

Written Testimony of John Nicolaou (By Sworn Declaration)
(Exhibit Allegra-13)

Mr. Nicolaou is a licensed real estate appraiser and has testified in this declaration regarding the diminution in value caused to the Wood and Allegra properties by the saturated soil and related conditions.

1 **MILLSTONE PETERSON & WATTS, LLP**
Attorneys at Law
2 GLENN W. PETERSON, ESQ. (SBN 126173)
RICHARD M. WATTS, JR., ESQ. (SBN 221268)
3 2267 Lava Ridge Court, Suite 210
Roseville, CA 95661
4 Phone: (916) 780-8222
Fax: (916) 780-8775

5 Attorneys for Plaintiffs
6 Tony Wood and Ted Allegra

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

10
11 TONY and DONNA WOOD and TED and)
CHERI ALLEGRA)
12 Plaintiffs,)
13 vs.)
14 HIDDEN LAKES ESTATES HOMEOWNERS)
ASSOCIATION, BRUCE YEOMAN,)
15 MICHAEL BONNIE, DAVE STINSON,)
16 KAREN SUTHERLAND, SUZIE MASON,)
KELLY PETERSON, CATHI BARRETT,)
17 RIVERSIDE MANAGEMENT & FINANCIAL)
SERVICES, INC., and DOES 1 THROUGH 20,)
18 inclusive,)
19 Defendants.)
20

No. SCV 16896

DECLARATION OF JOHN T. NICOLAOU REGARDING DAMAGE TO PLAINTIFFS' PROPERTIES AND IN OPPOSITION TO MOTION FOR SUMMARY JUDGMENT

Date: September 20, 2005
Time: 8:30 a.m.
Dept: 1

21 I, John T. Nicolaou, declare:

22 1. I am a professional real estate appraiser and consultant. I have held a Certified
23 General License from the State of California since 1993. I am an Associate member of the Appraisal
24 Institute. I have 25 years experience as a professional appraiser and over 30 years experience in the
25 real estate profession. Prior to becoming an appraiser, I was a real estate sales agent and a title
26 officer for First American Title. A current copy of my CV is attached hereto as Exhibit "A".

27 2. I have been qualified as an expert witness on appraisal/valuation issues by trial courts
28 in 11 separate cases, among 7 different Superior Courts. I have given pre-trial opinions in over 300



MILLSTONE
PETERSON &
WATTS, LLP

1 litigation cases, and have rendered a total of approximately 900 appraisal opinions including litigated
2 and non-litigated matters. I submit this declaration in opposition to Defendants' Motion for Summary
3 Judgment, or in the Alternative, Motion for Summary Adjudication. I have also been retained by
4 plaintiffs' counsel in this matter and will soon be disclosed as an expert witness pursuant to Code of
5 Civil Procedure section 2034. I expect to render expert testimony at trial in this case.

6 3. I have personal knowledge of the matters stated in this declaration, and if called as a
7 witness to do so, I could and would testify competently to their truth.

8 4. I was retained by plaintiffs in this case on May 19, 2005, to render opinions with
9 respect to valuation of both plaintiffs' properties, including an undisclosed drainage easement on the
10 Wood property and drainage issues from a community lake affecting both properties. Specifically, I
11 was retained to assess the nature and extent of possible diminution in value affecting both plaintiffs'
12 properties, caused by the impacts of the community lake draining or leaking onto those properties.

13 5. I inspected plaintiffs' properties on May 19, 2005, pursuant to the terms of my
14 engagement. I interviewed the plaintiffs and their spouses. I met with their attorney, Glenn
15 Peterson. I also interviewed two engineers retained by plaintiffs, Dr. Hugh Thompson and Martha
16 McDonnell. I also interviewed various other professionals including without limitation real estate
17 brokers, lending agents, insurance agents, remediation contractors, local government representatives
18 and public agencies. I also consulted various publications and studies regarding detrimental
19 conditions to real property.

20 6. Based upon my inspection of the properties, my investigation as described above, and
21 my evaluation of comparable sales and market data in the same area, I opine as follows with respect
22 to diminution in value to the plaintiffs' properties. This diminution is attributable to the detrimental
23 conditions caused by the inundation of water from the community lake ("detrimental conditions"):

24 A. Diminution in value attributable to detrimental conditions on Allegra Property:

25 \$82,500 for market resistance, not including assessment costs, remediation costs, future loss
26 of use, and ongoing costs (e.g., monitoring costs, energy costs, maintenance costs, and similar other
27 foreseeable expenditures).

