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and Ray Mellen and Linda Mellen, Trustees

UNITED STATES DISTRICT COURT,
EASTERN DISTRICT OF CALIFORNIA

MELLEN FAMILY TRUST, and RAY
MELLEN and LINDA MELLEN, Trustees,

Plaintiffs,

vs.

PINE MOUNTAIN CLUB PROPERTY
OWNERS ASSOCIATION, INC.; MARY
HANSEN, AS PMCPOA PRESIDENT; ALL
PERSONS UNKNOWN, CLAIMING ANY
LEGAL OR EQUITABLE RIGHT, TITLE,
ESTATE, LIEN, OR INTEREST IN THE
PROPERTY ADVERSE TO PLAINTIFFS'
TITLE, OR ANY CLOUD ON PLAINTIFFS'
TITLE TO THE PROPERTY; and DOES 1-
10,000, inclusive,

Defendants.

CASE NO.:

**COMPLAINT FOR DAMAGES
AND OTHER RELIEF**

1. Violation of U.S. Constitution (14th Amendment)
2. Violation of Civil Rights (42 U.S.C. § 1983)
3. Violation of California Constitution (Article 1)
4. Declaratory Relief
5. Quiet Title
6. Preliminary / Permanent Injunction
7. Fraud
8. Breach of Covenant
9. Negligence
10. Conversion
11. Conspiracy

Plaintiffs MELLEN FAMILY TRUST ("Trust"), and RAY MELLEN and LINDA MELLEN, Trustees (collectively "Trustees"; Trust and Trustees are referred to hereinafter collectively as "Plaintiffs") allege and complain as follows:

JURISDICTION

1. Jurisdiction of this court is invoked under 28 U.S.C. § 1331.
2. This action at law for declaratory relief and other equitable relief and for money damages, arises under the United States Constitution, as well as 42 U.S.C. § 1983, and

1 the California Constitution, the laws of the State of California, and common law principles,
2 to redress a deprivation of rights, privileges and immunities secured to Plaintiffs by said
3 statutes and laws, and by the Sixth and Fourteenth Amendments of the United States
4 Constitution and Article 1 of the California Constitution.

5 3. At all times herein mentioned, Trust was an inter vivos trust formed under the
6 laws of the state of California and Trustees were residents of the United States, residing
7 since approximately late 1997 in Pine Mountain Club ("PMC"), County of Kern, State of
8 California.

9 4. Plaintiffs are informed and believe and thereupon allege that, at all times herein
10 mentioned, defendant Pine Mountain Club Property Owners Association, Inc. ("PMCPOA")
11 was and is an incorporated common interest community development, which, with over 3000
12 shareholders/members, and which was incorporated in approximately the mid 1970s, with its
13 principal offices located in PMC, Kern County, California. Plaintiffs are members in good
14 standing / shareholders of PMCPOA. Plaintiffs are informed and believe and thereupon
15 allege that, PMCPOA asserts jurisdiction over a territory ("PMC Territory") in southern Kern
16 County, consisting of approximately 10 square miles. The PMC Territory contains several
17 large separate subdivisions, each of which is commonly known as a separate, numbered
18 "Tract." The real property ("Property") involved in this case is located in Tract 3566.
19 Plaintiffs are informed and believe and thereupon allege that defendant PMCPOA exercises
20 and performs general governmental functions in the PMC Territory, akin to a "company
21 town," including without limitation conducting annual and special elections, levying
22 assessments, making contracts, controlling environmental and land uses, maintaining roads
23 and other infrastructure, levying monetary fines against members, providing trash service,
24 providing local security patrols, and providing emergency services.

25 5. Plaintiffs are informed and believe and thereupon allege that, at all times herein
26 mentioned, defendants Mary Hansen ("Hansen"), as Chairman of PMCPOA, was and now is
27 residents of the State of California, residing in the County of Kern.

28 6. Plaintiffs are informed and believe and thereon allege that each of the defendants

1 designated as a DOES 1 - 10,000 is intentionally and/or, in the alternative, negligently
2 responsible in some manner for the events and happenings herein referred to, and thereby
3 proximately caused injuries and damages as herein alleged. The true names and capacities
4 of DOES 1-10,000, inclusive, and those persons sued as "all persons unknown, claiming any
5 legal or equitable right, title, the state, lien, or interest in the Property adverse to Plaintiffs'
6 title, or any cloud on Plaintiffs' title to the Property," and each of them, are not now known to
7 Plaintiffs who therefore sue said defendants by such fictitious names. Plaintiffs will seek
8 leave to amend this complaint to show their true names and capacities when the same have
9 been ascertained.

10 7. Plaintiffs are informed and believe and thereon allege that defendants, and each of
11 them, engaged in the acts and omissions hereinafter alleged in bad faith and with knowledge
12 that their conduct violated well established and settled law.

13 8. The events, acts and omissions herein complained occurred in and around the
14 PMC Territory, located in Kern County, California. Plaintiffs are informed and believe and
15 thereon allege that approximately 1800 permanent residents reside in the PMC Territory,
16 including members and non-members of the PMCPOA. Membership in the PMCPOA is
17 based on PMC lot ownership and approximately 3000 lots are contained within the PMCPOA
18 Territory, including several large common area or green space lots.

19 9. PMCPOA purports to exert its general authority over the PMC Territory through
20 certain recorded covenants conditions and restrictions ("CCRs") originally recorded in Kern
21 County 's official records in approximately 1971 for each Tract. Plaintiffs are informed and
22 believe and thereon allege that the CCRs state that each lot in each of the several Tracts
23 which exist in the Pine Mountain Club area is subject to the CCRs and that whatever owners
24 of record are listed for each lot are members of PMC. The CCRs also provide that they
25 shall expire on December 31, 2000 unless extended by owners of lots equaling 55% or more
26 of the geographical area of the Tract approving an extension. Plaintiffs are informed and
27 believe and thereupon allege that none of the CCRs were ever validly extended as to any of
28 the Tracts, including Tract 3566, prior to their automatic expirations on or about December

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2 31, 2000. In other words, Plaintiffs are informed and believe and thereupon allege that the
3 CCRs for all Tracts in the PMCPOA Territory, including Tract 3566, expired in accordance
4 with their respective terms, on or about December 31, 2000.

