

1 **Joseph Romano, In Pro Per**

2 4723 Muirfield Court

3 Santa Rosa, CA 95405

4 Telephone: (707) 542-2224

5 Facsimile: (707) 542-2227

6 Plaintiff in Pro Per: JOSEPH ROMANO, individually and as trustee  
7 of THE JOSEPH ROMANO AND PIXIE ROMANO  
8 LIVING TRUST

9 Attorney for Plaintiff/Cross-Defendant  
10 Joseph Romano, individually and as  
11 Trustee

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA

13 COUNTY OF SONOMA

14 JOSEPH ROMANO, individually and as  
15 trustee of THE JOSEPH ANDPIXIE  
16 ROMANO LIVING TRUST,

17 Plaintiffs,

18 v.

19 FAIRWAY VIEW ESTATES  
20 HOMEONWERS ASSOCIATION, and  
21 DOES 1-10,

22 Defendants.

Case No.: SCV-262714

**DECLARATION OF EDWARD J.  
NESSINGER IN SUPPORT OF  
PLAINTIFF/CROSS-DEFENDANT'S  
OPPOSITION TO DEFENDANT/CROSS-  
COMPLAINANT'S APPLICATION FOR  
PERMANENT INJUNCTION AND  
ORDER TO SHOW CAUSE**

Date: April 7<sup>th</sup>, 2021

Time: 3:00 p.m.

Dept.: 17

Location: ZOOM remote

23 FAIRWAY VIEW ESTATES  
24 HOMEONWERS ASSOCIATION,

25 Cross-Complainant,

26 v.

27 JOSEPH ROMANO, individually and as  
28 trustee of THE JOSEPH ANDPIXIE  
ROMANO LIVING TRUST, and ROES 1-  
10,

Cross-Defendant.

Assigned for all Purposes:  
Judge: Hon. Arthur Wick

I, Edward J. Nessinger, declare as follows:

1. I am not a party to above-entitled action. I have been retained by Plaintiff, Joseph

1 Romano, as an expert witness in the industry of general construction, including project costs and  
2 estimates, and underground engineering. I make this declaration based upon personal knowledge  
3 and shall testify to the facts herein if called as a witness.

4 2. This declaration is made in support of Plaintiff's Opposition to Defendant's  
5 Application for Permanent Restraining Order.

6 3. I have over 30 years of experience in the construction industry and hold the  
7 following contractor license classifications: "A" (engineering), "B" (general contracting), C-27  
8 (specialty). Attached to this declaration as Exhibit "A" and made a part hereof is my curriculum  
9 vitae which is true and complete.

#### 10 SOIL STABILITY

11 4. In the afternoon of March 11, 2021, I met with Joe Romano and Pat Conway, civil  
12 engineer from PJC Engineering, at the job site located at 4723 Muirfield Ct., Santa Rosa, CA.

13 5. We walked and inspected the construction that had commenced. The work progress  
14 was in the foundation phase; particularly, the foundation footings had been poured, the stem walls  
15 framed and steel re-bar installed, but not yet poured.

16 6. The work I inspected was to applicable building code standards.

17 7. I also inspected the surrounding property lines and soil conditions related to the  
18 construction work and did not witness any danger or erosion resulting from the construction work.

19 8. In my professional opinion, the construction work will not cause the dirt and soil  
20 underneath or surrounding the construction work to erode, slip or slide. Construction of the garage  
21 does not pose any risk of harm to the HOA or surrounding property. I estimate that based on the  
22 size of the garage/ADU project and the progress made thus far utilizing a small construction crew,  
23 that Mr. Romano has approximately 30 or more months of construction activity accomplished. Mr.  
24 Romano should employ a full-service contractor with a larger crew to speed up construction and  
25 reduce the impact of overall inflation costs.

#### 26 DAMAGES

27 9. I keep up with current cost trends in the construction industry by reading magazines  
28

1 and newspaper articles, obtaining quotes and proposals from our materials vendors, preparing our  
2 own construction costs estimates are many projects that we work, and by reviewing invoices from  
3 material suppliers.

4 10. Notwithstanding, it is no secret that construction costs have skyrocketed in the last  
5 few years. For example, I read an article in The Press Democrat (Press Democrat, 2/11/2021 Front  
6 Page News) where it reported that one large garage type structure, (a firehouse in Fountain Grove),  
7 had construction cost increases from 2015 to present day, by 5 times the original construction  
8 costs. The burned down fire station was 5,300 sq. ft. and cost \$4,000,000 (exclusive of land costs)  
9 is \$756 per sq ft. The new fire station is 10,000 sq. ft. and is projected to cost \$21,000,000 with  
10 land acquisition costs or \$2,100 a sq. ft. The building part of the fire station without land costs is  
11 estimated at \$950 per sq. ft. or \$9,000,000 with land costing \$12,000,000.

