COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT

No. C052660

RITA J. CARLS;
NICHOLAS ANTHONY BERNARDONI, a minor;
ANDREA R. BERNARDONI, a minor;
(PETER BERNARDONI as Guardian ad Litem for both minors)

Plaintiffs and Appellants
v.
BLUE LAKE HOUSING AUTHORITY
as successor in interest to J&L PROPERTIES

Defendant and Respondent

On appeal from the Judgment of the Superior Court of California, County of El Dorado, Superior Court Case No. PC 20050114, Honorable Judge Daniel Proud

APPELLANTS' OPENING BRIEF

JOHN C. MILLER, JR., #143323
TIMOTHY J. O'CONNOR, #151110
MILLER LAW, INC.
A Professional Law Corporation
Post Office Box 700
Folsom, California 95763-0700
Phone: (916) 351-1200
Fax: (916) 351-1244

Attorneys for Plaintiffs RITA J. CARLS;
NICHOLAS ANTHONY BERNARDONI;
ANDREA R. BERNARDONI

TABLE OF CONTENTS

TABLE OF AUTHORITIES

COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

No. C052660

RITA J. CARLS;

NICHOLAS ANTHONY BERNARDONI, a minor;

ANDREA R. BERNARDONI, a minor;

(PETER BERNARDONI as Guardian ad Litem for both minors)

Plaintiffs and Appellants

v.

BLUE LAKE HOUSING AUTHORITY

as successor in interest to J&L PROPERTIES

Defendant and Respondent

On appeal from the Judgment of the Superior Court

of California, County of El Dorado, Superior Court

Case No. PC 20050114, Honorable Judge Daniel Proud

APPELLANTS' OPENING BRIEF

I.

INTRODUCTION

Plaintiffs in the underlying action sued several Defendants, including Defendant Blue Lake Housing Authority (hereafter "Respondent"). Respondent is a branch of an Indian tribe. Respondent brought a motion to quash service, claiming that, as an Indian tribe, it has immunity from state court jurisdiction. Respondent claims that it has not waived its sovereign immunity.

The trial court held that Respondent is immune from State court jurisdiction unless it waives its immunity, and herein the immunity is not waived. The trial court then granted Respondent's motion to quash service.

Plaintiffs ("Appellants") appeal on the ground that Respondent unambiguously and expressly waived its immunity pursuant to a real estate sales contract. Appellants submit that the language of the sales contract has been consistently held to effect a waiver of sovereign immunity by both the U.S. Supreme Court and the California Appellate Court. Further, the waiver is recognized by the California Legislature via the California Code of Civil Procedure.

Despite this unbroken line of consistent and uncontested authority, the trial court ruled to the contrary. Appellants submit that the trial court ruled in error when it failed to recognize that Respondent waived its sovereign immunity.

II.

ISSUES PRESENTED FOR APPEAL

1. Does the sales contract effect an express waiver of sovereign immunity?
2. Without regard to any waiver of sovereign immunity, should sovereign immunity be extended to the underlying activities which involve a non-tribal construction company constructing non-tribal housing for sale off of tribal land?

III.

STATEMENT OF THE CASE

A. Statement of the Facts

Appellants purchased a mass produced home from Defendant J&L (also known as J&L Properties). J&L subsequently transferred all of its assets and liabilities to Respondent. J&L then ceased to exist.

The sales contract for the subject home includes an arbitration provision. The arbitration provision states that any disputes must be arbitrated and that the arbitration award may be enforced in **any court having jurisdiction thereof**. A dispute did arise in this case and litigation ensued.[1]

The above phrase "**any court having jurisdiction thereof**" is critical to this appeal. The US Supreme Court and the California Appellate Court hold that this phrase is a clear and express waiver of

[1] For reasons which are not germane to this appeal, but which require some explanation at this moment, the dispute was not arbitrated. California law holds that mandatory arbitration provisions cannot be enforced if the underlying property damage claim includes a claim personal injury. No one contests this issue. Herein, the claims included both property damage and personal injury. The case proceeded directly to litigation in the Superior Court of California.

tribal sovereign immunity. Further, the courts hold that this phrase "**any court having jurisdiction thereof**", coupled with reference to [California] state law confers jurisdiction to the [California] courts.

