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8
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 FOR THE COUNTY OF LOS ANGELES

12 [REDACTED] and [REDACTED])
13 [REDACTED],)
14 Plaintiffs,)

15 vs.)

16 [REDACTED])
17 [REDACTED], and DOES 1)
18 through 10, inclusive,)
19 Defendants.)

20 _____)
21 [REDACTED] and [REDACTED])
22 [REDACTED],)
23 Cross-Complainants,)

24 vs.)

25 [REDACTED])
26 [REDACTED], and ROES 1 through 20,)
inclusive,)
27 Cross-Defendants.)
28 _____)

Case No. [REDACTED]

[Unlimited Civil Action]

[Action Filed: [REDACTED], 2004]

MEMORANDUM OF POINTS AND
AUTHORITIES SUBMITTED BY PLAINTIFFS
AND CROSS-DEFENDANTS [REDACTED]
AND [REDACTED] IN SUPPORT OF
MOTION FOR ORDER DETERMINING THAT
NEITHER DEFENDANTS NOR CROSS-
COMPLAINANTS ARE ENTITLED TO A TRIAL
BY JURY IN THE WITHIN ACTION, AND FOR
A FURTHER ORDER DETERMINING THAT
THIS ENTIRE MATTER SHALL BE TRIED TO
A JUDGE RATHER THAN TO A JURY

Date: [REDACTED], 2005

Time: ___ o'clock ___ .m.

Dept: ___

TABLE OF CONTENTS

<u>Number</u>	<u>Title</u>	<u>Page(s)</u>
TOC	TABLE OF CONTENTS	2
TOA	TABLE OF AUTHORITIES	3
MEM	MEMORANDUM OF POINTS AND AUTHORITIES	6
I	DESCRIPTION OF THE CLAIMS FOR RELIEF AND THE DEFENSES THERETO BEING ASSERTED IN THE ACTION AT BAR	6
II	THE NATURE OF THE CLAIMS FOR RELIEF PRESENTED BY BOTH THE FIRST AMENDED COMPLAINT AND THE CROSS-COMPLAINT ON FILE HEREIN IS FUNDAMENTALLY EQUITABLE RATHER THAN LEGAL	7
III	THE RIGHT TO TRIAL BY JURY DOES NOT APPLY TO ACTIONS WHEREIN THE FUNDAMENTAL UNDERLYING NATURE OF THE RELIEF SOUGHT IS EQUITABLE RATHER THAN LEGAL IN NATURE	10
IV	THE INCLUSION BY MOVING PARTIES OF AN INCIDENTAL CLAIM FOR MONETARY DAMAGES BASED ON BREACH OF CONTRACT DOES NOT GIVE RISE TO A RIGHT TO TRIAL BY JURY	12
V	CONCLUSION	13

TABLE OF AUTHORITIES

Cases

Page(s)

Abbott v. City of Los Angeles (1958) 50 Cal.2d 438, 462, 326 P.2d 484..... 11

Appalachian Ins. Co. v. McDonnell Douglas Corp. (1989) 214 Cal.App.3d 1, 262 Cal.Rptr. 716..... 9

Ballou v. Avery (1917) 175 Cal. 641, 166 P. 1003..... 8

Bank of America Nat. Trust & Sav. Ass'n v. Greenbach (1950) 98 Cal.App.2d 220, 219 P.2d 814..... 9

Bennett v. Bennett (1919) 41 Cal.App. 537, 182 P. 461..... 8

Bettencourt v. Bank of Italy Nat. Trust & Savings Ass'n (1932) 216 Cal. 174, 13 P.2d 659..... 12

C & K Engineering Contractors v. Amber Steel Co. (1978) 23 Cal.3d 1, 151 Cal.Rptr. 323..... 10, 11, 12

Clough v. All Persons, etc. (1915) 27 Cal.App. 268, 149 P. 778..... 8

Columbia Pictures Corp. v. DeToth, 26 Cal.2d 753, 161 P.2d 217, 162 A.L.R. 747..... 9