5 10. Plaintiffs are informed and believe and thereupon allege that the PMCPOA
6 conducts annual elections for Board members and other PMCPOA governance matters
7 including adoption and amendment of bylaws, polices, and procedures, pursuant to the
8 CCRs. Such an election was conducted by PMCPOA in or about mid 2004. Plaintiffs are
9 informed and believe and thereupon allege that the PMCPOA also has conducted special
10 elections and recall elections in the past, including without limitation a special election to
11 purportedly extend the CCRs for 15 years. Plaintiffs are informed and believe and
12 thereupon allege that the CCRs are ambiguous in their description of voting power of
13 members or owners of lots in the PMC jurisdiction in connection with an extension of the
14 CCRs. Plaintiffs are informed and believe and thereupon allege that one possible
15 interpretation of the CCRs, which is adhered to by PMCPOA, is that the voting power of a lot
16 for purposes of extending the CCRs is determined by areal size of the lot, regardless of the
17 number of persons who own or reside on a lot. Therefore, Plaintiffs are informed and
18 believe and thereupon allege that where there is more than one owner of a PMC lot, the
19 owners are denied the constitutionally protected right to have one vote per person or at least
20 one vote per lot. Plaintiffs are informed and believe and thereupon allege that PMCPOA's
21 practice of dividing up the vote of each lot equally between all owners of record of such lot
22 further dilutes and discounts the vote of each member of PMCPOA to less than one vote per
23 person where there is more than one owner of record on a lot. Plaintiffs are informed and
24 believe and thereupon allege that there are approximately hundreds of lots in the PMC
25 Territory which are owned by multiple owners of record. Plaintiffs are informed and believe
26 and thereupon allege that an alternative interpretation of the CCRs extension provision is
27 that the votes of members controlling at least 55% of the geographical area of a Tract,
28 excluding the governing organization PMCPOA, determine extension of the CCRs, and that
under that interpretation PMCPOA has at all times failed to obtain the necessary votes to

1 extend the CCRs, as at most approximately 900 or less of approximately 3000 or more
2 potential votes were voted in favor of such extension. Plaintiffs are informed and believe
3 and thereupon allege, in the alternative, that PMCPOA violated the CCRs as well in
4 purporting to extend the CCRs to 2015.

5 11. Commencing at or about late February 2003, purporting to act under color of
6 the CCRs, PMC required Plaintiffs to submit documentation and monetary compensation to
7 PMC for approval of construction of Plaintiffs' planned single family residence (the
8 "Residence") at the Property, which is commonly known as 15025 Chestnut Court, located in
9 the PMC Territory. The Property is more particularly described, after a duly approved lot line
10 adjustment of Lots 99 and 100, as Lot 99, Tract 3566, recorded at Book 23, Map 197,
11 Official Records of Kern County, California. At all relevant times alleged herein, Plaintiffs
12 held and now hold an interest in the Property as fee simple owner.

13 12. Plaintiffs acceded to such demand and paid money to PMC at or about the
14 aforementioned date and place. PMCPOA's environmental control officer ("ECO") had a
15 duty after receipt of the aforesaid payment of money to exercise reasonable care in
16 monitoring the construction of the Residence by Plaintiffs' licensed general contractor, Bill
17 Brown ("Brown"), to ensure that Brown's construction of the Residence did not violate the
18 CCRs or infringe on any of PMCPOA's easements or property rights, and was buildable in
19 accordance with the plans submitted to PMCPOA, among other duties of care owed to
20 Plaintiffs by the ECO and PMCPOA. Plaintiffs are informed and believe and thereupon
21 allege that the ECO made numerous inspections of the Residence during construction
22 commencing in or about late February 2003 and continuing until at least approximately late
23 January 2004. However, neither PMCPOA nor the ECO at any time notified Plaintiffs that
24 there was any problem with the Residence encroaching or interfering with any PMCPOA
25 easement or other property interest, until approximately late January 2004, after a retaining
26 wall had been constructed to hold the slope adjacent to Chestnut Court and the Residence
27 was approximately 70% complete. Subsequently, in or about May 2004, PMCPOA's
28 attorneys also threatened to take legal action against Plaintiffs if they did not stop

1 construction of the Residence. Fearing PMCPOA's threat, Plaintiffs stopped construction of
2 the Residence. Plaintiffs then commenced an arbitration against Brown under the mandatory
3 arbitration provision of their contract with Brown, which is pending at the date of filing hereof.
4 Plaintiffs also commenced negotiations with PMCPOA in order to mitigate their damages and
5 attempt to resolve the PMCPOA demands. PMCPOA insisted the only way to resolve the
6 matter was to seek a variance from Kern County and then also seek a variance from
7 PMCPOA. Plaintiffs promptly sought and on October 14, 2004, obtained a variance
8 ("Variance") from Kern County. The Variance contained several conditions to be met by
9 Plaintiffs, one of which was to obtain a PMCPOA consent or approval of the Residence
10 encroaching on the Easement. Plaintiffs have satisfied all other conditions of the Variance
11 with the exception of the PMCPOA consent or approval (which was granted in bad faith, with
12 unreasonable and arbitrary conditions which would irreparably injure Plaintiffs, as alleged
13 hereinbelow).

