

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS

SUPERIOR COURT

BEFORE THE COURT APPOINTED REFEREE  
IN THE LIQUIDATION OF THE HOME INSURANCE COMPANY  
DISPUTED CLAIM DOCKET

In Re Liquidator Number:	2009-HICIL-44
Proof of Claim Number:	CLMN711647
Claimant's Name:	Adebowale O. Osijo
Claimant's Number:	CDV-2007-745
Policy or Contract Number:	GL-1692617
Insureds' Names:	Housing Resources Management, Inc., Acorn I, Ltd., & Acorn II, Ltd.
Date of Loss:	October 7, 1988

EXHIBITS TO CLAIMANT'S REPLY TO LIQUIDATOR'S SECTION 15 SUBMISSION REGARDING ISSUE AND  
CLAIM PRECLUSION PER ORDER OF JULY 21, 2009

Documents

Exhibit Numbers

Transcript of Hearing, Superior Court of California, Alameda County..... dated November 22, 1991.	1.
Declaration of Georgia A. Michell.....	2
Declaration of Charles S. Baker.....	3
Declaration of David R. Pinelli.....	4
Draft of Declaration of David R. Pinelli.....	5
Draft of Memorandum of Points and Authorities by David Pinelli.....	6

# EXHIBIT 1

IN THE DISTRICT COURT OF APPEALS OF THE STATE OF CALIFORNIA  
IN AND FOR THE FIRST APPELLATE DISTRICT

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IN THE MATTER OF:

WALE O. OSISO,

PLAINTIFF/APPELLANT

VS.

CASE NO. 6498B1-5

HOUSING RESOURCES MANAGEMENT,  
INC., ACRON I., LTD., ACRON II.,  
LTD., AND PROSTAFF SECURITY  
SERVICES, INC.,

DEFENDANTS/RESPONDENTS.

REPORTER'S TRANSCRIPT ON APPEAL

FROM THE JUDGMENT OF THE SUPERIOR COURT

OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ALAMEDA

BEFORE THE HONORABLE JOHN SUTTER, JUDGE

COPY

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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
IN AND FOR THE COUNTY OF ALAMEDA  
BEFORE THE HONORABLE JOHN SUTTER  
DEPARTMENT NO. 18

---000---

IN THE MATTER OF:

WALE O. OSIJO,

PLAINTIFF/APPELLANT,

VS.

CASE NO. 649891-5

HOUSING RESOURCES MANAGEMENT,  
INC., ACORN I., LTD., ACORN II.,  
LTD., AND PROSTAFF SECURITY  
SERVICES, INC.,

DEFENDANTS/RESPONDENTS.

REPORTER'S TRANSCRIPT OF PROCEEDINGS

SEPTEMBER 5, 1991

1221 OAK STREET, OAKLAND, CALIFORNIA  
(ADMINISTRATION BUILDING)

APPEARANCES: (SEE INDEX)

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FOR THE PLAINTIFF/APPELLANT:

WALE O. OSIJO  
4516 E. BELMONT AVENUE  
FRESNO, CA 93702

GEORGIA ANN MICHELL  
ATTORNEY AT LAW

FOR THE DEFENDANTS/RESPONDENTS:

DAVID PINELLI  
ATTORNEY AT LAW  
P.O. BOX 119  
OAKLAND, CA 94604

DAVID A. KAISER  
ATTORNEY AT LAW  
400 OYSTER POINT BOULEVARD  
WING C, SUITE 504  
S. SAN FRANCISCO, CA 94180

1 SEPTEMBER 5, 1991; MORNING SESSION

2 ---000---

3 P R O C E E D I N G S

4 THE COURT: ALL RIGHT. LINE 50, OSIJO VERSUS THE  
5 CITY OF OAKLAND.

6 MR. PINELLI: GOOD MORNING. DAVID PINELLI ON  
7 BEHALF OF THE MOVING DEFENDANTS; THAT WOULD BE HOUSING  
8 RESOURCES MANAGEMENT, FILBERT ONE AND FILBERT TWO.

9 MS. MICHELL: GEORGIA MICHELL APPEARING FOR  
10 PLAINTIFF WITH MR. WALE OSIJO.

11 MR. OSIJO: I'M WITH MYSELF.

12 MR. KAISER: DAVID KAISER FOR INTERVENOR  
13 DEPARTMENT OF INVESTIGATOR RELATIONS.

14 THE COURT: WELL, AS I UNDERSTAND IT, WE HAD A  
15 SETTLEMENT HERE AND THEN MR. OSIJO CHANGED HIS MIND.

16 MR. OSIJO: THAT'S CORRECT, YOUR HONOR.

17 MR. PINELLI: YOUR HONOR, I HAVE A COPY OF THE --  
18 OF THE ORIGINAL SETTLEMENT AGREEMENT WHICH I BROUGHT WITH ME.  
19 I WAS SOMEWHAT HESITANT TO FILE IT WITH THE MOVING PAPERS. I  
20 THINK IT PROBABLY SHOULD BE PART OF --

21 THE COURT: SHOW IT TO COUNSEL AND IF THERE IS NO  
22 OBJECTION, I'LL TAKE A LOOK AT IT.

23 MR. OSIJO: I HAVE SEEN IT, SIR.

24 THE COURT: IS IT SIGNED BY MR. OSIJO?

25 MS. MICHELL: YES, IT IS, YOUR HONOR. IT'S ALSO  
26 SIGNED BY ALL OF US.

27 MR. PINELLI: AND JUDGE CAMPALAGO.

28 THE COURT: WELL, MR. OSIJO, PERHAPS I SHOULD

1 EXPLAIN THAT COURTS ENCOURAGE SETTLEMENTS AND WHEN PARTIES  
2 ENTER INTO SETTLEMENTS, IT HAS CERTAIN EFFECTS. IT AFFECTS  
3 ALL THE PARTIES, THE COURT SYSTEM. WE -- PEOPLE MAKE  
4 COMMITMENTS BASED ON A SETTLEMENT. A SETTLEMENT IS A CONTRACT  
5 AND THE LAW PROVIDES THAT THAT CONTRACT CAN BE ENFORCED BY A  
6 MOTION LIKE THIS. APPARENTLY YOU UNDERSTOOD IT. YOU AGREED  
7 TO IT.

8 MR. OSIJO: NO, NO, HUH-UH. THAT'S THE REASON I'M  
9 HERE THIS MORNING. I DID NOT VOLUNTEER FOR IT AND I KNEW  
10 NOTHING ABOUT IT. NOR WAS I INFORMED OF THAT SETTLEMENT  
11 CONFERENCE BY MY ATTORNEY. I KNEW NOTHING ABOUT IT.

12 AND WHEN I RECEIVED THESE ON TUESDAY, JULY 23RD, IT  
13 SAYS VOLUNTARY SETTLEMENT CONFERENCE. I IMMEDIATELY WROTE MY  
14 ATTORNEY, I HAVE AN EXHIBIT B THERE, TO LET HER KNOW I DID NOT  
15 VOLUNTEER FOR THIS. AND I WAS NOT AWARE OF HER VOLUNTEERED  
16 ANY SUCH THING ON MY BEHALF. AND IF I KNEW, I WOULD NOT HAVE  
17 GONE TO SAN FRANCISCO BECAUSE I WOULD NOT HAVE AGREED WITH IT.  
18 THAT'S COMPROMISING MY OWN POSITION, I WOULDN'T DO THAT.

19 MOREOVER, ON JUNE 16TH THIS SAME YEAR, SHE HAS CALLED  
20 ME EARLIER TO BRING IN THESE SAME \$250,000 AND I SAID NO TO  
21 THAT. SO NOW THE NEXT ALTERNATIVE IS TO LOOK FOR A  
22 CONFERENCE. I KNEW NOTHING ABOUT IT. I WAS TOLD TO GO THERE.  
23 I WAS TO BE THERE. WHAT'S THE PENALTY IF I DON'T DO THAT?

