

1 Joseph Romano, In Pro Per
4723 Muirfield Court
2 Santa Rosa, CA 95405
Telephone: (707) 542-2224
3 Facsimile: (707) 542-2227

4 Philip J. Terry, Esq. (SBN 148144) (*Attorney for Plaintiff with limited scope*)
Samantha Pungprakearti, Esq. (SBN 264919)
5 CARLE, MACKIE, POWER & ROSS, LLP
100 B Street, Suite 400
6 Santa Rosa, California 95401
Telephone: (707) 526-4200
7 Facsimile: (707) 526-4707

8 Attorneys for Plaintiff

10 SUPERIOR COURT OF CALIFORNIA

11 COUNTY OF SONOMA

12 JOSEPH ROMANO, individually and as
trustee of the JOSEPH AND PIXIE ROMANO
13 LIVING TRUST,

14 Plaintiff,

15 v.

16 FAIRWAY VIEW ESTATES
HOMEOWNERS ASSOCIATION; and DOES
17 1-20, inclusive,

18 Defendants.

19 AND RELATED CROSS-ACTION
20

Case No: SCV-262714

(Unlimited Civil)

ANSWER TO CROSS-COMPLAINT

Action Filed: June 29, 2018

Trial date: August 23, 2019

Assigned Judge: Arthur A. Wick
Dept.: 17

22 Plaintiff and Cross-Defendant JOSEPH ROMANO, individually and as trustee of the
23 JOSEPH AND PIXIE ROMANO LIVING TRUST, (hereinafter "Cross-Defendant"), submits
24 this Answer to Defendant and Cross-Complainant FAIRWAY VIEW ESTATES
25 HOMEOWNERS ASSOCIATION's (hereinafter "Cross-Complainant") unverified Cross-
26 Complaint.

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GENERAL DENIAL

Pursuant to California Code of Civil Procedure section 431.30, Cross-Defendant generally denies each and every material allegation contained in Cross-Complainant’s unverified Cross-Complaint, and each and every cause of action thereof, and Cross-Defendant specifically denies that Cross-Complainant has been injured or damaged in any sum, or at all by reason of an act or omission on the part of Cross-Defendant.

AFFIRMATIVE DEFENSES

As separate affirmative defenses to the Cross-Complaint, Cross-Defendant further alleges as follows:

FIRST AFFIRMATIVE DEFENSE

(Failure to State a Cause of Action)

The Cross-Complaint and each cause of action therein fails to state facts sufficient to constitute viable causes of action against Cross-Defendant.

SECOND AFFIRMATIVE DEFENSE

(Statute of Limitations)

The Cross-Complaint and each cause of action and remedy sought therein is barred by the applicable statute of limitations, including but not limited to, California Code of Civil Procedure sections 336(b), 337, 338(a), 339(1), and 340.

THIRD AFFIRMATIVE DEFENSE

(Good Faith)

The Cross-Complaint and each cause of action and remedy sought therein is barred because Cross-Defendant acted in good faith and did not directly or indirectly intend to perform any acts whatsoever which would constitute a violation of any local, state or federal laws, or governing documents, including covenants or rules of Cross-Complainant.

FOURTH AFFIRMATIVE DEFENSE

(Failure to Mitigate)

Cross-Complainant, through the exercise of reasonable effort, could have mitigated its damages, if any, and the resulting damages, if any, were directly and proximately caused by

1 Cross-Complainant's failure, neglect and refusal to exercise reasonable effort to mitigate its
2 alleged damages. By way of example, Cross-Complainant knew or should have known that
3 Cross-Defendant's improvements allegedly encroached on the common area many years ago, but
4 failed and refused to raise this claim previously.

5 **FIFTH AFFIRMATIVE DEFENSE**

6 (Laches)

7 The Cross-Complaint, and each cause of action therein, is barred by the doctrine of
8 laches. Cross-Complainants unreasonably, and without excuse, delayed in filing the claims
9 alleged, and implicitly acquiesced to the alleged conduct, causing undue prejudice to Cross-
10 Defendant.

11 **SIXTH AFFIRMATIVE DEFENSE**

12 (Unclean Hands)

13 The Cross-Complaint and each cause of action and remedy sought therein is barred by the
14 doctrine of unclean hands to the extent that it has knowingly violated the law, and governing
15 documents, covenants and rules in an attempt to pressure Cross-Defendant into submission.

