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FILED
Clerk of the Superior Court

APR 05 2019

By: Anthony Shirley, Deputy

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO, CENTRAL DIVISION**

JULIAN VOLUNTEER FIRE COMPANY ASSOCIATION; BRIAN CROUCH, in his capacity as President of the Julian Volunteer Fire Company; MIKE HATCH, an individual; EVA HATCH, an individual; and DAVE SOUTHCOTT, an individual;

Plaintiffs and Petitioners,

v.

JULIAN-CUYAMACA FIRE PROTECTION DISTRICT; JACK SHELVER, in his official capacity as Board President of the Julian-Cuyamaca Fire Protection District; and DOES ONE through TEN, inclusive;

Defendants and Respondents;

Case No. 37-2018-00020015-CU-WM-CTL

**[PROPOSED]
PEREMPTORY WRIT OF MANDATE**

To: Defendant and respondent JULIAN-CUYAMACA FIRE PROTECTION DISTRICT ("Respondent" or "District"):

WHEREAS, consistent with the prior findings, orders, and Judgment made and entered by this Court, this Court finds and hereby orders, after a duly noticed motion and hearing on petitioners JULIAN VOLUNTEER FIRE COMPANY ASSOCIATION, BRIAN CROUCH, in his capacity as President of the Julian Volunteer Fire Company, MIKE HATCH, an individual, EVA HATCH, an individual, and DAVE SOUTHCOTT ("Plaintiffs") *First Amended Complaint for Declaratory and Injunctive Relief; Petition for Writ of Mandate* dated June 1, 2018 ("*First*

1 *Amended Complaint*"), the consideration of the Plaintiffs' submitted briefing and filing, and the
2 argument of counsel, that Respondent has violated the Brown Act (Government Code §§ 54950-
3 54963), specifically Government Code sections 54953, subdivisions (c)(1) and (c)(2), and
4 54960.1, arising from the secret ballot of the majority of the board members to dissolve the
5 District on or about January 30, 2018, as alleged in the First and Second Causes of Action in the
6 operative *First Amended Complaint* at ¶¶ 23, 26-28, 31-33, 38, 48-62, such that Plaintiffs are
7 entitled to have a peremptory writ of mandate issued under seal of this Court.

8 THEREFORE, IT IS ORDERED that, immediately upon service of this writ, Respondent
9 shall take action to rescind the following actions taken on February 13 (Item No. 14), March 13
10 (Item No. 11), and April 10, 2018 (Item No. 13), including Resolution No. 2018-03.

11 This Court shall retain jurisdiction over Respondent, including by way of a return to this
12 peremptory writ of mandate, until this Court has determined that Respondent has complied with
13 the acts encompassed by the foregoing order.

14 Respondent shall file a return to this writ no later than twenty (20) days from the date this
15 writ is issued and served setting forth what Respondent has done to comply with the writ set
16 forth herein.

17 IT IS SO ORDERED.

18 LET THE FOREGOING WRIT OF MANDATE ISSUE.

19 Dated: APR 05 2019

RANDA TRAPP

JUDGE OF THE SUPERIOR COURT



_____, Clerk
By ANTHONY SHIRLEY, Deputy Clerk

PROOF OF SERVICE

San Diego Superior Court - Case No. 37-2018-20015-CU-WM-CTL
Julian Volunteer Fire Company Association, et al. v. Julian-Cuyamaca Fire Protection District, et al.

I, the undersigned, declare under the penalty of perjury that I am over the age of eighteen years, my place of business is in the County of San Diego, located at 1901 First Avenue, San Diego, CA, and I am currently the attorney to this action; that I served the below-named person(s) the following document(s):

**NOTICE OF ERRATUM AND NOTICE OF LODGMENT OF
REVISED [PROPOSED] ORDERS**

[PROPOSED] JUDGMENT

[PROPOSED] PEREMPTORY WRIT OF MANDATE

On March 26, 2019 on the following person(s) in a sealed envelope or package, addressed as follows:

Cory J. Briggs, Esq
Briggs Law Corporation
99 C Street, Suite 111
Upland, CA 91786
cory@briggslawcorp.com
(via email and U.S. Mail)
Counsel for Defendant
JULIAN-CUYAMACA FIRE PROTECTION DISTRICT

in the following manner:

- 1) By personally delivering copies to the person(s) served.
- 2) By placing a copy in a separate envelope, with postage fully pre-paid, for each person and address named above and depositing each with the US Mails at San Diego, California.
- 3) By sending to each person named above via electronic service at the above electronic notification address(es).