24 NOW, AFTER ALL THAT'S SAID AND DONE, THERE IS A COPY OF  
25 THE CONTRACT. LET ME GO OUT AND READ IT AND UNDERSTAND IT, AT  
26 LEAST GIVE ME 24 HOURS. THEY SAID NO. YOU SEEN IT THERE OR  
27 YOU LEAVE IT HERE OR YOU DON'T SIGN THIS AND GO.

28 EVERYONE OF THEM, WITH EXCLUSION OF MR. KAISER --

1 MISS MICHELL, MR. PINELLI, MR. CAMPALAGO AND THE INSURANCE  
 2 MAN -- THEY WERE ALL ON ME. I DID NOT HAVE EVEN 20 MINUTES TO  
 3 MYSELF TO COMPREHEND, UNDERSTAND WHAT'S GOING ON. AND AT  
 4 LEAST LET ME KNOW. WHEN I HAVE FOUR PEOPLE I THINK THAT IS  
 5 GOOD, EVERYONE GOING IN THE SAME DIRECTION.

6 AND ALL THE WHILE I STILL HAD THE IMPRESSION THAT THE  
 7 CONFERENCE WAS REQUESTED BY MR. PINELLI AND HIS CLIENT. THAT  
 8 WAS MY IMPRESSION. IT WAS THE REASON I HAD IT IN WRITING AND  
 9 I FAXED IT SO THAT THEY WOULDN'T SAY IT WAS NOT RECEIVED OR  
 10 SOMETHING WAS WRONG. I HAD IT DONE IN WRITING AND LET THEM  
 11 KNOW. I DID NOT REQUEST THIS. I AM NOT AWARE OF IT BEING  
 12 REQUESTED ON MY BEHALF. IF YOU GIVE ME ONE DAY TO STUDY ALL  
 13 THIS AND THE FOLLOWING DAY I HAVE TO BE IN SAN FRANCISCO. I  
 14 LIVE IN FRESNO. IF THEY HAD SENT A COPY OF THIS THING TO ME  
 15 THAT JUDGMENT, IF I REALLY WANT TO SIGN IT, IT COULD HAVE BEEN  
 16 MAILED TO ME THERE; IF I REALLY WANTED TO AGREE WITH IT.

17 THE COURT: WELL, DID YOU SIGN IT?

18 MR. OSIJO: I DID SIGN IT UNDER PRESSURE.

19 THE COURT: DID YOU UNDERSTAND IT?

20 MR. OSIJO: NO, SIR.

21 THE COURT: DID YOU READ IT?

22 MR. OSIJO: I READ IT. I DIDN'T UNDERSTAND IT.

23 EVERYBODY -- I WAS CONFUSED.

24 THE COURT: IT'S A SETTLEMENT OF \$250,000. DID  
 25 YOU UNDERSTAND WHAT THAT MEANT?

26 MR. OSIJO: SHE HAS ALREADY SPOKEN TO ME ABOUT  
 27 \$250,000 ON JUNE 16. I SAID NO TO IT. AND WHEN THE PARTY  
 28 BROUGHT IT UP AGAIN, SHE, MR. PINELLI, MR. CAMPALAGO AND THE



1 INSURANCE MAN, THE INSURANCE MAN TOLD ME THAT HE WAS THE ONE  
2 THAT REQUESTED THE CONFERENCE AND PAID FOR IT.

3 THE COURT: WHAT IS YOUR OBJECTION TO THE  
4 SETTLEMENT?

5 MR. OSIJO: MY OBJECTION: I DID NOT AGREE WITH  
6 THE SETTLEMENT FIGURE. I WOULD NOT HAVE SIGNED THAT  
7 SETTLEMENT IF I WAS TOLD, OR IF I WAS GIVEN THE OPPORTUNITY TO  
8 GO ON MY OWN AT LEAST 24 HOURS AND COMPREHEND. I KNOW WHAT'S  
9 GOING ON. 24 HOURS I WOULD REFUSE IT. EVEN IF I STEP OUT AND  
10 BE MYSELF WITH IT, I WOULD HAVE REFUSED IT AND THAT'S WHAT I  
11 DID THE FOLLOWING MORNING AT 9:00 O'CLOCK. I CALLED TO LET  
12 THEM ALL KNOW I AM REFUSING IT.

13 MR. PINELLI: YOUR HONOR --

14 THE COURT: LET ME CLARIFY ONE THING. DID YOU  
15 READ THIS BEFORE YOU SIGNED IT?

16 MR. OSIJO: YOUR HONOR, I READ IT LIKE I TOLD YOU  
17 EARLIER. I HAVE FOUR PEOPLE TAKING TURNS ON ME CONFUSING ME.  
18 I READ IT. I COULD NOT COMPREHEND IT AND I WAS NOT GIVEN TIME  
19 TO BE ON MY OWN TO UNDERSTAND WHAT'S GOING ON.

20 THE COURT: IS YOUR OBJECTION TO THE AMOUNT OR THE  
21 FACT THAT YOU WANTED TO HAVE A TRIAL AND TELL YOUR STORY TO  
22 THE JURY?

23 MR. OSIJO: THANK YOU. GOOD QUESTION. TO THE  
24 AMOUNT.

25 THE COURT: ALL RIGHT. WELL, LET'S HEAR FROM -- I  
26 DON'T KNOW WHETHER PLAINTIFF'S COUNSEL WANTS TO SAY ANYTHING.  
27 DO YOU WANT TO COMMENT?

28 MR. PINELLI: YOUR HONOR, LET ME -- I THINK I

1 SHOULD SPEAK FIRST. FIRST OF ALL, THE CONFERENCE ITSELF WAS  
2 PAID BY MY PRINCIPAL. HOWEVER, THE REQUESTING FOR THE  
3 CONFERENCE EMANATED FROM MISS MICHELL'S OFFICE. WITH  
4 REFERENCE TO THAT \$250,000 FIGURE GIVEN BACK IN JUNE, THAT'S  
5 NOT TRUE. I NEVER HAD THAT KIND OF AUTHORITY BACK IN JUNE.  
6 THAT'S NUMBER ONE.

7 NUMBER TWO, I THINK THE COURT SHOULD BE AWARE THAT  
8 MR. OSIJO IS AN EXPERIENCED LITIGATOR. HE'S REPRESENTED  
9 HIMSELF IN SEVERAL LAWSUITS. HE REPRESENTED HIMSELF IN A  
10 WRONGFUL TERMINATION LAWSUIT WHEREIN HE SETTLED THE CASE BY  
11 HIMSELF. HE WAS A PRO PER IN THIS CASE. I THINK YOU CAN SEE  
12 BY THE SIZE OF THE COURT FILE, HE BROUGHT A NUMBER OF  
13 DIFFERENT MOTIONS BEFORE DEPARTMENT 19 AND BEFORE JUDGE  
14 AGRETELIS.

15 MORE IMPORTANTLY, HOWEVER, IS THAT HE HAD CONVERSATIONS  
16 WITH MISS MICHELL DURING THE ENTIRE COURSE OF THAT DAY. WE  
17 SPENT THE ENTIRE DAY IN FRONT OF JUDGE CAMPALAGO. WHEN THE  
18 TERMS WERE AGREED TO THE SETTLEMENT, AN AGREEMENT WAS DRAFTED  
19 UP. MR. OSIJO READ THAT AGREEMENT AND JUDGE CAMPALAGO WENT  
20 THROUGH IT WITH HIM POINT BY POINT.

