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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

AGK Sierra de Montserrat, L.P.,  
Plaintiff,  
v.  
Comerica Bank, et al.,  
Defendants.

No. 2:15-cv-01280-KJM-DB  
FINAL PRETRIAL ORDER

On January 20, 2022, the court conducted a final pretrial conference. Timothy J. Gorry appeared for plaintiff AGK Sierra de Montserrat. Frank Perrott appeared for defendant Comerica Bank. After hearing, and good cause appearing, the court makes the following findings and orders:

**JURISDICTION AND VENUE**

This court has subject matter jurisdiction based on 28 U.S.C. § 1331. This district and Sacramento in particular is an appropriate venue because the alleged events occurred within this district and the geographic area served by the Sacramento courthouse. The parties do not contest this court's jurisdiction or venue

**JURY / NON-JURY**

This matter will be tried as a bench trial.

1     **UNDISPUTED FACTS**

2             The court accepts the parties’ stipulation to the following agreed-upon undisputed facts:

- 3     1.     In 2005, Westwood Montserrat, Ltd. ("Westwood") began developing a residential  
4             subdivision located in Loomis, California, commonly known as Sierra de Montserrat.
- 5     2.     As the developer, Westwood recorded a Declaration Of Covenants, Conditions and  
6             Restrictions for Sierra de Montserrat (the "CC&Rs").
- 7     3.     The CC&Rs reserved certain rights for Westwood as the development's "Declarant.”
- 8     4.     To develop the property, Westwood borrowed money from Comerica.
- 9     5.     The loan was secured by a Construction Trust Deed with Assignment of Rents, Security  
10            Agreement and Fixture Filing (the "Trust Deed").
- 11    6.     The Trust Deed, among other things, assigned to Comerica certain rights in the  
12            Development in the event of Westwood's default.
- 13    7.     Westwood defaulted on its loan obligations to Comerica.
- 14    8.     Just days before the foreclosure sale, Westwood recorded a Supplemental Declaration  
15            Regarding Construction Obligation and Memorandum of Repurchase Rights (the  
16            "Supplemental Declaration"), which purportedly granted Westwood additional rights and  
17            benefits as the Declarant.
- 18    9.     On November 6, 2009, Comerica acquired 51 lots in Sierra de Montserrat following a  
19            nonjudicial foreclosure pursuant to the Trust Deed.
- 20    10.    On March 19, 2010, Don Murphy, on behalf of Angelo Gordon and Kinetic, made a  
21            written offer to purchase 51 lots in Sierra de Montserrat through a written letter.
- 22    11.    Keith Maruska was the main point of contact for Comerica during the negotiation of a  
23            Purchase And Sale Agreement And Joint Escrow Instructions, dated May 17, 2010  
24            (“PSA”).
- 25    12.    During the time period relevant to this lawsuit, Keith Maruska was a manager in  
26            Comerica’s California ORE Department - Western Market, a part of Comerica’s Special  
27            Assets Group.

28     ////

- 1 13. In late March or early April 2010, at Keith Maruska's direction, Comerica's attorneys
- 2 prepared the initial draft of the PSA.
- 3 14. Don Murphy is a principal of Kinetic.
- 4 15. Nader Pakfar acted as counsel for AGK, Angelo Gordon, and Kinetic in their negotiations
- 5 with Comerica.
- 6 16. Alvin Galstian acted as counsel for AGK, Angelo Gordon, and Kinetic in their
- 7 negotiations with Comerica.
- 8 17. Francis Ferrer acted as inside counsel for Comerica in its negotiations with AGK, Angelo
- 9 Gordon, and Kinetic.
- 10 18. Steve Chamberlain acted as Comerica's real estate agent for the sale of Comerica's lots in
- 11 the Development.
- 12 19. First American assigned Arah Tresler, an Escrow Specialist, to assist AGK and Comerica
- 13 with the transaction.
- 14 20. After Angelo Gordon and Kinetic submitted the LOI to Comerica, the parties began
- 15 negotiating the PSA.
- 16 21. On May 17, 2010, Angelo Gordon Real Estate, Inc. ("AGRE"), on the one hand, and
- 17 Comerica, on the other, entered into the PSA.
- 18 22. On June 16, 2010, AGRE and Comerica entered into the First Amendment of the PSA.
- 19 23. On June 18, 2010, AGRE and Comerica entered into the Second Amendment of the PSA.
- 20 24. On June 25, 2010, AGRE and Comerica entered into the Third Amendment of the PSA.
- 21 25. Kinetic and Angelo Gordon created a special purpose entity, AGK, to acquire 51 lots in
- 22 the Development from Comerica.
- 23 26. AGRE assigned its interest in the PSA to AGK.
- 24 27. On June 30, 2010, Keith Maruska executed a written Assignment of Declarants Rights
- 25 (the "Assignment").
- 26 28. First American Title Company recorded the Assignment.
- 27 ////
- 28 ////