Ford v. Palisades Corp. (1951) 101 Cal.App.2d 491, 225 P.2d 545..... 12

Fraters G. & P. Co. v. Southwestern C. Co. (1930) 107 Cal.App. 1, 6, 290 P. 45..... 10

Hartman v. Burford (1966) 242 Cal.App.2d 268, 270, 51 Cal.Rptr. 309, 311..... 9, 11

Herrlein v. Tocchini, 128 Cal.App. 612, 18 P.2d 73..... 9

Interinsurance Exchange v. Savior (1975) 51 Cal.App.3d 691, 694, 124 Cal.Rptr. 239..... 11

Kaliterna v. Wright (1949) 94 Cal.App.2d 926, 212 P.2d 32..... 8

Lestrade v. Barth (1862) 19 Cal. 660..... 13

1	<i>Loftus v. Fischer</i> (1896) 113 Cal. 286, 45 P. 328.....	9
2	<i>Meyer Koulish Co. v. Cannon</i> (1963) 213 Cal.App.2d 419,	
3	430, 28 Cal.Rptr. 757.....	10
4	<i>Miller v. Lantz</i> (1937) 9 Cal.2d 544, 548, 71 P.2d 585.....	10
5	<i>Ostrom v. DeYoe</i> (1906) 4 Cal.App. 326, 87 P. 811.....	9
6	<i>Paularena v. Superior Court</i> (1965) 231 Cal.App.2d 906, 911,	
7	42 Cal.Rptr. 366.....	11
8	<i>People v. One 1941 Chevrolet Coupe</i> (1951) 37 Cal.2d 283,	
9	287, 231 P.2d 832, 835.....	10, 11
10	<i>Pomeroy v. Collins</i> (1926) 198 Cal. 46, 243 P. 657.....	9
11	<i>Porter v. Superior Court for San Mateo County</i> (1977) 73	
12	Cal.App.3d 793, 141 Cal.Rptr. 59.....	8
13	<i>Price v. McConnell</i> (1960) 184 Cal.App.2d 660, 7 Cal.Rptr. 695.....	9
14	<i>Proctor v. Arakelian</i> (1929) 208 Cal. 82, 280 P. 368.....	9
15	<i>Raedeke v. Gibraltar Sav. & Loan Assn., supra</i> , 10 Cal.3d 665,	
16	672, 111 Cal.Rptr. 693, 696, 517 P.2d 1157, 1160.....	11
17	<i>Ruiz v. Ruiz</i> (1980) 104 Cal.App.3d 374, 163 Cal.Rptr. 708.....	8
18	<i>Santa Ana Mortg. & Inv. Co. v. Kinslow</i> (1938) 30 Cal.App.2d 107,	
19	85 P.2d 899.....	9
20	<i>Schaefer v. United Bank & Trust Co. of California</i> (1930) 104	
21	Cal.App. 635, 286 P. 723.....	9, 12
22	<i>Southern Pac. Transportation Co. v. Superior Court</i> (1976)	
23	58 Cal.App.3d 433, 436, 129 Cal.Rptr. 912.....	10, 12,
24		13, 14
25	<i>Swinney v. Legg</i> (1933) 129 Cal.App. 476, 18 P.2d 970.....	9
26	<i>Tibbetts v. Fife</i> (1958) 162 Cal.App.2d 568, 572, 328 P.2d 212.....	11
27	<i>Veale v. Piercy</i> (1962) 206 Cal.App.2d 557, 24 Cal.Rptr. 91.....	8, 10
28		

1 **Statutes**
2 *Code of Civil Procedure* §871.5..... 12
3
4
5
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8
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10
11
12
13
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 Plaintiffs and Cross-Defendants [REDACTED] and [REDACTED] (collectively
3 “Moving Parties”) hereby submit this Memorandum of Points and Authorities in support of their motion
4 for an order determining that neither Defendants nor Cross-Complainants [REDACTED], [REDACTED]
5 [REDACTED], nor [REDACTED] (collectively “Responding Parties”) are entitled to a trial by jury in
6 the within action, and for a further order determining that this entire matter shall be tried to a judge
7 rather than to a jury (the “Motion”).

