, Suite 2100
San Francisco, CA 94104
Tel. (415) 362-1422
FAX (415) 362-7054
SACRAMENTO A-1 DOOR

Alan H. Finkel
PROSKAUER, ROSE, GOETZ & MENDELSOHN
2121 Avenue of the Stars, #2700
Los Angeles, CA 90067-5010
Tel: (310) 284-5650
Fax: (310) 557-2193
Personal Counsel for THE ANDEN GROUP

Marisa D'Amico
BISHOP, BARRY, HOWE, HANEY & RYDER
275 Battery Street, 12th Floor
San Francisco, CA 94111-3333
Tel: (415) 421-8550
Fax: (415) 362-4730
Defendant and X-Complainant THE ANDEN GROUP

Marvin Sears, Esq.
Gregory Patterson, Esq.
Proskauer, Rose, Goetz & Mendelsohn
2049 Century Park East, Suite 3200
Los Angeles, CA 90067
Tel. (310) 284-5650
Fax (310) 557-2193
THE ANDEN GROUP

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and Address):	TELEPHONE NO.:	FOR COURT USE ONLY
Michael P. Quinlivan SB#54062 KOUNS, QUINLIVAN & SEVERSON 101 Park Center Plaza, Suite 1007 San Jose, CA 95113 ATTORNEY FOR (Name): Sierra Precast, Inc.	(408) 278-0125	FILED SAN MATEO COUNTY JAN 15 1998 Clerk of the Superior Court By _____ DEPUTY CLERK
Insert name of court and name of judicial district and branch court, if any: San Mateo County Superior Court		
PLAINTIFF/PETITIONER: EDGEWATER ISLE NORTH HOMEOWNERS DEFENDANT/RESPONDENT: THE ANDEN GROUP, et al.		
NOTICE OF ENTRY OF DISMISSAL AND PROOF OF SERVICE ☐ Personal Injury, Property Damage, or Wrongful Death ☐ Motor Vehicle ☐ Other ☐ Family Law ☐ Eminent Domain ☒ Other (specify): Construction Defect		CASE NUMBER: 388872

TO ATTORNEYS AND PARTIES WITHOUT ATTORNEYS: A dismissal was entered in this action by the clerk as shown on the Request for Dismissal. *(Attach a copy completed by the clerk.)*

Date: January 7, 1998

Michael P. Quinlivan
(TYPE OR PRINT NAME OF ☒ ATTORNEY ☐ PARTY WITHOUT ATTORNEY)

▶ _____
(SIGNATURE)

PROOF OF SERVICE

1. I am over the age of 18 and not a party to this cause. I am a resident of or employed in the county where the mailing occurred. My residence or business address is: 101 Park Center Plaza, Suite 1007
   San Jose, California 95113

2. ☒ I served a copy of the Notice of Entry of Dismissal and Request for Dismissal by mailing them, in a sealed envelope with postage fully prepaid, as follows:
   a. ☒ I deposited the envelope with the United States Postal Service.
   b. ☐ I placed the envelope for collection and processing for mailing following this business's ordinary practice with which I am readily familiar. On the same day correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service.
   c. Date of deposit: January 8, 1998
   d. Place of deposit *(city and state)*: San Jose, California
   e. Addressed as follows *(name and address)*: William L. Nagel, Esq. 345 Lorton Ave., #204, Burlingame, CA 94010-4116 - Bruce Mayfield, Esq., 4695 MacArthur Ct., #1150, Newport Beach, CA 92660

3. ☐ I served a copy of the Notice of Entry of Dismissal and Request for Dismissal by personally delivering copies to the person served as shown below:
   Name: Date: Time: Address:

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

Date: January 8, 1998

Susan Canihan
(TYPE OR PRINT NAME)

▶ _____
(SIGNATURE OF DECLARANT)

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and Address):	TELEPHONE NO.:	FOR COURT USE ONLY
THE LAW OFFICES OF THOMAS E. MILLER 4695 MacArthur Court Suite 1150 Newport Beach, Ca 92660	714/252-9150	(ENDORSED) FILED SAN MATEO COUNTY JAN - 2 1998 Clerk of the Superior Court By: Margaret Mills DEPUTY CLERK
ATTORNEY FOR (Name): Edgewater Isle HOA		
Insert name of court and name of judicial district and branch court, if any: SAN MATEO SUPERIOR COURT		
PLAINTIFF/PETITIONER: EDGEWATER ISLE NORTH HOMEOWNERS ASSOCIATION, DEFENDANT/RESPONDENT: THE ANDEN GROUP, etc., et al.,		
REQUEST FOR DISMISSAL ☐ Personal Injury, Property Damage, or Wrongful Death ☐ Motor Vehicle ☐ Other ☐ Family Law ☐ Eminent Domain ☒ Other *(specify)*: Construction Defect	CASE NUMBER: 388872	

— A conformed copy will not be returned by the clerk unless a method of return is provided with the document. —

1. **TO THE CLERK:** Please dismiss this action as follows:
   a. (1) ☐ With prejudice (2) ☒ Without prejudice
   b. (1) ☐ Complaint (2) ☐ Petition
   (3) ☐ Cross-complaint filed by *(name)*: on *(date)*:
   (4) ☐ Cross-complaint filed by *(name)*: on *(date)*:
   (5) ☐ Entire action of all parties and all causes of action
   (6) ☒ Other *(specify)*:* COMPLAINT AS TO DEFENDANT SIERRA PRECAST (NAME AS DOE 45) ONLY. EACH PARTY TO BEAR ITS OWN COSTS AND FEES.

Date: December 22, 1997

Thomas E. Miller
(TYPE OR PRINT NAME OF ☒ ATTORNEY ☐ PARTY WITHOUT ATTORNEY)

LAW OFFICES OF THOMAS E. MILLER
(SIGNATURE)

Attorney or party without attorney for:
☒ Plaintiff/Petitioner ☐ Defendant/Respondent
☐ Cross-complainant

* If dismissal requested is of specified parties only, of specified causes of action only, or of specified cross-complaints only, so state and identify the parties, causes of action, or cross-complaints to be dismissed.

2. **TO THE CLERK:** Consent to the above dismissal is hereby given.**
Date:

(TYPE OR PRINT NAME OF ☐ ATTORNEY ☐ PARTY WITHOUT ATTORNEY)

(SIGNATURE)

Attorney or party without attorney for:
☐ Plaintiff/Petitioner ☐ Defendant/Respondent
☐ Cross-complainant

** If a cross-complaint - or Response (Family Law) seeking affirmative relief - is on file, the attorney for cross-complainant (respondent) must sign this consent if required by Code of Civil Procedure section 581(i) or (j).

(To be completed by clerk)

3. ☐ Dismissal entered as requested on *(date)*:
4. ☑ Dismissal entered on *(date)*: JAN - 5 1998 as to only *(name)*: SEE ABOVE
5. ☐ Dismissal **not entered** as requested for the following reasons *(specify)*:

6. ☐ a. Attorney or party without attorney notified on *(date)*:
   b. Attorney or party without attorney not notified. Filing party failed to provide
   ☐ a copy to conform ☐ means to return conformed copy

Date: JAN - 5 1998

PEGGY THOMPSON
Clerk, by MARGARET MILLS, Deputy

ORIGINAL

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and Address):	TELEPHONE NO.:	FOR COURT USE ONLY
THE LAW OFFICES OF THOMAS E. MILLER 4695 MacArthur Court Suite 1150 Newport Beach, Ca 92660	714/252-9150	FILED SAN MATEO COUNTY JAN 15 1998 Clerk of the Superior Court By Maria Salazar DEPUTY CLERK
ATTORNEY FOR (Name): Edgewater Isle HOA		
Insert name of court and name of judicial district and branch court, if any: SAN MATEO SUPERIOR COURT		
PLAINTIFF/PETITIONER: EDGEWATER ISLE NORTH HOMEOWNERS ASSOCIATION, DEFENDANT/RESPONDENT: THE ANDEN GROUP, etc., et al.,		

REQUEST FOR DISMISSAL

- ☐ Personal Injury, Property Damage, or Wrongful Death
  - ☐ Motor Vehicle ☐ Other
- ☐ Family Law
- ☐ ~~Eminent~~ Domain
- ☒ Other *(specify)*: CONSTRUCTION DEFECT

CASE NUMBER: 388872

— A conformed copy will not be returned by the clerk unless a method of return is provided with the document. —

1. **TO THE CLERK:** Please **dismiss** this action as follows:
   a. (1) ☐ With prejudice (2) ☒ Without prejudice
   b. (1) ☐ Complaint (2) ☐ Petition
   (3) ☐ Cross-complaint filed by *(name)*: on *(date)*:
   (4) ☐ Cross-complaint filed by *(name)*: on *(date)*:
   (5) ☐ Entire action of all parties and all causes of action
   (6) ☒ Other *(specify)*:* COMPLAINT AS TO DEFENDANT CHRISP COMPANY ONLY. EACH PARTY TO BEAR THEIR OWN COSTS AND FEES.

Date: December 23, 1997

Thomas E. Miller
(TYPE OR PRINT NAME OF ☒ ATTORNEY ☐ PARTY WITHOUT ATTORNEY)

LAW OFFICES OF THOMAS E. MILLER
(SIGNATURE)

Attorney or party without attorney for:
☒ Plaintiff/Petitioner ☐ Defendant/Respondent
☐ Cross-complainant

* If dismissal requested is of specified parties only, of specified causes of action only, or of specified cross-complaints only, so state and identify the parties, causes of action, or cross-complaints to be dismissed.

2. **TO THE CLERK:** Consent to the above dismissal is hereby given.**
Date:

(TYPE OR PRINT NAME OF ☐ ATTORNEY ☐ PARTY WITHOUT ATTORNEY)

(SIGNATURE)

Attorney or party without attorney for:
☐ Plaintiff/Petitioner ☐ Defendant/Respondent
☐ Cross-complainant

** If a cross-complaint - or Response (Family Law) seeking affirmative relief - is on file, the attorney for cross-complainant (respondent) must sign this consent if required by Code of Civil Procedure section 581(i) or (j).