21 THE COURT: WAS THERE A RECORD?

22 MR. OSIJO: NO.

23 MR. PINELLI: NO. THAT WAS REACHED, YOUR HONOR,  
24 AT ABOUT 7:30 AT NIGHT. AND JUDGE CAMPALAGO -- I KNOW THIS IS  
25 HEARSAY, BUT WE DID REQUEST JUDGE CAMPALAGO TO GIVE US A  
26 DECLARATION TO SUBSTANTIATE WHAT I JUST REPRESENTED TO THE  
27 COURT. HE HAD A DECLARATION TYPED UP AND THEN WAS INFORMED BY  
28 HIS SECRETARY THAT J.A.M.S. POLICY IS NOT TO ALLOW THEIR

1 JUDGES TO GIVE DECLARATIONS. JUDGE CAMPALAGO CONFIRMED THAT  
2 WITH JUDGE FANNON AND THAT'S WHY THERE'S NO DECLARATION FROM  
3 JUDGE CAMPALAGO.

4 BUT FOR MR. OSIJO TO STAND BEFORE THIS COURT TODAY AND  
5 TELL THE COURT THAT HE DIDN'T UNDERSTAND IN ANY OF THE  
6 PROVISIONS IN THIS ENFORCEMENT DURING THIS AGREEMENT, IS JUST  
7 NOT TRUE.

8 MR. OSIJO: THAT'S NOT MY POINT, MR. PINELLI. CAN  
9 I RESPOND TO THAT?

10 THE COURT: WE'LL HEAR FROM OTHERS AND YOU CAN  
11 RESPOND FROM -- TO ALL OF THEM.

12 MR. PINELLI: MR. OSIJO HAS INDICATED THROUGHOUT  
13 THE LAWSUIT THAT THE MONEY DIDN'T MATTER TO HIM AT DIFFERENT  
14 POINTS AND WE'D ASKED HIM, "WHAT DOES MATTER TO YOU?" "WELL,  
15 I WANT TO TELL MY STORY." WELL, HE ALSO HAD AN OPPORTUNITY TO  
16 DO THAT IN FRONT OF JUDGE CAMPALAGO AND THE REST OF US. WE  
17 WEREN'T POUNDING ON MR. OSIJO. IN FACT, THE PRICE THAT WAS  
18 PAID IS AN EXTREMELY FAIR PRICE AND WE ALL AGREED, INCLUDING  
19 MR. OSIJO AT DINNER THAT NIGHT, THAT THIS WAS THE BEST THING  
20 FOR HIM TO GET THIS LAWSUIT BEHIND HIM.

21 AT MR. OSIJO'S REQUEST HE INVITED ME OUT TO DINNER  
22 ALONG WITH HIS ATTORNEY AND MR. KAISER. WE DID GO OUT TO  
23 DINNER. MR. OSIJO WAS INCREDIBLY HAPPY WITH THE RESULT AND  
24 NUMEROUS TIMES EXPRESSED HIS GRATITUDE IN GETTING THIS  
25 LITIGATION BEHIND HIM. AND I WAS SHOCKED THE NEXT DAY WHEN I  
26 WAS INFORMED BY MISS MICHELL THAT HE DID NOT WANT TO GO  
27 THROUGH WITH THE AGREEMENT. IT JUST --

28 THE COURT: OKAY. YOU'VE MADE THAT POINT IN YOUR

1 PAPERS. ANYTHING YOU WANT TO ADD, MR. KAISER?

2 MR. KAISER: WELL, I WOULD ADD TWO POINTS. THE  
3 FIRST, I TAKE EXCEPTION TO ITEM 90, MR. OSIJO'S DECLARATION.  
4 MR. OSIJO NEEDS THIS COURT TO BELIEVE THAT SOMEHOW THE  
5 DEPARTMENT OF INDUSTRIAL RELATIONS WENT BACK ON THEIR PROMISE  
6 TO WITHDRAW THE OBJECTION TO HIS PETITION TO THE WORKERS' COMP  
7 BENEFITS. IN ORDER FOR THAT TO BE TRUE, THE WORKERS' COMP  
8 COMPUTATION HEARING WOULD HAVE HAD TO OCCUR AFTER THE JULY  
9 25TH J.A.M.S. TALK. HOWEVER, IT OCCURRED THREE WEEKS BEFORE  
10 AND THE DECISION, AS HE POINTS OUT IN HIS DECLARATION, ISSUED  
11 THE VERY DAY WE WERE THERE, JULY 25TH.

12 IT WOULD HAVE BEEN VERY DIFFICULT TO WITHDRAW AN  
13 OBJECTION FROM A DECISION THAT WAS BEING MAILED THAT VERY DAY.  
14 BUT NONETHELESS, WE DID INTEND TO WITHDRAW OUR OBJECTION.  
15 HOWEVER, TWO DAYS AFTER JULY 25TH, MR. OSIJO CALLED OUR OFFICE  
16 AND SAID ESSENTIALLY TO LEAVE HIS COMPENSATION BENEFITS AS  
17 THEY WERE AND THAT'S WHAT WE DID.

18 NOW, APPARENTLY HE'S CHANGED HIS MIND AGAIN ON THIS AND  
19 IF SO, WE'D BE HAPPY TO WITHDRAW OUR OBJECTION AT THIS POINT.  
20 IT DOES NOT MATTER TO US ONE WAY OR THE OTHER. THE JUDGE  
21 RULED --

22 THE COURT: WHAT DOESN'T MATTER TO YOU? WHAT'S  
23 SETTLED OR NOT?

24 MR. KAISER: WHETHER THE WORKERS' COMPENSATION  
25 BENEFITS ARE COMMUTED OR NOT DOES NOT MATTER TO US. WE WILL  
26 WITHDRAW THE OBJECTION AS I PROMISED ALL ALONG. HE HAS MADE  
27 IT APPEAR THAT WE'VE GONE BACK ON THAT PROMISE. I DO OBJECT  
28 TO THE CHARACTERIZATION.

1 THE SECOND POINT, I WOULD CONCUR WITH MR. PINELLI,  
2 MR. OSIJO REPEATEDLY HAD SAID AT DINNER HOW PLEASED HE WAS  
3 WITH MISS MICHELL'S REPRESENTATION AND THE SETTLEMENT AND I  
4 DON'T -- HE REPEATEDLY SAID THAT. I DON'T KNOW WHAT ELSE TO  
5 SAY.

6 THE COURT: MISS MICHELL, ANYTHING YOU WANT TO  
7 SAY?

8 MS. MICHELL: ONE THING MR. KAISER DIDN'T ADD  
9 JUDGE HAM, THE APPEALS BOARD JUDGE, HIS DECISION TO NOT  
10 COMMUTE MR. OSIJO'S BENEFITS WAS WITHOUT PREJUDICE AND HE EVEN  
11 SAID IN HIS LENGTHY ORDER THAT MR. OSIJO IS FREE TO BRING THE  
12 MOTION AGAIN WHEN HE CAN MAKE A PROPER SHOWING OF NEED  
13 NECESSARY FOR THE COMMUTATION.

14 ADDITIONALLY, YOUR HONOR, WHICH NO ONE HAS MENTIONED,  
15 IS WHEN MR. OSIJO CAME INTO THE ROOM WITH ALL OF US ATTORNEYS  
16 WHEN WE BASICALLY HAMMERED OUT THE AGREEMENT THAT I HAD BEEN  
17 SHUTTLING DOWN THE HALL AND TALKING TO MR. OSIJO. BUT MR.  
18 OSIJO READ THE DOCUMENT AND THEN SAID THAT HE DIDN'T AGREE  
19 WITH IT.

20 THE COURT: HE DIDN'T?

21 MS. MICHELL: HE DIDN'T AGREE WITH IT BECAUSE HE  
22 WANTED \$300,000 AND THIS WAS DEBATED AND THEN IT WAS MADE  
23 PRETTY CLEAR TO HIM THERE WASN'T GOING TO BE \$300,000 AND HE  
24 AGREED TO THE \$250,000 AND THEN HE SIGNED IT. AND I MEAN, WE  
25 HAD A VERY LENGTHY DISCUSSION AND JUDGE CAMPALAGO WENT THROUGH  
26 POINT BY POINT WHAT WAS HAPPENING TO MR. OSIJO IN FRONT OF ALL  
27 OF US AND WE ALL CHIMED IN.