1 29. On April 17, 2015, AGK made written demand to Comerica to indemnify AGK for  
2 lawsuits Westwood filed against AGK and to pay for the attorneys' fees and expenses  
3 AGK incurred in defense of those actions.

4 30. On or about April 24, 2015, Comerica sent a written response indicating that Comerica  
5 would not indemnify AGK, as AGK had demanded.

6 31. Comerica has not paid any money to AGK, at any time, in response to AGK's demand  
7 that Comerica indemnify AGK.

## 8 **FACTS RESOLVED BY PLEADINGS**

9 The following facts are undisputed, and the court accepts the parties' stipulation that these facts  
10 are established for the purposes of trial without the need to further elicit such fact through  
11 testimony or documentary evidence:

12 32. Comerica's Answer [Docket No. 5], ¶19, admits Comerica "refuses to indemnify AGK  
13 from and against claims and causes of action asserted by Westwood against AGK in both  
14 lawsuits brought by Westwood in the Superior Court of the State of California."

15 33. Comerica's Answer [Docket No. 5], ¶23, admits "AGK and Comerica entered into a  
16 written indemnification agreement by and through the Assignment [the Assignment of  
17 Declarants Rights attached to the Complaint as Exhibit A]." Although Comerica agrees  
18 that its execution of the Assignment containing an indemnity provision in favor of AGK is  
19 an established fact, Comerica intends to offer further testimonial and documentary  
20 evidence of the facts and circumstances surrounding the execution of the Assignment in  
21 support of its affirmative defenses based on failure of consideration and mistake of fact  
22 and as extrinsic evidence regarding the meaning of the indemnity provision.

## 23 **DISPUTED FACTUAL ISSUES**

24 The following factual issues are disputed:

- 25 1. The nature, extent, scope, and effect of any communications between Comerica, on the one  
26 hand, and AGK, Angelo Gordon Real Estate, Inc. and/or Kinetic Homes, on the other hand,  
27 concerning the Assignment of Declarants Rights.

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- 1 2. The nature, extent, scope, and effect of any communications between Comerica, on the one  
2 hand, and AGK, Angelo Gordon Real Estate, Inc. and/or Kinetic Homes, on the other hand,  
3 about whether Comerica would agree to indemnify AGK, Angelo Gordon Real Estate, Inc.  
4 and/or Kinetic Homes from claims brought by Westwood Montserrat, L.P.
- 5 3. The nature, extent, scope, and effect of any communications between Comerica, AGK,  
6 Angelo Gordon Real Estate, Inc., and/or Kinetic Homes, their attorneys, and other parties  
7 involved in the purchase and sale of the real property that is the subject of this action,  
8 including, without limitation, representatives of First American Title Company (the title  
9 company) and VierraMoore, Inc. (a subdivision consultant).
- 10 4. The nature, basis and scope of the claims and allegations made by Westwood in certain  
11 lawsuits it brought against AGK.
- 12 5. The date that AGK first incurred any loss or liability in connection with the claims for which  
13 AGK seeks indemnity in this action.
- 14 6. The factual elements underpinning Comerica's affirmative defense of unilateral mistake of  
15 fact, including whether such mistake was caused by AGK.