(To be completed by clerk)

3. ☐ Dismissal entered as requested on *(date)*:
4. ☒ Dismissal entered on *(date)*: JAN 26 1998 as to only *(name)*: SEE ABOVE
5. ☐ Dismissal **not entered** as requested for the following reasons *(specify)*:

6. ☐ a. Attorney or party without attorney notified on *(date)*:
   b. Attorney or party without attorney not notified. Filing party failed to provide
   ☐ a copy to conform ☐ means to return conformed copy

Date: JAN 26 1998 PEGGY THOMPSON Clerk, by Maria Salazar, Deputy

SUPERIOR COURT FOR THE STATE OF CALIFORNIA **COUNTY OF SAN MATEO** **401 Marshall Street** **Redwood City, California 94063-1636**	FOR COURT USE ONLY FILED SAN MATEO COUNTY JAN 15 1998 Clerk of the Superior Court By _____ DEPUTY CLERK
CASE: **EDGEWATER ISLE HOMEOWNERS ASSOCIATION, INC. vs. THE ANDEN GROUP; et al.**	
ATTORNEY(S) NAME AND ADDRESS: **Daniel A. Berman (Bar No. 161696)** **James M. Ganion (Bar No. 183899)** **WOOD, SMITH, HENNING & BERMAN LLP** **801 South Figueroa Street, Ninth Floor** **Los Angeles, California 90017-2573** **Phone: (213) 622-9300 Fax: (213) 622-9394**	
ATTORNEY(S) FOR: **CHRISP COMPANY**	CASE NO.: **388872**

PROOF OF SERVICE BY MAIL
(C.C.P. § 1013a and § 2015.5)

I am employed in the County of Los Angeles, State of California; I am over the age of 18 years and not a party to the within action; my business address is 801 South Figueroa Street, Ninth Floor, Los Angeles, California 90017-2573.

On January 9, 1998, I served the foregoing document described as: **REQUEST FOR DISMISSAL** on the interested parties in said action in a sealed envelope addressed as follows:

SEE ATTACHED SERVICE LIST

I am readily familiar with Wood, Smith, Henning & Berman LLP's practice for the collection and processing of mail with the United States Postal Service; such envelope will be deposited with the United States Postal Service on the above date in the ordinary course of business at the business address shown above; and such envelope was placed for collection and mailing on the above date according to Wood, Smith, Henning & Berman LLP's ordinary business practices.

Executed on January 9, 1998, at Los Angeles, California.

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

C Walker

Cathy Walker, Declarant

SERVICE LIST
Edgewater Isle Homeowners Association vs. The Anden Group
Case No. 388872 (San Mateo County Superior Court)

Thomas E. Miller, Esq.
LAW OFFICES OF THOMAS E. MILLER
4695 MacArthur Court
Suite 1150
Newport Beach, California 92660
(714) 252-9150 FAX (714) 442-0646
Attorneys for Plaintiff EDGEWATER ISLE HOMEOWNERS ASSOCIATION

William L. Nagle, Esq.
345 Lorton Avenue
Suite 204
Burlingame, California 94010-4116
(415) 579-0500 FAX (415) 579-0623
SPECIAL MASTER

Sara Yoon, Esq.
BISHOP, BARRY, HOWE, HANEY & RYDER
Embarcadero Center West
275 Battery Street, 12th Floor
San Francisco, California 94111-3333
(415) 421-8550 FAX (415) 362-4730
Attorneys for Defendants and Cross-Complainants THE ANDEN GROUP

Thorsten J. Pray
LAW OFFICES OF JOHN J. CARNIATO
3736 Mt. Diablo Boulevard, Suite 300
Lafayette, California 94549
(510) 283-1552 FAX (510) 283-9830
Attorneys for Defendants and Cross-Complainants GLORIA DEVELOPMENT CO., INC. and O'BRIEN & HICKS, INC., O'BRIEN & HICKS 1988 AND BEYOND, LTD.

John Shinnick
HOGE, FENTON, JONES & APPAL
60 South Market Street, 14th Floor
San Jose, California 95113
(408) 287-9501 FAX (408) 287-2583
Attorneys for Defendant O'BRIEN & HICKS, INC.

Albert Blake
ROGER, SCOTT & HELMER
900 Veterans Boulevard, Suite 430
Redwood City, California 94063
(415) 385-7700 FAX (415) 385-0677
Attorneys for Cross-Defendant TARA COATINGS

Michael Meenen
DPIC COMPANIES, INC.
100 California Street, Suite 1190
San Francisco, California 94105
(415) 433-1675 FAX (415) 788-6507
Attorneys for Cross-Defendants MELVIN LEE & ASSOCIATES; and RUTH & GOING, INC.

Donald B. Fornasier
ARCHER, MCCAMAS, BRESLIN, MCMAHON & CHRITTON
Post Office Box 8035
Walnut Creek, California 94596
(510) 930-6600 FAX (510 (930-6620
Attorneys for Cross-Defendant APRICIO CEMENT

Anthony J. DeMaria
FELICE & DEMARIA
1130 Burnett Avenue
Building "D", Suite H
Concord, California 94520
(510) 676-5094 FAX (510) 676-0548
Attorneys for Cross-Defendant GONSALYES & SANTUCCI, INC. dba CONCO CEMENT COMPANY

S. Mitchell Kaplan
GORDON & REES
275 Battery Street, 20th Floor
San Francisco, California 94111
(415) 986-5900 FAX 986-8054
Attorneys for Cross-Defendant FISK, FIRENZE & McLEAN and DANIEL SMITH PLASTERING, INC.

Joe Thompson
Attorney at Law
981 Fremont Street
Santa Clara, California 95050
(408) 984-8555 FAX (408) 292-1061
Attorneys for Cross-Defendant SIERRA LUMBER

Norman Le Force
LAW OFFICES OF F. ROSS ADKINS
25 Pacific Avenue Mall
San Francisco, California 94111
(415) 981-5200 FAX (415) 981-2097
Co-Counsel for Cross-Defendants TARA COATINGS

Kevin J. Tully
GREENE, CHAUVEL & DESCALSO
902 Mariners Island Blvd., Suite 400
San Mateo, California 94404-1594
(415) 573-9500 FAX (415) 573-9689
Attorneys for Cross-Defendants SACRAMENTO A-1 DOOR and NORTH EMPIRE CONSTRUCTION

Nancy A. McPherson
HOLMES, DREVLOW, CARMODY, SCHMIDT & NAKANO
180 Montgomery Street, Suite 2100
San Francisco, California 94104
(415) 362-1422 FAX (415) 362-7054
Attorneys for Cross-Defendant SACRAMENTO A-1 DOOR

Helen B. Baumann
LAW OFFICES OF EUGENE L. BASS
495 Seaport Court, Suite 103
Redwood City, California 94063
(415) 361-1199 FAX (415) 369-4984
Attorneys for Cross-Defendant SAN CARLOS SHEET METAL WORKS, INC.

Johnathan Margolis
LOW, BALL & LYNCH
10 Twin Dolphin Drive, Suite B-500
Redwood City, California 94065
(415) 591-8822 FAX (415) 591-8884
Attorneys for Cross Defendant ALCAL ROOFING & INSULTATION

Marvin Sears, Esq.
Gregory Patterson, Esq.
PROSKAUER, ROSE, GOETZ & MENDELSOHN
2049 Century Park East, Suite 3200
Los Angeles, California 90067
(310) 284-5650 FAX (310) 557-2193
Personal Counsel for THE ANDEN GROUP

Howard L. Churchill
SCHOFIELD & SCHILLER
100 Pringle Avenue, Suite 510
Walnut Creek, California 94596
(510) 934-3600 FAX (510) 934-2257
Attorneys for Cross-Defendant SIERRA LUMBER

Donald L. Sullivan
CLAPP, MORONEY, BELLAGAMBA, DAVIS & VUCINICH
4400 Bohannon Drive, Suite 100
Menlo Park, California 94025
(415) 327-1300 FAX (415) 327-3707
Attorneys for Cross-Defendant MISSION DRYWALL OF SAN JOSE and SILVA FENCE COMPANY

David N. Poll
COLLINS & SCHIOTHAUER
60 South Market Street, Suite 1100
San Jose, California 95113-2369
(408) 298-5161 FAX (408) 297-5766
Co-Counsel for Cross-Defendant SILVA FENCE COMPANY

Joseph H. Huber
GASSETT, PARRY & FRANK
210 North Fourth Street, Suite 1100
San Jose, California 95113-2369
(408) 295-7034 FAX (408) 295-5799
Attorneys for Cross-Defendant CROWLEY COMPANY

Scott C. Finch
LARSAN & BURNHAM
Post Office Box 119
Oakland, California 94604
(510) 444-6800 FAX (510) 835-6868
Attorneys for Cross-Defendant HANSON'S MASONRY, INC.

David S. Henningsen, Esq.
ROBINSON & WOOD
227 North First Street
San Jose, California 95113
(408) 298-7120 FAX (408) 298-0477
Attorneys for B.L. COHEN LANDSCAPE, INC.

Susan P. Grey, Esq.
DOMINION LAW GROUP LLP
1155 North First Street
Suite 101
San Jose, California 95112
(408) 288-5592 (408) 938-1035
Attorneys for BL. COHEN LANDSCAPE, INC.

JEFFERY L. BORSUK - SBN 105069
JAMES F. BLAKE - SBN 130680
PANDELL & BORSUK LLP
2033 N. Main Street, Suite 450
Walnut Creek, CA 94596-3722
Telephone: (510) 746-8800
Facsimile: (510) 746-8898

Attorneys for Defendant
CARLOS RODRIGUEZ PAINTING

FILED
SAN MATEO COUNTY
JAN 13 1998
Clerk of the Superior Court
DEPUTY CLERK

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN MATEO

EDGEWATER ISLE HOMEOWNERS ASSOCIATION, INC., et al., Plaintiffs, vs. THE ANDEN GROUP, et al., Defendants. AND RELATED CROSS-ACTIONS.	NO. 388872 **PRETRIAL ORDER RE PLAINTIFF'S CLAIMS RELATED TO PAINTING**

The court having appointed William L. Nagle, Esq. as Special Master in this matter and good cause appearing therefore, following a telephonic conference with counsel for plaintiff and for defendant CARLOS RODRIGUEZ PAINTING, on December 2, 1997,

IT IS HEREBY ORDERED that:

Plaintiff's claims against CARLOS RODRIGUEZ PAINTING regarding alleged defects in the interior and exterior painting at the Edgewater Isle North project are limited to those claims that plaintiff's experts Robert Powell and Robert James

PANDELL & BORSUK LLP
ATTORNEYS AT LAW
2033 N. Main Street, Suite 450
Walnut Creek, CA 94596-3722

identified and testified about at their depositions. Plaintiff is hereby precluded from seeking damages against CARLOS RODRIGUEZ PAINTING for alleged painting defects other than those identified in the deposition testimony of the above-named experts.

This order shall have the same force and effect as if it were an order granting a *motion in limine* precluding all parties, counsel and all witnesses from offering evidence in support of, mentioning or otherwise referring to claims of alleged defects in the interior or exterior painting other than those identified in the deposition testimony described above, with the exception of testimony or evidence regarding the cost of repairs for the alleged defects.