Herein, the sales contract refers to California law and the California Code of Civil Procedure. In addition, the contract states that venue for any disputes will be in California.[2]

Chronology: Allegations in the Complaint include the following:

On or about mid-March 2003, Appellant RITA J. CARLS submitted an offer to purchase the Subject Property from "Developer Defendants". The term "Developer Defendants" is defined in the Complaint to include J&L Properties (paragraph 7 of the Complaint, Clerk's Transcript, page 3).

A final written agreement, i.e., the sales contract, was reached in or about late March 2003. (Paragraph 14 of the Complaint, Clerk's Transcript, page 5)

The subject property is located at 216 Knapp Court, El Dorado Hills, California. The Subject Property is located in, and as a part of, a district or subdivision known as JTS Communities Serrano in the city of El Dorado Hills, County of El Dorado (the "Subdivision"). The Subdivision is comprised of mass produced homes. (Paragraph 1 of the Complaint, Clerk's Transcript, page 2)

On or about March 31, 2003, Appellants moved into the Subject Property. (Paragraph 18 of the Complaint, Clerk's Transcript,

---

[2] The sales contract is attached as Exhibit A to the Complaint on file with the court, and is part of the Clerk's Transcript. The specific terms of the sales contract will be set forth, verbatim, throughout this Opening Brief where required, with references to the Clerk's Transcript.

page 6)

At the time when Appellants took possession of the Subject Property, the Subject Property had numerous undisclosed defects, including:

1. the building envelope permitted intrusion of water and/or moisture into its interior through exterior walls and windows;
2. the foundation, walls, siding, floors, roof, windows and other building structures were improperly designed and constructed;
3. the grading at the Subject Property caused excessive water to accumulate and pool around and under the structure, and into the home;
4. with respect to the exterior of the property, the land upon which the Subject Property was constructed has excessive moisture and drainage problems;
5. the land has inadequate irrigation causing the puddling of water against the foundation and causing standing water which evaporates into the structure and living area of the property;
6. there is cracked exterior stucco and paint, allowing water intrusion;
7. dry rot on exterior decks and framing members throughout the Subject Property;
8. leaking windows;
9. leaking roof;
10. insufficient attic ventilation;

11. leaking sill plates;

12. cracks in interior sheetrock with water intrusion, water stains, and mold being present within the living area of the Subject Property and contaminating the structure thereof.

None of these conditions were disclosed to Appellants at the time of purchase or when Appellants moved into the Subject Property. (Paragraph 19 of the Complaint, Clerk's Transcript, page 6)

In or about October 2003, Appellants first became aware of some of the numerous defective conditions listed above. Thereafter, certain repairs and inspections to the Subject Property were undertaken by Respondent's predecessor, J&L. (Paragraph 21 of the Complaint, Clerk's Transcript, page 7)

Appellants believed that the above referenced repairs had been accomplished in an appropriate fashion. In this regard, Appellants' belief was engendered not only by their observations of the repairs which appeared to solve many of the problems of which they complained, but also the representations of J&L that the repairs had, indeed, accomplished their stated goals. (Paragraph 22 of the Complaint, Clerk's Transcript, page 7)

In or about March 2004, an environmental specialist performed a mold and fungal inspection investigation at the Subject Property on behalf of Appellants. The results of the inspection and subsequent inspections revealed extremely high levels of toxic mold throughout the property. March 2004 was the first time Appellants knew or suspected that the Subject Property contained harmful, toxic molds. (Paragraph 23 of the Complaint, Clerk's Transcript, page 7)

