

211

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11 Attorneys for Debtor
 City of Stockton

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15 Attorney for Creditor
 16 Michael A. Cobb

17 UNITED STATES BANKRUPTCY COURT
 18 EASTERN DISTRICT OF CALIFORNIA
 19 SACRAMENTO DIVISION

20 In re:
 21 CITY OF STOCKTON, CALIFORNIA,
 22 Debtor.

Case No. 2012-32118
 D.C. No. OHS-15
 Chapter 9

**EXHIBITS A THROUGH P IN
 SUPPORT OF JOINT STIPULATION
 OF MATERIAL FACTS UNDERLYING
 OBJECTION OF CREDITOR
 MICHAEL A. COBB**

Date: May 7, 2014
 Time: 9:30 a.m.
 Dept: C
 Judge: Hon. Christopher M. Klein

Exhibit A

S CITY OF STOCKTON
STOCKTON CITY COUNCIL
CITY HALL, STOCKTON, CALIFORNIA 95202
TELEPHONE (209) 937-8459

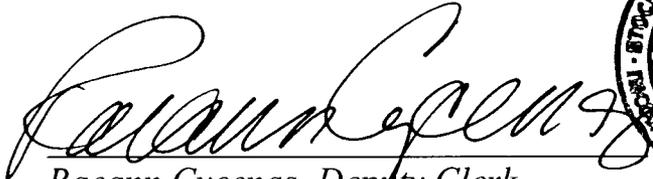


I, KATHERINE GONG MEISSNER, do hereby certify as follows:

I am the duly appointed, qualified City Clerk of the City of Stockton, a California municipal corporation; as such City Clerk, I am the custodian of the official records of the City Council of said City. The attached Resolution is a full, true, and correct copy of Resolution No. 98-0353 of said City Council, which was adopted by the City Council on August 18, 1998 on file in the City Clerk's office.

IN WITNESS WHEREOF, I have hereto affixed my hand and the seal of the City of Stockton on January 12, 2009.

**KATHERINE GONG MEISSNER, CITY CLERK
CITY OF STOCKTON**

By 
Raeann Cycenas, Deputy Clerk



98-0353

Resolution No. _____

STOCKTON CITY COUNCIL

RESOLUTION OF THE CITY OF STOCKTON FINDING AND DETERMINING THE PUBLIC NECESSITY REQUIRES THE ACQUISITION OF CERTAIN REAL PROPERTY INTERESTS FOR A PUBLIC PROJECT AND DIRECTING THE ACQUISITION OF SAID REAL PROPERTY INTERESTS BY EMINENT DOMAIN PROCEEDINGS.

WHEREAS, the City of Stockton ("City") is a chartered municipal corporation and one of the public entities authorized to exercise the power of eminent domain; and

WHEREAS, Section 37350.5 of the Government Code authorizes the City to acquire by eminent domain any property necessary to carry out its powers and functions; and

WHEREAS, one of the powers and functions of the City of Stockton is to provide streets and highways and bridges to the community; and

WHEREAS, Government Code sections 40403 and 40404 authorize the City of Stockton to acquire property to provide bridges, streets, sidewalks, and public highways; and

WHEREAS, Government Code section 66462.5 provides that the City shall acquire, by negotiation or exercise of its eminent domain powers, any property interest which will permit offsite public improvements to be made on land not owned or successfully acquired by a subdivider when required by a condition of a tentative subdivision map; and

WHEREAS, the interests in certain real property located in Stockton, California (the "Property"), as described in Exhibit "A" attached and incorporated by reference, are necessary for the construction of a portion of a public street, the improvement and extension of Industrial Drive between the West State Route 99

CITY ATTY REVIEW BOA
DATE AUG 10 1998

Frontage Road and Pock Lane, and a crossing of North Little John Creek (the "Project"); and

WHEREAS, written notice of the intent of the City of Stockton to adopt this Resolution of Necessity was sent to the owners of the properties whose names and addresses appear on the last equalized county assessment roll; and

WHEREAS, a written request to appear was received on July 31, 1998, from James R. Baskette, on behalf of Andrew C. Cobb, Trustee; and

WHEREAS, a hearing was conducted and all interested persons were given an opportunity to be heard;

NOW, THEREFORE, based on the evidence presented,

BE IT FOUND, DETERMINED AND RESOLVED BY THE COUNCIL OF THE CITY OF STOCKTON, AS FOLLOWS:

1. That the Property to be acquired is described in Exhibit "A," attached and incorporated by this reference.

2. That the Property is to be acquired for a public use and a public project, the construction and installation of a public street and bridge crossing pursuant to the authority granted by Sections 37350.5, 40403, 40404, and 66462.5 of the Government Code and Section 1230.010, et seq. of the Code of Civil Procedure.

3. That the public interest and necessity require the acquisition, construction and installation of the Proposed Project.

4. That the Proposed Project is planned and located in the manner which will be most compatible with the greatest public good and the least private injury.

5. That the Property, as described in Exhibit "A," is necessary for the Proposed Project.

6. That the amount of compensation believed to be just has been determined and an offer in such amount and the basis therefor has been made to the owners of record as required by Government Code section 7267.2.

7. That the City Attorney is hereby authorized and empowered:

(a) To acquire in the City's name, by condemnation, the Property in accordance with the provisions of the Eminent Domain Law of the Code of Civil Procedure and the Constitution of California;

(b) To prepare and prosecute in the City's name such proceedings in the proper court as are necessary for such acquisition;

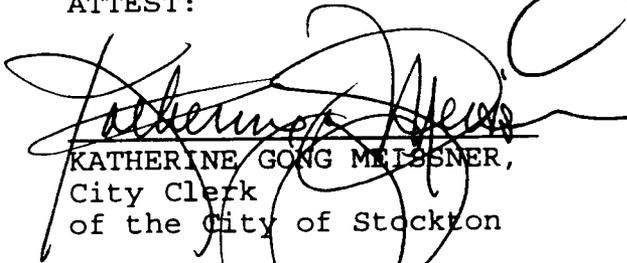
(c) To deposit the amount of probable compensation in compliance with Section 1255.010, et seq. of the Code of Civil Procedure; and

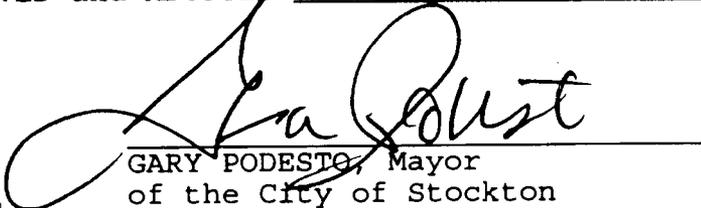
(d) To take all actions as necessary to secure immediate prejudgment possession and use of the property to be condemned; and

(e) To utilize the services of private counsel as co-counsel to prosecute said proceedings, as deemed necessary by the City Attorney.

PASSED, APPROVED and ADOPTED AUG 18 1998.

ATTEST:


KATHERINE GONG MEISSNER,
City Clerk
of the City of Stockton


GARY PODESTO, Mayor
of the City of Stockton

CITY COUNCIL VOTED AS FOLLOWS:

AYES: 6
NOES: 0
ABSTAIN: 0
ABSENT: 1

EXHIBIT A

LEGAL DESCRIPTION

INDUSTRIAL DRIVE
A.P.N. 179-180-07

All that certain real property, situate, lying and being in the City of Stockton, County of San Joaquin, State of California, described as follows:

PARCEL ONE:

Being a portion of that certain real property described as Parcel One in the deed to Andrew C. Cobb, a single man, recorded in Official Records, Book 4249, Page 556, San Joaquin County Records, also being a portion of the south 1/2 of Lot 9 of Ross-Gilmour Gardens, filed for record in Book of MAPS AND PLATS, Volume 7, Page 1, San Joaquin County Records, lying in Section 48 of the C.M. Weber Grant and being more particularly described as follows:

Commencing at City of Stockton survey control monument 5S-16, having the coordinates of N= 2,159,968.647 and E= 6,350,752.325, as shown on Book 33 of Surveys, at Page 20, San Joaquin County Records; thence South 17° 14' 51" East 4347.89 feet to City of Stockton survey control monument 3S-9, having the coordinates of N= 2,155,816.544 and E= 6,352,041.390, as shown on said Record of Survey; thence North 86° 15' 01" West 3470.85 feet to a 3/4" Iron Pin set at the northwesterly corner of Parcel "I," as shown on Book 28 of Surveys, at Page 87, San Joaquin County Records, said point being at the intersection of the northerly line of the southerly 1/2 of said Lot 9 of said Ross-Gilmour Gardens, with the centerline of Pock Lane (50.00 feet wide); thence North 72° 39' 12" East, along the northerly line of the southerly 1/2 of said Lot 9, also being the northerly line of said Parcel "I" and the northerly line of Lot 9 and Lot 1 of Stockton Airport Business Center, Unit No. 3, filed in Book 30 of MAPS AND PLATS, at Page 58, San Joaquin County Records, a distance of 512.47 feet to an angle point in the northerly line of said Lot 1; thence continue North 72° 39' 12" East, on the northerly line of the southerly 1/2 of Lot 9 of said Ross-Gilmour Gardens, 191.27 feet to the TRUE POINT OF BEGINNING of this description; thence continue North 72° 39' 12" East, on the northerly line of the southerly 1/2 of Lot 9 of said Ross-Gilmour Gardens, 299.08 feet to an angle point in the boundary of Little John Creek, Unit 3, as shown on the plat filed April 26, 1994, in Book 31 of Maps and Plats, at Page 112, San

98-0353

Joaquin County Records, said point being on a non-tangent curve to the left, from which the radius point of said curve bears North 00° 51' 20" West, said curve having a radius of 958.00 feet; thence easterly, on the arc of said curve, through a central angle of 14° 53' 31", and a chord bearing and distance of North 81° 41' 54" East 248.30 feet, an arc distance of 249.00 feet to a point of reverse curvature, from which the radius point bears South 15° 44' 52" East; thence easterly, along the arc of a curve to the right, having a radius of 1042.00 feet, a central angle of 21° 55' 46", and a chord bearing and distance of North 85° 13' 01" East 396.38 feet, an arc distance of 398.82 feet to a point of reverse curvature, from which the radius point bears North 06° 10' 54" East; thence easterly, along the arc of a curve to the left, having a radius of 958.00 feet, through a central angle of 03° 18' 46", and a chord bearing and distance of South 85° 28' 29" East 55.38 feet, an arc distance of 55.39 feet to a point on the easterly line of Lot 9 of said Ross-Gilmour Gardens, said point bearing South 17° 44' 50" East 145.90 feet from the northeasterly corner of the southerly 1/2 of said Lot 9, as said northeasterly corner is shown on that certain map filed in Book 32 of Surveys, at Page 118, San Joaquin County Records; thence South 17° 44' 50" East, on a non-tangent line, along the easterly line of said Lot 9, a distance of 68.08 feet to a point of intersection with a non-tangent curve to the right, from which the radius point of said curve bears North 01° 31' 30" East, said curve having a radius of 1022.00 feet; thence westerly, along the arc of said curve, through a central angle of 04° 39' 24", and a chord bearing and distance of North 86° 08' 48" West 83.04 feet, an arc distance of 83.06 feet to a point of reverse curvature, from which the radius point bears South 06° 10' 54" West; thence westerly, along the arc of a curve to the left, having a radius of 978.00 feet, a central angle of 21° 55' 46", and a chord bearing and distance of South 85° 13' 01" West 372.04 feet, an arc distance of 374.32 feet to a point of reverse curvature, from which the radius point bears North 15° 44' 52" West; thence westerly, along the arc of a curve to the right, having a radius of 1022.00 feet, a central angle of 14° 53' 31", and a chord bearing and distance of South 81° 41' 54" West 264.88 feet, an arc distance of 265.63 feet to a point of reverse curvature, from which the radius point of said curve bears South 00° 51' 20" East; thence westerly, along the arc of a curve to the left, having a radius of 1978.00 feet, through a central angle of 08° 20' 11", with a chord bearing and distance of South 84° 58' 34" West 287.54 feet, an arc distance of 287.80 feet to the point of beginning.

Containing 1.235 Acres more or less.

PARCEL TWO:

Being a portion of that certain real property described as Parcel One in the deed to Andrew C. Cobb, a single man, recorded in Official

98-0353

Records, Book 4249, Page 556, San Joaquin County Records, also being a portion of the south 1/2 of Lot 9 of Ross-Gilmour Gardens, filed for record in Book of MAPS AND PLATS, Volume 7, Page 1, San Joaquin County Records, lying in Section 48 of the C.M. Weber Grant and being more particularly described as follows:

Commencing at City of Stockton survey control monument 5S-16, having the coordinates N= 2,159,968.647 and E= 6,350,752.325, as shown on Book 33 of Surveys, at Page 20, San Joaquin County Records; thence South 17° 14' 51" East 4347.89 feet to City of Stockton survey control monument 3S-9, having the coordinates of N= 2,155,816.544 and E= 6,352,041.390, as shown on said Record of Survey; thence North 86° 15' 01" West 3470.85 feet to a 3/4" Iron Pin set at the northwesterly corner of Parcel "I," as shown on Book 28 of Surveys, at Page 87, San Joaquin County Records, said point being at the intersection of the northerly line of the southerly 1/2 of Lot 9 of said Ross-Gilmour Gardens, with the centerline of Pock Lane (50.00 feet wide); thence North 72° 39' 12" East, along the northerly line of the southerly 1/2 of said Lot 9, also being the northerly line of said Parcel "I" and the northerly line of Lot 9 and Lot 1 of Stockton Airport Business Center, Unit No. 3, filed in Book 30 of MAPS AND PLATS, at Page 58, San Joaquin County Records, a distance of 512.47 feet to an angle point in the northerly line of said Lot 1 and the TRUE POINT OF BEGINNING of this description; thence continue North 72° 39' 12" East, on the northerly line of the southerly 1/2 of Lot 9 of said Ross-Gilmour Gardens, 121.64 feet; thence South 11° 11' 53" East 16.33 feet to the beginning of a non-tangent curve to the left, having a radius of 1953.00 feet and a chord bearing and distance of South 77° 19' 12" West 101.01 feet, and from which the radius of said curve bears South 11° 11' 53" East; thence westerly, along the arc of said curve, through a central angle of 02° 57' 50", an arc distance of 101.03 feet to the centerline of North Little John Creek, also being the southerly line of aforesaid Parcel One in the deed to Andrew C. Cobb, a single man, recorded in Official Records, Book 4249, page 556, San Joaquin County Records, and also being the northerly line of Lot 1 of Stockton Airport Business Center, Unit No. 3, filed in Book 30 of MAPS AND PLATS, at Page 58, San Joaquin County Records; thence along the southerly line of said Cobb Parcel, and the northerly line of said Lot 1, North 84° 41' 32" West 20.81 feet to the point of beginning.

Containing 1268 Square Feet of Land, more or less

Bearings and coordinates used in the above descriptions are based on the California Coordinate System-83, Zone III. All distances are ground level distances and must be multiplied by 0.99993339 to obtain grid distances.

98-0353

Exhibit B

RECORDED
INDEXED
OCT 23 1998
BY [unclear]
CLERK

1 MAXWELL M. FREEMAN, State Bar Number 31278
2 RONALD J. D'AIUTO, State Bar Number 91962
3 JANICE D. MAGDICH, State Bar Number 188278
4 FREEMAN & D'AIUTO
5 A Professional Law Corporation
6 1818 Grand Canal Boulevard
7 Stockton, CA 95207
8 Telephone: (209) 474-1818

9 CYNTHIA HUMBERT NEELY, State Bar Number 109328
10 BARBARA J. ANDERSON, State Bar Number 119277
11 CITY ATTORNEY'S OFFICE, CITY OF STOCKTON
12 City Hall, Second Floor
13 425 N. El Dorado Street
14 Stockton, CA 95202
15 Telephone: (209) 937-8333

16 Attorneys for plaintiff
17 CITY OF STOCKTON

18 SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN JOAQUIN

19 STOCKTON BRANCH

20 CITY OF STOCKTON, a municipal corporation,
21 Plaintiff,
22 vs.
23 ANDREW C. COBB, Trustee of the Andrew C. Cobb 1992 Revocable Trust dated July 16, 1992; TITLE INSURANCE AND TRUST COMPANY, a California corporation; ALDO B. TOGNIALLI; ROSALIE TOGNIALLI; and DOES I through X, inclusive; AND ALL PERSONS CLAIMING AN INTEREST IN THE PROPERTY DESCRIBED IN THE COMPLAINT,
24 Defendants.

NO. CV
NOTICE OF DEPOSIT OF PROBABLE JUST COMPENSATION -- ACTION IN EMINENT DOMAIN

APN: 179-180-07

Complaint Filed: 10/23/98
Trial Date: None Set

25 TO DEFENDANTS NAMED HEREIN:

26 PLEASE TAKE NOTICE that on October 23, 1998, plaintiff caused to be deposited with
27 the State Treasury Condemnation Fund the sum of \$90,200.00 for the benefit of defendants for the
28

1 parcel of land sought to be condemned herein. Said deposit is based upon the appraisal summary
2 of Ronald L. Palmquist, less amounts, if any, which have been previously paid to the defendant
3 owners of said land or deposited in an escrow to purchase said land.

4 Dated: October 23, 1998

FREEMAN & D'AIUTO
A PROFESSIONAL LAW CORPORATION

6
7 By: 
8 JANICE D. MAGDICH
Attorneys for plaintiff
CITY OF STOCKTON

9 CITY\COBB\DEPOSIT.NTCLV

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Exhibit C

FILED
SUPERIOR COURT-STOCKTON
98 OCT 23 PM 12:08
C. CLERK
BY Kathy Valona
DEPUTY

1 MAXWELL M. FREEMAN, State Bar Number 31278
RONALD J. D'AIUTO, State Bar Number 91962
2 JANICE D. MAGDICH, State Bar Number 188278
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CITY ATTORNEY'S OFFICE, CITY OF STOCKTON
7 City Hall, Second Floor
425 N. El Dorado Street
8 Stockton, CA 95202
Telephone: (209) 937-8333

9 Attorneys for plaintiff
10 CITY OF STOCKTON

THIS CASE HAS BEEN ASSIGNED TO
JUDGE BOB MC NATT IN DEPARTMENT 11
FOR ALL PURPOSES, INCLUDING TRIAL

11 SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN JOAQUIN
12 STOCKTON BRANCH

13 CITY OF STOCKTON, a municipal
corporation,

14 Plaintiff,

15 vs.

16 ANDREW C. COBB, Trustee of the
17 Andrew C. Cobb 1992 Revocable Trust
dated July 16, 1992; TITLE INSURANCE
18 AND TRUST COMPANY, a California
corporation; ALDO B. TOGNIALLI;
19 ROSALIE TOGNIALLI; and DOES I
through X, inclusive; AND ALL
20 PERSONS CLAIMING AN INTEREST
IN THE PROPERTY DESCRIBED
21 IN THE COMPLAINT,

22 Defendants.

NO. **CV 006247**

**COMPLAINT - ACTION IN
EMINENT DOMAIN**
[Code Civ. Proc., § 1250.310]

APN: 179-180-07

24 Plaintiff, City of Stockton, a municipal corporation and charter city (City), complains of
25 defendants, and each of them, and for its cause of action alleges that:

26 1. The proceeding is instituted and the lands and interests hereinafter described are
27
28



1 taken and condemned pursuant to and under the provisions and authority and for the purposes and
2 uses authorized by Article I, Section 19 of the Constitution of the State of California, and sections
3 1240.010, 1240.030, 1240.050, 1240.110, 1240.120 and 1250.010 et seq. of the Code of Civil
4 Procedure of the State of California.

5 2. City is now, and at all times hereafter stated was, a public entity organized and
6 existing under and by virtue of the laws of the State of California, and is vested by such
7 constitution and laws with the power of eminent domain for public use.

8 3. City seeks to acquire interest in the real property hereinafter described for a public
9 improvement project, to wit: the construction of a public roadway, and modification of grade to
10 provide street, highway and sidewalk services to the community. City is authorized by
11 Government Code sections 37350.5, 40403, 40404 and 66462.5, as well as Title 7, Part 3, of
12 Code of Civil Procedure to acquire private property for the project.

13 4. City seeks to acquire an easement on that certain real property located within the
14 City of Stockton, County of San Joaquin, California, as more particularly described in Exhibit A.
15 Said real property and improvements, if any, are hereinafter referred to as the "Subject Property."

16 5. Exhibit B is a map portraying the Subject Property and showing the location of said
17 public improvement project for which the Subject Property is sought to be acquired.

18 6. Prior to commencement of this action, and after notice pursuant to Code of Civil
19 Procedure section 1235.235, at a meeting of the City Council of plaintiff City of Stockton on
20 August 18, 1998, said City Council, by a vote of at least two-thirds (2/3), passed Resolution
21 No. R-98-0353, a true and correct copy of which is attached hereto as Exhibit C and by reference
22 made a part thereof, stating and determining that the public interest and necessity require the
23 acquisition of the property interest described in said Exhibit A for the purposes and uses set forth
24 above, which uses are public uses authorized by law. The City Council found and determined in
25 said Resolution that:

26 a. the Subject Property to be acquired was described in an exhibit attached and
27
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1 incorporated by reference into the Resolution;

- 2 b. the Subject Property is to be acquired for a public use and a public project,
3 that is the construction and installation of a public street and bridge crossing
4 pursuant to the authority granted by California Government Code and Code
5 of Civil Procedure;
- 6 c. the public interest and necessity require the acquisition, construction and
7 installation of the proposed project;
- 8 d. the proposed project is planned and located in the manner which would be
9 the most compatible with the greatest public good and the least private
10 injury;
- 11 e. the Subject Property described is necessary for the proposed project;
- 12 f. the offer required by section 7267.2 of the Government Code of the State of
13 California has been made to the owners of record of the Subject Property;
- 14 g. the City Attorney of the City of Stockton was authorized and empowered to
15 acquire the Subject Property by condemnation in accordance with California
16 law, to deposit the amount of probable compensation in compliance with the
17 California Code of Civil Procedure, to take all actions as necessary to secure
18 immediate prejudgment possession and use of the property to be condemned,
19 and to utilize the services of private counsel as co-counsel to prosecute said
20 proceedings.

21 7. Names of all the owners and of all persons claiming to any right, title, estates, lien
22 or interest in, on, to or against the real property sought to be condemned in this action, or any part
23 thereof, so far as they are known to City, are hereinafter set forth. For the convenience of the
24 court and not as allegations by which City intends to be bound, their possible interests are set forth
25 respectively:

Defendant

Interest

Andrew C. Cobb

Trustee for fee owner, the Andrew C.. Cobb 1992 Revocable Trust dated July 16, 1992

Title Insurance and Trust Company, a California corporation

Trustee under a Deed of Trust recorded April 21, 1977, in Volume 4249, page 559, San Joaquin County Records

Aldo B. Tognialli

Beneficiary under a Deed of Trust recorded April 21, 1977, in Volume 4249, page 559, San Joaquin County Records

Rosalie Tognialli

Beneficiary under a Deed of Trust recorded April 21, 1977, in Volume 4249, page 559, San Joaquin County Records

8. Defendant DOES I through X, inclusive, have, or claim to have, an interest in the Property, the exact nature of which is unknown to City. The true names or capacities, whether individual, corporate, associate or otherwise of defendants DOES I through X, inclusive, being unknown, City sues said defendants by such fictitious names and will seek leave to amend this Complaint to show their true names and capacities when the same have been ascertained.

WHEREFORE, City prays:

1. That defendants, and each of them, be required by answer to set forth the nature and extent of their several estates and interests in the Subject Property or any part or portion sought to be condemned herein, and that such several estates and interests may be determined;

2. All liens and encumbrances against the Subject Property be extinguished and deducted from the Judgment;

3. That the County Assessor and/or Tax Collector of the County of San Joaquin be directed to provide the required information as to any taxes owing on the Subject Property; and

4. For judgment:

a. decreeing that the real property described in Exhibit A, to the extent of the title and interest which City seeks to acquire by this action, is condemned for necessary public uses of the City, as authorized by law and set forth in the Resolution of Necessity (Exhibit C), and that all of said land is necessary and

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suitable therefor;

b. determining the value of the Subject Property subject of this action, and each separate interest therein, and directing the payment of each separate interest to the persons entitled thereto; and

c. for such other and further relief as the court shall deem just and proper.

Dated: October 23, 1998

**FREEMAN & D'AIUTO
A PROFESSIONAL LAW CORPORATION**

By: 
JANICE D. MAGDICH
Attorneys for plaintiff
CITY OF STOCKTON

CITYCOBBVCOMPLNTLV

Exhibit D

DEC 1 1998

Filed _____, 19____
JEANNE MILLSAPS
CLERK
By CYNTHIA LEVESEY
DEPUTY

1 MAXWELL M. FREEMAN, State Bar Number 31278
2 RONALD J. D'AIUTO, State Bar Number 91962
3 JANICE D. MAGDICH, State Bar Number 188278
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15 Telephone: (209) 937-8333

16 Attorneys for plaintiff
17 CITY OF STOCKTON

18 SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN JOAQUIN
19 STOCKTON BRANCH

20 CITY OF STOCKTON, a municipal)
21 corporation,)
22 Plaintiff,)
23 vs.)
24 ANDREW C. COBB, Trustee of the)
25 Andrew C. Cobb 1992 Revocable Trust)
26 dated July 16, 1992; TITLE INSURANCE)
27 AND TRUST COMPANY, a California)
28 corporation; ALDO B. TOGNIALLI;)
ROSAIE TOGNIALLI; and DOES I)
through X, inclusive; AND ALL)
PERSONS CLAIMING AN INTEREST)
IN THE PROPERTY DESCRIBED)
IN THE COMPLAINT,)
Defendants.)

NO. CV 006247
**ORDER FOR PREJUDGMENT
POSSESSION - ACTION
IN EMINENT DOMAIN**

APN: 179-180-07
Date: December 1, 1998
Time: 9:00 a.m.
Dept: 11

Complaint Filed: 10/23/98
Trial Date: None Set

Based upon the declarations and other documents filed by plaintiff in support of its Application and Declaration for Prejudgment Possession on file in this case;

IT IS HEREBY ORDERED AND DETERMINED THAT:

1 1. Plaintiff has made a deposit of the probable just compensation and filed a Summary
2 of the Basis for Appraisal Opinion, both of which meet the requirements of Code of Civil
3 Procedure section 1255.010.

4 2. The parcel to be acquired is described in Exhibit A to plaintiff's Complaint on file
5 herein. Plaintiff is entitled to possession of said parcel as hereinafter set forth.

6 3. The time for service of this Order for Prejudgment Possession may not be less than
7 thirty (30) days prior to the time plaintiff is to take possession of said parcel.

8 4. Service of this Order for Prejudgment Possession is excused upon all defendants not
9 occupying the property taken.

10 5. Service of this Order for Prejudgment Possession shall be made in accordance with
11 Code of Civil Procedure section 1255.450.

12 6. The effective date of this Order for Prejudgment Possession as to said parcel shall
13 be not less than thirty (30) days after service of the Order for Prejudgment Possession is made on
14 the defendant-owner thereof and/or defendant-tenant.

15 7. On or about the dates specified herein, plaintiff is authorized to enter upon and take
16 immediate possession of said parcel of land being condemned herein. Plaintiff is empowered to
17 remove therefrom any persons, obstacles, improvements or structures of any kind or nature
18 thereon situated.

19 Dated: DEC 1 1998

B. W. McNATT

JUDGE OF THE SUPERIOR COURT

21 CITY\COBB\POSSESS.ORD\LV

Exhibit E

S CITY OF STOCKTON
STOCKTON CITY COUNCIL
CITY HALL, STOCKTON, CALIFORNIA 95202
TELEPHONE (209) 937-8459



I, KATHERINE GONG MEISSNER, do hereby certify as follows:

I am the duly appointed, qualified City Clerk of the City of Stockton, a California municipal corporation; as such City Clerk, I am the custodian of the official records of the City Council of said City. The attached Resolution is a full, true, and correct copy of Resolution No. 00-0505 of said City Council, which was adopted by the City Council on October 17, 2000 on file in the City Clerk's office.

IN WITNESS WHEREOF, I have hereto affixed my hand and the seal of the City of Stockton on January 12, 2009.

**KATHERINE GONG MEISSNER, CITY CLERK
CITY OF STOCKTON**

By


Raeann Cycenas, Deputy Clerk



00-0505

Resolution No. _____

STOCKTON CITY COUNCIL

WHEREAS, the Public Works Department has determined that improvements in INDUSTRIAL DRIVE FROM MINDEN LANE TO POCK LANE – SOUTH OF LITTLE JOHN CREEK SUBDIVISION have been completed in accordance with the approved plans and specifications; now, therefore,

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF STOCKTON, AS FOLLOWS:

1. THAT the improvements in INDUSTRIAL DRIVE FROM MINDEN LANE TO POCK LANE – SOUTH OF LITTLE JOHN CREEK SUBDIVISION in the City of Stockton, are hereby accepted.
2. THAT the City Clerk shall file a Notice of Completion with the County Recorder pursuant to Stockton Municipal Code Section 16-007.11.2.

PASSED, APPROVED and ADOPTED OCT 17 2000



GARY A. PODESTO, Mayor
of The City of Stockton

ATTEST:



KATHERINE GONG MEISSNER, City Clerk
of the City of Stockton

CITY ATTY
REVIEW 
DATE OCT 11 2000

00-0505

Exhibit F

State Treasurer's Office

Condemnation Deposits Fund

Account Statement as of 12/31/07

PLAINTIFF: STOCKTON, CITY OF

Account No: 35100993913

DEFENDANT	DEPOSITS			WITHDRAWALS		
	NUMBER	DATE	AMOUNT	NUMBER	DATE PAID	AMOUNT

COBB, ANDREW C.

ST117717 07/02/2007 \$90,200.00

CDF07328

10/23/2007

\$90,200.00

Total Withdrawals

\$90,200.00

Deposit Balance

\$0.00

HUSSAIN

ST106918 09/01/2000 \$10,300.00

Total Withdrawals

\$0.00

Deposit Balance

\$10,300.00

TRUST LIMITED XXI

ST109586 05/28/2002 \$15,800.00

Total Withdrawals

\$0.00

Deposit Balance

\$15,800.00

PHOENIX PROGRAMS, INC

ST113709 01/11/2005 \$6,000.00

Total Withdrawals

\$0.00

Deposit Balance

\$6,000.00

OFFICE OF THE TREASURER

P. O. BOX 942809
SACRAMENTO, CA 94209-0001



October 24, 2007

Regina N. Danner
Richards, Watson, Gershon
355 South Grand Avenue, 40th Floor
Los Angeles, CA 90071-3101

RE: City of Stockton v. Andrew C. Cobb, et al.
Case Number CV006247

Dear Ms. Danner:

Enclosed please find a check payable to Michael Cobb in the amount of \$90,200, representing a return of the funds deposited with the State Treasurer's Office in July 2007 relating to the above referenced matter. These funds are being returned to Michael Cobb for the following reasons.

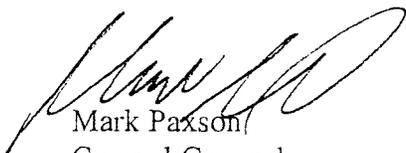
First, a Stipulation to Withdrawal of Deposit of Probable Just Compensation and Order was signed by Mr. Cobb and a representative of the City of Stockton on August 31, 2000, along with an Acknowledgement of Receipt of Deposit of Probable Just Compensation signed by Mr. Cobb on November 6, 2000. The Stipulation includes an order approved by the court for the State Treasurer's Office to issue payment to Mr. Cobb in the amount of \$90,200. The payment was apparently made sometime shortly after the execution of the Stipulation.

Second, although the matter remained open and was not dismissed until recently, I can find no authority, either statutory or pursuant to an order issued by the court in the relevant action, which allows the State of California to accept the redeposit of the funds into the Condemnation Deposits Fund. While, the Stipulation, by its terms, did not constitute a settlement of the action, it seems clear that, at least with respect to the withdrawal of the \$90,200 there was no dispute. Hence the agreement to the withdrawal, signed by both Mr. Cobb and a representative of the City of Stockton, as well as approved by the court. I am not aware of any intervening court order that changes this.

In addition to this payment, Mr. Cobb should also receive a payment directly from the City of Stockton in the amount of \$1,174.33, representing interest earned on the funds between its deposit and September 30, 2007. At this time, we do not know how much interest the funds have earned since October 1, 2007, because such determinations are made quarterly. The next such determination will not be made until December 31, 2007, when the current quarter closes. At that time, this office will communicate with the City of Stockton's counsel and advise them as to the additional interest owed to Mr. Cobb.

If you have any questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read 'Mark Paxson', written over a printed name.

Mark Paxson
General Counsel

cc: Vickie Archer
State Treasurer's Office

Tom Keeling
Counsel for City of Stockton

THE BACK OF THIS DOCUMENT CONTAINS AN ARTIFICIAL WATERMARK. VIEW AT AN ANGLE.



STATE OF CALIFORNIA

WARRANT NUMBER

07-722516

THE TREASURER OF THE STATE WILL PAY OUT OF THE

FUND NO. FUND NAME
0910 CONDEMNATION DEPOSITS F

IDENTIFICATION NO. XXXXX

MO. | DAY | YR.
0000 | 10 | 23 | 2007

90-1342/1211

07722516

TO: 722516
--- MICHAEL COBB

DOLLARS	CENTS
\$***90200	.00

John Chiang
JOHN CHIANG
CALIFORNIA STATE CONTROLLER



⑆121113423⑆ 077225166⑈

FORM 14-008 (2-97) CONTROLLER'S WARRANT



RICHARDS | WATSON | GERSHON
ATTORNEYS AT LAW – A PROFESSIONAL CORPORATION

355 South Grand Avenue, 40th Floor, Los Angeles, California 90071-3101
Telephone 213.626.8484 Facsimile 213.626.0078

Regina N. Danner
rdanner@rwglaw.com

December 6, 2007

FEDERAL EXPRESS

Coren Wong
Freeman, D'Aiuto, Pierce, Gurev, Keeling & Wolf
1818 Grand Canal Boulevard, Suite 4
Stockton, California 95207

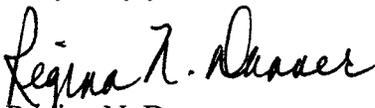
Re: City of Stockton v. Cobb
Refund of Deposit Made by City and Interest Accrued Thereon

Dear Mr. Wong:

Please find enclosed a money order for the sum of \$90,200.00. This represents Mr. Cobb's refund to the City of the deposit made by the City in the above-referenced case. Also enclosed is a check which was recently sent to Mr. Cobb from the City for interest which accrued on the funds on deposit.

If you have any questions regarding this matter, please do not hesitate to contact me.

Very truly yours,


Regina N. Danner

Enclosure(s)

12641-0002\1018825v1.doc

HOLD DOCUMENT UP TO THE LIGHT TO VIEW TRUE WATERMARK

COMMUNITY BANK

OFFICIAL CHECK

050503042

790 E. COLORADO BLVD.
PASADENA, CA 91101

CHEEL COBE

DATE December 05, 2007

16-3717
1220

TO
ORDER OF *****CITY OF STOCKTON*****

\$ *90,200.00*

EXACTLY \$90,200.00 DOLL 00cts

DOLLARS

TRIO #20

DRAWER: COMMUNITY BANK



by Integrated Payment Systems Inc., Englewood, Colorado
Argo Bank Ltd., Los Angeles, California

AUTHORIZED SIGNATURE

MP

⑈053221⑈ ⑆122037171⑆ 68000050503042⑈

FREEMAN, D'AIUTO, PIERCE, GUREV, KEELING & WOLF

MAXWELL M. FREEMAN
LEE ROY PIERCE, JR.
MICHAEL L. GUREV
THOMAS H. KEELING
ARNOLD J. WOLF
RONALD J. D'AIUTO*
*RETIRED

A PROFESSIONAL LAW CORPORATION

1818 GRAND CANAL BOULEVARD, SUITE 4, STOCKTON, CALIFORNIA 95207

JOHN W. VISS
ELIZABETH F. GUREV
COREN D. WONG
ALYSIA F. STEVENSON

December 10, 2007

Via FedEx Delivery

Regina N. Danner, Esq.
Richards, Watson & Gershon
355 South Grand Avenue, 40th Floor
Los Angeles, CA 90071-3101

**Re: *City of Stockton v. Cobb, et al.*,
San Joaquin County Superior Court, Case No. 006247**

Dear Ms. Danner:

We are in receipt of your letter to Mr. Wong dated December 6, 2007 and the attachments thereto. Those attachment include: (1) check No. 050503042 from Mr. Cobb in the amount of \$90,200, dated 12/05/07, payable to the City of Stockton; and (2) a transmittal letter dated November 29, 2007, from "Susan Will, Secretary/Redevelopment Department" of the City of Stockton, with an attached check (No. 1029860) from the City of Stockton in the amount of \$1,174.33, dated November 27, 2007, payable to Michael Cobb.

The originals of all the attachments to your December 6, 2007 letter are being returned to you as enclosures with this letter.

These documents are being returned for several reasons, some of which are outlined in Mr. Mark Paxson's October 24, 2007 letter to you, a copy of which is also enclosed for your reference. As you know, the City deposited the money as compensation for property interests which were the subject of the above-referenced action. As Mr. Paxson observed: in 2000 Defendant Cobb elected to withdraw - and did withdraw - the deposit of probable compensation in the above-referenced matter pursuant to a stipulation and Court order. No subsequent order of the Court has in any way affected that withdrawal of probable compensation. Mr. Cobb and his heirs enjoyed the benefit and use of that money for some seven years. The City of Stockton is not aware of any basis - legal, practical or otherwise - which would give rise to a "refund" of the compensation paid by the City in 2000 and lawfully withdrawn by Mr. Cobb.

Also for reasons referenced in Mr. Paxson's October 24, 2007 letter, the City is returning the check for \$1,174.33 which it issued to Mr. Cobb in compliance with instructions from Mr. Paxson at the State Office of the Treasurer. We understand that in July, 2007, Mr. Cobb attempted to deposit \$90,200 with the State Treasurer's Office. The State Treasurer's Office apparently assumed - erroneously - that this was a deposit made by or on behalf of the City of Stockton in an eminent domain action. Upon discovering its mistake, the Office of the

Regina N. Danner, Esq.
December 10, 2007
Page 2

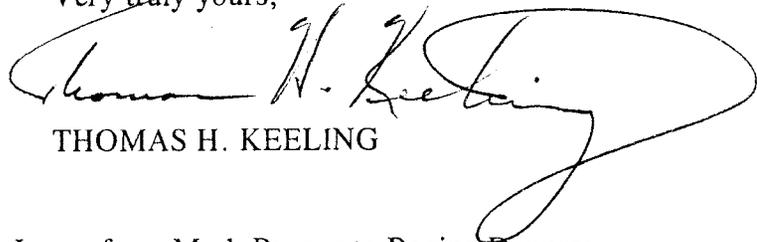
Treasurer explained – through Mr. Paxson’s letter – that the deposit had been made in error. It therefore returned the money to you, as counsel for Mr. Cobb.

As further explained by Mr. Paxson, during the brief period of time in 2007 during which the \$90,200 was with the State Treasurer’s Office interest was earned on that sum. That interest belongs to Mr. Cobb. The City has no right to that interest and has never claimed a right to that interest. For administrative reasons explained in the fourth paragraph of Mr. Paxson’s letter, however, the State sent the interest to the City of Stockton and could not send the accrued interest directly to Mr. Cobb at the same time it returned the principal sum to him. The State – again through Mr. Paxson’s letter – therefore instructed the City to send a check in the amount of \$1,174.33, which the City promptly did.

For the same reasons, as also explained by Mr. Paxson, the City will later receive another instruction from the State to send a specific sum directly to Mr. Cobb. Upon receiving that instruction, the City will promptly pay that sum of money to Mr. Cobb.

I should add that the exclusive authority to communicate with Mr. Cobb and/or his agents in connection with the above-referenced matter and the subject property has been delegated to our firm and Mr. John Luebberke, Assistant City Attorney for the City of Stockton. No other department, employee or agent of the City of Stockton is authorized to accept communications or otherwise transact business in connection with this matter or the subject property. If you have any questions, please do not hesitate to call.