APPROVED AND RECOMMENDED:

Dated: 1/6/98

William Nagle, Special Master

IT IS SO ORDERED:

Dated: JAN 12 1998

JUDGE OF THE SUPERIOR COURT

PANDELL & BORSUK LLP
ATTORNEYS AT LAW
2033 N. Main Street, Suite 450
Walnut Creek, CA 94596-3722

LAW OFFICES OF THOMAS E. MILLER
Thomas E. Miller / Bar #057821
Bruce Mayfield / Bar #057730
4695 MacArthur Court, Suite 1150
Newport Beach, CA 92660
(714) 252-9150 FAX (714) 442-0646

Attorneys for Plaintiff

(ENDORSED)
FILED
SAN MATEO COUNTY
JAN 13 1998
Clerk of the Superior Court
By _____
DEPUTY CLERK

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN MATEO

EDGEWATER ISLE HOMEOWNERS ASSOCIATION, Plaintiff, vs. THE ANDEN GROUP, et al., Defendants. AND RELATED CROSS-ACTIONS.	CASE NO. 388872 **NOTICE OF RULING** Trial Date: March 2, 1998

TO ALL PARTIES AND TO THEIR RESPECTIVE ATTORNEYS OF RECORD:

On January 6, 1998, in Department 28 of the above-entitled court Motions to Dismiss Action by Defendants TECHNIBUILDERS IRON, INC., and B.L.COHEN LANDSCAPE came on regularly for hearing before the Honorable George Miram. Mark Weaver appeared on behalf of Technibuilders Iron, Inc., Susan Gray appeared on behalf of B. L. COHEN LANDSCAPE and Bruce Mayfield appeared on behalf Plaintiff EDGEWATER ISLE NORTH HOMEOWNERS ASSOCIATION.

Based on the papers filed herein and following oral arguments,

and good cause appearing therefor, the court ruled as follows:

The Motions to Dismiss Action by TECHNIBUILDERS IRON, INC., and B. L. COHEN LANDSCAPE were denied.

DATED: January 9, 1998

LAW OFFICES OF THOMAS E. MILLER

Bruce Mayfield
Attorneys for Plaintiff

PROOF OF SERVICE
[C.C.P. Section 1013A(3)]

STATE OF CALIFORNIA, COUNTY OF ORANGE

I am employed in the County of Orange, State of California. I am over the age of 18 and not a party to the within action; my business address is 4695 MacArthur Court, Suite 1150, Newport Beach, California 92660.

On January 9, 1998, I served the documents described as:

NOTICE OF RULING

on other parties in this action by placing a true copy in a sealed envelope addressed as follows:

SEE ATTACHED SERVICE LIST

XX BY U.S. MAIL - As follows: I placed a true copy in a sealed envelope addressed as indicated above. I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on the same day with postage thereon fully prepaid at Claremont, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

PERSONAL SERVICE - I placed the copies in a sealed envelope addressed as indicated above and caused such envelope to be delivered by hand to the offices of the addressee.

____ **BY TELECOPIER** - I personally sent to the addressees' telecopier numbers attached hereto a true copy of the above-described document via facsimile transmission. Each transmission was reported as complete and without error. Copies of each transmission report are attached to this proof of service. Each report was properly issued by the transmitting facsimile machine.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on January 9, 1998 at Newport Beach, California

Penny Simpkins

Edgewater Isle Homeowners Association v. The Anden Group, et al.

San Mateo Superior Court Case No. 388872

SERVICE LIST

William L. Nagle 345 Lorton Avenue, Suite 204 Burlingame, CA 94010-4116 (650) 579-0500\(650) 579-0623 (FAX) **SPECIAL MASTER**	Robert K. Phillips Shahab E. Fotouhi **Phillips & Spallas** 225 Bush Street, 16th Floor San Francisco, CA 94104 415/439-8840\Fax 415/439-8822 Attorneys for Defendant **PENINSULA FLOORS, INC.**
Marisa D'Amico Thomas O. Haran **Bishop, Barry, Howe, Haney & Ryder** A Professional Corporation Embarcadero Center West 275 Battery Street, 12th Floor San Francisco, CA 94111-3333 (415) 421-8550\(415) 362-4730 (FAX) Defendants and Cross-Complainants **THE ANDEN GROUP**	Donald B. Fornasier **Archer, McComas, Breslin, McMahon & Chritton** Post Office Box 8035 Walnut Creek, CA 94596 (510) 930-6600\(510) 930-6620 (FAX) Cross-Defendant **C. APRICIO CEMENT CONTRACTORS**
Thorsten J. Pray **Law Offices of John J. Carniato** 3736 Mt. Diablo Blvd., Suite 300 Lafayette, CA 94549 (510) 283-1552\(510) 283-9830 (FAX) Defendants and Cross-Complainants **GLORIA DEVELOPMENT CO., INC. and O'BRIEN & HICKS, INC., O'BRIEN & HICKS 1988 & BEYOND, LTD.**	Anthony J. DeMaria **Felice & DeMaria** 1130 Burnett Ave., Bld. D, Suite H Concord, CA 94520 (510) 676-5094\(510) 676-0548 (FAX) Cross-Defendant **GONSALVES & SANTUCCI, INC. dba CONCO CEMENT COMPANY**
John Shinnick **Hoge, Fenton, Jones & Appel** 60 South Market Street, 14th Floor San Jose, CA 95113 (408) 287-9501\(408) 287-2583 (FAX) Defendant **O'BRIEN & HICKS, INC.**	S. Mitchell Kaplan **Gordon & Rees** 275 Battery Street, 20th Floor San Francisco, CA 94111 (415) 986-5900\(415) 986-8054 (FAX) Cross-Defendant **FISK, FIRENZE & McLEAN and DANIEL SMITH PLASTERING, INC.**
Albert Blake **Roger, Scott & Helmer** 900 Veterans Blvd., Suite 430 Redwood City, CA 94063 (415) 365-7700\(415) 365-0677 (FAX) Cross-Defendant **TARA COATINGS**	Joe Thompson Attorney at Law 981 Fremont Street Santa Clara, CA 95050 (408) 984-8555\(408) 292-1061 (FAX) Cross-Defendant **SIERRA LUMBER**
Norman La Force **Law Offices of F. Ross Adkins** 25 Pacific Avenue Mall San Francisco, CA 94111 (415) 981-5200\(415) 981-2097 (FAX) Co-Counsel Cross-Defendant **TARA COATINGS**	Howard L. Churchill **Schofield & Schiller** 100 Pringle Avenue, #510 Walnut Creek, CA 94596 (510) 934-3600\(510) 934-2257 (FAX) Cross-Defendant **SIERRA LUMBER**

Kevin J. Tully **Greene, Chauvel & Descalso** 902 Mariners Island Blvd., Suite 400 San Mateo, CA 94404-1594 (415) 573-9500\(415) 573-9689 (FAX) Cross-Defendants **SACRAMENTO A-1 DOOR and NORTH EMPIRE CONSTRUCTION**	Donald L. Sullivan **Clapp, Moroney, Bellagamba, Davis & Vucinich** 4400 Bohannon Drive, Suite 100 Menlo Park, CA 94025 (415) 327-1300\(415) 327-3707 (FAX) Cross-Defendant **MISSION DRYWALL OF SAN JOSE and SILVA FENCE COMPANY**
Maria Caruana, Esq. **Fortune & Drevlow** 180 Montgomery Street, Suite 2100 San Francisco, CA 94104 (415) 362-1422\(415) 362-7054 (FAX) Co-Counsel for Cross-Defendant **SACRAMENTO A-1 DOOR**	David N. Poll **Collins & Schlothauer** 60 South Market Street, Suite 1100 San Jose, CA 95113-2369 (408) 298-5161\(408) 297-5766 (FAX) Co-Counsel for Cross-Defendant **SILVA FENCE COMPANY**
Helen B. Baumann **Law Offices of Eugene L. Bass** 495 Seaport Court, Suite 103 Redwood City, CA 94063 (415) 361-1199\(415) 369-4984 (FAX) Cross-Defendant **SAN CARLOS SHEET METAL WORKS, INC.**	Joseph H. Huber **Gassett, Perry & Frank** 210 North Fourth Street, Suite 400 San Jose, CA 95112 (408) 295-7034\(408) 295-5799 (FAX) Cross-Defendant **CROWLEY COMPANY**
Johnathan Margolis **Low, Ball & Lynch** 10 Twin Dolphin Drive, Suite B-500 Redwood City, CA 94065 (415) 591-8822\(415) 591-8884 (FAX) Cross-Defendant **ALCAL ROOFING & INSULATION**	Scott C. Finch Melissa A. Bruzzano **Larson & Burnham** Post Office Box 119 Oakland, CA 94604 (510) 444-6800\(510) 835-6666 (FAX) Cross-Defendant **HANSON'S MASONRY, INC.**
Gregory J. Patterson **Proskauer Rose** 2049 Century Park East, Suite 3200 Los Angeles, CA 90067 (310) 284-5650\(310) 557-2193 (FAX) Direct: (310) 284-5676 (Personal Counsel) **THE ANDEN GROUP**	J. Michael Higginbotham, Esq. **Long & Levit** 101 California Street, Suite 2300 San Francisco, CA 94111 415/397-2222\415/397-6392 (FAX) Attorneys for Cross-Defendant **RUTH & GOING and MELVIN LEE**
Philip Y. Kazan, Esq. **Russell, Kazan, Brenner & Mallett** 343 Sansome Street, Suite 525 San Francisco, CA 94104 415/956-5841\415/956-0708 (FAX) Attorneys for Cross-Defendant **C. APARICIO CEMENT**	Michael P. Quinlivan, Esq. **Kouns, Quinlivan & Severson** 101 Park Center Plaza, Suite 1007 San Jose, CA 95113 408/278-0125\408/292-1257 Attorneys for Defendant **SIERRA PRECAST**
Clay A. Coelho, Esq. **Law Offices of Charlotte Venner** 50 Fremont Street, Suite 801 San Francisco, CA 94105 415/778-4660\415/778-4690 (FAX) Attorneys for Cross-Defendant **T & D TILE COMPANY, INC.**	Paul E. Stephan, Esq. **Stephan & Conroy** 444 Market Street, Suite 2675 San Francisco, CA 94111 415/983-4740\Fax 415/296-1043 Co-Counsel for **T & D TILE COMPANY, INC.**