14 13. On January 15, 2005, PMCPOA's Board of Directors ("Board"), acting under
15 color of State law pursuant to the Variance, as well as under the CCRs, by majority vote
16 passed a resolution ("Resolution"), approving the completion of the Residence as approved
17 by the Variance, provided that Plaintiffs would remove the planned and proposed front and
18 side decks and front porch from the Residence, which were located on the upper story of the
19 Residence, and which had been approved by the Variance. Plaintiffs are informed and
20 believe and thereupon allege that directors elected under the illegal and unconstitutional
21 PMCPOA voting/election procedures as alleged herein participated in such vote. Even if
22 enforced, the Resolution would cause Plaintiffs extreme hardship and irreparable injury, by
23 requiring destruction and/or removal of major portions of the Residence and redesigning and
24 reconstruction of the partially destroyed Residence (at a cost which Plaintiffs are informed
25 and believe and thereupon allege is estimated to be comparable to the cost of demolition of
26 the Residence). The destroyed portions of the Residence include those which connect the
27 Residence to Chestnut Court and make the upper level front door accessible from said
28 street. The PMCPOA conditions thus would effectively preclude any front entrance to the

1 Residence. The PMCPOA conditions therefore make the Residence virtually unliveable,
2 causing extreme hardship and irreparable injury to Plaintiffs. Plaintiffs are informed and
3 believe and thereupon allege that, on the other hand, the PMCPOA conditions requiring
4 removal of the front porch and decks from the Residence achieve no substantial benefit to
5 PMCPOA or its members or the public. Plaintiffs are informed and believe and thereupon
6 allege that removing the Residence porch and deck and eliminating any front entrance will
7 be detrimental to the properties on or near Chestnut Court as the Residence would become
8 architecturally and aesthetically less attractive in such a configuration. Plaintiffs are informed
9 and believe and thereupon allege that PMCPOA had no substantial reason for adopting the
10 restrictive conditions in the Resolution but acted arbitrarily and in bad faith in doing so,
11 particularly since Plaintiffs offered to the PMCPOA to remove an additional approximately
12 380 square feet of the front deck beyond what the Variance required, if PMCPOA would
13 permit a reasonable configuration for the Residence with a front entrance, front porch and
14 decks. Plaintiffs are informed and believe and thereupon allege that the Resolution was self-
15 executing, but Hansen promised Plaintiffs at the January 15, 2005, hearing that a written
16 record of the Resolution would be delivered to Plaintiffs within 15 days. No such document
17 has been delivered to Plaintiffs as of the date of filing hereof, despite written demand being
18 made by Plaintiffs that it be so delivered, so that Plaintiffs are able to make the Resolution of
19 record. Plaintiffs are informed and believe and thereupon allege that subsequent to passage
20 of the Resolution PMCPOA decided in bad faith to revise and/or renege on the Resolution
21 and is refusing to issue in written form the record of the actual Resolution, and intends to
22 disobey the Resolution, in order to further delay and obstruct construction of Plaintiffs'
23 Residence. Plaintiffs are informed and believe and thereupon allege that PMCPOA has no
24 intention of complying with its own Resolution and the representations of its Board, and will
25 continue to fail and/or refuse to issue a written version of its resolution to Plaintiffs, in order
26 to obstruct the completion of the Residence, if injunctive and declaratory relief is not granted
27 as herein requested.

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FIRST CAUSE OF ACTION

**(VIOLATION OF UNITED STATES CONSTITUTION - SIXTH AND 14TH AMENDMENTS)
(AGAINST DEFENDANT PMCPOA, HANSEN AS CHAIRMAN OF PMCPOA, AND DOES
1-50, INCLUSIVE)**

14. Plaintiffs refer to and replead each and every allegation contained in paragraphs 1. through 13. of this complaint, and by this reference incorporate the same herein and make each a part hereof.

15. Plaintiffs are informed and believe and thereupon allege that PMCPOA contends that the CCRs have remained in full force and effect after December 31, 2000, and that PMCPOA has the right and authority to enforce the CCRs, including the voting provisions thereof, by virtue of a purported extension of the CCRs to the year 2015. Plaintiffs are informed and believe and thereupon allege that PMCPOA bases its claim to authority on a special vote of the membership of PMCPOA, in which PMCPOA represented to the membership that each lot in the PMC jurisdiction had only the voting power attributable to its geographical size in proportion to the entire tract in which the lot was located, regardless of the number of owners of the lot, or the number of persons residing on the lot, and that each vote was only worth as much as the percent of land which the lot represented in proportion to the entire tract in which the lot was located in the PMC Territory. Thus, Plaintiffs are informed and believe and thereupon allege that PMCPOA contends that, for example, if Blackacre was a one acre lot, owned or resided upon by two persons, in a PMCPOA Tract which had one 101 acre lot owned by PMCPOA as common area and 198 other one acre lots besides Blackacre, for a total of 200 lots in that 300 acre Tract, Plaintiffs are informed and believe and thereupon allege, that PMCPOA would contend that in voting on an extension of the CCRs for that Tract, Blackacre has only one third of 1/300 of the total voting power, which must be split between the two owners, giving them each at most 1/600 of the voting power, as opposed to 1/200 of the vote or one vote per person, while PMCPOA gives itself 101/300 or 1/3 of the entire vote though it owns only one lot. In this example, Plaintiffs are informed and believe and thereupon allege that PMCPOA contends that it and

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2 65 other lot owners, controlling only 66 lots in the 200 lot tract could carry a vote to extend
3 the CCRs for that tract or any other vote because they geographically controlled 55 percent
4 or more of the geographical area of the Tract. Thus, Plaintiffs are informed and believe and
5 thereupon allege that under PMCPOA's practice, in the foregoing example, less than about
6 1/3 of the owners/voters could impose their will on the other two-thirds of the owners/voters
7 of the subject Tract. Plaintiffs are informed and believe and thereupon allege that PMCPOA
8 will attempt to extend the CCRs for additional periods beyond 2015, utilizing the
9 unconstitutional and invalid practices and procedures complained of herein if the declaratory
and injunctive relief requested herein is not granted.