Very truly yours,



THOMAS H. KEELING

THK:tmr

- Enclosures:
- (1) October 24, 2007, Letter from Mark Paxson to Regina Danner;
 - (2) Check 050503042 [payable to the City of Stockton in the amount of \$90,200, dated 12/05/07];
 - (3) Transmittal letter dated November 29, 2007, from “Susan Will, Secretary/Redevelopment Department” of the City of Stockton, re check No. 1029860 from the City of Stockton;
 - (4) City of Stockton check 1029860 [payable to Michael Cobb in the amount of \$1,174.33, dated 11/27/07], attached to transmittal letter of 11/29/07 from Susan Will to Regina Danner.

cc: John M. Luebberke, Esq., Deputy City Attorney (w/o enc., via U.S. Mail)
Ronald L. Palmquist, Supervising Real Property Agent (w/o enc., via U.S. Mail)

RW RICHARDS | WATSON | GERSHON
SG ATTORNEYS AT LAW – A PROFESSIONAL CORPORATION

355 South Grand Avenue, 40th Floor, Los Angeles, California 90071-3101
Telephone 213.626.8484 Facsimile 213.626.0078

RICHARD RICHARDS
(1916–1988)

GLENN R. WATSON
(RETIRED)

HARRY L. GERSHON
(1922–2007)

STEVEN L. DORSEY
WILLIAM L. STRAUSS
MITCHELL E. ABBOTT
GREGORY W. STEPANICICH
ROCHELLE BROWNE
WILLIAM B. RUDELL
QUINN M. BARROW
CAROL W. LYNCH
GREGORY M. KUNERT
THOMAS M. JIMBO
ROBERT C. CECCON
STEVEN H. KAUFMANN
KEVIN G. ENNIS
ROBIN D. HARRIS
MICHAEL ESTRADA
LAURENCE S. WIENER
STEVEN R. ORR
B. TILDEN KIM
SASKIA T. ASAMURA
KAYSER O. SUME
PETER M. THORSON
JAMES L. MARKMAN
CRAIG A. STEELE
T. PETER PIERCE
TERENCE R. BOGA
LISA BOND
JANET E. COLESON
ROXANNE M. DIAZ
JIM G. GRAYSON
ROY A. CLARKE
WILLIAM P. CURLEY III
MICHAEL F. YOSHIBA
REGINA N. DANNER
PAULA GUTIERREZ BAEZA
TERESA HO-URANO
BRUCE W. GALLOWAY
DIANA K. CHUANG
PATRICK K. BOBKO
BILLY D. DUNSMORE
AMY GREYSON
DEBORAH R. HAKMAN
D. CRAIG FOX
ALEXANDER ABBE
SUSAN E. RUSNAK
DAVID M. SNOW
LOLLY A. ENRIQUEZ
KIRSTEN R. BOWMAN
G. INDER KHALSA
GINETTA L. GIOVINCO
TRISHA ORTIZ
CANDICE K. LEE
DAVID G. ALDERSON
MELISSA M. CROSTHWAITE
MARICELA E. MARROQUIN
GENA M. STINNETT
JENNIFER PETRUSIS
STEVEN L. FLOWER
CHRISTOPHER J. DIAZ
MATTHEW E. COHEN
DEBBIE Y. CHO
GEOFFREY WARD
ERIN L. POWERS
TOUSSAINT S. BAILEY
WHITNEY G. McDONALD
KENNETH J. POOLE
SERITA R. HOLNESS

May 15, 2008

Thomas Keeling
Freeman, D'Aiuto, Pierce, Gurev, Keeling & Wolf
1818 Grand Canal Boulevard, Suite 4
Stockton, California 92507

Re: Cobb v. City of Stockton, et al.
Funds Previously Deposited With the Court

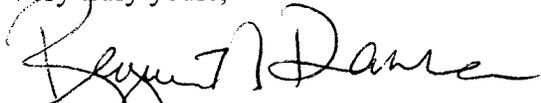
Dear Mr. Keeling:

As you are aware, in the prior lawsuit entitled City of Stockton v. Cobb, et al., and identified as San Joaquin County Superior Court, Case No. 006247, Mr. Cobb made a good faith attempt to re-deposit the sum of \$90,200 with the Court. This sum represented the sum that the City had originally deposited in that action. The State Treasurer's Office subsequently returned these funds to Mr. Cobb, along with the interest which had accrued thereon.

Please be advised that Mr. Cobb has caused the principal amount to be deposited into an interest bearing account trust account. These funds are being held in trust pending the resolution of the above-referenced case.

If you have any questions regarding this matter, please contact me at your earliest convenience.

Very truly yours,



Regina N. Danner

cc: Michael Cobb

12641-0002\1056904v1.doc

OF COUNSEL
MARK L. LAMKEN
SAYRE WEAVER
NORMAN A. DUPONT
JIM R. KARPIAK

SAN FRANCISCO OFFICE
TELEPHONE 415.421.8484

ORANGE COUNTY OFFICE
TELEPHONE 714.990.0901

FREEMAN, D'AIUTO, PIERCE, GUREV, KEELING & WOLF

MAXWELL M. FREEMAN
LEE ROY PIERCE, JR.
MICHAEL L. GUREV
THOMAS H. KEELING
ARNOLD J. WOLF
RONALD J. D'AIUTO*
*RETIRED

A PROFESSIONAL LAW CORPORATION

1818 GRAND CANAL BOULEVARD, SUITE 4, STOCKTON, CALIFORNIA 95207

JOHN W. VISS
ELIZABETH F. GUREV
COREN D. WONG
ALYSIA F. STEVENSON

May 21, 2008

Via Facsimile (213) 626-0078
and United States Mail

Regina N. Danner, Esq.
Richards, Watson & Gershon
355 South Grand Avenue, 40th Floor
Los Angeles, CA 90071-3101

Re: *Cobb v. City of Stockton*
San Joaquin County Superior Court, Case No. CV035015

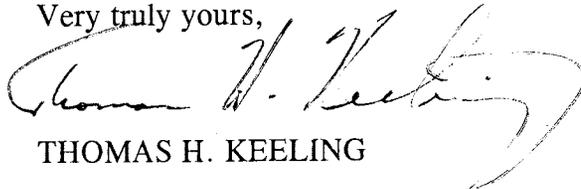
Dear Ms. Danner:

We are in receipt of your letter dated May 15, 2008, in which you advise that Mr. Cobb has caused certain monies to be deposited into a trust account "pending the resolution of the above-referenced case."

Your client is free to do whatever he pleases with his money, of course. Please be advised, however, that any money Mr. Cobb has deposited into a trust account has nothing whatsoever to do with the above-referenced matter. The City has no interest in, or claim to, any money held by Mr. Cobb. Nor has the City ever requested, suggested, or demanded that Mr. Cobb place any money in any trust account for any purpose whatsoever. Nor does the "resolution" of the above-referenced matter have anything at all to do with the disposition of such money.

It seems odd that Mr. Cobb would notify us that he has made such a deposit. By this maneuver, Mr. Cobb cannot "un-ring the bell" or rewrite history with respect to the previous litigation between Mr. Cobb and the City. Nor can he hope to manufacture a wrong or a grievance by this kind of gamesmanship. As you know, in 1998 the City deposited money as compensation for property interests which were the subject of that earlier action. In 2000, Mr. Cobb elected to withdraw - and did withdraw - the deposited money pursuant to a stipulation and court order. No subsequent order of the court in that case in any way affected that withdrawal of that money. Andrew Cobb and his heirs, including your client, enjoyed the benefit and use of that money for many years. The City has no interest in the money. Period.

Very truly yours,



THOMAS H. KEELING

THK:tmr

cc: John M. Luebberke, Esq., Assistant City Attorney (via U.S. Mail)

Exhibit G

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN JOAQUIN

CITY OF STOCKTON,
Plaintiff (s),

Vs.

ANDREW C. COBB, et al.
Defendant(s),

Date of Hearing: July 9, 2007

Judge: CARTER HOLLY

Clerk: Miltonetta Atwater

Bailiff: AnnaMarie DiGiorgio

Reporter: Cara Poe

Case No: CV006247

NATURE OF HEARING: MOTION TO DISMISS PURSUANT TO CCP 583.360

Appearances:

Plaintiff(s): THOMAS KEELING
COREN WONG
Defendant(s) REGINA N. DANNER

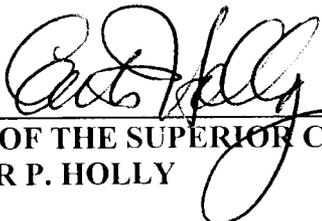
This matter came on for hearing at 10:00 a.m. in Dept. 42 of the Superior Court. Counsel were present for their respective parties. The matter was argued before the court and submitted. The court took the matter under submission and now renders the following order:

This case is dismissed for lack of prosecution. CCP § 583.310 requires that an action be brought to trial within five years after the action is commenced.

The case was filed on October 23, 1998, almost nine years ago.

Dated:

October 9, 2007



JUDGE OF THE SUPERIOR COURT
CARTER P. HOLLY

SAN JOAQUIN COUNTY SUPERIOR COURT
222 E. WEBER AVE.
DEPARTMENT 42
STOCKTON CA 95202

Filed OCT - 9 2007,
ROSA JUNQUEIRO, CLERK

By Miltonetta Atwater
DEPUTY

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN JOAQUIN

CITY OF STOCKTON,
Plaintiff,

ANDREW C. COBB, et al.
Defendants,

No. CV006247

CERTIFICATE OF MAILING

I am a Deputy clerk of the above entitled Court and not a party to the above entitled action.

That on October 9, 2007 I served true and correct copies of ORDER AFTER HEARING

by depositing the sealed envelope with the United States Postal Service with the postage fully prepaid. placing the envelope for collection and mailing following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid.

* THOMAS H. KEELING
FREEMAN D'AIUTO PIERCE GUREV &
1818 Grand Canal Blvd. Suite 4
Stockton CA 95207

* COREN D. WONG
FREEMAN D'AIUTO PIERCE GUREV &
1818 Grand Canal Blvd. Suite 4
Stockton CA 95207

* REGINA N. DANNER
RICHARDS WATSON & GERSHON
355 S. Grand Avenue, 40th Floor
Los Angeles CA 90071-3101

*

*

*

See attached mailing list

Executed at Stockton, California, on the above date specified.

Miltonetta Atwater
Deputy Clerk of the Superior Court
Miltonetta Atwater

Exhibit H

1
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RICHARDS, WATSON & GERSHON
A Professional Corporation
REGINA N. DANNER (137210)
MARICELA E. MARROQUIN (232321)
355 South Grand Avenue, 40th Floor
Los Angeles, CA 90071-3101
Telephone: (213) 626-8484
Facsimile: (213) 626-0078

FILED
MAY 17 2014 10:36
COURT CLERK
BY MOLICHA FORDE
DEPUTY

Attorneys for Plaintiff,
Michael A. Cobb, Trustee of the
Andrew C. Cobb 1992 Revocable Trust
dated July 16, 1992

THIS CASE HAS BEEN ASSIGNED TO
JUDGE ELIZABETH HUNTERREYS IN
DEPARTMENT 41 FOR ALL PURPOSES,
INCLUDING TRIAL

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN JOAQUIN**

MICHAEL A. COBB, Trustee of the
Andrew C. Cobb 1992 Revocable Trust
dated July 16, 1992,

Case No. **CV 033**
**COMPLAINT FOR INVERSE
CONDEMNATION**

Plaintiff,

vs.

CITY OF STOCKTON, a municipal
corporation; and DOES 1-50, Inclusive,

Defendants.

Plaintiff, Michael A. Cobb, Trustee of the Andrew C. Cobb 1992 Revocable Trust
dated July 16, 1992 ("Plaintiff"), alleges as follows:

I. INTRODUCTION

1. The Andrew C. Cobb 1992 Revocable Trust dated July 16, 1992 owns the
real property located at 4218 Pock Lane, Stockton, California 95206 identified as San
Joaquin Assessor's Parcel Number 179-180-07 ("Cobb Property") in fee. Plaintiff,
Michael A. Cobb, is the trustee of the Cobb Trust and has the power to prosecute this
action for the protection of the Cobb Property.

IRIN RICHARDS | WATSON | GERSHON
ATTORNEYS AT LAW - A PROFESSIONAL CORPORATION

IRIA RICHARDS | WATSON | GERSHON
ATTORNEYS AT LAW - A PROFESSIONAL CORPORATION

1 2. Defendant City of Stockton (“City”) is a municipal corporation organized
2 and existing under the laws of the State of California.

3 3. Plaintiff is ignorant of the true names and capacities of defendants sued
4 herein as DOES 1-50, Inclusive, and therefore sues these defendants by such fictitious
5 names. Plaintiff will amend this complaint to allege their true names and capacities when
6 ascertained.

7 4. Plaintiff is informed and believes and based thereon alleges, that each
8 fictitiously named defendant is in some manner responsible for the injury and damage to
9 Plaintiff as alleged herein.

10 5. On October 23, 1998, City filed an eminent domain action to acquire a
11 portion of the Cobb property for the construction of a public roadway. The eminent
12 domain action was filed in the Superior Court of the State of California, County of San
13 Joaquin, and was further identified as Case No. CV006247 (“1998 Action”). More
14 specifically, the City sought to acquire an “easement” through the Cobb Property. The
15 property that the City sought to acquire is legally described in Exhibit “A” to the
16 complaint in eminent domain that was filed in the 1998 Action. The Complaint in
17 Eminent Domain is attached as Exhibit “1” to this complaint. The property that was the
18 subject of the 1998 Action will be hereby referred to as the “Property Interest”.

19 6. When the City filed the 1998 Action, the Cobb Property was owned by
20 Andrew C. Cobb 1992 Revocable Trust dated July 16, 1992. Andrew C. Cobb, was the
21 trustee of the Andrew C. Cobb 1992 Revocable Trust dated July 16, 1992. On or about
22 November 30, 1998, Andrew C. Cobb, as trustee of the Andrew C. Cobb 1992 Revocable
23 Trust dated July 16, 1992 answered the Complaint in Eminent Domain. Andrew C. Cobb
24 was killed in early 2000. After his father’s death, Michael A. Cobb appeared in the 1998
25 Action as Executor of the Estate of Andrew C. Cobb and as Successor Trustee of the
26 Andrew C. Cobb 1992 Revocable Trust dated July 16, 1992.

27 7. On or about December 31, 1998, the City took possession of the Property
28 Interest that was the subject of the 1998 Action pursuant to an Order for Prejudgment

1 Possession. A true and correct copy of the Order for Prejudgment Possession is attached
2 as Exhibit "2". The City constructed a public roadway on the Property Interest that runs
3 through the Cobb Property. The City, however, failed to prosecute the 1998 Action and
4 the fair market value of the Property Interest was never determined.

5 8. On July 9, 2007, a motion to dismiss the 1988 Action pursuant to Code of
6 Civil Procedure Section 585.360 came on for hearing before the Honorable Carter P.
7 Holly, Judge Presiding. The matter was argued before the Court and submitted.

8 9. On October 9, 2007, the Court dismissed the case for lack of prosecution.
9 The Court ruled that Code of Civil Procedure Section 585.310 required that an action be
10 brought to trial within five years after the action is commenced. The City had failed to
11 prosecute the case for almost nine years, so the matter was dismissed.

12 10. Plaintiff could not file this action until after the 1998 Action was dismissed
13 for lack of prosecution because the 1998 Action was still pending.

14 11. The Cobb Property has been damaged because a public roadway has been
15 built through it. The public roadway bisects the Cobb Property rendering the remaining
16 property useless and undevelopable. Plaintiff has not received just compensation for this
17 taking of private property by a public entity.

18
19
20 **FIRST CAUSE OF ACTION**
21 **AS AGAINST ALL DEFENDANTS**

22 **(Inverse Condemnation - Article I Section 19 of the California Constitution)**

23 12. Plaintiff hereby realleges and incorporates by reference paragraphs 1
24 through 12 above.

25 13. The Andrew C. Cobb 1992 Revocable Trust dated July 16, 1992 is the fee
26 owner of the Cobb Property. Michael C. Cobb, is the trustee of the Andrew C. Cobb 1992
27 Revocable Trust dated July 16, 1992. When the 1998 Action was filed on October 23,
28 1998, Andrew C. Cobb, was the Trustee of the Andrew C. Cobb Revocable Trust which
owned the Cobb Property. At no time has the City taken title to the Property Interest or

1 any portion of the Cobb Property. The Andrew C. Cobb 1992 Revocable Trust dated July
2 16, 1992 has continued to pay real estate taxes on this parcel for all these years.

3 14. On December 31, 1998, the City obtained an Order for Prejudgment
4 Possession of the Property Interest after it deposited money with the Court in the 1998
5 Action. See Exhibit "2." The City subsequently took possession of the Property Interest
6 and built a public roadway through the middle of the Cobb property. The City was
7 negligent in failing to prosecute the 1998 Action to determine the true fair market value of
8 the Cobb property as required by the Constitution. The City's acts constitute a taking
9 because the City has physically invaded and appropriated a valuable property right. The
10 City's taking has caused the Cobb Property to diminish in value. The Cobb Property
11 cannot be developed with a road running through it.

12 15. The City took and damaged the Cobb Property for a public use because it
13 used the Cobb Property to construct a public roadway. The general public has continually
14 used the roadway since it was constructed without any benefit to the property owner and
15 without payment of just compensation.

16 16. The City's actions caused injury to the Cobb Property because the
17 construction of the public roadway through the Cobb Property precluded the development
18 of the Cobb Property. The construction of the public roadway rendered the remaining
19 land an uneconomic remnant and thus constitutes a taking of the Cobb Property in fee.

20 17. The City has not paid Plaintiff just compensation for the taking. On
21 October 23, 1998, the City deposited the sum of Ninety Thousand Two Hundred Dollars
22 (\$90,200.00) with the Court in order to obtain prejudgment possession of the Cobb
23 Property. On November 6, 2002, pursuant to a stipulation between Michael A. Cobb, as
24 Executor of the Estate of Andrew C. Cobb and Trustee of the Andrew C. Cobb 1992
25 Revocable Trust dated July 16, 1992 and the City, Michael A. Cobb withdrew the funds
26 on deposit with the Court. The issue of just compensation in the 1998 Action was never
27 tried before a judge or jury and remained unresolved upon the dismissal of the 1998
28 Action.

1 18. The City has the power of eminent domain and, thus, may be sued for
2 inverse condemnation.

3 19. Although the City took possession of the Property Interest in 1998, Plaintiff
4 could not initiate this action until after the 1998 Action was dismissed for failure to
5 prosecute. Prior to the action being dismissed, it was premature to file this action because
6 the eminent domain action was still pending.

7
8 **PRAYER FOR RELIEF**

9 Plaintiff hereby prays as follows:

- 10 1. That the amount of just compensation for the Property Interest be
- 11 ascertained and determined;
- 12 2. For damages in an amount yet to be ascertained with interest thereon at the
- 13 legal rate from the date of those damages;
- 14 3. Litigation expenses;
- 15 4. Costs of suit;
- 16 5. Real estate taxes, maintenance costs, insurance costs; and
- 17 6. For such other relief as the Court deems just and proper.

18 DATED: March 14, 2008

RICHARDS, WATSON & GERSHON
A Professional Corporation
REGINA N. DANNER
MARICELA E. MARROQUIN

19
20
21
22 By: 
23 REGINA M. DANNER
24 Attorneys for Defendant
25 MICHAEL A. COBB, Trustee of the Andrew C.
26 Cobb 1992 Revocable Trust dated July 16, 1992
27
28

RICHARDS | WATSON | GERSHON
ATTORNEYS AT LAW - A PROFESSIONAL CORPORATION

Exhibit I

IRW RICHARDS | WATSON | GERSHON
ATTORNEYS AT LAW - A PROFESSIONAL CORPORATION

1 RICHARDS, WATSON & GERSHON
A Professional Corporation
2 REGINA N. DANNER (137210)
KIRSTEN R. BOWMAN (181627)
3 MARICELA E. MARROQUIN (232321)
355 South Grand Avenue, 40th Floor
4 Los Angeles, CA 90071-3101
Telephone: (213) 626-8484
5 Facsimile: (213) 626-0078

6 Attorneys for Plaintiff,
Michael A. Cobb, Trustee of the
7 Andrew C. Cobb 1992 Revocable Trust
dated July 16, 1992
8

9
10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **COUNTY OF SAN JOAQUIN**

12
13 MICHAEL A. COBB, Trustee of the
Andrew C. Cobb 1992 Revocable Trust
14 dated July 16, 1992,

15 Plaintiff,

16 vs.

17 CITY OF STOCKTON, a municipal
corporation; and DOES 1-50, Inclusive,

18 Defendants.
19

Case No. CV 035015

**FIRST AMENDED COMPLAINT FOR
INVERSE CONDEMNATION**

20
21 Plaintiff, Michael A. Cobb, Trustee of the Andrew C. Cobb 1992 Revocable Trust
22 dated July 16, 1992 ("Plaintiff"), alleges as follows:

23 **I. INTRODUCTION**

24 1. The Andrew C. Cobb 1992 Revocable Trust dated July 16, 1992 ("Cobb
25 Trust") owns the real property located at 4218 Pock Lane, Stockton, California 95206
26 identified as San Joaquin Assessor's Parcel Number 179-180-07 ("Cobb Property") in fee.
27 Plaintiff, Michael A. Cobb, is the trustee of the Cobb Trust and has the power to prosecute
28 this action for the protection of the Cobb Property.

1 2. Defendant City of Stockton (“City”) is a municipal corporation organized
2 and existing under the laws of the State of California.

3 3. Plaintiff is ignorant of the true names and capacities of defendants sued
4 herein as DOES 1-50, Inclusive, and therefore sues these defendants by such fictitious
5 names. Plaintiff will amend this complaint to allege their true names and capacities when
6 ascertained.

7 4. Plaintiff is informed and believes and based thereon alleges, that each
8 fictitiously named defendant is in some manner responsible for the injury and damage to
9 Plaintiff as alleged herein.

10 5. On October 23, 1998, the City filed an eminent domain action seeking to
11 condemn a permanent easement across one parcel of land owned by the Cobb Trust for
12 the construction of a public roadway. The eminent domain action was filed in the Superior
13 Court of the State of California, County of San Joaquin, and was further identified as Case
14 No. CV006247 (“1998 Action”). Specifically, the City sought to acquire an “easement”
15 through the Cobb Property, thereby, bisecting the property into two separate parcels of
16 land. The property that the City sought to acquire is legally described in Exhibit “A” to
17 the Complaint in Eminent Domain that was filed in the 1998 Action. The Complaint in
18 Eminent Domain is attached as Exhibit “1” to this complaint. The property that was the
19 subject of the 1998 Action will be hereby referred to as the “Property Interest”.

20 6. When the City filed the 1998 Action, the Cobb Property was owned by the
21 Cobb Trust. Andrew C. Cobb, was the trustee of the Cobb Trust. On or about November
22 30, 1998, Andrew C. Cobb filed an Answer to the Complaint in Eminent Domain. The
23 Answer to the Complaint in Eminent Domain is attached as Exhibit 2.

24 7. By filing an Answer to the Complaint, Andrew C. Cobb, preserved his
25 constitutional rights to contest the City’s right to take the Property Interest, and to receive
26 just compensation to be determined by a jury. It was not necessary for plaintiff to file a
27 cross-complaint for inverse condemnation because he preserved his constitutional rights
28 in his Answer to the Complaint in Eminent Domain. Moreover, Andrew C. Cobb

1 reasonably believed that his constitutional rights were protected by having filed an
2 Answer to the Complaint in Eminent Domain.

3 8. On or about December 31, 1998, the City took pre-judgment possession of
4 the Property Interest that was the subject of the 1998 Action pursuant to an Order for
5 Prejudgment Possession. A true and correct copy of the Order for Prejudgment
6 Possession is attached as Exhibit "3".

7 9. Andrew C. Cobb was originally represented by the law firm of Atherton and
8 Dozier, who withdrew on October 15, 1999. Andrew C. Cobb continued to represent the
9 Cobb Trust in pro per, and attempted to negotiate with the City of Stockton regarding the
10 Property Interest until he was killed in early 2000. After Andrew C. Cobb's death, there
11 was a dispute among his heirs regarding the ownership interests of his property. In late
12 2000, Michael A. Cobb, his son, appeared in the 1998 Action as Executor of the Estate of
13 Andrew C. Cobb and as Successor Trustee of the Trust. In late 2000, Michael A. Cobb
14 withdrew the funds on deposit, thereby, waiving any claims regarding the City's right to
15 take but not his right to a determination of just compensation by a jury. Michael A. Cobb,
16 was also represented by Atherton and Dozier, who assisted in the negotiations with the
17 City.

18 10. The City eventually constructed a public roadway on the Property Interest
19 that runs through the Cobb Property.

20 11. On July 9, 2007, the Court commenced a motion to dismiss the 1998 Action
21 pursuant to Code of Civil Procedure Section 585.360. It came on for hearing before the
22 Honorable Carter P. Holly, Judge Presiding. The matter was argued before the Court and
23 submitted.

24 12. On October 9, 2007, the Court dismissed the case for lack of prosecution.
25 The Court ruled that Code of Civil Procedure Section 585.310 required that an action be
26 brought to trial within five years after the action is commenced.

27 13. The City failed to prosecute the case for almost nine years, hence the
28 Eminent Domain Complaint was dismissed.

1 14. The City never obtained a Final Judgment of Condemnation and a Final
2 Order of Condemnation of the Property Interest. The Cobb Trust is still the legal owner of
3 the Property Interest.

4 15. Plaintiff and the City continued to negotiate through the years, both verbally
5 and in writing. For example, plaintiff's attorney confirmed in writing one of the many
6 settlement communications with the City, at which time the City promised to negotiate
7 with plaintiff. A copy of a memo memorializing a conversation with the City is attached
8 as Exhibit 4. The City knowingly led plaintiff to believe that it intended to settle the
9 issues and/or prosecute the 1998 Action when in fact it did not have such intentions. As
10 such, plaintiff detrimentally relied upon the City to continue to engage in good faith
11 negotiations, and to prosecute the 1998 Action. Since Andrew C. Cobb filed an Answer
12 to the Complaint in Eminent Domain, plaintiff believed that his father had preserved the
13 Trust's right to have just compensation determined by a jury. Plaintiff had no idea that
14 the City intended to acquire the Property Interest by obtaining possession of the Property
15 Interest in 1998, falsely negotiate with the Plaintiff and fail to prosecute the action
16 resulting in a dismissal of the 1998 Action.

17 16. The City, by its own admission, failed to prosecute the 1998 Action under
18 the premise that it could not prosecute the 1998 Action against the Trust alleging plaintiff,
19 Michael A. Cobb never retained counsel. Hence, unbeknownst to plaintiff, the City had
20 no intention of settling the 1998 Action.

21 17. When the Court dismissed the 1998 Action, plaintiff's right to receive
22 probable just compensation to be determined by a jury was terminated, and therefore, the
23 taking by the City without the payment of just compensation occurred.

24 18. The Cobb Property has been damaged because a public roadway for the
25 public benefit has been constructed on it. The public roadway bisects the Cobb Property
26 rendering the remaining property useless and undevelopable. Plaintiff has not received
27 just compensation as determined by a jury for this taking of private property by a public
28 entity.

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**FIRST CAUSE OF ACTION
AS AGAINST ALL DEFENDANTS**

(Inverse Condemnation - Article I Section 19 of the California Constitution)

19. Plaintiff hereby realleges and incorporates by reference paragraphs 1 through 18 above.

20. The Cobb Trust is the fee owner of the Cobb Property. Michael C. Cobb, is the trustee of the Cobb Trust. When the 1998 Action was filed on October 23, 1998, Andrew C. Cobb, was the Trustee of the Cobb Trust, which owned the Cobb Property. At no time has the City taken title to the Property Interest or any portion of the Cobb Property. The Trust has continued to pay real estate taxes on the entire parcel, including the Property Interest, up to the present.

21. On December 31, 1998, the City obtained an Order for Prejudgment Possession of the Property Interest after it deposited money with the Court in the 1998 Action. See Exhibit "2." The City subsequently took possession of the Property Interest and built a public roadway through the middle of the Cobb Property. The City was negligent in failing to prosecute the 1998 Action to determine the true fair market value of the Cobb Property as required by the Constitution.

22. The City knowingly led plaintiff to believe that it intended to settle the issues and/or prosecute the 1998 Action when in fact it did not have such intentions. As such, plaintiff detrimentally relied upon the City to continue to engage in good faith negotiations, and to prosecute the 1998 Action. Since Andrew C. Cobb filed an Answer to the Complaint in Eminent Domain, plaintiff believed that his father had preserved the Trust's right to have just compensation to be determined by a jury. Plaintiff had no idea that the City intended to acquire the Property Interest by obtaining possession of the Property Interest in 1998, falsely negotiate with the plaintiff, do nothing to move the case forward, and then allow the Court to dismiss the 1998 Action.

IRVING RICHARDS | WATSON | GERSHON
ATTORNEYS AT LAW - A PROFESSIONAL CORPORATION

1 23. When the Court dismissed the 1998 Action, plaintiff's right to receive
2 probable just compensation to be determined by a jury was terminated, and therefore, the
3 taking by the City without the payment of just compensation occurred.

4 24. The City's acts constitute a taking because the City has physically invaded
5 and appropriated a valuable property right for a public use. The City's taking has caused
6 the Cobb Property to diminish in value. The Cobb Property cannot be developed with a
7 road running through it.

8 25. The City took and damaged the Cobb Property for a public use because it
9 used the Cobb Property to construct a public roadway. The general public has continually
10 used the roadway since it was constructed without any benefit to the property owner and
11 without payment of just compensation.

12 26. The City's actions caused injury to the Cobb Property because the
13 construction of the public roadway through the Cobb Property precluded the development
14 of the Cobb Property. The construction of the public roadway rendered the remaining
15 land an uneconomic remnant and thus constitutes a taking of the Cobb Property in fee.

16 27. The City has not paid Plaintiff just compensation for the taking. On
17 October 23, 1998, the City deposited the sum of Ninety Thousand Two Hundred Dollars
18 (\$90,200.00) with the Court in order to obtain prejudgment possession of the Property
19 Interest. On November 6, 2000, pursuant to a stipulation between Michael A. Cobb, as
20 Executor of the Cobb Trust and the City, Michael A. Cobb withdrew the funds on deposit
21 with the Court. The issue of just compensation in the 1998 Action was never tried before
22 a judge or jury and remained unresolved upon the dismissal of the 1998 Action.

23 28. The City has the power of eminent domain and, thus, may be sued for
24 inverse condemnation.

25 29. Although the City took possession of the Property Interest in 1998,
26 plaintiff's cause of action accrued when plaintiff was denied the right to a determination
27 of just compensation by a jury when the 1998 Action was dismissed for failure to
28 prosecute. Prior to the action being dismissed, it was not necessary to file this action

1 because the eminent domain action was still pending, and plaintiff had preserved his
2 rights to just compensation by having Answered the Complaint in Eminent Domain.

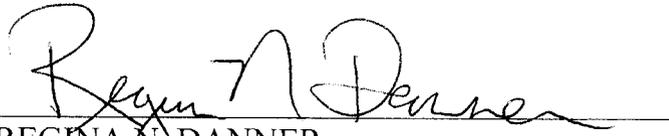
3
4 **PRAYER FOR RELIEF**

5 Plaintiff hereby prays as follows:

- 6 1. That the amount of just compensation for the Property Interest be
- 7 ascertained and determined;
- 8 2. For damages in an amount yet to be ascertained with interest thereon at the
- 9 legal rate from the date of those damages;
- 10 3. Attorney's fees and litigation expenses;
- 11 4. Costs of suit;
- 12 5. Real estate taxes, maintenance costs, insurance costs; and
- 13 6. For such other relief as the Court deems just and proper.

14 DATED: July 11, 2008

RICHARDS, WATSON & GERSHON
A Professional Corporation
REGINA N. DANNER
KIRSTEN R. BOWMAN
MARICELA E. MARROQUIN

15
16
17
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19 By: 
REGINA N. DANNER
Attorneys for Defendant
MICHAEL A. COBB, Trustee of the Andrew C.
Cobb 1992 Revocable Trust dated July 16, 1992

RICHARDS | WATSON | GERSHON
ATTORNEYS AT LAW - A PROFESSIONAL CORPORATION


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FILED
SUPERIOR COURT-STOCKTON

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JANICE VALONA, CLERK

BY Kathy Valona
DEPUTY

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2 RONALD J. D'AIUTO, State Bar Number 91962
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13 425 N. El Dorado Street
14 Stockton, CA 95202
15 Telephone: (209) 937-8333

16 Attorneys for plaintiff
17 CITY OF STOCKTON

THIS CASE HAS BEEN ASSIGNED TO
JUDGE BOB MC NATT IN DEPARTMENT 11
FOR ALL PURPOSES, INCLUDING TRIAL

18 SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN JOAQUIN
19 STOCKTON BRANCH

20 CITY OF STOCKTON, a municipal
21 corporation,

22 Plaintiff,

23 vs.

24 ANDREW C. COBB, Trustee of the
25 Andrew C. Cobb 1992 Revocable Trust
26 dated July 16, 1992; TITLE INSURANCE
27 AND TRUST COMPANY, a California
28 corporation; ALDO B. TOGNIALLI;
ROSALIE TOGNIALLI; and DOES I
through X, inclusive; AND ALL
PERSONS CLAIMING AN INTEREST
IN THE PROPERTY DESCRIBED
IN THE COMPLAINT,

Defendants.

NO. CV 006247

COMPLAINT - ACTION IN
EMINENT DOMAIN
[Code Civ. Proc., § 1250.310]

APN: 179-180-07

Plaintiff, City of Stockton, a municipal corporation and charter city (City), complains of
defendants, and each of them, and for its cause of action alleges that:

1. The proceeding is instituted and the lands and interests hereinafter described are

1 taken and condemned pursuant to and under the provisions and authority and for the purposes and
2 uses authorized by Article I, Section 19 of the Constitution of the State of California, and sections
3 1240.010, 1240.030, 1240.050, 1240.110, 1240.120 and 1250.010 et seq. of the Code of Civil
4 Procedure of the State of California.

5 2. City is now, and at all times hereafter stated was, a public entity organized and
6 existing under and by virtue of the laws of the State of California, and is vested by such
7 constitution and laws with the power of eminent domain for public use.

8 3. City seeks to acquire interest in the real property hereinafter described for a public
9 improvement project, to wit: the construction of a public roadway, and modification of grade to
10 provide street, highway and sidewalk services to the community. City is authorized by
11 Government Code sections 37350.5, 40403, 40404 and 66462.5, as well as Title 7, Part 3, of
12 Code of Civil Procedure to acquire private property for the project.

13 4. City seeks to acquire an easement on that certain real property located within the
14 City of Stockton, County of San Joaquin, California, as more particularly described in Exhibit A.
15 Said real property and improvements, if any, are hereinafter referred to as the "Subject Property."

16 5. Exhibit B is a map portraying the Subject Property and showing the location of said
17 public improvement project for which the Subject Property is sought to be acquired.

18 6. Prior to commencement of this action, and after notice pursuant to Code of Civil
19 Procedure section 1235.235, at a meeting of the City Council of plaintiff City of Stockton on
20 August 18, 1998, said City Council, by a vote of at least two-thirds (2/3), passed Resolution
21 No. R-98-0353, a true and correct copy of which is attached hereto as Exhibit C and by reference
22 made a part thereof, stating and determining that the public interest and necessity require the
23 acquisition of the property interest described in said Exhibit A for the purposes and uses set forth
24 above, which uses are public uses authorized by law. The City Council found and determined in
25 said Resolution that:

26 a. the Subject Property to be acquired was described in an exhibit attached and
27

1 incorporated by reference into the Resolution;

- 2 b. the Subject Property is to be acquired for a public use and a public project,
3 that is the construction and installation of a public street and bridge crossing
4 pursuant to the authority granted by California Government Code and Code
5 of Civil Procedure;
- 6 c. the public interest and necessity require the acquisition, construction and
7 installation of the proposed project;
- 8 d. the proposed project is planned and located in the manner which would be
9 the most compatible with the greatest public good and the least private
10 injury;
- 11 e. the Subject Property described is necessary for the proposed project;
- 12 f. the offer required by section 7267.2 of the Government Code of the State of
13 California has been made to the owners of record of the Subject Property;
- 14 g. the City Attorney of the City of Stockton was authorized and empowered to
15 acquire the Subject Property by condemnation in accordance with California
16 law, to deposit the amount of probable compensation in compliance with the
17 California Code of Civil Procedure, to take all actions as necessary to secure
18 immediate prejudgment possession and use of the property to be condemned,
19 and to utilize the services of private counsel as co-counsel to prosecute said
20 proceedings.

21 7. Names of all the owners and of all persons claiming to any right, title, estates, lien
22 or interest in, on, to or against the real property sought to be condemned in this action, or any part
23 thereof, so far as they are known to City, are hereinafter set forth. For the convenience of the
24 court and not as allegations by which City intends to be bound, their possible interests are set forth
25 respectively:

Defendant

Interest

Andrew C. Cobb

Trustee for fee owner, the Andrew C. Cobb 1992 Revocable Trust dated July 16, 1992

Title Insurance and Trust Company, a California corporation

Trustee under a Deed of Trust recorded April 21, 1977, in Volume 4249, page 559, San Joaquin County Records

Aldo B. Tognialli

Beneficiary under a Deed of Trust recorded April 21, 1977, in Volume 4249, page 559, San Joaquin County Records

Rosalie Tognialli

Beneficiary under a Deed of Trust recorded April 21, 1977, in Volume 4249, page 559, San Joaquin County Records

8. Defendant DOES I through X, inclusive, have, or claim to have, an interest in the Property, the exact nature of which is unknown to City. The true names or capacities, whether individual, corporate, associate or otherwise of defendants DOES I through X, inclusive, being unknown, City sues said defendants by such fictitious names and will seek leave to amend this Complaint to show their true names and capacities when the same have been ascertained.

WHEREFORE, City prays:

1. That defendants, and each of them, be required by answer to set forth the nature and extent of their several estates and interests in the Subject Property or any part or portion sought to be condemned herein, and that such several estates and interests may be determined;

2. All liens and encumbrances against the Subject Property be extinguished and deducted from the Judgment;

3. That the County Assessor and/or Tax Collector of the County of San Joaquin be directed to provide the required information as to any taxes owing on the Subject Property; and

4. For judgment:

a. decreeing that the real property described in Exhibit A, to the extent of the title and interest which City seeks to acquire by this action, is condemned for necessary public uses of the City, as authorized by law and set forth in the Resolution of Necessity (Exhibit C), and that all of said land is necessary and

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suitable therefor;

b. determining the value of the Subject Property subject of this action, and each separate interest therein, and directing the payment of each separate interest to the persons entitled thereto; and

c. for such other and further relief as the court shall deem just and proper.

Dated: October 23, 1998

**FREEMAN & D'AIUTO
A PROFESSIONAL LAW CORPORATION**

By: 

JANICE D. MAGDICH
Attorneys for plaintiff
CITY OF STOCKTON

CITYCOBBVCOMPLNTLV

EXHIBIT A

LEGAL DESCRIPTION

**INDUSTRIAL DRIVE
A.P.N. 179-180-07**

All that certain real property, situate, lying and being in the City of Stockton, County of San Joaquin, State of California, described as follows:

PARCEL ONE:

Being a portion of that certain real property described as Parcel One in the deed to Andrew C. Cobb, a single man, recorded in Official Records, Book 4249, Page 556, San Joaquin County Records, also being a portion of the south 1/2 of Lot 9 of Ross-Gilmour Gardens, filed for record in Book of MAPS AND PLATS, Volume 7, Page 1, San Joaquin County Records, lying in Section 48 of the C.M. Weber Grant and being more particularly described as follows:

Commencing at City of Stockton survey control monument 5S-16, having the coordinates of N= 2,159,968.647 and E= 6,350,752.325, as shown on Book 33 of Surveys, at Page 20, San Joaquin County Records; thence South 17° 14' 51" East 4347.89 feet to City of Stockton survey control monument 3S-9, having the coordinates of N= 2,155,816.544 and E= 6,352,041.390, as shown on said Record of Survey; thence North 86° 15' 01" West 3470.85 feet to a 3/4" Iron Pin set at the northwesterly corner of Parcel "I," as shown on Book 28 of Surveys, at Page 87, San Joaquin County Records, said point being at the intersection of the northerly line of the southerly 1/2 of said Lot 9 of said Ross-Gilmour Gardens, with the centerline of Pock Lane (50.00 feet wide); thence North 72° 39' 12" East, along the northerly line of the southerly 1/2 of said Lot 9, also being the northerly line of said Parcel "I" and the northerly line of Lot 9 and Lot 1 of Stockton Airport Business Center, Unit No. 3, filed in Book 30 of MAPS AND PLATS, at Page 58, San Joaquin County Records, a distance of 512.47 feet to an angle point in the northerly line of said Lot 1; thence continue North 72° 39' 12" East, on the northerly line of the southerly 1/2 of Lot 9 of said Ross-Gilmour Gardens, 191.27 feet to the TRUE POINT OF BEGINNING of this description; thence continue North 72° 39' 12" East, on the northerly line of the southerly 1/2 of Lot 9 of said Ross-Gilmour Gardens, 299.08 feet to an angle point in the boundary of Little John Creek, Unit 3, as shown on the plat filed April 26, 1994, in Book 31 of Maps and Plats, at Page 112, San

98-0353

Joaquin County Records, said point being on a non-tangent curve to the left, from which the radius point of said curve bears North 00° 51' 20" West, said curve having a radius of 958.00 feet; thence easterly, on the arc of said curve, through a central angle of 14° 53' 31", and a chord bearing and distance of North 81° 41' 54" East 248.30 feet, an arc distance of 249.00 feet to a point of reverse curvature, from which the radius point bears South 15° 44' 52" East; thence easterly, along the arc of a curve to the right, having a radius of 1042.00 feet, a central angle of 21° 55' 46", and a chord bearing and distance of North 85° 13' 01" East 396.38 feet, an arc distance of 398.82 feet to a point of reverse curvature, from which the radius point bears North 06° 10' 54" East; thence easterly, along the arc of a curve to the left, having a radius of 958.00 feet, through a central angle of 03° 18' 46", and a chord bearing and distance of South 85° 28' 29" East 55.38 feet, an arc distance of 55.39 feet to a point on the easterly line of Lot 9 of said Ross-Gilmour Gardens, said point bearing South 17° 44' 50" East 145.90 feet from the northeasterly corner of the southerly 1/2 of said Lot 9, as said northeasterly corner is shown on that certain map filed in Book 32 of Surveys, at Page 118, San Joaquin County Records; thence South 17° 44' 50" East, on a non-tangent line, along the easterly line of said Lot 9, a distance of 68.08 feet to a point of intersection with a non-tangent curve to the right, from which the radius point of said curve bears North 01° 31' 30" East, said curve having a radius of 1022.00 feet; thence westerly, along the arc of said curve, through a central angle of 04° 39' 24", and a chord bearing and distance of North 86° 08' 48" West 83.04 feet, an arc distance of 83.06 feet to a point of reverse curvature, from which the radius point bears South 06° 10' 54" West; thence westerly, along the arc of a curve to the left, having a radius of 978.00 feet, a central angle of 21° 55' 46", and a chord bearing and distance of South 85° 13' 01" West 372.04 feet, an arc distance of 374.32 feet to a point of reverse curvature, from which the radius point bears North 15° 44' 52" West; thence westerly, along the arc of a curve to the right, having a radius of 1022.00 feet, a central angle of 14° 53' 31", and a chord bearing and distance of South 81° 41' 54" West 264.88 feet, an arc distance of 265.63 feet to a point of reverse curvature, from which the radius point of said curve bears South 00° 51' 20" East; thence westerly, along the arc of a curve to the left, having a radius of 1978.00 feet, through a central angle of 08° 20' 11", with a chord bearing and distance of South 84° 58' 34" West 287.54 feet, an arc distance of 287.80 feet to the point of beginning.