Paul Walker, Esq. **Adams, Nye, Sinunu & Walker** 633 Battery Street, 5th Floor San Francisco, CA 94111 415/982-8955\415/982-2042 (FAX) Attorneys for Cross-Defendant **MISSION DRYWALL**	Daniel A. Berman James M. Ganion **Wood, Smith, Henning & Berman** 801 South Figueroa Street, 9th Floor Los Angeles, CA 90017-2573 213/622-9300\Fax 213/622-9394 Attorneys for Defendant **CHRISP COMPANY**
Jolly, Herlhy & Helper 275 Battery Street, Suite 600 San Francisco, CA 94111 415/658-3100\Fax 415/658-3094 Attorneys for **M & H ELECTRIC**	Susan P. Grey **Dominion Law Group** 1155 N. First Street, Suite 101 San Jose, CA 95112 408/288-5592\Fax 408/938-1035 Attorneys for Defendant **B. L. COHEN LANDSCAPE**
Jeffery L. Borsuk James F. Blake **Pandell & Borsuk** 2033 N. Main Street, Suite 450 Walnut Creek, CA 94596-3722 510/746-8800\Fax 510/746-8898 Attorneys for Defendant **CARLOS RODRIGUEZ PAINTING**	David S. Henningsen, Esq. **Robinson & Wood, Inc.** 227 North First Street San Jose, CA 95113 408/298-7120\Fax 408/298-0477 Associate Attorneys for Defendant **B.L. COHEN LANDSCAPE, INC.**
William H. Staples, Esq. **Capps, Staples, Ward, Stephenson & Dodson** 1777 Botelho Drive, Suite 100 Walnut Creek, CA 94596 510/939-4411\510/939-5241 (FAX) Attorneys for Cross-Defendant **SAFECO INSURANCE COMPANY OF AMERICA**	Rand L. Chritton, Esq. Donald B. Fornasier, Esq. **Archer, McComas, Breslin, McMahon & Chritton** 2033 North Main Street, Suite 800 Peri Executive Centre P. O. Box 8035 Walnut Creek, CA 94596 510/930-6600\Fax 510/930-6620 Associate counsel for Defendant **B. L. COHEN LANDSCAPE**
Anthony Varni, Esq. **Varni Fraser Hartwell & Rodgers** 22771 Main Street Hayward, CA 94543-0570 510/886-5000\Fax 510/538-8797	Jilio & Associates, Document Depository c/o San Francisco Reporting Service 5 Third Street, Suite 815 San Francisco, CA 94103

HOWARD L. CHURCHILL, ESQ., #79872
LYNN M. DIRINGER, ESQ., #165626
SCHOFIELD & SCHILLER
100 Pringle Avenue, Suite 510
Walnut Creek, CA 94596
(510) 934-3600

Attorneys for Defendant
SIERRA LUMBER & FENCE COMPANY

FILED
SAN MATEO COUNTY
JAN 13 1998
Clerk of the Superior Court
By
DEPUTY CLERK

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN MATEO

EDGEWATER ISLE HOMEOWNERS ASSOCIATION, INC., a non-profit mutual benefit corporation, on behalf of itself and as representative of all EDGEWATER ISLE homeowners,

Plaintiffs,

vs.

THE ANDEN GROUP, a California general partnership, THE ANDEN CORPORATION, a California corporation, et al.,

Defendants.
_____/

AND RELATED CROSS-ACTIONS.
_____/

No. 388872

MEMORANDUM OF POINTS AND AUTHORITIES SUPPORTING MOTION FOR SUMMARY JUDGMENT BY DEFENDANT SIERRA LUMBER & FENCE COMPANY

Date: February 13, 1998
Time: 9:00 a.m.
Dept: 14
Room: 8B

Trial Date: March 2, 1998

I. INTRODUCTION

The initial complaint in this matter was filed by the Edgewater Isle Homeowners' Association (hereinafter "HOA") on July 27, 1994. SIERRA LUMBER & FENCE COMPANY (hereinafter "SIERRA") was first served on September 17, 1995 by THE ANDEN GROUP. SIERRA was dismissed without prejudice on February 13, 1997. Over five (5) months later, SIERRA was again served in this matter. This time the service was by the HOA on August 23, 1997.

II. FACTUAL BACKGROUND

This case arises out of the allegedly defective construction of a 224 condominium development project in San Mateo, California. It is referred to as Edgewater Isle North. William Nagle has been assigned to be the Special Master in this matter. In response to the Special Master's Pre-Trial Order No. 35, the HOA was required to file a Final Defect List. See Exhibit "A". The Final Defect List was to provide information detailed in Pre-Trial Order No. 34. See Exhibit "B". Pre-trial Order No. 34 states as follows:

> "(t)he specific defect; the location of that defect; the number of locations observed for each defect versus the number of defects found; every witness who has knowledge of the existence of the defect; every document which supports the existence of the defect; every witness who can or will testify to the existence of the alleged defect at trial; every document which supports the existence of the alleged defect."

Plaintiff filed the requisite Final Defect List on October 17, 1997. A copy of the Final Defect List and a Notice of Compliance with Pre-Trial Order No. 35 are attached hereto. See Exhibits "C" and "D". Special Master William Nagle confirmed that the Final Defect List should be the HOA's Final Statement of Claims and that the HOA should not be making any further claims except for good cause. See Exhibit "E".

There has been a stay on discovery since the appointment of a Special Master. See Exhibit "F". This stay was continued again and again, lastly in Pre-Trial Order No. 42. See Exhibit "G".

SIERRA is a fencing and retaining wall installer located in San Jose. SIERRA installed the following items or provided the following services at the Edgewater Isle North development:

(1) Bridge bollards, columns, & railings (no iron railing);
(2) Trap fence at model building;
(3) Arbor at sales office;
(4) Bench at lake area;
(5) Removed and chain link fence including posts and concrete
(6) Supply and installed end posts and braces at the sound barrier wall;
(7) Install 6 bollards (removable) at Fire Access Road under Highway 92;
(8) Install deck at model - Building 49, Units 2 & 5
(9) Install arbor at model - Building 49, Unit 2;

(10) Install kickboard at model - Building 49, Unit 3;
(11) Moved trap fence from model - Building 49, Unit 3 to Unit 5;
(12) Install bench in spa area to match existing bench;
(13) Install perimeter fence;
(14) Install retaining wall along fire trail;
(15) Install temporary closed louver fence at area from sales trailer area to power line tower and screen field from landscaped area.

See Exhibits "H" and "I".

The model building is also known as Building 49. See Exhibit "H", document Bate stamped SIE 00055. No allegations regarding defects in any work done by SIERRA are included in the HOA's Final Defect List. It should be noted that the HOA was fi rst given the deadline of April 3, 1995 to serve their Preliminary Statement of Claims. See Exhibit "J". As such, the HOA has been working on and updating its Statement of Claims/Defect List for over two and a half years. The HOA cannot contend that they have not had sufficient time to discovery and list all known or discoverable defects at the Edgewater Isle North development.

In sum, the HOA has no evidence linking SIERRA to any of its alleged damages at the Edgewater Isle North development. SIERRA respectfully requests that this court grants its summary judgment on its behalf, and against the HOA on the grounds that no triable issue of fact exists as to liability against SIERRA.

III. LEGAL ARGUMENT

A. Summary Judgment Is Appropriate When There Is an Absence of Evidence to Support One or More of Plaintiff's Causes of Action

Code of Civil Procedure §437c provides in pertinent part:

> Any party may move for summary judgment in any action or proceeding if it is contended that the action has no merit or that there is no defense thereto.

Code of Civil Procedure §437c has been modified to provide that once a defendant shows that one or more of plaintiff's causes of action cannot be established, the plaintiff bears the burden of demonstrating that a triable issue of fact exists. Code of Civil

Procedure §437c(o)(2) provides in pertinent part:

> A defendant or cross-defendant has met his or her burden of showing that a cause of action has no merit if that party has shown that one or more elements of the cause of action, even if not separately pleaded, cannot be established or that there is a complete defense to that cause of action. Once the defendant or cross-defendant has met that burden, the burden shifts to the plaintiff or cross-complainant to show that a triable issue of one or more material facts exist as to that cause of action...The plaintiff or cross-complainant may not rely upon the mere allegations or denials of its pleadings to show that a triable issue of material fact exists, but instead, shall set forth the specific facts showing that a triable issue of material fact exists as to that cause of action or defense thereto. (Emphasis added.)

The recent decision in Union Bank v. Superior Court (1995) 31 Cal.App.4th 573, provides the long awaited interpretation of the recent amendments to CCP §437c. After discussing the legislative history and intent in painstaking detail, the court states, at p. 590:

> "The legislature intended that the burden shifting characteristics of rule 56 of the Federal Rules of Federal Procedure (28 U.S.C.) as interpreted in Celotex Corp. v. Catrett, supra, 477 U.S. at pp. 322-327 were intended to be applied to California summary judgment motions when a defendant relied on a plaintiff's factually inadequate discovery answers to seek summary judgment. Now, a moving defendant may rely on factually devoid discovery responses to shift the burden of proof pursuant to section 437c, subdivision (o)(2). Once the burden shifts as a result of the factually devoid discovery responses, the plaintiff must set forth the specific facts which prove the existence of a triable issue of material fact. The express language of the 1992 and 1993 amendments and the judicially noticed legislative history demonstrate the foregoing was intended by the Legislature." (Emphasis added.)

The same interpretation of the statute was reached in the more recent decision of Villa v. McFerren (1995) 35 Cal.App.4th 733. It is noteworthy that in Villa, the court held that the moving papers did not meet the initial showing required to shift the burden of proof to the opposing party. However, the evidence submitted by the opposing party supplied the necessary information to effect the shift of the burden of proof to the opposing party. Thus, in determining whether there has been a sufficient showing to shift the burden of proof, evidence submitted by the opposing party may be

considered.

As discussed below, the HOA's Final Defect List establishes that it has no evidence to support its claim that it was damaged through any acts or omissions by SIERRA. Thus, summary judgment is proper.

B. The HOA Cannot Establish the Essential Element of Having Been Damaged by Any Acts or Omissions by SIERRA.

The HOA has not provided any evidence linking SIERRA to the damages it alleges to have suffered. Pursuant to Special Master Nagle's Pre-Trial Order, the HOA filed its Final Defect List on October 17, 1997. The Special Master has clarified that this Final Defect List is the HOA's final Statement of Claims and that the HOA should not be making any further claims except for good cause. Due to the stay on discovery, SIERRA is forced to rely on the contents of the HOA's Final Defect List. The HOA's Final Defect List does not list any of the work done by SIERRA at Edgewater Isle North as defective.

While the HOA's Final Defect List was filed within the mediation process, its review by the court is allowed. California Evid. Code §1120.5(a)(6). California Evid. Code §1120.5(a)(6) states as follows:

> Evidence otherwise admissible or subject to discovery outside of mediation shall not become inadmissable or protected from disclosure solely by reason of its introduction or use in mediation. (Emphasis added.)

If there was no discovery stay in effect, SIERRA would have propounded discovery on the HOA and would have received responses. These responses would have contained the same lack of evidence against SIERRA as is demonstrated in the HOA's Final Defect List.

The public policy underlying California Evid. Code §1120.5 precluding admission into evidence of anything said or any admission made in the course of mediation is to promote mediation as a preferable alternative to judicial proceeding by providing confidentiality. Ryan v. Garcia (App. 3 Dist. 1994) 33 Cal.Rptr.2d 158. Evid. Code §1120 provides in pertinent part as follows:

"Evidence otherwise admissible or subject to discovery outside of a mediation or a mediation consultation shall not be or become inadmissible or protected from disclosure solely by reason of its introduction or use in a mediation or a mediation consultation."

