

1 SIRJIT SANDHU
2216 Parnassus Court
2 Hayward, CA 94542

3 *In Pro Per*

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6 SUPERIOR COURT OF THE STATE OF CALIFORNIA
7 COUNTY OF ALAMEDA
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9 MCH ELECTRIC, INC.,

10 Plaintiff,

11 vs.

12 ALTIMA CONTRACTING LTD, INC.;;
13 FAIRVIEW HILLS LLC; FINANCIAL
14 PACIFIC INSURANCE COMPANY, and
DOES 1 through 100, inclusive,

15 Defendants.

Case No. HG 09455003

**DECLARATION OF SIRJIT SANDHU
IN SUPPORT OF PETITIONER SIRJIT
SANDHU'S PETITION TO REDUCE
QUORUM REQUIREMENTS FOR NON-
PROFIT CORPORATION**

Date: May 25, 2012

Time: 9:30 a.m.

Dept: 520

Judge: Hon. David Hunter

Reservation No. R-1279115

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18 FINANCIAL PACIFIC INSURANCE
COMPANY,

19 Cross-Complainant,

20 vs.

21 COUNTY OF ALAMEDA, et al.

22 Cross-Defendants,
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1 FAIRVIEW HILLS, LLC, et al.

2 Cross-Complainants,

3 vs.

4 FINANCIAL PACIFIC INSURANCE
5 COMPANY, et al.

6 Cross-Defendants,
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8 I, Sirjit Sandhu, declare:

9 1. I am the Petitioner in this action, a member of the Fairview Heights
10 Homeowners Association (hereinafter the "Association"), and the owner of lot 6 of the
11 common interest development know as Tract 6102, located at 24518 Karina Street, Hayward,
12 California. As the owner of said property, I spent a great deal of time at the situs of Tract
13 6102, and am familiar with the status of development at the site. I have reviewed the
14 governing documents and a variety of correspondence and other documents related to Tract
15 6102. I was personally involved in the meetings and elections discussed herein, and have
16 also engaged in numerous conversations with the members of the Association. If called upon
17 to testify at trial, I could and would competently testify to the facts attested to herein.

18 2. Defendant Fairview Heights Homeowners Association, hereinafter
19 referred to as "Association," is, and at all times herein mentioned was, a non-profit
20 corporation organized under the laws of the State of California for the sole purpose of acting
21 as the homeowners association for the Tract 6102 common interest development in Alameda
22 County, California. The legal status of the corporation was suspended because the
23 corporation has not filed the necessary annual statements for the corporation. A true and
24 correct copy of a print out from the website of the California Secretary of State is attached
25 hereto as Exhibit "A."

26 3. The Association is governed by the Declaration of Covenants
27 Conditions and Restrictions, Fairview Heights recorded in the Official Records of the County
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1 of Alameda September 5, 2006 as document number 2006337411 (the "CC&Rs") and the
2 Bylaws of Fairview Heights Homeowners Association (the "Bylaws"). A true and correct
3 copy of the CC&Rs is attached hereto as Exhibit "B," and a true and correct copy of the
4 Bylaws is attached hereto as Exhibit "C."

5 4. The Association is the owner of several streets, a sophisticated
6 stormwater system (including a mechanical pump and retention basins), sewer systems,
7 potable water system, common infrastructure and other common property in the residential
8 subdivision known as Tract 6102 in the Fairview area of the unincorporated area of Alameda
9 County. Eight homes within the subdivision were constructed prior to 2008.

10 5. The vast majority of the 40 lots, however, have lain dormant during the
11 recent period of economic malaise. The Association, although formed as a legal corporation,
12 never became active in any practical way until August 2011, when a group of the
13 Associations' members, including myself, began holding the meetings and made the
14 unsuccessful attempts at holding elections described herein below.

15 6. The Association, having neither directors, officers nor other authorized
16 agents, has failed, and continues to fail, to undertake any and all of its duties as a common
17 interest development for the period of time starting with the formation of the Association in
18 September 2006 through the date of this Petition.

19 7. In particular, the Association failed to comply with the following,
20 nonexclusive list of duties:

21 a. The Association failed to take any steps to maintain the common
22 areas of Tract 6102 as required by paragraph 8.1 (A) of the CC&Rs, and specifically has
23 failed to enter into agreements with street cleaning, landscape maintenance companies, or any
24 company to maintain a storm water pump station at the site;

25 b. The Association failed to procure and maintain insurance
26 policies of any kind for the common areas of Tract 6102 as required by paragraph 8.1(C) of
27 the CC&Rs;

28 c. The Association failed to fix, levy or collect Assessments, as this

1 term is defined in the CC&Rs, in violation of paragraph 8.1(E) of the CC&Rs;

2 d. The Association failed to file the proper reports to maintain its
3 corporate status in violation of paragraph 8.1 (F) of the CC&Rs;

4 e. The Association failed to establish and maintain a neighborhood
5 crime watch in violation of paragraph 8.1(H) of the CC&Rs;

6 f. The Association failed to negotiate with its neighbors related to
7 permanent easements as required by agreement entered into by the original developer, a
8 predecessor in interest to the Association;

9 g. The Association has failed to hold Annual Meetings as discussed
10 in paragraph 3.1 of the Bylaws; and

11 h. The Association failed to file a responsive pleading in this
12 action, resulting in the default being entered against the Association in this action.