Containing 1.235 Acres more or less.

PARCEL TWO:

Being a portion of that certain real property described as Parcel One in the deed to Andrew C. Cobb, a single man, recorded in Official

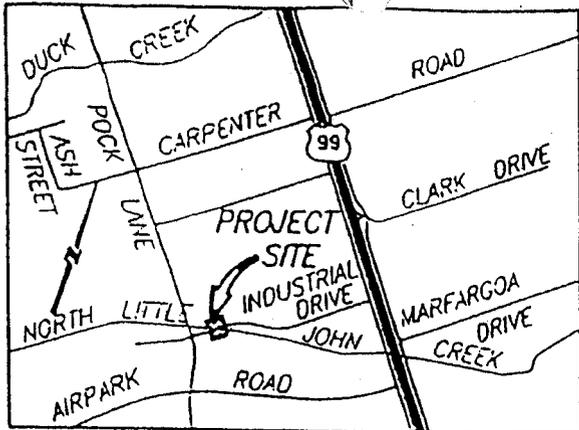
Records, Book 4249, Page 556, San Joaquin County Records, also being a portion of the south 1/2 of Lot 9 of Ross-Gilmour Gardens, filed for record in Book of MAPS AND PLATS, Volume 7, Page 1, San Joaquin County Records, lying in Section 48 of the C.M. Weber Grant and being more particularly described as follows:

Commencing at City of Stockton survey control monument 5S-16, having the coordinates N= 2,159,968.647 and E= 6,350,752.325, as shown on Book 33 of Surveys, at Page 20, San Joaquin County Records; thence South 17° 14' 51" East 4347.89 feet to City of Stockton survey control monument 3S-9, having the coordinates of N= 2,155,816.544 and E= 6,352,041.390, as shown on said Record of Survey; thence North 86° 15' 01" West 3470.85 feet to a 3/4" Iron Pin set at the northwesterly corner of Parcel "I," as shown on Book 28 of Surveys, at Page 87, San Joaquin County Records, said point being at the intersection of the northerly line of the southerly 1/2 of Lot 9 of said Ross-Gilmour Gardens, with the centerline of Pock Lane (50.00 feet wide); thence North 72° 39' 12" East, along the northerly line of the southerly 1/2 of said Lot 9, also being the northerly line of said Parcel "I" and the northerly line of Lot 9 and Lot 1 of Stockton Airport Business Center, Unit No. 3, filed in Book 30 of MAPS AND PLATS, at Page 58, San Joaquin County Records, a distance of 512.47 feet to an angle point in the northerly line of said Lot 1 and the TRUE POINT OF BEGINNING of this description; thence continue North 72° 39' 12" East, on the northerly line of the southerly 1/2 of Lot 9 of said Ross-Gilmour Gardens, 121.64 feet; thence South 11° 11' 53" East 16.33 feet to the beginning of a non-tangent curve to the left, having a radius of 1953.00 feet and a chord bearing and distance of South 77° 19' 12" West 101.01 feet, and from which the radius of said curve bears South 11° 11' 53" East; thence westerly, along the arc of said curve, through a central angle of 02° 57' 50", an arc distance of 101.03 feet to the centerline of North Little John Creek, also being the southerly line of aforesaid Parcel One in the deed to Andrew C. Cobb, a single man, recorded in Official Records, Book 4249, page 556, San Joaquin County Records, and also being the northerly line of Lot 1 of Stockton Airport Business Center, Unit No. 3, filed in Book 30 of MAPS AND PLATS, at Page 58, San Joaquin County Records; thence along the southerly line of said Cobb Parcel, and the northerly line of said Lot 1; North 84° 41' 32" West 20.81 feet to the point of beginning.

Containing 1268 Square Feet of Land, more or less

Bearings and coordinates used in the above descriptions are based on the California Coordinate System-83, Zone III. All distances are ground level distances and must be multiplied by 0.99993339 to obtain grid distances.

98-0353

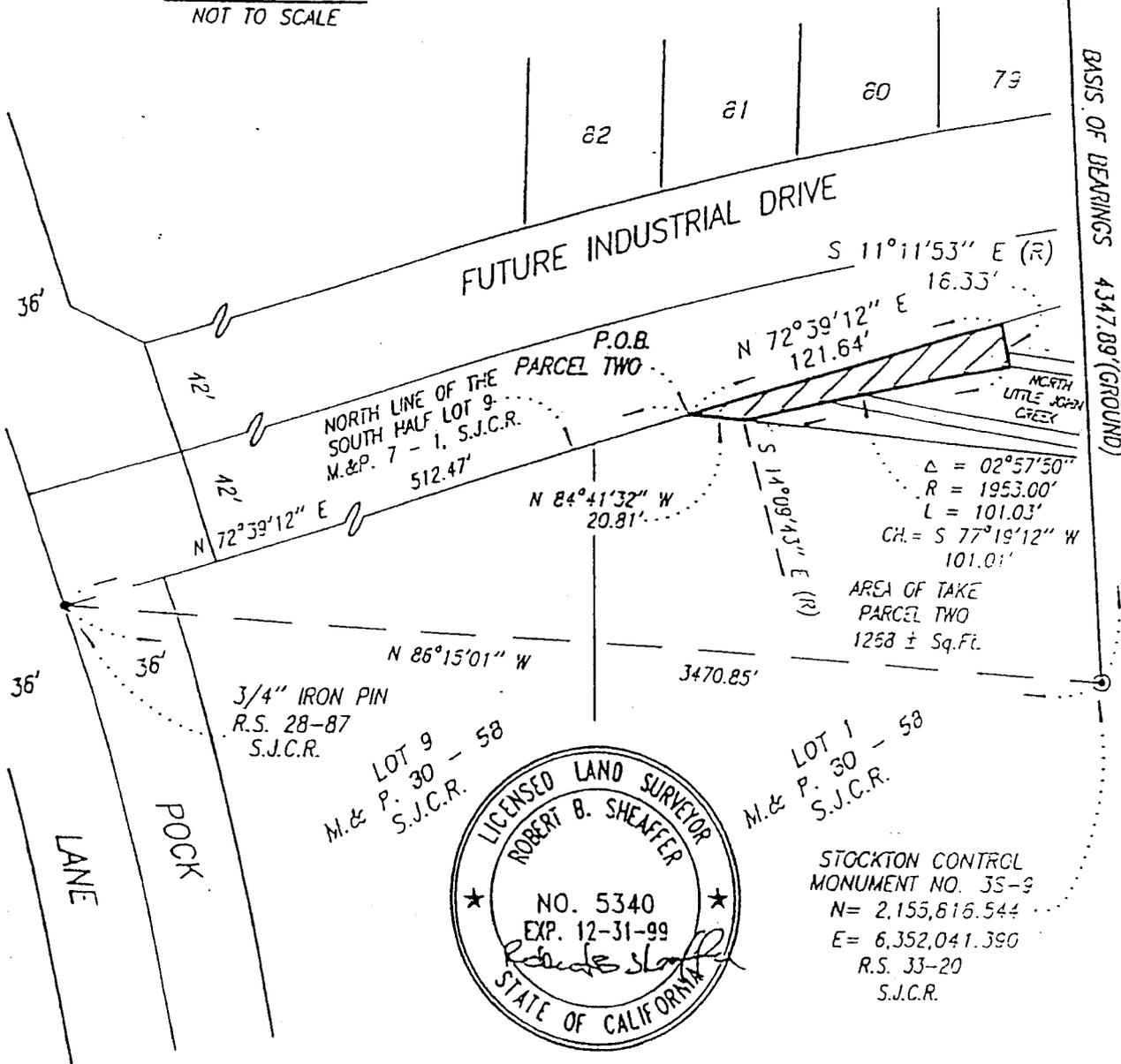


VICINITY MAP
NOT TO SCALE

STOCKTON CONTROL
MONUMENT NO. 55-16
N = 2,159,968.647
E = 6,350,752.325
R.S. JJ-20
S.J.C.R.

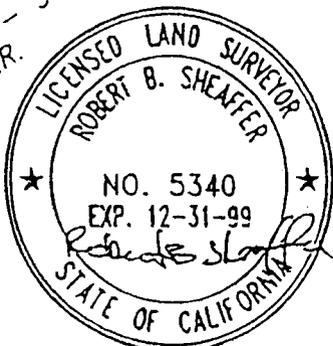
SCALE 1" = 60'

LITTLE JOHN CREEK
UNIT 3
M. & P. 31 - 112
S.J.C.R.



$\Delta = 02^{\circ}57'50''$
 $R = 1953.00'$
 $L = 101.03'$
 $CH. = S 77^{\circ}19'12'' W$
 $101.01'$

AREA OF TAKE
PARCEL TWO
1258 ± Sq.Ft.



STOCKTON CONTROL
MONUMENT NO. 35-9
N = 2,155,816.544
E = 6,352,041.390
R.S. 33-20
S.J.C.R.

No.	Revised	By
1	01/27/98	RBS
Drawn by: R.B.S.		
Date: June 2, 1997		
Scale: 1" = 60'		

ACQUISITION PLAT FOR
INDUSTRIAL DRIVE - PARCEL TWO

CITY OF STOCKTON
DEPARTMENT OF PUBLIC WORKS

Approved by
Paul M. Smalley
City Engineer
Date: 7/1/98
Drawing J:\CA0\13381856

3854.1A

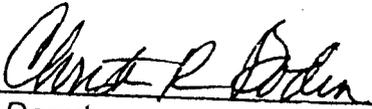
VI:K99C
3854.1A

I, **KATHERINE GONG MEISSNER**, do hereby **certify** as follows:

I am the duly appointed, qualified City Clerk of **the** City of Stockton, a California municipal corporation; as such City Clerk, I am **the** custodian of the official records of the City Council of said City. The attached **Resolution** is a full, true, and correct copy of Resolution No. 98-0353 of said City Council, **which** was adopted by the City Council on 18 August 1998.

IN WITNESS WHEREOF, I have hereto affixed my hand and the seal of the City of Stockton on 20 August 1998.

KATHERINE GONG MEISSNER, CITY CLERK
CITY OF STOCKTON

By 
Deputy

98-0353

Resolution No. _____

STOCKTON CITY COUNCIL

RESOLUTION OF THE CITY OF STOCKTON FINDING AND DETERMINING THE PUBLIC NECESSITY REQUIRES THE ACQUISITION OF CERTAIN REAL PROPERTY INTERESTS FOR A PUBLIC PROJECT AND DIRECTING THE ACQUISITION OF SAID REAL PROPERTY INTERESTS BY EMINENT DOMAIN PROCEEDINGS.

WHEREAS, the City of Stockton ("City") is a chartered municipal corporation and one of the public entities authorized to exercise the power of eminent domain; and

WHEREAS, Section 37350.5 of the Government Code authorizes the City to acquire by eminent domain any property necessary to carry out its powers and functions; and

WHEREAS, one of the powers and functions of the City of Stockton is to provide streets and highways and bridges to the community; and

WHEREAS, Government Code sections 40403 and 40404 authorize the City of Stockton to acquire property to provide bridges, streets, sidewalks, and public highways; and

WHEREAS, Government Code section 66462.5 provides that the City shall acquire, by negotiation or exercise of its eminent domain powers, any property interest which will permit offsite public improvements to be made on land not owned or successfully acquired by a subdivider when required by a condition of a tentative subdivision map; and

WHEREAS, the interests in certain real property located in Stockton, California (the "Property"), as described in Exhibit "A" attached and incorporated by reference, are necessary for the construction of a portion of a public street, the improvement and extension of Industrial Drive between the West State Route 99

CITY ATTY REVIEW BOA
DATE AUG 10 1998

98-0353

Frontage Road and Pock Lane, and a crossing of North Little John Creek (the "Project"); and

WHEREAS, written notice of the intent of the City of Stockton to adopt this Resolution of Necessity was sent to the owners of the properties whose names and addresses appear on the last equalized county assessment roll; and

WHEREAS, a written request to appear was received on July 31, 1998, from James R. Baskette, on behalf of Andrew C. Cobb, Trustee; and

WHEREAS, a hearing was conducted and all interested persons were given an opportunity to be heard;

NOW, THEREFORE, based on the evidence presented,

BE IT FOUND, DETERMINED AND RESOLVED BY THE COUNCIL OF THE CITY OF STOCKTON, AS FOLLOWS:

1. That the Property to be acquired is described in Exhibit "A," attached and incorporated by this reference.
2. That the Property is to be acquired for a public use and a public project, the construction and installation of a public street and bridge crossing pursuant to the authority granted by Sections 37350.5, 40403, 40404, and 66462.5 of the Government Code and Section 1230.010, et seq. of the Code of Civil Procedure.
3. That the public interest and necessity require the acquisition, construction and installation of the Proposed Project.
4. That the Proposed Project is planned and located in the manner which will be most compatible with the greatest public good and the least private injury.
5. That the Property, as described in Exhibit "A," is necessary for the Proposed Project.
6. That the amount of compensation believed to be just has been determined and an offer in such amount and the basis therefor has been made to the owners of record as required by Government Code section 7267.2.
7. That the City Attorney is hereby authorized and empowered:

[Handwritten mark]

1 Bradford J. Dozier SBN 142061
2 ATHERTON & DOZIER
3 305 N. El Dorado St., Suite 301
4 Stockton, CA 95202
5 Telephone: (209) 948-5711

6 Attorney for Defendants
7 ANDREW COBB and
8 ANDREW C. COBB as Trustee of the
9 Andrew C. Cobb 1992 Revocable Trust

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **FOR THE COUNTY OF SAN JOAQUIN**

12 ---o0o---

13 CITY OF STOCKTON, a municipal
14 corporation,

15 Plaintiff,

16 vs.

17 ANDREW C. COBB, Trustee of the
18 Andrew C. Cobb 1992 Revocable Trust)
19 dated July 16 1992; TITLE)
20 INSURANCE AND TRUST COMPANY, a)
21 California corporation; ALDO B.)
22 TOGNIALLI; ROSALIE TOGNIALLI and)
23 DOES I through X, inclusive; AND ALL)
24 PERSONS CLAIMING AN INTEREST)
25 IN THE PROPERTY DESCRIBED IN)
26 THE COMPLAINT,)

27 Defendants.

No. CV 006247

ANSWER TO COMPLAINT

APN: 179-180-07

28 Defendants Andrew C. Cobb and Andrew C. Cobb as Trustee of the
Andrew C. Cobb 1992 Revocable Trust in answer to the Complaint herein,
admit, deny, and allege as follows:

- 1. Admit each and every allegation in Paragraphs 1 through 6c and 6e through 8 of the Complaint
- 2. Defendants further answer that the named defendants: Title

1 Insurance and Trust Company, Aldo B. Tognialli and Rosalie Tognialli have no
2 interest in the subject realty which is held by defendants Andrew C. Cobb
3 and Andrew C. Cobb as Trustee of the Andrew C. Cobb 1992 Revocable Trust
4 in fee simple and unencumbered.

5 3. Defendants deny Paragraph 6d and allege on the contrary that
6 the proposed project is a "take" of an elevated road easement to be known as
7 Industrial Drive, wholly occupying Parcel One (1.25 acres) and Parcel Two
8 (1,268 square feet). The "take" alone has a fair market value exceeding
9 \$50,000.

10 4. Industrial Drive runs in a sinuous manner through the 6.8
11 contiguous acres of defendant Andrew C. Cobb, sometimes in the middle and
12 sometimes close to the boundary of the 6.8 acres thereby cutting up the
13 usable acreage into disconnected scraps of little value. The severance
14 damages to defendants in this destruction of the residential or other
15 development of the 6.8 acres, as aforementioned, exceeds \$200,000, the
16 amount according to proof.

17 5. By way of further answer, this answering defendant alleges that
18 this project is not planned or located in the manner that will be most
19 compatible with the greatest public good and the least private injury in that
20 the road will slice through this answering defendant's land rather than be
21 located toward one side or the other.

22 WHEREFORE, defendant Andrew C. Cobb prays judgment as follows:

23 1. That plaintiff be required to develop the road prayed for to the
24 extent feasible to the boundary or water way in place, to lessen the acreage
25 taken and a route which is most compatible with the greatest public good
26 and least private injury;

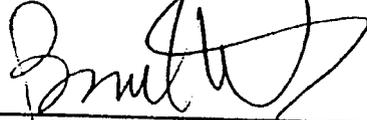
27 2. To determine the fair market value of the acreage "taken" in
28 amount exceeding \$50,000.00 according to proof;

1 3. To adjudge the damages to the remainder of Andrew C. Cobb's
2 realty by the fact of rendering most of the remainder of little value; and

3 4. For costs of suit and further relief as the court may deem just and
4 proper.

5 Dated: 11/30/98

ATHERTON & DOZIER



Bradford J. Dozier,
Attorney for Defendants
ANDREW C. COBB and
ANDREW C. COBB Trustee of
the Andrew C. Cobb Revocable
Trust

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1 MAXWELL M. FREEMAN, State Bar Number 31278
2 RONALD J. D'AIUTO, State Bar Number 91962
3 JANICE D. MAGDICH, State Bar Number 188278
4 FREEMAN & D'AIUTO
5 A Professional Law Corporation
6 1818 Grand Canal Boulevard
7 Stockton, CA 95207
8 Telephone: (209) 474-1818

9 CYNTHIA HUMBERT NEELY, State Bar Number 109328
10 BARBARA J. ANDERSON, State Bar Number 119277
11 CITY ATTORNEY'S OFFICE, CITY OF STOCKTON
12 City Hall, Second Floor
13 425 N. El Dorado Street
14 Stockton, CA 95202
15 Telephone: (209) 937-8333

16 Attorneys for plaintiff
17 CITY OF STOCKTON

18 SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN JOAQUIN
19 STOCKTON BRANCH

20 CITY OF STOCKTON, a municipal
21 corporation,
22 Plaintiff,
23 vs.
24 ANDREW C. COBB, Trustee of the
25 Andrew C. Cobb 1992 Revocable Trust
26 dated July 16, 1992; TITLE INSURANCE
27 AND TRUST COMPANY, a California
28 corporation; ALDO B. TOGNIALLI;
ROSALIE TOGNIALLI; and DOES I
through X, inclusive; AND ALL
PERSONS CLAIMING AN INTEREST
IN THE PROPERTY DESCRIBED
IN THE COMPLAINT,
Defendants.

NO. CV 006247
**ORDER FOR PREJUDGMENT
POSSESSION -- ACTION
IN EMINENT DOMAIN**
APN: 179-180-07
Date: December 1, 1998
Time: 9:00 a.m.
Dept: 11
Complaint Filed: 10/23/98
Trial Date: None Set

DEC 1 1998

Filed _____, 19____
JEANNE MILLSAPS
CLERK
By CYNTHIA LEVESEY
DEPUTY

Based upon the declarations and other documents filed by plaintiff in support of its Application and Declaration for Prejudgment Possession on file in this case;

IT IS HEREBY ORDERED AND DETERMINED THAT:

1 1. Plaintiff has made a deposit of the probable just compensation and filed a Summary
2 of the Basis for Appraisal Opinion, both of which meet the requirements of Code of Civil
3 Procedure section 1255.010.

4 2. The parcel to be acquired is described in Exhibit A to plaintiff's Complaint on file
5 herein. Plaintiff is entitled to possession of said parcel as hereinafter set forth.

6 3. The time for service of this Order for Prejudgment Possession may not be less than
7 thirty (30) days prior to the time plaintiff is to take possession of said parcel.

8 4. Service of this Order for Prejudgment Possession is excused upon all defendants not
9 occupying the property taken.

10 5. Service of this Order for Prejudgment Possession shall be made in accordance with
11 Code of Civil Procedure section 1255.450.

12 6. The effective date of this Order for Prejudgment Possession as to said parcel shall
13 be not less than thirty (30) days after service of the Order for Prejudgment Possession is made on
14 the defendant-owner thereof and/or defendant-tenant.

15 7. On or about the dates specified herein, plaintiff is authorized to enter upon and take
16 immediate possession of said parcel of land being condemned herein. Plaintiff is empowered to
17 remove therefrom any persons, obstacles, improvements or structures of any kind or nature
18 thereon situated.

19 Dated: DEC 1 1998

B. W. McNATT

JUDGE OF THE SUPERIOR COURT

20
21 CITY\COBB\POSSESS.ORDLV

PROOF OF SERVICE BY MAIL

1
2
3 I am employed in the County of San Joaquin, State of California. My business address is
4 1818 Grand Canal Boulevard, Stockton, California 95207. I am over the age of 18 years and not
5 a party to this action. I am readily familiar with my office's business practice for collection and
6 processing of correspondence for mailing with the United States Postal Service, and under such
7 practice the correspondence would be deposited with the United States Postal Service the same day
8 in the ordinary course of business. On December 1, 1998, I served the foregoing document
9 described as: **ORDER FOR PREJUDGMENT POSSESSION -- ACTION IN EMINENT**
10 **DOMAIN** on the following persons or parties by placing a true and correct copy thereof in a
11 sealed envelope for collection and mailing on that date following ordinary business practices to:

12 BRADFORD J. DOZIER, ESQ.
13 AHERTON & DOZIER
305 N. EL DORADO STREET, SUITE 301
STOCKTON, CA 95202

14 ANDREW C. COBB
15 4307 SOUTH HIGHWAY 99
STOCKTON, CA 95205

16
17 Executed on December 1, 1998, at Stockton, California.

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

19
20 
LISA VERNON

Warren H. Atherton (1892 - 1976)
Jack Dozier
Bradford J. Dozier

ATHERTON & DOZIER
Attorneys at Law
Wells Fargo Bank Building
305 N. El Dorado St., Suite 301
Stockton, California 95202
Telephone: (209) 948-5711
Facsimile: (209) 948-3021

To: MIKE COBB
P O BOX 1330
UPLAND CA 91785

Date: November 20, 2000

From: Bradford J. Dozier

Re: City of Stockton v. Cobb
Clemens v. Cobb

Enclosed please find: Copy of Answer filed in Clemens Case

- Please sign and return in the enclosed envelope.
- In accordance with your request.
- For filing and return of file-marked copies in the enclosed envelope.
- For recordation and return of original in the enclosed envelope.
- For signature of Court, filing and return of file-marked copies in the envelope provided.
- For your perusal and comment.
- For your information and records. No reply necessary.
- For calendaring.
- Please call for an appointment in regard to the above matter.

Other: I talked with the City's attorneys re the offer to sell the whole 6.85 for the City's price per acre values. He said that the City had rejected this before but thinks it was at your dad's much higher demands. He will present it to the City in writing and obtain a written response. It was all made as a settlement offer.

Exhibit 4

PROOF OF SERVICE

I, Kelley Herrington, declare:

I am a resident of the State of California and over the age of eighteen years, and not a party to the within action; my business address is Richards, Watson & Gershon, 355 South Grand, 40th Floor, Los Angeles, California. On July 11, 2008, I served the within documents:

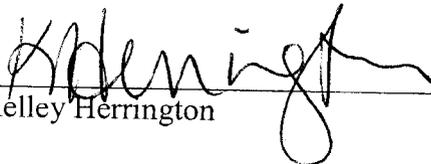
FIRST AMENDED COMPLAINT FOR INVERSE CONDEMNATION

- by causing facsimile transmission of the document(s) listed above from (213) 626-8484 to the person(s) and facsimile number(s) set forth below on this date before 5:00 P.M. This transmission was reported as complete and without error. A copy of the transmission report(s), which was properly issued by the transmitting facsimile machine, is attached. Service by facsimile has been made pursuant to a prior written agreement between the parties.
- by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Los Angeles, California, addressed as set forth below. I am readily familiar with the firm's practice for collection and processing correspondence for mailing with the United States Postal Service. 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 contained in this affidavit.
- by placing the document(s) listed above in a sealed envelope and affixing a pre-paid air bill, and causing the envelope to be delivered to an agent for delivery, or deposited in a box or other facility regularly maintained by FEDEX, in an envelope or package designated by the express service carrier, with delivery fees paid or provided for, addressed 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.
- by causing personal delivery by First Legal Support Services, 1511 West Beverly Boulevard, Los Angeles, California 90026 of the document(s) listed above to the person(s) at the address(es) set forth below.

See Attached Service List

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

Executed on July 11, 2008



 Kelley Herrington

SERVICE LIST

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Richard E. Nosky, City Attorney
John M. Luebberke
Office of the City Attorney
425 North El Dorado Street
Stockton, California 95202

Maxwell M. Freeman
Thomas H. Keeling
Coren D. Wong
Freeman, D'Aiuto, Pierce, Gurev,
Keeling & Wolf
1818 Grand Canal Boulevard
Suite 4
Stockton, California 95202

 IRIX RICHARDS | WATSON | GERSHON
ATTORNEYS AT LAW - A PROFESSIONAL CORPORATION

Exhibit J

1 MAXWELL M. FREEMAN, #31278
THOMAS H. KEELING, #114979
2 COREN D. WONG, #185047
FREEMAN, D'AIUTO, PIERCE,
3 GUREV, KEELING & WOLF
A PROFESSIONAL LAW CORPORATION
4 1818 Grand Canal Boulevard, Suite 4
Stockton, California 95207
5 Telephone: (209) 474-1818
Facsimile: (209) 474-1245

FILED
EXEMPT FROM FILING FEES
PURSUANT TO GOVERNMENT
08 SEP 1 08 PM 8:07
CODE SECTION 6103
ROSA JUNQUEIRO, CLERK
BY TRACY DYKHOORN
DEPUTY

6 OFFICE OF THE CITY ATTORNEY
7 CITY OF STOCKTON
RICHARD E. NOSKY, JR., #130726
8 JOHN M. LUEBBERKE, #164893
425 North El Dorado Street
9 Stockton, California 95202
Telephone: (209) 937-8333

10 Attorneys for defendant City of Stockton

11
12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 FOR THE COUNTY OF SAN JOAQUIN

14 MICHAEL A. COBB, Trustee of the Andrew)
C. Cobb 1992 Revocable Trust dated July 16,)
15 1992,)
16 Plaintiff,)
17 vs.)
18 CITY OF STOCKTON, a municipal)
corporation; and DOES 1-50, inclusive,)
19 Defendant.)

CASE NO. CV035015

**[PROPOSED] ORDER SUSTAINING
DEFENDANT CITY OF
STOCKTON'S DEMURRER TO
FIRST AMENDED COMPLAINT FOR
INVERSE CONDEMNATION**

Date: August 28, 2008
Time: 9:00 a.m.
Dept: 41
Judge: Hon. Elizabeth Humphreys
Reservation No: 1095149

20
21 Complaint Filed: March 17, 2008

22 The above-entitled matter was calendared for hearing before the Honorable Elizabeth
23 Humphreys, in Department 41 of the above-entitled court at 9:00 a.m. on August 28, 2008. Pursuant
24 to Local Rule of Court, rule 3-113(D), the court issued its tentative ruling sustaining the demurrer, as
25 follows:

26 The question of whether estoppel is sufficiently plead may be properly
27 addressed on demurrer; the question of whether a plaintiff can "prove
the elements of estoppel requires factual determinations that cannot
28 properly be made on demurrer." *Elmore v. Oak Valley Hospital
District*, 204 Cal. App. 3d 716, 724 (1988). The manner in which a

1 public entity obtains possession of the "Property Interest" is irrelevant
 2 when determining whether inverse condemnation has occurred. When
 3 liability is based on a physical invasion, the cause of action accrues
 4 once the governmental entity takes physical possession of the property.
 5 See *People ex rel. Department of Transportation v. Gardella*, 200 Cal.
 6 App. 3d 559, 571(1988); *Otay Water District v. Beckwith*, 1 Cal App.
 7 4th 1041, 1048-1049 (1991). The City of Stockton took possession of
 8 the Property Interest on December 31, 1998. FAC ¶¶ 8, 21. Even
 9 under *Mehl v. People ex rel. Department of Public Works*, 13 Cal. 3d
 10 710 (1975), the date of possession remains the same. FAC ¶ 5. The
 11 court finds no legal requirement that the public entity's possession of
 12 private property be open and notorious before liability for inverse
 13 condemnation will attach. Cal. Const., art. I, § 19; See *Selby Realty Co.*
 14 *v. City of Buenaventura*, 10 Cal. 3d 110, 119 (1973). Plaintiff has
 15 failed to allege the misrepresentation or promise that induced him to
 16 delay filing this action. Plaintiff must allege the facts he is relying on to
 17 claim estoppel. See *Mills v. Forestex Co.*, 108 Cal. App. 4th 625, 641
 18 (2003); *Piazza Properties, Ltd. v. Dept. of Motor Vehicles*, 71 Cal.
 19 App.3rd 622, 631 (1977). When a plaintiff relies on a theory of ...
 20 estoppel to save a cause of action that otherwise appears on its face to
 21 be time-barred, he or she must specifically plead facts which, if proved,
 22 would support the theory." *Mills v. Forestex Co.*, *supra.*, 108 Cal.
 23 App. 4th at p. 641. The General Demurrer to the First Amended
 24 Complaint is sustained w/ 10 days leave to amend because the First-
 25 Amended Complaint demonstrates that it is barred by the five year
 26 statute of limitations. See *Otay Water District v. Beckwith*, 1 Cal. App.
 27 4th 1041, 1048-1049 (1991).

15 No request for oral argument having been made by any party, the Court's tentative ruling
 16 became the order of the court.

17 Good cause appearing therefore, IT IS SO ORDERED.

18 Dated: SEP 11 2008

19
 20 ELIZABETH HUMPHREYS
 21 HON. ELIZABETH HUMPHREYS

22
 23 Approved as to Form:

24 RICHARDS WATSON & GERSHON

25
 26 By: 
 27 REGINA DANNER
 28 Attorneys for plaintiff Michael A. Cobb

PROOF OF SERVICE

I hereby certify that I am a citizen of the United States, over the age of eighteen years, and not a party to this action. My business address is 1818 Grand Canal Boulevard, Suite 4, Stockton, California 95207. I served the foregoing document entitled:

NOTICE OF ENTRY OF ORDER SUSTAINING DEFENDANT CITY OF STOCKTON'S DEMURRER TO FIRST AMENDED COMPLAINT FOR INVERSE CONDEMNATION

Service by United States Mail:

✓ by placing a true copy thereof enclosed in a sealed envelope or package with postage thereon fully prepaid in a box or receptacle designated by my employer for collection and processing of correspondence for mailing with the United States Postal Service, addressed as set forth below. I am readily familiar with the business practices of my employer, FREEMAN, D'AIUTO, PIERCE, GUREV, KEELING & WOLF, for the collection and processing of correspondence for mailing with the United States Postal Service. Under that practice, the correspondence placed in the designated box or receptacle is deposited with the United States Postal Service at San Joaquin County, California, the same day in the ordinary course of business.

ATTORNEY FOR MICHAEL A. COBB, TRUSTEE OF THE ANDREW C. COBB 1992 REVOCABLE TRUST DATED JULY 16, 1992:
Regina Danner, Esq.
Maricela E. Marroquin, Esq.
Richards Watson & Gershon
355 S. Grand Avenue, 40th Floor
Los Angeles, CA 90071-3101

ATTORNEYS FOR DEFENDANT CITY OF STOCKTON:
John M. Luebberke, Esq.
Richard E. Nosky, Jr., Esq.
City Attorney
City of Stockton
425 N. El Dorado Street, 2nd Fl.
Stockton, CA 95202

The acts described above were undertaken and completed in San Joaquin County on September 16, 2008.

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 on September 16, 2008, at Stockton, California.


Audra L. Reising

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Exhibit K

1 RICHARDS, WATSON & GERSHON
A Professional Corporation
2 REGINA N. DANNER (137210)
KIRSTEN R. BOWMAN (181627)
3 MARICELA E. MARROQUIN (232321)
355 South Grand Avenue, 40th Floor
4 Los Angeles, CA 90071-3101
Telephone: (213) 626-8484
5 Facsimile: (213) 626-0078

6 Attorneys for Plaintiff,
Michael A. Cobb, Trustee of the
7 Andrew C. Cobb 1992 Revocable Trust
dated July 16, 1992
8

9
10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **COUNTY OF SAN JOAQUIN**

12
13 MICHAEL A. COBB, Trustee of the
Andrew C. Cobb 1992 Revocable Trust
14 dated July 16, 1992,

15 Plaintiff,

16 vs.

17 CITY OF STOCKTON, a municipal
corporation; and DOES 1-50, Inclusive,

18 Defendants.
19

Case No. CV 035015

**SECOND AMENDED COMPLAINT
FOR:**

- 1. INVERSE CONDEMNATION
- 2. QUIET TITLE
- 3. DECLARATORY RELIEF
- 4. EJECTMENT

20
21 Plaintiff, Michael A. Cobb, Trustee of the Andrew C. Cobb 1992 Revocable Trust
22 dated July 16, 1992 ("Plaintiff"), alleges as follows:
23

24 **I. INTRODUCTION**

25 1. The Andrew C. Cobb 1992 Revocable Trust dated July 16, 1992 ("Cobb
26 Trust") owns the real property located at 4218 Pock Lane, Stockton, California 95206
27 identified as San Joaquin Assessor's Parcel Number 179-180-07 ("Cobb Property") in fee.
28 Plaintiff, Michael A. Cobb, is the trustee of the Cobb Trust and has the power to prosecute

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ATTORNEYS AT LAW - A PROFESSIONAL CORPORATION

1 this action for the protection of the Cobb Property. An affidavit of Acceptance of
2 Trusteeship is attached as Exhibit "1".

3 2. Defendant City of Stockton ("Defendant" or "City") is a municipal
4 corporation organized and existing under the laws of the State of California.

5 3. Plaintiff is ignorant of the true names and capacities of Defendants sued
6 herein as DOES 1-50, Inclusive, and therefore sues these Defendants by such fictitious
7 names. Plaintiff will amend this complaint to allege their true names and capacities when
8 ascertained.

9 4. Plaintiff is informed and believes and based thereon alleges, that each
10 fictitiously named Defendants is in some manner responsible for the injury and damage to
11 Plaintiff as alleged herein.

12 5. On October 23, 1998, Defendant filed an eminent domain action seeking to
13 condemn a permanent easement across one parcel of land owned by the Cobb Trust for
14 the construction of a public roadway. The eminent domain action was filed in the
15 Superior Court of the State of California, County of San Joaquin, and was further
16 identified as Case No. CV006247 ("1998 Action"). Specifically, Defendant sought to
17 acquire an "easement" through the Cobb Property, thereby, bisecting the property into
18 two separate parcels of land. The property that Defendant sought to acquire is legally
19 described in Exhibit "A" to the Complaint in Eminent Domain that was filed in the 1998
20 Action. The Complaint in Eminent Domain is attached as Exhibit "2" to this complaint.
21 The property that was the subject of the 1998 Action will be hereby referred to as the
22 "Property Interest".

23 6. When Defendant filed the 1998 Action, the Cobb Property was owned by
24 the Cobb Trust. Andrew C. Cobb, was the trustee of the Cobb Trust. On or about
25 November 30, 1998, Andrew C. Cobb filed an Answer to the Complaint in Eminent
26 Domain. The Answer to the Complaint in Eminent Domain is attached as Exhibit 3.

27 7. By filing an Answer to the Complaint, Andrew C. Cobb, preserved his
28 constitutional rights to contest Defendant's right to take the Property Interest, and to

1 receive just compensation as determined by a jury. In addition, by filing an Answer,
2 Cobb affirmed that his property rights were adverse to those claimed by Defendant. It
3 was not necessary for Plaintiff to file a cross-complaint for inverse condemnation because
4 he preserved his constitutional rights in his Answer to the Complaint in Eminent Domain.
5 Moreover, Andrew C. Cobb reasonably believed that his constitutional rights were
6 protected by having filed an Answer to the Complaint in Eminent Domain.

7 8. On or about December 31, 1998, Defendant took legal pre-judgment
8 possession of the Property Interest that was the subject of the 1998 Action pursuant to an
9 Order for Prejudgment Possession. A true and correct copy of the Order for Prejudgment
10 Possession is attached as Exhibit "4".

11 9. Andrew C. Cobb was originally represented by the law firm of Atherton and
12 Dozier, who withdrew on October 15, 1999. Andrew C. Cobb continued to represent the
13 Cobb Trust in pro per, and attempted to negotiate with the City of Stockton regarding the
14 Property Interest until he was killed in early 2000. The City of Stockton refused to
15 negotiate personally with Andrew C. Cobb because they felt Mr. Cobb was a threat to the
16 City and therefore, directed all settlement negotiations through their attorneys, Freeman,
17 D'Aiuto, Pierce, Gurev, Keeling and Wolf. A true and correct copy of an Informational
18 Bulletin advising City staff to contact the Vice Unit if Andrew C. Cobb attempted to
19 contact them is attached as Exhibit "5". After Andrew C. Cobb's death, there was a
20 dispute among his heirs regarding the ownership interests of his property. In late 2000,
21 Michael A. Cobb, his son, appeared in the 1998 Action as Executor of the Estate of
22 Andrew C. Cobb and as Successor Trustee of the Trust. In late 2000, Michael A. Cobb
23 withdrew the funds on deposit, thereby waiving any claims regarding the City's right to
24 take, but not his right to a determination of just compensation by a jury. Michael A.
25 Cobb, was also represented by Atherton and Dozier, who assisted in the negotiations with
26 Defendant in 2000 but were never formally designated as the attorneys for the Cobb Trust
27 in the 1998 Action. Michael A. Cobb was not represented by an attorney from 2000 to
28 2007.

1 10. Defendant eventually constructed a public roadway on the Property Interest
2 that runs through the Cobb Property.

3 11. On July 9, 2007, the Court commenced a motion to dismiss the 1998 Action
4 pursuant to Code of Civil Procedure Section 585.360. It came on for hearing before the
5 Honorable Carter P. Holly, Judge Presiding. The matter was argued before the Court and
6 submitted.

7 12. Plaintiff supported the dismissal of the 1998 Action because Defendant
8 threatened to file a second eminent domain action, and Plaintiff did not want his right to
9 just compensation and the property issues to languish in the court system for another nine
10 (9) years.

11 13. On October 9, 2007, the Court dismissed the 1998 Action for Defendant's
12 lack of prosecution. The Court ruled that Code of Civil Procedure Section 585.310
13 required that an action be brought to trial within five years after the action is commenced.

14 14. Defendant failed to prosecute the case for almost nine years, hence, the
15 1998 Action was dismissed, and Defendant's lawful possession of the Property Interests
16 were terminated on October 7, 2007.

17 15. Defendant never obtained a Final Judgment of Condemnation and a Final
18 Order of Condemnation of the Property Interest. The Cobb Trust is still the fee owner of
19 the Property Interest.