28 THE OTHER THING IS, THAT THE JUNE 16TH DISCUSSION I HAD

1 WITH MR. OSIJO WAS NOT AN OFFER FROM MR. PINELLI, IT WAS ME  
2 CALLING THE CLIENT SAYING WE'RE HAVING THESE SETTLEMENT  
3 DISCUSSIONS. THEY'RE INDICATING TO ME THEY'RE IN THE HUNDREDS  
4 OF DOLLARS RANGE. THEY'RE NOT AT THE \$500 OFFER. THEY'RE  
5 TALKING AT -- REAL MONEY. YOU DON'T HAVE A TWO AND A HALF  
6 MILLION DOLLAR INJURY. I CAN'T PROVE THAT UP TO A JURY. WE  
7 HAVE TO GET REAL WHERE WE'RE GOING TO BE. I ASKED HIM TO GIVE  
8 ME HIS BEST SHOT. I WAS TRYING TO GET HIM DOWN TO 250,000. I  
9 THOUGHT THAT WAS A LOW SIDE OF A FAIR SETTLEMENT. AND SO THAT  
10 WASN'T AN OFFER THAT TIME. WE ACTUALLY DIDN'T GET THE 250,000  
11 UNTIL THE DAY AT J.A.M.S. PRIOR TO THAT, MR. PINELLI HAD  
12 OFFERED A HUNDRED SEVENTY-FIVE THOUSAND.

13 MR. PINELLI: A HUNDRED THIRTY-FIVE AND I HAD  
14 GIVEN INDICATION THAT MY CLIENT WOULD PROBABLY SETTLE IN THE  
15 RANGE OF 175 TO 200. WHEN WE WENT TO THE J.A.M.S., YOUR  
16 HONOR, WE DIDN'T HAVE 250 AUTHORITY, WE HAD 200, WE HAD TO GET  
17 THE ADDITIONAL THOUSAND.

18 THE COURT: OKAY. WELL, I THINK WE HAVE TO MOVE  
19 ON.

20 MR. OSIJO, YOU WANTED TO RESPOND TO SOMETHING?

21 MR. OSIJO: YES, SIR. THE POINT STILL REMAINS. I  
22 WAS NOT AWARE BECAUSE IF I KNEW THAT THEY -- THAT JUDICIAL  
23 ARBITRATION MITIGATION -- JUDICIAL ARBITRATION IS SOMETHING  
24 CORROBORATED -- WAS REQUESTED BY MY ATTORNEY I WOULDN'T GO.  
25 THAT PUTS ME IN A COMPROMISING POSITION AND THAT PUTS ME IN  
26 THE NEIGHBORHOOD I'M NOT HAPPY ABOUT. I MUST BE IN SAN  
27 FRANCISCO AND I KNEW ONE WAY OR THE OTHER IT'S NOT A PLACE FOR  
28 ME.

1 NUMBER TWO, IF ONLY I HAD STEPPED OUT OF THE ROOM FOR  
2 AT LEAST 20 MINUTES OR 30 MINUTES OR ONE HOUR, LEAVE ME ALONE  
3 TO MYSELF, LET ME THINK BY MYSELF. WHEN I HAVE FOUR PEOPLE ON  
4 TOP OF ME AND THEY SAID -- AT FIRST I SAID THAT'S ALL RIGHT.  
5 SURRENDER. MR. PINELLI, CAN'T SETTLE. "YOU ACCEPT IT?"  
6 "NO." "LET ME KNOW." HE BROUGHT OUT THE PIECE OF PAPER,  
7 "READ IT." WHAT CAN I -- I WAS CONFUSED. I HAVE FOUR  
8 PEOPLE -- NOW, IF THINGS WERE TO WORK OUT, SHE OUGHT TO BE ON  
9 MY SIDE, AT LEAST THAT'S WHAT WE AGREED BETWEEN THE TWO OF US.  
10 AND IF I SAID NO, IF WE'RE GOING TO DISAGREE, WE DISAGREE  
11 OUTSIDE. IF WE WANT TO DO ANYTHING -- SHE WAS WITH THE REST  
12 OF THEM AND I HAVE FOUR PEOPLE, EVEN THE ONE WHO IS SUPPOSED  
13 TO BE ON MY SIDE ON ME. I SAID I SURRENDER.

14 THEY SAID, "NO, YOU CAN'T SURRENDER, YOU HAVE TO ACCEPT  
15 IT." I SAID, "ACCEPT IT? LET ME GO READ IT. I WILL  
16 UNDERSTAND WHAT'S GOING ON." "NO, YOU CAN'T STEP OUT OF THIS  
17 ROOM WITH IT IF IT'S NOT SIGNED."

18 THE COURT: DID YOU GO TO DINNER?

19 MR. OSIJO: THANK YOU.

20 THE COURT: TAKE EVERYBODY TO DINNER?

21 MS. MICHELL: NO, WE TOOK HIM TO DINNER.

22 THE COURT: REGARDLESS OF WHO WENT TO DINNER --

23 MR. OSIJO: MR. PINELLI PAID FOR THE DINNER. I  
24 PAID FOR THE BAR TAP.

25 THE COURT: DID YOU DISCUSS PLEASURE WITH THE  
26 AGREEMENT?

27 MR. OSIJO: WHAT THEY SAY WAS TRUE. I WAS UNDER  
28 THE IMPRESSION THAT IT WAS MR. PINELLI AND HIS CLIENTS BEHIND

1 ALL THE ARBITRATION AND EVERYTHING. I DID NOT KNOW MY  
2 POSITION WAS ALREADY BEING COMPROMISED. MY IMPRESSION,  
3 REMEMBER YOU'RE -- THE INSURANCE MAN TOLD ME RIGHT IN FRONT OF  
4 EVERYBODY THAT HE WAS THE ONE THAT REQUESTED THIS  
5 ARBITRATION. HE'S THE ONE PAYING FOR IT.

6 MS. MICHELL: HE DID.

7 MR. OSIJO: AND, OF COURSE, WHEN THE MAN, I TOOK  
8 HIM TO DINNER, TOO, IN FRESNO, THE INSURANCE MAN.

9 THE COURT: I WANT TO REREAD MR. OSIJO'S PAPERS  
10 AND THE MATTER WILL STAND SUBMITTED AND WE WILL ADVISE YOU BY  
11 MAIL.

12 MR. OSIJO: THANK YOU, YOUR HONOR.

13 THE COURT: MR. OSIJO, YOU SHOULDN'T FEEL, EVEN IF  
14 YOUR ATTORNEY REQUESTED THE SETTLEMENT CONFERENCE -- I DON'T  
15 KNOW IF SHE DID OR NOT -- SOMEHOW THAT'S NOT IN YOUR BEST  
16 INTEREST. WE OFTEN HAVE SETTLEMENT CONFERENCES AND THE CASE  
17 GETS SETTLED. SOMETIMES THE ONLY TIME -- IN THE CASE  
18 ACCORDING TO MR. PINELLI, THE SETTLEMENT CONFERENCE, IN  
19 EFFECT, FORCED HIS PEOPLE TO COME UP WITH SOME MORE MONEY. SO  
20 OFTENTIMES PLAINTIFF'S ATTORNEYS WILL SET A SETTLEMENT  
21 CONFERENCE AND IT'S ACTUALLY TO THE GREAT BENEFIT OF THE  
22 PLAINTIFF. NOW, YOU MAY NOT LIKE THE FINAL AGREEMENT.

23 MR. OSIJO: I HAVE NO PROBLEM WITH THAT EXCEPT I  
24 WAS KEPT OUT.

25 THE COURT: I SEE.

26 MR. OSIJO: KEPT OUT, NO INFORMATION, NO DECISION  
27 OF MYSELF.

28 MR. PINELLI: I SHOULD POINT OUT ONE LAST THING.



1 I DO WANT TO ADDRESS THAT POINT. MR. OSIJO NEVER ASKED FOR  
2 TIME ALONE AT THAT CONFERENCE. IN FACT, IT'S THE EXACT  
3 OPPOSITE.