8 **I**

9 **DESCRIPTION OF THE CLAIMS FOR RELIEF AND THE DEFENSES**

10 **THERE TO BEING ASSERTED IN THE ACTION AT BAR**

11 Moving Parties’ First Amended Complaint seeks three specific remedies: Specific performance
12 of a contract by which Responding Parties agreed to convey certain real property to Moving Parties;
13 declaratory relief with respect to Moving Parties’ rights under the contract; and incidental damages for
14 breach of the contract. The *gravamen* of the entire pleading is the claim that two out of the three
15 Responding Parties¹ entered into a written agreement with Moving Parties, by which Moving Parties
16 agreed to purchase, and Responding Parties agreed to sell, a parcel of real property located in Los
17 Angeles County. The fundamental relief that Moving Parties seek is simply a judgment requiring the
18 two contracting Responding Parties to carry through with the consummation of the transaction that is the
19 subject of the written agreement. Moving Parties primarily seek, in other words, an *equitable remedy*.²

20 The Answer to the First Amended Complaint filed by two of the three Responding Parties³
21 employs the “shotgun approach” to boilerplate affirmative defenses, setting forth a total of twenty-seven
22 alleged separate defenses. Substantively, those defenses of the most import are all equitable, rather than

23
24 ¹ Responding Parties [REDACTED] and [REDACTED].

25 ² The third Responding Party named as a defendant by Moving Parties is [REDACTED]
26 (“[REDACTED] Moving Parties seek relief from [REDACTED] based on a deed to her from the other two
27 Responding Parties that was given without consideration and which purported to convey a portion of the
subject real property to [REDACTED] at a time when [REDACTED] already had notice of the existence of Moving
Parties’ claim. See First Amended Complaint at pp. 2-3, ¶9.

28 ³ Responding Parties [REDACTED] and [REDACTED].

1 legal, in nature: The Doctrine of Equitable Estoppel (Sixth Affirmative Defense); the Doctrine of
2 Laches (Seventh Affirmative Defense); the Doctrine of Unclean Hands (Eighth Affirmative Defense); a
3 generalized claim of estoppel that could fall under either the Doctrine of Equitable Estoppel or the
4 Doctrine of Estoppel en Pais (Thirteenth Affirmative Defense); a claim that Moving Parties' claims are
5 barred under the Doctrine of Res Judicata which, under the facts as pleaded in the Answer, is really the
6 same thing as asserting the Doctrine of Collateral Estoppel (Twentieth Affirmative Defense); and the
7 Doctrine of Collateral Estoppel itself (Twenty-First Affirmative Defense). All other affirmative
8 defenses asserted in the Answer are comprised of standard, pre-canned, and non-particularized
9 statements such as, e.g., the notion that the First Amended Complaint fails to state facts sufficient to
10 constitute a cause of action (First Affirmative Defense). The substantive affirmative defenses pleaded in
11 the Answer, like the claims for relief posed by the First Amended Complaint, are all *equitable* rather
12 than *legal* in nature.

13 The Cross-Complaint of two out of the three Responding Parties⁴ alleges causes of action for
14 Declaratory Relief, Rescission, and for Reformation. As in the case of the First Amended Complaint as
15 well as the Answer thereto, the Cross-Complaint seeks purely *equitable*, and no *legal*, forms of relief.

16 It is true that the First Amended Complaint also seeks the alternative, incidental legal remedy of
17 monetary damages for breach of contract. This is of no consequence since, as discussed *infra*, the true
18 gravamen of ALL of the pleadings in this case considered collectively is equitable, not legal.

19 II

20 **THE NATURE OF THE CLAIMS FOR RELIEF PRESENTED BY BOTH THE** 21 **FIRST AMENDED COMPLAINT AND THE CROSS-COMPLAINT ON FILE** 22 **HEREIN IS FUNDAMENTALLY EQUITABLE, RATHER THAN LEGAL**

23 As described in Section I above, the claims being advanced in this action include causes of
24 action for declaratory relief, specific performance, incidental monetary damages for breach of contract,
25 rescission of contract, and reformation of contract. And most of the affirmative defenses pleaded in
26 response to Moving Parties' First Amended Complaint – at least, those with any degree of potential
27 substance – are predicated upon equitable doctrines. At the outset, it is necessary for the court to

28
4 _____
[REDACTED] and [REDACTED].