20 16. Plaintiff and Defendant's attorneys continued to negotiate through the years,
21 both verbally and in writing. Plaintiff represented the Andrew C. Cobb Trust in Pro per
22 after 2000. Plaintiff spoke directly to the attorneys, Freeman, D'Aiuto, Pierce, Gurev,
23 Keeling and Wolf, who represented Defendant in the 1998 Action. The attorneys for
24 Defendant never told Plaintiff that they were unable to negotiate with him, and they
25 promised Plaintiff that they would get back to him regarding the settlement offers that
26 Plaintiff made to Defendant. An example of such a promise is reflected in the attached
27 2000 billing statement from Plaintiff's attorney to Defendant's attorney memorializing a
28 promise by Defendant's attorneys to obtain a written response to Plaintiff's settlement

1 demand. A true and correct copy of the billing statement dated November 20, 2000 is
2 attached as Exhibit "6". The 1998 Action never settled, and finally, in frustration,
3 Plaintiff advised the attorneys for Defendant that he would just let a jury decide his right
4 to compensation in the 1998 Action. No one from the Defendant's attorney's office
5 advised him that it was necessary for him to prosecute the 1998 Action or that he should
6 file a cross-complaint if he wished to preserve his rights in the 1998 Action. The
7 attorneys for Defendant acknowledged, in other pleadings, that they believed that they
8 were not able to negotiate with Plaintiff because he was not represented by an attorney;
9 yet, they continued to lead Plaintiff into believing that they could negotiate a settlement,
10 and thereby induced him into not filing a cross-complaint to protect his rights for greater
11 compensation. Plaintiff detrimentally relied upon Defendant and its attorneys to continue
12 to engage in good faith negotiations, and to prosecute the 1998 Action. Since Andrew C.
13 Cobb filed an Answer to the Complaint in Eminent Domain, Plaintiff believed that his
14 father had preserved the Trust's right to have just compensation determined by a jury.
15 Once Plaintiff indicated that he wanted a jury to decide his right to just compensation in
16 the 1998 Action, the attorneys for Defendant should have advised Plaintiff that it was
17 necessary to file a cross-complaint to preserve his rights or to continue to prosecute the
18 1998 Action, yet failed they to do so. Plaintiff had no idea that the Defendant intended to
19 acquire the Property Interest by obtaining legal possession of the Property Interest in
20 1998, falsely negotiate with the Plaintiff, induce Plaintiff into failing to file a cross-
21 complaint and not prosecute the action resulting in a dismissal of the 1998 Action.

22 17. Defendant's attorneys by their own admission, failed to prosecute the 1998
23 Action under the premise that it could not prosecute the 1998 Action against the Trust
24 alleging Plaintiff, Michael A. Cobb never retained counsel. Hence, unbeknownst to
25 Plaintiff, Defendant had no intention of settling the 1998 Action.

26 18. When the Court dismissed the 1998 Action, Plaintiff's right to receive
27 probable just compensation as determined by a jury was terminated, and therefore, the
28 taking by the City without the payment of just compensation occurred.

1 jury. Plaintiff had no idea that Defendant intended to acquire the Property Interest by
2 obtaining possession of the Property Interest in 1998, falsely negotiate with the Plaintiff,
3 do nothing to move the case forward, and then allow the Court to dismiss the 1998
4 Action.

5 24. Plaintiff represented the Andrew C. Cobb Trust in Pro per after 2000.
6 Plaintiff spoke directly to the attorneys, Freeman, D'Aiuto, Pierce, Gurev, Keeling and
7 Wolf, who represented Defendant in the 1998 Action. The attorneys for Defendant never
8 told Plaintiff that they were unable to negotiate with him, and they promised Plaintiff that
9 they would get back to him regarding the settlement offers that Plaintiff made to
10 Defendant. The matter was not settled, and finally, in frustration, Plaintiff advised the
11 attorneys for the City of Stockton that he would just let the Court decide his right to
12 compensation in the 1998 Action. No one from the attorney's office advised him that it
13 was necessary for him to prosecute the 1998 Action or that he should file a cross-
14 complaint if he wished to preserve his rights in the 1998 Action. Since Andrew C. Cobb
15 filed an Answer to the Complaint in Eminent Domain, Plaintiff believed that his father
16 had preserved the Trust's right to have just compensation determined by a jury. Once
17 Plaintiff indicated that he wanted a jury to decide his right to just compensation in the
18 1998 Action, the attorneys should have advised Plaintiff that it was necessary to file a
19 cross-complaint to preserve his rights or to continue to prosecute the 1998 Action, yet
20 failed they to do so. Plaintiff had no idea that the Defendant intended to acquire the
21 Property Interest by obtaining legal possession of the Property Interest in 1998, falsely
22 negotiate with the Plaintiff, induce Plaintiff into failing to file a cross-complaint and not
23 prosecute the action resulting in a dismissal of the 1998 Action.

24 25. When the Court dismissed the 1998 Action, Plaintiff's right to receive
25 probable just compensation as determined by a jury was terminated, and therefore, the
26 taking by Defendant without the payment of just compensation occurred.

27 26. Defendant's acts constitute a taking because Defendant has physically
28 invaded and appropriated a valuable property right for a public use. Defendant's taking

1 has caused the Cobb Property to diminish in value. The Cobb Property cannot be
2 developed with a road running through it.

3 27. Defendant took and damaged the Cobb Property for a public use because it
4 used the Cobb Property to construct a public roadway. The general public has continually
5 used the roadway since it was constructed without any benefit to the property owner and
6 without payment of just compensation.

7 28. Defendant's actions caused injury to the Cobb Property because the
8 construction of the public roadway through the Cobb Property precluded the development
9 of the Cobb Property. The construction of the public roadway rendered the remaining
10 land an uneconomic remnant and thus constitutes a taking of the Cobb Property in fee.

11 29. Defendant has not paid Plaintiff just compensation for the taking. On
12 October 23, 1998, Defendant deposited the sum of Ninety Thousand Two Hundred
13 Dollars (\$90,200.00) with the Court in order to obtain prejudgment possession of the
14 Property Interest. On November 6, 2000, pursuant to a stipulation between Michael A.
15 Cobb, as Executor of the Cobb Trust and Defendant, Michael A. Cobb withdrew the funds
16 on deposit with the Court. The issue of just compensation in the 1998 Action was never
17 tried before a judge or jury and remained unresolved upon the dismissal of the 1998
18 Action.

19 30. Defendant has the power of eminent domain and, thus, may be sued for
20 inverse condemnation. Although Defendant took possession of the Property Interest in
21 1998, Plaintiff's cause of action accrued when Plaintiff was denied the right to a
22 determination of just compensation by a jury when the 1998 Action was dismissed for
23 failure to prosecute. Prior to the action being dismissed, it was not necessary to file this
24 action because the eminent domain action was still pending, and Plaintiff had preserved
25 his rights to just compensation by having Answered the Complaint in Eminent Domain.

26 ///

27 ///

28 ///

IRIN RICHARDS | WATSON | GERSHON
ATTORNEYS AT LAW - A PROFESSIONAL CORPORATION

SECOND CAUSE OF ACTION

AS AGAINST ALL DEFENDANTS (Quiet Title-Adverse Possession)

31. Plaintiff repeats and realleges each and every allegation set forth in paragraphs 1 through 30, inclusive of this Second Amended Complaint and incorporates the same by this reference as though fully set forth herein.

32. The Andrew C. Cobb 1992 Revocable Trust dated July 16, 1992 ("Cobb Trust") is the fee owner of the real property located at 4218 Pock Lane, Stockton, California 95206 identified as San Joaquin Assessor's Parcel Number 179-180-07 ("Cobb Property") in fee. Plaintiff, Michael A. Cobb, is the trustee of the Cobb Trust and has the power to prosecute this action for the protection of the Cobb Property.

33. Plaintiff's title is based upon a Deed of Trust recorded in Official Records, Book 4249, Page 556, San Joaquin County Records, and is based upon his actual, open, notorious, exclusive, hostile, and adverse possession of the Cobb Property for at least five years preceding the commencement of this action, together with Plaintiff's payment of all taxes assessed against the Cobb Property for the same five year period, which taxes include assessments for the road constructed on the Cobb Property.

34. Defendant claims an interest adverse to Plaintiff in the above described parcel, in that Defendant alleges that it had legal possession, as a highway, easement of portions of the Cobb Property, which commenced in 1998, and was terminated on October 9, 2007.

35. Defendant never obtained a Final Order of Condemnation and Judgment in Condemnation; hence, Defendant's possession is no longer lawful.

36. Plaintiff is seeking to quiet title against all adverse claims of Defendant.

37. The adverse claims of Defendant are without any right whatsoever. Defendant has no right, title, estate, lien, or interest whatsoever in the Cobb Property, and which are adverse to Plaintiff's title.

38. Plaintiff seeks to quiet title as of November 30, 1998, which is the date that Plaintiff Answered the 1998 Action, or in the alternative as of December 31, 1998, when

1 Defendant obtained possession of the Property Interests, or finally, in the alternative,
2 Plaintiff seeks to quiet title as of December 2003, which is the date five years after the
3 Defendant obtained possession of the Property.

4
5 **THIRD CAUSE OF ACTION**

6 **AS AGAINST ALL DEFENDANTS (Declaratory Relief)**

7 39. Plaintiff repeats and realleges each and every allegation set forth in
8 paragraphs 1 through 38, inclusive of this Second Amended Complaint and incorporates
9 the same by this reference as though fully set forth herein.

10 40. An actual controversy has arisen and now exists between Plaintiff and
11 Defendant concerning their respective rights and duties under Defendant's taking or
12 appropriation of Plaintiff's property for a public purpose without the payment of just
13 compensation to be a determined by a jury under Article I Section 19 of the California
14 Constitution. An actual controversy has also arisen and now exists between the parties
15 regarding Defendant's wrongful occupation of Plaintiff's property, and therefore, Plaintiff
16 contends that Defendant must remove the roadway, which is claimed to occupy those
17 portions of the Cobb Property, identified as the Property Interests.

18 41. A judicial declaration is necessary and appropriate at this time, and under
19 the circumstances, in order to determine the rights and duties of the parties under
20 Defendant's taking or appropriation of Plaintiff's property, and determine the
21 compensation and title hereunder.

22
23 **FOURTH CAUSE OF ACTION**

24 **AS AGAINST ALL DEFENDANTS (EJECTMENT)**

25 42. Plaintiff repeats and realleges each and every allegation set forth in
26 paragraphs 1 through 41, inclusive of this Second Amended Complaint and incorporates
27 the same by this reference as though fully set forth herein.

1 43. A roadway is located on the Cobb Property, specifically over the Property
2 Interests, and Defendant, thus, is possessing and withholding the use and enjoyment of
3 that property to the exclusion of Plaintiff.

4 44. So long as Defendant wrongfully continues to possess and withhold the use
5 and enjoyment of the Property Interests, Plaintiff is wrongfully being denied the full use
6 and enjoyment of the Cobb Property.

7
8 **PRAYER FOR RELIEF**

9 Plaintiff hereby prays as follows:

10 ON THE FIRST CAUSE OF ACTION

- 11 1. That the amount of just compensation for the Property Interest be
- 12 ascertained and determined;
- 13 2. For damages in an amount yet to be ascertained with interest thereon at the
- 14 legal rate from the date of those damages;
- 15 3. Attorney's fees and litigation expenses;
- 16 4. Costs of suit;
- 17 5. Real estate taxes, maintenance costs, insurance costs; and
- 18 6. For such other relief as the Court deems just and proper

19 ON THE SECOND CAUSE OF ACTION

- 20 1. For a Judgment that Plaintiff is the owner in fee simple of the portion of the
- 21 roadway, which encroaches on the Cobb Property, and that Defendant has no interest in
- 22 the Cobb Property; and
- 23 2. For an order that Defendants be enjoined from making any further claim
- 24 adverse to Plaintiff, by legal action or otherwise, relating to the portion of the Cobb
- 25 Property onto which the roadway encroaches.

26 ///

27 ///

28 ///

ON THE THIRD CAUSE OF ACTION

1. For a judicial declaration that Defendant's taking or appropriation of Plaintiff's property was without the payment of just compensation under Article I, Section 19 of the California Constitution. .

2. For a judicial declaration that Plaintiff owns the Cobb Property in fee, to the exclusion of any claim by Defendant, to the portion of Plaintiff's Property that is encroached upon by the roadway.

ON THE FOURTH CAUSE OF ACTION

1. For restitution of the premises to Plaintiff.

DATED: September 8, 2008

RICHARDS, WATSON & GERSHON
A Professional Corporation
REGINA N. DANNER
KIRSTEN R. BOWMAN
MARICELA E. MARROQUIN

By: 
Kirsten R. Bowman
Attorneys for Defendant
MICHAEL A. COBB, Trustee of the Andrew C. Cobb 1992 Revocable Trust dated July 16, 1992

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Exhibit L

EXEMPT FROM FILING FEES
PURSUANT TO GOVERNMENT
CODE SECTION 6103
NOV 24 AM 9:32

L. L. QUEIROZ, CLERK
TRACY DYCKHOORN

1 MAXWELL M. FREEMAN, #31278
THOMAS H. KEELING, #114979
2 COREN D. WONG, #185047
FREEMAN, D'AIUTO, PIERCE,
3 GUREV, KEELING & WOLF
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6 OFFICE OF THE CITY ATTORNEY
7 CITY OF STOCKTON
RICHARD E. NOSKY, JR., #130726
8 JOHN M. LUEBBERKE, #164893
425 North El Dorado Street
9 Stockton, California 95202
Telephone: (209) 937-8333

10 Attorneys for defendant City of Stockton

11
12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 FOR THE COUNTY OF SAN JOAQUIN

14 MICHAEL A. COBB, Trustee of the Andrew)
C. Cobb 1992 Revocable Trust dated July 16,)
15 1992,)

16 Plaintiff,)

17 vs.)

18 CITY OF STOCKTON, a municipal)
corporation; and DOES 1-50, inclusive,)

19 Defendant.)
20)

CASE NO. CV035015

**[PROPOSED] ORDER SUSTAINING
DEFENDANT CITY OF STOCKTON'S
DEMURRER TO SECOND AMENDED
COMPLAINT OF MICHAEL A. COBB,
TRUSTEE OF THE ANDREW C. COBB
1992 REVOCABLE TRUST DATED JULY
16, 1992**

Date: October 29, 2008

Time: 9:00 a.m.

Dept: 41

Judge: Hon. Elizabeth Humphreys

Reservation No: 1119140

Complaint Filed: March 17, 2008

First Amended Complaint Filed:
July 11, 2008

Second Amended Complaint Filed:
September 8, 2008

21
22 The above-entitled matter was calendared for hearing before the Honorable Elizabeth
23 Humphreys in Department 41 of the above-entitled court at 9:00 a.m. on October 29, 2008. Pursuant
24 to Local Rule of Court, rule 3-113(D), the Court issued its tentative ruling requesting counsels'
25 appearance. On October 30, 2008, Kirsten R. Bowman of Richards, Watson & Gershon appeared and

1 argued on behalf of plaintiff Michael A. Cobb, Trustee of the Andrew C. Cobb 1992 Revocable
2 Trusted dated July 16, 1992, and Thomas H. Keeling of Freeman, D'Aiuto, Pierce, Gurev, Keeling &
3 Wolf appeared and argued on behalf of defendant City of Stockton. Having considered all of the
4 pleadings filed by the parties, except as otherwise noted below, as well as oral argument by counsel
5 for both parties, the Court now rules as follows:

6 1. Defendant City of Stockton's Demurrer to Second Amended Complaint of Michael A.
7 Cobb, Trustee of the Andrew C. Cobb 1992 Revocable Trust Dated July 16, 1992, is sustained as
8 follows:

9 a. As to the First Cause of Action for Inverse Condemnation, the demurrer is
10 sustained without leave to amend. Plaintiff fails to state a cause of action, which is based upon the
11 failure to establish that the five-year statute of limitations has not run, and it is clear from the face of
12 the complaint that it has. Plaintiff's cause of action accrued once the City took possession of the
13 Property Interest on December 31, 1998. (See, *Otay Water District v. Beckwith* (1991) 1 Cal.App.4th
14 1041, 1048-1049; see also, *Mehl v. People ex rel. Department of Public Works* (1975) 13 Cal.3d 710;
15 *People ex rel. Department of Transportation v. Gardella Square* (1988) 200 Cal.App.3d 599, 571.)

16 The Second Amended Complaint does not allege a date of possession different from the prior
17 complaints. The statute of limitations expired on December 31, 2003. Estoppel has not been
18 sufficiently alleged. (See, *California Cigarette Concessions, Inc. v. City of Los Angeles* (1960) 53
19 Cal.2d 865; see also, *Mills v. Forestex Co.* (2003) 108 Cal.App.4th 625, 641.) Plaintiff has failed to
20 allege any specific misrepresentation or promise made by the City that induced him to delay filing.
21 (See, *Becerra v. Gonzales* (1995) 32 Cal.App.4th 584, 596.) Plaintiff has also failed to allege
22 reliance.

23 Given that this is the third time that the Court has heard argument on this issue, the Court has
24 determined that the issues have been fully and properly addressed by both parties, and the Court
25 sustains the demurrer without leave to amend.

26 b. As to the Second Cause of Action for Quiet Title, the demurrer is sustained
27 with leave to amend. It is sustained because the statute of limitations, be it the five year or three year
28 statute of limitations, has run, which is clear from the face of the complaint. (See, *Ankoanda v.*

1 *Walker-Smith* (1996) 44 Cal.App.4th 610, 615.)

2 From the pleading, the Court can only conclude that the gravamen of the cause of action is
3 inverse condemnation. Plaintiff is granted leave to amend to allege a basis for a quiet title claim that
4 would not be barred by the statute of limitations. The amended cause of action cannot be based on the
5 same inverse condemnation claim.

6 c. As to the Third Cause of Action for Declaratory Relief, the demurrer is
7 sustained with leave to amend. Plaintiff has failed to state a cause of action because the claim for
8 declaratory relief is based on the inverse condemnation, and it is clear from the face of the complaint
9 that the five-year statute of limitations has run. (See, *Pena v. City of Los Angeles* (1970) 8
10 Cal.App.3d 257, 262.)

11 Leave to amend is granted to allege a declaratory relief claim that is not based on the inverse
12 condemnation claim.

13 d. As to the Fourth Cause of Action for Ejectment, the demurrer is sustained with
14 leave to amend based on the doctrine of intervening public use. (See, *Reed v. Oakdale Irrigation*
15 *District* (1920) 46 Cal.App. 139, 142.) The cause of action may only be amended if it does not relate
16 to the inverse condemnation claim, and there must be a pleading that sets forth why the doctrine of
17 intervening public use would not be applicable to the ejectment claim as pled.

18 e. The Request for Judicial Notice in Support of Defendant City of Stockton's
19 Demurrer to Second Amended Complaint of Michael A. Cobb, Trustee of the Andrew C. Cobb 1992
20 Revocable Trust Dated July 16, 1992, which the City filed September 23, 2008, and Plaintiff's
21 Request for Judicial Notice in Support of Plaintiff's Opposition to defendant City of Stockton's
22 Demurrer to Second Amended Complaint, which Plaintiff filed October 16, 2008, are granted.

23 f. The Supplemental Request for Judicial Notice in Support of Defendant City of
24 Stockton's Demurrer to Second Amended Complaint of Michael A. Cobb, Trustee of the Andrew C.
25 Cobb 1992 Revocable Trust Dated July 16, 1992, which the City filed October 22, 2008, was not
26 considered by the Court in making its ruling. While the Court did not clearly understand Plaintiff's
27 Objection to Supplemental Request for Judicial Notice in Support of City of Stockton's Motion to

28 / / /

1 Strike Quiet Title, Declaratory Relief, and Ejectment from Second Amended Complaint, the Court
2 understood the Objection to be based on the fact that the Request was untimely as it appeared in the
3 reply and not in the moving papers. On that basis, the Court would sustain the objection. Again,
4 however, the Court did not use the Supplemental Request and did not consider it for purposes of the
5 Court's ruling.

6 Good cause appearing therefor, IT IS SO ORDERED.

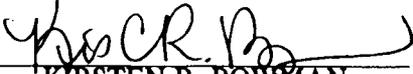
7 Dated: November __, 2008

NOV 24 2008

ELIZABETH HUMPHREYS
HON. ELIZABETH HUMPHREYS, JUDGE

9 Approved as to Form:

10 RICHARD, WATSON & GERSHON

11
12 By 
13 KIRSTEN R. BOWMAN

14 Attorneys for plaintiff Michael A. Cobb,
15 Trustee of the Andrew C. Cobb 1992
16 Revocable Trust dated July 16, 1992
17
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Exhibit M

RICHARDS, WATSON & GERSHON
A Professional Corporation
REGINA N. DANNER (137210)
KIRSTEN R. BOWMAN (181627)
355 South Grand Avenue, 40th Floor
Los Angeles, CA 90071-3101
Telephone: (213) 626-8484
Facsimile: (213) 626-0078

Attorneys for Plaintiff,
Michael A. Cobb, Trustee of the
Andrew C. Cobb 1992 Revocable Trust
dated July 16, 1992

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN JOAQUIN**

MICHAEL A. COBB, Trustee of the
Andrew C. Cobb 1992 Revocable Trust
dated July 16, 1992,

Plaintiff,

vs.

CITY OF STOCKTON, a municipal
corporation; and DOES 1-50, Inclusive,

Defendants.

Case No. CV 035015

**THIRD AMENDED COMPLAINT
FOR:**

- 1. QUIET TITLE**
- 2. EJECTMENT**
- 3. TRESPASS**
- 4. DECLARATORY RELIEF**

Case Management Conference:
Date: January 15, 2009
Time: 8:45 a.m.
Dept.: 41

Plaintiff, Michael A. Cobb, Trustee of the Andrew C. Cobb 1992 Revocable Trust
dated July 16, 1992 (“Plaintiff”), alleges as follows:

I.

INTRODUCTION

1. The Andrew C. Cobb 1992 Revocable Trust dated July 16, 1992 (“Cobb
Trust”) is the sole owner in fee of the real property located at 4218 Pock Lane, Stockton,
California 95206 identified as San Joaquin Assessor’s Parcel Number 179-180-07 (“Cobb

IRW RICHARDS | WATSON | GERSHON
ATTORNEYS AT LAW - A PROFESSIONAL CORPORATION

1 Property”). A true and correct copy of the Grant Deed recorded on July 31, 1992 is
2 attached as Exhibit “1”.

3 2. Plaintiff, Michael A. Cobb, is the trustee of the Cobb Trust and has the
4 power to prosecute this action for the protection of the Cobb Property. A true and correct
5 copy of the affidavit of Acceptance of Trusteeship is attached as Exhibit “2”.

6 3. Defendant City of Stockton (“Defendant” or “City”) is a municipal
7 corporation organized and existing under the laws of the State of California.

8 4. Plaintiff is ignorant of the true names and capacities of Defendants sued
9 herein as DOES 1-50, Inclusive, and therefore sues these Defendants by such fictitious
10 names. Plaintiff will amend this complaint to allege their true names and capacities when
11 ascertained.

12 5. Plaintiff is informed and believes and based thereon alleges, that each
13 fictitiously named Defendants claim some right, title, estate, lien or interest in the Cobb
14 Property adverse to Plaintiff’s title, and their claims, and each of them constitute a cloud
15 on plaintiff’s title to the Cobb Property.

16 6. Plaintiff is informed and believes and based thereon alleges, that each of the
17 fictitiously named Defendants is responsible in some manner for the occurrences herein
18 alleged, and that Plaintiff’s injuries as herein alleged were proximately caused by these
19 Defendants.

20 7. On October 23, 1998, Defendant filed an eminent domain action seeking to
21 condemn a permanent easement across the Cobb Property for the construction of a public
22 roadway. The eminent domain action was filed in the Superior Court of the State of
23 California, County of San Joaquin, and was further identified as Case No. CV006247
24 (“1998 Action”). Specifically, Defendant sought to acquire an “easement” through the
25 Cobb Property. The property that Defendant sought to acquire is legally described in
26 Exhibit “A” to the Complaint in Eminent Domain that was filed in the 1998 Action. A
27 true and correct copy of the Complaint in Eminent Domain filed in 1998 is attached as

28 ///

1 Exhibit “3” to this complaint. The property that was the subject of the 1998 Action will
2 be hereby referred to as the “Property Interest”.

3 8. On October 23, 1998, Defendants recorded a Notice of Pendency of Action-
4 Eminent Domain with the San Joaquin County Recorders (“Lis Pendens”) indicating an
5 intent to condemn and acquire for a public use an easement interest in the above described
6 Property Interest. A true and correct copy of the Notice of Pendency of Action-Action in
7 Eminent Domain is attached as Exhibit “4” to this complaint.

8 9. On or about December 31, 1998, Defendant took legal pre-judgment
9 possession of the Property Interest that was the subject of the 1998 Action pursuant to an
10 Order for Prejudgment Possession. A true and correct copy of the Order for Prejudgment
11 Possession is attached as Exhibit “5”.

12 10. Defendant constructed a public roadway on the Property Interest. The
13 public roadway is described as Industrial Drive from Minden Lane to Pock Lane-South of
14 Little John Creek Subdivision.

15 11. Defendant never obtained a Final Judgment of Condemnation and a Final
16 Order of Condemnation of the Property Interest.

17 12. On October 9, 2007, the Court dismissed the 1998 Action for Defendant’s
18 lack of prosecution; therefore, Defendants were and are no longer in legal possession of
19 the Property Interest. A true and correct copy of the Case Report/Case Summary Sheet is
20 attached as Exhibit “6”.

21 13. Although the 1998 Action was dismissed, Defendants failed and continue to
22 fail to release the Lis Pendens recorded against the Cobb Property.

23 14. Because the Cobb Property is currently encumbered by the Lis Pendens,
24 Plaintiff’s title to the Cobb Property is clouded, and Plaintiff is unable to use, develop or
25 sell the Cobb Property.

26 15. On November 10, 2008, Plaintiff, through his attorneys, demanded that
27 Defendants remove those portions of Industrial Drive from Minden Lane to Pock Lane-
28 South of Little John Creek Subdivision constructed on San Joaquin County Assessor’s

1 Parcel Number: 179-180-07, commonly known as 4218 Pock Lane in the City of
2 Stockton, California (“Ejectment letter”). A true and correct copy of the November 10,
3 2008 Ejectment letter is attached as Exhibit “7”.

4 16. On November 11, 2008, Plaintiff, through his attorneys, submitted a
5 Government Tort Claim under Government Code Section 910 et seq. for property
6 damages, temporary restraining order, and preliminary and permanent injunction
7 (“Claim”). A true and correct copy of the November 11, 2008 Claim is attached as
8 Exhibit “8”.

9 17. Defendants failed to respond within forty-five days of submission of the
10 Claim, as such, under Government Code Section 911.4, the Claim is deemed to have been
11 denied.

12 18. On November 24, 2008, the Court in this matter ordered that Defendant’s
13 demurrer to the Inverse Condemnation cause of action was sustained without leave to
14 amend, as such Plaintiff has no legal remedy for Inverse Condemnation damages against
15 Defendants. A true and correct copy of the Notice of Ruling and Order are attached as
16 Exhibit “9”.

17 **II.**

18 **FIRST CAUSE OF ACTION FOR QUIET TITLE**

19 19. Plaintiff hereby realleges and incorporates by reference paragraphs 1
20 through 18 above.

21 20. Plaintiff was seized of the Property Interests within five years of the
22 commencement of this action.

23 21. Plaintiff is informed and believes, and on such information and belief
24 alleges that Defendant, City of Stockton, claims an interest adverse to Plaintiff’s in the
25 Cobb Property by way of recordation of a Lis Pendens, indicating that Defendants and
26 each of them are entitled to an easement for a public highway on the Cobb Property, and
27 the previously described Property Interest. The Lis Pendens was recorded on October 23,
28 1998, in the Official Records the San Joaquin County Assessor’s Office, Some of the

1 unknown Defendants, specifically those additionally designated as DOES 1 to 25, claim
2 interests in the Cobb Property adverse to Plaintiff's as assignees and successors of
3 Defendant, City of Stockton.

4 22. Plaintiff is seeking to quiet title against the claims of Defendants by having
5 Defendants release the Lis Pendens from the Cobb Property, and the Property Interest.

6 **III.**

7 **SECOND CAUSE OF ACTION FOR EJECTMENT**

8 23. Plaintiff hereby realleges and incorporates by reference paragraphs 1
9 through 22 above.

10 24. Defendants are now in possession of the Property Interest and have been in
11 unlawful possession of the Property Interest since October 9, 2007, when they ousted
12 Plaintiff from peaceful possession of the Property Interest.

13 25. On November 10, 2008, Plaintiff demanded of Defendants, and each of
14 them, that they remove that portion of Industrial Drive, which is constructed upon the
15 Cobb Property specifically on the Property Interest, but Defendants, and each of them,
16 have ignored this demand, have refused Plaintiff exclusive use of the Property Interest,
17 and still unlawfully withhold possession of the premises.

18 26. The reasonable value of the rents and profits of the premises is, and was, an
19 amount that is not known by Plaintiff at this time; however, Plaintiff will seek leave to
20 amend the complaint to so state such sum before judgment. Plaintiff has been damaged in
21 this sum since October 9, 2007, and will continue to be damaged as long as Defendants
22 withhold possession of the Property Interest from Plaintiff. Plaintiff will seek leave to
23 amend the complaint to so state the damages before judgment.

24 ///

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IV.

**THIRD CAUSE OF ACTION FOR DAMAGES FOR TRESPASS AND FOR
TEMPORARY RESTRAINING ORDER, AND PRELIMINARY AND
PERMANENT INJUNCTION**

27. Plaintiff hereby realleges and incorporates by reference paragraphs 1 through 26 above.

28. On October 9, 2007, and continuing to the present time, Defendants, and each of them, without Plaintiff's consent, unlawfully possessed and continue to possess the Property Interest of which Plaintiff is the owner and possessor, by having constricted and continued daily use of Industrial Drive by the public. Defendants have no legal right to construct such road on Plaintiff's property, nor do Defendants have the right to allow the public to use such road on Plaintiff's property.

29. As a proximate result of Defendants' unlawful and continued possession of the Property Interest of which Plaintiff is the owner and possessor, by having constructed a road and by allowing the public to use such road on a daily basis, Plaintiff's property was damaged to such an extent that repairs will be necessary to restore the property to its prior condition all to Plaintiff's damage a sum according to proof. Plaintiff will seek leave to amend the Complaint to so state the damages before judgment.

30. As a further proximate result of Defendants' unlawful and continued possession of the Property Interest of which Plaintiff is the owner and possessor, by having constructed a road and by allowing the public to use such road on a daily basis, Plaintiff has suffered discomfort and annoyance and experienced mental suffering. Plaintiff has also sustained injuries to his nervous system, all of which injuries have caused and continue to cause plaintiff great mental, physical, and nervous pain and suffering. As a result of this mental distress, Plaintiff has suffered general damages.

31. As a further proximate result of Defendants' unlawful and continued possession of the Property Interest of which Plaintiff is the owner and possessor, by having constructed a road and by allowing the public to use such road on a daily basis,

1 Plaintiff has incurred, and will continue to incur, medical and related expenses.

2 32. Defendants' wrongful conduct, by having constructed a road on the
3 Property Interest, and by allowing the public to use such road on a daily basis, unless
4 enjoined and restrained by order of this court, will cause great and irreparable injury
5 through the ongoing injury to the property, and will deprive Plaintiff of the ability to use,
6 develop or sell the Cobb Property in its entirety.

7 33. Plaintiff has no adequate remedy at law for the injuries currently being
8 suffered, and Defendants will continue to maintain and allow the public to use the road
9 on Plaintiff's property unless restrained, and Plaintiff would be required to maintain a
10 multiplicity of judicial proceedings to protect his interests.

11 V.

12 **FOURTH CAUSE OF ACTION AS AGAINST ALL DEFENDANTS**
13 **UNDER CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 1060**
14 **(DECLARATORY RELIEF)**

15 34. Plaintiff repeats and realleges each and every allegation set forth in
16 paragraphs 1 through 33, inclusive of this Third Amended Complaint and incorporates the
17 same by this reference as though fully set forth herein.

18 35. An actual controversy has arisen and now exists between Plaintiff and
19 Defendants concerning their respective rights and duties regarding Defendants' unlawful
20 occupation, both by Lis Pendens and physically, of Plaintiff's property.

21 36. A judicial declaration is necessary and appropriate at this time, and under
22 the circumstances, in order to determine the rights and duties of the parties concerning
23 Defendant's unlawful occupation of Plaintiff's property.

24
25 WHEREFORE, Plaintiff prays judgment against Defendants, and each of them, as
26 follows:

27 **FIRST CAUSE OF ACTION-QUIET TITLE**

28 1. For a judgment that Plaintiff is the fee owner of the Property Interest and

1 that Defendants have no interest in the property adverse to Plaintiffs;

2 2. For costs of suit herein incurred; and

3 3. For such other and further relief as the court may deem proper.

4 SECOND CAUSE OF ACTION-EJECTMENT

5 1. For restitution of the premises;

6 2. For damages for their unlawful possession after October 9, 2007, until
7 delivery of possession thereof;

8 3. For costs of suit herein incurred; and

9 4. For such other and further relief as the Court may deem proper.

10 THIRD CAUSE OF ACTION-TRESPASS

11 1. For general damages for property damage in an amount to be ascertained;

12 2. For general damages for personal injury and mental distress according to
13 proof;

14 3. For special damages for medical and related expenses according to proof;

15 4. For an order requiring Defendant to show cause, if it has any interest in the
16 property, and why it should not be enjoined as hereinafter set forth, during the pendency
17 of this action;

18 5. For a temporary restraining order, preliminary injunction, and a permanent
19 injunction, all requiring Defendant and its agents, servants and employees, and all person
20 acting under, in concert with, or for it:

21 a. To refrain from continuing to trespass on Plaintiff's land and from
22 maintaining a public road on Plaintiff's property;

23 b. To remove Industrial Drive on the Cobb Property, as described in
24 Exhibits A to the 1998 Action, and return the Cobb Property to its original condition.

25 6. For costs of suit herein incurred;

26 7. For reasonable attorney's fees according to proof;

27 8. For such other and further relief as the court may deem proper.

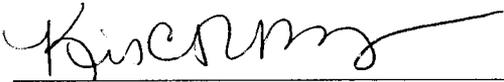
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1 FOURTH CAUSE OF ACTION-DECLARATORY RELIEF

2 1. For a judicial declaration that Plaintiff owns the Cobb Property in fee, to the
3 exclusion of any claim by Defendant, to the portion of Plaintiff's Property that is
4 encroached upon by the roadway.

5
6 DATED: December 23, 2008

RICHARDS, WATSON & GERSHON
A Professional Corporation
REGINA N. DANNER
KIRSTEN R. BOWMAN
MARICELA E. MARROQUIN

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11 By: 
12 Kirsten R. Bowman
13 Attorneys for Defendant
14 MICHAEL A. COBB, Trustee of the Andrew C.
15 Cobb 1992 Revocable Trust dated July 16, 1992

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RWA RICHARDS | WATSON | GERSHON
KWG ATTORNEYS AT LAW - A PROFESSIONAL CORPORATION

EXHIBIT 1

RECORDING REQUESTED BY

92088573

SAN JOAQUIN COUNTY
RECORDER'S OFFICE
JAMES M. JOHNSTONE

92 JUL 31 AM 11:28

RECORDED AT REQUEST OF
ATTORNEY

FEE 13-1

AND WHEN RECORDED MAIL THIS DEED AND,
UNLESS OTHERWISE SHOWN BELOW, MAIL TAX
STATEMENTS TO:

Andrew C. Cobb
4307 S. Hwy. 99
Stockton, CA 95215

ESCROW NO. _____
TITLE ORDER NO. _____

SPACE ABOVE THIS LINE FOR RECORDER'S USE

GRANT DEED

The undersigned grantor(s) declare(s):
Documentary transfer tax is \$ -0- A.P.N. 179-180-05 and 179-180-07
() computed on full value of property conveyed, or
() computed on full value less value of liens and encumbrances remaining at time of sale.
() Unincorporated area: () City of _____, and

By this instrument dated July 16, 1992, for a valuable consideration

ANDREW C. COBB, a single man,

hereby GRANTS to

ANDREW C. COBB, Trustee of the Andrew C. Cobb 1992 Revocable Trust,
dated July 16, 1992

the following described real property in the
County of San Joaquin, State of California

(See EXHIBIT "A" Attached Hereto)

STATE OF CALIFORNIA,
COUNTY OF SAN JOAQUIN

On July 16, 1992 before me
the undersigned, a Notary Public in and for said County and State,
personally appeared

ANDREW C. COBB

Andrew C. Cobb
ANDREW C. COBB

personally known to me (or proved to me on the basis of satisfactory
evidence) to be the person(s) whose name(s) is/are subscribed to the
within instrument and acknowledged to me that he/she/they executed the
same.

WITNESS my hand and official seal.

Signature *Renate M. Drivon*



MAIL TAX STATEMENTS TO PARTY SHOWN ON FOLLOWING LINE; IF NO PARTY IS SHOWN, MAIL AS DIRECTED ABOVE.

Name

Street Address

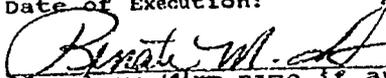
City & State

18 00 11/24

GOVERNMENT CODE 27361.7 92088573

I certify under the penalty of perjury that the notary seal on the document to which this statement is attached reads as follows:

Name of Notary:	Renate M. Drivon
Date Commission Expires:	August 19, 1994
Place of Execution:	Stockton, California
Date of Execution:	August 16, 1992



 signature (firm name if any)

92088673

EXHIBIT "A"

THAT CERTAIN REAL PROPERTY SITUATED IN THE COUNTY OF SAN JOAQUIN, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

PARCEL ONE:

ALL THAT CERTAIN REAL PROPERTY SITUATED WITHIN THE COUNTY OF SAN JOAQUIN, STATE OF CALIFORNIA, BEING A PORTION OF SECTION 48, C. M. WEBER GRANT, ALSO BEING A PORTION OF LOT NINE (9) OF THE ROSS GILMOUR GARDENS, FILED FOR RECORD IN BOOK OF MAPS AND PLATS, VOLUME 7, PAGE 1, SAN JOAQUIN COUNTY RECORDS, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF LOT ONE (1) OF SAID ROSS GILMOUR GARDENS; THENCE NORTH 71°40' EAST 1212.00 FEET ALONG THE NORTH LINE OF SAID LOT 1 TO THE NORTHEAST CORNER THEREOF, SAID NORTHEAST CORNER BEING A POINT ON THE CENTER LINE OF THE FIFTY (50) FOOT WIDE RIGHT OF WAY FOR POCK LANE; THENCE SOUTH 18°02'06" EAST 2184.38 FEET ALONG THE WEST LINE OF LOTS 6, 7, 8 AND 9 OF SAID ROSS GILMOUR GARDENS AND ALSO ALONG THE CENTER LINE OF SAID POCK LANE TO THE NORTHWEST CORNER OF LOT 10 OF SAID ROSS GILMOUR GARDENS; THENCE NORTH 72°10' EAST 1130.05 FEET ALONG THE NORTH LINE OF SAID LOT 10 TO A POINT ON THE CENTER LINE OF NORTH LITTLE JOHN CREEK, AS SAID CREEK CENTERLINE IS SHOWN ON THAT CERTAIN MAP OF SURVEY BY R. W. SIEGFRIED AND ASSOCIATES, CIVIL ENGINEERS, ENTITLED "PORTIONS OF THE ROSS GILMOUR GARDENS AND SECTION 48, C. M. WEBER GRANT", SAID MAP OF SURVEY BEING RECORDED MARCH 11, 1969, IN BOOK OF SURVEYS, VOL. 18 PAGE 160, SAID POINT ALSO BEING THE TRUE POINT OF BEGINNING; THENCE NORTH 72°10' EAST 556.36 FEET ALONG SAID NORTH LINE OF LOT 10 TO THE NORTHEAST CORNER THEREOF; THENCE NORTH 18°15'16" WEST 258.79 FEET ALONG THE EAST LINE OF SAID LOT 9 TO THE NORTH LINE OF THE SOUTH ONE-HALF OF LOT 9, AS SHOWN ON SAID SURVEY; THENCE SOUTH 72°08'40" WEST 1173.02 FEET ALONG THE NORTH LINE OF THE SOUTH ONE-HALF OF LOT 9 TO A POINT IN THE CENTER LINE OF NORTH LITTLE JOHN CREEK, AS SAID CREEK CENTER LINE IS SHOWN ON SAID SURVEY; THENCE SOUTH 85°10' EAST 670.34 FEET UPSTREAM ALONG SAID CREEK CENTER LINE TO THE POINT OF BEGINNING.

PARCEL TWO:

ALL THAT CERTAIN REAL PROPERTY SITUATED WITHIN THE COUNTY OF SAN JOAQUIN, STATE OF CALIFORNIA, BEING A PORTION OF SECTION 48, C. M. WEBER GRANT, ALSO BEING PORTION OF LOT 10 OF THE ROSS GILMOUR GARDENS, FILED FOR RECORD IN BOOK OF MAPS AND PLATS, VOLUME 7, PAGE 1, SAN JOAQUIN COUNTY RECORDS, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF LOT 1 OF SAID ROSS GILMOUR GARDENS; THENCE NORTH 71°40' EAST 1212.00 FEET ALONG THE NORTH LINE OF SAID LOT 1 TO THE NORTHEAST CORNER THEREOF, SAID NORTHEAST CORNER BEING A POINT ON THE CENTER LINE OF THE FIFTY (50) FOOT WIDE RIGHT OF WAY FOR POCK LANE; THENCE SOUTH 18°02'06" EAST 2184.38 FEET ALONG THE WEST LINE OF LOTS 6, 7, 8 AND 9 OF SAID ROSS GILMOUR

92088673

GARDENS AND ALSO ALONG THE CENTER LINE OF SAID POCK LANE TO THE NORTHWEST CORNER OF LOT 10 OF SAID ROSS GILMOUR GARDENS; THENCE NORTH 72°10' EAST 1130.05 FEET ALONG THE NORTH LINE OF SAID LOT 10 TO A POINT ON THE CENTER LINE OF NORTH LITTLE JOHN CREEK, AS SAID CREEK CENTER LINE IS SHOWN ON THAT CERTAIN MAP OF SURVEY BY R. W. SIEGFRIED AND ASSOCIATES, CIVIL ENGINEERS, ENTITLED, "PORTIONS OF THE ROSS-GILMOUR GARDENS AND SECTION 48, C. M. WEBER GRANT", SAID MAP OF SURVEY BEING DATED MARCH 1967 AND DECEMBER 1968, SAID POINT ALSO BEING THE TRUE POINT OF BEGINNING; THENCE NORTH 72°10' EAST 556.36 FEET ALONG SAID NORTH LINE OF LOT 10 TO THE NORTHEAST CORNER THEREOF; THENCE SOUTH 18°15'16" EAST 290.86 FEET ALONG THE EAST LINE OF LOT 10 TO SAID CREEK CENTER LINE; THENCE DOWNSTREAM ALONG SAID CREEK CENTER LINE THE FOLLOWING TWO (2) COURSES: (1) NORTH 77°45' WEST 411.77 FEET AND (2) NORTH 35°10' WEST 219.13 FEET TO THE TRUE POINT OF BEGINNING.