10 16. Plaintiffs are informed and believe and thereupon allege that the voting
11 practices and contentions of PMCPOA, and/or the CCRs themselves, violate the
12 constitutional rights of Plaintiffs and all other members of the PMCPOA by diluting, debasing
13 and discounting their voting rights, thus denying them their constitutional rights, and
14 disenfranchising them and all other members of the PMCPOA and denying them their full
15 constitutional voting rights under the United States and California Constitutions and
16 applicable Federal and State laws and statutes.

17 17. On or about December 18, 2004 and again on January 15, 2005, defendant
18 PMCPOA further violated Plaintiffs' constitutional rights by denying them due process and
19 equal protection of the law, as well as the right to representation by counsel, in the quasi
20 judicial PMCPOA Board hearings on those dates, which were carried out by PMCPOA to
21 decide on Plaintiffs' requests that PMCPOA permit Plaintiffs to complete construction of their
22 Residence pursuant to the Variance. Without prior notification to Plaintiffs, PMCPOA
23 refused to allow Plaintiffs' counsel to speak and forced Plaintiffs to consult with Plaintiffs'
24 counsel in side bar conferences during the hearing rather than allowing Plaintiffs' counsel to
25 speak and represent them directly, thereby disadvantaging Plaintiffs in their presentation of
26 their case to the Board. PMCPOA was represented by counsel who sat with the PMCPOA
27 Board directors at the hearing. When Plaintiffs attempted to consult with their counsel during
28 the hearing, the PMCPOA Board chairman Hansen abruptly and immediately tabled and

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2 curtailed the hearing without any hearing on the merits, forcing Plaintiffs to return again one
3 month later and bring their counsel again, at an additional substantial expense, on January
4 15, 2005. Plaintiffs were denied the right to have their counsel present their case again at
5 the January 15 hearing, which again prejudiced their ability to present their case.

6 18. At the January 15 hearing, the PMCPOA Board took evidence regarding the
7 requests of Plaintiffs, including a presentation by Plaintiffs (but not their counsel), as well as
8 testimony from other members of PMCPOA, including those who supported and those who
9 opposed the request of Plaintiffs. Plaintiffs are informed and believe and thereupon allege
10 that both the December 18 and January 15 hearings were audiotaped and Plaintiffs have
11 requested in writing that copies of such tapes be provided at their cost. However, as of the
12 date of filing of this complaint, PMCPOA has failed and refused to provide such tapes. To
13 the contrary, Plaintiffs are informed and believe and thereupon allege that, subsequent to the
14 January 15, 2005 hearing, without any further Board action or opportunity for Plaintiffs to be
15 heard, PMCPOA has made written demand of Plaintiffs to make further concessions,
16 including an indemnification of the PMCPOA, which were not part of the Resolution.
17 PMCPOA has in bad faith denied Plaintiffs' their substantive and procedural due process
18 rights, as well as equal protection of the law, in this process of considering Plaintiffs' petition
19 for PMCPOA consent to completion of the Residence, by: (1) denying them effective legal
20 representation; (2) denying them any reasonable alternative to complete the Residence so
21 as to avoid tearing it down; (3) refusing to follow their own Resolution and/or deciding in
22 secret meetings to renege on and/or revise such Resolution after passage; and (4) imposing
23 unreasonable and arbitrary conditions on Plaintiffs which have not been placed on other
24 PMCPOA members who have allegedly encroached on or infringed on alleged PMCPOA
25 setback and/or easement rights on their lots but whose encroachments and infringements
26 have not been precluded or removed by PMCPOA.

27 19. As a proximate result of PMCPOA's violation of Plaintiffs' constitutional rights
28 as alleged herein, Plaintiffs have been damaged in an amount according to proof by such
improper assessments. Under threat of placing a lien on the Property, PMCPOA has

1 continued to demand hundreds of dollars in annual assessments from Plaintiffs, which
2 Plaintiffs are informed and believe and thereupon allege PMCPOA has no authority to collect
3 because the CCRs expired on December 31, 2000. As a proximate result of PMCPOA's
4 violation of Plaintiffs' constitutional rights as alleged herein, Plaintiffs have also been
5 damaged by incurring costs and expenses arising out of delay in completion of the
6 Residence, in an amount according to proof.

7 20. The aforementioned acts and omissions of defendants were committed by
8 each of them knowingly, wilfully and maliciously, with the intent to harm, injure, vex, harass
9 and oppress Plaintiff with a conscious disregard of Plaintiffs' constitutional rights and by
10 reason thereof, Plaintiff seeks punitive and exemplary damages from defendants, and each
11 of them, in an amount as proved.

12 **SECOND CAUSE OF ACTION**

13 **(VIOLATION OF CIVIL RIGHTS ACT - 42 U.S.C. § 1983)**

14 **(AGAINST DEFENDANT PMCPOA AND DOES 1-50, INCLUSIVE)**

15 21. Plaintiffs refer to and replead each and every allegation contained in
16 paragraphs 1. through 20. of this complaint, and by this reference incorporate the same
17 herein and make each a part hereof.

18 22. The acts omissions and policies and practices of PMCPOA with regard to
19 voting for extension to CCRs, and other matters, violates Plaintiffs civil rights under the Civil
20 Rights Act (including 42 U.S.C. § 1983), by denying Plaintiffs and all other members of
21 PMCPOA the right to one vote per person, or at least one vote per lot owned, without
22 dilution, debasement and discounting due to the geographical size of the lot, and/or the
23 number of record owners of the lot, and without the PMCPOA effectively controlling
24 determinations by exercising a larger than proportional percentage of votes in each tract of
25 the PMC jurisdiction because of the larger geographical area of PMCPOA-owned common
26 area/green space lots owned by PMCPOA in each Tract. Plaintiffs are informed and believe
27 and thereupon allege that PMCPOA owns more than 55 percent of the geographical area of
28 each tract in the PMC Territory, including Tract 3566, so that PMCPOA contends it can by

1 fiat simply extend the CCRs and impose its will on the PMCPOA membership, without a true
 2 or fair supermajority vote of the PMCPOA membership. Plaintiffs are informed and believe
 3 and thereupon allege that this provision for extension of the CCRs, in addition to being
 4 unconstitutional and unlawful, should be construed narrowly against PMCPOA to limit
 5 PMCPOA so that it cannot unilaterally pass an extension of the CCRs or any other measures
 6 with regard to the CCRs, without a true and fair supermajority vote which enfranchises fully
 7 each of the members of PMCPOA, regardless of the size of their lots, number of record
 8 owners of a lot, or the PMCPOA lot in the Tract concerned.