1 characterize the nature of the affirmative claims being made in the First Amended Complaint and in the
2 Cross-Complaint: Are they predominantly equitable, or legal, in nature?

- 3 • **Declaratory Relief:** The declaratory relief sought by the First Amended Complaint amounts, in
4 effect, to a request for a mandatory injunction, i.e., an order of the court directing the two subject
5 Responding Parties to perform under the terms of their original written agreement with Moving
6 Parties. Injunctive relief, of course, is always equitable in nature. The Cross-Complaint seeks an
7 opposite declaration of the respective parties' rights and duties. In holdings involving the need
8 to make similar determinations, it has continually been found that the gravamen of the action lies
9 in equity, not in law, and that no right to a jury trial attaches. See, e.g., *Ruiz v. Ruiz* (1980) 104
10 Cal.App.3d 374, 163 Cal.Rptr. 708 (an action seeking the cancellation of a written instrument is
11 equitable in nature in which a trial by jury is not a matter of right); *Porter v. Superior Court for*
12 *San Mateo County* (1977) 73 Cal.App.3d 793, 141 Cal.Rptr. 59 (holding that a husband seeking
13 a judgment cancelling a deed from himself to himself and his wife as joint tenants was pursuing
14 an equitable claim and was not entitled to a jury trial); *Veale v. Piercy* (1962) 206 Cal.App.2d
15 557, 24 Cal.Rptr. 91 (holding that a complaint by plaintiffs in possession of real property seeking
16 a declaratory judgment of title was equitable in nature and triable by the court without a jury);
17 *Bennett v. Bennett* (1919) 41 Cal.App. 537, 182 P. 461 (an executor's action to declare a
18 testator's deeds null and void and to require them to be delivered up and cancelled, and to
19 adjudge the executor to be the owner of the subject real property to the exclusion of the
20 defendants' opposite claim); *Ballou v. Avery* (1917) 175 Cal. 641, 166 P. 1003 (holding that an
21 action to have a note declared void and cancelled was in equity, and that plaintiff was not entitled
22 to a jury trial); and *Clough v. All Persons, etc.* (1915) 27 Cal.App. 268, 149 P. 778 (holding that
23 a defendant in a quiet title action seeking cancellation of a written instrument is seeking
24 equitable relief, and is not entitled to a jury trial). Further, the specific question of whether a jury
25 trial right necessarily attaches to an action for declaratory relief was definitively answered in
26 *Kaliterna v. Wright* (1949) 94 Cal.App.2d 926, 212 P.2d 32, wherein the court held:

27 "While the [trial] court stated, in effect, that it would determine the
28 equitable questions and reserve the jury for questions of fact, it
actually decided all questions itself. Defendants contend these fact

1 issues should have been submitted to the jury. Defendants cited no
2 authority to support their position. *It is well settled in this state that in*
3 *actions for declaratory relief the court may refuse to submit disputed*
4 *questions of fact to a jury and may itself determine them. Herrlein v.*
5 *Tocchini*, 128 Cal.App. 612, 18 P.2d 73; *Columbia Pictures Corp. v.*
6 *DeToth*, 26 Cal.2d 753, 161 P.2d 217, 162 A.L.R. 747.” [Emphasis
7 added]