PARCEL THREE:

ALL THAT CERTAIN REAL PROPERTY SITUATED WITHIN THE COUNTY OF SAN JOAQUIN, STATE OF CALIFORNIA, BEING A PORTION OF SECTION 48, C. M. WEBER GRANT, ALSO BEING PORTIONS OF LOTS 16 AND 17 OF THE ROSS GILMOUR GARDENS, FILED FOR RECORD IN BOOK OF MAPS AND PLATS, VOLUME 7, PAGE 1, SAN JOAQUIN COUNTY RECORDS, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF LOT 1 OF SAID ROSS GILMOUR GARDENS; THENCE NORTH 71°40' EAST 4449.96 FEET ALONG THE NORTH LINE OF SAID ROSS GILMOUR GARDENS TO THE WEST LINE OF THAT CERTAIN PARCEL OF LAND DESCRIBED AS PARCEL NO. 2 IN THE DEED TO THE STATE OF CALIFORNIA RECORDED IN BOOK OF OFFICIAL RECORDS, VOLUME 1575, PAGE 364, SAN JOAQUIN COUNTY RECORDS; THENCE SOUTH 17°45'10" EAST 2482.62 FEET ALONG THE WEST LINE OF SAID PARCEL NO. 2 AND SAID WEST LINE EXTENDED SOUTHERLY TO A POINT ON THE SOUTH LINE OF THE NORTH 270 FEET OF LOT 16 OF SAID ROSS GILMOUR GARDENS, SAID POINT ALSO BEING THE TRUE POINT OF BEGINNING; THENCE SOUTH 17°45'10" EAST 316.97 FEET ALONG THE WEST LINE OF THAT CERTAIN PARCEL OF LAND DESCRIBED IN THE DEED TO THE STATE OF CALIFORNIA RECORDED IN BOOK OF OFFICIAL RECORDS, VOLUME 1653, PAGE 374, SAN JOAQUIN COUNTY RECORDS; THENCE SOUTH 72°10' WEST 1026.49 FEET TO THE CENTER LINE OF NORTH LITTLE JOHN CREEK, AS SAID CREEK CENTERLINE IS SHOWN ON THAT CERTAIN MAP OF SURVEY BY R. W. SIEGFRIED AND ASSOCIATES, CIVIL ENGINEERS, ENTITLED, "PORTIONS OF THE ROSS GILMOUR GARDENS AND SECTION 48, C. M. WEBER GRANT", SAID MAP OF SURVEY BEING DATED MARCH 1967 AND DECEMBER 1968; THENCE NORTH 77°45' WEST 590.74 FEET DOWNSTREAM ALONG SAID CREEK CENTER LINE TO THE WEST LINE OF SAID LOT 16; THENCE NORTH 18°15'16" WEST 20.85 FEET ALONG SAID WEST LINE TO THE SAID SOUTH LINE OF THE NORTH 270 FEET OF SAID LOT 16; THENCE NORTH 72°10' EAST 1538.26 FEET ALONG SAID SOUTH LINE TO THE TRUE POINT OF BEGINNING.

EXCEPTING THEREFROM AN UNDIVIDED 1/2 INTEREST IN AND TO ALL OIL, GAS, AND MINERAL RIGHTS PREVIOUSLY RESERVED.

25 x 17

EXHIBIT 2

FILED
SUPERIOR COURT - STOCKTON
93 OCT 23 PM 12:06
CITY CLERK
BY Kathy Valone
DEPUTY

1 MAXWELL M. FREEMAN, State Bar Number 31278
2 RONALD J. D'AIUTO, State Bar Number 91962
3 JANICE D. MAGDICH, State Bar Number 188278
4 FREEMAN & D'AIUTO
5 A Professional Law Corporation
6 1818 Grand Canal Boulevard
7 Stockton, CA 95207
8 Telephone: (209) 474-1818

9 CYNTHIA HUMBERT NEELY, State Bar Number 109328
10 BARBARA J. ANDERSON, State Bar Number 119277
11 CITY ATTORNEY'S OFFICE, CITY OF STOCKTON
12 City Hall, Second Floor
13 425 N. El Dorado Street
14 Stockton, CA 95202
15 Telephone: (209) 937-8333

16 Attorneys for plaintiff
17 CITY OF STOCKTON

THIS CASE HAS BEEN ASSIGNED TO
JUDGE BOB MC NATT IN DEPARTMENT 11
FOR ALL PURPOSES, INCLUDING TRIAL

18 SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN JOAQUIN
19 STOCKTON BRANCH

20 CITY OF STOCKTON, a municipal
21 corporation,

22 Plaintiff,

23 vs.

24 ANDREW C. COBB, Trustee of the
25 Andrew C. Cobb 1992 Revocable Trust
26 dated July 16, 1992; TITLE INSURANCE
27 AND TRUST COMPANY, a California
28 corporation; ALDO B. TOGNIALLI;
ROSAIE TOGNIALLI; and DOES I
through X, inclusive; AND ALL
PERSONS CLAIMING AN INTEREST
IN THE PROPERTY DESCRIBED
IN THE COMPLAINT,

Defendants.

NO. **CV 006247**

**COMPLAINT - ACTION IN
EMINENT DOMAIN**
[Code Civ. Proc., § 1250.310]

APN: 179-180-07

Plaintiff, City of Stockton, a municipal corporation and charter city (City), complains of
defendants, and each of them, and for its cause of action alleges that:

- 1. The proceeding is instituted and the lands and interests hereinafter described are

1 taken and condemned pursuant to and under the provisions and authority and for the purposes and
2 uses authorized by Article I, Section 19 of the Constitution of the State of California, and sections
3 1240.010, 1240.030, 1240.050, 1240.110, 1240.120 and 1250.010 et seq. of the Code of Civil
4 Procedure of the State of California.

5 2. City is now, and at all times hereafter stated was, a public entity organized and
6 existing under and by virtue of the laws of the State of California, and is vested by such
7 constitution and laws with the power of eminent domain for public use.

8 3. City seeks to acquire interest in the real property hereinafter described for a public
9 improvement project, to wit: the construction of a public roadway, and modification of grade to
10 provide street, highway and sidewalk services to the community. City is authorized by
11 Government Code sections 37350.5, 40403, 40404 and 66462.5, as well as Title 7, Part 3, of
12 Code of Civil Procedure to acquire private property for the project.

13 4. City seeks to acquire an easement on that certain real property located within the
14 City of Stockton, County of San Joaquin, California, as more particularly described in Exhibit A.
15 Said real property and improvements, if any, are hereinafter referred to as the "Subject Property."

16 5. Exhibit B is a map portraying the Subject Property and showing the location of said
17 public improvement project for which the Subject Property is sought to be acquired.

18 6. Prior to commencement of this action, and after notice pursuant to Code of Civil
19 Procedure section 1235.235, at a meeting of the City Council of plaintiff City of Stockton on
20 August 18, 1998, said City Council, by a vote of at least two-thirds (2/3), passed Resolution
21 No. R-98-0353, a true and correct copy of which is attached hereto as Exhibit C and by reference
22 made a part thereof, stating and determining that the public interest and necessity require the
23 acquisition of the property interest described in said Exhibit A for the purposes and uses set forth
24 above, which uses are public uses authorized by law. The City Council found and determined in
25 said Resolution that:

26 a. the Subject Property to be acquired was described in an exhibit attached and
27
28

1 incorporated by reference into the Resolution;

2 b. the Subject Property is to be acquired for a public use and a public project,
3 that is the construction and installation of a public street and bridge crossing
4 pursuant to the authority granted by California Government Code and Code
5 of Civil Procedure;

6 c. the public interest and necessity require the acquisition, construction and
7 installation of the proposed project;

8 d. the proposed project is planned and located in the manner which would be
9 the most compatible with the greatest public good and the least private
10 injury;

11 e. the Subject Property described is necessary for the proposed project;

12 f. the offer required by section 7267.2 of the Government Code of the State of
13 California has been made to the owners of record of the Subject Property;

14 g. the City Attorney of the City of Stockton was authorized and empowered to
15 acquire the Subject Property by condemnation in accordance with California
16 law, to deposit the amount of probable compensation in compliance with the
17 California Code of Civil Procedure, to take all actions as necessary to secure
18 immediate prejudgment possession and use of the property to be condemned,
19 and to utilize the services of private counsel as co-counsel to prosecute said
20 proceedings.

21 7. Names of all the owners and of all persons claiming to any right, title, estates, lien
22 or interest in, on, to or against the real property sought to be condemned in this action, or any part
23 thereof, so far as they are known to City, are hereinafter set forth. For the convenience of the
24 court and not as allegations by which City intends to be bound, their possible interests are set forth
25 respectively:

Defendant

Interest

Andrew C. Cobb

Trustee for fee owner, the Andrew C. Cobb 1992 Revocable Trust dated July 16, 1992

Title Insurance and Trust Company, a California corporation

Trustee under a Deed of Trust recorded April 21, 1977, in Volume 4249, page 559, San Joaquin County Records

Aldo B. Tognialli

Beneficiary under a Deed of Trust recorded April 21, 1977, in Volume 4249, page 559, San Joaquin County Records

Rosalie Tognialli

Beneficiary under a Deed of Trust recorded April 21, 1977, in Volume 4249, page 559, San Joaquin County Records

8. Defendant DOES I through X, inclusive, have, or claim to have, an interest in the Property, the exact nature of which is unknown to City. The true names or capacities, whether individual, corporate, associate or otherwise of defendants DOES I through X, inclusive, being unknown, City sues said defendants by such fictitious names and will seek leave to amend this Complaint to show their true names and capacities when the same have been ascertained.

WHEREFORE, City prays:

1. That defendants, and each of them, be required by answer to set forth the nature and extent of their several estates and interests in the Subject Property or any part or portion sought to be condemned herein, and that such several estates and interests may be determined;

2. All liens and encumbrances against the Subject Property be extinguished and deducted from the Judgment;

3. That the County Assessor and/or Tax Collector of the County of San Joaquin be directed to provide the required information as to any taxes owing on the Subject Property; and

4. For judgment:

a. decreeing that the real property described in Exhibit A, to the extent of the title and interest which City seeks to acquire by this action, is condemned for necessary public uses of the City, as authorized by law and set forth in the Resolution of Necessity (Exhibit C), and that all of said land is necessary and

1 suitable therefor;

2 b. determining the value of the Subject Property subject of this action, and each
3 separate interest therein, and directing the payment of each separate interest
4 to the persons entitled thereto; and

5 c. for such other and further relief as the court shall deem just and proper.

6 Dated: October 23, 1998

FREEMAN & D'AIUTO
A PROFESSIONAL LAW CORPORATION

8
9 By: 

JANICE D. MAGDICH
Attorneys for plaintiff
CITY OF STOCKTON

10
11 CITYCOBBVCOMPLNTLV

EXHIBIT A

LEGAL DESCRIPTION

INDUSTRIAL DRIVE
A.P.N. 179-180-07

All that certain real property, situate, lying and being in the City of Stockton, County of San Joaquin, State of California, described as follows:

PARCEL ONE:

Being a portion of that certain real property described as Parcel One in the deed to Andrew C. Cobb, a single man, recorded in Official Records, Book 4249, Page 556, San Joaquin County Records, also being a portion of the south 1/2 of Lot 9 of Ross-Gilmour Gardens, filed for record in Book of MAPS AND PLATS, Volume 7, Page 1, San Joaquin County Records, lying in Section 48 of the C.M. Weber Grant and being more particularly described as follows:

Commencing at City of Stockton survey control monument 5S-16, having the coordinates of N= 2,159,968.647 and E= 6,350,752.325, as shown on Book 33 of Surveys, at Page 20, San Joaquin County Records; thence South 17° 14' 51" East 4347.89 feet to City of Stockton survey control monument 3S-9, having the coordinates of N= 2,155,816.544 and E= 6,352,041.390, as shown on said Record of Survey; thence North 86° 15' 01" West 3470.85 feet to a 3/4" Iron Pin set at the northwesterly corner of Parcel "I," as shown on Book 28 of Surveys, at Page 87, San Joaquin County Records, said point being at the intersection of the northerly line of the southerly 1/2 of said Lot 9 of said Ross-Gilmour Gardens, with the centerline of Pock Lane (50.00 feet wide); thence North 72° 39' 12" East, along the northerly line of the southerly 1/2 of said Lot 9, also being the northerly line of said Parcel "I" and the northerly line of Lot 9 and Lot 1 of Stockton Airport Business Center, Unit No. 3, filed in Book 30 of MAPS AND PLATS, at Page 58, San Joaquin County Records, a distance of 512.47 feet to an angle point in the northerly line of said Lot 1; thence continue North 72° 39' 12" East, on the northerly line of the southerly 1/2 of Lot 9 of said Ross-Gilmour Gardens, 191.27 feet to the TRUE POINT OF BEGINNING of this description; thence continue North 72° 39' 12" East, on the northerly line of the southerly 1/2 of Lot 9 of said Ross-Gilmour Gardens, 299.08 feet to an angle point in the boundary of Little John Creek, Unit 3, as shown on the plat filed April 26, 1994, in Book 31 of Maps and Plats, at Page 112, San

98-0353

Joaquin County Records, said point being on a non-tangent curve to the left, from which the radius point of said curve bears North 00° 51' 20" West, said curve having a radius of 958.00 feet; thence easterly, on the arc of said curve, through a central angle of 14° 53' 31", and a chord bearing and distance of North 81° 41' 54" East 248.30 feet, an arc distance of 249.00 feet to a point of reverse curvature, from which the radius point bears South 15° 44' 52" East; thence easterly, along the arc of a curve to the right, having a radius of 1042.00 feet, a central angle of 21° 55' 46", and a chord bearing and distance of North 85° 13' 01" East 396.38 feet, an arc distance of 398.82 feet to a point of reverse curvature, from which the radius point bears North 06° 10' 54" East; thence easterly, along the arc of a curve to the left, having a radius of 958.00 feet, through a central angle of 03° 18' 46", and a chord bearing and distance of South 85° 28' 29" East 55.38 feet, an arc distance of 55.39 feet to a point on the easterly line of Lot 9 of said Ross-Gilmour Gardens, said point bearing South 17° 44' 50" East 145.90 feet from the northeasterly corner of the southerly 1/2 of said Lot 9, as said northeasterly corner is shown on that certain map filed in Book 32 of Surveys, at Page 118, San Joaquin County Records; thence South 17° 44' 50" East, on a non-tangent line, along the easterly line of said Lot 9, a distance of 68.08 feet to a point of intersection with a non-tangent curve to the right, from which the radius point of said curve bears North 01° 31' 30" East, said curve having a radius of 1022.00 feet; thence westerly, along the arc of said curve, through a central angle of 04° 39' 24", and a chord bearing and distance of North 86° 08' 48" West 83.04 feet, an arc distance of 83.06 feet to a point of reverse curvature, from which the radius point bears South 06° 10' 54" West; thence westerly, along the arc of a curve to the left, having a radius of 978.00 feet, a central angle of 21° 55' 46", and a chord bearing and distance of South 85° 13' 01" West 372.04 feet, an arc distance of 374.32 feet to a point of reverse curvature, from which the radius point bears North 15° 44' 52" West; thence westerly, along the arc of a curve to the right, having a radius of 1022.00 feet, a central angle of 14° 53' 31", and a chord bearing and distance of South 81° 41' 54" West 264.88 feet, an arc distance of 265.63 feet to a point of reverse curvature, from which the radius point of said curve bears South 00° 51' 20" East; thence westerly, along the arc of a curve to the left, having a radius of 1978.00 feet, through a central angle of 08° 20' 11", with a chord bearing and distance of South 84° 58' 34" West 287.54 feet, an arc distance of 287.80 feet to the point of beginning.

Containing 1.235 Acres more or less.

PARCEL TWO:

Being a portion of that certain real property described as Parcel One in the deed to Andrew C. Cobb, a single man, recorded in Official

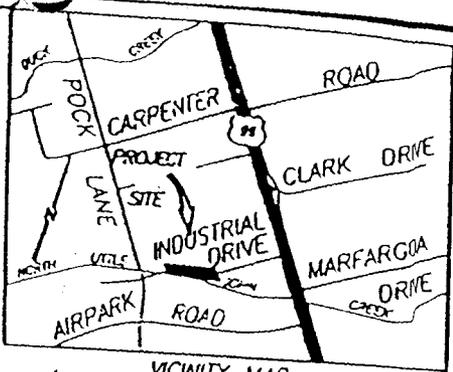
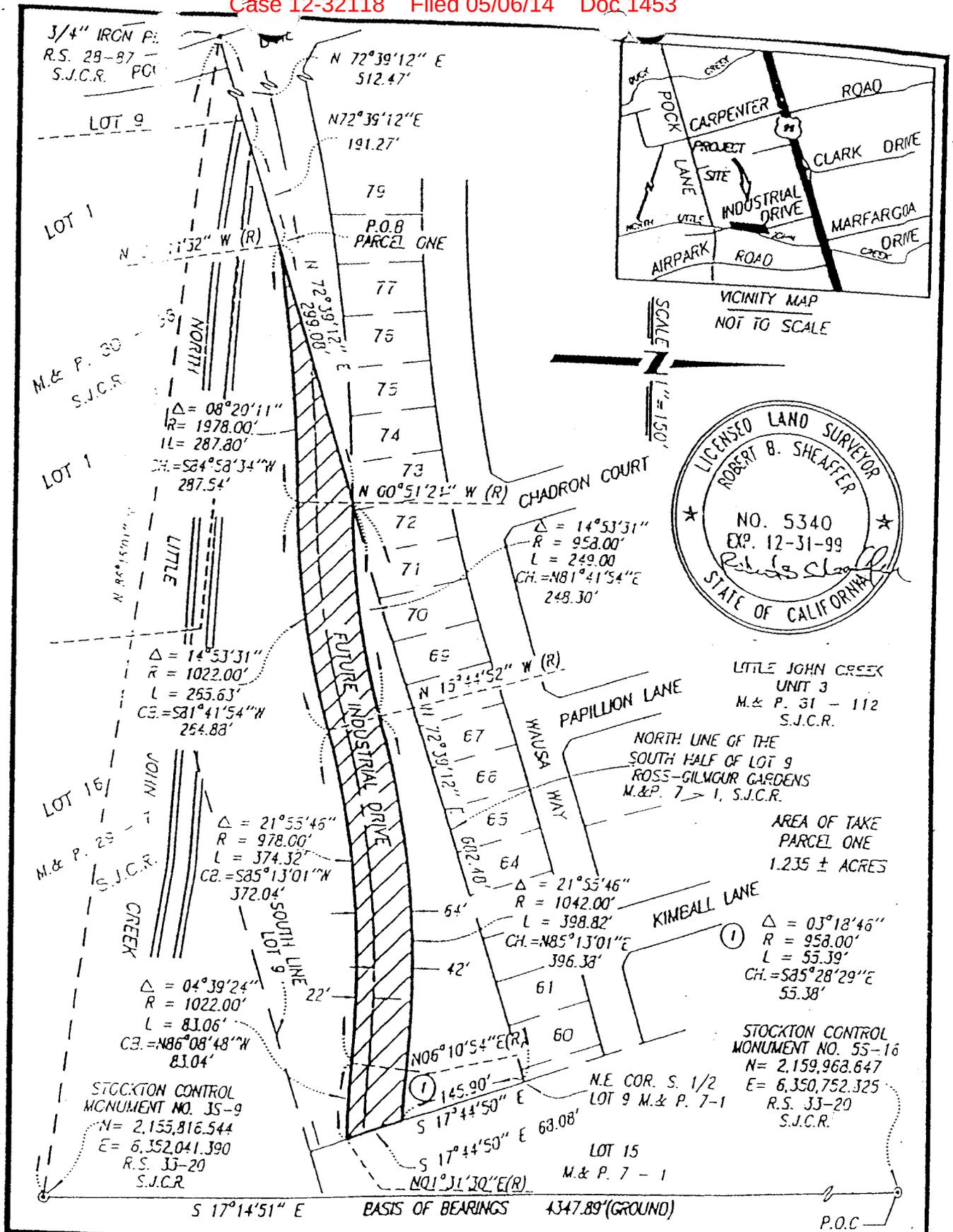
Records, Book 4249, Page 556, San Joaquin County Records, also being a portion of the south 1/2 of Lot 9 of Ross-Gilmour Gardens, filed for record in Book of MAPS AND PLATS, Volume 7, Page 1, San Joaquin County Records, lying in Section 48 of the C.M. Weber Grant and being more particularly described as follows:

Commencing at City of Stockton survey control monument 5S-16, having the coordinates N= 2,159,968.647 and E= 6,350,752.325, as shown on Book 33 of Surveys, at Page 20, San Joaquin County Records; thence South 17° 14' 51" East 4347.89 feet to City of Stockton survey control monument 3S-9, having the coordinates of N= 2,155,816.544 and E= 6,352,041.390, as shown on said Record of Survey; thence North 86° 15' 01" West 3470.85 feet to a 3/4" Iron Pin set at the northwesterly corner of Parcel "I," as shown on Book 28 of Surveys, at Page 87, San Joaquin County Records, said point being at the intersection of the northerly line of the southerly 1/2 of Lot 9 of said Ross-Gilmour Gardens, with the centerline of Pock Lane. (50.00 feet wide); thence North 72° 39' 12" East, along the northerly line of the southerly 1/2 of said Lot 9, also being the northerly line of said Parcel "I" and the northerly line of Lot 9 and Lot 1 of Stockton Airport Business Center, Unit No. 3, filed in Book 30 of MAPS AND PLATS, at Page 58, San Joaquin County Records, a distance of 512.47 feet to an angle point in the northerly line of said Lot 1 and the TRUE POINT OF BEGINNING of this description; thence continue North 72° 39' 12" East, on the northerly line of the southerly 1/2 of Lot 9 of said Ross-Gilmour Gardens, 121.64 feet; thence South 11° 11' 53" East 16.33 feet to the beginning of a non-tangent curve to the left, having a radius of 1953.00 feet and a chord bearing and distance of South 77° 19' 12" West 101.01 feet, and from which the radius of said curve bears South 11° 11' 53" East; thence westerly, along the arc of said curve, through a central angle of 02° 57' 50", an arc distance of 101.03 feet to the centerline of North Little John Creek, also being the southerly line of aforesaid Parcel One in the deed to Andrew C. Cobb, a single man, recorded in Official Records, Book 4249, page 556, San Joaquin County Records, and also being the northerly line of Lot 1 of Stockton Airport Business Center, Unit No. 3, filed in Book 30 of MAPS AND PLATS, at Page 58, San Joaquin County Records; thence along the southerly line of said Cobb Parcel, and the northerly line of said Lot 1, North 84° 41' 32" West 20.81 feet to the point of beginning.

Containing 1268 Square Feet of Land, more or less

Bearings and coordinates used in the above descriptions are based on the California Coordinate System-83, Zone III. All distances are ground level distances and must be multiplied by 0.99993339 to obtain grid distances.

98-0353



VICINITY MAP
NOT TO SCALE

SCALE
1" = 150'



LITTLE JOHN CREEK
UNIT 3
M.& P. 31 - 112
S.J.C.R.

AREA OF TAKE
PARCEL ONE
1.235 ± ACRES

① $\Delta = 03^{\circ}18'46''$
 $R = 958.00'$
 $L = 55.39'$
 $CH. = S85^{\circ}28'29''E$
 $55.38'$

STOCKTON CONTROL
MONUMENT NO. 55-16
 $N = 2,159,968.647$
 $E = 6,350,752.325$
R.S. 33-20
S.J.C.R.

No.	Revised	By
1	01/15/98	RSS
Drawn by:		R.B.S.
Date:		June 2, 1997
Scale:		1" = 150'

ACQUISITION PLAT FOR
INDUSTRIAL DRIVE - PARCEL ONE

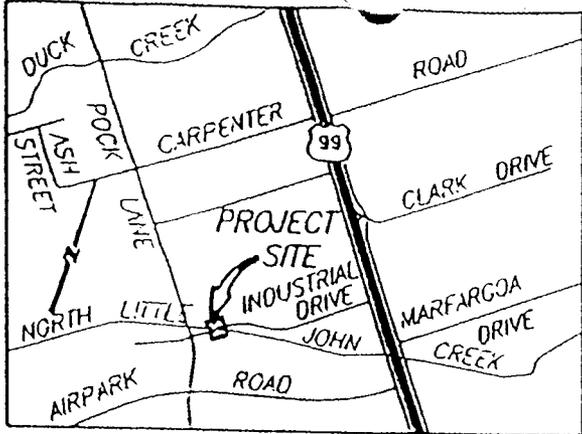
CITY OF STOCKTON
DEPARTMENT OF PUBLIC WORKS

Approved by
Robert B. Sheaffer
City Engineer

Date: 2/2/98

DRAWING 21C4013381256

3854A

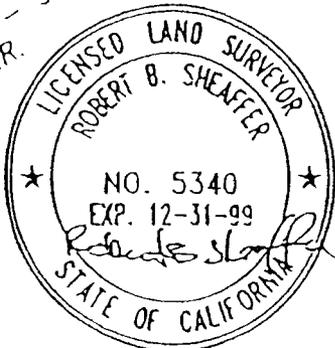
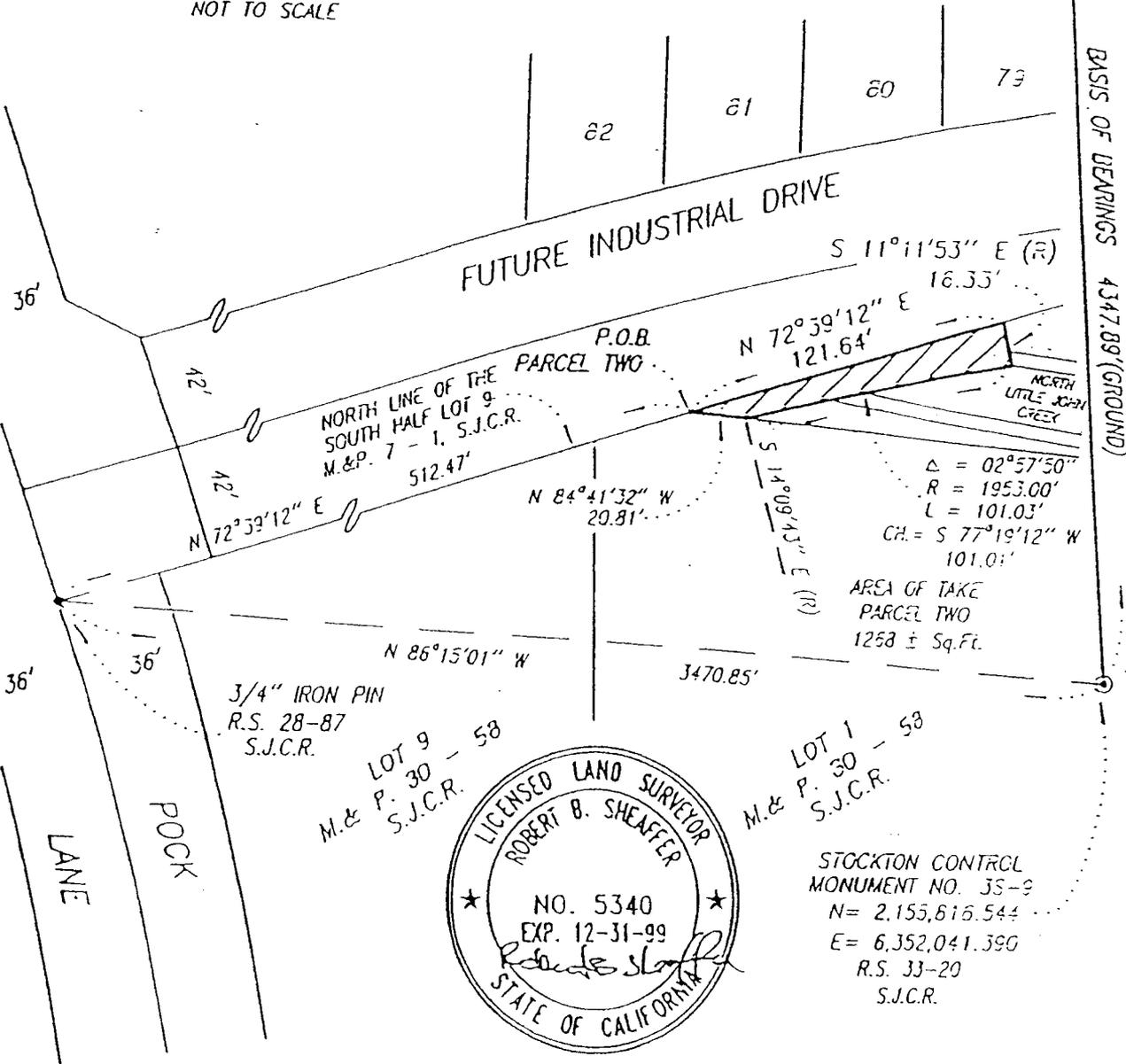


VICINITY MAP
NOT TO SCALE

STOCKTON CONTROL
MONUMENT NO. 55-16
N = 2,159,968.647
E = 6,350,752.325
R.S. 33-20
S.J.C.R.

SCALE 1" = 60'

LITTLE JOHN CREEK
UNIT 3
M. & P. 31 - 112
S.J.C.R.



STOCKTON CONTROL
MONUMENT NO. 35-9
N = 2,155,616.544
E = 6,352,041.390
R.S. 33-20
S.J.C.R.

No.	Revised	By
1	01/27/98	RBS
Drawn by:		R.B.S.
Date:		June 2, 1997
Scale:		1" = 60'

ACQUISITION PLAT FOR
INDUSTRIAL DRIVE - PARCEL TWO

CITY OF STOCKTON
DEPARTMENT OF PUBLIC WORKS

Approved by
[Signature]
City Engineer

Date: 7/1/98

Drawing J:\CA0\1338185d

3854.1A

3854.P.1A

I, KATHERINE GONG MEISSNER, do hereby certify as follows:

I am the duly appointed, qualified City Clerk of the City of Stockton, a California municipal corporation; as such City Clerk, I am the custodian of the official records of the City Council of said City. The attached Resolution is a full, true, and correct copy of Resolution No. 98-0353 of said City Council, which was adopted by the City Council on 18 August 1998.

IN WITNESS WHEREOF, I have hereto affixed my hand and the seal of the City of Stockton on 20 August 1998.

KATHERINE GONG MEISSNER, CITY CLERK
CITY OF STOCKTON

By Christ R. Dodin
Deputy

Resolution No. 98-0353

STOCKTON CITY COUNCIL

RESOLUTION OF THE CITY OF STOCKTON FINDING AND DETERMINING THE PUBLIC NECESSITY REQUIRES THE ACQUISITION OF CERTAIN REAL PROPERTY INTERESTS FOR A PUBLIC PROJECT AND DIRECTING THE ACQUISITION OF SAID REAL PROPERTY INTERESTS BY EMINENT DOMAIN PROCEEDINGS.

WHEREAS, the City of Stockton ("City") is a chartered municipal corporation and one of the public entities authorized to exercise the power of eminent domain; and

WHEREAS, Section 37350.5 of the Government Code authorizes the City to acquire by eminent domain any property necessary to carry out its powers and functions; and

WHEREAS, one of the powers and functions of the City of Stockton is to provide streets and highways and bridges to the community; and

WHEREAS, Government Code sections 40403 and 40404 authorize the City of Stockton to acquire property to provide bridges, streets, sidewalks, and public highways; and

WHEREAS, Government Code section 66462.5 provides that the City shall acquire, by negotiation or exercise of its eminent domain powers, any property interest which will permit offsite public improvements to be made on land not owned or successfully acquired by a subdivider when required by a condition of a tentative subdivision map; and

WHEREAS, the interests in certain real property located in Stockton, California (the "Property"), as described in Exhibit "A" attached and incorporated by reference, are necessary for the construction of a portion of a public street, the improvement and extension of Industrial Drive between the West State Route 99

CITY ATTY
REVIEW POA
DATE AUG 10 1998

Frontage Road and Pock Lane, and a crossing of North Little John Creek (the "Project"); and

WHEREAS, written notice of the intent of the City of Stockton to adopt this Resolution of Necessity was sent to the owners of the properties whose names and addresses appear on the last equalized county assessment roll; and

WHEREAS, a written request to appear was received on July 31, 1998, from James R. Baskette, on behalf of Andrew C. Cobb, Trustee; and

WHEREAS, a hearing was conducted and all interested persons were given an opportunity to be heard;

NOW, THEREFORE, based on the evidence presented,

BE IT FOUND, DETERMINED AND RESOLVED BY THE COUNCIL OF THE CITY OF STOCKTON, AS FOLLOWS:

1. That the Property to be acquired is described in Exhibit "A," attached and incorporated by this reference.
2. That the Property is to be acquired for a public use and a public project, the construction and installation of a public street and bridge crossing pursuant to the authority granted by Sections 37350.5, 40403, 40404, and 66462.5 of the Government Code and Section 1230.010, et seq. of the Code of Civil Procedure.
3. That the public interest and necessity require the acquisition, construction and installation of the Proposed Project.
4. That the Proposed Project is planned and located in the manner which will be most compatible with the greatest public good and the least private injury.
5. That the Property, as described in Exhibit "A," is necessary for the Proposed Project.
6. That the amount of compensation believed to be just has been determined and an offer in such amount and the basis therefor has been made to the owners of record as required by Government Code section 7267.2.
7. That the City Attorney is hereby authorized and empowered:

98125980

RECORDER
COUNTY CLERK
JAMES H. JOHNSTONE

98 OCT 23 PM 12:40

SAN JOAQUIN COUNTY

~~ATTORNEY~~

~~EXEMPT FROM FEE~~

1 MAXWELL M. FREEMAN, State Bar Number 31278
2 RONALD J. D'AIUTO, State Bar Number 91962
3 JANICE D. MAGDICH, State Bar Number 188278
4 FREEMAN & D'AIUTO
5 A Professional Law Corporation
6 1818 Grand Canal Boulevard
7 Stockton, CA 95207
8 Telephone: (209) 474-1818

9 CYNTHIA HUMBERT NEELY, State Bar Number 109328
10 BARBARA J. ANDERSON, State Bar Number 119277
11 CITY ATTORNEY'S OFFICE, CITY OF STOCKTON
12 City Hall, Second Floor
13 425 N. El Dorado Street
14 Stockton, CA 95202
15 Telephone: (209) 937-8333

16 Attorneys for plaintiff
17 CITY OF STOCKTON

18 SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN JOAQUIN

19 STOCKTON BRANCH

20 CITY OF STOCKTON, a municipal)
21 corporation,)
22 Plaintiff,)
23 vs.)
24 ANDREW C. COBB, Trustee of the)
25 Andrew C. Cobb 1992 Revocable Trust)
26 dated July 16, 1992; TITLE INSURANCE)
27 AND TRUST COMPANY, a California)
28 corporation; ALDO B. TOGNIALLI;)
ROSAIE TOGNIALLI; and DOES 1)
through X, inclusive; AND ALL)
PERSONS CLAIMING AN INTEREST)
IN THE PROPERTY DESCRIBED)
IN THE COMPLAINT,)
Defendants.)

NO. ~~CW 006347~~

NOTICE OF PENDENCY
OF ACTION - ACTION IN
EMINENT DOMAIN
[Code Civ. Proc., § 405.20]

APN: 179-180-07

Complaint Filed: 10/23/98
Trial Date: None Set

24 NOTICE IS HEREBY GIVEN that an action was commenced in the Superior Court of
25 California, County of San Joaquin, Stockton Branch, on October 23, 1998, by plaintiff, City of
26 Stockton, a municipal corporation and charter city of the State of California, against defendants,
27
28



98125980

1 Andrew C. Cobb, Trustee of the Andrew C. Cobb 1992 Revocable Trust dated July 15, 1992; Tile
 2 Insurance and Trust Company, a California corporation; Aldo B. Tognialli; Rosalie Tognialli; and
 3 DOES I through X, inclusive; and all persons claiming an interest in the property described in the
 4 Complaint, to condemn and acquire for a public use an easement in real property situated in the
 5 City of Stockton, County of San Joaquin, California, more particularly described in Exhibit A
 6 attached hereto and by reference made a part hereof.

7 Dated: October 23, 1998

FREEMAN & D'AUTO
A PROFESSIONAL LAW CORPORATION

8
 9
 10 By: 
 11 JANICE D. MAGDICH
 Attorneys for plaintiff
 CITY OF STOCKTON

12 CITYCORSPENDENS.LISLV

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98125980

EXHIBIT A

LEGAL DESCRIPTION

INDUSTRIAL DRIVE
A.P.N. 179-180-07

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98-0353

98125980

Joaquin County Records, said point being on a non-tangent curve to the left, from which the radius point of said curve bears North 00° 51' 20" West, said curve having a radius of 958.00 feet; thence easterly, on the arc of said curve, through a central angle of 14° 53' 31", and a chord bearing and distance of North 81° 41' 54" East 248.30 feet, an arc distance of 249.00 feet to a point of reverse curvature, from which the radius point bears South 15° 44' 52" East; thence easterly, along the arc of a curve to the right, having a radius of 1042.00 feet, a central angle of 21° 55' 46", and a chord bearing and distance of North 85° 13' 01" East 396.38 feet, an arc distance of 398.82 feet to a point of reverse curvature, from which the radius point bears North 06° 10' 54" East; thence easterly, along the arc of a curve to the left, having a radius of 958.00 feet, through a central angle of 03° 18' 46", and a chord bearing and distance of South 85° 28' 29" East 55.38 feet, an arc distance of 55.39 feet to a point on the easterly line of Lot 9 of said Ross-Gilmour Gardens, said point bearing South 17° 44' 50" East 145.90 feet from the northeasterly corner of the southerly 1/2 of said Lot 9, as said northeasterly corner is shown on that certain map filed in Book 32 of Surveys, at Page 118, San Joaquin County Records; thence South 17° 44' 50" East, on a non-tangent line, along the easterly line of said Lot 9, a distance of 68.08 feet to a point of intersection with a non-tangent curve to the right, from which the radius point of said curve bears North 01° 31' 30" East, said curve having a radius of 1022.00 feet; thence westerly, along the arc of said curve, through a central angle of 04° 39' 24", and a chord bearing and distance of North 86° 08' 48" West 83.04 feet, an arc distance of 83.06 feet to a point of reverse curvature, from which the radius point bears South 06° 10' 54" West; thence westerly, along the arc of a curve to the left, having a radius of 978.00 feet, a central angle of 21° 55' 46", and a chord bearing and distance of South 85° 13' 01" West 372.04 feet, an arc distance of 374.32 feet to a point of reverse curvature, from which the radius point bears North 15° 44' 52" West; thence westerly, along the arc of a curve to the right, having a radius of 1022.00 feet, a central angle of 14° 53' 31", and a chord bearing and distance of South 81° 41' 54" West 264.88 feet, an arc distance of 265.63 feet to a point of reverse curvature, from which the radius point of said curve bears South 00° 51' 20" East; thence westerly, along the arc of a curve to the left, having a radius of 1978.00 feet, through a central angle of 08° 20' 11", with a chord bearing and distance of South 84° 58' 34" West 287.54 feet, an arc distance of 287.80 feet to the point of beginning.

Containing 1.235 Acres more or less.