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

Executed on March 26, 2019 at San Diego, California.



Craig Sherman

FILED
Clerk of the Superior Court

APR 05 2019

~~By~~ Anthony Shirley, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO, CENTRAL DIVISION

JULIAN VOLUNTEER FIRE COMPANY
ASSOCIATION; BRIAN CROUCH, in his
capacity as President of the Julian Volunteer
Fire Company; MIKE HATCH, an individual;
EVA HATCH, an individual; and DAVE
SOUTHCOTT, an individual;

Plaintiffs and Petitioners,

v.

JULIAN-CUYAMACA FIRE PROTECTION
DISTRICT; JACK SHELVER, in his official
capacity as Board President of the Julian-
Cuyamaca Fire Protection District; and
DOES ONE through TEN, inclusive;

Defendants and Respondents;

Case No. 37-2018-00020015-CU-WM-CTL

~~[PROPOSED]~~ JUDGMENT

This matter came on March 26, 2019 for an ex parte application and order for shortened time for a motion and hearing for entry of judgment [with said motion and petition hearing date heard on 4/5/19, 2019] in Department C-70 of the above-captioned Superior Court, the Honorable Randa Trapp, presiding.

Attorney Craig A. Sherman appeared for plaintiffs and petitioners JULIAN VOLUNTEER FIRE COMPANY ASSOCIATION, BRIAN CROUCH, in his capacity as President of the Julian Volunteer

JUDGMENT

1 Fire Company; MIKE HATCH, an individual, EVA HATCH, an individual, and DAVE SOUTHCOTT,
2 an individual (collectively referred to as "Julian Fire Association" or "Plaintiffs").

3 Cory J. Briggs appeared for defendant and respondent JULIAN-CUYAMACA FIRE
4 PROTECTION DISTRICT ("JCFPD" or "Respondent")

5 All other named parties have been dismissed, including defendant/respondent JACK SHELVER,
6 named and sued in his official capacity as Board President of the Julian-Cuyamaca Fire Protection
7 District.

8 After the Court's consideration of the briefing, evidence, and arguments of counsel, and the
9 reasons and findings made, explained, and set forth in decision or Minute Order(s) dated 4-5-19
10 2019 (the "Ruling"), this Court rules in favor of Plaintiffs on their *First* and *Second Causes of Action* of
11 their First Amended Complaint, and against the Julian-Cuyamaca Fire Protection District, as follows:

12
13 **NOW, THEREFORE IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:**

14 1. A Judgment shall enter in favor of Plaintiffs and against the Julian-Cuyamaca Fire
15 Protection District on the *First* and *Second Causes of Action* of Plaintiffs' First Amended Complaint.

16 2. The specific alleged actions taken by the Julian-Cuyamaca Fire Protection District on
17 February 13 (Item No. 14), March 13 (Item No. 11), and April 10, 2018 (Item No. 13), including the
18 adoption of Resolution No. 2018-03, for and related to actions to terminate and dissolve the Julian-
19 Cuyamaca Fire Protection District, shall be rendered null and void.

20 3. A declaratory judgment and/or other further appropriate judicial relief is granted in favor
21 of Plaintiffs and against the Julian-Cuyamaca Fire Protection District for the aforementioned voided
22 actions of the District that are enforceable and shall herein be rendered void based on Plaintiffs' action
23 brought under Government Code section 54960.1, as provided for and instructed under Government
24 Code sections 54953 and 54960.1.

25 4. A writ of mandamus shall issue in favor of Plaintiffs, under the seal of this Court,
26 ordering the Julian-Cuyamaca Fire Protection District to set aside and rescind its February 13 (Item No.
27 14), March 13 (Item No. 11), and April 10, 2018 (Item No. 13) actions for and related to termination and

JUDGMENT

1 dissolution of the Julian-Cuyamaca Fire Protection District.

2 5. Plaintiffs shall recover their prevailing party statutory costs in the amount of
3 \$ _____, along with their statutory entitled reasonable attorneys' fees and non-statutory
4 litigation costs as allowed under California Government Code § 54960.5 and California Code of Civil
5 Procedure § 1021.5 in the amount of \$ _____ (as against and payable by the Julian-Cuyamaca
6 Fire Protection District), subject to appropriate post-judgment filings and/or motions, in amounts (if any)
7 as further ordered and entered by this Court.

