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FILED
SUPERIOR COURT
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

JUL 21 2009

5 Attorneys for Defendant Mill Pond Partners, L.P.
6

By Bill Cass Deputy

7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF SAN BERNARDINO

10
11 ARROWHEAD WOODS
ARCHITECTURAL COMMITTEE, INC. a
12 California corporation,

13 Plaintiff,

14 v.

15 MILL POND PARTNERS, L.P., a Limited
Partnership, and all person unknown claiming
16 any legal or equitable right, title, estate, lien or
interest in the property described in the
17 complaint, named as DOES 1 to 50, inclusive,

18 Defendants.
19

Case No. CIV^DSS 900262

Honorable W. Robert Fawke
Department S 38

**DECLARATION OF MICHAEL
FOGARTY IN SUPPORT OF MILL
POND PARTNERS, L.P.'S MOTION FOR
AN ORDER TO REQUIRE AN
UNDERTAKING**

Date: August 18, 2009
Time: 8:30 a.m.

Complaint Filed: January 12, 2009

20 I, Michael Fogarty, declare as follows:

21 1. I am a lawful resident of California. I have personal knowledge of the facts stated
22 below and if called as a witness at the time of any proceeding I could, and would, competently
23 testify thereto.

24 2. I am currently a realtor at Windermere Real Estate Coachella Valley ("Windermere
25 Real Estate"). I have more than 9 years of experience in marketing and selling residential
26 properties in California, including the sale of numerous properties at Lake Arrowhead.

27 3. Windermere Real Estate is a premiere broker specializing in the marketing and sale
28 of high-end properties, including unimproved residential building & lots.

RC

1 4. Mill Pond Partners, L.P. ("Mill Pond") has retained Windermere Real Estate and
2 Premier Properties (working together as joint listing agents) to market and sell Mill Pond's 60
3 unimproved residential building lots at Lake Arrowhead. I am the primary realtor at Windermere
4 Real Estate working on the Mill Pond Project ("Project"). Windermere has expended significant
5 financial resources marketing the Project.

6 5. The Mill Pond Project has been in development for over thirteen years and the
7 Project has generated significant public interest over that period of time. Windermere Real Estate
8 and Premier Properties are responsible for marketing and selling 17 of the 60 lots as soon as
9 possible. The 17 lots we are marketing have White Papers issued by the California Department of
10 Real Estate and therefore can be sold at any time.

11 6. The best season to market unimproved residential building lots at Lake Arrowhead
12 is summer. Summer is the time of year when lots can be walked and seen in their entirety without
13 snow or mud covering the land. Summer is also the time of year when Lake Arrowhead enjoys
14 the most number of visitors and the most number of persons seeking to purchase a lot on which to
15 build a vacation or retirement home.

16 7. The individual lots and the overall Project are high quality. Attached as Exhibit 1
17 to this declaration is a color marketing brochure describing the Project.

18 8. I have learned that the plaintiff in this action recorded a lis pendens against the
19 Project. Because of the existence of the lis pendens against the Project, we are unable to market
20 the lots, unable to sell the lots, and unable to close escrow on two current sales. Until the lis
21 pendens is removed, the lots are unmarketable and economically worthless. The existence of the
22 lis pendens has chilled all of our joint efforts to market and sell the lots. Lots of this quality
23 typically sell in the same year that they are offered for sale, even in a down market. We should
24 have been able to sell 17 lots of this quality this summer.

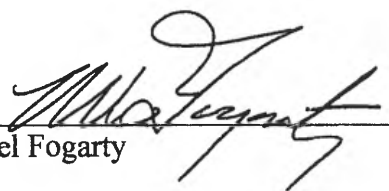
25 9. Earlier this year, a buyer named Coker Partners, L.P. agreed to purchase Lot 14
26 from Mill Pond for \$262,000. Mill Pond promised to provide Windermere Real Estate and
27 Premier Properties \$10,000 upon close of escrow on Lot 14 to finance additional marketing efforts
28 for the Project this summer. Those efforts would have included a \$3,000 targeted print and

1 magazine advertisement and a nightly sixty-second spot on a popular local television station. The
2 Lot 14 escrow cannot close until the lis pendens is removed. Because the Lot 14 escrow cannot
3 close, Mill Pond has been unable to provide Windermere Real Estate and Premier Properties the
4 \$10,000 Mill Pond previously committed to the marketing efforts.

5 10. The critical months for marketing and selling the lots at Lake Arrowhead are June,
6 July, and August, especially the July 4th weekend. The opportunity to market lots in June and
7 July has already been lost, as there is a natural lead time between the date advertisements appear in
8 the media and the date potential buyers actually come to Lake Arrowhead to view potential
9 property.

10 11. The average targeted sale price for the 60 lots is approximately \$300,000. The sale
11 price of a lot depends, in part, on the lot's location, size, view, and topography. With the
12 anticipated sale of the lots that currently have White Papers, I expect that White Papers on the
13 remaining lots would follow and marketing would proceed on those lots. I estimate that the
14 market value of all sixty lots exceeds \$18,000,000.

15 I declare under penalty of perjury, under the laws of the State of California, that the
16 foregoing is true and correct. Executed this 17th day of July, 2009 at Indian Wells, California.

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Michael Fogarty

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