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Being a portion of that certain real property described as Parcel One in the deed to Andrew C. Cobb, a single man, recorded in Official

98125980

Records, Book 4249, Page 556, San Joaquin County Records, also being a portion of the south 1/2 of Lot 9 of Ross-Gilmour Gardens, filed for record in Book of MAPS AND PLATS, Volume 7, Page 1, San Joaquin County Records, lying in Section 48 of the C.M. Weber Grant and being more particularly described as follows:

Commencing at City of Stockton survey control monument 5S-16, having the coordinates N= 2,159,968.647 and E= 6,350,752.325, as shown on Book 33 of Surveys, at Page 20, San Joaquin County Records; thence South 17° 14' 51" East 4347.89 feet to City of Stockton survey control monument 3S-9, having the coordinates of N= 2,155,816.544 and E= 6,352,041.390, as shown on said Record of Survey; thence North 86° 15' 01" West 3470.85 feet to a 3/4" Iron Pin set at the northwesterly corner of Parcel "I," as shown on Book 28 of Surveys, at Page 87, San Joaquin County Records, said point being at the intersection of the northerly line of the southerly 1/2 of Lot 9 of said Ross-Gilmour Gardens, with the centerline of Pock Lane (50.00 feet wide); thence North 72° 39' 12" East, along the northerly line of the southerly 1/2 of said Lot 9, also being the northerly line of said Parcel "I" and the northerly line of Lot 9 and Lot 1 of Stockton Airport Business Center, Unit No. 3, filed in Book 30 of MAPS AND PLATS, at Page 58, San Joaquin County Records, a distance of 512.47 feet to an angle point in the northerly line of said Lot 1 and the TRUE POINT OF BEGINNING of this description; thence continue North 72° 39' 12" East, on the northerly line of the southerly 1/2 of Lot 9 of said Ross-Gilmour Gardens, 121.64 feet; thence South 11° 11' 53" East 16.33 feet to the beginning of a non-tangent curve to the left, having a radius of 1953.00 feet and a chord bearing and distance of South 77° 19' 12" West 101.01 feet, and from which the radius of said curve bears South 11° 11' 53" East; thence westerly, along the arc of said curve, through a central angle of 02° 57' 50", an arc distance of 101.03 feet to the centerline of North Little John Creek, also being the southerly line of aforesaid Parcel One in the deed to Andrew C. Cobb, a single man, recorded in Official Records, Book 4249, page 556, San Joaquin County Records, and also being the northerly line of Lot 1 of Stockton Airport Business Center, Unit No. 3, filed in Book 30 of MAPS AND PLATS, at Page 58, San Joaquin County Records; thence along the southerly line of said Cobb Parcel, and the northerly line of said Lot 1, North 84° 41' 32" West 20.81 feet to the point of beginning.

Containing 1268 Square Feet of Land, more or less

Bearings and coordinates used in the above descriptions are based on the California Coordinate System-83, Zone III. All distances are ground level distances and must be multiplied by 0.99993339 to obtain grid distances.

98-0353

DEC 1 1998

Filed _____, 19____
JEANNE MILLSAPS
CLERK
By CYNTHIA LEVESEY
DEPUTY

1 MAXWELL M. FREEMAN, State Bar Number 31278
2 RONALD J. D'AIUTO, State Bar Number 91962
3 JANICE D. MAGDICH, State Bar Number 188278
4 FREEMAN & D'AIUTO
5 A Professional Law Corporation
6 1818 Grand Canal Boulevard
7 Stockton, CA 95207
8 Telephone: (209) 474-1818

9 CYNTHIA HUMBERT NEELY, State Bar Number 109328
10 BARBARA J. ANDERSON, State Bar Number 119277
11 CITY ATTORNEY'S OFFICE, CITY OF STOCKTON
12 City Hall, Second Floor
13 425 N. El Dorado Street
14 Stockton, CA 95202
15 Telephone: (209) 937-8333

16 Attorneys for plaintiff
17 CITY OF STOCKTON

18 SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN JOAQUIN
19 STOCKTON BRANCH

20 CITY OF STOCKTON, a municipal
21 corporation,

22 Plaintiff,

23 vs.

24 ANDREW C. COBB, Trustee of the
25 Andrew C. Cobb 1992 Revocable Trust
26 dated July 16, 1992; TITLE INSURANCE
27 AND TRUST COMPANY, a California
28 corporation; ALDO B. TOGNIALLI;
ROSAIE TOGNIALLI; and DOES I
through X, inclusive; AND ALL
PERSONS CLAIMING AN INTEREST
IN THE PROPERTY DESCRIBED
IN THE COMPLAINT,

Defendants.

NO. CV 006247

ORDER FOR PREJUDGMENT
POSSESSION - ACTION
IN EMINENT DOMAIN

APN: 179-180-07

Date: December 1, 1998
Time: 9:00 a.m.
Dept: 11

Complaint Filed: 10/23/98
Trial Date: None Set

Based upon the declarations and other documents filed by plaintiff in support of its
Application and Declaration for Prejudgment Possession on file in this case;

IT IS HEREBY ORDERED AND DETERMINED THAT:

1 1. Plaintiff has made a deposit of the probable just compensation and filed a Summary
2 of the Basis for Appraisal Opinion, both of which meet the requirements of Code of Civil
3 Procedure section 1255.010.

4 2. The parcel to be acquired is described in Exhibit A to plaintiff's Complaint on file
5 herein. Plaintiff is entitled to possession of said parcel as hereinafter set forth.

6 3. The time for service of this Order for Prejudgment Possession may not be less than
7 thirty (30) days prior to the time plaintiff is to take possession of said parcel.

8 4. Service of this Order for Prejudgment Possession is excused upon all defendants not
9 occupying the property taken.

10 5. Service of this Order for Prejudgment Possession shall be made in accordance with
11 Code of Civil Procedure section 1255.450.

12 6. The effective date of this Order for Prejudgment Possession as to said parcel shall
13 be not less than thirty (30) days after service of the Order for Prejudgment Possession is made on
14 the defendant-owner thereof and/or defendant-tenant.

15 7. On or about the dates specified herein, plaintiff is authorized to enter upon and take
16 immediate possession of said parcel of land being condemned herein. Plaintiff is empowered to
17 remove therefrom any persons, obstacles, improvements or structures of any kind or nature
18 thereon situated.

19 Dated: DEC 1 1998

B. W. McNATT

20 JUDGE OF THE SUPERIOR COURT

21 CITY\COBB\POSSESS.ORDLV

FILED
SUPERIOR COURT-STOCKTON
98 DEC -2 PM 4:06
JEANNE WELLSAPS, CLERK
BY Deputy Valora
DEPUTY

1 MAXWELL M. FREEMAN, State Bar Number 31278
RONALD J. D'AIUTO, State Bar Number 91962
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10 Attorneys for plaintiff
CITY OF STOCKTON

11 SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN JOAQUIN
12 STOCKTON BRANCH

13 CITY OF STOCKTON, a municipal)
corporation,)
14)
Plaintiff,)
15)
vs.)
16)
ANDREW C. COBB, Trustee of the)
17 Andrew C. Cobb 1992 Revocable Trust)
dated July 16, 1992; TITLE INSURANCE)
18 AND TRUST COMPANY, a California)
corporation; ALDO B. TOGNIALLI;)
19 ROSALIE TOGNIALLI; and DOES I)
through X, inclusive; AND ALL)
20 PERSONS CLAIMING AN INTEREST)
IN THE PROPERTY DESCRIBED)
21 IN THE COMPLAINT,)
22 Defendants.)
23)
24)
25)
26)
27)
28)

NO. CV 006247
PROOF OF SERVICE
BY MAIL

Complaint Filed: 10/23/98
Trial Date: None Set

PROOF OF SERVICE BY MAIL

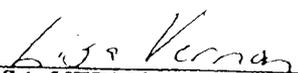
1
2
3 I am employed in the County of San Joaquin, State of California. My business address is
4 1818 Grand Canal Boulevard, Stockton, California 95207. I am over the age of 18 years and not
5 a party to this action. I am readily familiar with my office's business practice for collection and
6 processing of correspondence for mailing with the United States Postal Service, and under such
7 practice the correspondence would be deposited with the United States Postal Service the same day
8 in the ordinary course of business. On December 1, 1998, I served the foregoing document
9 described as: **ORDER FOR PREJUDGMENT POSSESSION -- ACTION IN EMINENT**
10 **DOMAIN** on the following persons or parties by placing a true and correct copy thereof in a
11 sealed envelope for collection and mailing on that date following ordinary business practices to:

12 BRADFORD J. DOZIER, ESQ.
13 AHERTON & DOZIER
14 305 N. EL DORADO STREET, SUITE 301
15 STOCKTON, CA 95202

16 ANDREW C. COBB
17 4307 SOUTH HIGHWAY 99
18 STOCKTON, CA 95205

19 Executed on December 1, 1998, at Stockton, California.

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

21
22
23
24
25
26
27
28


LISA VERNON

Case Report Case Search**Case Summary****Case Information****Case Number:** CV006247**Case Title:** CITY OF STOCKTON VS ANDREW C COBB. ET AL**Case Category:** Civil - Unlimited**Filing Date:** 10/23/1998**Case Type:** Eminent domain/Inverse condemnation**Case Status:** Post Judgment**Judicial Officer:** Humphreys, Elizabeth**Location:** Stockton**Participants**

Name	Filing Document	Role	Attorney	Filed By
CITY OF STOCKTON	Complaint	Plaintiff	Anderson, Barbara	CITY OF STOCKTON
CITY OF STOCKTON	Complaint	Plaintiff	Freeman, Maxwell	CITY OF STOCKTON
COBB., TRUSTEE	Complaint	Defendant		CITY OF STOCKTON
TITLE INSURANCE & TRUST CO.	Complaint	Defendant		CITY OF STOCKTON
TOGNIALLI, ALDO	Complaint	Defendant		CITY OF STOCKTON
TOGNIALLI, ROSALIE	Complaint	Defendant		CITY OF STOCKTON

Pending Hearings

No results found

Past Events

No results found

Register of Actions

ROA #	Entry
1	10/23/1998: Initial petition/complaint filed Filed by:CITY OF STOCKTON(Plaintiff) Refers to:COBB., TRUSTEE(Defendant); TITLE INSURANCE & TRUST CO.(Defendant); TOGNIALLI, ALDO (Defendant); TOGNIALLI, ROSALIE(Defendant)
2	10/28/1998: STATUS CONFERENCE
3	09/17/1999: DEFT(ANDREW C. COBB, as Trustee, etc.) N/M TO BE RELIEVED AS COUNSEL
4	10/05/1999: M/ TO BE RELIEVED AS COUNSEL GRANTED
5	10/15/1999: ORDER GRANTING MTN TO BE RELIEVED AS COUNSEL DEFT (ANDREW C. COBB, TRUSTEE)
6	10/21/1999: NOTICE OF ENTRY OF ORDER GRANTING MTN TO BE RELIEVED AS COUNSEL DEFT (ANDREW C. COBB, TRUSTEE)
7	10/21/1999: NOTICE OF ATTY'S CLAIM OF LIEN FOR COSTS
8	09/26/2000: Disclaimer of DEFT (ALDO B. TOGNIALLI) sued as DEFT (ALDO B. TOGNIALLI)

9	09/26/2000: Disclaimer of DEFT (ROSALIE TOGNIALLI) sued as DEFT (ROSALIE TOGNIALLI)
10	10/03/2000: Request for Entry of Dismissal DEFT (ALDO B. TOGNIALLI)
11	10/03/2000: Status of ALDO B. TOGNIALLI changed to DISM
12	10/03/2000: Request for Entry of Dismissal DEFT (TITLE INSURANCE & TRUST CO.)
13	10/03/2000: Status of TITLE INSURANCE & TRUST CO. changed to DISM
14	10/03/2000: Request for Entry of Dismissal DEFT (ROSALIE TOGNIALLI)
15	10/03/2000: Status of ROSALIE TOGNIALLI changed to DISM
16	10/05/2000: Notice of Entry of Dismissal & POS
17	10/05/2000: Notice of Entry of Dismissal & POS
18	10/05/2000: Notice of Entry of Dismissal & POS
19	10/26/2000: Stipulation & order re: to withdrawal of deposit of probable just compensation
20	11/15/2000: Acknowledgment of receipt of deposit of probable just compensation
21	02/13/2001: Notice of Change of Firm Name PLTF (CITY OF STOCKTON)
22	09/15/2005: Status of ANDREW C. COBB, TRUSTEE changed to DISM
23	03/06/2007: Motion to dismiss pursuant to CCP 583
24	04/05/2007: PLTF's City of Stockton's Memorandum of Points and Authorities in opposition to order to show cause re: dismissal
25	04/05/2007: Declaration of Coren D. Wong in support of PLTF City of Stockton's MEMPA in opposition to order to show cause re: dismissal
26	04/06/2007: PLTF's notice of errata re: declaration of Coren D. Wong in support of PLTF's MEMPA in opposition to order to show cause re: dismissal
27	04/09/2007: MO: OSC hearing held
28	04/09/2007: Multiple plaintiffs/defendants
29	04/09/2007: Pro per defendant
30	04/09/2007: Dismissed for lack of prosecution
31	04/09/2007: Case reopened
32	04/10/2007: MO: Hearing continued on party's motion New hearing date: 07/09/2007
33	04/10/2007: Notice of Court's Motion for Dismissal Pursuant to CCP 583
34	05/17/2007: Association of Attorneys filed by deft Michael Cobb as to (Richards, Watson & Geshon) Law Firm.
35	06/25/2007: DEFT Michel Cobb's MEMPA in support fo the Court's order to show cause Re: Dismissal
36	06/25/2007: Notice of Deposit

37	06/29/2007: [PLTF] CITY OF STOCKTON'S response to DEFT Michael Cobb's MEMPA in support of the Court's order to show cause re: Dismissal
38	07/09/2007: MO: Other predisposition hearing held
39	07/09/2007: Multiple plaintiffs/defendants
40	07/09/2007: Pro per defendant
41	07/09/2007: Dismissed for lack of prosecution
42	07/09/2007: Case reopened
43	07/09/2007: Case under submission with Judge Holly
44	10/09/2007: No longer under submission with Judge
45	10/09/2007: Order after hearing on 7/9/07. Case is dismissed for lack of prosecution. CCP 583 requires that an action be brought to trial within five years after action is commenced. This case has taken 9 years before trial. Signed by Judge Holly on 10/9/07
46	10/09/2007: Certificate of Service by Mail of OAH to attorneys Keeling; Danner; and Wong. 10/9/07
47	10/09/2007: Multiple plaintiffs/defendants
48	10/09/2007: Pro per defendant
49	10/09/2007: Dismissed for lack of prosecution
50	11/09/2007: Memorandum of Costs (Summary) total costs: \$20,463
51	11/09/2007: DEFT Cobb's motion for award of attorneys' fees and costs; Declaration of Regina N. Danner in support thereof.
52	12/07/2007: Declaration of Coren D. Wong in Response to Defendants' Motion for Award of Attorneys' Fees & Costs
53	12/20/2007: Minute Order of hearing calendared for December 20, 2007
54	12/20/2007: This matter is dropped from calendar. Case has settled.
55	01/03/2008: Stipulation & order re: Deft's motion for award of attorneys' fees and costs granted and denied in part. Defendant Michael Cobb awarded total sum of \$15,462.48 as the litigation expenses incurred, including reasonable attorneys; fees.
56	01/11/2008: Notice of Entry of Order of stipulation and order re DEFT's motion for award of atty's fees and costs

EXHIBIT 7



RICHARDS | WATSON | GERSHON

ATTORNEYS AT LAW - A PROFESSIONAL CORPORATION

355 South Grand Avenue, 40th Floor, Los Angeles, California 90071-3101
Telephone 213.626.8484 Facsimile 213.626.0078

RICHARD RICHARDS
(1916-1988)

GLENN R. WATSON
(RETIRED)

HARRY L. GERSHON
(1922-2007)

STEVEN L. DORSEY
WILLIAM L. STRAUSS
MITCHELL E. ABBOTT
GREGORY W. STEPANICICH
ROCHELLE BROWNE
WILLIAM B. RUDELL
QUINN M. BARROW
CAROL W. LYNCH
GREGORY M. KUNERT
THOMAS M. JIMBO
ROBERT C. CECCON
STEVEN H. KAUFMANN
KEVIN G. ENNIS
ROBIN D. HARRIS
MICHAEL ESTRADA
LAURENCE S. WIENER
STEVEN R. ORR
B. TILDEN KIM
SASKIA T. ASAMURA
KAYSER O. SUME
PETER M. THORSON
JAMES L. MARKMAN
CRAIG A. STEELE
T. PETER PIERCE
TERENCE R. BOGA
LISA BOND
JANET E. COLESON
ROXANNE M. DIAZ
JIM G. GRAYSON
ROY A. CLARKE
WILLIAM P. CURLEY III
MICHAEL F. YOSHIBA
REGINA N. DANNER
PAULA GUTIERREZ BAEZA
TERESA HO-URANO
BRUCE W. GALLOWAY
DIANA K. CHUANG
PATRICK K. BOBKO
BILLY D. DUNSMORE
AMY GREYSON
DEBORAH R. HAKMAN
D. CRAIG FOX
ALEXANDER ABBE
SUSAN E. RUSNAK
DAVID M. SNOW
LOLLY A. ENRIQUEZ
KIRSTEN R. BOWMAN
G. INDER KHALSA
GINETTA L. GIOVINCO
TRISHA ORTIZ
CANDICE K. LEE
DAVID G. ALDERSON
MELISSA M. CROSTHWAITE
MARICELA E. MARROQUIN
GENA M. STINNETT
JENNIFER PETRUSIS
STEVEN L. FLOWER
CHRISTOPHER J. DIAZ
MATTHEW E. COHEN
DEBBIE Y. CHO
GEOFFREY WARD
ERIN L. POWERS
TOUSSAINT S. BAILEY
WHITNEY G. McDONALD
SERITA R. YOUNG
VERONICA S. GUNDERSON

November 10, 2008

City Clerk of the City of Stockton
425 North El Dorado Street, Suite 200
Stockton, California 95202

Re: Industrial Drive from Minden Lane to Pock Lane-South of Little John Creek
Subdivision constructed on San Joaquin County APN No.: 179-180-07, 4218
Pock Lane in the City of Stockton, California 95205

Dear City Clerk:

This firm represents Michael A. Cobb, as successor trustee to the Andrew C. Cobb
1992 Revocable Trust dated July 16, 1992 ("Trust"). The Trust is the owner and
entitled to possession of the real property identified as San Joaquin County APN No.
179-180-07, and more commonly known as 4218 Pock Lane, Stockton California
95205 ("Real Property Interests").

On or about December 31, 1998, the City of Stockton ("City") took lawful possession
of portions of the Real Property Interests by way of an Order Possession, which was
part of the 1998 Eminent Domain Action filed in the Superior Court of the State of
California, County of San Joaquin, further identified as Case Number: CV006247
("1998 Eminent Domain Action"), which was initiated by the City.

The purpose for the lawful possession was to construct Industrial Drive from Minden
Lane to Pock Lane, South of Little John Creek Subdivision in the City of Stockton
("Industrial Drive"). On or about October 11, 2000, the City accepted Industrial
Drive, and recorded a Notice of Completion with the County of San Joaquin
recorder's office. A legal description of the location of Industrial Drive as it relates to
the Real Property Interests is attached as Exhibit 1.

On October 9, 2007, when the Superior Court dismissed the 1998 Eminent Domain
Action, the City was no longer in lawful possession of the Real Property Interests.
Moreover, at that time, the City unlawfully ousted the Trust from peaceful possession
of the land underlying Industrial Drive.

OF COUNSEL

MARK L. LAMKEN
SAYRE WEAVER
NORMAN A. DUPONT
JIM R. KARPIAK

SAN FRANCISCO OFFICE
TELEPHONE 415.421.8484

ORANGE COUNTY OFFICE
TELEPHONE 714.990.0901

City of Stockton
November 10, 2008
Page 2

On or about March 14, 2008, the Trust filed a Complaint in Inverse Condemnation (“Complaint”) against the City to recover damages for the City’s unlawful appropriation and invasion of its property rights. On October 29, 2008, after several amendments to the Trust’s Complaint, the Honorable Elizabeth Humphreys sustained the City’s Demurrer to the Trust’s Second Amended Complaint as to the Inverse Condemnation Cause of Action; hence, the Trust has no remedy at law to protect its rights in this matter. *See Sheffet v. County of Los Angeles*, (1970) 3 Cal.App.3d 720; *Frustuck v. City of Fairfax*, (1963) 212 Cal.App.2d 345.

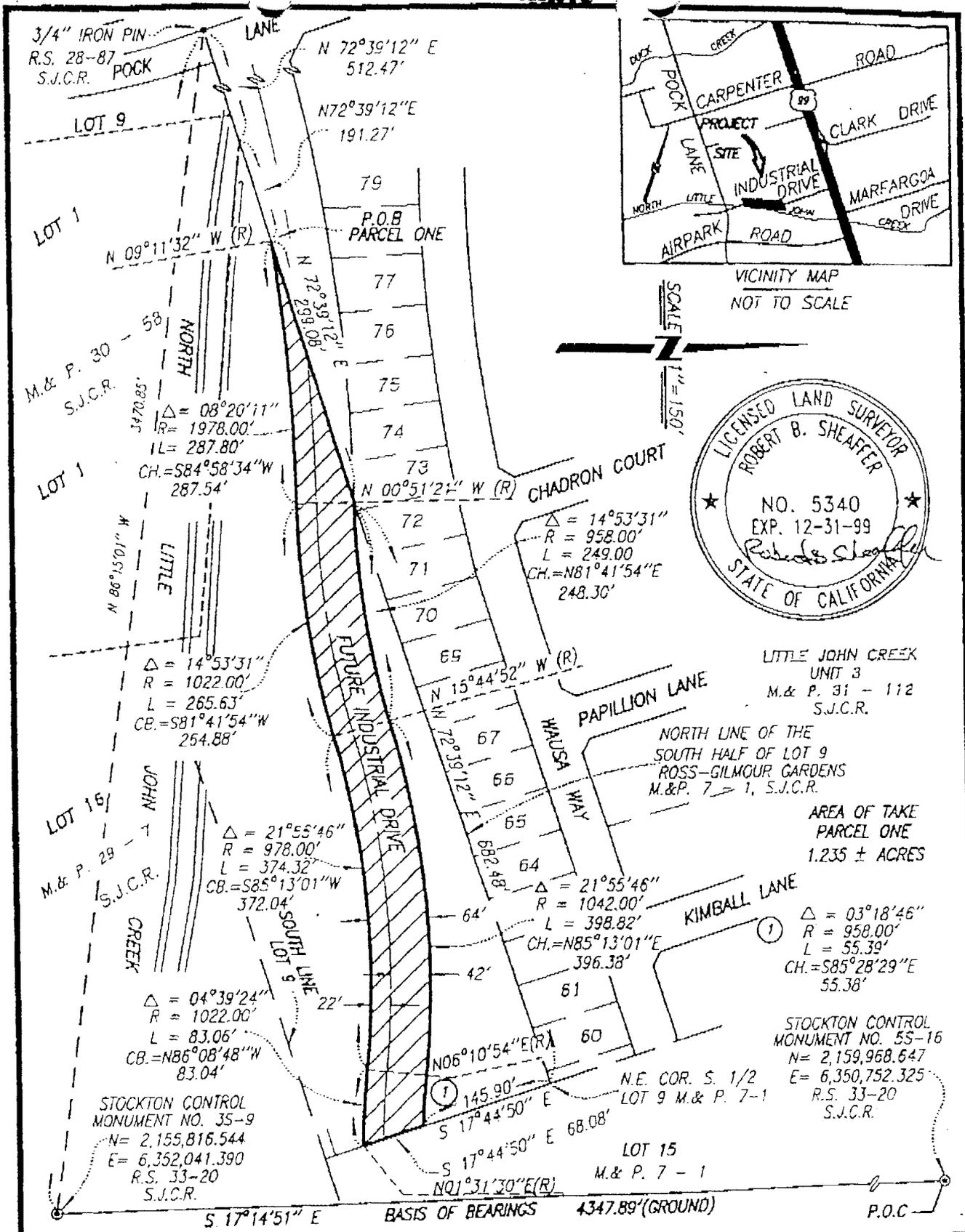
The Trust hereby demands that the City remove Industrial Drive from the Real Property Interests on or before November 24, 2008. Your failure to remove Industrial Drive from the Real Property Interests on or before November 24, 2008, will be construed as a refusal to remove Industrial Drive, and accordingly, the Trust will seek restitution of the premises, damages for the unlawful possession of portions of the Real Property Interests, costs of a lawsuit and any other and further relief as the court may deem proper.

Very truly yours,


Kirsten R. Bowman

cc: Thomas H. Keeling, J.D., Ph.D.
Freeman, D’Aiuto, Pierce, Gurev, Keeling & Wolf

12641-0002\1099179v1.doc



No.	Revised	By
1	01/15/98	RBS
Drawn by:		R.B.S.
Date:		June 2, 1997
Scale:		1" = 150'

ACQUISITION PLAT FOR
INDUSTRIAL DRIVE - PARCEL ONE

CITY OF STOCKTON
DEPARTMENT OF PUBLIC WORKS

Approved by
Robert B. Sheaffer
City Engineer
Date: 2/1/98
DRAWING J:\CA0\13381856

3854A

EXHIBIT A

EXHIBIT "A"

LEGAL DESCRIPTION

INDUSTRIAL DRIVE
A.P.N 179-180-07

All that certain real property, situate, lying and being in the City of Stockton, County San Joaquin, State of California, described as follows:

PARCEL ONE:

Being a portion of that certain real property described as Parcel One in the deed to Andrew C. Cobb, a single man, recorded in Official Records, Book 4249, Page 556, San Joaquin County Records, also being a portion of the south 1/2 of Lot 9 of Ross-Gilmour Gardens, filed for record in Book of MAPS AND PLATS, Volume 7, Page 1, San Joaquin County Records, lying in Section 48 of the C.M. Weber Grant and being more particularly described as follows:

Commencing at City of Stockton survey control monument 5S-16, having the coordinates of N= 2,159,968.647 and E= 6,350,752.325, as shown on Book 33 of Surveys, at Page 20, San Joaquin County Records; thence South 17°14'51" East 4347.89 feet to City of Stockton survey control monument 3S-9, having the coordinates of N= 2,155,816.544 and E= 6,352,041.390, as shown on said Record of Survey; thence North 86°15'01" West 3470.85 feet to a 3/4" Iron Pin set at the northwesterly corner of Parcel "I", as shown on Book 28 of Surveys, at Page 87, San Joaquin County Records, said point being at the intersection of the northerly line of the southerly 1/2 of Lot 9 of said Ross-Gilmour Gardens, with the centerline of Pock Lane (50.00 feet wide); thence North 72°39'12" East, along the northerly line of the southerly 1/2 of said Lot 9, also being the northerly line of said Parcel "I" and the northerly line of Lot 9 and Lot 1 of Stockton Airport Business Center, Unit No. 3, filed in Book 30 of MAPS AND PLATS, at Page 58, San Joaquin County Records, a distance of 512.47 feet to an angle point in the northerly line of said Lot 1; thence continue North 72°39'12" East, on the northerly line of the southerly 1/2 of Lot 9 of said Ross-Gilmour Gardens, 191.27 feet to the TRUE POINT OF BEGINNING of this description; thence continue North 72°39'12" East, on the northerly line of the southerly 1/2 of Lot 9 of said Ross-Gilmour Gardens, 299.08 feet to an angle point in the boundary of Little John Creek, Unit 3, as shown on the plat filed April 26, 1994, in Book 31 of Maps and Plats, at Page 112, San Joaquin County Records, said point being on a non-tangent curve to the left, from which the radius point of said curve bears North 00°51'20" West, said curve having a radius of 958.00 feet; thence easterly, on the arc of said curve, through a central angle of 14°53'31", and a chord bearing and

3854A
3854.1A

Exhibit A

distance of North 81°41'54" East 248.30 feet, an arc distance of 249.00 feet to a point of reverse curvature, from which the radius point bears South 15°44'52" East; thence easterly, along the arc of a curve to the right, having a radius of 1042.00 feet, a central angle of 21°55'46", and a chord bearing and distance of North 85°13'01" East 396.38 feet, an arc distance of 398.82 feet to a point of reverse curvature, from which the radius point bears North 06°10'54" East; thence easterly, along the arc of a curve to the left, having a radius of 958.00 feet, through a central angle of 03°18'46", and a chord bearing and distance of South 85°28'29" East 55.38 feet, an arc distance of 55.39 feet to a point on the easterly line of Lot 9 of said Ross-Gilmour Gardens, said point bearing South 17°44'50" East 145.90 feet from the northeasterly corner of the southerly 1/2 of said Lot 9, as said northeasterly corner is shown on that certain map filed in Book 32 of Surveys, at Page 118, San Joaquin County Records; thence South 17°44'50" East, on a non-tangent line, along the easterly line of said Lot 9, a distance of 68.08 feet to a point of intersection with a non-tangent curve to the right, from which the radius point of said curve bears North 01°31'30" East, said curve having a radius of 1022.00 feet; thence westerly, along the arc of said curve, through a central angle of 04°39'24", and a chord bearing and distance of North 86°08'48" West 83.04 feet, an arc distance of 83.06 feet to a point of reverse curvature, from which the radius point bears South 06°10'54" West; thence westerly, along the arc of a curve to the left, having a radius of 978.00 feet, a central angle of 21°55'46", and a chord bearing and distance of South 85°13'01" West 372.04 feet, an arc distance of 374.32 feet to a point of reverse curvature, from which the radius point bears North 15°44'52" West; thence westerly, along the arc of a curve to the right, having a radius of 1022.00 feet, a central angle of 14°53'31", and a chord bearing and distance of South 81°41'54" West 264.88 feet, an arc distance of 265.63 feet to a point of reverse curvature, from which the radius point of said curve bears South 00°51'20" East; thence westerly, along the arc of a curve to the left, having a radius of 1978.00 feet, through a central angle of 08°20'11", with a chord bearing and distance of South 84°58'34" West 287.54 feet, an arc distance of 287.80 feet to the point of beginning.

Containing 1.235 Acres more or less

PARCEL TWO:

Being a portion of that certain real property described as Parcel One in the deed to Andrew C. Cobb, a single man, recorded in Official Records, Book 4249, Page 556, San Joaquin County Records, also being a portion of the south 1/2 of Lot 9 of Ross-Gilmour Gardens, filed for record in Book of MAPS AND PLATS, Volume 7, Page 1, San Joaquin County Records, lying in Section 48

3854A
3854.1A

Exhibit "A"

of the C.M. Weber Grant and being more particularly described as follows:

Commencing at City of Stockton survey control monument 5S-16, having the coordinates of N= 2,159,968.647 and E= 6,350,752.325, as shown on Book 33 of Surveys, at Page 20, San Joaquin County Records; thence South 17°14'51" East 4347.89 feet to City of Stockton survey control monument 3S-9, having the coordinates of N= 2,155,816.544 and E= 6,352,041.390, as shown on said Record of Survey; thence North 86°15'01" West 3470.85 feet to a 3/4" Iron Pin set at the northwesterly corner of Parcel "I", as shown on Book 28 of Surveys, at Page 87, San Joaquin County Records, said point being at the intersection of the northerly line of the southerly 1/2 of Lot 9 of said Ross-Gilmour Gardens, with the centerline of Pock Lane (50.00 feet wide); thence North 72°39'12" East, along the northerly line of the southerly 1/2 of said Lot 9, also being the northerly line of said Parcel "I" and the northerly line of Lot 9 and Lot 1 of Stockton Airport Business Center, Unit No. 3, filed in Book 30 of MAPS AND PLATS, at Page 58, San Joaquin County Records, a distance of 512.47 feet to an angle point in the northerly line of said Lot 1 and the TRUE POINT OF BEGINNING of this description; thence continue North 72°39'12" East, on the northerly line of the southerly 1/2 of Lot 9 of said Ross-Gilmour Gardens, 121.64 feet; thence South 11°11'53" East 16.33 feet to the beginning of a non-tangent curve to the left, having a radius of 1953.00 feet and a chord bearing and distance of South 77°19'12" West 101.01 feet, and from which the radius point of said curve bears South 11°11'53" East; thence westerly, along the arc of said curve, through a central angle of 02°57'50", an arc distance of 101.03 feet to the centerline of North Little John Creek, also being the southerly line of aforesaid Parcel One in the deed to Andrew C. Cobb, a single man, recorded in Official Records, Book 4249, page 556, San Joaquin County Records, and also being the northerly line of Lot 1 of Stockton Airport Business Center, Unit No. 3, filed in Book 30 of MAPS AND PLATS, at Page 58, San Joaquin County Records; thence along the southerly line of said Cobb Parcel, and the northerly line of said Lot 1, North 84°41'32" West 20.81 feet to the point of beginning.

Containing 1268 Square Feet of Land, more or less

Bearings and coordinates used in the above descriptions are based on the California Coordinate System-83, Zone III. All distances are ground level distances and must be multiplied by 0.99993339 to obtain grid distances.

2S133818.S14
06/02/97

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1 RICHARDS, WATSON & GERSHON
A Professional Corporation
2 REGINA N. DANNER (137210)
KIRSTEN R. BOWMAN (181627)
3 355 South Grand Avenue, 40th Floor
Los Angeles, CA 90071-3101
4 Telephone: (213) 626-8484
Facsimile: (213) 626-0078

5
6 Attorneys for Claimant,
Michael A. Cobb, Trustee of the
Andrew C. Cobb 1992 Revocable Trust
7 dated July 16, 1992

8
9
10 MICHAEL A. COBB, Trustee of the
Andrew C. Cobb 1992 Revocable Trust
dated July 16, 1992,

11 Claimant,

12 vs.

13 CITY OF STOCKTON, a municipal
14 corporation; and DOES 1-50, Inclusive,
15

**CLAIM FOR PROPERTY DAMAGES,
TEMPORARY RESTRAINING
ORDER, PRELIMINARY AND
PERMANENT INJUNCTION
(Trespass and continuing Trespass)**

16
17 To the City of Stockton, its agents, employees and contractors:

18 You are hereby notified that Michael A. Cobb, successor Trustee of the Andrew C.
19 Cobb 1992 Revocable Trust dated July 16, 1992 (“Claimant” and/or “Trust”), 110 North
20 3rd Avenue, Upland, California, 91784, claims continuing property damages caused by
21 the City of Stockton, its agents, employees and contractors.

22 This claim is based on property damages sustained and continuing to be sustained
23 by claimant, under the following circumstances:

24 The Trust is the owner and entitled to possession of the real property identified as
25 San Joaquin County APN No. 179-180-07, and more commonly known as 4218 Pock
26 Lane, Stockton, California, 95205 (“Real Property Interests”).

27 On or about December 31, 1998, the City of Stockton (“City”) took lawful
28 possession of portions of the Real Property Interests by way of an Order for Possession,

1 which was part of the 1998 Eminent Domain Action filed in the Superior Court of the
2 State of California, County of San Joaquin, further identified as Case Number: V006247
3 (“1998 Eminent Domain Action”), which was initiated by the City. This possession was
4 pursuant to a Court Order in the 1998 Eminent Domain Action. In addition, the City
5 recorded a Lis Pendens against the Real Property Interests.

6 The purpose for the lawful possession was to construct Industrial Drive from
7 Minden Lane to Pock Lane, South of Little John Creek Subdivision in the City of
8 Stockton (“Industrial Drive”). On or about October 11, 2000, the City accepted Industrial
9 Drive, and recorded a Notice of Completion with the County of San Joaquin Recorder’s
10 office. A legal description of the location of Industrial Drive as it relates to the Real
11 Property Interests is attached as Exhibit 1.

12 On October 9, 2007, the Superior Court dismissed the 1998 Eminent Domain
13 Action, for lack of prosecution, thereby dismissing the City’s lawful possession of the
14 Real Property Interests. Indeed, on October 9, 2007 and continuing to the present without
15 the Trust’s consent, the City unlawfully possessed and continues to unlawfully possess a
16 portion of the Trust’s Real Property Interests by the construction and continued daily use
17 of Industrial Drive by the public. At the time of the dismissal of the 1998 Eminent
18 Domain Action and continuing up to the present, there exists a Lis Pendens recorded
19 against the Real Property Interests, which currently encumbers and continues to encumber
20 the Real Property Interests.

21 The names of the public employees, agents or contractors causing Claimant’s
22 injuries under the above described circumstances are not known to Claimant at this time.

23 The specific amount of damages sustained by Claimant, and continuing to the
24 present are unknown at this time; however, they include damage to the Real Property
25 Interests; costs associated with the removal of Industrial Drive and restoration of the Real
26 Property Interests; diminution in market value of the Real Property Interests; injuries to
27 Claimant’s nervous system, all of which injuries have caused and continue to cause
28 claimant great mental, physical, and nervous pain and suffering, and medical and related

1 expenses.

2 The damages exceed \$25,000; therefore, this is an unlimited civil case.

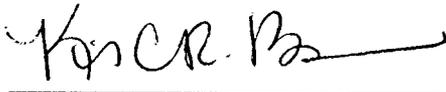
3 All Notices or other communications with regard to this claim should be sent to the
4 attorney for claimant: Kirsten R. Bowman, Richards, Watson & Gershon, 355 South
5 Grand Avenue, 40th Floor, City of Los Angeles California 90071, 213-626-8484,
6 Kbowman@rwglaw.com.

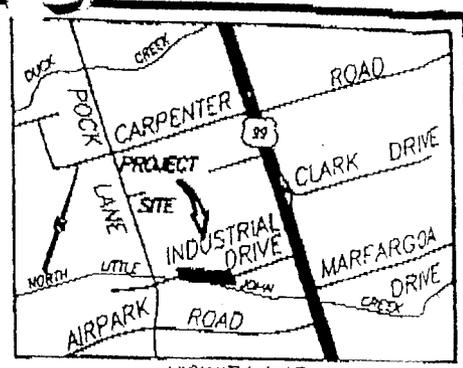
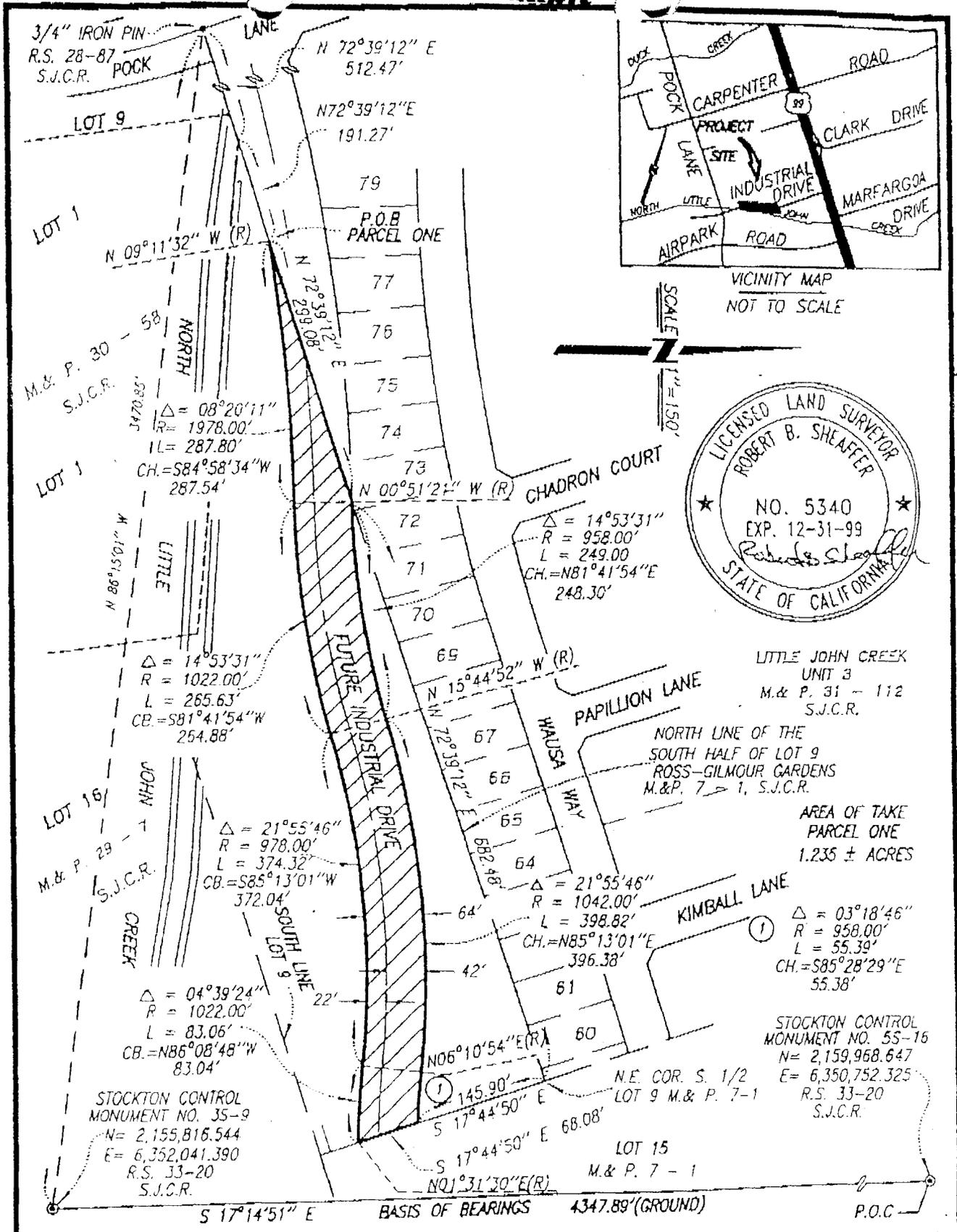
7
8 DATED: November 12, 2008

RICHARDS, WATSON & GERSHON
A Professional Corporation
REGINA N. DANNER
KIRSTEN R. BOWMAN

IRW RICHARDS | WATSON | GERSHON
ATTORNEYS AT LAW - A PROFESSIONAL CORPORATION

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By: 
KIRSTEN R. BOWMAN
Attorneys for Claimant
MICHAEL A. COBB, Trustee of the Andrew C.
Cobb 1992 Revocable Trust dated July 16, 1992



VICINITY MAP
NOT TO SCALE

SCALE
1" = 150'



LITTLE JOHN CREEK
UNIT 3
M.& P. 31 - 112
S.J.C.R.