16 **SPECIAL FACTUAL INFORMATION FOR ACTION INVOLVING**  
17 **CONTRACT**

18 The parties have provided the following information as provided by Eastern District Local  
19 Rule 281(b)(6)(iii), as AGK's claims are based on a contract between the parties:

- 20 1. The contractual obligations at issue are contained in the Assignment. Comerica's assignment  
21 of its declarant's rights was required by a broader agreement between the parties, the terms of  
22 which are embodied in the PSA, as amended.
- 23 2. The contract at issue is written.
- 24 3. AGK alleges that Comerica breached the contract by failing and refusing to indemnify AGK  
25 under the terms of the Assignment Of Declarants Rights in connection with two lawsuits that  
26 Westwood Montserrat L.P. brought against AGK in which Westwood Montserrat's claims  
27 were based, at least in part, on the theory that Westwood Montserrat remained the Declarant  
28 of the Sierra de Montserrat development and that Comerica was never the Declarant. More

1 specifically, AGK alleges that, through the lawsuits, Westwood Montserrat claimed : (a) AGK  
2 was liable to Westwood Montserrat for Comerica’s attempts to act as Sierra de Montserrat’s  
3 Declarant by, among other things, rescinding the Supplemental Declaration; (b) AGK was  
4 liable to Westwood Montserrat for refusing to allow Westwood Montserrat, as the  
5 development’s Declarant, to repurchase AGK-owned lots in Sierra de Montserrat as provided  
6 for in the Supplemental Declaration Westwood Montserrat recorded before the foreclosure,  
7 despite that Comerica’s exercise of its then-held Declarant right to rescind the Supplemental  
8 Declaration; and (c) AGK is liable for a civil conspiracy with Comerica designed to deprive  
9 Westwood Montserrat of its Declarant rights based on, among other things, Comerica’s public  
10 claims that it had acquired Declarant rights for Sierra de Montserrat, Comerica’s recordation  
11 of the Assignment and Comerica’s rescission of the Supplemental Declaration Westwood  
12 Montserrat had recorded.

- 13 4. Comerica alleges that it is entitled to partial rescission of the Assignment because its consent  
14 to the indemnity provision was given by mistake.
- 15 5. Comerica alleges that AGK’s breach of contract claims are barred by the statutes of  
16 limitation, because AGK incurred loss or liability in connection with the claims for which  
17 AGK seeks indemnity in this action more than four years prior to the filing of its complaint.
- 18 6. Neither party has alleged a claim or defense of estoppel or waiver.
- 19 7. AGK seeks the following relief: (a) monetary damages in an amount of at least \$3,231,115;  
20 and (b) a judicial declaration confirming that Comerica has a contractual obligation pursuant  
21 to the Assignment to indemnify AGK against any loss, liability, claims, or causes of action  
22 arising out of Comerica’s position as “Declarant” under the Sierra de Montserrat CC&Rs that  
23 accrued before the date of the Assignment. AGK believes the declaration is necessary, as at  
24 least one of Westwood’s lawsuits against AGK is ongoing and Westwood has recently  
25 threatened additional litigation against AGK.
- 26 8. Comerica disputes that AGK is entitled to a judicial declaration regarding the parties’ rights  
27 and responsibilities with respect to any prospective claims or litigation. Comerica is unaware

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1 of any “threatened additional litigation against AGK,” and any such ongoing lawsuits or  
2 litigation have not been the subject of this action or any of the discovery herein.

3 9. AGK’s measure of damages stems from the amounts of attorneys’ fees and costs it spent  
4 defending against claims Westwood Montserrat, L.P. brought against AGK in various actions  
5 where the claims and allegations arose from Westwood’s assertion that Comerica did not  
6 obtain the Declarant rights through foreclosure (specifically, Placer County Superior Court  
7 Case Nos. SCV0029131 and SCV0032447). AGK’s itemization of these amounts is as  
8 follows: (a) attorneys’ fees and costs incurred in Case No. SCV0029131, in the amount of at  
9 least \$1,000,311; and (b) attorneys’ fees and costs incurred in Case No. SCV0032447, in the  
10 amount of at least \$1,377,346. AGK take the position those damages continue to accrue, as  
11 litigation is ongoing in Case No. SCV0032447.

12 Also, as part of its damages, AGK asserts that it is entitled to recoup the costs of litigating  
13 against Comerica in this action, which was a necessary consequence of Comerica’s refusal to  
14 provide indemnification. AGK calculates the amount of those damages as at least \$853,458,  
15 and says this component of AGK’s damages continues to accrue as litigation continues.

16 10. Comerica disputes that AGK is entitled to recover the attorneys’ fees and costs it incurred  
17 prosecuting its indemnity claim against Comerica as damages.

## 18 **DISPUTED EVIDENTIARY ISSUES**

19 The parties do not anticipate any unique or unusually complex evidentiary issues at this  
20 time and therefore do not plan to file any motions in limine with one possible exception related to  
21 bifurcation as noted below.

