

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state number, and address):
Jay P. Renneisen (#173531)
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ATTORNEY FOR (Name): Plaintiff Benjamin Kaatz

FOR COURT USE ONLY
FILED
SEP 15 2003
SHERRI L. PEDERSEN
CLERK OF THE SUPERIOR COURT
DEPUTY

SUPERIOR COURT OF CALIFORNIA, COUNTY OF MONTEREY
STREET ADDRESS: 1200 Aguajito Road
MAILING ADDRESS: 1200 Aguajito Road
CITY AND ZIP CODE: Monterey, CA 93940
BRANCH NAME: Monterey Division

PLAINTIFF/PETITIONER: BENJAMIN KAATZ
DEFENDANT/RESPONDENT: CITY OF SEASIDE et al

CASE MANAGEMENT STATEMENT
(Check one): **UNLIMITED CASE** (Amount demanded exceeds \$25,000) **LIMITED CASE** (Amount demanded is \$25,000 or less)

CASE NUMBER:
M65043

A **CASE MANAGEMENT CONFERENCE** is scheduled as follows:
Date: _____ Time: _____ Dept.: 17 Div.: _____ Room: _____
Address of court (if different from the address above): _____

INSTRUCTIONS: All applicable boxes must be checked, and the specified information must be provided.

1. **Party or parties (answer one):**
 - a. This statement is submitted by party (name): Benjamin Kaatz
 - b. This statement is submitted jointly by parties (names):

2. **Complaint and cross-complaint (to be answered by plaintiffs and cross-complainants only):**
 - a. The complaint was filed on (date): May 16, 2003
 - b. The cross-complaint, if any, was filed on (date):

3. **Service (to be answered by plaintiffs and cross-complainants only)**
 - a. All parties named in the complaint and cross-complaint have been served, or have appeared, or have been dismissed.
 - b. The following parties named in the complaint or cross-complaint
 - (1) have not been served (specify names and explain why not):
 - (2) have been served but have not appeared and have not been dismissed (specify names):
 - (3) have had a default entered against them (specify names):
 - c. The following additional parties may be added (specify names, nature of involvement in case, and the date by which they may be served): Please see attachment pages regarding issue of adding necessary parties and providing notice to other prospective new record title holders of the Hayes Park Property.

4. **Description of case**
 - a. Type of case in complaint cross-complaint (describe, including causes of action):
Taxpayer action.

PLAINTIFF/PETITIONER: Kaatz	CASE NUMBER: M65043
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4. b. Provide a brief statement of the case, including any damages. *(If personal injury damages are sought, specify the injury and damages claimed, including medical expenses to date [indicate source and amount], estimated future medical expenses, lost earnings to date, and estimated future lost earnings. If equitable relief is sought, describe the nature of the relief.)*

This Court is fully familiar with the facts and law applicable to this case. Inter alia, plaintiff seeks a declaration that the deed purporting to convey the Hayes Park Property from the City to K&B/Bakewell is void.

(If more space is needed, check this box and attach a page designated as Attachment 4b.)

5. Jury or nonjury trial

The party or parties request a jury trial a nonjury trial *(if more than one party, provide the name of each party requesting a jury trial):*

6. Trial date

- a. The trial has been set for *(date)*:
- b. No trial date has been set. This case will be ready for trial within 12 months of the date of the filing of the complaint *(if not, explain)*:
- c. Dates on which parties or attorneys will not be available for trial *(specify dates and explain reasons for unavailability)*:
Counsel will have their updated trial and vacation calendar schedules available at the conference herein.

7. Estimated length of trial

- The party or parties estimate that the trial will take *(check one)*:
- a. days *(specify number)*: 3-5 days
 - b. hours (short causes) *(specify)*:

8. Trial representation *(to be answered for each party)*

- The party or parties will be represented at trial by the attorney or party listed in the caption by the following:
- a. Attorney:
 - b. Firm:
 - c. Address:
 - d. Telephone number:
 - e. Fax number:
 - f. E-mail address:
 - g. Party represented:
- Additional representation is described in Attachment 8.