NORTH LINE OF THE
SOUTH HALF OF LOT 9
ROSS-GILMOUR GARDENS
M.&P. 7 - 1, S.J.C.R.

AREA OF TAKE
PARCEL ONE
1.235 ± ACRES

① $\Delta = 03^{\circ}18'46''$
 $R = 958.00'$
 $L = 55.39'$
 $CH. = S85^{\circ}28'29''E$
 $55.38'$

STOCKTON CONTROL
MONUMENT NO. 55-16
 $N = 2,159,968.647$
 $E = 6,350,752.325$
R.S. 33-20
S.J.C.R.

No.	Revised	By
1	01/15/98	RBS
Drawn by: R.B.S.		
Date: June 2, 1997		
Scale: 1" = 150'		

ACQUISITION PLAT FOR
INDUSTRIAL DRIVE - PARCEL ONE

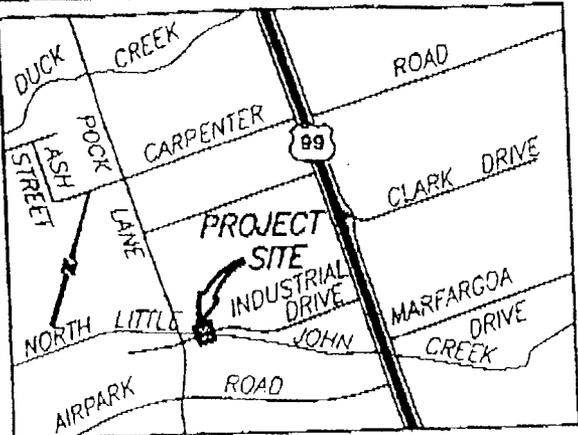
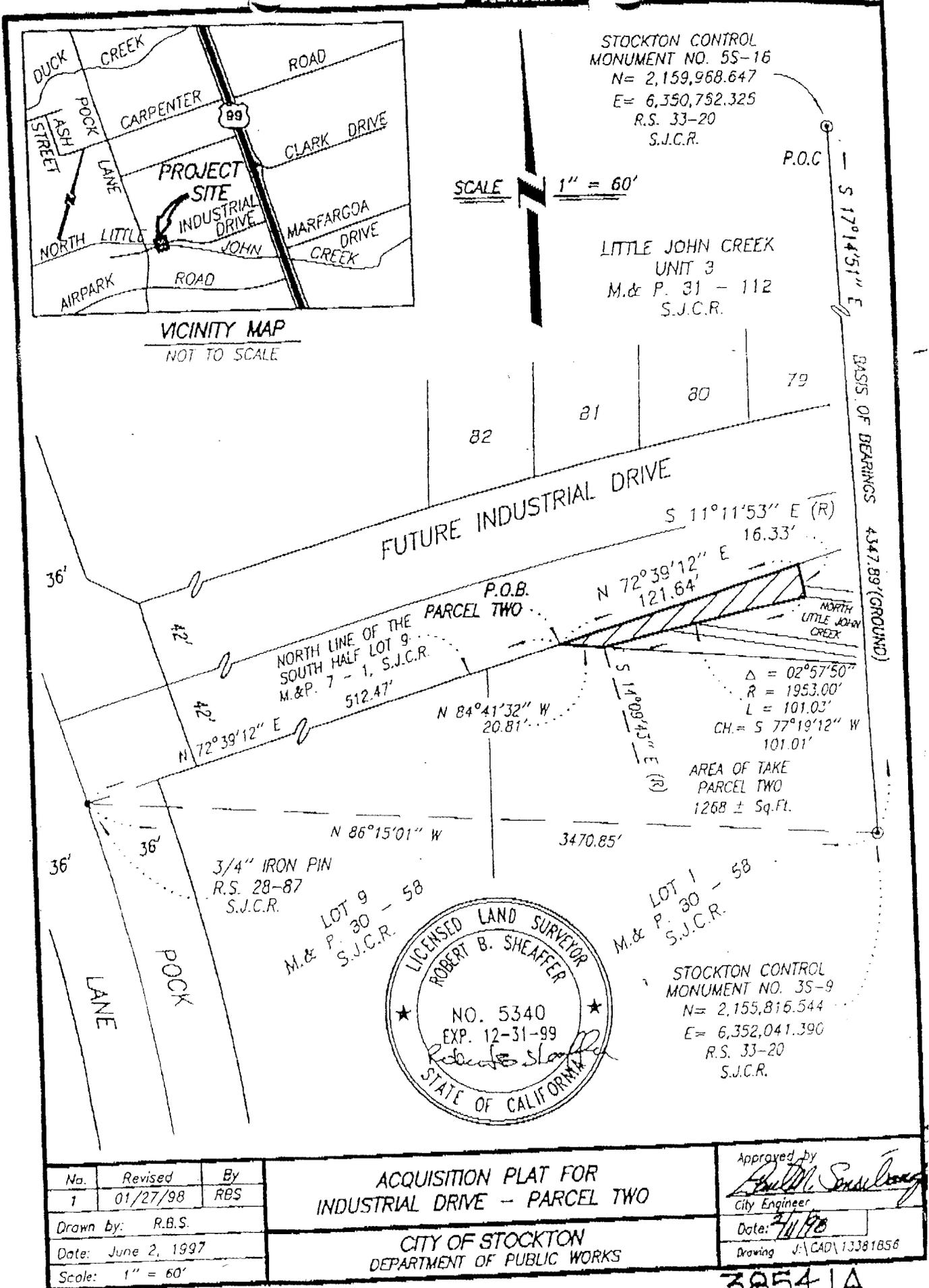
CITY OF STOCKTON
DEPARTMENT OF PUBLIC WORKS

Approved by
Paul M. Smallegange
City Engineer

Date: 2/1/98

DRAWING J:\CAD\13391856

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STOCKTON CONTROL MONUMENT NO. 5S-16
 N= 2,159,968.647
 E= 6,350,792.325
 R.S. 33-20
 S.J.C.R.

SCALE 1" = 60'

LITTLE JOHN CREEK UNIT 3
 M.& P. 31 - 112
 S.J.C.R.

FUTURE INDUSTRIAL DRIVE

P.O.B. PARCEL TWO

NORTH LINE OF THE SOUTH HALF LOT 9
 M.& P. 7 - 1, S.J.C.R.
 512.47'

$\Delta = 02^{\circ}57'50''$
 $R = 1953.00'$
 $L = 101.03'$
 $CH = S 77^{\circ}19'12'' W 101.01'$

AREA OF TAKE PARCEL TWO
 1268 ± Sq. Ft.

3/4" IRON PIN
 R.S. 28-87
 S.J.C.R.

LOT 9
 M.& P. 30 - 58
 S.J.C.R.



LOT 1
 M.& P. 30 - 58
 S.J.C.R.

STOCKTON CONTROL MONUMENT NO. 3S-9
 N= 2,155,816.544
 E= 6,352,041.390
 R.S. 33-20
 S.J.C.R.

No.	Revised	By
1	01/27/98	RBS
Drawn by: R.B.S.		
Date: June 2, 1997		
Scale: 1" = 60'		

ACQUISITION PLAT FOR INDUSTRIAL DRIVE - PARCEL TWO

CITY OF STOCKTON DEPARTMENT OF PUBLIC WORKS

Approved by: *[Signature]*
 City Engineer
 Date: 7/1/98
 Drawing: J:\CAD\13381856

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EXHIBIT "A"

LEGAL DESCRIPTION

INDUSTRIAL DRIVE
A.P.N 179-180-07

All that certain real property, situate, lying and being in the City of Stockton, County San Joaquin, State of California, described as follows:

PARCEL ONE:

Being a portion of that certain real property described as Parcel One in the deed to Andrew C. Cobb, a single man, recorded in Official Records, Book 4249, Page 556, San Joaquin County Records, also being a portion of the south 1/2 of Lot 9 of Ross-Gilmour Gardens, filed for record in Book of MAPS AND PLATS, Volume 7, Page 1, San Joaquin County Records, lying in Section 48 of the C.M. Weber Grant and being more particularly described as follows:

Commencing at City of Stockton survey control monument 5S-16, having the coordinates of N= 2,159,968.647 and E= 6,350,752.325, as shown on Book 33 of Surveys, at Page 20, San Joaquin County Records; thence South 17°14'51" East 4347.89 feet to City of Stockton survey control monument 3S-9, having the coordinates of N= 2,155,816.544 and E= 6,352,041.390, as shown on said Record of Survey; thence North 86°15'01" West 3470.85 feet to a 3/4" Iron Pin set at the northwesterly corner of Parcel "I", as shown on Book 28 of Surveys, at Page 87, San Joaquin County Records, said point being at the intersection of the northerly line of the southerly 1/2 of Lot 9 of said Ross-Gilmour Gardens, with the centerline of Pock Lane (50.00 feet wide); thence North 72°39'12" East, along the northerly line of the southerly 1/2 of said Lot 9, also being the northerly line of said Parcel "I" and the northerly line of Lot 9 and Lot 1 of Stockton Airport Business Center, Unit No. 3, filed in Book 30 of MAPS AND PLATS, at Page 58, San Joaquin County Records, a distance of 512.47 feet to an angle point in the northerly line of said Lot 1; thence continue North 72°39'12" East, on the northerly line of the southerly 1/2 of Lot 9 of said Ross-Gilmour Gardens, 191.27 feet to the TRUE POINT OF BEGINNING of this description; thence continue North 72°39'12" East, on the northerly line of the southerly 1/2 of Lot 9 of said Ross-Gilmour Gardens, 299.08 feet to an angle point in the boundary of Little John Creek, Unit 3, as shown on the plat filed April 26, 1994, in Book 31 of Maps and Plats, at Page 112, San Joaquin County Records, said point being on a non-tangent curve to the left, from which the radius point of said curve bears North 00°51'20" West, said curve having a radius of 958.00 feet; thence easterly, on the arc of said curve, through a central angle of 14°53'31", and a chord bearing and

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Exhibit A

distance of North 81°41'54" East 248.30 feet, an arc distance of 249.00 feet to a point of reverse curvature, from which the radius point bears South 15°44'52" East; thence easterly, along the arc of a curve to the right, having a radius of 1042.00 feet, a central angle of 21°55'46", and a chord bearing and distance of North 85°13'01" East 396.38 feet, an arc distance of 398.82 feet to a point of reverse curvature, from which the radius point bears North 06°10'54" East; thence easterly, along the arc of a curve to the left, having a radius of 958.00 feet, through a central angle of 03°18'46", and a chord bearing and distance of South 85°28'29" East 55.38 feet, an arc distance of 55.39 feet to a point on the easterly line of Lot 9 of said Ross-Gilmour Gardens, said point bearing South 17°44'50" East 145.90 feet from the northeasterly corner of the southerly 1/2 of said lot 9, as said northeasterly corner is shown on that certain map filed in Book 32 of Surveys, at Page 118, San Joaquin County Records; thence South 17°44'50" East, on a non-tangent line, along the easterly line of said Lot 9, a distance of 68.08 feet to a point of intersection with a non-tangent curve to the right, from which the radius point of said curve bears North 01°31'30" East, said curve having a radius of 1022.00 feet; thence westerly, along the arc of said curve, through a central angle of 04°39'24", and a chord bearing and distance of North 86°08'48" West 83.04 feet, an arc distance of 83.06 feet to a point of reverse curvature, from which the radius point bears South 06°10'54" West; thence westerly, along the arc of a curve to the left, having a radius of 978.00 feet, a central angle of 21°55'46", and a chord bearing and distance of South 85°13'01" West 372.04 feet, an arc distance of 374.32 feet to a point of reverse curvature, from which the radius point bears North 15°44'52" West; thence westerly, along the arc of a curve to the right, having a radius of 1022.00 feet, a central angle of 14°53'31", and a chord bearing and distance of South 81°41'54" West 264.88 feet, an arc distance of 265.63 feet to a point of reverse curvature, from which the radius point of said curve bears South 00°51'20" East; thence westerly, along the arc of a curve to the left, having a radius of 1978.00 feet, through a central angle of 08°20'11", with a chord bearing and distance of South 84°58'34" West 287.54 feet, an arc distance of 287.80 feet to the point of beginning.

Containing 1.235 Acres more or less

PARCEL TWO:

Being a portion of that certain real property described as Parcel One in the deed to Andrew C. Cobb, a single man, recorded in Official Records, Book 4249, Page 556, San Joaquin County Records, also being a portion of the south 1/2 of Lot 9 of Ross-Gilmour Gardens, filed for record in Book of MAPS AND PLATS, Volume 7, Page 1, San Joaquin County Records, lying in Section 48

3854A
3854.1A

Exhibit "A"

of the C.M. Weber Grant and being more particularly described as follows:

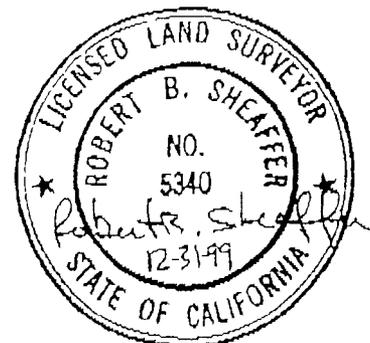
Commencing at City of Stockton survey control monument 5S-16, having the coordinates of N= 2,159,968.647 and E= 6,350,752.325, as shown on Book 33 of Surveys, at Page 20, San Joaquin County Records; thence South 17°14'51" East 4347.89 feet to City of Stockton survey control monument 3S-9, having the coordinates of N= 2,155,816.544 and E= 6,352,041.390, as shown on said Record of Survey; thence North 86°15'01" West 3470.85 feet to a 3/4" Iron Pin set at the northwesterly corner of Parcel "I", as shown on Book 28 of Surveys, at Page 87, San Joaquin County Records, said point being at the intersection of the northerly line of the southerly 1/2 of Lot 9 of said Ross-Gilmour Gardens, with the centerline of Pock Lane (50.00 feet wide); thence North 72°39'12" East, along the northerly line of the southerly 1/2 of said Lot 9, also being the northerly line of said Parcel "I" and the northerly line of Lot 9 and Lot 1 of Stockton Airport Business Center, Unit No. 3, filed in Book 30 of MAPS AND PLATS, at Page 58, San Joaquin County Records, a distance of 512.47 feet to an angle point in the northerly line of said Lot 1 and the TRUE POINT OF BEGINNING of this description; thence continue North 72°39'12" East, on the northerly line of the southerly 1/2 of Lot 9 of said Ross-Gilmour Gardens, 121.64 feet; thence South 11°11'53" East 16.33 feet to the beginning of a non-tangent curve to the left, having a radius of 1953.00 feet and a chord bearing and distance of South 77°19'12" West 101.01 feet, and from which the radius point of said curve bears South 11°11'53" East; thence westerly, along the arc of said curve, through a central angle of 02°57'50", an arc distance of 101.03 feet to the centerline of North Little John Creek, also being the southerly line of aforesaid Parcel One in the deed to Andrew C. Cobb, a single man, recorded in Official Records, Book 4249, page 556, San Joaquin County Records, and also being the northerly line of Lot 1 of Stockton Airport Business Center, Unit No. 3, filed in Book 30 of MAPS AND PLATS, at Page 58, San Joaquin County Records; thence along the southerly line of said Cobb Parcel, and the northerly line of said Lot 1, North 84°41'32" West 20.81 feet to the point of beginning.

Containing 1268 Square Feet of Land, more or less

Bearings and coordinates used in the above descriptions are based on the California Coordinate System-83, Zone III. All distances are ground level distances and must be multiplied by 0.99993339 to obtain grid distances.

2S133818.S14
06/02/97

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PROOF OF SERVICE

I, Kelley Herrington, declare:

I am a resident of the state of California and over the age of eighteen years and not a party to the within action. My business address is 355 South Grand Avenue, 40th Floor, Los Angeles, California 90071-3101. On November 12, 2008, I served the within document(s) described as:

CLAIM FOR PROPERTY DAMAGES, TEMPORARY RESTRAINING ORDER, PRELIMINARY AND PERMANENT INJUNCTION

on the interested parties in this action as stated below:

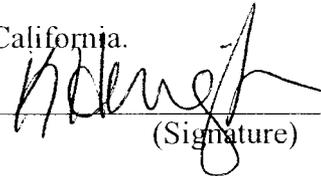
City Clerk of the City of Stockton
425 North El Dorado Street, Suite 200
Stockton, California 95202

(BY MAIL) By placing a true copy of the foregoing document(s) in a sealed envelope addressed as set forth above. I placed each such envelope for collection and mailing following ordinary business practices. I am readily familiar with this Firm's practice for collection and processing of correspondence for mailing. Under that practice, the correspondence would be deposited with the United States Postal Service on that same day, with postage thereon fully prepaid at Los Angeles, 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.

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

Executed on November 12, 2008, at Los Angeles, California.

Kelley Herrington
(Type or print name)


(Signature)

RICHARDS | WATSON | GERSHON
ATTORNEYS AT LAW - A PROFESSIONAL CORPORATION

EXEMPT FROM FILING FEES
PURSUANT TO GOVERNMENT
CODE SECTION 6103

1 MAXWELL M. FREEMAN, #31278
THOMAS H. KEELING, #114979
2 COREN D. WONG, #185047
FREEMAN, D'AIUTO, PIERCE,
3 GUREV, KEELING & WOLF
A PROFESSIONAL LAW CORPORATION
4 1818 Grand Canal Boulevard, Suite 4
Stockton, California 95207
5 Telephone: (209) 474-1818
Facsimile: (209) 474-1245

6 OFFICE OF THE CITY ATTORNEY
7 CITY OF STOCKTON
RICHARD E. NOSKY, JR., #130726
8 JOHN M. LUEBBERKE, #164893
425 North El Dorado Street
9 Stockton, California 95202
Telephone: (209) 937-8333

10 Attorneys for defendant City of Stockton
11

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 FOR THE COUNTY OF SAN JOAQUIN

14 MICHAEL A. COBB, Trustee of the Andrew)
C. Cobb 1992 Revocable Trust dated July 16,)
15 1992,)
16 Plaintiff,)
17 vs.)
18 CITY OF STOCKTON, a municipal)
corporation; and DOES 1-50, inclusive,)
19 Defendant.)

CASE NO. CV035015

**NOTICE OF ENTRY OF ORDER
SUSTAINING DEFENDANT CITY OF
STOCKTON'S DEMURRER TO SECOND
AMENDED COMPLAINT OF MICHAEL A.
COBB, TRUSTEE OF THE ANDREW C.
COBB 1992 REVOCABLE TRUST DATED
JULY 16, 1992**

Date: October 29, 2008
Time: 9:00 a.m.
Dept: 41
Judge: Hon. Elizabeth Humphreys
Reservation No: 1119140

Complaint Filed: March 17, 2008
First Amended Complaint Filed:
July 11, 2008
Second Amended Complaint Filed:
September 8, 2008

25 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD HEREIN:

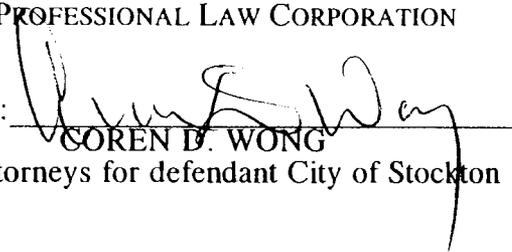
26 Please take notice that the Order Sustaining Defendant City of Stockton's Demurrer to Second
27 Amended Complaint of Michael A. Cobb, Trustee of the Andrew C. Cobb 1992 Revocable Trust

28 / / /

1 Dated July 16, 1992, was entered on November 24, 2008. A copy of the Order is attached hereto as
2 Exhibit A.

3 Dated: December 2, 2008

FREEMAN, D'AIUTO, PIERCE,
GUREV, KEELING & WOLF
A PROFESSIONAL LAW CORPORATION

4
5
6 By: 
COREN B. WONG
Attorneys for defendant City of Stockton

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EXEMPT FROM FILING FEES
PURSUANT TO GOVERNMENT
CODE SECTION 6103
03 NOV 24 AM 9:32
TRACY DYKCHORN
CLERK

1 MAXWELL M. FREEMAN, #31278
THOMAS H. KEELING, #114979
2 COREN D. WONG, #185047
FREEMAN, D'AIUTO, PIERCE,
3 GUREV, KEELING & WOLF
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8 JOHN M. LUEBBERKE, #164893
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9 Stockton, California 95202
Telephone: (209) 937-8333

10 Attorneys for defendant City of Stockton

11
12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 FOR THE COUNTY OF SAN JOAQUIN

14 MICHAEL A. COBB, Trustee of the Andrew)
C. Cobb 1992 Revocable Trust dated July 16,)
15 1992,)
16 Plaintiff,)
17 vs.)
18 CITY OF STOCKTON, a municipal)
corporation; and DOES 1-50, inclusive,)
19 Defendant.)

CASE NO. CV035015
[PROPOSED] ORDER SUSTAINING
DEFENDANT CITY OF STOCKTON'S
DEMURRER TO SECOND AMENDED
COMPLAINT OF MICHAEL A. COBB,
TRUSTEE OF THE ANDREW C. COBB
1992 REVOCABLE TRUST DATED JULY
16, 1992
Date: October 29, 2008
Time: 9:00 a.m.
Dept: 41
Judge: Hon. Elizabeth Humphreys
Reservation No: 1119140
Complaint Filed: March 17, 2008
First Amended Complaint Filed:
July 11, 2008
Second Amended Complaint Filed:
September 8, 2008

21
22
23
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25 The above-entitled matter was calendared for hearing before the Honorable Elizabeth
26 Humphreys in Department 41 of the above-entitled court at 9:00 a.m. on October 29, 2008. Pursuant
27 to Local Rule of Court, rule 3-113(D), the Court issued its tentative ruling requesting counsels'
28 appearance. On October 30, 2008, Kirsten R. Bowman of Richards, Watson & Gershon appeared and

1 argued on behalf of plaintiff Michael A. Cobb, Trustee of the Andrew C. Cobb 1992 Revocable
2 Trusted dated July 16, 1992, and Thomas H. Keeling of Freeman, D’Aiuto, Pierce, Gurev, Keeling &
3 Wolf appeared and argued on behalf of defendant City of Stockton. Having considered all of the
4 pleadings filed by the parties, except as otherwise noted below, as well as oral argument by counsel
5 for both parties, the Court now rules as follows:

6 1. Defendant City of Stockton’s Demurrer to Second Amended Complaint of Michael A.
7 Cobb, Trustee of the Andrew C. Cobb 1992 Revocable Trust Dated July 16, 1992, is sustained as
8 follows:

9 a. As to the First Cause of Action for Inverse Condemnation, the demurrer is
10 sustained without leave to amend. Plaintiff fails to state a cause of action, which is based upon the
11 failure to establish that the five-year statute of limitations has not run, and it is clear from the face of
12 the complaint that it has. Plaintiff’s cause of action accrued once the City took possession of the
13 Property Interest on December 31, 1998. (See, *Otay Water District v. Beckwith* (1991) 1 Cal.App.4th
14 1041, 1048-1049; see also, *Mehl v. People ex rel. Department of Public Works* (1975) 13 Cal.3d 710;
15 *People ex rel. Department of Transportation v. Gardella Square* (1988) 200 Cal.App.3d 599, 571.)

16 The Second Amended Complaint does not allege a date of possession different from the prior
17 complaints. The statute of limitations expired on December 31, 2003. Estoppel has not been
18 sufficiently alleged. (See, *California Cigarette Concessions, Inc. v. City of Los Angeles* (1960) 53
19 Cal.2d 865; see also, *Mills v. Forestex Co.* (2003) 108 Cal.App.4th 625, 641.) Plaintiff has failed to
20 allege any specific misrepresentation or promise made by the City that induced him to delay filing.
21 (See, *Becerra v. Gonzales* (1995) 32 Cal.App.4th 584, 596.) Plaintiff has also failed to allege
22 reliance.

23 Given that this is the third time that the Court has heard argument on this issue, the Court has
24 determined that the issues have been fully and properly addressed by both parties, and the Court
25 sustains the demurrer without leave to amend.

26 b. As to the Second Cause of Action for Quiet Title, the demurrer is sustained
27 with leave to amend. It is sustained because the statute of limitations, be it the five year or three year
28 statute of limitations, has run, which is clear from the face of the complaint. (See, *Ankoanda v.*

1 *Walker-Smith* (1996) 44 Cal.App.4th 610, 615.)

2 From the pleading, the Court can only conclude that the gravamen of the cause of action is
3 inverse condemnation. Plaintiff is granted leave to amend to allege a basis for a quiet title claim that
4 would not be barred by the statute of limitations. The amended cause of action cannot be based on the
5 same inverse condemnation claim.

6 c. As to the Third Cause of Action for Declaratory Relief, the demurrer is
7 sustained with leave to amend. Plaintiff has failed to state a cause of action because the claim for
8 declaratory relief is based on the inverse condemnation, and it is clear from the face of the complaint
9 that the five-year statute of limitations has run. (See, *Pena v. City of Los Angeles* (1970) 8
10 Cal.App.3d 257, 262.)

11 Leave to amend is granted to allege a declaratory relief claim that is not based on the inverse
12 condemnation claim.

13 d. As to the Fourth Cause of Action for Ejectment, the demurrer is sustained with
14 leave to amend based on the doctrine of intervening public use. (See, *Reed v. Oakdale Irrigation*
15 *District* (1920) 46 Cal.App. 139, 142.) The cause of action may only be amended if it does not relate
16 to the inverse condemnation claim, and there must be a pleading that sets forth why the doctrine of
17 intervening public use would not be applicable to the ejectment claim as pled.

18 e. The Request for Judicial Notice in Support of Defendant City of Stockton's
19 Demurrer to Second Amended Complaint of Michael A. Cobb, Trustee of the Andrew C. Cobb 1992
20 Revocable Trust Dated July 16, 1992, which the City filed September 23, 2008, and Plaintiff's
21 Request for Judicial Notice in Support of Plaintiff's Opposition to defendant City of Stockton's
22 Demurrer to Second Amended Complaint, which Plaintiff filed October 16, 2008, are granted.

23 f. The Supplemental Request for Judicial Notice in Support of Defendant City of
24 Stockton's Demurrer to Second Amended Complaint of Michael A. Cobb, Trustee of the Andrew C.
25 Cobb 1992 Revocable Trust Dated July 16, 1992, which the City filed October 22, 2008, was not
26 considered by the Court in making its ruling. While the Court did not clearly understand Plaintiff's
27 Objection to Supplemental Request for Judicial Notice in Support of City of Stockton's Motion to

28 / / /

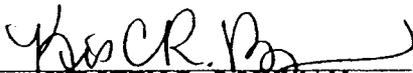
1 Strike Quiet Title, Declaratory Relief, and Ejectment from Second Amended Complaint, the Court
2 understood the Objection to be based on the fact that the Request was untimely as it appeared in the
3 reply and not in the moving papers. On that basis, the Court would sustain the objection. Again,
4 however, the Court did not use the Supplemental Request and did not consider it for purposes of the
5 Court's ruling.

6 Good cause appearing therefor, IT IS SO ORDERED.

7 Dated: November __, 2008
8 NOV 24 2008

ELIZABETH HUMPHREYS
HON. ELIZABETH HUMPHREYS, JUDGE

9 Approved as to Form:
10 RICHARD, WATSON & GERSHON
11

12 By 
13 KIRSTEN R. BOWMAN
14 Attorneys for plaintiff Michael A. Cobb,
15 Trustee of the Andrew C. Cobb 1992
16 Revocable Trust dated July 16, 1992
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PROOF OF SERVICE

I hereby certify that I am a citizen of the United States, over the age of eighteen years, and not a party to this action. My business address is 1818 Grand Canal Boulevard, Suite 4, Stockton, California 95207. I served the foregoing document entitled:

NOTICE OF ENTRY OF ORDER SUSTAINING DEFENDANT CITY OF STOCKTON'S DEMURRER TO SECOND AMENDED COMPLAINT OF MICHAEL A. COBB, TRUSTEE OF THE ANDREW C. COBB 1992 REVOCABLE TRUST DATED JULY 16, 1992

Service by United States Mail:

✓ by placing a true copy thereof enclosed in a sealed envelope or package with postage thereon fully prepaid in a box or receptacle designated by my employer for collection and processing of correspondence for mailing with the United States Postal Service, addressed as set forth below. I am readily familiar with the business practices of my employer, FREEMAN, D'AIUTO, PIERCE, GUREV, KEELING & WOLF, for the collection and processing of correspondence for mailing with the United States Postal Service. Under that practice, the correspondence placed in the designated box or receptacle is deposited with the United States Postal Service at San Joaquin County, California, the same day in the ordinary course of business.

ATTORNEY FOR MICHAEL A. COBB, TRUSTEE OF THE ANDREW C. COBB 1992 REVOCABLE TRUST DATED JULY 16, 1992:

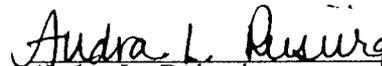
Regina Danner, Esq.
Kirsten R. Bowman, Esq.
Richards Watson & Gershon
355 S. Grand Avenue, 40th Floor
Los Angeles, CA 90071-3101

ATTORNEYS FOR DEFENDANT CITY OF STOCKTON:

John M. Luebberke, Esq.
Richard E. Nosky, Jr., Esq.
City Attorney
City of Stockton
425 N. El Dorado Street, 2nd Fl.
Stockton, CA 95202

The acts described above were undertaken and completed in San Joaquin County on December 2, 2008.

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 on December 2, 2008, at Stockton, California.


Audra L. Reising

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PROOF OF SERVICE

I, Linda Pomatto, declare:

I am a resident of the State of California and over the age of eighteen years, and not a party to the within action; my business address is Richards, Watson & Gershon, 355 South Grand, 40th Floor, Los Angeles, California. On December 23, 2008, I served the within documents:

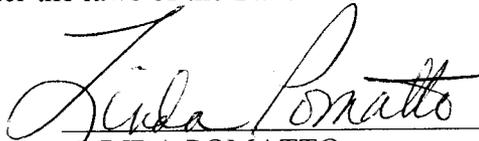
THIRD AMENDED COMPLAINT FOR: 1. QUIET TITLE; 2. EJECTMENT; 3. TRESPASS AND 4. DECLARATORY RELIEF

- by causing facsimile transmission of the document(s) listed above from (213) 626-8484 to the person(s) and facsimile number(s) set forth below on this date before 5:00 P.M. This transmission was reported as complete and without error. A copy of the transmission report(s), which was properly issued by the transmitting facsimile machine, is attached. Service by facsimile has been made pursuant to a prior written agreement between the parties.
- by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Los Angeles, California, addressed as set forth below. I am readily familiar with the firm's practice for collection and processing correspondence for mailing with the United States Postal Service. 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 contained in this affidavit.
- by placing the document(s) listed above in a sealed envelope and affixing a pre-paid air bill, and causing the envelope to be delivered to an agent for delivery, or deposited in a box or other facility regularly maintained by FEDEX, in an envelope or package designated by the express service carrier, with delivery fees paid or provided for, addressed 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 declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on December 23, 2008



 LINDA POMATTO

IRW RICHARDS | WATSON | GERSHON
ATTORNEYS AT LAW - A PROFESSIONAL CORPORATION

SERVICE LIST

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Richard E. Nosky, City Attorney
John M. Luebberke
Office of the City Attorney
425 North El Dorado Street
Stockton, California 95202

Maxwell M. Freeman
Thomas H. Keeling
Coren D. Wong
Freeman, D' Aiuto, Pierce, Gurev,
Keeling & Wolf
1818 Grand Canal Boulevard, Suite 4
Stockton, California 95202

Exhibit N

1 MAXWELL M. FREEMAN, #31278
THOMAS H. KEELING, #114979
2 COREN D. WONG, #185047
FREEMAN, D'AIUTO, PIERCE,
3 GUREV, KEELING & WOLF
A PROFESSIONAL LAW CORPORATION
4 1818 Grand Canal Boulevard, Suite 4
Stockton, California 95207
5 Telephone: (209) 474-1818
Facsimile: (209) 474-1245

6 OFFICE OF THE CITY ATTORNEY
7 CITY OF STOCKTON
RICHARD E. NOSKY, JR., #130726
8 JOHN M. LUEBBERKE, #164893
425 North El Dorado Street
9 Stockton, California 95202
Telephone: (209) 937-8333

10 Attorneys for defendant City of Stockton

11
12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 FOR THE COUNTY OF SAN JOAQUIN

14 MICHAEL A. COBB, Trustee of the Andrew)
C. Cobb 1992 Revocable Trust dated July 16,)
15 1992,)

16 Plaintiff,)

17 vs.)

18 CITY OF STOCKTON, a municipal)
corporation; and DOES 1-50, inclusive,)

19 Defendant.)

CASE NO. CV035015

~~PROPOSED~~ ORDER SUSTAINING
DEFENDANT CITY OF STOCKTON'S
DEMURRER TO THIRD AMENDED
COMPLAINT OF MICHAEL A. COBB,
TRUSTEE OF THE ANDREW C. COBB
1992 REVOCABLE TRUST DATED JULY
16, 1992 WITHOUT LEAVE TO AMEND

Date: March 12, 2009
Time: 9:00 a.m.
Dept: 41
Judge: Hon. Elizabeth Humphreys
Reservation No: 1167009

Complaint Filed: March 17, 2008
First Amended Complaint Filed:
July 11, 2008
Second Amended Complaint Filed:
September 8, 2008
Third Amended Complaint Filed:
December 24, 2008

26 The above-entitled matter was calendared for hearing before the Honorable Elizabeth
27 Humphreys in Department 41 of the above-entitled court at 9:00 a.m. on March 12, 2009. Pursuant
28 to Local Rule of Court, rule 3-113(D), the Court issued its tentative ruling sustaining the demurrer

~~PROPOSED~~ ORDER SUSTAINING DEFENDANT CITY OF STOCKTON'S DEMURRER TO THIRD AMENDED
COMPLAINT WITHOUT LEAVE TO AMEND

EXEMPT FROM FILING FEES
PURSUANT TO GOVERNMENT
CODE SECTION 6103

Filed APR 03 2009

ROSA JUNQUEIRO, CLERK

By ~~SONYA FARNWORTH~~

DEPUTY

1 without leave to amend. Plaintiff requested oral argument and on March 12, 2009, Kirsten R.
2 Bowman of Richards, Watson & Gershon appeared on behalf of plaintiff Michael A. Cobb, Trustee of
3 the Andrew C. Cobb 1992 Revocable Trust dated July 16, 1992, and Thomas H. Keeling and Coren
4 D. Wong of Freeman, D'Aiuto, Pierce, Gurev, Keeling & Wolf appeared on behalf of defendant City
5 of Stockton. Having considered all of the pleadings filed by the parties, as well as oral argument by
6 counsel for both parties, the Court now rules as follows:

7 1. Defendant City of Stockton's Demurrer to the Third Amended Complaint of Michael
8 A. Cobb, Trustee of the Andrew C. Cobb 1992 Revocable Trust Dated July 16, 1992, is sustained
9 without leave to amend on the following grounds:

10 a. As to the First Cause of Action for Quiet Title, the recordation of a lis pendens
11 is a privileged act that cannot be the basis for any cause of action. (See, Civ. Code, § 47; see, e.g.,
12 *Palmer v. Zaklama* (2003) 109 Cal.App.4th 1367, 1378; see also, TAC, ¶¶ 1, 8, 9, 12, 15, 21, 24;
13 City's RFJN, Ex. D, ¶¶ 12-19.)

14 Plaintiff has conceded the fact of the intervening public use by affirmatively alleging a public
15 use in his previous complaint. (See, City's RFJN, Exs. A, B, and H, ¶¶ 18, 19, and 26-28; see also,
16 Code Civ. Proc., §§ 1240.030 and 1245.250.) The Third Amended Complaint does not contain any
17 allegations of gross abuse of discretion. (See, *County of San Mateo v. Bartole* (1960) 184 Cal.App.2d
18 422, 433; see also, *Sheffet v. County of Los Angeles* (1970) 3 Cal.App.3d 720, 736.)

19 b. As to the Second Cause of Action for Ejectment, the doctrine of intervening
20 public use precludes Plaintiff from recovering restitution of the Property Interest as a matter of law.
21 (See, e.g., *Reed v. Oakdale Irrigation District* (1920) 46 Cal.App. 139, 142; *Sheffet v. County of Los*
22 *Angeles, supra*, 3 Cal.App.3d 720, 736; see also, City's RFJN, Exs. A; B; H 3:22-24, ¶¶ 18, 19, and
23 26-28; TAC, ¶ 10.)

24 Plaintiff failed to timely file a claim for damages under Government Code sections 911.2 and
25 945.6. The date a cause of action accrues for purposes of claims presentation is the same date on
26 which the cause of action accrues for purposes of the statute of limitations. (See, *Shirk v. Vista*
27 *Unified School District* (2007) 42 Cal.4th 201, 209.) The 1998 Action was dismissed on October 9,
28 2007, and any cause of action for ejectment accrued, at the latest, on the date. (TAC, ¶ 12.) Plaintiff

1 did not submit a claim until November 12, 2008, a date beyond the one year statutory period
2 permitted by the Government Code. (TAC, Ex. 8.)

3 Whether Plaintiff's injuries are continuing is not relevant to the determination of whether he
4 filed a timely government claim. (See, Field-Escandon v. DeMann (1988) 204 Cal.App.3d 228, 234;
5 Phillips v. City of Pasadena (1945) 27 Cal.2d 104, 107-108.)

6 The City did not waive the defense that Plaintiff's Government Code claim was untimely.
7 (See, Gov. Code, §§ 911.2 and 911.3; Smith v. County of Los Angeles (1989) 214 Cal.App.3d 266,
8 281 fn. 5; see also, TAC, ¶¶ 8, 16, and 30; City's RFJN, Ex. A.)

9 c. As to the Third Cause of Action for Trespass, see discussion regarding the
10 Second Cause of Action for Ejectment above.

11 Plaintiff does not cite any statute imposing liability for trespass on a public entity. (Gov. Code,
12 § 815)

13 d. As to the Fourth Cause of Action for Declaratory Relief, the Third Amended
14 Complaint does not allege an "actual controversy" separate and apart from the one previously alleged
15 in the Second Amended Complaint. (See, City of Cotati v. Cashmen (2002) 29 Cal.4th 69, 80; see
16 also, TAC, ¶ 35; SAC, ¶ 40.)

17 2. Plaintiff's Request for Judicial Notice is granted.

18 3. Defendant's Request for Judicial Notice is granted.

19 Good cause appearing therefor, IT IS SO ORDERED.

20 Dated: March 17, 2009

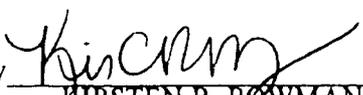
ELIZABETH HUMPHREYS

21 APR 03 2009

HON. ELIZABETH HUMPHREYS, JUDGE

22 Approved as to Form:

23 RICHARD, WATSON & GERSHON

24
25 By 
KIRSTEN R. BOWMAN

26 Attorneys for plaintiff Michael A. Cobb,
27 Trustee of the Andrew C. Cobb 1992
Revocable Trust dated July 16, 1992

28

Exhibit O

Filed 1/26/11

CERTIFIED FOR PUBLICATION

COPY

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
(San Joaquin)

MICHAEL A. COBB, AS TRUSTEE, ETC.,

Plaintiff and Appellant,

v.

CITY OF STOCKTON,

Defendant and Respondent.

C062328

(Super. Ct. No.
CV035015)

APPEAL from a judgment of the Superior Court of San Joaquin County, Humphreys, Judge. Reversed with directions.

Kirsten R. Bowman for Plaintiff and Appellant.

Thomas H. Keeling for Defendant and Respondent.

Nine years after the City of Stockton (City) initiated eminent domain proceedings to acquire real property owned by Andrew C. Cobb, as trustee of the Andrew C. Cobb 1992 Revocable

Trust (the Trust), and after the City constructed a public roadway across the condemned property, the trial court dismissed the action for lack of prosecution (Code Civ. Proc., § 583.360). Plaintiff, Michael A. Cobb, as successor trustee, then initiated this action in inverse condemnation to collect for the taking of the property by virtue of the extant roadway.

The City demurred to the complaint, arguing the inverse condemnation claim is time-barred, inasmuch as the taking occurred more than five years before the complaint was filed. The trial court agreed, sustained the demurrers without leave to amend, and entered judgment for the City. Plaintiff appeals.

We conclude the trial court erred in sustaining the demurrer based on the statute of limitations. Plaintiff's claim for inverse condemnation did not accrue until the City's occupation of the property became wrongful, which did not occur until the eminent domain proceeding was dismissed. We therefore reverse.

FACTS AND PROCEEDINGS

Since this is an appeal from a dismissal following an order sustaining a demurrer, we summarize and accept as true all material allegations of the complaint. (*Hensler v. City of Glendale* (1994) 8 Cal.4th 1, 8, fn. 3; *Shoemaker v. Myers* (1990) 52 Cal.3d 1, 7.) In this instance, plaintiff's only challenge is to dismissal of the inverse condemnation claim contained in his second amended complaint. We therefore take the facts from the second amended complaint.

