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April 24, 2014

*Via Facsimile & First-Class Mail*

Ronald S. Erickson  
County Counsel  
County of Sutter  
1160 Civic Center Boulevard  
Suite C  
Yuba City, California 95993  
Facsimile: (530) 822-7194

Re: CPRR v. Sutter County

Dear Mr. Erickson:

California Public Records Research, Inc., (CPRR) presented a class claim for damages (per Govt.C. §910) to the Board of Supervisors in December and I have been retained to seek a writ of mandate and other relief regarding the fees for copies of documents on file with the County Recorder.

Whether one applies the common-law standard of recoupment applicable to governmental user fees or Judge Sumner's definitions of recoupable costs (attached to the claim), the facts disclosed in the documents furnished to CPRR pursuant to its PRA request, and investigation and research by CPRR establishes that this is a case of clear liability. In a nutshell, staff, impermissibly, calculated recoupable costs pursuant to the recoupment standard of Government Code section 54985 (and, additionally, inflated the time it takes to service a copy request and inflated the hourly rate for that labor). Staff misinformed the Board. The Board acted, impermissibly, pursuant to the non-existent authority of Government Code section 54985.

Quite apart from all of that, no reasonable person can conclude that it costs \$60.00 to make a copy of a typical 16-page deed or deed of trust by hitting the print button on a computer keyboard. Kinko's, using more labor-intensive office copiers, would charge \$2.40 (including profit) and the same document from the Mono County Recorder would cost \$1.44.

Should this matter go to a final, contested, evidentiary hearing the County's economic exposure—damages and attorney's fees and costs (petitioner's and the County's)--would be in excess of \$500,000.

CPRR wishes to attempt to resolve the matter at this time

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As Judge Sumner found in the Sacramento case the several "copy-fees cases" are, fundamentally, about access. We have repeatedly argued that the ultimate resolution to this problem would be to put the images on line where they could be searched, viewed and printed from anywhere. Hard-copy requests (except for certification) and the costs of servicing them would virtually disappear. Individual consumers would not have to trek to the recorders' offices to get copies.

I am satisfied, after talking to a number of counties, that they do not believe that is feasible. CPRR is attempting to remedy the objection by an amendment to AB 2206, presently before the Assembly Local Government Committee. An agreed-to legislative resolution could form the basis for a statewide resolution of the issues and eliminate the need to attempt to adjust the fees by litigation on a county-by-county basis. But that "global," too, seems remote.

Recognizing that putting the images on line or reduction of the fees would, obviously, result in lost revenues we have also argued that there is an inherent unfairness in imposing the Recorder's operating costs (to say nothing of county-wide general overhead) on individual consumers/users. The lenders, title companies, and title insurance companies derive millions of dollars in profit reselling the information they obtain from the recorders--at bargain-basement fees. In fact, they cannot do business without it and the bargaining power of the counties is significant. One of the common-law recoupment standards for user fees is that the fee is to be measured by the benefit it confers on the recipient of the service or product.

Because these companies engage in millions of transactions, all dependent on the recorders' title information, imposing additional fees on them spreads such costs far more equitably than does the present system of imposing them on individual consumers.

Again, conversations with several counties clearly indicates that the counties are unwilling to do this and a resolution on such a basis appears to be beyond the pale.

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Please advise the Board that CPRR hereby offers to provide a general release of all of its claims, and a dismissal with prejudice of the present action, in exchange for an agreement by the County to reduce the fees for a hard copy of a recorded document (and other records in the possession of the Recorder) that does not require special handling to 20¢ per 8-1/2 x 11-inch page and payment to CPRR of \$27,500 in damages, attorneys fees, and costs and expenses. CPRR will agree to not file or prosecute a class action. This latter provision may require court approval .

This offer will expire on May 14, 2014.

Sincerely,

DONALD W. RICKETTS

DWR:dar  
cc: CPRR