8 6. The Court shall exercise continuing jurisdiction over the declarations of law, return of the
9 writ of mandamus, and to determine and ensure compliance with this Judgment.

10
11 **IT IS SO ORDERED AND ADJUDGED.**

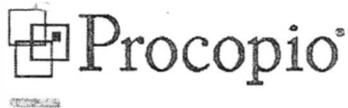
12 Dated: APR 05 2019

RANDA TRAPP

Hon. Randa Trapp
JUDGE OF THE SUPERIOR COURT

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JUDGMENT



PROCOPIO
525 B Street
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San Diego, CA 92101
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F. 619.235.0398

THEODORE J. GRISWOLD
P. 619.515.3277
ted.griswold@procopio.com

DEL MAR HEIGHTS
LAS VEGAS
PHOENIX
SAN DIEGO
SILICON VALLEY

April 5, 2019

Keene Simonds
Executive Officer and Board of Directors
San Diego County LAFCO
935 Hazard Way, Suite 200
San Diego, CA 92123

Re: Reversion of the Mosler Trust Property upon Dissolution of the Julian Cuyamaca Fire Protection District

Mr. Simonds:

Our firm represents the Kumeyaay Diegueño Land Conservancy ("KDLC"). We are in receipt of LAFCO's notice to take action at its April 8, 2019 meeting to "file certified results" of the March 19, 2019 special election and formally approve dissolution of the Julian Cuyamaca Fire Protection District ("JCFPD") through a Certificate of Completion. We understand that County spokespersons have opined that with recordation of the Certificate of Compliance, the property upon which JCFPD's Station 56 sits will transfer to the County. As we explained unequivocally to the County, with the dissolution of JCFPD this transfer is inconsistent with the ownership of the property and the County has no authorization to take possession of or occupy that property.

JCFPD obtained the real property by deed from the Frances H. Mosler Trust. That deed contained a condition subsequent and a reverter, which ceases JCFPD's ownership of the property upon abandonment of the fire station by the JCFPD (referred to as "District" in the deed):

If District permanently abandons the fire station, title to the subject property shall automatically vest in the [Native American Land] Conservancy or the Conservancy's assignee of this right of reverter. (Fiduciary's Deed to Real Property recorded on June 11, 2009 at the San Diego County Recorder's Office, as Document No. 2009-0316332)

Pursuant to the Marketable Record Title Act, an automatic reverter in real property is no longer recognized in the State of California. (Cal Civ. Code § 885.020). Instead, it has been transformed into a "power of termination". (Cal. Civ. Code § 885.020). The power of termination allows the grantor to terminate a fee simple estate to enforce a condition subsequent on the estate

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(Cal. Civ. Code § 885.010). In addition, a party claiming an interest in this type of property may file a Notice to Preserve Interest to protect its interest from expiration (Cal. Civ. Code §§ 880.310-880.370). The Grantor of this property has recorded a Notice to Preserve Interest on the property and will protect that interest with all means necessary to effectuate the intent of the Frances H. Mosler Trust.

Thus, if these actions by LAFCO take place such that the JCFPD is dissolved, the real property held by JCFPD is necessarily abandoned by JCFPD and will revert to the original grantor, the Frances H. Mosler Trust (“Trust”), per the transfer deed. The Trustee will then decide the outcome of the property consistent with the probate document associated with the Trust. Discussions with the Trustee, Claudia Powell, and her attorney, K.C. Thompson, indicate that the Trustee intends to re-deed the property to the Native American Land Conservancy (“NALC”) and its assignee KDLC.

If JCFPD abandons the property by means of dissolution of the organization and any government agency such as the San Diego County Fire Authority or Cal Fire attempts to take possession of the property or the fire station, such possession will constitute trespass and a taking without just compensation. The County Fire Authority and Cal Fire are fully aware of the reversion to the Frances H. Mosler Trust per the transfer deed upon JCFPD’s dissolution and have chosen to ignore our attempts to warn them of this situation and discuss possible continued use of the fire station by the County.