On or about June 30, 2004, Respondent acquired all of the assets and liabilities of J&L. Thereafter, J&L ceased to exist. (Paragraph 6 of Respondents Declaration in support of its Motion to Quash, Clerk's Transcript, page 120)

B. The Proceedings Below

Appellants filed suit against Respondent on February 28, 2005. (Clerk's Transcript, page 1)

Respondent brought two Motions to Quash Service: one filed by Respondent in its own name, and the other filed by Respondent as *successor in interest* to J&L (Clerk's Transcript, pages 109, 160) In all other respects, the motions are the same. Respondent asserts in both motions that it has sovereign immunity from state court jurisdiction. (Clerk's Transcript, pages 109, 160)

Appellants opposed both motions. (Clerk's Transcript, pages 209, 217) In all relevant respects, the two Oppositions are the same. Appellants argued that sovereign immunity should not, and does not, extend to non-tribal activities occurring off of tribal land. In our present case, a non-tribal construction company (J&L Properties) conducted non-tribal activities (building private residences for sale) and did so off of tribal land (Serrano at El Dorado Hills). Sometime thereafter, J&L Properties sold all of its assets and liabilities to Respondent. (Clerk's Transcript, page 120)

The trial court's tentative ruling held that Respondent was a sovereign nation, with immunity, unless that immunity is waived. (Clerk's Transcript, page 238)

At the hearing for the two motions, Appellants orally addressed

the issue of waiver. Appellants referred to the arbitration clause in the sales contract and specifically referred to the phrase "**any court having jurisdiction thereof**". Appellant directed the trial court to the case of *Bodrell Smith v. Hopland Band of Pomo Indians* (2002) 95 Cal.App.4th 1.[3]

In the final formal ruling, the trial court referred to, but rejected the application of, the *Hopland* case, instead upholding the tentative ruling that Respondent did not waive its sovereign immunity. (Clerk's Transcript, page 249)

C. Standard of Review

De Novo Review – There is no conflicting evidence on any issue relevant to this appeal. As such, the ultimate conclusion to be drawn from the evidence is a question of law, for which the appropriate review is de novo. *Miller v. Ellis* (1961) 103 Cal.App.4th 373. The validity of the arbitration clause as an express waiver of sovereign immunity is a question of law. As for this question of law, an appellate court is not bound by the trial court's construction of the contract when based solely upon the terms of the instrument. *Metalclad Corp. v. Ventana Environmental Organizational Partnership* (2003) 109 Cal.App.4th 1705.

3

Appellant recognizes that the reporter's transcript is not part of the clerk's transcript. However, even if Appellant NEVER argued the waiver issue to the trial court, Appellant would not be barred from arguing the waiver issue on this appeal wherein it is only a question of law which is presented, and only on the facts in the record. Change of theory is permitted on appeal where question of law only is presented on facts appearing in the record. *In re Hunter's Estate* (1961) 194 Cal.App.2d 859

IV.

SUMMARY OF ARGUMENT

Appellants have two main arguments, either of which is sufficient to prevail on this appeal. The first argument is that Respondent expressly waived its sovereign immunity pursuant to the terms of the sales contract, i.e., the phrase "**any court having jurisdiction thereof**". The second argument is that *waiver* is irrelevant, as sovereign nation immunity simply does not apply to the underlying activities in this case as those activities are not on tribal land and are not tribal activities.

ARGUMENT

V.

THE SALES CONTRACT IS AN UNAMBIGUOUS AND EXPRESS WAIVER OF SOVEREIGN IMMUNITY

The subject sales contract includes an arbitration clause, which clause includes the phrase "**any court having jurisdiction thereof**". The specific clause states:

