

**Law Office of Robert E. Ormiston**

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September 30, 2021

Richard M. Patel  
3340 Folsom Street  
San Francisco, CA 94110

Re: 3348 Folsom Street, San Francisco, CA 94110

Dear Mr. Patel:

The undersigned represents the owners of the property at 3348 Folsom Street, San Francisco, CA 94110, your neighbors, Michael Manuel Castro and Katherine May Castro, Co-Trustees of the 2018 Michael and Katherine Castro Revocable Living Trust dated June 20, 2018 ("Castros"). The Castro family has owned the 3348 Folsom property for many decades and long before you purchased the 3340-3344 Folsom Street property.

I am writing this letter to you because your giant sequoia tree has caused and continues to cause extensive damage to the Castros' property. The trunk of this tree is on your property and is located only about four and one-half (4.5) feet from the Castros' property. The roots of your giant sequoia tree have grown onto the Castros' property and are damaging their home. The garage slab has been extensively cracked, the foundation has been lifted and cracked, and the hot water heater has been lifted and the flu offset. The Castros' sewer line was also damaged requiring replacement.

An Arborist has inspected the situation and determined that your giant sequoia tree is causing this damage to the Castros' property. A copy of the Arborist report with photos from Roy C. Leggitt, III of Tree Management experts is attached. Given the size of your giant sequoia tree and its close proximity to the Castros' property, the Arborist has concluded that severing the roots and installing a root barrier will not be part of a viable solution here as this would sever the structural roots and create an imminent risk of whole tree failure. Accordingly, the Arborist recommends that the only viable option here to stop the ongoing damage to the Castros' home is that your giant Sequoia tree must be removed.

There is no uncertainty here that your giant sequoia tree's roots have caused this damage as the garage slab was opened up along the cracks and this exposed the roots the arborist confirmed were from your giant sequoia tree.

The Castros' property was also inspected by Mark Garrison, principal and Richard Helser, Structural Engineer of MG Constructors & Engineers, Inc. MG Constructors & Engineers, Inc., concludes that your giant sequoia tree is without a doubt causing serious structural damage and lifting the foundation of the Castros' home, and that your tree should be removed in its entirety.

MG Constructors & Engineers, Inc. found that the Castros' home main garage slabs have been severely impacted by your giant sequoia tree's root growth. Your tree is approximately four (4) feet in diameter and is about four feet four inches (4'4") from the Castros' home. Per MG Constructors & Engineers, Inc., a tree of such size should be located a minimum of twenty (20) feet from any structure and with your 4' diameter tree this close to the Castros' property it will continue to grow and the damage to the Castros' home and such damage will worsen over time. MG Constructors & Engineers, Inc. conducted a floor level survey and concluded that your giant sequoia tree's roots have also caused the north side of the Castros' home foundation, garage slab and corresponding upper framing to be lifted/elevated a minimum of one inch (1").

MG Constructors & Engineers, Inc., recommends the following:

- 1) That design drawings and details be prepared for building permit for repairs to the Castros' home foundation, slab, plaster, lath, interior electrical, hot water heater, and plumbing removal and replacement, etc.;
- 2) To excavate and remove the fence and exterior walkway impacted by the root areas on both sides of the foundation and the replace after root removal work is completed;
- 3) To remove the entire tree, and corresponding tree roots at interior, exterior and within three feet from the edge of the foundation in each direction - this will require removal of the entire slab on grade of the garage and storage areas up to bath/stair areas where existing visible roots terminate;
- 4) To replace the slab on grade and foundation per Professionally Engineered (PE) design and current building code. To repair foundation cracks per International Concrete Repair Institute (ICRI) and PE design at foundation crack locations. This will include a deepened engineered footing at the north side of the Castros' home where the existing roots will be over excavated and removed; and
- 5) To replace fence and finishes after the structural work is complete.

MG Constructors & Engineers, Inc. has prepared an estimate for their recommended repairs necessitated by your giant sequoia tree's roots. A copy of this estimate is attached. The required work per MG Constructors & Engineers, Inc. will cost \$65,895.59. This figure does not include the cost to remove your giant sequoia tree, the cost of the sewer line repairs, the costs of the reports obtained by the Castros, emotional distress damages, or any latent conditions discovered during the course of the work.

You are responsible here under long-standing California law that holds that invading tree roots are a nuisance and you as the tree owner are responsible for the damage your tree roots have caused to the Castros' property, and their emotional distress damages. (*Stevens v. Moon* (1921) 54 Cal.App. 737, 740 [Tree roots that extend into the land of another that cause damage are nuisances and the owner of the tree can be sued for the damages caused by the roots and to have the Court order that the tree owner abate the nuisance]; *Smith v. County of Los Angeles* (1989) 214 Cal.App.3d 266, 287 [It is well-settled that emotional distress damages can be recovered in a nuisance action]; *Civil Code* §3479 [Anything which is an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property is a nuisance]; and *Code of Civil Procedure* §731 [An action may be brought by any person whose property is injuriously affected

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and by the judgment in that action the nuisance may be enjoined or abated as well as damages recovered therefor]).

If you do not promptly take responsibility for the damage caused by your giant sequoia tree and reach a mutually acceptable solution with the Castros, then the Castros will be forced to bring a lawsuit against you to recover all of their damages, including the damages to their home and emotional distress damages (including emotional distress, mental anguish, discomfort and annoyance occasioned by the ongoing damage your giant sequoia tree is causing to their home), together with injunctive relief requiring that you remove your tree roots on the Castros' property and that you remove your giant sequoia tree in its entirety.

Time is of the essence here as the Castros need their home promptly repaired and your giant sequoia tree removed before further damage occurs.

The Castros prefer an informal resolution of this matter with you if you will promptly take responsibility for the damages caused by your giant sequoia tree and reach a mutually acceptable solution with the Castros. Given what has occurred and based on the investigation and conclusions of the Arborist and Structural Engineer, that would mean that the damage to the Castros' home will need to be repaired (and repair expenses reimbursed where repairs have already occurred) and your giant sequoia tree will need to be removed. Otherwise if we are not able to promptly reach an informal resolution, the Castros have authorized the undersigned to proceed with a lawsuit against you to obtain all appropriate relief (the Castros reserve the right to seek all available damages and relief against you in any litigation and shall not be limited by the amounts set forth in this letter). If you have homeowner's insurance then you should promptly tender this claim to your carrier and ask them to contact the undersigned. If you would like to discuss this matter to work out an informal resolution, please contact the undersigned within seven (7) days of your receipt of this letter so that we can explore an informal resolution of this matter. If you will be having an attorney handle this matter, then please have him/her contact the undersigned within seven (7) days of your receipt of this letter.

Thank you in advance for your anticipated cooperation and prompt response so that this situation can hopefully be promptly informally resolved so that the Castros are not forced to proceed with litigation against you.

Very truly yours,



Robert E. Ormiston, Esq.

REO:fs  
Encls.  
cc: Michael Manuel Castro and Katherine May Castro