16 **SEVENTH AFFIRMATIVE DEFENSE**

17 (Consent)

18 The Cross-Complaint and each cause of action and remedy sought therein is barred
19 because Cross-Complainant consented, either expressly or impliedly, to any such acts or conduct
20 as may be shown on the part of Cross-Defendant. This includes, but is not limited to, Cross-
21 Complainant's failure to raise the alleged issues of encroachment and failure to abide by rules for
22 the last nine years.

23 **EIGHTH AFFIRMATIVE DEFENSE**

24 (Estoppel)

25 The Cross-Complaint and each cause of action and remedy sought therein is barred due to
26 Cross-Complainant's conduct, including its failure to notify Cross-Defendant or any prior owner
27 that the property allegedly encroaches on the common area, or that the property has alleged
28 improvements that violate the governing documents was reasonably relied upon by Cross-

1 Defendant to his detriment. Therefore, Cross-Complainant must be estopped from asserting its
2 alleged claims.

3 **NINTH AFFIRMATIVE DEFENSE**

4 (Waiver)

5 The Cross-Complaint and each cause of action therein is barred by the equitable doctrine
6 of waiver. Cross-Complainant waived its right to enforce any alleged rights in the governing
7 documents that are not alleged to have been violated, when it freely and knowingly chose not to
8 enforce those rules on Cross-Defendant and other residents during the past nine years.

9 **TENTH AFFIRMATIVE DEFENSE**

10 (Bad Faith)

11 The Cross-Complaint and each cause of action therein is barred by the doctrine of bad
12 faith and/or selective enforcement. Cross-Complainant cannot enforce its governing documents
13 in an arbitrary or capricious manner. The alleged violations asserted in the Cross-Complaint are
14 not enforced against other owners and do not pose a threat to the use or enjoyment of the other
15 properties in the community.

16 **ELEVENTH AFFIRMATIVE DEFENSE**

17 (Changed Circumstances)

18 The Cross-Complaint and each cause of action therein is barred by the equitable doctrine
19 of changed circumstances. Cross-Complainant cannot enforce its governing documents when the
20 change in the surrounding circumstances substantially frustrates the purpose of the covenant. By
21 way of example, the fact that Cross-Defendant's property has been merged between two parcels.
22 The alleged offending improvements are not near any other properties such that they would
23 cause a threat to the use or enjoyment of the other residents. Plus, the Cross-Complainants have
24 permitted substantial improvements on most other residents' properties such that the community
25 has operated without conforming to the strict requirements described in the governing
26 documents.

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1 **TWELFTH AFFIRMATIVE DEFENSE**

2 (Balancing of Equities)

3 The Cross-Complaint and each cause of action therein is barred when balancing the
4 equities. The alleged harm described in the Cross-Complaint is greatly outweighed by the
5 hardship to the Cross-Defendant should equitable relief be granted.

6 **THIRTEENTH AFFIRMATIVE DEFENSE**

7 (Reservation of All Defenses)

8 Because the Cross-Complaint is couched in conclusory terms, Cross-Defendant cannot
9 fully anticipate all defenses that may be applicable to the within action. Accordingly, Cross-
10 Defendant reserves the right to assert additional defenses, if and to the extent that such defenses
11 are applicable.

12 **PRAYER FOR RELIEF**

13 WHEREFORE, Cross-Defendant, JOSEPH ROMANO, individually and as trustee of the
14 JOSEPH AND PIXIE ROMANO LIVING TRUST, prays for judgment as follows:

- 15 1. That Cross-Complainant takes nothing by way of the Cross-Complaint;
16 2. That the Cross-Complaint and all causes of action thereunder be dismissed with
17 prejudice;
18 3. That the Court enter judgment for Cross-Defendant against Cross-Complainant on
19 all alleged causes of action;
20 4. For attorneys' fees and costs of suit; and
21 5. For such other and further relief as this Court may deem just and proper.

22 Dated: May 16, 2019

CARLE, MACKIE, POWER & ROSS LLP

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25 By:



26 Philip J. Terry, Esq.
Samantha Pungprakearti, Esq.
27 Attorneys for Plaintiff/Cross-Complainant
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