> 5. ARBITRATION OF DISPUTES: Buyer and Seller expressly agree to submit any and all disputes regarding liquidated damages, based on alleged default of buyer to arbitration in accordance with the procedures set forth below pertaining to liquidated damages. Judgment upon the award rendered by arbitration may be entered **in any court having jurisdiction thereof**. The parties shall have the right to discovery in accordance with Code of Civil Procedure § 1283.05.
>
> NOTICE: BY INITIALIZING IN THE SPACE BELOW YOU ARE AGREEING TO HAVE ANY DISPUTE ARISING OUT OF THE MATTERS INCLUDED IN THE ARBITRATION OF DISPUTES PROVISION DECIDED BY NEUTRAL ARBITRATION **AS PROVIDED BY CALIFORNIA LAW....**

(Clerk's Transcript, page 30; boldface font emphasis)

The language quoted above from Appellants'/Respondents' arbitration clause is virtually identical to the language quoted in *Bodrell Smith v. Hopland Band of Pomo Indians* (2002) 95 Cal.App.4th 1.

In *Hopland*, the arbitration clause stated:

"7.3 ...The foregoing agreement to arbitrate... shall be specifically enforceable **in any court having jurisdiction thereof.**" (*Id.* at 3)

"7.4 ...and judgment may be entered upon it in accordance with applicable law **in any court having jurisdiction thereof.**" (*Id.* at 3)

Hopland concluded that this language in the contract effected a clear and express waiver of tribal sovereign immunity. (*Hopland* at 12)

The analysis provided by *Hopland* begins at the bottom of page 5 of its holding, wherein *Hopland* cites to the U.S. Supreme Court, as follows:

Analysis

> While this appeal was pending, the United States Supreme Court, in *C & L Enterprises v. Potawatomi* Indian Tribe (2001) 532 U.S. 411 [121 S.Ct. 1589, 149 L.Ed.2d 623] (hereafter *C & L Enterprises*), resolved the split of authority that had emerged in the state and federal courts [FN5] on the question whether, by agreeing to an arbitration clause, and to enforcement of an arbitral award, " **'in any court having jurisdiction thereof,'** " a tribe has waived its sovereign immunity from suit.
>
> The court concluded that agreement to such contract language constitutes an explicit waiver, of tribal sovereign immunity. *C & L Enterprises*, at p. 421 [121 S.Ct. at pp. 1595-1596].) (1a) As we shall explain, the contract in this case is indistinguishable from the contract in *C & L Enterprises*, and the only reasonable interpretation of its terms is that it clearly, and explicitly waives tribal sovereign immunity.

The contract between Appellants and Respondent is indistinguishable from the contract in *C&L Enterprises* and *Hopland*. Therefore, and to quote the U.S. Supreme Court, supra, the only reasonable interpretation is that it clearly, and explicitly, waives tribal sovereign immunity.

The arbitration provision confers jurisdiction to the California courts. As *Hopland* continues at pg. 6, by stating that "...California has adopted a provision of the Uniform Arbitration Act which provides that the making of an agreement... providing for arbitration in this state, **confers jurisdiction** on the court to enforce the agreement under this act and to enter judgment on an award hereunder, and which further defines court as any court of competent jurisdiction of this state." (emphasis added)

In addition to the California Appellate Court and the U.S. Supreme Court, Appellants also note that the California legislature has consistently and expressly stated that the making of the arbitration agreement is a consent to state court jurisdiction. CCP § 1293 states:

> The making of an agreement in this State providing for arbitration **to be had within this State** shall be deemed a consent of the parties thereto to the jurisdiction of the courts of this State to enforce such agreement by the making of any orders provided for in this title and by entering of judgment on an award under the agreement. (emphasis added)

Herein the sales contract states that the arbitration is **to be had within this State**, and in particular the contract language states:

> (ii) The venue of the arbitration proceeding shall be in

> the county in which the properties are located unless the parties agree to a different location. (Clerk's Transcript, page 30)

The subject property is in the County of El Dorado, State of California (Paragraph 1 of the Complaint, Clerk's Transcript, page 2), and there is no evidence that the parties agreed to a different location.