28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

B. Diminution in value attributable to detrimental conditions on Wood Property including undisclosed easement and mold issues:

\$165,000 for market resistance, not including assessment costs, remediation costs, loss of use, and ongoing costs (e.g., monitoring costs, energy costs, maintenance costs, and similar other foreseeable expenditures).

7. In addition to the foregoing damages, I opine that both plaintiffs have incurred damages for lost use of their properties to date, directly cause by the detrimental conditions. I am still in the process of calculating damages for prior lost use, and expect to complete my analysis prior to being deposed as an expert witness in this case. I expect the damages for prior lost use to be a material amount.

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

Executed on this 1st day of September, 2005, at Roseville, California.



JOHN T. NICOLAOU

JOHN T. NICOLAOU
REAL ESTATE APPRAISER AND CONSULTANT
3260 ST. MATTHEWS DRIVE
SACRAMENTO, CALIFORNIA 95821
(916) 849-7108 • (916) 486-4048
FAX (916) 486-1665 • E-mail jtnappraiser@gmail.com

QUALIFICATIONS OF JOHN T. NICOLAOU

APPRAISAL EXPERIENCE

Mr. Nicolaou has been an independent fee real estate appraiser since 1980. He has worked in the real estate industry for more than 30 years. Types of properties he has appraised include commercial, industrial, urban, rural, unimproved land (all types), agriculture (row crops and orchards), residential (all types), and special use properties. Appraisals have been completed for market value purposes in dissolution, eminent domain, litigation support, estates, gift taxes, property tax appeals and for lenders.

CERTIFICATION

"Certified General Real Estate Appraiser" by the State of California since 1994, OREA Appraiser Identification Number AG021233; expires July 12, 2007

MEMBERSHIP AND POSITIONS

- Associate member of the Appraisal Institute
- Board of Director for the Sacramento Sierra Chapter of Appraisal Institute, elected three-year term began January 1, 2004
- 2005 selected participant in the Leadership Development & Advisory Council (LDAC) for the Appraisal Institute, Washington D.C.

EDUCATION

Bachelor of Science Degree, Business Administration, concentration in Finance, California State University, Chico, California, graduated 1974.

EXPERT WITNESS

Mr. Nicolaou has qualified as an expert witness in real estate valuation in the following California Superior Courts: Amador, El Dorado, Placer, Sacramento, Sonoma, Sutter, and Yolo.

SPECIALIZED EDUCATION

Appraisal Institute Courses:

USPAP update	7-hour National Uniform Standards of Professional Appraisal Practice (USPAP)
Course 110	Appraisal Principal
Course 120	Appraisal Procedures
Course 201	Principals of Income Property Appraising
Course 410	Standards of Professional Practice Part A
Course 420	Standards of Professional Practice Part B
Course 520	Highest & Best Use and Market Analysis
Course 530	Advanced Sales Comparison and Cost Approach
Course 540	Report Writing and Valuation Analysis
Course 550	Advanced Applications

Numerous seminars on various appraisal and real estate topics.

QUALIFICATIONS OF JOHN T. NICOLAOU (page 2)

PARTIAL CLIENT LISTING *

Government and Public Agencies:

City of Roseville	California Department of Transportation (Cal-Trans)
City of Sacramento	Folsom-Cordova Unified School District
City of Stockton	Grant Joint Union High School District
City of Vacaville	Resolution Trust Corporation
City of Yuba City	Sacramento Area Flood Control Agency
County of El Dorado	Sacramento Municipal Utility District (SMUD)
County of Sacramento	Sacramento Housing and Redevelopment Agency (SHRA)
County of San Joaquin	South Sutter Water District
U.S. Bankruptcy Court	U.S. Postal Service

Financial Institutions:

American River Bank	Citi-Group (formerly Travelers Group)
Bank of Amador	Feather River State Bank
Bank of Woodland	Sonoma National Bank

Corporations and Other Entities:

AKT Development	Maryland Casualty Insurance Company
Renwood Winery	Mercy Foundation
Chicago Title Insurance Company	Morrison Homes
Cowell Foundation	Raley's
Fidelity National Title Insurance Co.	Reynen & Bardis Development, LLC