- 8 • **Specific Performance:** Specific performance is and always has been, by definition, an equitable
9 rather than a legal remedy, and the cases have uniformly held that no right to a trial by jury
10 attaches to such actions. See, e.g., *Hartman v. Burford* (1966) 242 Cal.App.2d 268, 51 Cal.Rptr.
11 309; *Price v. McConnell* (1960) 184 Cal.App.2d 660, 7 Cal.Rptr. 695; *Schaefer v. United Bank*
12 *& Trust Co. of California* (1930) 104 Cal.App. 635, 286 P. 723; and *Ostrom v. DeYoe* (1906) 4
13 Cal.App. 326, 87 P. 811.
- 14 • **Rescission of Contract:** Like specific performance, the remedy of rescission has long been held
15 to be equitable in nature, and thus not susceptible to a claim of the right to a jury trial. In *Bank of*
16 *America Nat. Trust & Sav. Ass’n v. Greenbach* (1950) 98 Cal.App.2d 220, 219 P.2d 814, the
17 court said specifically that an action for rescission is equitable in nature and that a jury trial is not
18 allowed as a matter of right, irrespective of the inclusion of a cause of action for conspiracy in a
19 presumed effort to change the nature of the underlying remedy from equitable to legal. Other
20 cases in which rescission has been labeled as an equitable remedy and thus not eligible for trial
21 by jury as a matter of right include *Santa Ana Mortg. & Inv. Co. v. Kinslow* (1938) 30
22 Cal.App.2d 107, 85 P.2d 899; *Swinney v. Legg* (1933) 129 Cal.App. 476, 18 P.2d 970; *Proctor v.*
23 *Arakelian* (1929) 208 Cal. 82, 280 P. 368; and *Pomeroy v. Collins* (1926) 198 Cal. 46, 243 P.
24 657. To counsel’s best knowledge, there are no California decisions that are *contra* with regard
25 to this question.
- 26 • **Reformation of Contract:** Reformation is in the same class as rescission, namely, it is an
27 equitable rather than a legal remedy and carries with it no right to trial by jury. See, e.g., *Loftus*
28 *v. Fischer* (1896) 113 Cal. 286, 45 P. 328. In *Appalachian Ins. Co. v. McDonnell Douglas Corp.*
(1989) 214 Cal.App.3d 1, 262 Cal.Rptr. 716, the court held specifically that “*Since reformation*

1 *is an equitable remedy*, it may be denied if the mistake was the result of ...the want of that
2 degree of care and diligence which would be exercised by persons of reasonable prudence under
3 the same circumstances." (Citing *Fraters G. & P. Co. v. Southwestern C. Co.* (1930) 107
4 Cal.App. 1, 6, 290 P. 45; and *Miller v. Lantz* (1937) 9 Cal.2d 544, 548, 71 P.2d 585) [Emphasis
5 added] As in the case of every other cause of action pleaded in the Cross-Complaint, the claim
6 for reformation is not eligible for a jury trial as a matter of right, because it is inherently
7 equitable, rather than legal, in nature.

8 III

9 **THE RIGHT TO TRIAL BY JURY DOES NOT APPLY TO ACTIONS** 10 **WHEREIN THE FUNDAMENTAL UNDERLYING NATURE OF THE** 11 **RELIEF SOUGHT IS EQUITABLE RATHER THAN LEGAL IN NATURE**

12 In addition to the particularized holdings cited above with respect to each specific cause of action
13 contained in the First Amended Complaint and in the Cross-Complaint on file herein, a general
14 examination of the rule determining when the right to trial by jury does and does not attach, depending
15 on the equitable versus legal form of the relief sought, is appropriate. The seminal case on this topic in
16 California is *C & K Engineering Contractors v. Amber Steel Co.* (1978) 23 Cal.3d 1, 151 Cal.Rptr. 323.
17 There, the court explained that:

18 "The right to a jury trial is guaranteed by our Constitution. (Cal.Const.,
19 art. I, § 16.) We have long acknowledged that the right so guaranteed,
20 however, is the right as it existed at common law in 1850, when the
21 Constitution was first adopted, 'and what that right is, is a purely historical
22 question, a fact which is to be ascertained like any other social, political or
23 legal fact.' (*People v. One 1941 Chevrolet Coupe* (1951) 37 Cal.2d 283,
24 287, 231 P.2d 832, 835; accord *Southern Pac. Transportation Co. v.*
25 *Superior Court* (1976) 58 Cal.App.3d 433, 436, 129 Cal.Rptr. 912; *Meyer*
26 *Koulisch Co. v. Cannon* (1963) 213 Cal.App.2d 419, 430, 28 Cal.Rptr. 757;
27 *Veale v. Piercy* (1962) 206 Cal.App.2d 557, 560, 24 Cal.Rptr. 91.) ***As a***
28 ***general proposition, 'The jury trial is a matter of right in a civil action at***
law, but not in equity.' (*Southern Pac. Transportation Co. v. Superior*