The admission of the HOA's Final Defect List does not contravene that goal in the slightest. In fact, section 1152.5(a)(6) makes it clear that the section does not make evidence discoverable by other means inadmissible by its mere introduction at mediation.

The HOA has no evidence linking acts or omissions by SIERRA to any of the defects it alleges. Based on this lack of evidence the burden of proof is on the HOA to demonstrate the alleged link and the evidence on which the allegation is based.

IV. CONCLUSION

For the forgoing reasons, defendant SIERRA respectfully requests that its motion for summary judgment be granted in its favor and against plaintiff.

DATED: January 7, 1998.

Respectfully submitted,

SCHOFIELD & SCHILLER

By: _____
LYNN M. DIRINGER
Attorney for Defendant
SIERRA LUMBER & FENCE COMPANY

RECEIVED
JAN 13 1998
CLERK OF THE SUPERIOR COURT
SAN MATEO COUNTY

HOWARD L. CHURCHILL, ESQ., #79872
LYNN M. DIRINGER, ESQ., #165626
SCHOFIELD & SCHILLER
100 Pringle Avenue, Suite 510
Walnut Creek, CA 94596
(510) 934-3600

Attorneys for Defendant
SIERRA LUMBER & FENCE COMPANY

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN MATEO

EDGEWATER ISLE HOMEOWNERS ASSOCIATION, INC., a non-profit mutual benefit corporation, on behalf of itself and as representative of all EDGEWATER ISLE homeowners,

Plaintiffs,

vs.

THE ANDEN GROUP, a California general partnership, THE ANDEN CORPORATION, a California corporation, et al.,

Defendants.
_____/

AND RELATED CROSS-ACTIONS.
_____/

No. 388872

"PROPOSED" ORDER GRANTING SUMMARY JUDGMENT IN FAVOR OF DEFENDANT SIERRA LUMBER & FENCE COMPANY

Date: February 13, 1998
Time: 9:00 a.m.
Dept: 14
Room: 8B

Trial Date: March 2, 1998

The motion by defendant SIERRA LUMBER & FENCE COMPANY for summary judgment came on for hearing on February ____, 1998. Having read, heard and considered all of the arguments and evidence submitted, and having considered only that evidence which is relevant and admissible,

The court finds that there is no triable issue as to any material fact and that the moving party, defendant SIERRA LUMBER & FENCE COMPANY is entitled to a judgment as a matter of law.

The motion by defendant SIERRA LUMBER & FENCE COMPANY for summary judgment is hereby granted. Judgment shall be entered in favor of SIERRA LUMBER & FENCE COMPANY and against plaintiffs, and defendant SIERRA LUMBER & FENCE COMPANY shall recover its costs of suit herein.

IT IS SO ORDERED.

Dated: _____.

_____
JUDGE OF THE SUPERIOR COURT

M:\CASES\HLC\SIERRA\CASES\EDGEWATE\MSJ.1

HOWARD L. CHURCHILL, ESQ., #79872
LYNN M. DIRINGER, ESQ., #165626
SCHOFIELD & SCHILLER
100 Pringle Avenue, Suite 510
Walnut Creek, CA 94596
(510) 934-3600

Attorneys for Defendant
SIERRA LUMBER & FENCE COMPANY

~~(ENDORSED)~~
FILED
SAN MATEO COUNTY

JAN 13 1998

Clerk of the Superior Court
By _____
DEPUTY CLERK

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN MATEO

CALENDAR JAN 13 1998 UF

EDGEWATER ISLE HOMEOWNERS ASSOCIATION, INC., a non-profit mutual benefit corporation, on behalf of itself and as representative of all EDGEWATER ISLE homeowners,

Plaintiffs,

vs.

THE ANDEN GROUP, a California general partnership, THE ANDEN CORPORATION, a California corporation, et al.,

Defendants.

_____/

AND RELATED CROSS-ACTIONS.

_____/

No. 388872

NOTICE OF MOTION AND MOTION FOR SUMMARY JUDGMENT BY DEFENDANT SIERRA LUMBER & FENCE COMPANY

Date: February 13, 1998
Time: 9:00 a.m.
Dept: 14
Room: 8B

Trial Date: March 2, 1998

Accompanying documents:

1. Separate Statement of Facts;
2. Points and Authorities;
3. Declaration of Lynn M. Diringer
4. Proposed Order

TO PLAINTIFFS AND THEIR ATTORNEYS OF RECORD HEREIN:

PLEASE TAKE NOTICE that on February 13 1998, at 9:00 ~~9:30~~ a.m., or as soon thereafter as the matter may be heard in Department 14 of the above-referenced Court, defendant SIERRA LUMBER & FENCE COMPANY, will, and hereby does, move for entry of summary judgment pursuant to Code of Civil Procedure §437(c).

This motion is brought upon the grounds that there is no triable issue as to any material fact and that moving party, defendant, SIERRA LUMBER & FENCE COMPANY,

CASE#:388872
01-13-1998/02:20 PM
$100.00/03-60019

is entitled to judgment as a matter of law. The motion is supported by this Notice of Motion and Motion; the accompanying Memorandum of Points and Authorities; Separate Statement of Undisputed Material Facts; the Declaration of Lynn M. Diringer; upon the Court's records and filed herein; and upon such further evidence and arguments as may be submitted.

DATED: January 7, 1998.

SCHOFIELD & SCHILLER

BY: _____
LYNN M. DIRINGER
Attorney for Defendant
SIERRA LUMBER & FENCE COMPANY

PROOF OF SERVICE BY MAIL -- CCP 1013(a), 2015.5

I, the undersigned, hereby declare:

I am employed in the County of Contra Costa, over the age of eighteen years and not a party to the within cause. My business address is One Walnut Creek Center, 100 Pringle Avenue, Suite 510, Walnut Creek, CA 94596.

I am readily familiar with our business's practice for collection and processing of documents for mailing with the U.S. Postal Service, and that the below-named document will be deposited with the U.S. Postal Service with fully prepaid postage thereon on the date set forth below at Walnut Creek, California.

On the date set forth below, I served the within:

1. **NOTICE OF MOTION AND MOTION FOR SUMMARY JUDGMENT BY DEFENDANT SIERRA LUMBER & FENCE COMPANY**
2. **MEMORANDUM OF POINTS AND AUTHORITIES SUPPORTING MOTION FOR SUMMARY JUDGMENT BY DEFENDANT SIERRA LUMBER & FENCE COMPANY**
3. **SEPARATE STATEMENT OF UNDISPUTED FACTS SUPPORTING MOTION FOR SUMMARY JUDGMENT BY DEFENDANT SIERRA LUMBER & FENCE COMPANY**
4. **DECLARATION OF LYNN M. DIRINGER SUPPORTING MOTION FOR SUMMARY JUDGMENT BY DEFENDANT SIERRA LUMBER & FENCE COMPANY**
5. **"PROPOSED" ORDER GRANTING SUMMARY JUDGMENT IN FAVOR OF DEFENDANT SIERRA LUMBER & FENCE COMPANY**

by placing a true copy in an envelope, sealing and placing it for collection and mailing, following ordinary practices addressed as follows:

Thomas E. Miller, Esq.
LAW OFFICES OF THOMAS E. MILLER
4685 MacArthur Court, Suite 220
Newport Beach, CA 92660

Pltf., Edgewater Isle Homes
Tel: (800) 403-3332
Fax: (714) 442-0646
(714) 252-9150

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

Executed on January 9, 1998, at Walnut Creek, California.

Regina Garabedian
REGINA GARABEDIAN

William L. Nagle
345 Lorton Avenue, Suite 204
Burlingame, CA 94010-4116
(650) 579-0500
(650) 579-0623 (FAX)

FILED
SAN MATEO COUNTY
JAN 12 1998
Clerk of the Superior Court
DEPUTY CLERK

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN MATEO

EDGEWATER ISLE HOMEOWNERS ASSOCIATION, Plaintiff, vs. THE ANDEN GROUP, et al., Defendants. AND RELATED CROSS-ACTIONS.	CASE NO. 388872 **PRE-TRIAL ORDER NO. 47** **ORDER TO APPEAR AT MEDIATION JANUARY 15 AND 16, 1998**

The Court having appointed William L. Nagle as Special Master/Mediator in this case and having ordered a two-day Settlement Conference, has issued the following orders:

1. A continued mediation session has been scheduled in the above-captioned case on January 15 and 16, 1998 beginning at 9:00 a.m. to 5:00 p.m. at the offices of the Special Master located at 345 Lorton Avenue, Suite 204, Burlingame, California, telephone number (650) 579-0500 in accordance with the following schedule.

///

SENT BY:Law Offices Of ; 1- 7-98 ; 2:03PM ; Thomas E. Miller→ 6505790623:# 3/ 6

All counsel, defending insurance carriers and non-defending insurance carriers which may have a duty to defend or indemnify any of the parties listed below shall appear as scheduled; the only exception from the requirement of personal attendance is for carriers having no office or representative in the State of California. To the extent any carrier takes the position that any significant portion of the claim against the insured is not covered under the terms of the policy, counsel should arrange to have the carrier representative and coverage counsel present at the mediation, except Allen Freudenheim and Lewis Loss whose attendance is not required.

All claims adjusters and parties listed below shall appear on the date and times indicated. <u>The adjuster appearing must have full settlement authority.</u>

The mediation agenda is set forth below. Only the following parties, counsel and insurance carrier representatives should attend:

<u>THURSDAY, JANUARY 15, 1998</u>

9:00-9:30 a.m. Mediations between Plaintiff and Developer Defendant The Anden Group only

9:30 a.m. - 12:00 p.m. SUBCONTRACTOR MEDIATIONS:

<u>Decking Group</u>

O'Brien & Hicks - General Contractor
Tara Coatings - Deck Surfacing
San Carlos Sheet Metal Works, Inc. - Sheet Metal
Techna Builders

12:00-1:30 p.m. Lunch Break

1:30-2:30 p.m. <u>Roofing Group</u>

O'Brien & Hicks - General Contractor
AlCal Roofing - Roofs
Ash Roofing - Roofs

SENT BY:Law Offices Of : 1- 7-98 ; 2:03PM ; Thomas E. Miller→ 6505790623;# 4/ 6

2:30 - 5:00 p.m. Stucco, Drywall and Painting Group

O'Brien & Hicks - General Contractor
Carlos Rodriguez - Painting
Mission Drywall of San Jose - Drywall
Daniel Smith Plastering, Inc. - Exterior Stucco

FRIDAY, JANUARY 16, 1998

9:00-10:00 a.m. Peripheral Party Group

C. Aparicio Cement Contractors - Concrete curbs, gutters and sidewalks
Sierra Lumber - Landscape Specialty Carpentry
Sacramento A-1 Door - Millwork & Trim

10:00 - 11:00 a.m. Misc. Party Group

B.L. Cohen Landscape - Landscaping (Models)
Silva Fence Company - Fences (Buildings 16 thru 28)

11:00 - 12:00 p.m. Civil/Soils Group

O'Brien & Hicks - General Contractor
Conco Cement Co. - Concrete foundations/slabs, walks and drives
Melvin Lee & Associates - Landscape Engineer
Fisk, Firenzi & McLean - Grading and Paving
Ruth & Going

12:00 - 1:30 p.m. Lunch Break

1:30-5:00 p.m. MEDIATIONS BETWEEN PLAINTIFF, THE ANDEN GROUP AND O'BRIEN & HICKS ONLY

Defense counsel must notify all of their insureds of the following mediation schedule immediately, in writing.