## 22 **RELIEF SOUGHT**

23 Plaintiff seeks monetary damages in an amount of at least \$3,231,115.

24 Plaintiff also seeks a judicial declaration confirming that Comerica has a contractual  
25 obligation pursuant to the Assignment to indemnify AGK against any loss, liability, claims, or  
26 causes of action arising out of Comerica’s position as “Declarant” under the Sierra de Montserrat  
27 CC&Rs that accrued before the date of the Assignment.

28 Defendant seeks judgment in its favor.

1 **POINTS OF LAW**

2 The parties have alerted the court to legal disputes in their joint pretrial statement. Trial  
3 briefs addressing these points more completely shall be filed with this court **no later than seven**  
4 **days prior to the date of trial** in accordance with Local Rule 285.

5 **ABANDONED ISSUES**

6 No issues or defenses have been abandoned by parties.

7 **WITNESSES**

8 Plaintiff's and Defendant's witnesses are both listed in Joint Exhibit A. Each party may  
9 call any witnesses designated by the other.

10 A. The court will not permit any other witness to testify unless:

11 (1) The party offering the witness demonstrates that the witness is for the  
12 purpose of rebutting evidence that could not be reasonably anticipated at  
13 the pretrial conference, or

14 (2) The witness was discovered after the pretrial conference and the proffering  
15 party makes the showing required in "B," below.

16 B. Upon the post pretrial discovery of any witness a party wishes to present at trial,  
17 the party shall promptly inform the court and opposing parties of the existence of  
18 the unlisted witnesses so the court may consider whether the witnesses shall be  
19 permitted to testify at trial. The witnesses will not be permitted unless:

20 (1) The witness could not reasonably have been discovered prior to the  
21 discovery cutoff;

22 (2) The court and opposing parties were promptly notified upon discovery of  
23 the witness;

24 (3) If time permitted, the party proffered the witness for deposition; and

25 (4) If time did not permit, a reasonable summary of the witness's testimony  
26 was provided to opposing parties.



1 **EXHIBITS, SCHEDULES AND SUMMARIES**

2 Plaintiff's and Defendant's exhibits are listed in Joint Exhibit List B. The parties are  
3 ordered to provide a supplemental exhibit list **within two weeks of the depositions of Louis**  
4 **Friedel and Frances Ferrer** as allowed below. The parties stipulate that the email  
5 communications that are separately listed in the parties' Joint Exhibit List are authentic and were  
6 transmitted on or about the date and time reflected in the emails. At trial, Joint Exhibits shall be  
7 identified as JX and listed numerically, e.g., JX-1, JX-2.

8 All exhibits must be premarked.

9 The parties must prepare exhibit binders for use by the court at trial, with a side tab  
10 identifying each exhibit in accordance with the specifications above. Each binder shall have an  
11 identification label on the front and spine.

12 The parties must exchange exhibits no later than **twenty-eight days before trial**. Any  
13 written objections to exhibits are due no later than **fourteen days before trial**.

14 A. The court will not admit exhibits other than those identified on the exhibit lists  
15 referenced above unless:

- 16 1. The party proffering the exhibit demonstrates that the exhibit is for the  
17 purpose of rebutting evidence that could not have been reasonably  
18 anticipated, or
- 19 2. The exhibit was discovered after the issuance of this order and the  
20 proffering party makes the showing required in Paragraph "B," below.

21 B. Upon the discovery of exhibits after the discovery cutoff, a party shall promptly  
22 inform the court and opposing parties of the existence of such exhibits so that the  
23 court may consider their admissibility at trial. The exhibits will not be received  
24 unless the proffering party demonstrates:

- 25 1. The exhibits could not reasonably have been discovered earlier;
- 26 2. The court and the opposing parties were promptly informed of their  
27 existence; and

28 //



1 **AMENDMENTS AND DISMISSALS**

2 The parties do not anticipate requesting any additional amendments to pleadings,  
3 dismissals, or additions or substitutions of parties.

4 **SETTLEMENT**

5 The parties engaged in a Mandatory Settlement Conference before the Honorable Deborah  
6 Barnes on August 3, 2021, and were unable to reach a settlement. There have been no further  
7 settlement discussions between the parties and the court orders no further court-convened  
8 settlement at this time.