12 11. If this ratio holds true, the estimated cost of delay of Romano's garage/ADU and  
13 game room/gym projects could increase from estimated material costs of \$1,465,000 to  
14 \$7,325,000. These structures total 8,200 sq ft of floor space. Because no land acquisition costs are  
15 involved in the Press Democrat example, Plaintiff's construction expert estimates the cost delays  
16 from the two fires, and earthquake and delays by the FVEHOA for not approving the plans in a  
17 timely manner, (not including the TRO construction delay of 60 days minimum) as shown below.

18 12. In my opinion, the construction costs per sq. ft. will rise from the original estimated  
19 cost of the garage and game room on 1/14/2014 of \$1,465,398 (8,200 sq. ft is \$178 a sq ft.) costs of  
20 materials and labor have risen to \$560 per sq. ft. for 8,200 sq. ft. or \$4,592,000 (an increase of  
21 \$3,026,602 or 206.53% increase in construction costs since the estimate on 1/14/2014 to 2/1/2021  
22 or \$36,030 per month for 84 months).

23 13. As of February 1, 2021, the cost per sq. ft. increased by over 70%. Construction  
24 costs continue to increase on a monthly average basis of at least \$30,000 per month. Even higher  
25 increases in costs for labor and materials is projected in the balance of 2021 and 2022 due to labor  
26 and materials shortages nationwide and due to the massive building efforts in Sonoma County due  
27 to the recent fire storms.

1           14.     This increase in costs is 2.8 times the original estimated costs and is a 67% on  
2     estimated costs as of December of 2020. This projection is conservative, and the actual costs likely  
3     will be significantly higher as delays continue because of the FVEHOA's continued interference  
4     with construction.

5           15.     Prices are continuing to rise as the market experiences additional shortages of  
6     lumber, concrete, and most importantly, the availability of skilled labor.

7           16.     Delay of construction to July 9, 2021 the date of trial will result in great hardship to  
8     Romano. It is estimated that construction costs are increasing by 3% per month in 2021 alone  
9     which breaks down to about \$1,000 per day in inflationary costs. This is the minimal amount of  
10    delay if the Plaintiffs TRO dismissal is not granted by the Court.

11          17.     Each time that a construction job of this magnitude is shut down, even for a brief  
12    time, the owner must expend efforts and funds to shut down the project and protect the forms, on-  
13    sight materials and equipment as well as comply with municipal regulations for fire safety, ground  
14    erosion, and other hazards of a vacant job site. I reviewed Mr. Romano's letter of February 12,  
15    2021 (Exhibit 16) describing the project shutdown required by the Courts TRO. The steps and  
16    actions Mr. Romano indicated he would take, and the estimated costs of mitigation of damages  
17    seems reasonable considering the site and the size of the project. The estimated \$30,000 in shut  
18    down costs, storage, and other mitigations at \$4 a sq ft for 60 days appears to be conservative.

19          18.     Mr. Romano also informed me that on two previous shut down periods he expended  
20    approximately \$12,000 for each shutdown period to comply with City of Santa Rosa ground  
21    covering and runoff wattles for erosion control is very conservative at approximately \$2.50 a sq ft  
22    of open foundation (5,000 sq ft), not including covering 10,000 sq ft of exposed soils on site.  
23    Remobilization of construction likely would exceed those shutdown expenses each time.

24          19.     Not only does the cost to Romano increase for that time that construction is delayed  
25    but into the following winter because the job must be mobilized, materials ordered and contracts  
26    re-bid, to obtain concrete, concrete pumping, qualified carpenters, electricians, plumbers, and  
27    other workers in a very competitive market. It is likely that delay until July would not allow  
28

1 construction to resume until January 2022 and at much higher cost.

2 20. Based on my analysis, a four-month delay to the trial date would likely cost Mr.  
3 Romano more than \$150,000 assuming there are no further cost increases during that time, which is  
4 very unlikely in this market. This delay most likely would require construction to be delayed  
5 further to January 15, 2022 because of weather, competition, and other factors.

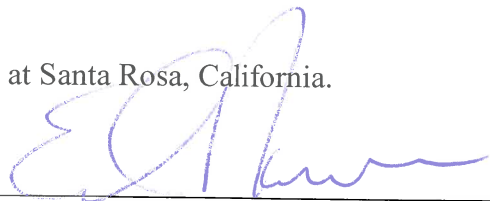
6 21. Calculating construction cost and labor increases alone, at current rates, from the  
7 TRO date of March 12, 2021 to January 15, 2022 is 339 days at \$1,250 0 per day is \$ \$423,750.

8 22. In this case, I would recommend a bond of at least \$500,000 to cover most delay  
9 costs, however even that amount could prove to be low because the real costs by this year's end will  
10 in all probability be much higher.