13 8. To become an active, functioning homeowners association, the
14 Association's members, myself included, attempted to elect directors to make routine
15 decisions and act as authorized agents of the Association. The Association held a meeting in
16 late September, 2011, attended by at least 22 members. The members present agreed to a
17 hold an election by secret ballot to choose directors for the Association. At the meeting, five
18 volunteers were nominated as candidates for the three director positions. After the meeting, I
19 sent ballot forms to each of the known members, and requested that ballots be returned no
20 later than October 20, 2011. Of the 40 ballots sent out, however, only nine (9) were returned.
21 As I was advised that 22 votes are necessary for a quorum to elect directors, the election was
22 determined to be ineffective.

23 9. Having failed to reach a quorum in the first attempt, the other members
24 and I made a second attempt to reach a quorum to elect directors through a secret ballot. In
25 early November 2011, the Association's members voted to hold another election via secret
26 ballot, and selected Roy Helsing of the Helsing Group ("Helsing") to act as Inspector of
27 Elections. At this meeting, eight candidates were nominated for the three director positions
28 by a process that provided for the selection of any person who expressed a desire to be a

1 candidate.

2 10. On January 18, 2012, Helsing, acting as Inspector of Elections,
3 delivered secret ballots to each of the 40 record owners of property within Tract 6102. A list
4 of the record property owners was created from the property records obtained from a title
5 company. A true and correct copy of this list is attached hereto as Exhibit "D."

6 11. Each of the secret ballots delivered by Helsing included two envelopes
7 (one to fit within the other to ensure confidentiality), and the following written materials, true
8 and correct copies of which are attached hereto as Exhibit "E":

- 9 (a) Official Ballot;
10 (b) Voting Instructions;
11 (c) Frequently Asked Questions; and
12 (d) A cover letter.

13 12. The Official Ballot required that the Ballot be returned in the envelopes
14 provided by February 27, 2012.

15 13. I and other Association members made numerous phone calls and sent
16 numerous emails to members of the Association to encourage that each member vote by
17 returning his or her secret ballots. Many of the members expressed disinterest in voting,
18 however, stating they preferred to avoid paying Association dues and stating that they
19 believed that the selection of directors would lead to the assessment of dues.

20 14. Despite these extraordinary efforts by the other involved members and
21 I, only 12 out of 40 ballots were returned to the Inspector of Elections by the due date of
22 February 27, 2012. Two additional ballots were delivered February 28 and 29, 2012,
23 respectively; although one of the ballots was not signed. The 14 ballots from the second
24 election (including the two delivered late) remain unopened as of the date of the filing of this
25 petition in the possession of Helsing.

26 15. The Bylaws and California law are ambiguous as to whether a quorum
27 is required for the initial election of Directors. However, these authorities could be
28 interpreted to require a quorum of 22 of the 40 Members.

1 16. Paragraph 5.2 of the Bylaws states that:

2 The first election of the Board shall be conducted at the first
3 meeting of the Association. At such election the Members or
4 their proxies may cast, in respect to each vacancy, as many votes
5 as they are entitled to exercise under the provisions of the
6 Declaration. ***The persons receiving the largest number of votes
7 shall be elected.*** All members shall be entitled to cumulate their
8 votes for one (1) or more candidates for the Board, . . .

9 Paragraph 3.4 of the Bylaws states:

10 3.4 **Quorum.** The presence either in person or by proxy, at
11 any meeting, of Members entitled to cast ***a majority plus one (1)***
12 ***of the total voting power of the Association . . .*** shall constitute a
13 quorum for any action except as otherwise provided in the
14 Declaration, or these Bylaws.

15 Code of Civil Procedure § 1363.03 (b) states:

16 Notwithstanding any other law or provision of the governing documents,
17 elections regarding assessments legally requiring a vote, election and removal
18 of members of the association board of directors, amendments to the governing
19 documents, or the grant of exclusive use of the common area property pursuant
20 to Section 1363.07 shall be held by secret ballot in accordance with the
21 procedures set forth in this section. ***A quorum shall be required only if so
22 stated in the governing documents of the association or other provisions of
23 law.*** If a quorum is required by the governing documents, each ballot received
24 by the inspector of elections shall be treated as a member present at a meeting
25 for purposes of establishing a quorum. An association shall allow for
26 cumulative voting using the secret ballot procedures provided in this section, if
27 cumulative voting is provided for in the governing documents.

28 (Emphasis added).

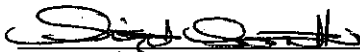
1 17. Having held elections using secret ballots on two occasions, and having
2 failed to reach a quorum of 22 votes on both occasions, I and other active Association
3 members believe the Association cannot reach a quorum using the normal procedures set
4 forth in the Association Bylaws.

5 18. The Association was formed in the context of the severe downturn in
6 the housing market that occurred in 2008. Immediately upon purchase of the lots, the value
7 of these lots decreased dramatically, leaving the homeowners with loans exceeding the value
8 of the property. Many of the lots were later foreclosed upon by the lenders or currently in the
9 process of being foreclosed upon. Very few of the lot owners (8 out of 40) actually built

1 homes on the property. The original developer not only failed to complete the project, but
2 also failed to take the steps to make sure that homeowners association became holding
3 meetings. By 2011, however, many of the lot owners realized that a properly functioning
4 homeowners association was essential to the subdivision

5 19. For this reason, I respectfully requests involvement of the Court to
6 lower the quorum requirements set forth in the Association Bylaws.

7 I declare under penalty of perjury under the laws of the State of California that
8 the foregoing is true and correct. Executed on April ~~16~~¹⁷ 2012 in Hayward, California.

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12 Sirjit Sandhu
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