9 **SEPARATE TRIAL OF ISSUES**

10 Comerica reserves its right to seek the bifurcation of trial for the purpose of having its  
11 affirmative defense based on mistake determined prior to the determination of all other issues.  
12 AGK does not currently believe that bifurcation of trial or any trial issue will make trial more  
13 efficient or less burdensome.

14 The parties are **ordered** to exhaust meet and confer on this issue and schedule any  
15 remaining dispute for hearing on a motion in limine at the beginning of trial if necessary.

16 **IMPARTIAL EXPERTS OR LIMITATIONS OF EXPERTS**

17 Not applicable.

18 **ATTORNEYS' FEES**

19 AGK and Comerica include requests for an award of attorneys' fees, as costs, in the  
20 prayers for relief in their operative pleadings. The court will address any request for costs after  
21 trial, following the appropriate post-trial motion. AGK's requests for attorneys' fees may be  
22 subsumed in its indemnity damages, as AGK contends that applicable case law allows AGK to  
23 seek the attorneys' fees and costs it expended to prosecute this indemnity action as part of its  
24 damages.

25 **TRIAL DATE AND ESTIMATED LENGTH OF TRIAL**

26 The bench trial is set for **Tuesday, April 26, 2022 starting at 9:00 a.m.** in Courtroom  
27 Three before the Honorable Kimberly J. Mueller. Trial is anticipated to last **three to five days.**

1 The parties are directed to Judge Mueller's default trial schedule outlined on her web page on the  
2 court's website, with a more detailed schedule to be provided by the courtroom deputy closer to  
3 trial.

4 **PROPOSED JURY VOIR DIRE AND PROPOSED JURY INSTRUCTIONS**

5 Not applicable.

6 **OBJECTIONS TO THIS ORDER AND CONCLUSION**

7 Each party is granted **fourteen days** from the date of this order to file objections to the  
8 same. If no objections are filed, the order will become final without further order of this court.

9 DATED: January 25, 2022.

  
\_\_\_\_\_  
CHIEF UNITED STATES DISTRICT JUDGE

# EXHIBIT A

**Exhibit A Joint Witness List**

The parties may call the following witnesses at trial:

<u>Name</u>	<u>Address</u>	<u>Type</u>
Don Murphy	Can be reached through AGK's counsel	Fact Witness
Louis Friedel	Can be reached through AGK's counsel	Fact Witness
Keith Maruska	Can be reached through Comerica's counsel	Fact Witness
Francis Ferrer	Can be reached through Comerica's counsel	Fact Witness
Nader Pakfar	450 N. Roxbury Dr., Suite 700 Beverly Hills, CA 90210	Fact Witness
Alvin Galstian	9595 Wilshire Blvd., Suite 900 Beverly Hills, CA 90212	Fact Witness
Timothy Gorry	10880 Wilshire Boulevard, 19th Floor, Los Angeles, CA 90024	Fact Witness
Jeffrey Lowenthal	235 Pint Street, 15th Floor, San Francisco, CA 94111	Fact Witness
Karen Balmer	Can be reached through Comerica's counsel	
David Lardner	Can be reached through Comerica's counsel	
Steve Chamberlain	301 University Ave., Suite 100, Sacramento, CA 95825	
Arah Tresler	Address currently unknown	
David Pratt	Address currently unknown	
Curtis Westwood	12150 Tributary Point Dr., Suite 160, Gold River, CA 95670	
Tom Trost	3721 Douglas Blvd., Suite 300, Roseville, CA 95661	
Greg Maxim	3721 Douglas Blvd., Suite 300, Roseville, CA 95661	

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Terri-Sue Sublett	Address currently unknown	
George Moore	2870 Gateway Oaks Dr., Suite 100, Sacramento, CA 95833	
Jeff Wagner	1331 N. California Blvd., Fifth Floor, Walnut Creek, CA 94596	