11 23. Balancing the hardships here makes clear that there is no risk to the FVEHOA to  
12 allow Romano to construct the buildings approved by the FVEHOA'S ACC and by the operation of  
13 the CC&R's, which again approved Romano's plans.

14 I declare under penalty of perjury under the laws of the State of California that the foregoing  
15 is true.

16 Executed this 24<sup>th</sup> day of March 2021 at Santa Rosa, California.

17   
18 \_\_\_\_\_  
19 Edward Nessinger,  
20 Declarant  
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# **EXHIBIT A**

# EDWARD J. NESSIGNER

244 Colgan Ave. ▪ Santa Rosa, CA 95404 ▪ Tel: (707) 953-4500 ▪ [ed@ewestconstruction.com](mailto:ed@ewestconstruction.com)

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## Construction Industry Expert

Over thirty (30) years of experience in the construction industry, including both private and public works, residential, multi-family, commercial and plan development • Experienced in all phases of construction, including demolition, underground, foundation, structural and high rise • Project budgeting and job pricing • Managed multi-million dollar projects • Plan development and operations management • Deal directly with clients and negotiate contract terms • Project and subcontractor coordination and contract administration • Oversee project and schedules • Coordinate design and administration construction processes • Public works • Permitting • Manage subcontractors to ensure quality • Production and safety compliance • Hundreds of successfully completed construction projects

**Contractors Licenses:** A, B and C-27.

### AREAS OF EXPERTISE

- |                           |                            |                           |
|---------------------------|----------------------------|---------------------------|
| ➤ Commercial Construction | ➤ Residential Construction | ➤ Underground Engineering |
| ➤ Steel Construction      | ➤ Project Budgeting        | ➤ Construction Financing  |
| ➤ Estimating              | ➤ Bids and Proposals       | ➤ Design-Build            |
| ➤ Public Contracting      | ➤ Permitting               | ➤ Landscape Construction  |
| ➤ Grading & Paving        | ➤ Community Development    |                           |

### PROFESSIONAL EXPERIENCE

**E West Construction, Inc.** (Former Owner/Vice-President) 2015-*Present*. General and underground engineering contractor specializing in the areas of both commercial and residential construction and high-end remodels. Currently constructing large custom-built homes and multiple re-builds of private residences lost to the Sonoma County 2017 and 2019 wild fires.

**RE West Builders, Inc.** (Owner/President) 2006-2014. General Contractor specializing in large commercial residential and multi-family remodels and commercial building construction, public works, grading, paving and underground.

**Nessco Construction, Inc.** (Owner/President) 1996 –2015. Landscaping contractor specializing in both commercial and private landscape & development, including parks, golf courses, open space fields for sports, planned community and common areas.

**Nessinger, Inc.** (Owner/President) 1996-*present*. Construction equipment holding and leasing company.

**North Bay Construction.** (Project Superintendent) 1984-1996. Engineering contractor formerly specializing in large residential development projects, commercial and public works.

## PROJECT HIGHLIGHTS

### COMMERCIAL PROJECTS

Esposti Apartments. New construction of 36 residential apartment units. (7 M)

Boulders Project. Remodel of large 300 unit multi-family apartment complex. (22 M)

Yarborough Brothers Towing. Construction of a new commercial building. (1.4 M)

Cove Clubhouse. Large remodel of commercial building. (2.7 M)

Car Wash. New commercial/industrial car wash facility. (2 M)

Yolanda Project. Commercial construction of three commercial warehouse units totaling 32,000 sq. ft. with follow-up 2019 tenant improvement project. (3 M)

Petaluma Transit. Commercial remodel project (1.4 M)

Hamilton Elementary. Gymnasium and administration building (2.0M)

Middletown Senior Center & Library. Commercial project remodel and new construction (3.4 M)

Santa Rosa Transit Mall. Renovation of bus stop facility (2 M)

Kia Automotive. New commercial construction of automotive dealership. (2.8 M)

Pet Care Veterinary Hospital. 13,000 sq. ft. complete remodel of a community center to a specialty 24-hour urgent care veterinary hospital. (3.2 M)

San Clemente Apartments. Large remodel of multi-family apartment complex (2.3 M)

Chanate Apartments. New construction of multi-family apartment complex (2.7 M)

### RESIDENTIAL PROJECTS

Currently in contract to re-build multiple private residential homes previously lost to the Sonoma County fire storm in October 2017, totaling approximately \$20 M.

Adobe Canyon Properties. Large, multi-million dollar residential custom homes. (7 M)

Desforges Residence. Large custom-home remodel. (4 M)

Mayer Residence. Large multi-million dollar custom home using all steel framing. *Under construction.* (7 M)

Powell Residence. Large multi-million dollar custom home using all steel framing. *Under construction.* (3 M)