Respondent is bound by the sales contract, including its waiver of immunity, as Respondent is the successor in interest to J&L, the signor on the sales contract. Generally, the purchaser of a corporation's assets is not a purchaser of the corporation's liabilities. But the rule is otherwise when the purchaser expressly purchases **both** the assets and the liabilities of the predecessor. Herein, Respondent states that it acquired **both** the assets and liabilities of predecessor J&L. (Paragraph 6 of Respondents Declaration in support of its Motion to Quash, Clerk's Transcript, page 120) In *Fisher v. Allis-Chalmers Corp. Product Liability Trust* (2002) 95 Cal.App.4th 1182, at 1188, the court held:

> B. Potential Successor in Interest Liability
>
> (1) The general rule of successor nonliability provides that where a corporation purchases, or otherwise acquires by transfer, the assets of another corporation, the acquiring corporation does not assume the selling corporation's debts and liabilities. (*Ray v. Alad Corp.* (1977) 19 Cal.3d 22, 28 [136 Cal.Rptr. 574, 560 P.2d 3] (*Ray v. Alad*).) This general rule does not apply if (1) there is an express or implied agreement of assumption.

See *SCM Corp. v. Berkel, Inc.* (1977) 73 Cal.App.3d 49, 56-59 (successor corporation's assumption of all liabilities extended even to unknown tort claims); compare *Franklin v. USX Corp.* (2001) 87 Cal.App.4th 615, 621-623 (contract provision expressly disclaiming assumption of liabilities was unambiguous and precluded

consideration of contrary extrinsic evidence).

After Respondent purchased both the assets and liabilities of J&L, J&L ceased to exist. (Paragraph 6 of Respondents Declaration in support of its Motion to Quash, Clerk's Transcript, page 120) *If one corporation has merged into another, the surviving corporation is subject to all liabilities of the merged or now-defunct corporation.* "All rights of creditors and all liens upon the property of each of the constituent corporations shall be preserved unimpaired... and surviving corporation... shall be subject to all debts and liabilities [of the merged corporation] ... as if the surviving corporation had itself incurred them." [Corps. Code § 1107; see *Petrini v. Mohasco Corp.* (1998) 61 Cal.App.4th 1091, 1096]

VI.

SOVEREIGN IMMUNITY DOES NOT APPLY TO THIS CASE WHEREIN THE SUBJECT ACTS ARE NOT RELATED TO TRIBAL FUNCTIONS

As argued to the trial court, there is no reason to extend sovereign immunity to the underlying litigation. The underlying litigation did not arise from any tribal act or any tribal activity. California has addressed this question, as have the courts in Arizona and New Mexico. All consistently hold that tribal immunity does not extend to non-tribal activity.

California: *Trudgeon vs. Fantasy Springs Casino* (1999) 71 Cal.App.4th 632. *Trudgeon* upheld immunity to the tribe for an injury which occurred at a tribal bingo hall which was constructed by the tribe and was located on tribe property. The court held that the

bingo hall "is a for-profit corporation formed by the Tribe under tribal law to conduct bingo gaming enterprises on tribal land." (*Trudgeon* at 636) The court also pointed out that the injury occurred on tribal land as the plaintiff was walking to her car which was parked in the tribal parking lot. In stark contrast, Appellants' case deals with a non-tribe construction company (J&L) building non-tribe housing (Appellants' home) which is on non-tribal land (JTS Communities Serrano in the city of El Dorado Hills). Further, Appellants' injury was not on tribal land. While *Trudgeon* found a significant connection between the bingo hall and the tribe, no such connection exists between Appellants and Respondent.