4 THE COURT: WE WILL HAVE TO GO ON AND I WANT TO  
5 REREAD HIS DECLARATION. WE'LL ADVISE YOU BY MAIL.

6 MR. OSIJO: THANK YOU, SIR.

7 (WHEREUPON PROCEEDINGS WERE CONCLUDED.)  
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1 STATE OF CALIFORNIA)  
2 COUNTY OF ALAMEDA ) SS

(OSIJO V. CITY OF OAKLAND)  
CASE NO. 649881-6

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4  
5 I, SHIRLEY A. WALKER, AN OFFICIAL COURT REPORTER OF THE  
6 SUPERIOR COURT OF THE COUNTY OF ALAMEDA, STATE OF CALIFORNIA,  
7 DO HEREBY CERTIFY THAT I CORRECTLY REPORTED THE  
8 WITHIN-ENTITLED MATTER AND THAT THE FOREGOING IS A FULL, TRUE  
9 AND CORRECT TRANSCRIPTION OF MY SHORTHAND NOTES OF THE  
10 TESTIMONY AND OTHER ORAL PROCEEDINGS HAD IN THE SAID MATTER.

11  
12 DATED THIS 22ND DAY OF NOVEMBER, 1991; OAKLAND,  
13 CALIFORNIA

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21 SHIRLEY A. WALKER, C.S.R. #2449  
22 OFFICIAL REPORTER  
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# EXHIBIT 2

RECORDED  
FILED

AUG 28 1991

RENE C. DAVIDSON County Clerk  
By EDWARD CRANSTON

1 Georgia Ann Michell, Esq.  
2 Carola Kekow Keaton, Esq.  
3 GANONG AND MICHELL  
4 500 Ygnacio Valley Road, Suite 360  
5 Walnut Creek, CA 94596  
6 Telephone: (415) 935-0706

7 Attorneys for Plaintiff,  
8 WALE O. OSIJO

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
10 IN AND FOR THE COUNTY OF ALAMEDA

11	Wale O. Osijo,	)	No. 649881-6
12	Plaintiff,	)	
13	-v-	)	DECLARATION OF GEORGIA ANN
14	Housing Resources Management,	)	MICHELL RE SETTLEMENT
15	Inc. et al.,	)	AGREEMENT
	Defendants.	)	Date: September 5, 1991
		)	Time: 10:00 a.m.
		)	Dept: 19
		)	Trial Date: 10/25/91

16 I, Georgia ann Michell, do declare as follows:

17 1. I am an attorney at law duly licensed in the State of  
18 California and am the attorney of record for plaintiff, Wale  
19 Osijo, herein.

20 2. I engaged in contracted settlement negotiations with  
21 David Pinelli, the attorney for defendants Housing Resources  
22 Management, Inc. and Filbert I, LTD. and filbert II, LTD. during  
23 the entirety of Spring 1991.

24 3. In the month of June, 1991, it became clear to me that  
25 negotiations were at a stand still. Mr. Pinelli had indicated  
26 that he thought the case had a top value of \$175,000.00 to  
\$225,000.00 (not explicitly but through strong hints) and I

GANONG AND MICHELL  
500 Ygnacio Valley  
Road, Suite 360  
Walnut Creek, CA  
94596  
(415) 935-0706

002883

1 | believed the case had a settlement value of \$250,000.00 to  
2 | \$350,000.00. An impediment to settlement was the plaintiff who  
3 | was at the time vacillating between wanting \$500,000.00 and  
4 | \$2,500,000.00 to settle this matter.

5 |         4. In late June, 1991, Mr. Pinelli and I determined that  
6 | a JAM's settlement conference might speed up the settlement  
7 | process before hard-core discovery procedures (stayed because of  
8 | the bankruptcy of defendant HRM) got under way. [It was my  
9 | opinion, based upon my experience in handling several similar  
10 | cases that I would expend, on behalf of plaintiff, at least  
11 | \$35,000.00 to \$50,000.00 in costs prior to trial for  
12 | depositions, expert fees and services as well as exhibit  
13 | preparation.] I felt that an early settlement might be more  
14 | palatable if both sides were not too heavily invested in the  
15 | costs of the litigation.

16 |         5. A JAM's settlement conference was subsequently  
17 | arranged with Judge Campilongo for July 25, 1991.

18 |         6. Prior to that conference I had engaged in protracted  
19 | telephone conversations with plaintiff regarding the value of  
20 | the case, my evaluation of the chances of prevailing in front of  
21 | a jury, and the potential costs which would need to be incurred  
22 | to adequately prepare for trial as well as the advantages of  
23 | having the security of a settlement and the ability to negotiate  
24 | with the lien holders.

25 |         7. On the date of the JAM's settlement conference, I  
26 | attended with my client.

8. Negotiations took place all through the morning; at

1 noon, I took my client to lunch and discussed the merits of the  
2 defendant's offer.

3 9. After lunch, negotiations resumed. One important  
4 issue under negotiation was the reimbursement due the Intervenor  
5 for medical bills, temporary disability payments made and the  
6 \$30,000.00 permanent disability award which had not been paid in  
7 substantial part. The amounts claimed by the Intervenor were in  
8 excess of \$50,000.00.

9 10. At each step in the negotiation process, I kept my  
10 client informed of the offers being made and the ramification to  
11 him of each offer. By late afternoon, when the monetary offer  
12 was increased to \$250,000.00 and all but \$10,000.00 of the lien  
13 was waived, Mr. Osijo indicated to me that the various offers  
14 were acceptable to him provided he had an opportunity to speak  
15 with Judge Campilongo and was able to tell his side of the  
16 story.

17 11. At this time, I personally accessed the JAM's word  
18 processing department and drafted the Settlement Agreement with  
19 the assistance of Mr. Pinelli and Mr. Kizer. The Settlement  
20 Agreement so drafted embodied the agreements made that day as I  
21 had discussed them with my client.

22 12. Thereafter, all of the attorneys save Mr. Van Dam, the  
23 adjuster, plaintiff, and Judge Campilongo assembled in the  
24 conference room. We spent the next several hours discussing the  
25 injuries sustained by plaintiff; plaintiff showed us his  
26 grievous injuries and expressed his distress regarding both his  
injuries and how he had been treated thereafter. After long

1 discussions wherein all present participated, Mr. Osijo  
2 expressed his willingness to agree to the settlement negotiated  
3 that date.

4 13. Thereafter, Judge Campilongo presented Mr. Osijo with  
5 the typed Settlement Agreement I had prepared and Mr. Osijo (who  
6 has completed the schooling necessary to receive an MBA) read  
7 the agreement and further discussed the terms and provisions of  
8 the agreement with all present.

9 14. After more discussion, Mr. Osijo indicated to all  
10 parties that he was in agreement with the Settlement Agreement.  
11 Thereafter, the parties present affixed their names thereto.

12 15. Mr. Kizer, Mr. Pinelli, my client and I went to the  
13 Big Four Restaurant in the Huntington Hotel. We had a before  
14 dinner cocktail and then had dinner. During this dinner, Mr.  
15 Osijo continually expressed his satisfaction with the settlement  
16 both as to the amount and the terms (especially since the  
17 Intervenor was going to pay him an additional \$20,000.00 on top  
18 of the \$250,000.00).

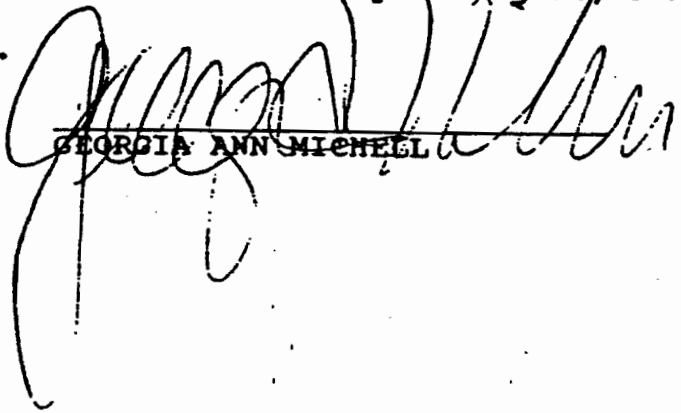
19 16. The evening ended about 10:30 p.m. when Mr. Pinelli  
20 and I arranged for Mr. Osijo to have a room at the Huntington so  
21 he wouldn't have to drive home that evening.