On October 23, 1998, the City filed an action in eminent domain to acquire a portion of a parcel of property located at 4218 Pock Lane in Stockton (the Property) for the purpose of constructing a roadway. The Property is owned by the Trust. At the time, the City deposited \$90,200 with the trial court as probable just compensation for the Property. On or about December 31, 1998, the court entered an order granting the City prejudgment possession of the Property. The City thereafter constructed the proposed roadway. On November 6, 2000, plaintiff, as successor trustee of the Trust, withdrew the \$90,200 deposit.

On October 9, 2007, the trial court dismissed the eminent domain action for failure to bring the matter to trial within five years (Code Civ. Proc., §§ 583.310, 583.360).

On March 14, 2008, plaintiff filed this action against the City alleging a single cause of action for inverse condemnation. The City demurred on the basis of the statute of limitations, asserting that plaintiff's claim is governed by a five-year limitation period and the claim accrued in 1998, when the City first acquired the Property. The trial court agreed and sustained the demurrer with leave to amend.

Plaintiff filed a first amended complaint, again alleging inverse condemnation. The City again demurred on the basis of the statute of limitations and the trial court sustained the demurrer with leave to amend.

Plaintiff filed a second amended complaint containing a claim for inverse condemnation plus three related claims. The

City again demurred. The trial court sustained the demurrer to the inverse condemnation claim without leave to amend. On the other claims, the court sustained the demurrers with leave to amend.

Plaintiff filed a third amended complaint containing four causes of action, but no claim for inverse condemnation. The City again demurred, and the trial court sustained the demurrers without leave to amend. The court thereafter entered judgment of dismissal.

DISCUSSION

I

Klopping v. City of Whittier

In the second amended complaint, plaintiff alleged that when the trial court proposed to dismiss the eminent domain action for failure to prosecute, he supported the dismissal based on representations by the City that it intended to re-file the action. Plaintiff contends the second amended complaint adequately stated a claim for inverse condemnation, because the City's failure to file a second eminent domain action after promising to do so "subjects the City to inverse condemnation liability under *Klopping v. City of Whittier* (1972) 8 Cal.3d 39 (*Klopping*)."

In *Klopping*, the city initiated condemnation proceedings but later abandoned the action due to a pending lawsuit filed by one of the defendants. At the time of abandonment, the city announced its intention to reinstitute proceedings once the

other lawsuit was resolved. The city later reinstated and completed the condemnation action. The plaintiffs, who were owners of a portion of the target property, filed a complaint in inverse condemnation, claiming the fair market value of their property had declined during the period between the city's announcement of an intention to reinstate the condemnation proceeding and the actual completion of that proceeding. The plaintiffs alleged the condemnation cloud hanging over the property during this period reduced its rental value.

(*Klopping, supra*, 8 Cal.3d at pp. 45-46.)

The California Supreme Court concluded the plaintiffs could recover for the reduced rental value of their property under the circumstances presented. The court first cautioned that any reduction in value occasioned by a routine announcement of condemnation proceedings is not recoverable. (*Klopping, supra*, 8 Cal.3d at p. 51.) "However, when the condemner acts unreasonably in issuing precondemnation statements, either by excessively delaying eminent domain action or by other oppressive conduct, our constitutional concern over property rights requires that the owner be compensated." (*Id.* at pp. 51-52.)

Plaintiff contends the circumstances presented here "provide an even more compelling case for damages than the circumstances in *Klopping*." Plaintiff argues that, under *Klopping*, "the City may be held liable in inverse condemnation arising either (1) from unreasonably delaying filing its promised second eminent domain action after announcing an intent

to file, or (2) from its unreasonable conduct prior to filing any action.”

The City responds that *Klopping* has no bearing on the present matter, because there is no allegation here of unreasonable pre-condemnation activity. Even if the City promised to re-file the eminent domain action, which the City denies, this occurred after the eminent domain action was filed. There was no second filing, as in *Klopping*. Furthermore, the City argues, plaintiff does not allege damage based on a promise to re-file the eminent domain action, but from construction of the roadway across the Property.

We agree *Klopping* has no bearing on the present matter. *Klopping* involved a claim that a party's unreasonable pre-condemnation actions depressed the value of the target property even before any physical invasion of it. In *Klopping*, the mere anticipation of a condemnation proceeding depressed the value of the property. In the present matter, plaintiff does not allege the City's announcement of an intention to condemn or its promise to re-file the condemnation action somehow reduced the value of the Property. Plaintiff's claim is that the *actual* invasion of the Property by the construction of a roadway across it reduced the value of the Property and is a taking requiring just compensation.

II

Statute of Limitations

The trial court concluded plaintiff's inverse condemnation claim is barred by the applicable statute of limitations. In reaching this conclusion, the court determined plaintiff's claim accrued at the time the City took prejudgment possession of the Property on December 31, 1998, and the statutory period expired five years later, on December 31, 2003.

Plaintiff contends the claim did not accrue when the Property was first taken but when that taking became unlawful. Plaintiff argues the City took possession of the Property pursuant to a court order granting such possession, and the City's continued occupancy of the Property by virtue of the constructed roadway did not become unlawful until the eminent domain action was dismissed without a new one being filed.

We agree. The statute of limitations applies to claims for inverse condemnation. (*Otay Water Dist. v. Beckwith* (1991) 1 Cal.App.4th 1041, 1048 (*Otay*.) The trial court used the five-year statute of limitations applicable to actions for adverse possession (Code Civ. Proc., § 318). Courts have applied this statute "where a public entity has physically entered and exercised dominion and control over some portion of a plaintiff's property." (*Bookout v. State of California ex rel. Dept. of Transportation* (2010) 186 Cal.App.4th 1478, 1484.) On the other hand, plaintiff's claim is arguably based on damage to the Property by virtue of the construction of a roadway

across a portion of it. Such a claim may be governed by the three-year statute of limitations for actions based on trespass upon or injury to real property (Code Civ. Proc., § 338, subd. (b)).

We need not decide which limitation period applies here. The City first took dominion over a portion of the Property in December 1998, when the trial court gave the City prejudgment possession, and plaintiff did not file his inverse condemnation claim until March 2008, more than nine years later. Thus, whether we apply the five-year or the three-year statute of limitations, the question of whether the statute has run turns on whether plaintiff's cause of action accrued at the time the City took possession of the Property or later, when the City abandoned its eminent domain action.

The City contends plaintiff's cause of action accrued when the City first took possession of the Property, and the trial court agreed, citing as support *Mehl v. People ex rel. Dept. of Public Works* (1975) 13 Cal.3d 710 (*Mehl*); *People ex rel. Department of Transportation v. Gardella Square* (1988) 200 Cal.App.3d 559 (*Gardella Square*); and *Otay, supra*, 1 Cal.App.4th 1041. However, as we shall explain, those cases are inapposite.

In *Mehl*, the state constructed a freeway on property immediately adjacent to and south of the defendants' property and, to accommodate the natural drainage flow that would otherwise be blocked by the freeway, installed a culvert under the freeway that channeled the runoff onto the defendants'

property. In February 1969, the county condemned a drainage easement down the middle of the defendants' property. The defendants cross-complained against the state in inverse condemnation for partial loss of their property as a result of the freeway construction. The trial court rejected the state's statute of limitations defense and awarded damages to the defendants on their cross-complaint. The Court of Appeal affirmed on all issues except the calculation of damages. (*Mehl, supra*, 13 Cal.3d at pp. 714-715.)

The California Supreme Court agreed the defendants' claim was not barred by the statute of limitations. The court explained: "The taking asserted in this action consists of the channeling of a flow of extra water onto the Mehl property. [In essence, the Mehls asserted that the state had appropriated a drainage easement over their property.] The date the taking occurred is not necessarily the date on which the period of limitation and of claims started to run. [] [Rather, the period begins to run when the damage is sufficiently appreciable to a reasonable man. [Citation.]]" (*Mehl, supra*, 13 Cal.3d at p. 717, fn. omitted.) The trial court found the defendants did not become aware of the drainage system until 1969, and the high court concluded this finding was supported by the evidence. (*Ibid.*)

In *Gardella Square*, the Department of Transportation filed a condemnation action concerning a parcel of unimproved property, and the property owner asserted an affirmative defense of inverse condemnation based on pre-condemnation conduct by the

department that allegedly interfered with the owner's attempts to develop the property prior to condemnation. (*Gardella Square, supra*, 200 Cal.App.3d at pp. 563-564.) In that opinion, which involved issues of prejudgment interest and litigation expenses, not the statute of limitations, the Court of Appeal stated: "[A] cause of action for inverse condemnation arises from a governmental invasion or appropriation of a valuable property right which directly and specifically affects the landowner to his injury." (*Id.* at p. 571.)

In *Otay*, a water district obtained a ranch in 1962 and constructed a reservoir which, inadvertently, also encompassed adjacent property later acquired by the defendant. The water district eventually learned of the error and, in 1989, filed an action to quiet title to a prescriptive easement over the property. The defendant and others cross-complained for inverse condemnation. The trial court granted summary judgment to the water district on both its claim for prescriptive easement and the cross-complaint for inverse condemnation, and the Court of Appeal affirmed. (*Otay, supra*, 1 Cal.App.4th at pp. 1044-1045.)

The appellate court explained the limitations period on inverse condemnation claims normally begins to run when the governmental entity takes possession of the property. (*Otay, supra*, 1 Cal.App.4th at pp. 1048-1049.) "Where, however, there is no direct physical invasion of the landowner's property and the fact of taking is not immediately apparent, the limitations period is tolled until 'the damage is sufficiently appreciable to a reasonable [person]'" (*Id.* at p. 1049.) The

defendant argued he was not aware of the encroachment until the water district filed its action in 1989. The appellate court rejected this argument, concluding the encroachment was open and apparent and the defendant was able to determine the nature and extent of the taking long before the water district filed its action. (*Ibid.*)

None of the foregoing cases addresses the issue presented in this matter. The statement in *Gardella Square* about when a cause of action in inverse condemnation arises was dictum. The case involved pre-condemnation activity that reduced the value of the property, not whether an inverse condemnation claim arises from an invasion that is initially authorized by court order.

In *Mehl* and *Otay*, the question was whether the inverse condemnation action had been brought within the statutory period after the taking should reasonably have been discovered by the property owner. In *Mehl*, the high court concluded substantial evidence supported the trial court's determination that the defendants were unaware of the drainage diversion across their property until the county filed its eminent domain action. In *Otay*, the Court of Appeal concluded the reservoir was obvious to the defendant long before the quiet title action was filed. In both cases, the encroachment had been wrongful at its inception.

In the present matter, there is no question plaintiff's predecessor was aware on December 31, 1998, that the City had taken possession of the Property. However, at the time, the City's possession was pursuant to a court order. In other

words, the City was not in *wrongful* possession of the Property. The question presented here is thus whether, under such circumstances, the statute of limitations begins to run at the time of permissive possession on any inverse condemnation claim that might later arise from that possession.

“Generally, a cause of action accrues and the statute of limitation begins to run when a suit may be maintained. [Citations.] “Ordinarily this is when the wrongful act is done and the obligation or the liability arises, but it does not ‘accrue until the party owning it is entitled to begin and prosecute an action thereon.’” [Citation.] In other words, “[a] cause of action accrues ‘upon the occurrence of the last element essential to the cause of action.’” [Citations.]’ [Citation.]” (*Howard Jarvis Taxpayers Assn. v. City of La Habra* (2001) 25 Cal.4th 809, 815.)

A trespass requires that the entry be without permission. (See CACI No. 2000.) In the present matter, plaintiff could not have maintained an action in trespass against the City while the eminent domain action was pending, because the City’s occupancy was authorized by court order. Hence, the three-year statute of limitations applicable to trespass actions did not begin to run until the City’s occupancy was no longer pursuant to permission of the court, which did not occur until the eminent domain action was dismissed.

Nor could plaintiff have maintained an action against the City to recover real property, within the meaning of the five-year statute of limitations (Code Civ. Proc., § 318). The City

did not possess the Property under a claim of right, as required for adverse possession or a prescriptive easement. (See *Felgenhauer v. Soni* (2004) 121 Cal.App.4th 445, 449.) Rather, the City was attempting through the eminent domain action to establish its claim of right to occupy the Property. The City had been given a temporary right of occupancy only. It was only after that temporary right expired, with dismissal of the eminent domain action, that the applicable statute of limitations began to run.

Taken to its logical conclusion, the trial court's ruling would mean that every time a condemning authority takes prejudgment possession of the subject property, the owner would have to file a protective inverse condemnation claim in the event the eminent domain action is later dismissed. Such action would then remain dormant while the eminent domain action ran its course.

Under the circumstances presented, a cause of action for inverse condemnation did not accrue until the City no longer had a right to occupy plaintiff's property. This did not occur until the eminent domain action was dismissed. Only then did the statute of limitations begin to run. Because plaintiff filed the instant action less than a year after the trial court dismissed the eminent domain action, the action was timely, and the trial court erred in sustaining demurrers to the inverse condemnation action of the second amended complaint.

DISPOSITION

The judgment is reversed and the matter is remanded to the trial court with directions to vacate its order sustaining and enter a new order overruling the City's demurrer to the first cause of action (inverse condemnation) of the second amended complaint. Plaintiff shall receive his costs on appeal.

HULL, J.

We concur:

RAYE, P. J.

NICHOLSON, J.

Exhibit P

UNITED STATES BANKRUPTCY COURT Eastern District of California		PROOF OF CLAIM
Name of Debtor City of Stockton, California	Case Number 12-32118	FILED U.S. Bankruptcy Court Eastern District of CA Wayne Blackwelder, Clerk 8/16/2013
NOTE: Do not use this form to make a claim for an administrative expense that arises after the bankruptcy filing. You may file a request for payment of an administrative expense according to 11 U.S.C. § 503.		COURT USE ONLY
Name of Creditor (the person or other entity to whom the debtor owes money or property): Michael A. Cobb, Trustee of the Andrew C. Cobb 1992 Revocable Trust		
Name and address where notices should be sent: c/o Bradford J. Dozier ATHERTON & DOZIER 305 N. El Dorado St., Suite 301 Stockton, CA 95202 Telephone number: (209) 948-5711 email: athdoz@aol.com		<input type="checkbox"/> Check this box if this claim amends a previously filed claim. Court Claim Number: _____ (If known) Filed on: _____
Name and address where payment should be sent (if different from above): Telephone number: _____ email: _____		<input type="checkbox"/> Check this box if you are aware that anyone else has filed a proof of claim relating to this claim. Attach copy of statement giving particulars.
1. Amount of Claim as of Date Case Filed: \$ <u>4200997</u>		
If all or part of the claim is secured, complete item 4.		
If all or part of the claim is entitled to priority, complete item 5.		
<input checked="" type="checkbox"/> Check this box if the claim includes interest or other charges in addition to the principal amount of the claim. Attach a statement that itemizes interest or charges.		
2. Basis for Claim: <u>Inverse condemnation and other claims from 1998 on</u> (See instruction #2)		
3. Last four digits of any number by which creditor identifies debtor: _____	3a. Debtor may have scheduled account as: _____ (See instruction #3a)	3b. Uniform Claim Identifier (optional): _____ (See instruction #3b)
4. Secured Claim (See instruction #4) Check the appropriate box if the claim is secured by a lien on property or a right of setoff, attach required redacted documents, and provide the requested information.		Amount of arrearage and other charges, as of the time case was filed, included in secured claim, if any: \$ _____
Nature of property or right of setoff: <input type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other Describe:		Basis for perfection: _____
Value of Property: \$ _____		Amount of Secured Claim: \$ _____
Annual Interest Rate: ___ % <input type="checkbox"/> Fixed or <input type="checkbox"/> Variable (when case was filed)		Amount Unsecured: \$ _____
5. Amount of Claim Entitled to Priority under 11 U.S.C. §507(a). If any part of the claim falls into one of the following categories, check the box specifying the priority and state the amount.		
<input type="checkbox"/> Domestic support obligations under 11 U.S.C. §507(a)(1)(A) or (a)(1)(B).	<input type="checkbox"/> Wages, salaries, or commissions (up to \$12,475*) earned within 180 days before the case was filed or the debtor's business ceased, whichever is earlier – 11 U.S.C. §507(a)(4).	<input type="checkbox"/> Contributions to an employee benefit plan – 11 U.S.C. § 507(a)(5). Amount entitled to priority: \$ _____
<input type="checkbox"/> Up to \$2,775* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use – 11 U.S.C. § 507(a)(7).	<input type="checkbox"/> Taxes or penalties owed to governmental units – 11 U.S.C. § 507(a)(8).	<input type="checkbox"/> Other – Specify applicable paragraph of 11 U.S.C. §507(a)(____).
*Amounts are subject to adjustment on 4/1/13 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.		
6. Credits. The amount of all payments on this claim has been credited for the purpose of making this proof of claim. (See instruction #6)		

7. Documents: Attached are **redacted** copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, security agreements, or, in the case of a claim based on an open-end or revolving consumer credit agreement, a statement providing the information required by FRBP 3001(c)(3)(A). If the claim is secured, box 4 has been completed, and **redacted** copies of documents providing evidence of perfection of a security interest are attached. If the claim is secured by the debtor's principal residence, the Mortgage Proof of Claim Attachment is being filed with this claim. (See instruction #7, and the definition of "redacted".)

DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING.

If the documents are not available, please explain:

8. Signature: (See instruction #8)

Check the appropriate box.

- I am the creditor.
- I am the creditor's authorized agent.
- I am the trustee, or the debtor, or their authorized agent. (See Bankruptcy Rule 3004.)
- I am a guarantor, surety, indorser, or other codebtor. (See Bankruptcy Rule 3005.)

I declare under penalty of perjury that the information provided in this claim is true and correct to the best of my knowledge, information, and reasonable belief.

Print Name: Bradford J. Dozier
 Title: Attorney for Creditor Cobb
 Company: ATHERTON & DOZIER

Address and telephone number (if different from notice address above): _____
 _____ (Signature) 8/16/2013
 _____ (Date)

Telephone number: _____ email: _____

Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.

1 RICHARDS, WATSON & GERSHON
 A Professional Corporation
 2 REGINA N. DANNER (137210)
 KRISTEN R. BOWMAN (181627)
 3 MARICELA E. MARROQUIN (232321)
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 5 Facsimile: (213) 626-0078

FILED
 SUPERIOR COURT - STOCKTON
 2008 SEP -8 PM 3:51
 ROSA JUNQUEIRO, CLERK
 BY DOMINIC WILLIS
 DEPUTY

6 Attorneys for Plaintiff,
 Michael A. Cobb, Trustee of the
 7 Andrew C. Cobb 1992 Revocable Trust
 dated July 16, 1992
 8
 9

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
 11 COUNTY OF SAN JOAQUIN

12
 13 MICHAEL A. COBB, Trustee of the
 Andrew C. Cobb 1992 Revocable Trust
 14 dated July 16, 1992,

15 Plaintiff,

16 vs.

17 CITY OF STOCKTON, a municipal
 corporation; and DOES 1-50, Inclusive,

18 Defendants.
 19

Case No. CV 035015

SECOND AMENDED COMPLAINT
 FOR:

- 1. INVERSE CONDEMNATION
- 2. QUIET TITLE
- 3. DECLARATORY RELIEF
- 4. EJECTMENT

BY FAX

20
 21 Plaintiff, Michael A. Cobb, Trustee of the Andrew C. Cobb 1992 Revocable Trust
 22 dated July 16, 1992 ("Plaintiff"), alleges as follows:
 23

24 I. INTRODUCTION

25 1. The Andrew C. Cobb 1992 Revocable Trust dated July 16, 1992 ("Cobb
 26 Trust") owns the real property located at 4218 Pock Lane, Stockton, California 95206
 27 identified as San Joaquin Assessor's Parcel Number 179-180-07 ("Cobb Property") in fee.
 28 Plaintiff, Michael A. Cobb, is the trustee of the Cobb Trust and has the power to prosecute

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 ATTORNEYS AT LAW - A PROFESSIONAL CORPORATION

1 this action for the protection of the Cobb Property. An affidavit of Acceptance of
2 Trusteeship is attached as Exhibit "1".

3 2. Defendant City of Stockton ("Defendant" or "City") is a municipal
4 corporation organized and existing under the laws of the State of California.

5 3. Plaintiff is ignorant of the true names and capacities of Defendants sued
6 herein as DOES 1-50, Inclusive, and therefore sues these Defendants by such fictitious
7 names. Plaintiff will amend this complaint to allege their true names and capacities when
8 ascertained.

9 4. Plaintiff is informed and believes and based thereon alleges, that each
10 fictitiously named Defendants is in some manner responsible for the injury and damage to
11 Plaintiff as alleged herein.

12 5. On October 23, 1998, Defendant filed an eminent domain action seeking to
13 condemn a permanent easement across one parcel of land owned by the Cobb Trust for
14 the construction of a public roadway. The eminent domain action was filed in the
15 Superior Court of the State of California, County of San Joaquin, and was further
16 identified as Case No. CV006247 ("1998 Action"). Specifically, Defendant sought to
17 acquire an "easement" through the Cobb Property, thereby, bisecting the property into
18 two separate parcels of land. The property that Defendant sought to acquire is legally
19 described in Exhibit "A" to the Complaint in Eminent Domain that was filed in the 1998
20 Action. The Complaint in Eminent Domain is attached as Exhibit "2" to this complaint.
21 The property that was the subject of the 1998 Action will be hereby referred to as the
22 "Property Interest".

23 6. When Defendant filed the 1998 Action, the Cobb Property was owned by
24 the Cobb Trust. Andrew C. Cobb, was the trustee of the Cobb Trust. On or about
25 November 30, 1998, Andrew C. Cobb filed an Answer to the Complaint in Eminent
26 Domain. The Answer to the Complaint in Eminent Domain is attached as Exhibit 3.

27 7. By filing an Answer to the Complaint, Andrew C. Cobb, preserved his
28 constitutional rights to contest Defendant's right to take the Property Interest, and to

1 receive just compensation as determined by a jury. In addition, by filing an Answer,
2 Cobb affirmed that his property rights were adverse to those claimed by Defendant. It
3 was not necessary for Plaintiff to file a cross-complaint for inverse condemnation because
4 he preserved his constitutional rights in his Answer to the Complaint in Eminent Domain.
5 Moreover, Andrew C. Cobb reasonably believed that his constitutional rights were
6 protected by having filed an Answer to the Complaint in Eminent Domain.

7 8. On or about December 31, 1998, Defendant took legal pre-judgment
8 possession of the Property Interest that was the subject of the 1998 Action pursuant to an
9 Order for Prejudgment Possession. A true and correct copy of the Order for Prejudgment
10 Possession is attached as Exhibit "4".

11 9. Andrew C. Cobb was originally represented by the law firm of Atherton and
12 Dozier, who withdrew on October 15, 1999. Andrew C. Cobb continued to represent the
13 Cobb Trust in pro per, and attempted to negotiate with the City of Stockton regarding the
14 Property Interest until he was killed in early 2000. The City of Stockton refused to
15 negotiate personally with Andrew C. Cobb because they felt Mr. Cobb was a threat to the
16 City and therefore, directed all settlement negotiations through their attorneys, Freeman,
17 D'Aiuto, Pierce, Gurev, Keeling and Wolf. A true and correct copy of an Informational
18 Bulletin advising City staff to contact the Vice Unit if Andrew C. Cobb attempted to
19 contact them is attached as Exhibit "5". After Andrew C. Cobb's death, there was a
20 dispute among his heirs regarding the ownership interests of his property. In late 2000,
21 Michael A. Cobb, his son, appeared in the 1998 Action as Executor of the Estate of
22 Andrew C. Cobb and as Successor Trustee of the Trust. In late 2000, Michael A. Cobb
23 withdrew the funds on deposit, thereby waiving any claims regarding the City's right to
24 take, but not his right to a determination of just compensation by a jury. Michael A.
25 Cobb, was also represented by Atherton and Dozier, who assisted in the negotiations with
26 Defendant in 2000 but were never formally designated as the attorneys for the Cobb Trust
27 in the 1998 Action. Michael A. Cobb was not represented by an attorney from 2000 to
28 2007.

1 10. Defendant eventually constructed a public roadway on the Property Interest
2 that runs through the Cobb Property.

3 11. On July 9, 2007, the Court commenced a motion to dismiss the 1998 Action
4 pursuant to Code of Civil Procedure Section 585.360. It came on for hearing before the
5 Honorable Carter P. Holly, Judge Presiding. The matter was argued before the Court and
6 submitted.

7 12. Plaintiff supported the dismissal of the 1998 Action because Defendant
8 threatened to file a second eminent domain action, and Plaintiff did not want his right to
9 just compensation and the property issues to languish in the court system for another nine
10 (9) years.

11 13. On October 9, 2007, the Court dismissed the 1998 Action for Defendant's
12 lack of prosecution. The Court ruled that Code of Civil Procedure Section 585.310
13 required that an action be brought to trial within five years after the action is commenced.

14 14. Defendant failed to prosecute the case for almost nine years, hence, the
15 1998 Action was dismissed, and Defendant's lawful possession of the Property Interests
16 were terminated on October 7, 2007.

17 15. Defendant never obtained a Final Judgment of Condemnation and a Final
18 Order of Condemnation of the Property Interest. The Cobb Trust is still the fee owner of
19 the Property Interest.

20 16. Plaintiff and Defendant's attorneys continued to negotiate through the years,
21 both verbally and in writing. Plaintiff represented the Andrew C. Cobb Trust in Pro per
22 after 2000. Plaintiff spoke directly to the attorneys, Freeman, D'Aiuto, Pierce, Gurev,
23 Keeling and Wolf, who represented Defendant in the 1998 Action. The attorneys for
24 Defendant never told Plaintiff that they were unable to negotiate with him, and they
25 promised Plaintiff that they would get back to him regarding the settlement offers that
26 Plaintiff made to Defendant. An example of such a promise is reflected in the attached
27 2000 billing statement from Plaintiff's attorney to Defendant's attorney memorializing a
28 promise by Defendant's attorneys to obtain a written response to Plaintiff's settlement

1 demand. A true and correct copy of the billing statement dated November 20, 2000 is
2 attached as Exhibit "6". The 1998 Action never settled, and finally, in frustration,
3 Plaintiff advised the attorneys for Defendant that he would just let a jury decide his right
4 to compensation in the 1998 Action. No one from the Defendant's attorney's office
5 advised him that it was necessary for him to prosecute the 1998 Action or that he should
6 file a cross-complaint if he wished to preserve his rights in the 1998 Action. The
7 attorneys for Defendant acknowledged, in other pleadings, that they believed that they
8 were not able to negotiate with Plaintiff because he was not represented by an attorney;
9 yet, they continued to lead Plaintiff into believing that they could negotiate a settlement,
10 and thereby induced him into not filing a cross-complaint to protect his rights for greater
11 compensation. Plaintiff detrimentally relied upon Defendant and its attorneys to continue
12 to engage in good faith negotiations, and to prosecute the 1998 Action. Since Andrew C.
13 Cobb filed an Answer to the Complaint in Eminent Domain, Plaintiff believed that his
14 father had preserved the Trust's right to have just compensation determined by a jury.
15 Once Plaintiff indicated that he wanted a jury to decide his right to just compensation in
16 the 1998 Action, the attorneys for Defendant should have advised Plaintiff that it was
17 necessary to file a cross-complaint to preserve his rights or to continue to prosecute the
18 1998 Action, yet failed they to do so. Plaintiff had no idea that the Defendant intended to
19 acquire the Property Interest by obtaining legal possession of the Property Interest in
20 1998, falsely negotiate with the Plaintiff, induce Plaintiff into failing to file a cross-
21 complaint and not prosecute the action resulting in a dismissal of the 1998 Action.

22 17. Defendant's attorneys by their own admission, failed to prosecute the 1998
23 Action under the premise that it could not prosecute the 1998 Action against the Trust
24 alleging Plaintiff, Michael A. Cobb never retained counsel. Hence, unbeknownst to
25 Plaintiff, Defendant had no intention of settling the 1998 Action.

26 18. When the Court dismissed the 1998 Action, Plaintiff's right to receive
27 probable just compensation as determined by a jury was terminated, and therefore, the
28 taking by the City without the payment of just compensation occurred.

1 19. The Cobb Property has been damaged because a public roadway for the
2 public benefit has been constructed on it. The public roadway bisects the Cobb Property
3 rendering the remaining property useless and undevelopable. Plaintiff has not received
4 just compensation as determined by a jury for this taking of private property by a public
5 entity.

6 **FIRST CAUSE OF ACTION**
7 **AS AGAINST ALL DEFENDANTS**

8 **(Inverse Condemnation - Article I Section 19 of the California Constitution)**

9 20. Plaintiff hereby realleges and incorporates by reference paragraphs 1
10 through 18 above.

11 21. The Cobb Trust is the fee owner of the Cobb Property. Michael C. Cobb, is
12 the trustee of the Cobb Trust. When the 1998 Action was filed on October 23, 1998,
13 Andrew C. Cobb, was the Trustee of the Cobb Trust, which owned the Cobb Property. At
14 no time has Defendant taken title to the Property Interest or any portion of the Cobb
15 Property. The Trust has continued to pay real estate taxes on the entire parcel, including
16 the Property Interest, up to the present.

17 22. On December 31, 1998, Defendant obtained an Order for Prejudgment
18 Possession of the Property Interest after it deposited money with the Court in the 1998
19 Action. See Exhibit "3." Defendant subsequently took lawful possession of the Property
20 Interest and built a public roadway through the middle of the Cobb Property. Defendant
21 was negligent in failing to prosecute the 1998 Action to determine the true fair market
22 value of the Cobb Property as required by the Constitution.

23 23. Defendant through its attorneys knowingly led Plaintiff to believe that it
24 intended to settle the issues and/or prosecute the 1998 Action when in fact it did not have
25 such intentions. As such, Plaintiff detrimentally relied upon Defendant's attorneys to
26 continue to engage in good faith negotiations, and to prosecute the 1998 Action. Since
27 Andrew C. Cobb filed an Answer to the Complaint in Eminent Domain, Plaintiff believed
28 that his father had preserved the Trust's right to have just compensation determined by a

1 jury. Plaintiff had no idea that Defendant intended to acquire the Property Interest by
2 obtaining possession of the Property Interest in 1998, falsely negotiate with the Plaintiff,
3 do nothing to move the case forward, and then allow the Court to dismiss the 1998
4 Action.

5 24. Plaintiff represented the Andrew C. Cobb Trust in Pro per after 2000.
6 Plaintiff spoke directly to the attorneys, Freeman, D'Aiuto, Pierce, Gurev, Keeling and
7 Wolf, who represented Defendant in the 1998 Action. The attorneys for Defendant never
8 told Plaintiff that they were unable to negotiate with him, and they promised Plaintiff that
9 they would get back to him regarding the settlement offers that Plaintiff made to
10 Defendant. The matter was not settled, and finally, in frustration, Plaintiff advised the
11 attorneys for the City of Stockton that he would just let the Court decide his right to
12 compensation in the 1998 Action. No one from the attorney's office advised him that it
13 was necessary for him to prosecute the 1998 Action or that he should file a cross-
14 complaint if he wished to preserve his rights in the 1998 Action. Since Andrew C. Cobb
15 filed an Answer to the Complaint in Eminent Domain, Plaintiff believed that his father
16 had preserved the Trust's right to have just compensation determined by a jury. Once
17 Plaintiff indicated that he wanted a jury to decide his right to just compensation in the
18 1998 Action, the attorneys should have advised Plaintiff that it was necessary to file a
19 cross-complaint to preserve his rights or to continue to prosecute the 1998 Action, yet
20 failed they to do so. Plaintiff had no idea that the Defendant intended to acquire the
21 Property Interest by obtaining legal possession of the Property Interest in 1998, falsely
22 negotiate with the Plaintiff, induce Plaintiff into failing to file a cross-complaint and not
23 prosecute the action resulting in a dismissal of the 1998 Action.

24 25. When the Court dismissed the 1998 Action, Plaintiff's right to receive
25 probable just compensation as determined by a jury was terminated, and therefore, the
26 taking by Defendant without the payment of just compensation occurred.

27 26. Defendant's acts constitute a taking because Defendant has physically
28 invaded and appropriated a valuable property right for a public use. Defendant's taking

1 has caused the Cobb Property to diminish in value. The Cobb Property cannot be
2 developed with a road running through it.

3 27. Defendant took and damaged the Cobb Property for a public use because it
4 used the Cobb Property to construct a public roadway. The general public has continually
5 used the roadway since it was constructed without any benefit to the property owner and
6 without payment of just compensation.

7 28. Defendant's actions caused injury to the Cobb Property because the
8 construction of the public roadway through the Cobb Property precluded the development
9 of the Cobb Property. The construction of the public roadway rendered the remaining
10 land an uneconomic remnant and thus constitutes a taking of the Cobb Property in fee.

11 29. Defendant has not paid Plaintiff just compensation for the taking. On
12 October 23, 1998, Defendant deposited the sum of Ninety Thousand Two Hundred
13 Dollars (\$90,200.00) with the Court in order to obtain prejudgment possession of the
14 Property Interest. On November 6, 2000, pursuant to a stipulation between Michael A.
15 Cobb, as Executor of the Cobb Trust and Defendant, Michael A. Cobb withdrew the funds
16 on deposit with the Court. The issue of just compensation in the 1998 Action was never
17 tried before a judge or jury and remained unresolved upon the dismissal of the 1998
18 Action.

19 30. Defendant has the power of eminent domain and, thus, may be sued for
20 inverse condemnation. Although Defendant took possession of the Property Interest in
21 1998, Plaintiff's cause of action accrued when Plaintiff was denied the right to a
22 determination of just compensation by a jury when the 1998 Action was dismissed for
23 failure to prosecute. Prior to the action being dismissed, it was not necessary to file this
24 action because the eminent domain action was still pending, and Plaintiff had preserved
25 his rights to just compensation by having Answered the Complaint in Eminent Domain.

26 ///

27 ///

28 ///

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SECOND CAUSE OF ACTION

AS AGAINST ALL DEFENDANTS (Quiet Title-Adverse Possession)

1
2
3 31. Plaintiff repeats and realleges each and every allegation set forth in
4 paragraphs 1 through 30, inclusive of this Second Amended Complaint and incorporates
5 the same by this reference as though fully set forth herein.

6 32. The Andrew C. Cobb 1992 Revocable Trust dated July 16, 1992 ("Cobb
7 Trust") is the fee owner of the real property located at 4218 Pock Lane, Stockton,
8 California 95206 identified as San Joaquin Assessor's Parcel Number 179-180-07 ("Cobb
9 Property") in fee. Plaintiff, Michael A. Cobb, is the trustee of the Cobb Trust and has the
10 power to prosecute this action for the protection of the Cobb Property.

11 33. Plaintiff's title is based upon a Deed of Trust recorded in Official Records,
12 Book 4249, Page 556, San Joaquin County Records, and is based upon his actual, open,
13 notorious, exclusive, hostile, and adverse possession of the Cobb Property for at least five
14 years preceding the commencement of this action, together with Plaintiff's payment of all
15 taxes assessed against the Cobb Property for the same five year period, which taxes
16 include assessments for the road constructed on the Cobb Property.

17 34. Defendant claims an interest adverse to Plaintiff in the above described
18 parcel, in that Defendant alleges that it had legal possession, as a highway, easement of
19 portions of the Cobb Property, which commenced in 1998, and was terminated on
20 October 9, 2007.

21 35. Defendant never obtained a Final Order of Condemnation and Judgment in
22 Condemnation; hence, Defendant's possession is no longer lawful.

23 36. Plaintiff is seeking to quiet title against all adverse claims of Defendant.

24 37. The adverse claims of Defendant are without any right whatsoever.
25 Defendant has no right, title, estate, lien, or interest whatsoever in the Cobb Property, and
26 which are adverse to Plaintiff's title.

27 38. Plaintiff seeks to quiet title as of November 30, 1998, which is the date that
28 Plaintiff Answered the 1998 Action, or in the alternative as of December 31, 1998, when

1 Defendant obtained possession of the Property Interests, or finally, in the alternative,
2 Plaintiff seeks to quiet title as of December 2003, which is the date five years after the
3 Defendant obtained possession of the Property.

4
5 **THIRD CAUSE OF ACTION**

6 **AS AGAINST ALL DEFENDANTS (Declaratory Relief)**

7 39. Plaintiff repeats and realleges each and every allegation set forth in
8 paragraphs 1 through 38, inclusive of this Second Amended Complaint and incorporates
9 the same by this reference as though fully set forth herein.

10 40. An actual controversy has arisen and now exists between Plaintiff and
11 Defendant concerning their respective rights and duties under Defendant's taking or
12 appropriation of Plaintiff's property for a public purpose without the payment of just
13 compensation to be a determined by a jury under Article I Section 19 of the California
14 Constitution. An actual controversy has also arisen and now exists between the parties
15 regarding Defendant's wrongful occupation of Plaintiff's property, and therefore, Plaintiff
16 contends that Defendant must remove the roadway, which is claimed to occupy those
17 portions of the Cobb Property, identified as the Property Interests.

18 41. A judicial declaration is necessary and appropriate at this time, and under
19 the circumstances, in order to determine the rights and duties of the parties under
20 Defendant's taking or appropriation of Plaintiff's property, and determine the
21 compensation and title hereunder.

22
23 **FOURTH CAUSE OF ACTION**

24 **AS AGAINST ALL DEFENDANTS (EJECTMENT)**

25 42. Plaintiff repeats and realleges each and every allegation set forth in
26 paragraphs 1 through 41, inclusive of this Second Amended Complaint and incorporates
27 the same by this reference as though fully set forth herein.

1 43. A roadway is located on the Cobb Property, specifically over the Property
2 Interests, and Defendant, thus, is possessing and withholding the use and enjoyment of
3 that property to the exclusion of Plaintiff.

4 44. So long as Defendant wrongfully continues to possess and withhold the use
5 and enjoyment of the Property Interests, Plaintiff is wrongfully being denied the full use
6 and enjoyment of the Cobb Property.

7
8 **PRAYER FOR RELIEF**

9 Plaintiff hereby prays as follows:

10 ON THE FIRST CAUSE OF ACTION

- 11 1. That the amount of just compensation for the Property Interest be
- 12 ascertained and determined;
- 13 2. For damages in an amount yet to be ascertained with interest thereon at the
- 14 legal rate from the date of those damages;
- 15 3. Attorney's fees and litigation expenses;
- 16 4. Costs of suit;
- 17 5. Real estate taxes, maintenance costs, insurance costs; and
- 18 6. For such other relief as the Court deems just and proper

19 ON THE SECOND CAUSE OF ACTION

20 1. For a Judgment that Plaintiff is the owner in fee simple of the portion of the
21 roadway, which encroaches on the Cobb Property, and that Defendant has no interest in
22 the Cobb Property; and

23 2. For an order that Defendants be enjoined from making any further claim
24 adverse to Plaintiff, by legal action or otherwise, relating to the portion of the Cobb
25 Property onto which the roadway encroaches.

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ON THE THIRD CAUSE OF ACTION

1. For a judicial declaration that Defendant's taking or appropriation of Plaintiff's property was without the payment of just compensation under Article I, Section 19 of the California Constitution. .

2. For a judicial declaration that Plaintiff owns the Cobb Property in fee, to the exclusion of any claim by Defendant, to the portion of Plaintiff's Property that is encroached upon by the roadway.

ON THE FOURTH CAUSE OF ACTION

1. For restitution of the premises to Plaintiff.

DATED: September 8, 2008

RICHARDS, WATSON & GERSHON
A Professional Corporation
REGINA N. DANNER
KIRSTEN R. BOWMAN
MARICELA E. MARROQUIN

By: 
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MICHAEL A. COBB, Trustee of the Andrew C. Cobb 1992 Revocable Trust dated July 16, 1992

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EXHIBIT 1

In re CITY OF STOCKTON, CALIFORNIA, Debtor

United States Bankruptcy Court, Eastern District of California, Sacramento Division

Case No. 2012-32118

Creditor: Michael A. Cobb, Trustee of the 1992 Andrew C. Cobb 1992 Revocable Trust dated July 16, 1992

STATEMENT OF INTEREST AND OTHER CHARGES IN ADDITION TO PRINCIPAL

This claim arises out of a state court action of Michael A. Cobb, Trustee of the 1992 *Andrew C. Cobb 1992 Revocable Trust dated July 16, 1992, Plaintiff, vs. City of Stockton, a municipal corporation, et al., Defendants*, Superior Court of California, County of San Joaquin, case number CV 035015. A copy of the operative SECOND AMENDED COMPLAINT is attached also to this Proof of Claim.

Principal of claim (value of land taken by debtor at valuation date of taking)	\$1,540,000.00
Interest on value from of land taken from 10-23-1998 (date of filing by debtor of eminent domain action) to August 16, 2013 at 10% per annum (and continuing at the daily rate of \$421.92 thereafter)	\$2,282,997.26
Attorney's fees and litigation expenses (estimated to date)	\$350,000.00
Costs of suit (estimated to date)	\$13,000.00
Real estate taxes, maintenance costs, insurance costs	<u>\$15,000.00</u>
TOTAL	\$4,200,997.26