9 23. The aforementioned acts and omissions of defendants were committed by
 10 each of them knowingly, wilfully and maliciously, with the intent to harm, injure, vex, harass
 11 and oppress Plaintiff with a conscious disregard of Plaintiffs' constitutional rights and by
 12 reason thereof, Plaintiff seeks punitive and exemplary damages from defendants, and each
 13 of them, in an amount as proved.

14 **THIRD CAUSE OF ACTION**

15 **(VIOLATION OF CALIFORNIA CONSTITUTION - ARTICLE 1)**

16 **(AGAINST DEFENDANT PMCPOA AND DOES 51-100, INCLUSIVE)**

17 24. Plaintiffs refer to and replead each and every allegation contained in
 18 paragraphs 1.

19 through 23. of this complaint, and by this reference incorporate the same herein and make
 20 each a part hereof.

21 25. The acts and omissions of defendants PMCPOA, Hansen and DOES 51 - 100,
 22 as
 23 alleged herein above, violate California Constitution Article 1, including Sections 7 and 22
 24 thereof.

25 26. As a proximate result of said defendants' violations of Plaintiffs' constitutional
 26 rights as alleged herein, Plaintiffs have been damaged in amount according to proof, in the
 27 amount of such improper assessments.

28 27. The aforementioned acts and omissions of defendants were committed by

each of them knowingly, wilfully and maliciously, with the intent to harm, injure, vex, harass and oppress Plaintiff with a conscious disregard of Plaintiffs' constitutional rights and by reason thereof, Plaintiff seeks punitive and exemplary damages from defendants, and each of them, in an amount as proved.

FOURTH CAUSE OF ACTION

DECLARATORY RELIEF

(AGAINST DEFENDANTS PMCPOA AND DOES 1 - 10,000, INCLUSIVE)

28. Plaintiffs refer to and replead each and every allegation contained in paragraphs 1. through 27. of this complaint, and by this reference incorporate the same herein and make each a part hereof.

29. Plaintiffs are informed and believe that PMCPOA and DOES 1 - 10,000, contend: (1) the CCRs are in full force and effect and were validly extended until December 31, 2015, and PMCPOA can enforce all its provisions, including enforcing a front setback requirement; (2) the Resolution did not grant a variance or all permissions needed to complete the Residence in accordance with the requirements of the Resolution but rather Plaintiffs must execute one or more additional documents including an indemnification of PMCPOA before they can proceed with any type of further construction on the Residence; and (3) PMCPOA holds title to a 20 foot slope easement ("Easement") adjacent to the Chestnut Court edge of the Property, as depicted on the Tract Map of Tract 3566.

30. Plaintiffs contend in all respects to the contrary, namely that: (1) the CCRs have expired and are of no further force and effect and that the Board has no right to require Plaintiffs to obtain its approval to construct the Residence under the expired CCRs, or collect any assessments or exercise any other authority under the CCRs, including enforcing any front setback requirement; (2) the Resolution was self-executing and allows Plaintiffs to construct the Residence if they remove the front deck, side decks and porch from the Residence; and (3) Plaintiffs are informed and believe and thereupon allege that PMCPOA does not hold title to the Easement.

31. PMCPOA's contentions have caused and will continue to cause Plaintiffs

1 irreparable injury and Plaintiffs allege that the above-described dispute between them and
2 PMCPOA will continue until a judicial resolution of the dispute occurs by issuance of
3 declaratory relief to dedare the rights and duties of the parties in the disputed matters.

4 **FIFTH CAUSE OF ACTION**

5 **QUIET TITLE**

6 **(AGAINST DEFENDANTS PMCPOA AND DOES 101 - 10,000, INCLUSIVE)**

7 32. Plaintiffs refer to and replead each and every allegation contained in
8 paragraphs 1. through 31. of this complaint, and by this reference incorporate the same
9 herein and make each a part hereof.

10 33. The basis of Plaintiffs' title is a grant deed/deed of trust which was delivered
11 to Plaintiffs and recorded at Book 23, Page 197, of Official Records of Kern County,
12 California. At all times herein mentioned, Plaintiffs have been in possession of the Property.

13 34. Plaintiffs do not know the true names, capacities, bases for liability, or
14 interest in the Property of defendants named in this action as DOES 101 through 10,000,
15 inclusive, and will amend this complaint when that information is discovered. At all relevant
16 times, each defendant, including any defendant fictitiously named, claims in interest in the
17 Property or was acting as the agent, servant, employee, partner, or joint venturer of each
18 other defendant in doing the things alleged and is responsible in some manner for the
19 damages and disputes alleged in this complaint.

20 35. Plaintiffs seek to quiet title against the following claims of the following
21 named defendants: Plaintiffs are informed and believe and thereupon allege that PMCPOA
22 claims the CCRs bind and are applicable to the Property, including a 25 foot front setback
23 ("Setback") requirement under the CCRs as well as the Easement along the front of the
24 Property, which Plaintiffs dispute. Also, PMCPOA's demand to stop work on the Residence
25 and allegations of violation of the CCRs have created an encumbrance and cloud on the title
26 of Plaintiffs to the Residence and the Property. Finally, PMCPOA has demanded that
27 Plaintiffs remove the front porch and all decking from the front and sides of the Residence,
28 some of which decking, Plaintiffs are informed and believe and thereupon allege, does not

1 extend into either the Setback or the Easement. Plaintiffs are informed and believe and
2 thereupon allege that PMCPOA contends it has a right to record a lien on the Property
3 and/or levy a fine or assessment on Plaintiffs and record a lien in respect to such
4 assessment or fine, should Plaintiffs proceed with construction of the Residence without
5 complying with all of PMCPOA's demands. Plaintiffs are informed and believe and
6 thereupon allege that all of the foregoing PMCPOA claims are without any right, and that
7 PMCPOA has no right title, estate, lien or interest in the Property or any part of it.