22 17. At no time during the evening did Mr. Osijo express  
23 anything but agreement with the settlement agreement we had all  
24 signed that day.

25 18. I was quite shocked the next morning when I received a  
26 call from my client indicating that he felt he had been  
"tricked" and "snookered" into signing the settlement agreement.

1           19. Based on the facts of this case and the damages  
2 sustained by my client, it is my opinion that \$250,000.00 in  
3 addition to the compensation benefits which plaintiff has  
4 received and will receive is a good settlement of this matter.  
5 Given the reality of Proposition 51, it was a strong possibility  
6 that plaintiff would have obtained by way of verdict  
7 substantially less.

8           I declare under penalty of perjury that the foregoing is  
9 true and correct and was executed this 20th day of August, 1991  
10 at Walnut Creek, California.

11   
12 GEORGIA ANN MICHELL  
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PROOF OF SERVICE BY MAIL  
(CCP Sec. 1013a)

000087

1  
2 I declare that I am a citizen of the United States and am  
3 employed in the County of Contra Costa. I am over the age of 18  
4 years and not a party to the above-entitled case. My business  
5 address is 500 Ygnacio Valley Road, Suite 360, Walnut Creek,  
6 California 94596.

7 On August 21, 1991, I served the within:

8 DECLARATION OF CHARLES S. BAKER, ESO, RE SETTLEMENT AGREEMENT;  
9 DECLARATION OF GOERGIA ANN MICHELL RE SETTLEMENT AGREEMENT

10 by placing a true copy thereof enclosed in a sealed envelope  
11 with postage thereon fully prepaid for collection and mailing,  
12 in the course of ordinary business practice, with other  
13 correspondence of Ganong and Michell, at Walnut Creek,  
14 California, addressed as follows:

15 David R. Pinelli  
16 Larson & Burnham  
17 P.O. Box 119  
18 Oakland, CA 94604

Judge Campilongo  
JAMS  
111 Pine St.  
San Francisco, CA 94111

19 I am familiar with the practice of the Law Offices of Ganong and  
20 Michell for collection and processing of correspondence for  
21 mailing with the United States Postal Service. It is the  
22 practice that correspondence is deposited with the United States  
23 Postal Service the same day it is submitted for mailing.

24 I declare under penalty of perjury under the laws of the  
25 State of California that the foregoing is true and correct, and  
26 that this declaration was executed on August 21, 1991, at Walnut  
Creek, California.

  
Dianne T. Stamatelos

# EXHIBIT 3

000088  
ENDORSED  
FILED

AUG 22 1991

RENE C. DAVIDSON, County Clerk  
By EDWARD CRANSTON

1 Georgia Ann Michell, Esq.  
2 Carola Kekow Keaton, Esq.  
3 GANONG AND MICHELL  
4 500 Ygnacio Valley Road, Suite 360  
5 Walnut Creek, CA 94596  
6 Telephone: (415) 935-0706

7 Attorneys for Plaintiff,  
8 WALE O. OSIJO

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
10 IN AND FOR THE COUNTY OF ALAMEDA

10	Wale O. Osijo,	)	No. 649881-6
11	Plaintiff,	)	DECLARATION OF CHARLES S.
12	-v-	)	BAKER, ESQ. RE SETTLEMENT
13	Housing Resources Management,	)	AGREEMENT
14	Inc. et al.,	)	Date: September 5, 1991.
15	Defendants.	)	Time: 10:00 a.m.
		)	Dept: 19
		)	Trial Date: 10/25/91

16 I, Charles S. Baker, Esq., do declare as follows:

17 1. I am an attorney at law duly licensed in the State of  
18 California and am an associate with the law firm Ganong and  
19 Michell.

20 2. On or about August 7, 1991, I traveled to Fresno to  
21 meet with Mr. Osijo, the plaintiff herein, to try and obtain his  
22 signature on the release required to settle this case.


23 3. I am familiar with the facts of the within case and  
24 met with Mr. Osijo over lunch to discuss his sudden aversion to  
25 settling the case and signing the release.

26 4. Mr. Osijo did not appear to me to be so upset with the  
amount of the settlement, but rather to be fixated on the idea

1 of "telling his story to the jury". He indicated that he didn't  
2 care if he won or lost at trial, but that honor was to be won in  
3 taking the fight to the very end. He seemed to feel that any  
4 compromise was "losing face".

5 5. After several hours of discussion with Mr. Osijo, we  
6 discussed the fact that Mr. Pinelli had promised that if Mr.  
7 Osijo did not sign the release that the defendants would make a  
8 664 motion to enforce the settlement. Thereafter, Mr. Osijo  
9 indicated to me that if he was ordered to take the settlement by  
10 a judge, it would not be as offensive because that was not the  
11 same as him agreeing to accept less than his \$2,500,000.00  
12 demand.

13 I declare under penalty of perjury that the foregoing is  
14 true and correct and was executed this 20th day of August, 1991  
15 at Walnut Creek, California.

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18 CHARLES S. BAKER, ESQ.  
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# EXHIBIT 4

1 GREGORY D. BROWN  
2 DAVID R. PINELLI  
3 LARSON & BURNHAM  
4 A Professional Corporation  
5 Post Office Box 119  
6 Oakland, California 94604  
7 Telephone: (415) 444-6800

8 Attorneys for Defendants  
9 HOUSING RESOURCES MANAGEMENT, INC.,  
10 FILBERT I, LTD. and FILBERT II, LTD.

11 SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA  
12 NORTHERN DIVISION

13 WALE O. OSIJO,

No. 649881-6

14 Plaintiff,

DECLARATION OF DAVID R.  
PINELLI IN SUPPORT OF MOTION  
FOR ENFORCEMENT OF SETTLEMENT

15 v.

16 HOUSING RESOURCES MANAGEMENT,  
17 INC. and PROSTAFF SECURITY  
18 SERVICES, INC.,

DATE: September 5, 1991  
TIME: 9:00 a.m.  
DEPT: 19  
TRIAL DATE: October 25, 1991

19 Defendants.

20 I, DAVID R. PINELLI, declare as follows:

21 1. I am an attorney duly licensed to practice law before  
22 all of the courts in the State of California and am an  
23 associate with the law offices of Larson & Burnham,  
24 attorneys for Defendants and Cross-complainants, FILBERT I,  
25 LTD., FILBERT II, LTD., and HOUSING RESOURCES MANAGEMENT,  
26 INC.

2. A voluntary settlement conference was held in this  
case before the Honorable Judge Victor M. Campilongo, retired,  
on July 25, 1991, at the JAMS office in San Francisco. The

1 conference commenced at 10:00 a.m. and settlement was achieved  
2 late that evening.

3 3. The terms and conditions of the settlement are set  
4 forth in the written "Settlement Agreement" which was signed by  
5 all the parties, including Mr. Osijo, at the conclusion of the  
6 July 25, 1991 conference. (A true and correct copy of  
7 the fully-executed "Settlement Agreement" is attached  
8 hereto and marked as Exhibit 1; the original "Settlement  
9 Agreement" will be produced at the hearing of this  
10 motion.)