# EXHIBIT B



### Exhibit B – Joint Exhibit List

EXHIBIT ID	DESCRIPTION	BATES NO.	OFFERED	ADMITTED
2	Letter, dated August 27, 2010, from Curtis A. Westwood to Don Murphy	WEST04626 – WEST04627		
4	Letter, dated April 18, 2011, from Timothy Gorry to Curtis Sproul	WEST04613 - WEST04615		
5	Letter, dated April 22, 2011, from Gregory Maxim to Robert C. and Jennielyn B. Kincade	WEST04616 – WEST04618		
6	Complaint For Declaratory Relief; Injunctive Relief; and Nuisance, filed May 2, 2011, in Placer County Superior Court Case No. SCV0029131	WEST03732 – WEST03750		
8	Westwood Montserrat, LTD’s Claim For Arbitration, dated May 6, 2013, in JAMS Arbitration No. 1130005625	WEST03752 – WEST03765		
9	Westwood Montserrat, LTD’s Amended Claim For Arbitration, dated August 20, 2013, in JAMS Arbitration No. 1130005625			
10	Ruling On Cross Motions For Summary Judgment On Issue Of Declarant (Phase One), dated October 25, 2013, in JAMS Arbitration No. 1130005625			
15	Letter, dated November 9, 2012, from Gregory Maxim to Timothy Gorry (with enclosures)	WEST04344 – WEST04350		
16	Letter, dated November 21, 2012, from Timothy J. Gorry to Gregory Maxim (with enclosures)	WEST01703 – WEST01707		
17	Letter, dated December 5, 2012, from Gregory Maxim to Timothy Gorry	WEST04341 – WEST04343		
21	Letter of Intent, dated March 19, 2010, from Don Murphy to Steve Chamberlain	001342 – 001345		
26	Email, dated May 13, 2010, from Keith W. Maruska to Steve Chamberlain (with attachment)	COM002066 – COM002112		
27	Purchase and Sale Agreement and Joint Escrow Instructions, dated May 19, 2010, by and between Angelo Gordon Real Estate, Inc. and Comerica Bank	COM00465 – COM00506		

<b>EXHIBIT ID</b>	<b>DESCRIPTION</b>	<b>BATES NO.</b>	<b>OFFERED</b>	<b>ADMITTED</b>
28	Email, dated May 21, 2010, from Keith W. Maruska to Nader Pakfar	COM003499 – COM003502		
29	Email, dated May 25, 2010, from Alvin Galstian to Robin Nieto	AGK000248 – AGK000249		
30	Email, dated May 27, 2010, from Keith W. Maruska to Alvin Galstian	COM001725 – COM001731		
31	Email, dated May 28, 2010, from Nader Pakfar to Tim Ward	AGK000404- AGK000406		
32	Email, dated June 1, 2010, from Don Murphy to Keith W. Maruska			
33	Email, dated June 2, 2010, from Steve L. Chamberlain to Keith W. Maruska	COM003456 – COM003458		
34	Email, dated June 8, 2010, from Keith W. Maruska to Nader Pakfar (with attachments)	COM001687 – COM001695		
37	Supplemental Declaration Regarding Construction Obligation and Memorandum of Repurchase Right, recorded October 28, 2009, DOC-2009-0092355	COM002682 – COM002688		
38	Email, dated June 16, 2010, from Keith W. Maruska to Steve L. Chamberlain			
39	Email, dated June 21, 2010, from Don to Keith W. Maruska	COM000460 – COM000463		
43	Email, dated June 25, 2010, from Keith W. Maruska to Nader Pakfar (with exhibits)	COM000955 – COM000972		
45	Email, dated June 25, 2010, from Arah Tresler to Nader Pakfar	COM000929 – COM000937		
46	Email, dated June 25, 2010, from Keith W. Maruska to Arah Tresler (with attachments)	COM000899 – COM000910		
47	Email, dated June 25, 2010, from Nader Pakfar to Keith Maruska	COM000849 – COM000854		