8 36. Plaintiffs are informed and believe and thereupon allege that DOES
9 101 - 10,000, and other unknown defendants, allege and contend that the CCRs prohibit
10 Plaintiffs from constructing and/or completing construction of the Residence on the Property
11 because the Residence violates the Setback, and/or other architectural and/or aesthetic and
12 provisions of the CCRs and policies and procedures adopted under the CCRs by PMCPOA
13 and its environmental control committee ("ECC"), and/or infringes on the Easement, and/or
14 in some other way violates their respective rights.

15 37. Plaintiffs do not now the exact names, capacities, or interest in the Property
16 alleged by certain defendants, which Plaintiffs designate for this action as "all persons
17 unknown, claiming any legal or equitable right, title, the state, lien, or interest in the Property
18 adverse to Plaintiffs' title, or any cloud on Plaintiffs' title to the Property." Plaintiffs seek to
19 quiet title in the Property against the claim of each such defendant, and each such defendant
20 has no right, title, state, lien, or interest in the Property or any part of it. Plaintiff will serve
21 this class of defendants by publication as the court allows.

22 38. Plaintiffs seek to quiet title against all defendants and each of them as of the
23 date of filing of this complaint.

24 39. Plaintiffs are informed and believe and thereupon allege that DOES 101 -
25 4000, including other members of the PMCPOA, also have threatened litigation and other
26 adverse proceedings and/or actions against Plaintiffs and the Residence, on the grounds of
27 alleged violation of the CCRs, and/or alleged violations of their other rights, which
28 additionally cloud and or encumber Plaintiffs' title to the Residence.

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2 40. The aforesaid encumbrances and clouds on Plaintiffs' title have caused and
3 will continue to cause, irreparable injury to Plaintiffs unless title is quieted in them free of the
4 encumbrances and clouds on title presented by PMCPOA and DOES 101 - 4000.

5 **SIXTH CAUSE OF ACTION**

6 **PRELIMINARY AND PERMANENT INJUNCTION**

7 **(AGAINST DEFENDANTS PMCPOA AND DOES 1 - 100, INCLUSIVE)**

8 41. Plaintiffs refer to and replead each and every allegation contained in
9 paragraphs 1. through 40. of this complaint, and by this reference incorporate the same
10 herein and make each a part hereof.

11 42. Plaintiffs have no adequate remedy at law to address and/or remedy the
12 demands and
13 contentions of PMCPOA which prevent completion of the Residence. Plaintiffs will be
14 irreparably injured if they are unable to complete the Residence and/or peaceably enjoy the
15 Property without the interference of PMCPOA and other defendants.

16 43. A preliminary and permanent injunction are necessary in order to prevent the
17 PMCPOA and other defendants from interfering with the completion of the Residence and
18 the peaceable enjoyment of the Property by Plaintiffs. Defendant PMCPOA should be
19 enjoined from enforcing any and all provisions of the CCRs against Plaintiffs, and any other
20 members of PMCPOA, including PMCPOA's environmental control policies and procedures,
21 as well as the collection of annual assessments, which Plaintiffs are informed and believe
22 and thereupon allege amount to several million dollars per year collected from the entire
23 PMCPOA membership. Also, PMCPOA and the other defendants should be enjoined from
24 interfering with Plaintiffs' peaceable enjoyment of the Residence and the Property, including
25 the Setback and the Easement.

26 **SEVENTH CAUSE OF ACTION**

27 **FRAUD**

28 **(AGAINST DEFENDANTS PMCPOA AND DOES 1 - 100, INCLUSIVE)**

44. Plaintiffs refer to and replead each and every allegation contained in

1 paragraphs 1. through 43. of this complaint, and by this reference incorporate the same
2 herein and make each a part hereof.

3 45. Plaintiffs are informed and believe and thereupon allege that in or about
4 1997 defendant PMCPOA misrepresented the constitutionality and validity of its proposal to
5 the PMCPOA membership to extend the CCRs by virtue of a vote in which the PMCPOA
6 voted its geographically weighted green belt lot votes in each Tract of the PMCPOA to
7 purportedly obtain a 55 percent vote necessary to extend the CCRs. Plaintiffs are informed
8 and believe and thereupon allege that PMCPOA's interpretation of the CCRs was novel and
9 had never been contemplated by prior PMCPOA boards or by the majority of the PMCPOA
10 membership. Plaintiffs are informed and believe and thereupon allege that the PMCPOA
11 Board of Directors in 1997 carried out an unconstitutional and illegal vote to purportedly
12 extend the CCRs out of desperation because they knew that they could not obtain even the
13 50 percent vote of the lot owners in any tract of the PMCPOA to extend the CCRs needed to
14 seek a judicial determination under California Civil Code Sections 1356 or 1357. Plaintiffs
15 are informed and believe and thereupon allege that PMCPOA has at all times failed to file
16 suit to avail itself of the available remedy of an action under California Civil Code Sections
17 1356 and/or 1357, in order to obtain a judicial determination on the vote necessary to
18 approve an extension of the CCRs, and or to request judicial action to reduce the percentage
19 of votes required to extend the CCRs.