11 4. Prior to the voluntary settlement conference, I  
12 spent an enormous amount of time the previous six months  
13 negotiating with Mr. Osijo's attorney, Georgia Ann Michell, in  
14 an attempt to settle the case. An impasse occurred in early  
15 July, 1991, when Ms. Michell informed me that she would  
16 recommend to Mr. Osijo a settlement of no less than  
17 \$250,000.00. At that time, I believed (and still believe)  
18 that the case had a reasonable settlement value falling  
19 into a range of \$175,000.00 to \$225,000.00. Although I  
20 did not communicate to Ms. Michell my actual evaluation  
21 of the settlement value of the case, I gave her every  
22 indication that the range mentioned above was where I  
23 thought the case should settle. Ms. Michell suggested  
24 that we attend a voluntary settlement conference at JAMS  
25 so that the gap in the monies being demanded and offered  
26

would be bridged.

1  
2 5. As noted above, the voluntary settlement  
3 conference was presided over by Judge Campilongo. He  
4 spent nearly twelve hours helping us to agree on the  
5 \$250,000.00 settlement figure and helping us to resolve  
6 the problems relating to the outstanding liens in  
7 the case.

8 6. Mr. Osijo actively participated in the  
9 settlement process through numerous discussions with  
10 Ms. Michell. He was fully apprised of and agreed to  
11 the terms that were negotiated. The terms and conditions  
12 of the settlement were explained to him prior to the  
13 drafting of the "Settlement Agreement."

14 7. Ms. Michell herself prepared the written  
15 "Settlement Agreement." One of the conditions of the  
16 settlement was that the parties further agreed and  
17 stipulated that the agreement would satisfy the requirements  
18 of a settlement made pursuant to California Code of Civil  
19 Procedure, section 664. Mr. Osijo was informed of this  
20 provision and its ramifications by Ms. Michell prior  
21 to the drafting of the "Settlement Agreement."

22 8. After the "Settlement Agreement" was prepared,  
23 Mr. Osijo, in the presence of all the attorneys and Judge  
24 Campilongo (save and except for Mr. Van Dam, who had to leave  
25 the conference prior to its conclusion), discussed the merits  
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1 of the agreement and displayed his injuries. Mr. Osijo then  
2 openly indicated acceptance of the agreement. Thereafter, Mr.  
3 Osijo read the agreement, discussed it at length with all  
4 present and then signed it.

5 9. Mr. Osijo was not coerced or harassed into signing  
6 the agreement. He knew of and fully understood and agreed to  
7 the terms of the settlement prior to executing the agreement.  
8 He appeared to be extremely satisfied with the agreement  
9 and appeared very happy that the case had been resolved.  
10 Indeed, following the conference, he requested me to  
11 accompany him to a restaurant to celebrate the resolution of  
12 the case.

13 10. I in fact invited Mr. Osijo and his attorney, Ms.  
14 Michell, and David Kizer, the attorney who represented the  
15 Intervenor, to dinner at the Huntington Hotel in San Francisco.  
16 During the course of our dinner, which lasted approximately two  
17 and one-half hours, Mr. Osijo expressed to me his great  
18 satisfaction with the settlement and his relief that he could  
19 put the litigation behind him. At no point in time, either at  
20 the settlement conference when he agreed to the terms of the  
21 "Settlement Agreement" or at dinner did Mr. Osijo express any  
22 reservations regarding the settlement. To say the least, I was  
23 quite shocked when I learned that Mr. Osijo wished to breach  
24 the agreement.

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26 ///

1 11. Following the settlement conference, I have had  
2 several discussions with Mr. Osijo's attorney regarding the  
3 terms and conditions of the agreement and the fairness of the  
4 settlement. Ms. Michell is in total agreement with me that the  
5 settlement achieved was extremely fair to Mr. Osijo and, in  
6 fact, an outright victory for him. As I stated above, although  
7 I believed that the case had a settlement value of no more than  
8 \$225,000.00, I nevertheless recommended to my principal to  
9 agree to the \$250,000.00 figure because it was in the  
10 "ballpark."

11 12. In sum, it is my opinion that the settlement  
12 agreement achieved was extremely reasonable for Mr. Osijo.  
13 More importantly, and despite what Mr. Osijo may feel at  
14 this time, he completely endorsed the terms of the "Settlement  
15 Agreement" at the time he executed the written "Settlement  
16 Agreement." There was absolutely no hesitation on his part  
17 nor did he communicate misgivings when he signed the  
18 Agreement.

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

Executed this 2nd day of August, 1991, at Oakland, California.

  
\_\_\_\_\_  
DAVID R. PINELLI

# EXHIBIT 5

1 GREGORY D. BROWN  
2 DAVID R. PINELLI  
3 LARSON & BURNHAM  
4 A Professional Corporation  
5 Post Office Box 119  
6 Oakland, California 94604  
7 Telephone: (415) 444-6800

**DRAFT**

8 Attorneys for Defendants  
9 HOUSING RESOURCES MANAGEMENT, INC.,  
10 FILBERT I, LTD. and FILBERT II, LTD.

11 SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA  
12 NORTHERN DIVISION

13 WALE O. OSIJO,  
14 Plaintiff,  
15 v.

No. 649881-6  
DECLARATION OF DAVID R.  
PINELLI

16 HOUSING RESOURCES MANAGEMENT,  
17 INC. and PROSTAFF SECURITY  
18 SERVICES, INC.,  
19 Defendants.

20 I, DAVID R. PINELLI, declare as follows:

21 1. I am an attorney duly licensed to practice law before  
22 all of the courts in the State of California and am an  
23 associate with the law offices of Larson & Burnham, attorneys  
24 for Defendants and Cross-complainants, FILBERT I, LTD., FILBERT  
25 II, LTD., and HOUSING RESOURCES MANAGEMENT, INC.

26 2. A voluntary settlement conference was held in this  
case before the Honorable Judge Victor M. Campilongo, Retired,  
on July 25, 1991, at the JAMS office in San Francisco. The  
conference commenced at 10:00 a.m. and settlement was achieved  
late that evening.

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conference commenced at 10:00 a.m. and settlement was achieved late that evening.

3. The terms and conditions of the settlement are set forth in the written "Settlement Agreement" which was signed by all the parties, including Mr. Osijo, at the conclusion of the July 25, 1991 conference. (A true and correct copy of the fully-executed "Settlement Agreement" is attached hereto and marked as Exhibit 1; the original "Settlement Agreement" will be produced at the hearing of this motion.)

4. Prior to the voluntary settlement conference, I spent an enormous amount of time the previous six months negotiating with Mr. Osijo's attorney, Georgia Ann Michell, in an attempt to settle the case. An impasse occurred in early July, 1991, when Ms. Michell informed me that she would recommend to Mr. Osijo a settlement of no less than \$250,000.00. At that time, I believed (and still believe) that the case had a reasonable settlement value falling into a range of \$175,000.00 to \$225,000.00. Although I did not communicate to Ms. Michell my actual evaluation of the settlement value of the case, I gave her every indication that the range mentioned above was where I thought the case should settle. Ms. Michell suggested that we attend a voluntary settlement conference at JAMS so that the gap in the monies being demanded and offered

would be bridged.

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5. As noted above, the voluntary settlement conference was presided over by Judge Campilongo. He spent nearly twelve hours helping us to agree on the \$250,000.00 settlement figure and helping us to resolve the problems relating to the outstanding liens in the case.

6. Mr. Osijo actively participated in the settlement process through numerous discussions with Ms. Michell. He was fully apprised of and agreed to the terms that were negotiated. The terms and conditions of the settlement were explained to him prior to the drafting of the "Settlement Agreement."

7. Ms. Michell herself prepared the written "Settlement Agreement." One of the conditions of the settlement was that the parties further agreed and stipulated that the agreement would satisfy the requirements of a settlement made pursuant to California Code of Civil Procedure, section 664. Mr. Osijo was informed of this provision and its ramifications by Ms. Michell prior to the drafting of the "Settlement Agreement."

8. After the "Settlement Agreement" was prepared, Mr. Osijo, in the presence of all the attorneys and Judge Campilongo (save and except for Mr. Van Dam, who had to leave the conference prior to its conclusion), discussed the merits

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of the agreement and displayed his injuries. Mr. Osijo then openly indicated acceptance of the agreement. Thereafter, Mr. Osijo read the agreement, discussed it at length with all present and then signed it.