9. Preference

This case is entitled to preference *(specify code section)*: CCP Section 526a

10. Alternative Dispute Resolution (ADR)

- a. Counsel has has not provided the ADR information package identified in rule 201.9 to the client and has reviewed ADR options with the client.
- b. All parties have agreed to a form of ADR. ADR will be completed by *(date)*:
- c. The case has gone to an ADR process *(indicate status)*:

PLAINTIFF/PETITIONER: Kaatz	NUMBER: M65043
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10. d. The party or parties are willing to participate in (*check all that apply*):
- (1) Mediation
 - (2) Nonbinding judicial arbitration under Code of Civil Procedure section 1141.12 (discovery to close 15 days before arbitration under Cal. Rules of Court, rule 1612)
 - (3) Nonbinding judicial arbitration under Code of Civil Procedure section 1141.12 (discovery to remain open until 30 days before trial; order required under Cal. Rules of Court, rule 1612)
 - (4) Binding judicial arbitration
 - (5) Binding private arbitration
 - (6) Neutral case evaluation
 - (7) Other (*specify*): Plaintiff will agree to private mediation if defendants agree to advance costs.
- e. This matter is subject to mandatory judicial arbitration because the amount in controversy does not exceed the statutory limit.
- f. Plaintiff elects to refer this case to judicial arbitration and agrees to limit recovery to the amount specified in Code of Civil Procedure section 1141.11.
- g. This case is exempt from judicial arbitration under rule 1600.5 of the California Rules of Court (*specify exemption*):
Action includes a prayer for equitable relief. [CRC 1600.5(a)]

11. **Settlement conference**

- The party or parties are willing to participate in an early settlement conference (*specify when*):
Any time

12. **Insurance**

- a. Insurance carrier, if any, for party filing this statement (*name*):
- b. Reservation of rights: Yes No
- c. Coverage issues will significantly affect resolution of this case (*explain*):

13. **Jurisdiction**

- Indicate any matters that may affect the court's jurisdiction or processing of this case, and describe the status.
- Bankruptcy Other (*specify*):
Status:

14. **Related cases, consolidation, and coordination**

- a. There are companion, underlying, or related cases.
- (1) Name of case:
 - (2) Name of court:
 - (3) Case number:
 - (4) Status:
- Additional cases are described in Attachment 14a.
- b. A motion to consolidate coordinate will be filed by (*name party*):

15. **Bifurcation**

- The party or parties intend to file a motion for an order bifurcating, severing, or coordinating the following issues or causes of action (*specify moving party, type of motion, and reasons*):

16. **Other motions**

- The party or parties expect to file the following motions before trial (*specify moving party, type of motion, and issues*):
A dispute between the parties currently exists regarding plaintiff's first amended complaint, which has yet to be filed due to a disagreement regarding the exact language of the pleading. If this dispute cannot be resolved via plaintiff's current efforts to meet and confer, then plaintiff will be forced to file another motion to amend.

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17. Discovery

- a. The party or parties have completed all discovery.
- b. The following discovery will be completed by the date specified (*describe all anticipated discovery*):

<u>Party</u>	<u>Description</u>	<u>Date</u>
Plaintiff	Written Discovery	January, 2003
Plaintiff	Depositions	February, 2003

- c. The following discovery issues are anticipated (*specify*):

18. Economic Litigation

- a. This is a limited civil case (i.e., the amount demanded is \$25,000 or less) and the economic litigation procedures in Code of Civil Procedure sections 90 through 98 will apply to this case.
- b. This is a limited civil case and a motion to withdraw the case from the economic litigation procedures or for additional discovery will be filed (*if checked, explain specifically why economic litigation procedures relating to discovery or trial should not apply to this case*):

19. Other issues

- The party or parties request that the following additional matters be considered or determined at the case management conference (*specify*): Please see attachment pages regarding issue of adding necessary parties and providing notice to other prospective new record title holders of the Hayes Park Property.