Counsel for Plaintiff and The Anden Group have advised the Special Master that they will seek sanctions and other appropriate orders against any party or insurance carrier if this Order is violated.

APPROVED AND RECOMMENDED.

Dated: 1/7/98

William L. Nagle, Special Master

SENT BY:Law Offices Of : 1- 7-98 ; 2:04PM ; Thomas E. Miller→ 6505790623:# 5/ 6

IT IS SO ORDERED:

Dated: JAN 09 1998

Judge of the Superior Court

SENT BY:Law Offices Of ; 1- 7-98 ; 2:04PM ; Thomas E. Miller→ 6505790623:# 6/ 6

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 CDET X PAGE NO.0008 IPH     UD10   05/12/98 09:23
01/29/96 CACT        1-26-96 !UF                                        0    551
02/01/96 CACT POS PRE TRI ORD #9 SRVD 1-30-96 BY M (SEE SVC LIST)!      3    554
02/01/96 CACT ORD PRE-TRIAL ORD #10 SIG BY JDG HARRINGTON !RB           0    554
02/06/96 CACT POS WILLIAM L. NAGLE, ETC. SEE ATTACHED LIST SRVD ON      5    559
02/06/96 CACT        PRE-TRIAL ORD #10 ON 2/2/96 BY M (SPECIAL MASTE    0    559
03/07/96 CACT ORD PRE-TRIAL ORD NO 11 SIG BY JDG HAHN ! CK             30    589
03/11/96 CACT NTC OF APPEARANCE OF ASSOCIATED COUNSEL ON BEHALF OF      4    593
03/11/96 CACT        T & D TILE CO., INC. W/POS! MS                     0    593
03/11/96 CACT NTC OF ASSOCIATION OF COUNSEL W/POS! MS                   0    593
03/12/96 CACT POS WILLIAM L. NAGLE, ESQ. SEE ATTACHED LIST SRVD ON      1    594
03/12/96 CACT        PRE-TRIAL ORD #11 ON 3/8/96 BY M !RB               0    594
04/05/96 CACT DSM ENT XCM ONLY AS TO C. APARICIO CEMENT CONTRACTOR     24    618
04/05/96 CACT        (THE ANDEN GROUP XCM) !RB                          0    618
04/08/96 CACT DSM AS TO ASH ROOFING & DANIEL SMITH PLASTERING!MM        3    621
04/16/96 CACT DEC OF SERVICE BY MAIL SRVD PRE-TRIAL ORDER NO.12         8    629
04/16/96 CACT        (SEE SERVICE LIST) ON 4-12-96!DD                   0    629
04/26/96 CACT ORD PRE-TRIAL ORD #13 SIG BY JDG FORCUM ON 4/26/96!UF    10    639
04/30/96 CACT ORD PRE-TRIAL ORD NO. 13 RE SPECIAL APPEARANCE SIG        4    643
04/30/96 CACT        BY JDG HAHN ON 4-29-96!UL                          0    643
05/01/96 CACT POS WILLIAM L. NAGLE, SPEC MASTER (SEE SERVICE LIST)      1    644
05/01/96 CACT        SRVD PRE TRIAL ORD #13 4-29-96 BY M!DD             0    644
05/02/96 CACT ORD PRE-TRIAL NO. 14 SGD JDG FORCUM 5-2-96! MS            1    645
 CONT  ***CONTINUATION***                                          .29
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 CDET X PAGE NO.0009 IPH    UD10   05/12/98 09:24
05/08/96 CACT POS WILLIAM L NAGLE SPEC MASTER SRVD PRE-TRIAL ORD#14      6    651
05/08/96 CACT       5-3-96 BY M (SEE SERVICE LIST)!DD                   0    651
05/20/96 CACT ORD PRE-TRIAL NO. 15 ..ROBERT BROWN TO BE RETAINED BY    12    663
05/20/96 CACT       SPEC MASTER , ETC; SGD BY JDG HAHN 5-17! GH         0    663
05/23/96 CACT POS WILLIAM L.NAGLE SPEC MAST(SEE SERVICE LIST) SRVD      3    666
05/23/96 CACT       PRE-TRIAL ORD NO.15 5-21-96 BY M!DD                 0    666
06/06/96 CACT AOC XDEFT SILVA FENCE CO ASSOCIATES DAVID N POLL         14    680
06/06/96 CACT       AS CO-COPUNSEL W/POS !JK                            0    680
06/18/96 CACT NTC OF APPEARANCY BY XDEFT. DANIEL SMITH PLASTERING,     12    692
06/18/96 CACT       INC., W/POS !UF                                     0    692
06/18/96 CACT FPD $182.00 BY XDEFT. DANIEL SMITH PLASTERING INC!UF      0    692
06/21/96 CACT ORD PRE-TRIAL ORD #16 SIG BY JDG HAHN ON 6/19/96 !UF      3    695
06/21/96 CACT POS (SEE SERVICE LIST) SRVD NTC OF APPEARANCE ON          0    695
06/21/96 CACT       6/19/96 BY M !JK                                    0    695
06/26/96 CACT POS WILLIAM L NAGLE SPEC MAST(SEE SRVC LIST)SRVD PRE-     5    700
06/26/96 CACT       TRIAL ORD NO.16 6-24-96 BY M!DD                     0    700
07/02/96 CACT ORD PRE-TRIAL ORD NO. 17 BY WILLIAM L. NAGLE SIG BY       6    706
07/02/96 CACT       JDG FORCUM ON 6-28-96!UL                            0    706
07/05/96 CACT FPD 182.00 BY HANSON'S MASONRY, INC.!MM                   3    709
07/05/96 CACT NTC OF APPEARANCE BY HANSON'S MASONRY INC. W/POS!MM       0    709
07/10/96 CACT POS SPEC MASTER(SEE SERVICE LIST)SRVD PRETRIAL ORD #1     5    714
07/10/96 CACT       7-8-96 BY M!DD                                      0    714
 CONT  ***CONTINUATION***                                          .38
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 CDET X PAGE NO.0010 IPH     UD10   05/12/98 09:24
08/06/96 CACT ORD PRE-TRIAL ORD #18 SIG BY JDG HAHN 8-7-96! WKP          27    741
08/09/96 CACT POS PRE TRI ORD #18 SRVD 8-7-97 BY M (SEE SVC LIST)!        3    744
08/13/96 CACT DSM ENT AS TO ANDEN GROUP, ET AL'S XCM AGAINST              4    748
08/13/96 CACT       XDEFT T & D TILE CO, INC W/O PREJ! NMC               0    748
08/14/96 CACT ORD PRE-TRIAL ORD NO 19 SIG BY JDG VEAL ON 8/12/96 !J       1    749
08/27/96 CACT POS "SEE SERVICE LIST" SRVD ENDORSED FILED                 13    762
08/27/96 CACT       COPY OF THE REQ 4 DSM W/OUT PREJ OF XDEFT            0    762
08/27/96 CACT       T&D TILE CO INC ONLY ON 8/23/96 BY M! SCA            0    762
09/03/96 CACT POS "SEE SERVICE LIST" SRVD PRE-TRIAL ORD #19              7    769
09/03/96 CACT       ON 8/27/96 BY M! SCA                                 0    769
10/02/96 CACT ORD PRE-TRIAL ORD #19 SIG BY JDG HAHN 10-2-96! WKP         29    798
10/08/96 CACT POS SEE SRVC LIST SRVD PRE TRIAL ORD #19 10-3-96 BY        6    804
10/08/96 CACT      M! WKP                                                0    804
10/28/96 CACT FPD $14 ON EXPARTE! NM                                    20    824
10/28/96 CACT MIS APPLIC 4 DETERMINATION OF GOOD FAITH SETTLEMENT!       0    824
10/28/96 CACT DEC OF DANIEL P BEAVER IN SUPRT OF APPLIC GOOD FAITH!      0    824
10/28/96 CACT NTC OF SETTLEMENT! NM                                      0    824
10/28/96 CACT POS APPLIC 4 DETERM GOOD FAITH SET/DEC OF BEAVER/NTC       0    824
10/28/96 CACT       OF SET SRVD 10-14-96 BY M (SEE SERVICE LIST)! NM     0    824
10/29/96 CACT ORD PRE-TRIAL ORD #20 SIG BY JDG HAHN ON 10/28/96 !UF      1    825
10/30/96 CACT ORD PRE-TRIAL ORD #20 SIG BY JDG HAHN 10/29/96 !UF         1    826
10/30/96 CACT NTC OF ENTRY OF JMT OF DISMISSAL W/POS !UF                 0    826
 CONT  ***CONTINUATION***                                          .83
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 CDET X PAGE NO.0011 IPH     UD10   05/12/98 09:55
11/05/96 CACT POS PRE TRIAL ORD #20 SRVD 10-31-96 BY M (SEE SVC LIS      6    832
11/06/96 CACT MOT DEFTS/XDEFT. GLORIA DEVELOPMENT COMPANY, INC.,         1    833
11/06/96 CACT       ET AL NTC OF MOT & MOT 2 OPPOSE GOOD FAITH           0    833
11/06/96 CACT       SETTLEMENT APPLICATION ALONG W/MEMO P&A; DECL        0    833
11/06/96 CACT       OF THORSTEN J. PRAY; POS; FPD $14.00 (HRG 12-2)      0    833
11/12/96 CACT FPD $14 ON JDR! MS                                         6    839
11/12/96 CACT JDR BY X-DEFT DANIEL SMITH PLASTERING, INC. IN DEFT        0    839
11/12/96 CACT       & X-COMPLAINANT'S OPP & SEPARATE OPP 2 GOOD          0    839
11/12/96 CACT       FAITH SETTLEMENT APLIC W/POS (HRG 12-2-96)! MS       0    839
11/21/96 CACT FPD $14 ON JDR! MS                                         9    848
11/21/96 CACT JDR BY PACIFIC COAST BLDG PRODUCTS, DBA ALCAL              0    848
11/21/96 CACT       ROOFING 2 GLORIA DEVELOPMENT CO., INC.'S             0    848
11/21/96 CACT       MOT 2 OPPOSE GOOD FAITH SETTLEMENT W/POS             0    848
11/21/96 CACT       (HRG 12-16-96)! MS                                   0    848
12/02/96 CEVN MOT DEFTS. & XDEFTS. GLORIA DEVELOPMENT COMPANY, INC.     11    859
12/02/96 CEVN MOT X-DEFT DANIEL SMITH PLASTERING, INC.'S JOINDER IN      0    859
12/03/96 CACT DSM ENT AS TO XCMPL AGAINST SOILS FOUNDATION               1    860
12/03/96 CACT       SYSTEMS ONLY W/PREJ! NMC                             0    860
12/06/96 CACT OPP PLTFS MEMO IN OPP 2 MOT OPPOSING GOOD FAITH            3    863
12/06/96 CACT       SETTLEMENT APLIC ALONG W/DECL OF MICHAEL B           0    863
12/06/96 CACT       ALLEN; DECL OF KEVIN TULLY; POS (HRG 12-16)!UF       0    863
12/06/96 CACT FPD $14 ON JDR! WKP                                        0    863
 CONT  ***CONTINUATION***                                          .44
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 CDET X PAGE NO.0014 IPH     UD10   05/12/98 09:55
01/14/97 CEVN MOT CROSS-DEF'S FISK, FIRENZE & MCLEAN AND DANIEL SM      0    902
01/23/97 CACT ORD PRE-TRIAL ORD #23 SIG BY JDG FORCUM (SPECIAL MAST     9    911
01/31/97 CACT POS WILLIAM L. NAGLE, SEE SERVICE LIST SRVD ON PRE-       8    919
01/31/97 CACT       TRIAL ORD #23 ON 1/29/97 BY M !RB                   0    919
02/13/97 CACT DSM RCVD !UF                                             13    932
02/13/97 CACT DSM ENT AS TO XCMPL OF THE ANDEN GROUP AGAINST            0    932
02/13/97 CACT       SIERRA LUMBER & FENCE COMPANY, INC W/O              0    932
02/13/97 CACT       PREJ! NMC                                           0    932
02/14/97 CACT ORD PRE-TRIAL ORD #24 (SPECIAL MASTER) SIG BY JDG         1    933
02/14/97 CACT       FORCUM !RB                                          0    933
02/18/97 CACT DSM ENT AS TO XCMPL OF THE ANDEN GROUP AS TO              4    937
02/18/97 CACT       SACRAMENTO A-1 DOOR ONLY W/PREJ! NMC                0    937
02/21/97 CACT POS SEE SRVC LIST SRVD PRE TRIAL ORD #24 2-19-97          3    940
02/21/97 CACT      BY M! WKP                                           0    940
02/21/97 CACT ORD GRANTING MOT 4 RECON & CONFIRMING GOOD FAITH          0    940
02/21/97 CACT       SETTLEMENT SIG BY JDG FORCUM ON 2/20/97 !UF         0    940
02/27/97 CACT NTC OF ENTRY OF ORD BY MICHAEL B. ALLEN ATTY FOR          6    946