<b>EXHIBIT ID</b>	<b>DESCRIPTION</b>	<b>BATES NO.</b>	<b>OFFERED</b>	<b>ADMITTED</b>
49	Email, dated June 28, 2010, from Alvin Galstian to Arah Tresler (with attachments)	COM000282 – COM000291		
51	Assignment of Declarants Rights, recorded June 30, 2010, DOC-2010-0049607-00	COM000287 – COM000291		
60	Email, dated June 16, 2010, from Keith W. Maruska to Nader Pakfar (with attachments)	COM001657 – COM001668		
61	Email, dated June 18, 2010, from Keith W. Maruska to Nader Pakfar (with attachments)	COM001632 – COM001641		
65	Email, dated June 03, 2010, from Cherri Kirchoff to Nancy D. Kordoban	COM002755 – COM002760		
66	Email, dated June 03, 2010, from Nancy D. Kordoban to Alvin Luckenbach	COM003267 – COM003271		
70	Email, dated June 28, 2010, from Francis Ferrer to Alvin Luckenbach	COM000737 – COM000739		
72	Email, dated June 29, 2010, from Arah Tresler to Keith W. Maruska (with attachments)			
73	Email, dated June 30, 2010, from Karen Balmer to Arah Tresler (with attachments)	COM002543 – COM002558		
100	Assignment And Assumption Of Purchase And Sale Agreement, dated as of June 28, 2010, by and between Angelo Gordon Real Estate, Inc. and AGK Sierra De Montserrat, L.P.	FA0098 - 0149		
101	Grant Deed, recorded June 30, 2010, DOC-2010-0049606-00	AGK- COM0000283 - 0000285		
102	Bill Of Sale, Assignment And Assumption, dated as of June 30, 2010	FA0090 - 0096		
103	Rescission of Declaration of Restrictions, recorded June 30, 2010, DOC-2010-0049605-00	COM002184 - 002186		
104	Letter, dated April 9, 2014, from Gregory L. Maxim to Anthony R. Eaton	AGK- COM0000267 - 0000282		

EXHIBIT ID	DESCRIPTION	BATES NO.	OFFERED	ADMITTED
105	Letter, dated April 17, 2015, from Timothy Gorry to Frank Perrott			
106	Letter, dated April 24, 2015, from Frank Perrott to Timothy Gorry			
107	Bylaws of Sierra de Montserrat Owners Association	AGK-COM0000286 - 0000311		
108	Eisner Law Firm Invoices from June 2011 to May 2015 for <i>Westwood v. AGK</i> , Placer County Superior Court Case No. SCV0029131	EI0008497 – 0008635; AGK-COM0000647 - 0000710		
109	Theodora Oringer Invoices from April 2015 to July 2020 for <i>Westwood v. AGK</i> , Placer County Superior Court Case No. SCV0029131	AGK-COM0018602 - 0018708		
110	Eisner Law Firm Invoices from February 2013 to February 2015 for <i>Westwood v. AGK</i> , Placer County Superior Court Case No. SCV0032447	AGK-COM0000833 - 0000909		
111	Theodora Oringer Invoices from April 2015 to July 2020 for <i>Westwood v. AGK</i> , Placer County Superior Court Case No. SCV0032447	AGK-COM0000711 – 0000832; AGK-COM0018709 - 0018800		
112	Steyer Lowenthal Invoices from July 2013 to March 2020 for <i>Westwood v. AGK</i> , Placer County Superior Court Case No. SCV0032447	AGK-COM0000910 – 0001014; AGK-COM0018801 - 0018828		
113	Michelman & Robinson Invoices from September 2020 for <i>Westwood v. AGK</i> , Placer County Superior Court Case No. SCV0032447	AGK-COM0018833 - 0018835		
114	Theodora Oringer Invoices for <i>AGK v. Comerica</i> , U.S.D.C. Case No. 2:15-cv-01280	AGK-COM0018481 – 0018601		
115	Michelman & Robinson Invoices from September 2020 for <i>AGK v. Comerica</i> , U.S.D.C. Case No. 2:15-cv-01280	AGK-COM0018829 - 0018832		

EXHIBIT ID	DESCRIPTION	BATES NO.	OFFERED	ADMITTED
116	Defendant Comerica Bank's Responses To Plaintiff AGK Sierra De Montserrat, L.P.'s First Set Of Requests For Admission			
117	Complaint filed by Westwood Montserrat, LTD, filed September 30, 2010, in Placer County Superior Court Case No. SCV0028027			
118	Complaint For Damages And Other Relief, filed January 25, 2013, in Placer County Superior Court Case No. SCV0032447	WEST04706 – WEST04815		
119	First Amended Complaint For Damages And Other Relief, filed April 23, 2013, in Placer County Superior Court Case No. SCV0032447	WEST00059 – WEST00079		
120	Trustee's Deed Upon Sale, recorded November 6, 2009, as document number 20090095778	COM01768 – COM01772		
121	Email, dated June 28, 2010, from Nader Pakfar to Arah Tresler (with attachments)			
122	Settlement Agreement and Release, dated November 4, 2011, by and between AGK Sierra De Montserrat, L.P. and Wildlife Heritage Foundation			
123	Letter, dated March 8, 2011, from Louis Friedel to Board of Directors of the Sierra de Montserrat Owners Association	WEST08632		
124	Sierra de Montserrat Owners' Association Board Minutes from Meeting on March 14, 2011	WEST08634 – WEST08635		
125	Request for Resolution, dated March 14, 2011, from Curtis C. Sproul	WEST04604 – WEST04615		
126	Notice of Motion and Motion By Defendants AGK Sierra De Montserrat, L.P., Robert C. Kincade And Jennielyn B. Kincade To Compel Arbitration And Stay Claims Pending Against Them Pending Arbitration, filed June 16, 2011, in Placer County Superior Court Case No. SCV0029131	WEST05208 – WEST05215		