Attorneys:

John B. Allen – Attorney at Law	Gary Liviach – Desmond Nolan Livaich & Cunningham
Gary Appleblatt – Attorney at Law	Wes Sage – Attorney at Law
Richard Brown – McDonough Holland & Allen	Stacey Sheston – McDonough Holland & Allen
Edward Freidberg – Freidberg & Parker	Charles D. Stark – Attorney & Counselor at Law
Rick Linkert – Matheny Sears Linkert & Long	Frank Watson – Watson Khachadourian & Iams, LLP
Max Freeman, Tom Keeling, & Arnie Wolf – Freeman D'Auito Pierce Gurev Keeling & Wolf	

Numerous individuals, attorneys, and corporations not listed.

* Includes other appraisers' clients where Mr. Nicolaou completed or assisted with the appraisals.

GEOGRAPHICAL AREAS (where appraisals have been completed)

California Counties:

Alameda	El Dorado	Los Angeles	Napa	San Francisco	Sierra	Tehama
Amador	Fresno	Madera	Nevada	San Joaquin	Siskiyou	Tulare
Butte	Glenn	Marin	Placer	San Mateo	Solano	Tuolumne
Calaveras	Humboldt	Merced	Plumas	Santa Clara	Sonoma	Ventura
Colusa	Kern	Mendocino	Sacramento	Santa Cruz	Stanislaus	Yolo
Contra Costa	Lake	Monterey	San Bernardino	Shasta	Sutter	Yuba
Del Norte	Lassen					

Nevada Counties:

Clark	Douglas	Washoe
-------	---------	--------

Arizona Counties:

Maricopa

1 CASE TITLE: *Wood v. Hidden Lakes Estates Homeowners Association, et al.*

2 COURT/CASE NO: Placer County Superior Court, Case No. SCV 16896

3 **PROOF OF SERVICE**

4 I am employed in the County of Placer; my business address is 2267 Lava Ridge Court,
5 Suite 210, Roseville, California. I am over the age of 18 years and not a party to the foregoing
6 action.

6 On September 6, 2005, I served the following documents:

7 **DECLARATION OF JOHN T. NICOLAOU REGARDING DAMAGE TO PLAINTIFFS'
8 PROPERTIES AND IN OPPOSITION TO MOTION FOR SUMMARY JUDGMENT**

8 **by mail** on the following party(ies) in said action, in accordance with Code of Civil
9 Procedure § 1013a(3), by placing a true copy thereof enclosed in a sealed envelope in a
10 designated area for outgoing mail, addressed as set forth below. At Millstone Peterson &
11 Watts, LLP, mail placed in that designated area is given the correct amount of postage and
12 is deposited that same day, in the ordinary course of business, in a United States mailbox
13 in the City of Roseville, California.

12 **by personally delivering** a true copy thereof, in accordance with Code of Civil
13 Procedure § 1011, to the person(s) and at the address(es) set forth below.

13 **by overnight delivery** on the following party(ies) in said action, in accordance with
14 Code of Civil Procedure § 1013(c), by placing a true copy thereof enclosed in a sealed
15 envelope, with delivery fees paid or provided for, and delivering that envelope to an
16 overnight express service carrier as defined in Code of Civil Procedure § 1013(c).

16 **by facsimile transmission**, in accordance with Code of Civil Procedure § 1013(e), to
17 the following party(ies) at the facsimile number(s) indicated.

18 David F. Beach, Esq.
19 John J. Fritsch, Esq.
20 Law Offices of David F. Beach, P.C.
21 100 Stony Point Road, Suite 185
22 Santa Rosa, CA 95401
23 Fax: 707-547-1694

Miller, Starr & Regalia
1331 N. California Blvd. 5th Fl.
Walnut Creek, CA 94596-4537
Fax: 925-933-4126

21 Tim Blaine, Esq.
22 Porter Scott Weiberg & Delehant
23 350 University Ave, Ste. 200
24 Sacramento, CA 95825
25 Fax: 916-927-3706

24 I declare under penalty of perjury under the laws of the State of California that the foregoing is
25 true and correct. Executed on September 6, 2005, at Roseville, California.

26 _____ /s/
27 KATE MOORE
28