02/27/97 CACT       PLTF W/POS !RB                                      0    946
03/06/97 CEVN SET FURTHER SETTLEMENT CONFERENCE                         7    953
03/06/97 CACT ORD AMND PRE TRIAL ORD #24 SIG BY JDG FORCUM              0    953
03/06/97 CACT      3-5-97! WKP                                         0    953
03/10/97 CACT COM AMENDMENT 2 CMPL (C C P SEC 474)! NMC                 4    957
 CONT  ***CONTINUATION***                                    .40
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 CDET X PAGE NO.0016 IPH    UD10   05/12/98 09:55
05/19/97 CACT ORD PRE TRIAL ORD #26 SIG BY JDG FORCUM 5-16-97! NM      27   1027
05/21/97 CACT ORD PRE-TRIAL ORD #27 (SPECIAL MASTER) SIG BY JDG         2   1029
05/21/97 CACT       KOZLOSKI 5/19/97 !RB                                0   1029
05/23/97 CACT POS SEE SRVC LIST SRVD PRE TRIAL ORD #26 5-21-97          2   1031
05/23/97 CACT      BY M! WKP                                            0   1031
05/23/97 CACT ORD DETERMINING CROWLEY COMPANY'S SET 2 BE IN GOOD        0   1031
05/23/97 CACT      FAITH SIG BY JDG PFEIFFER 5-22-97! NM                0   1031
05/28/97 CACT POS SEE SRVC LIST SRVD PRE TRIAL ORD #27 5-23-97          5   1036
05/28/97 CACT      BY M! WKP                                            0   1036
06/09/97 CACT DSM ENT ONLY AS TO XCM OF THE ANDEN GROUP AGAINST        12   1048
06/09/97 CACT       CROWLEY CO (SUED AS CROWLEY PLUMBING) !RB           0   1048
06/09/97 CACT NTC OF ENTRY OF ORD W/POS !RB                             0   1048
06/09/97 CACT AOC OF ATTY BY JOSEPH H. HUBER ATTY FOR XD !RB            0   1048
06/16/97 CACT ORD PRE TRIAL ORD #28 SIG BY JDG FORCUM 6-16-97! WKP      7   1055
06/24/97 CACT POS SEE SRVC LIST SRVD PRE TRIAL ORD #28 6-18-97          8   1063
06/24/97 CACT      BY M! WKP                                            0   1063
07/01/97 CACT ORD PRE-TRIAL ORD #29 SIG BY JDG FORCUM ON 6/30/97        7   1070
07/01/97 CACT       (SPECIAL MASTER) !RB                                0   1070
07/09/97 CACT POS PRE TRIAL ORDER #29 SRVD 7-3-97 BY M (SEE             8   1078
07/09/97 CACT      SERVICE LIST)! NM                                    0   1078
07/25/97 CACT SUM ORIGINAL ISS ON DOE AMENDMENT--DOE 14-50 (NTC        16   1094
07/25/97 CACT      OF UNDOCUMENTED ACT)! WKP                            0   1094
 CONT  ***CONTINUATION***                                          .36
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 CDET X PAGE NO.0032 IPH    UD10   05/12/98 09:56
11/13/97 CACT      SUPRT;P&S;$14 PAID (HRG 12-5-97)! WKP                  0   1205
11/14/97 CACT ORD PRE TRIAL ORD #40 ORD 2 APPEAR AT MEDIATION             1   1206
11/14/97 CACT      11-13 AND 11-14-97 SIG BY JDG FORCUM 11-12-97! N       0   1206
11/17/97 CACT POS WILLIAM L NAGLE, THOMAS A MILLER, ETAL (SEE SRVC        3   1209
11/17/97 CACT       LIST) SRVD PRE-TRIAL ORD #37 ON 11/13/97 BY M¦U       0   1209
11/19/97 CACT POS SEE SRVD LIST SRVD PRE TRIAL ORD NO 40                  2   1211
11/19/97 CACT      11-17-97 BY M! WKP                                     0   1211
11/20/97 CEVN MOT DEFT:  TECHNIBUILDERS IRON'S MOTION TO DISMISS          1   1212
11/20/97 CEVN MOT DEFT CARLOS RODRIGUEZ PAINTING'S MOTION TO DISMIS       0   1212
11/21/97 CACT OPP BY PLTFS 2 DEFT TECHNIBUILDERS IRON'S MOT 2 DISMI       1   1213
11/21/97 CACT       ACTION W/POS - (HRG 12-29-97) ¦UF                     0   1213
11/25/97 CACT MOT & NTC BY DEFT CARLOS RODRIGUEZ PAINTING 2               4   1217
11/25/97 CACT      DISMISS ACT PER CCP 583.420;MEMO P&A IN SUPRT;         0   1217
11/25/97 CACT      DEC OF JAMES F BLAKE IN SUPRT;POS;PROPOSED ORD;        0   1217
11/25/97 CACT      $14 PAID (HRG 1-12-98)! WKP                            0   1217
11/25/97 CACT AOC DONALD B FORNASIER ASSOCIATES DAVID S                   0   1217
11/25/97 CACT      HENNINGSEN W/POS! WKP                                  0   1217
11/26/97 CACT DSM ENT AS TO XCOM OF THE ANDEN GROUP, MIDEN CORP,          1   1218
11/26/97 CACT       ESDEN PARTNERS, MDG ASSOC., TMD CORP., &              0   1218
11/26/97 CACT       ESR CORP. AS AGAINST HANSON'S MASONRY ONLY            0   1218
11/26/97 CACT       W/PREJ! NMC                                           0   1218
12/01/97 CACT ORD PRE-TRIAL ORDER NO.41,SGD BY JDG FORCUM 11-24-97!       5   1223
 CONT  ***CONTINUATION***                                          .43
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 CDET X PAGE NO.0034 IPH     UD10   05/12/98 09:56
12/09/97 CACT ORD PRE-TRL #42 SGN JDG FORCUM 12/8/97!MG                  0   1231
12/10/97 CACT ORD PRE-TRL #43 SGN JDG FORCUM 12/10/97!MG                 1   1232
12/17/97 CACT ROP TO PLTF'S OPP TO MOT TO DISMISS OF DEFT B.L. COHE      7   1239
12/17/97 CACT       LANDSCAPE; DECL OF SUSAN P. GREY IN SUPRT;           0   1239
12/17/97 CACT       W/POS !RB                                            0   1239
12/17/97 CACT ANS BY SAN CARLOS SHEET METAL WORKS, INC'S 2 THE            0   1239
12/17/97 CACT       2ND AMND CMPL W/POS !MF                              0   1239
12/18/97 CACT DSM AS TO DEF T&D TILE,ONLY W/OUT PREJ!MM                  1   1240
12/19/97 CACT DSM ENT 12-26, DEF PENINSULA FLOORS,ONLY W/OUT PREJ!M      1   1241
12/22/97 CACT REP DEFT CARLOS RODRIGUEZ PAINTING REPLY BRIEF IN          3   1244
12/22/97 CACT       SUPRT OF ITS MOT 2 DISMISS ACTION ALONG W/2ND        0   1244
12/22/97 CACT       DECL OF JAMES F BLAKE; POS - (HRG 1-12-98) !UF       0   1244
12/26/97 CACT ORD PRETRL ORD. 44 SGN JDG FORCUM 12/26/97!MG              4   1248
12/26/97 CACT ORD PRETRL ORD #45 SGN JDG FORCUM 12/26/97!MG              0   1248
12/26/97 CACT ORD PRETRL ORD #46 SGN JDG FORCUM 12/26/97!MG              0   1248
12/29/97 CEVN MOT DEFT TECHNIBUILDERS IRON'S MOTION TO DISMISS ACTI      3   1251
12/30/97 CACT REP BRIEF BY DEFT TECHINBUILDERS IRON                      1   1252
12/30/97 CACT       (HRG 1/6/98) W/POS! SCA                              0   1252
01/02/98 CACT DSM ENTD 1-5,AS TO DEF SIERRA PRECAST W/OUT PREJ!MM        3   1255
01/06/98 CEVN MOT DEFT B.L. COHEN LANDSCAPE MOTION TO DISMISS ACTIO      4   1259
01/06/98 CEVN MOT DEFT SIERRA PRECAST,INC.'S MOTION TO DISMISS ACTI      0   1259
01/06/98 CEVN MOT DEFT TECHNIBUILDERS IRON'S MOTION TO DISMISS ACTI      0   1259
 CONT  ***CONTINUATION***                                          .44
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 CDET X PAGE NO.0035 IPH    UD10   05/12/98 09:56
01/06/98 CACT DSM ENTD 1-6,AS TO DEF M&H ELECTRIC,ONLY W/OUT PREJ!M      0   1259
01/08/98 CACT NTC OF ENTRY OF DSM & POS!MM                               2   1261
01/08/98 CACT DSM ENTD 1-9,AS TO DEF HANSON'S MASONRY, ONLY W/OUT P      0   1261
01/12/98 CEVN MOT DEFT CARLOS RODRIGUEZ PAINTING'S MOTION TO DISMIS      4   1265
01/12/98 CACT POS PRE-TRI ORDS #43-46 1-8-98 BY M (SEE SERVICE           0   1265
01/12/98 CACT       LIST)! DR                                            0   1265
01/12/98 CACT XCM AMNDMT 2 DEEMED XCM 4 EXPRESS INDEMNITY,DECLARATO      0   1265
01/12/98 CACT       RELIEF & CONTRIBUTION W/POS!MEF                      0   1265
01/12/98 CACT ORD PRE-TRIAL ORDER #47-ORDER TO APPEAR AT MEDIATION       0   1265
01/12/98 CACT       JAN 15 & 16, 1998 - ORDER TO APPEAR AT MEDIATIO      0   1265
01/12/98 CACT       SGN 1-9-98 BY JDG KOZLOSKI ! AD                      0   1265
01/13/98 CACT MOT DEFT SIERRA LUMBER & FENCE CO NTC OF MOT/MOT 4         1   1266
01/13/98 CACT       SJ ALONG W/SEPARATE STMT; MEMO P&A; DECL OF          0   1266
01/13/98 CACT       LYNN M DIRINGER; PROPOSED ORD; POS; FPD $100.00      0   1266
01/13/98 CACT       (HRG 2-13-98) ¦UF                                    0   1266
01/13/98 CACT NTC OF RULING W/POS!MM                                     0   1266
01/13/98 CACT ORD PRETRIAL ORD RE PLTFS CLAIMS RELATED TO PAINTING       0   1266
01/13/98 CACT      SIG BY JDG KOZLOSKI 1-12-98! NM                       0   1266
01/15/98 CACT DSM RECEIVED! MS                                           2   1268
01/15/98 CACT NTC OF ENTRY OF DSM/POS ¦UF                                0   1268
01/21/98 CACT ANS BY DEFT GLORIA DEVELOPMENT CO. INC. & O'BRIEN & H      6   1274
01/21/98 CACT       INC. TO AMNDMT TO DEEMED XCM OF RUTH & GOING, I      0   1274
 CONT  ***CONTINUATION***                                          .48
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03/02/98	CACT	SERVICE LIST)! NM	0	1314
03/02/98	CACT ORD	PERMITTING HRG ON MOTS 4 SJ & SA LESS THAN 30 DAY	0	1314
03/02/98	CACT	BEFORE TRIAL (MOTS TO BE FILED/SRVD BY 3/16/98	0	1314
03/02/98	CACT	& MOTS TO BE HEARD ON 4/13/98) SIG BY JDG	0	1314
03/02/98	CACT	ROSEMARY PFEIFFER 2/24/98 ($23 FPD)! SCA	0	1314
03/03/98	CACT POS	"SEE LIST" SRVD PRE-TRIAL ORD #51 B/M ON 02-27-98	1	1315
03/04/98	CACT DSM	ENTD 3-4, AS TO CMPL, AS TO DEFT R.D.	1	1316
03/04/98	CACT	MOORE CONSTRUCTION CO., INC. W/O PREJ! MS	0	1316
03/04/98	CACT ORD	PRE-TRIAL #53 - SIG BY JDG J.W. KOZLOSKI! SCA	0	1316
03/09/98	CACT POS	WILLIAM L. NAGLE, THOMAS A. MILLER, ETAL SRVD	5	1321
03/09/98	CACT	PRE-TRIAL ORD #53 ON 3/5/98 BY M UF	0	1321
03/16/98	CEVN SET	SETTLEMENT CONFERENCE	7	1328
03/16/98	CACT ORD	PRE-TRIAL # 54 (MSC 3/16 & 3/17 AT 800 NO.	0	1328
03/16/98	CACT	HUMBOLT) SIG BYB JDG JUDITH KOZLOSKI 3/10/98! S	0	1328
03/17/98	CEVN SET	/ASSIGNED TO WILLIAM NAGLE- TO BE HELD IN COURTRO	1	1329
03/20/98	CACT ORD	PRE TRIAL ORD #55 SIG BY JDG KOZLOSKI 3-17-98! NM	3	1332
03/25/98	CACT POS	WILLIAM L NAGLE, THOMAS A MILLER, ETAL (SEE SRVC	5	1337
03/25/98	CACT	LIST) SRVD PRE-TRIAL ORD #54 ON 3/19/98 BY M UF	0	1337
03/26/98	CACT AOC	THE LAW FIRM OF ARCHER, MC COMAS, BRESLIN,	1	1338
03/26/98	CACT	MC MAHON & CHRITTON IS HEREBY ASSOCIATED WITH	0	1338
03/26/98	CACT	TIMOTHY FOGARTY OF THE LAW FIRM OF PANDELL &	0	1338
03/26/98	CACT	BORSUK ON BEHALF OF DEFT CARLOS RODRIGUEZ	0	1338
CONT	***CONTINUATION***		.43	

