[redacted]
Attorney at Law
[redacted]

Attorney for Respondent,
[redacted]

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF MONTEREY

[redacted]	)	
	)	
Plaintiff, Cross-Defendant	)	
And Respondent	)	
v.	)	[redacted]
	)	
[redacted]	)	
	)	
Defendant, Cross-Complaint	)	
And Appellant.	)	
	)	

APPLICATION FOR ORDER PERMITTING PREPARATION OF A SETTLED STATEMENT

TO: THE HONORABLE MICHAEL S. FIELDS:

Pursuant to rules 7(a)(2)(B) and 7(b)(1) of the California Rules of Court, respondent [redacted] applies to this court for an order permitting a settled

statement to be prepared covering the proceedings on September 18, 2001 at which respondent's trial counsel, appellant's trial counsel, and the court met in the library to discuss whether there had been any dispute that plaintiff had made all of the mortgage payments on the residence after defendant and appellant left the residence. This was a quiet title and partition action. The court dismissed the quiet title action and proceeded by way of partition by appraisal. The court determined the parties respective interests in the property (respondent-98.2%; appellant 1.8%), and ordered respondent [redacted] to pay to plaintiff 1.8% of the appraised value of the property or $7,000. Appellant [redacted] appealed to the Sixth District Court of Appeal claiming that she had the right to 50% of the value ($192,500) minus offsets as a joint tenant, and that the trial court had no authority to enter a judgment allowing partition by appraisal instead of partition by sale.

The Reporter's Transcript of Proceedings covering September 18, 2001, makes clear that the court and counsel met in the library on the morning of September 18, 2001. Following the meeting, [redacted], put a stipulation on the record that plaintiff [redacted] had made all mortgage, tax, and insurance payments on the property from June 1997 onward. (See Exhibit "A" attached hereto.) However, a dispute has arisen between the parties whether the parties agreed during this meeting in the library to proceed by way of partition by appraisal. [redacted] claims on appeal that the parties did not have an agreement to proceed by way of partition by appraisal, and that therefore this court had no authority to enter a partition by appraisal. The only reference to the parties

understanding in the appellate record is the following notation from a section entitled "STIPULATION" in the defendant and appellant's trial brief: "In the event the Court shall decide that [redacted] has a concurrent interest in the subject property, the parties agree to partition by appraisal pursuant to the terms as will be set forth in an agreement to be filed with the Court at Trial." (See Exhibit "B.") The parties did not file such an agreement. However, the court entered a judgment of partition in which partition was to be by appraisal. Therefore, the court believed it had the authority to do so. (See Exhibit "E.") Plaintiff's trial counsel's ([redacted]) explanation is that the parties agreed in chambers "to a partition by appraisal should the Court decide a partition was appropriate." (Exhibit "C.") [redacted] recalls that the court then "made a comment about Mr. [redacted] appraisal and whether there was any disagreement as to Mr. [redacted] appraisal." The parties then informed the court "that Mr. [redacted] appraisal would be the only expert opinion on the current value of the subject property. . . ." (Ibid.)

Appellant's counsel, on the other hand, declares that no agreement to partition by appraisal was reached with the court. [redacted] states that "[i]t was, however, anticipated that an agreement to partition by appraisal could have been appropriate to enter into after the trial court had first established the respective interests of the parties and a valuation date through an interlocutory judgment." (Exhibit "D," p. 5, ¶ 3.)

Therefore, since a transcription of the meeting in the library cannot be

obtained, a settled statement, if obtainable, should be prepared. Pursuant to rules 7(a)(2)(B) and 7(b)(1), this court should grant permission to prepare a settled statement covering the proceedings at which the court requested the parties to meet with the court in the library to discuss the case.

Dated: July 11, 2002

Respectfully submitted,

[redacted]
Attorney for Respondent