<b>EXHIBIT ID</b>	<b>DESCRIPTION</b>	<b>BATES NO.</b>	<b>OFFERED</b>	<b>ADMITTED</b>
127	Email, dated August 17, 2012, from Anthony Eaton to Gregory Maxim (with attachments)	WEST01691 – WEST01695		
128	Letter, dated January 30, 2014, from Gregory Maxim to Hon. Cecily Bond	WEST05286 – WEST05288		
129	Claimant Westwood Montserrat’s Statement of Phase II Issues and Damages, dated February 3, 2014, in JAMS Arbitration No. 1130005625	WEST04906 – WEST04936		
130	Response to Statement of Phase II Issues and Damages, dated February 10, 2014, in JAMS Arbitration No. 1130005625	WEST04939 – WEST04952		
131	Order Re Westwood Montserrat, Ltd’s Petition To Vacate Final Arbitration Award, filed September 16, 2015, in Placer County Superior Court Case No. SCV0029131	WEST04984 – WEST04985		
132	Motion for Relief from Order Staying Action, filed June 18, 2014, in Placer County Superior Court Case No. SCV0032447	WEST04875 – WEST04887		
133	Defendants AGK Sierra De Montserrat, L.P., Don Murphy, Angelo Gordon Real Estate, Inc., Kinetic Homes, And Kinetic Partners, Inc.’s Notice of Motion And Motion for Summary Judgment, filed March 2, 2017, in Placer County Superior Court Case No. SCV0032447	WEST06418 – WEST06425		
134	Order Granting Defendants’ Motion To Compel Arbitration And Stay Claims Pending Against Them Pending Arbitration, filed October 21, 2011, in Placer County Superior Court Case No. SCV0029131	WEST05217 – WEST05218		
135	Order After Conference Call, dated June 4, 2013, in JAMS Arbitration No. 1130005625	WEST05237 – WEST05238		
136	Conference And Scheduling Order Re Phase 2, dated January 28, 2014, in JAMS Arbitration No. 1130005625	WEST04901 – WEST04903		
137	Order Following Telephonic Conference Re Phase II, dated February 27, 2014, in JAMS Arbitration No. 1130005625	WEST04955 – WEST04958		

<b>EXHIBIT ID</b>	<b>DESCRIPTION</b>	<b>BATES NO.</b>	<b>OFFERED</b>	<b>ADMITTED</b>
138	Order Following Telephonic Conference, dated June 6, 2014, in JAMS Arbitration No. 1130005625	WEST04961 – WEST04963		
139	Final Award, dated April 2, 2015, in JAMS Arbitration No. 1130005625	WEST05349 – WEST05362		
140	Ruling On Submitted Matter, filed September 6, 2013, in Placer County Superior Court Case No. SCV0032447	WEST04889 – WEST04891		
141	Order Re Westwood Montserrat, Ltd’s Motion For Relief From Order Staying Action, filed September 14, 2015, in Placer County Superior Court Case No. SCV0032447	WEST03994 – WEST04002		
142	Fourth Amended Complaint For Damages And Other Relief, filed February 3, 2017, in Placer County Superior Court Case No. SCV0032447	WEST05021 – WEST05050		
143	Law And Motion Minutes, dated June 6, 2017, in Placer County Superior Court Case No. SCV0032447	WEST05838 – WEST05847		
144	Tentative Decision Re Bifurcated Issue Of Affirmative Defenses, filed May 2, 2018, in Placer County Superior Court Case No. SCV0032447	WEST09420 – WEST09453		
145	Tentative Decision Re Bifurcated Issue Of Affirmative Defenses, filed June 29, 2018, in Placer County Superior Court Case No. SCV0032447	WEST09455 – WEST09463		