The true question before this court is whether tribal immunity should extend to a construction company which is not related to the function and purpose of the tribe. As *Trudgeon* explained, at 638:

> However, most courts have rejected, implicitly if not explicitly, the suggestion that courts should "confer tribal immunity on every entity established by an Indian tribe, no matter what its purposes or activities might have been." (*Dixon v. Picopa Const. Co.* (1989) 160 Ariz. 251, 255, fn. 7 [772 P.2d 1104, 1108].)
>
> These decisions hold that whether tribal immunity should be extended to a tribal business entity should depend on the degree to which the tribe and entity are related in terms of such factors as purpose and organizational structure. Applying that standard, courts have reached various conclusions on the immunity issue, depending on the facts. (See, e.g., *Gavle v. Little Six, Inc.* (Minn. 1996) 555 N.W.2d 284;
>
> *Padilla v. Pueblo of Acoma* (1988) 107 N.M. 174, 179-180 [754 P.2d 845, 850-851] [unincorporated tribal construction firm not immune from liability for breach of contract arising from off-reservation activities];
>
> *Dixon v. Picopa Const. Co., supra*, 160 Ariz. 251, 256-259 [772 P.2d 1104, 1109-1112] [construction company incorporated by tribe not immune for off-reservation

tort].)

Although *Trudgeon's* facts are distinguishable (on-site bingo hall vs. Appellant's off-site private residence), it does provide us with some authorities which are relevant to our fact pattern. Namely, *Padilla* and *Dixon*, both cited supra.

New Mexico: *Padilla* – This is a Supreme Court decision from the state of New Mexico. This case involved a tribe doing business as a construction company off of tribal land. The question was whether the tribe, doing business as a construction company, was immune from state court jurisdiction. *Padilla* held that the state court did have jurisdiction over the tribe, as the tribe was engaged in an activity off of the reservation. (179-180) In our present case, the Plaintiffs' home was constructed off of the reservation.

Padilla, at 179, explained that the real question to be decided is:

> QUESTION: "[W]hether business conduct engaged in by a sovereign Indian tribe off of its reservation is clothed with the immunity which has been the subject of the foregoing discussion."
>
> ANSWER: "We believe not. We know of no controlling law that divests the New Mexico courts of jurisdiction over Indian tribes for off-reservation business conduct."

In our present appeal, Respondent is seeking to be clothed with the very same immunity as that sought by Padilla. But as *Padilla* held: We Believe Not!

Arizona : *Dixon* – The second case cited within *Trudgeon* is the case of *Dixon* (supra). This is a Supreme Court decision from Arizona. This case is an automobile accident involving a truck

owned by a construction company (Picopa), which in turn was owned by a tribe (Indian Community). The accident occurred off of the reservation.

Defendant Picopa argued that it, and its vehicles, are immune from state court jurisdiction because it is a subordinate economic organization, and therefore cloaked with tribal immunity. The *Dixon* court held that the construction company was not a subordinate economic organization, and therefore not protected by the immunity.

The "Subordinate Economic Organization" doctrine allows Indian tribes to conduct their economic affairs through subordinate governmental agencies without fear of unintended waiver of sovereign immunity; however, this doctrine was never meant to protect entities conducting non-tribal business. As *Dixon* explained, at 1109:

> In short, the subordinate economic organization doctrine allows Indian tribes to conduct their economic affairs through subordinate governmental agencies without fear of an unintended waiver of immunity. Although this court does not favor bestowing immunities from tort liability for negligence on preferred classes of defendants, [citations] substantial policy considerations militate in favor of recognizing immunity when a tribe conducts tribal business through a tribal economic entity. However, the doctrine was never meant to protect entities conducting non-tribal business.
>
> We do not, at this time, attempt to define "tribal business" or distinguish it from "non-tribal business." Suffice it to say that for all this record shows, Picopa's off-reservation activities at the time of the accident were independent of any activity connected with tribal self-government or the promotion of tribal interests.

and at 1110:

> Most importantly, [this construction company] was not formed to aid the Community in carrying out tribal governmental functions. So far as its articles or any

> extrinsic evidence show, Picopa was simply a for-profit corporation involved in construction projects. The present record offers no evidence that Picopa had limited itself to tribal projects.

and at 1110, fn 13:

> Indeed, even if Picopa, as a corporate non-subordinate economic organization, had limited itself exclusively to on-reservation projects, it still may have been subject to Arizona's jurisdiction for this off-reservation tort.