In May 2018, the County Fire Authority and JCFPD went to the San Diego County Board of Supervisors to request to have their application for dissolution approved. At this time, KDLC representatives appeared and reminded the County Fire Authority and JCFPD of the automatic reverter in the transfer deed should JCFPD dissolve. Representatives of KDLC met with the County Fire Authority on August 10, 2018 to discuss the dissolution and the reverter was again heavily discussed, with KDLC informing County that it would appear at the dissolution proceedings and move to formally protect its interest in the property, but would entertain a Use Agreement with the County. The County was non-responsive to the suggestion of a Use Agreement. On September 7, 2018, NALC recorded a Notice of Intent to Preserve Interest for its power of termination and reverter interest, recorded at the San Diego County Recorder’s Office as Document No. 2018-0370957. Representatives of KDLC and NALC appeared at the December 2018 LAFCO hearing regarding the dissolution and reiterated the situation regarding the property ownership to the LAFCO Board, County and JCFPD. As apparent from the foregoing, the County Fire Authority is fully aware of the reverter and has been aware since the beginning of the dissolution discussions.

KDLC and NALC have no interest in jeopardizing fire protection in the Julian area. As noted, they have repeatedly offered to allow the County to continue to use the property as a fire station under a conditional use agreement with compensation to NALC/KDLC, but all such offers have been ignored. This property does not belong to the County Fire Authority or Cal Fire and neither may legally take possession of the property or the station.

This letter does not attempt to contest the results of the election, but rather seeks to ensure that LAFCO fully understands the ramifications of its decision to certify the election and formally approve the dissolution of JCFPD. We are attaching the recorded Notice of Intent to Preserve Interest recorded on the property by the Trust per Cal. Civ. Code § 880.310.



Should you have any questions or wish to discuss this matter further, please do not hesitate to contact the undersigned at ted.griswold@procopio.com or 619-515-3277.

Very truly yours,

A handwritten signature in black ink, appearing to read "TJG", written over a horizontal line.

Theodore J. Griswold

TJG
Attachment

cc: Johnny Elliott, KDLC
Nicole Johnson, NALC
Claudia Powell, Trustee, Frances H. Mosler Trust
K.C. Thompson, Esq. Attorney for Frances H. Mosler Trust
Cory Briggs, Esq.
Suedy Alfaro, Esq., County Counsel



Apr 05, 2019 03:39 PM

OFFICIAL RECORDS
Ernest J. Dronenburg, Jr.,
SAN DIEGO COUNTY RECORDER
FEES: \$95.00 (SB2 Atkiris: \$75.00)

PAGES: 3

Recording Requested by and
When Recorded Mail to:
Kent C. Thompson, Esq.
Hughes & Pizzuto
401 B Street, Suite 2400
San Diego, California 92101

Mail Tax Statements to:
PROCOPIO, CORY, HARGREAVES & SAVITCH LLP
Theodore J. Griswold, Esq.
525 B Street, Suite 2200
San Diego, California 92101

Assessor's Parcel No. 292-011-15-00 (a portion)

(Space Above This Line for Recorder's Use Only)

NOTICE OF INTENT TO PRESERVE INTEREST

The undersigned Claimant declares:

Documentary Transfer Tax is \$ -0- .

computed on the full value of property conveyed.

computed on the full value less value of liens and encumbrances remaining at time of sale.

Unincorporated area; City of San Diego; and

This notice is intended to preserve an interest in real property from extinguishment pursuant to Title 5 (commencing with Section 880.020) of Part 2 of Division 2 of the Civil Code (Marketable Record Title).

Claimant Name: Claudia Powell, Trustee, The Frances H. Mosler Trust

Mailing address: Post Office Box 2321
La Mesa, CA 91943-2321

Interest Character: Claudia Powell, the Trustee of The Frances H. Mosler Trust, holds a reverter interest and/or power of termination under the following clause in the deed: "If construction of a fire station has not commenced within three (3) years as of the date of this deed, title to the property shall automatically vest in the Native American Land Conservancy, hereinafter "Conservancy"), or the Conservancy's assignee of this right of reverter. If District permanently abandons the fire station, title to the subject property shall automatically vest in the Conservancy or the Conservancy's assignee of this right of reverter." (Fiduciary's Deed to Real Property recorded on June 11, 2009 at the San Diego County Recorder's Office, as Document No. 2009-0316332.)

Record location of document evidencing interest in claimant: Fiduciary's Deed to Real Property recorded on June 11, 2009 at the San Diego County Recorder's Office, as Document No. 2009-0316332.

Legal Description: See Exhibit "A attached hereto and fully incorporated herein by this reference.