20. Meet and confer

- a. The party or parties have met and conferred with all parties on all subjects required by rule 212 of the California Rules of Court (*if not, explain*):
- b. After meeting and conferring as required by rule 212 of the California Rules of Court, the parties agree on the following (*specify*):

21. Case management orders

Previous case management orders in this case are (*check one*): none attached as Attachment 21.


22. Total number of pages attached (*if any*): 4

I am completely familiar with this case and will be fully prepared to discuss the status of discovery and ADR, as well as other issues raised by this statement, and will possess the authority to enter into stipulations on these issues at the time of the case management conference, including the written authority of the party where required.

Date: September 15, 2003

Jay P. Renneisen

(TYPE OR PRINT NAME)

▶ 
 (SIGNATURE OF PARTY OR ATTORNEY)

▶ _____
 (SIGNATURE OF PARTY OR ATTORNEY)

Additional signatures are attached

1 **Kaatz v. City of Seaside et al**
2 **Monterey County Superior Court Case No. M65043**

3 As part of the present case management conference, plaintiff respectfully requests
4 that the Court and the parties address the following issues:

5 **1. Issue of Joinder of New Record Title Holders**

6 As K&B/Bakewell has elected to commence conveying record title to its customers,
7 these new record title holders to the Hayes Park Property will need to be joined as parties to
8 this action. Under Code of Civil Procedure section 389, the Court has the power to order
9 joinder of these new parties on its own. K&B/Bakewell, of course, has the information
10 regarding the names of the new record title holders, the new parcel numbers, and the precise
11 dates escrow will close. K&B/Bakewell should be ordered to provide this information to both
12 plaintiff and to the Court at this time. As a practical matter, it may be easiest for the Court to
13 order, in advance of the close of escrow, that the new title holders be joined as parties to the
14 action upon the close of their individual escrows. This would avoid any potential gaps in
15 jurisdiction which, according to the arguments of K&B/Bakewell's attorneys before Judge
16 O'Farrell, would exist until such record title holder is joined as a party to this action.

17 **2. Issue of Service of Process on New Record Title Holders**

18 Because of the potential for a lack of jurisdiction during any period of time in which a
19 record title holder is not joined in this action, as K&B/Bakewell has argued, service of process
20 on the newly joined parties should be fully completed at the same time escrow closes. This
21 can be accomplished in different ways. One option is that K&B/Bakewell be ordered to
22 include in its escrow conditions a requirement that record title purchasers execute an
23 acknowledgment and receipt of summons as a condition for escrow to close, as allowed for
24 under Code of Civil Procedure section 415.30. Alternatively, the escrow instructions could
25 require the personal presence of the new record title holder, or appropriate agent for service
26 of process if the purchaser is a corporation or other such entity, and the personal service on
27 such individual at the close of escrow.

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1 **3. Issue of Notice to All Future Record Title Holders**

2 Defendants herein have raised equitable defenses in this action, and it is possible that
3 future record title holders will attempt to assert equitable arguments. Specifically, it is
4 possible that future record title holders may allege that they did not have adequate notice of
5 this action when they took record title, and, as innocent purchasers, would be unduly harmed
6 if the original conveyance from the City of Seaside were held to be void with record title of the
7 property reverting to the city. At the hearing before Judge O'Farrell on August 15th, counsel
8 for K&B/Bakewell presented the court with a one-page document entitled "Supplemental
9 Disclosure – Pending Litigation", which counsel stated was the form of a notice given to all of
10 its home purchasers, at some point prior to the hearing. A true and correct copy of the one-
11 page document presented to Judge O'Farrell is attached hereto.

12 Ironically, while K&B/Bakewell's attorneys were arguing that, as a record title holder, it
13 was an indispensable party to the litigation, the Supplemental Disclosure does not inform
14 potential buyers that they would also become indispensable parties to the litigation
15 immediately upon the close of their escrows. Rather, the document somewhat casually
16 states that the home purchasers "might be interested" in "additional information applicable to
17 the Community", that "may impact your purchase of a home in the Community". While
18 admitting that the lawsuit could void their purchase contracts, the document does not state
19 that the Court could void their title to their homes at some point in the future, possibly several
20 years in the future as this case works its way through the appellate courts.