There is no discernable difference between *Padilla*'s and *Dixon*'s non-tribal off-site torts and the non-tribal off-site tort of Respondent. This court should therefore hold that tribal immunity does not apply to this case.

VIII.

CONCLUSION

Sovereign immunity does not apply to the facts of this case, wherein the underlying activity had nothing to do with tribal activities. EVEN IF immunity were applicable to the underlying activities, then any such immunity was waived by the express terms of the sales contract. Respondent, as successor in interest having acquired the assets and the liabilities of its predecessor, now faces one of those liabilities. This appellate court should overturn the trial court's granting of the two motions to quash service and allow this litigation to continue in the California State Court.

DATED: August 22, 2006

Respectfully submitted,

MILLER LAW, INC.

By: _____
TIMOTHY J. O'CONNOR
Attorney for Appellants

CERTIFICATE OF WORD COUNT
(Cal. Rules of Court, rule 14(c)(1))

The text of this brief consists of 4,054 words as counted by the Corel WordPerfect version 9 word-processing program used to generate the brief.

DATE: August 22, 2006

By: _____

TIMOTHY J. O'CONNOR
Attorney for Appellants

Court of Appeal of the State of California, Third Appellate District
CARLS v. BLUE LAKE HOUSING AUTHORITY; Case No. C052660

PROOF OF SERVICE

CODE OF CIVIL PROCEDURE
SECTIONS 1013, SUBDIVISION (a) AND 2015.5

I am a citizen of the United States and am employed in the County of Sacramento. I am over the age of 18 years and not a party to the within cause; my business address is Miller Law, Inc., P.O. Box 700, Folsom, California 95763-0700.

I am familiar with the business practice at my place of business for collection and processing of documents for mailing with the United States Postal Service. Documents so collected and processed, with postage fully prepaid, will be deposited with the United States Postal Service that same day in the ordinary course of business.

On the below date, I served the within **APPELLANTS' OPENING BRIEF** on the parties in this cause, by placing for collection, process and deposit a true copy thereof enclosed in a sealed envelope by:

☒ United States mail by placing such envelope(s) in the designated area for collection and process of outgoing mail in accordance with this office's practice, whereby the mail is deposited in a United States mailbox, postage fully paid thereon, in the City of Folsom, California, that same day in the ordinary course of business.

☐ Air Express Courier:

☐ Express Mail

☐ Personal Service

to the parties addressed as follows:

ATTORNEYS FOR JTS COMMUNITIES, INC.
Jack A. Klauschie, Jr., Esq.
Matheny Sears Linkert & Long LLP
P.O. Box 13711
Sacramento, CA 95853-4711
(via U.S. Mail)

OFFICE OF THE CLERK
Supreme Court of California
350 McAllister Street
San Francisco, CA 94102-4783
(415) 865-7000
(via U.S. Mail)

ATTORNEYS FOR BLUE LAKE HOUSING AUTHORITY; J&L PROPERTIES
Michael J. Levangie, Esq.
Prout & LeVangie
2150 River Plaza Drive, Suite 420
Sacramento, CA 95833
(via U.S. Mail)

OFFICE OF THE CLERK
El Dorado County Superior Court
3321 Cameron Park Drive
Cameron Park, CA 95682
(530) 621-7685
(via U.S. Mail)

OFFICE OF THE CLERK
Court Of Appeal, Third Appellate District
State Of California
Library and Courts Annex
900 N Street, Room 400
Sacramento, CA 95814-4869
(916) 654-0209
(via Express Mail)

Miller Law, Inc.
Post Office Box 700
Folsom, California 95763-0700
(916) 351-1200

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 August 22, 2006, at Folsom, California.

David Graulich

DAVID GRAULICH

Attorney at Law, APC.
Post Office Box 700
Folsom, California 95763-0700
(916) 351-1200