1 *Court, supra*, at p. 436, 129 Cal.Rptr. at p. 914; accord *Abbott v. City of*
2 *Los Angeles* (1958) 50 Cal.2d 438, 462, 326 [587 P.2d 1140] P.2d 484;
3 *People v. One 1941 Chevrolet Coupe, supra*, at p. 299, 231 P.2d 832;
4 *Paularena v. Superior Court* (1965) 231 Cal.App.2d 906, 911, 42
5 Cal.Rptr. 366.)” [Emphasis added]

6 The California Supreme Court had previously said in *People v. One 1941 Chevrolet Coupe,*
7 *supra*, that:

8 "If the action has to deal with ordinary common-law rights cognizable in
9 courts of law, it is to that extent an action at law. In determining whether
10 the action was one triable by a jury at common law, the court is not bound
11 by the form of the action but rather by the nature of the rights involved
12 and the facts of the particular case -- the *Gist* of the action. A jury trial
13 must be granted where the *Gist* of the action is legal, where the action is in
14 reality cognizable at law." (p. 299, 231 P.2d p. 843, fn. omitted.)”
15 [Emphasis added]

16 The *C & K Engineering Contractors v. Amber Steel Co., supra* court went on to say:

17 “On the other hand, if the action is essentially one in equity and the relief
18 sought ‘depends upon the application of equitable doctrines,’ the parties
19 are not entitled to a jury trial. (E.g., *Hartman v. Burford* (1966) 242
20 Cal.App.2d 268, 270, 51 Cal.Rptr. 309, 311 (enforcement of promise to
21 make a will); *Tibbetts v. Fife* (1958) 162 Cal.App.2d 568, 572, 328 P.2d
22 212 (establishment of constructive trust).) Although we have said that ‘the
23 legal or equitable nature of a cause of action ordinarily is determined by
24 the mode of relief to be afforded’ (*Raedeke v. Gibraltar Sav. & Loan*
25 *Assn., supra*, 10 Cal.3d 665, 672, 111 Cal.Rptr. 693, 696, 517 P.2d 1157,
26 1160), the prayer for relief in a particular case is not conclusive
27 (*Paularena v. Superior Court, supra*, 231 Cal.App.2d at pp. 911-912, 42
28 Cal.Rptr. 366; *Interinsurance Exchange v. Savior* (1975) 51 Cal.App.3d
 691, 694, 124 Cal.Rptr. 239). Thus, ‘The fact that damages is one of a full

1 range of possible remedies does not guarantee...the right to a jury...'
2 (*Southern Pac. Transportation Co. v. Superior Court, supra*, 58
3 Cal.App.3d at p. 437, 129 Cal.Rptr. at p. 915.)”

4 The holding in *C & K Engineering Contractors v. Amber Steel Co., supra* and the cases cited
5 therein, as well as its progeny, all clearly establish that where the fundamental thrust – the “gist” or the
6 “gravamen” – of an action is equitable in nature, there is no right to a trial by jury. These holdings are
7 fully in accord with older precedents attesting to the same rule. See, e.g., *Ford v. Palisades Corp.*
8 (1951) 101 Cal.App.2d 491, 225 P.2d 545; *Bettencourt v. Bank of Italy Nat. Trust & Savings Ass’n*
9 (1932) 216 Cal. 174, 13 P.2d 659; *Schaefer v. United Bank & Trust Co. of California, supra*.