20 46. Plaintiffs are informed and believe and thereupon allege that the PMCPOA
21 Board also failed to inform Plaintiffs and the PMCPOA membership that a judicial
22 determination was available at the time the PMCPOA Board was proposing to extend the
23 CCRs in 1997. Plaintiffs were unaware of the misrepresentations by the PMCPOA Board in
24 or about mid 2004 when they were forced to consult legal counsel in response to a threat
25 received from PMCPOA's attorneys that legal action would be taken against them if they did
26 not stop construction of the Residence. Until this adverse action by PMCPOA against
27 Plaintiffs, Plaintiffs had no reason to suspect or believe that the PMCPOA action was
28 unconstitutional, illegal or defective in any way. Plaintiffs have until approximately mid 2004

justifiably relied upon the representations of the PMCPOA Board that it had the proper authority to extend the CCRs in the manner proposed by the PMCPOA Board in 1997, and in reliance thereupon, acquiesced in the PMCPOA's claims that it had continued authority under the CCRs after December 31, 2000.

47. As a proximate result of PMCPOA's misrepresentations and concealments of material facts from Plaintiffs, Plaintiffs have been damaged in an amount according to proof.

48. The aforementioned acts and omissions of defendants were committed by each of them knowingly, wilfully and maliciously, with the intent to harm, injure, vex, harass and oppress Plaintiffs, and with a conscious disregard of Plaintiffs' constitutional and other rights, and by reason thereof, Plaintiff seeks punitive and exemplary damages from defendants, and each of them, in an amount as proved.

EIGHTH CAUSE OF ACTION

BREACH OF COVENANT OF GOOD FAITH AND FAIR DEALING

(AGAINST DEFENDANTS PMCPOA AND DOES 1-100, INCLUSIVE)

49. Plaintiffs refer to and replead each and every allegation contained in paragraphs 1. through 48. of this complaint, and by this reference incorporate the same herein and make each a part hereof.

50. Plaintiffs allege, in the alternative, that if the CCRs were in effect in 2003 and all times thereafter alleged herein, PMCPOA had a duty under the CCRs to deal fairly and in good faith with Plaintiffs who were and are shareholders and members in good standing of PMCPOA.

51. In the alternative, PMCPOA breached its duty under the covenant of good faith and fair dealing implied in the CCRs by failing to notify Plaintiffs of any alleged encroachment or interference of the Residence with any PMCPOA easement or property right and by failing and refusing to accede to any of Plaintiffs' proposals of a reasonable, buildable alternative plan when requested by Plaintiffs.

52. Plaintiffs are informed and believe that PMCPOA has in the past both failed

1 to enforce the CCRs as to alleged encroachments and or infringements at a variety of other
 2 properties in the PMC area subject to the CCRs and/or has granted variance for such
 3 properties where the alleged encroachments and /or infringements on PMCPOA easements
 4 and /or property rights were comparable to or even more extensive than those alleged to
 5 have occurred at the Residence. Plaintiffs are informed and believe that PMCPOA has
 6 arbitrarily and maliciously singled out Plaintiffs for unfair and unequal treatment to punish
 7 them and make an example of them by imposing infeasible and unreasonable limitations on
 8 the construction of their Residence which are in effect a constructive denial and prohibition
 9 of construction of the Residence, and tantamount to imposing the cost of demolition on
 10 Plaintiffs.

11 53. As a proximate result of PMCPOA's breach of the covenant of good faith and
 12 fair dealing, Plaintiffs have been damaged in an amount according to proof.

13 54. The aforementioned acts and omissions of defendants were committed by
 14 each of them knowingly, wilfully and maliciously, with the intent to harm, injure, vex, harass
 15 and oppress Plaintiffs, and with a conscious disregard of Plaintiffs' constitutional rights and
 16 by reason thereof, Plaintiff seeks punitive and exemplary damages from defendants, and
 17 each of them, in an amount as proved.

18 **NINTH CAUSE OF ACTION**

19 **NEGLIGENCE**

20 **(AGAINST DEFENDANT PMCPOA, AND DOES 1- 100, INCLUSIVE)**

21 55. Plaintiffs refer to and replead each and every allegation contained in
 22 paragraphs 1. through 54. of this complaint, and by this reference incorporate the same
 23 herein and make each a part hereof.

24 56. Defendants PMCPOA and DOES 1- 100, inclusive, and each of them, owed to
 25 Plaintiff a duty of due care to properly survey, locate, plan and/or inspect the Residence as it
 26 was being sited and constructed. Plaintiffs paid valuable consideration to said defendants in
 27 order to obtain such services from Defendants. PMCPOA demanded that it be allowed to
 28 inspect and approve the Residence plans and siting and construction and sent its ECO to

1 inspect the Residence commencing in or about late February 2003 and continuing until
2 approximately January 2004. Plaintiffs are informed and believe and thereupon allege that
3 the ECO made numerous inspections of the Residence during construction commencing in
4 or about late February 2003 and continuing until approximately late January 2004. However,
5 neither PMCPOA nor the ECO at any time notified Plaintiffs that there was any problem with
6 the Residence encroaching or interfering with any PMCPOA easement or other property
7 interest, until approximately late January 2004, after a retaining wall to hold the slope had
8 been constructed adjacent to Chestnut Court and the Residence was approximately 70%
9 complete. PMCPOA's failure to detect the alleged problems with the Residence allegedly
10 infringing or encroaching on PMCPOA rights, and to notify Plaintiffs thereof, was a breach of
11 PMCPOA's duty to Plaintiffs, as PMCPOA knew or should have known of the alleged
12 improper siting starting in or about late February 2003, and continuing until January 2004,
13 but failed to detect such erroneous siting and/or to notify Plaintiffs thereof in a timely
14 manner.

15 57. DOES 1 - 100 were retained and/or otherwise engaged to inspect and/or
16 survey the Property in or about late 2002 and had a duty to Plaintiffs to perform a
17 professional and workmanlike inspection and/or survey. Commencing in approximately late
18 February 2003, and continuing to late January 2004, DOES 1- 100 breached their duty by
19 failing to properly and with due care inspect and/or survey the Property, so as to properly site
20 the Residence and/or discern whether it was improperly sited, and by failing to notify
21 Plaintiffs of any problem with the location of the Residence.