9. Mr. Osijo was not coerced or harassed into signing the agreement. He knew of and fully understood and agreed to the terms of the settlement prior to executing the agreement. He appeared to be extremely satisfied with the agreement and appeared very happy that the case had been resolved. Indeed, following the conference, he requested me to accompany him to a restaurant to celebrate the resolution of the case.

10. I in fact invited Mr. Osijo and his attorney, Ms. Michell, and David Kizer, the attorney who represented the Intervenor, to dinner at the Huntington Hotel in San Francisco. During the course of our dinner, which lasted approximately two and one-half hours, Mr. Osijo expressed to me his great satisfaction with the settlement and his relief that he could put the litigation behind him. At no point in time, either at the settlement conference when he agreed to the terms of the "Settlement Agreement" or at dinner did Mr. Osijo express any reservations regarding the settlement. To say the least, I was quite shocked when I learned that Mr. Osijo wished to breach the agreement.

///  
///





# EXHIBIT 6

GREGORY D. BROWN  
DAVID R. PINELLI  
LARSON & BURNHAM  
A Professional Corporation  
Post Office Box 119  
Oakland, California 94604  
Telephone: (415) 444-6800

**DRAFT**

Attorneys for Defendants  
HOUSING RESOURCES MANAGEMENT, INC.,  
FILBERT I, LTD. and FILBERT II, LTD.

Ans'd.....

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA  
NORTHERN DIVISION

WALE O. OSIJO,  
Plaintiff,  
v.

No. 649881-6

MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF  
MOTION FOR ENFORCEMENT OF  
JUDGMENT

HOUSING RESOURCES MANAGEMENT,  
INC. and PROSTAFF SECURITY  
SERVICES, INC.,  
Defendants.

Date:  
Time:  
Dept:

I. FACTS

In October 1988, plaintiff sustained gunshot wounds while employed as a security guard at the Acorn Apartment complex located in Oakland, California. At the time of the incident, plaintiff was employed as a security guard by Prostaff Security Services. The apartment complex where plaintiff was injured was owned by Filbert I and Filbert II, and managed by Housing Resources Management.

Plaintiff subsequently filed suit against Prostaff, Filbert I and Filbert II, and Housing Resources Management.

("HRM"). Substantial written discovery took place, as well as the deposition of the plaintiff.

Settlement discussions began between David R. Pinelli, attorney for Filbert I and Filbert II and HRM, and plaintiff's attorney. Numerous discussion took place between January 1991 and July 1991.

As of July 1991, it was apparent that the discussions had reached an impasse. It was agreed that the parties could benefit from a settlement conference. Plaintiff's attorney arranged for a settlement conference through the Judicial Arbitration and Mediation Services, Inc. ("JAMS") on July 25, 1991.

The conference took place on that date before Honorable Judge Victor M. Campilongo, retired. Attorneys for all of the parties, as well as the plaintiff, began the conference at approximately 10:00 a.m. A settlement was achieved later in the evening.

During the conference, plaintiff had numerous discussions with his attorney. He was fully informed of all of the terms of the settlement which were negotiated on his behalf. Near the end of the conference, his attorney prepared a written document entitled "Settlement Agreement." It was stipulated among the parties that this agreement would satisfy the requirements of the Code of Civil Procedure relating to judicially supervised settlements.

After the "settlement agreement" was prepared, plaintiff,

in the presence of all the attorneys, and Judge Campilongo, discussed the merits of the agreement. Plaintiff also displayed his injuries to all those present. Plaintiff then openly indicated his acceptance of the agreement. Plaintiff then read the agreement, discussed it again at length with all present, and then signed the same in front of all the parties and Judge Campilongo.

Plaintiff reviewed the completed document, and signed the same in front of all of the parties and Judge Campilongo.

The plaintiff was aware of, fully comprehended and agreed to the terms of the settlement prior to signing the document. In fact, plaintiff appeared very satisfied with the agreement, and invited the parties to join him at a restaurant to celebrate the resolution of the case.

During the course of this dinner, plaintiff repeatedly expressed his satisfaction with the agreement. At no point during the conference or during the celebration dinner, did plaintiff express any reservations regarding the settlement.

On July 26, 1991, plaintiff prepared a letter, which was sent to all counsel. In this letter he claims he did not agree with settlement, and felt that he was "tricked" into signing the agreement. Since receiving that letter, plaintiff's counsel has consulted with her client, who has reiterated his refusal to sign the standard release agreement, as specified in the "settlement agreement."

II. LEGAL AUTHORITIES

- A. California Code of Civil Procedure Authorizes The Court To Enter Judgment Pursuant To The Terms Of A Settlement Agreement.

Code of Civil Procedure section 664.6 states

If parties to pending litigation stipulate, in writing or orally before the court, for settlement of the case, or part thereof, the court, upon motion, may enter judgment pursuant to the terms of the settlement.

Numerous cases have interpreted section 664.6 to enforce settlements when a party has later attempted to rescind.

The litigants in Corkland v. Bosco (1984) 156 Cal.App.3d 989, submitted a written settlement agreement to the court. One of the parties subsequently filed a motion to compel enforcement of the agreement. The court noted the intent of the legislature in enacting Code of Civil Procedure section 664.6, and stated that the right to bring the motion to enforce is applicable not only to judicially supervised settlement conferences, but to stipulations as settlement in writing or orally before the court intending litigation. Id. at 994.

It is the duty of the court in deciding upon a section 664.6 motion to determine that the parties entered into a valid and binding settlement of all or part of the case. In making this determination, the court, in the sound exercise of discretion, may consider oral testimony or may determine the motion upon declarations alone. Corkland at 994.

The courts have enforced the agreement, even if the settlement is not manifested by a writing. For example, in

Richardson v. Richardson (1986) 180 Cal.App.3d 91, a husband and wife attended a mandatory settlement conference to settle the financial terms of their dissolution. They reached an oral settlement before the judge, who presided over the conference. When the wife later attempted to reduce the agreement to writing, the husband disputed several material terms of the agreement. The wife brought a motion, which was granted by the court.

The court in Richardson noted that, while there was no written agreement, the court could rely on the recollections of the settlement conference judge regarding the terms of the settlement. The facts in Richardson indicated that there was a mutual consent to the oral settlement, despite the later protestation of the husband.

In the instant case, it is clear from the supporting declarations submitted by David R. Pinelli and Judge Campilongo that a settlement was reached at the JAMS conference on July 25, 1991. Plaintiff was actively involved in all of the negotiations, and conferred frequently with his attorney. His attorney explained all of the terms of the settlement, which were later reduced to the "settlement agreement," and signed by all parties including plaintiff. All of these negotiations took place in front of Judge Campilongo, who presided over the entire conference. Judge Campilongo also explained the provisions to the plaintiff, to ensure that he had full knowledge of what he was signing.

Plaintiff clearly assented to the settlement agreement at the JAMS conference. Further, after the conference, he repeatedly expressed his satisfaction with the settlement. At no time during the entire conference or dinner did plaintiff indicate that he felt pressured or coerced into signing the document. In fact, he appeared to be relieved that the litigation was behind him.

It was not until the next day that he notified all of the parties by letter, claiming he had been "tricked" into the settlement.

Thus, it is clear from of the evidence presented that there was a "meeting of the minds" as to the terms of the settlement. The written agreement reflected the culmination of the oral negotiations, and was drafted in accordance with Code of Civil Procedure section 664.

B. Public Policy Supports The Enforcement Of This Motion.

There is a strong public policy in California towards favoring settlements because they diminish the expense and persistence of litigation. Hastings v. Matlocks (1985) 171 Cal.App.3d 826, 837. In the instant action, all of the parties agree to attend a JAMS conference, in order to facilitate settlement.

No party was coerced into attending the conference. In fact, it was agreed that, given previous six months of negotiations, that the parties were close enough in their respective terms that all interested parties could benefit from