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 CDET   PAGE NO.0039 IPH    UD10   05/12/98 09:57
03/26/98 CACT       PAINTIFF W/POS! NMC                                  0   1338
03/27/98 CACT POS "SEE SERVICE LIST" SRVD PRE-TRIAL ORD # 55             1   1339
03/27/98 CACT       ON 3/25/98 BY M! SCA                                 0   1339
04/15/98 CEVN HEA SETTLEMENT HEARING                                    19   1358
04/23/98 CACT DSM ENTD 5-8, AS TO DEFT SACRAMENTO A-1 DOOR               8   1366
04/23/98 CACT       ONLY W/O PREJ! MS                                    0   1366
05/08/98 CACT ORD RE SETTLEMENT SIG BY JDG KOZLOSKI 5-7-98! FM          15   1381
05/14/98 CEVN 207 MANDATORY SETTLEMENT CONFERENCES  (5/26/98)            6   1387
05/26/98 CEVN TRI /PER CHRIS BRITTAN, WM. NAGLE, SHE WILL NOTICE        12   1399

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03/26/98 CACT	PAINTING W/POS! NMC	0	1338
03/27/98 CACT POS	"SEE SERVICE LIST" SRVD PRE-TRIAL ORD # 55	1	1339
03/27/98 CACT	ON 3/25/98 BY M! SCA	0	1339
04/15/98 CEVN HEA	SETTLEMENT HEARING	19	1358
04/23/98 CACT DSM	ENTD 5-8, AS TO DEFT SACRAMENTO A-1 DOOR	8	1366
04/23/98 CACT	ONLY W/O PREJ! MS	0	1366
05/08/98 CACT ORD	RE SETTLEMENT SIG BY JDG KOZLOSKI 5-7-98! FM	15	1381
05/14/98 CEVN 207	MANDATORY SETTLEMENT CONFERENCES (5/26/98)	6	1387
05/15/98 CACT ORD	PRE-TRIAL #57 SGD JDG KOZLOSKI 5-14-98 MS	1	1388
05/15/98 CACT ORD	PRE-TRIAL #56 SGD JDG KOZLOSKI 5-14-98 MS	0	1388
05/18/98 CACT NTC	OF ENTRY OF DISMISSAL & POS! SEA	3	1391
05/19/98 CACT NTC	BY PLTF OF VACATION; OF 5-14-98 MANDATORY	1	1392
05/19/98 CACT	SET CONF; & SETTING OF STATUS REVIEW HRG	0	1392
05/19/98 CACT	W/POS! DR	0	1392
05/21/98 CACT POS	(SEE SERV LIST)SVD COPIES OF PRE-TRIAL ORDER	2	1394
05/21/98 CACT	NO.56 & 57 - W/POS M ! AD	0	1394
05/26/98 CEVN TRI	/PER CHRIS BRITTAN, WM. NAGLE, SHE WILL NOTICE	5	1399
06/09/98 CACT POS	(SEE SERV LIST)SVD COPIES OF ORD RE SETTLEMENT	14	1413
06/09/98 CACT	ON 6-5-98 W/POS M ! AD	0	1413
06/18/98 CACT ORD	AMNDMT 2 ORD RE SETTLEMENT SIG BY JDG KOZLOSKI	9	1422
06/18/98 CACT	6-18-98! DR	0	1422
06/23/98 CACT POS	WILLIAM L NAGLE, ET AL (SEE SRVC LIST) SRVD	5	1427
CONT	***CONTINUATION***	.34	

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 CDET   PAGE NO.0040 IPH    UD10   08/04/98 11:29
06/23/98 CACT       AMNDMNT 2 ORD RE SETTLEMENT 6/19/98 BY M !AD        0   1427
07/01/98 CACT ORD AMENDEMENT 2 ORD RE: SETTLEMENT BY KOZLOSKI 6-22-     8   1435
07/20/98 CACT MOT ANDEN GROUP'S MOT RE DETERMINE GOOD FAITH            19   1454
07/20/98 CACT      SETTLEMENT, MEMO OF P & A AND DEC !TP               0   1454
07/20/98 CACT FPD 23.00 FOR MOTION BY ANDEN GROUP TO BE HEARD          0   1454
07/20/98 CACT      8-31-98!TP                                          0   1454
07/28/98 CACT DSM RECEIVED !TP                                         8   1462
07/29/98 CEVN MOT JOINT MOTION FOR GOOD FAITH SETTLEMENT               1   1463
07/31/98 CACT ORD PRE-TRIAL ORD #58 SIG BY JDG KOZLOSKI 7-29-98!FM     2   1465
08/07/98 CEVN CMC STATUS REVIEW/CASE MANAGEMENT CONF                   7   1472
08/31/98 CEVN MOT DE/XCM ANDEN GROUP'S NOT OF MOT AND MOT FOR DETER   24   1496


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