22 58. As a proximate result of the acts of defendants, and each of them, as herein
23 alleged, Plaintiffs were compelled to expend money all to their damage in an amount
24 according to proof.

25 TENTH CAUSE OF ACTION

26 CONVERSION

27 (AGAINST PMCPOA)

28 59. Plaintiffs refer to and replead each and every allegation contained in

1 paragraphs 1. through 58. of this complaint, and by this reference incorporate the same
2 herein and make each a part hereof.

3 60. Based on the CCRs, and by implied threat of filing a lien on the Property,
4 Defendant PMCPOA has required Plaintiffs to pay annual assessments in an amount
5 according to proof, as well as purported permit fees in an amount according to proof in
6 connection with the construction of the Residence. Plaintiffs are informed and believe and
7 thereupon allege that PMCPOA has also required all other members of PMCPOA to pay
8 similar annual assessments, in an amount according to proof, but which are believed to
9 exceed several million dollars per year. Plaintiffs are informed and believe and thereupon
10 allege that PMCPOA had no right to demand or obtain these assessments and fees after
11 expiration of the CCRs on December 31, 2000.

12 61. Plaintiffs have been damaged by PMCPOA's conversion of their moneys
13 paid to PMCPOA, in an amount according to proof.

14 **ELEVENTH CAUSE OF ACTION**

15 **CONSPIRACY**

16 **(AGAINST PMCPOA AND DOES 1 - 10,000 , INCLUSIVE)**

17 62. Plaintiffs refer to and replead each and every allegation contained in
18 paragraphs 1. through 61. of this complaint, and by this reference incorporate the same
19 herein and make each a part hereof.

20 63. Commencing on or about late February 2003, and continuing into
21 approximately mid 2004, Plaintiffs are informed and believe and thereupon allege that
22 defendant PMCPOA and DOES 1 - 10,000 and each of them, agreed, planned and -
23 conspired among themselves to cooperate in the acts and omissions alleged herein.

24 64. Defendants' tortious and unconstitutional acts and omissions as
25 hereinbefore alleged proximately caused Plaintiffs to be damaged in an amount according to
26 proof.

27 WHEREFORE, Plaintiffs pray judgment against all defendants and each of them, as
28 follows, as to each cause of action as applicable:

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1. For general damages in an amount according to proof;
2. For special damages in an amount according to proof;
3. For punitive damages as provided by law, in an amount to be proved against each
- 4 defendant;
- 5 4. For treble damages as provided by law;
- 6 5. For a declaration that the voting procedures and policies of PMCPOA are unconstitutional
- 7 and unlawful, and violate Plaintiffs' due process and equal protection rights, and that each
- 8 member of PMCPOA must be given one vote in any election or referendum of any kind held
- 9 by PMCPOA.
- 10 6. For a declaration that the CCRs as to the Tract, and all other tracts in the PMC Territory,
- 11 were not validly extended and have expired and are of no force and effect, and for a
- 12 preliminary and permanent injunction enjoining PMCPOA from enforcing the CCRs and
- 13 prohibiting PMCPOA and all other defendants from interfering with Plaintiffs' completion of
- 14 construction of the Residence and peaceable enjoyment of the Property.
- 15 7. In the alternative, for a declaration that PMCPOA has unconstitutionally, inequitably and
- 16 erroneously interpreted and/or applied the CCRs to violate Plaintiffs' rights and to prevent
- 17 Plaintiffs from completing the Residence, and for a preliminary and permanent injunction
- 18 ordering PMCPOA to issue all necessary documentation in recordable form to permit
- 19 Plaintiffs to complete and occupy the Residence with reasonable access through the front
- 20 side of the Residence, as approved by the Variance.
- 21 8. For an order requiring PMC to provide Plaintiffs with a recordable certified copy of the
- 22 PMC Resolution approving Plaintiffs' request to the Board on January 15, 2005.
- 23 9. For Judgment quieting title in Plaintiffs' favor as owners in fee simple of the Property and
- 24 that PMCPOA and the other defendants and each of them have no right, title, estate, lien,
- 25 encumbrance or interest in the Property, including any right, title or interest under the CCRs,
- 26 and any right to the Setback or the Easement, adverse to Plaintiffs;
- 27 10. For attorney's fees pursuant to 42 U.S.C Section 1988, and as a private attorneys
- 28 general enforcing the constitutional rights of all PMCPOA members and in the public interest;

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- 11. For costs of suit;
- 12. For interest, including prejudgment interest on all assessments collected by PMCPOA from Plaintiffs since December 31, 2000;
- 13. For such other and further relief as the Court may deem proper.
- 14. Plaintiffs hereby demand a jury trial.

DATED: February 18, 2005 LAW OFFICES OF JACK A. DRAPER, P. C.

By: _____
 JACK A. DRAPER II
Attorneys for The Mellen Family Trust and
Ray and Linda Mellen, Trustees

VERIFICATION

STATE OF CALIFORNIA ss

I, the undersigned, certify and declare that I have read the foregoing:

COMPLAINT FOR DAMAGES AND OTHER RELIEF

and know its contents. The statement following the box checked is applicable.

() I am a party to this action. The matters stated in the document described above are true of my own knowledge and belief except as to those matters stated on information and belief, and as to those matters I believe them to be true.

(X) I am () Assistant Secretary () President (X) Trustee of (X) The Mellen Family Trust, a party to this action, and am authorized to make this verification for and on its behalf, and I make this verification for that reason. I am informed and believe and on that ground allege that the matters stated in the document described above are true.

() I am the attorney, or one of the attorneys for _____, each a party to this action. Such party is absent from the county where I or such attorneys have their offices and is unable to verify the document described above. For that reason, I am making this verification for and on behalf of that party. I am informed and believe and on that ground allege that the matters stated in said document are true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on February 18, 2005.

_____(S)_____
Ray Mellen, as Trustee of the Mellen Family Trust