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8 SUPERIOR COURT OF CALIFORNIA  
9 COUNTY OF MARIN

10  
11 DARTMOND CHERK, and THE CHERK )  
FAMILY TRUST, )

12 Plaintiffs and Petitioners, )

13 v. )

14 COUNTY OF MARIN, )

15 Defendant and Respondent. )

No.: CIV 1602934

**NOTICE OF MOTION AND  
MOTION FOR JUDGMENT  
ON VERIFIED PETITION  
FOR WRIT OF MANDATE**

) Date: December 6, 2017

) Time: 1:30 pm

) Place: Department B

) Judge: The Hon. Rov O. Chernus

1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE, that on December 6, 2017, at 1:30 pm, in Department B of the  
3 above-titled court located at 3501 Civic Center Drive, San Rafael, CA 92903, Petitioner will, and  
4 hereby does, move the Court for judgment on its writ of mandate, compelling the Respondent  
5 County of Marin to set aside its decision imposing a \$39,960 fee as a condition of granting  
6 Petitioner approval to split a parcel of land on Upper Road in San Rafael into two lots, and to  
7 refund that fee to Petitioner. This motion is made pursuant to Code of Civil Procedure  
8 section 1094.5 and the Mitigation Fee Act, Gov't Code § 66000, *et seq.*, on the grounds that the  
9 County failed to act in accordance with law in imposing the fee. Specifically the fee violates the  
10 Mitigation Fee Act. Second, the fee is an unconstitutional exaction.

11 This motion is based on this notice of motion and motion and the memorandum of points  
12 and authorities filed concurrently with the motion; the administrative record lodged with the Court  
13 on or about July 3, 2017; the Verified Petition for Writ of Mandate, filed on August 15, 2016; all  
14 other papers filed in this matter; and any evidence subsequently admitted.

15 DATED: October 2, 2017.

16 Respectfully submitted,

17 LAWRENCE G. SALZMAN  
18 Pacific Legal Foundation

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20 By  \_\_\_\_\_  
LAWRENCE G. SALZMAN

21 Attorney for Plaintiffs and Petitioners  
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1 **DECLARATION OF SERVICE**

2 I, Barbara A. Siebert, declare as follows:

3 I am a resident of the State of California, residing or employed in Sacramento, California.  
4 I am over the age of 18 years and am not a party to the above-entitled action. My business address  
5 is 930 G Street, Sacramento, California 95814.

6 On October 2, 2017, a true copy of NOTICE OF MOTION AND MOTION FOR  
7 JUDGMENT ON VERIFIED PETITION FOR WRIT OF MANDATE was placed in an envelope  
8 addressed to:

9 BRIAN E. WASHINGTON  
10 TARISHA K. BAL  
Office of the County Counsel  
11 3501 Civic Center Drive, Room 275  
San Rafael, CA 94903-4257  
12 *Counsel for Defendant and Respondent*  
*County of Marin*

13 which envelope, with postage thereon fully prepaid, was then sealed and deposited in a mailbox  
14 regularly maintained by the United States Postal Service in Sacramento, California.

15 On October 2, 2017, a true copy of NOTICE OF MOTION AND MOTION FOR  
16 JUDGMENT ON VERIFIED PETITION FOR WRIT OF MANDATE was sent via electronic  
17 mail addressed to:

18 BRIAN E. WASHINTON  
E-Mail: bWASHINGTON@marincounty.org  
19 TARISHA K. BAL  
E-Mail: tbal@marincounty.org  
20 *Counsel for Defendant and Respondent*  
*County of Marin*

21 I declare under penalty of perjury that the foregoing is true and correct and that this  
22 declaration was executed this 2nd day of October, 2017, at Sacramento, California.  
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25 \_\_\_\_\_  
26 BARBARA S. SIEBERT  
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