10 IV

11 **THE INCLUSION BY MOVING PARTIES OF AN INCIDENTAL CLAIM** 12 **FOR MONETARY DAMAGES BASED ON BREACH OF CONTRACT** 13 **DOES NOT GIVE RISE TO A RIGHT TO TRIAL BY JURY**

14 As previously noted, Moving Parties have requested specific performance, declaratory relief, *and*
15 monetary damages for breach of contract in their First Amended Complaint. In analogous situations it
16 has not been uncommon for parties seeking a trial by jury to argue that the inclusion of any prayer for
17 relief that would be available *at law*, rather than *in equity*, triggers the jury trial right. Despite having
18 been often advanced, this proposition has been soundly rejected in California. In *Southern Pac.*
19 *Transportation Co., supra*, for example, court properly observed that under the statute with which that
20 case dealt,⁵ the trial court must "effect such an adjustment of the rights, equities, and interests" of the
21 parties as was consistent with substantial justice. The court went on to conclude that the action was
22 essentially one calling for the exercise of equitable principles, and added:

23 "The fact that damages is one of a full range of possible remedies does not
24 guarantee real parties the right to a jury," since "there is no possibility of
25 severing the legal from the equitable. The trier of fact must determine
26 whether to quiet title in the improver on the condition he pay to the

27
28 ⁵ *Code of Civil Procedure* §871.5, dealing with the rights of parties who have made improvements to real property owned by other parties.

1 landowner the value of the unimproved land, or whether and in what
2 amount, to award damages to the improver, or whether to require a
3 completely different form of relief... Such a determination is not
4 susceptible of division into one component to be resolved by the court and
5 another component to be determined by a jury. Only one decision can be
6 made, and it must make a proper adjustment of the 'rights, equities, and
7 interests' of all the parties involved." (pp. 437-438, 129 Cal.Rptr. p. 915.)

8 The court concluded that in view of the various equitable considerations involved, it would be
9 "an impossible task" for a jury to resolve the dispute. (p. 438, 129 Cal.Rptr. 912.)

10 The exact same scenario exists in the action at bar: The gravamen of the First Amended
11 Complaint involves primarily the equitable remedy of specific performance – Moving Parties are merely
12 seeking the benefit of their bargain to purchase an inherently unique asset, namely, real property.
13 Further, most of the substantive affirmative defenses pleaded in two of the three Responding Parties’
14 Answer to the First Amended Complaint involve the invocation of equitable doctrines and principles.
15 Finally, the Cross-Complaint itself also seeks the equitable remedies of declaratory relief, rescission of
16 contract, and reformation of contract. The incidental inclusion by Moving Parties of an alternative claim
17 for monetary damages does not, under the holding in *Southern Pac. Transportation Co., supra* and the
18 cases cited therein, give rise to a right to trial by jury.⁶

19 **V**

20 **CONCLUSION**

21 California law is very clear (as is the law in most every other U.S. jurisdiction) that when the
22 “gist” or “gravamen” or “underlying foundation” or “fundamental thrust” of a lawsuit is one that seeks
23 the application of relief that is equitable rather than legal in nature, there is no right to a jury trial.
24 Instead, such matters are – for historic reasons long ago established by the common law of the United
25 Kingdom – exclusively within the province of the trial court itself. The *Southern Pac. Transportation*
26 *Co., supra* court took specific note that when a variety of equitable considerations are involved – as they

27
28 ⁶ The law on this question had been settled long before the *Southern Pac. Transportation Co., supra*
decision. As far back as 1862, the California Supreme Court had characterized the submission to a jury
of all legal and equitable defenses together as “irregular.” *Lestrade v. Barth* (1862) 19 Cal. 660.

1 are in the action at bar -- it would be "an impossible task" for a jury to resolve the dispute. It is
2 respectfully submitted that this Honorable Court has no more reason than did the *Southern Pac.*
3 *Transportation Co., supra* court to subject itself to the confusion and convolutions that would be
4 inherent were a jury to be impaneled in this action for the purpose of deciding issues like "How does the
5 Doctrine of Laches affect all of this?" Or "I wonder if this might be one of those Promissory Estoppel-
6 type of situations?"

7 Moving Parties accordingly request an order of this Court determining that Responding Parties
8 are not entitled to a trial by jury in the within action, and for a further order determining that this entire
9 matter shall be tried to a judge rather than to a jury. A form of [Proposed] Order for the Court's
10 signature is filed concurrently herewith.

11 Dated: [REDACTED], 2005

12 Respectfully submitted,

13 [REDACTED]
14 a member of
15 [REDACTED] **LAW FIRM**
16 Attorneys at Law

17 By _____
18 [REDACTED], Attorneys for
19 Moving Parties
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