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9 HOMEOWNERS ASSOCIATION; JOHN NILSSON;
10 PETERS & FREEDMAN, L.L.P.; and N.N. JAESCHKE, INC.

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO, NORTH COUNTY JUDICIAL DISTRICT

11 BROOK HILLS HOMEOWNERS)
12 ASSOCIATION, a California non-profit mutual)
13 benefit corporation,)
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Plaintiff,

v.

JAMES BASS, an individual; SONNI BASS, an
individual; and DOES 1 through 25, Inclusive,

Defendants.

CASE NO. GIN026443

DECLARATION OF MICHAEL G. KIM IN SUPPORT OF CROSS-DEFENDANTS' MOTION TO STRIKE THE BASSES FIRST AMENDED CROSS-COMPLAINT PURSUANT TO CODE OF CIVIL PROCEDURE § 425.16

[Case Category: Injunctive Relief]

DATE: March 4, 2004
TIME: 3:00 p.m. (TELEPHONIC)
DEPT: 27

AND ALL RELATED CROSS-CLAIMS

Action Filed: 12/18/02
Department: 27
Judge: Hon. Jacqueline M. Stern

I, MICHAEL G. KIM, declare as follows:

1. I am an attorney at law licensed to practice before all of the Courts of the State of California, and I am a member of Peters & Freedman, L.L.P., counsel for Cross-Defendants herein.
2. I have personal knowledge of the matters stated in this Declaration, and if called as a witness, could and would competently testify as to them.
3. I have reviewed the First Amended Cross-Complaint filed by JAMES and SONNI BASS against the Cross-Defendants. Inasmuch as my law firm has been counsel for BROOK HILLS

1 HOMEOWNERS ASSOCIATION ("ASSOCIATION") since the inception of communications with
2 the BASSES on the landscaping issue, and insofar as I have been counsel for Cross-Defendants since
3 service of the BASSES' original Cross-Complaint and the First Amended Cross-Complaint which is
4 the subject of this Motion, I have personal knowledge of the following facts upon which the BASSES'
cross-claims are based:

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LIE (a) On or about April 9, 2000, my law firm, on behalf of the ASSOCIATION, sent a letter
to the BASSES advising them that they were in violation of the CC&Rs for failing to
complete their landscaping, and notified them of the imposition of a \$200.00
compliance charge, and an opportunity to be heard on the propriety of the imposition
of that compliance charge.

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(b) On or about September 5, 2002 (not on August 12, 2002 as alleged), the
ASSOCIATION published a Fine Schedule as a result of numerous homeowners being
delinquent in installing their landscaping, and which provided a schedule of various
fines for failure to install landscaping, or failing to install landscaping without
approval.

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(c) The ASSOCIATION's Management Company, N.N. JAESCHKE, INC., began to bill
the BASSES for legal charges incurred by the ASSOCIATION as a result of the
BASSES' failure to install their landscaping in a timely fashion.

(d) After the BASSES installed an unapproved sports court and light standard on their
property while their approved landscaping according to the plans had not yet been
finished, my law firm sent the BASSES a letter on or about October 9, 2002 asking
that they cease installation of unapproved landscaping on their lot.

(e) Because the BASSES rejected the ASSOCIATION's Requests for Alternative Dispute
Resolution pursuant to *Civil Code § 1354*, and had constructed unapproved structures
on their lot and had failed to timely install the approved landscaping, on or about
December 18, 2002 my law firm, on behalf of the ASSOCIATION, filed the original
Complaint in this matter generally alleging that the BASSES had failed to install their
landscaping, and had installed unapproved structures on their lot. This Complaint was

1 amended and the Amended Complaint was filed on January 30, 2003. The Amended
2 Complaint makes specific reference to the fine schedule for failure to install
3 landscaping to which the BASSES may be subject.

4 (f) In response to a request that the ASSOCIATION set forth its settlement position from
5 SONNIBASS, my law firm, on behalf of the ASSOCIATION, sent a letter explaining
6 the ASSOCIATION's settlement position to MS. BASS on January 30, 2003. This
7 letter specifically states that it is being sent pursuant to the Mediation and Settlement
8 Privileges of Evidence Code §§ 1119 and 1152.

9 (g) On or about May 23, 2003, my law firm sent a letter to the BASSES advising them of
10 a hearing on the landscaping fine. Contrary to the allegations of the First Amended
11 Cross-Complaint, this fine had not already assessed against the BASSES. Rather the
12 allegation in the First Amended Complaint was that the ASSOCIATION sought to
13 impose such fines against the BASSES for failure to install landscaping in a timely
14 fashion. The May 23, 2003 letter was a form letter sent to about 15 Brook Hills
15 homeowners, including the BASSES, that notified them of the hearing date, time and
16 location on the landscaping fines pursuant to the "fine schedule" previously published
17 on September 5, 2002. This hearing occurred on June 14, 2003. Subsequent to the
18 hearing, I am informed that the ASSOCIATION's Board of Directors decided to
19 impose a \$2,500.00 landscaping fine pursuant to the fine schedule against the
20 BASSES.

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21 (h) The BASSES submitted some rudimentary plans for the already constructed sports
22 court and light standard to the Management Company on or about March 24, 2003,
23 approximately four months after this action had been filed. On August 18, 2003, my
24 law firm, at the direction of the ASSOCIATION's Architectural Committee, informed
25 the BASSES that the sports court was approved, but the light standard was not.

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26 Based upon my review of the BASSES' First Amended Cross-Complaint, there is no question
27 that the cross-claims made by the BASSES are based upon the above facts.

28 4. Because the BROOK HILLS HOMEOWNERS ASSOCIATION is a retainer client of

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1 my law firm, they are charged a reduced rate for legal work. All of the Cross-Defendants, with the
2 exception of my law firm, are being charged at this reduced rate of \$150.00 per hour. Since being
3 advised of the allegations of the BASSES' First Amended Cross-Complaint, on or about November
4 6, 2003, Cross-Defendants have incurred \$8,827.50 in attorneys fees, meaning that 58.9 hours of
5 attorney time have been expended since November 6, 2003 in relation to the defense of these cross-
6 claims and \$3,406.80 in costs incurred. The majority of these costs relate to the depositions of the
7 BASSES. The total of these two figures is \$12,234.30. These figures do not reflect all relevant
8 billings as of the date of this Declaration, the December 2003 billings had not been finalized.
9 Moreover, I anticipate that additional fees and costs will be incurred before the hearing date on this
10 motion. These will be the subject of a later Declaration.

11 I declare under the penalty of perjury under the laws of the State of California that the
12 foregoing is true and correct. Executed this 5th day of January, 2004.



Michael G. Kim

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*CAN we get him for
perjury*