21 Additionally, although it appears that every one of the 88 purchase contracts entered
22 into between K&B/Bakewell and the individual homebuyers were entered into after this action
23 was filed on May 15, 2003, the language of the Supplemental Disclosure suggests that the
24 information was not provided until after K&B/Bakewell had first secured the home purchase
25 contracts.

26 Finally, the Supplemental Disclosure directs purchasers to the Salinas branch of the
27 Monterey County Superior Court for additional information (at their own expense), when the
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1 case file for this action is actually physically kept at the Monterey Courthouse.

2 In order to place all future record title holders on notice that their title is being legally
3 challenged in this action, one option would be for the Court to make an order that title not
4 transfer until proof is filed with the Court establishing that the new record title holder has been
5 adequately advised of the lawsuit prior to conveyance of the record title. Then, after record
6 title is conveyed and the new purchaser is joined as a party to the lawsuit, the new purchaser
7 would be subject to the same court order requiring proof of notice prior to reconveying the
8 record title.

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K&B BAKWELL SEASIDE VENTURE, LLC
1725 Fremont Boulevard
Seaside, CA 93955

Supplemental Disclosure - Pending Litigation

Buyer's Printed Name(s): _____

Community: Seaside Highlands
Property: Lot No.: ____ of Tract No _____
Contract Date: _____, 200__

From: K&B BAKWELL SEASIDE VENTURE, LLC (hereafter, K&B Bakewell)

When you entered into escrow to purchase a home in the Community, you received from KB Home a "Community Long Form Disclosure" which disclosed certain information with respect to the Community, the surrounding areas and the home you are buying. We have recently become aware of additional information applicable to the Community we thought you might be interested in having.

Pending Litigation: Buyers are hereby advised that there is currently pending litigation against the City of Seaside known as "Kaatz vs. City of Seaside, et al" which was filed in the Monterey County Superior Court, Case Number M65043. The lawsuit was filed on May 15, 2003 and may impact your purchase of a home in the Community. In the lawsuit, the Plaintiff alleges that the City of Seaside, and not K&B Bakewell, is the rightful owner of the Community. The Complaint requests the Court to transfer the Community from K&B Bakewell back to the City of Seaside and render any contract between K&B Bakewell and Buyers null and void. You may request a copy of the court documents for the case at the Monterey County Superior Court, 240 Church St., Salinas, CA 93901, (831) 775-5400.

By signing below, you acknowledge that you have received and understand this disclosure and have considered the matters set forth herein in making your decision to purchase a home in the Community.

Buyer _____

Date _____

Buyer _____

Date _____

PROOF OF SERVICE

(Kaatz v. City of Seaside et al - Monterey County Superior Court Case No. M65043)

I, the undersigned, declare:

I am a citizen of the United States of America, am over the age of eighteen (18) years, and not a party to the within action. I am an employee of the Law Offices of Jay P. Renneisen, and my business address is 1931 San Miguel Drive, Suite 210 A, Walnut Creek, California 94596.

On September 15, 2003, I caused to be served the following document(s): Plaintiff's Case Management Statement

on the parties involved addressed as follows:

Counsel for Defendant City of Seaside

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City Attorney for City of Seaside
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AND Home Fax No: 831-373-0108

Counsel for Defendant K&B/Bakewell

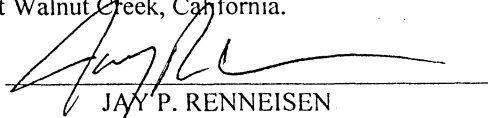
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XX BY MAIL: I caused each envelope, with postage thereon fully prepaid, to be placed in the United States mail at Walnut Creek, California. I am readily familiar with the business practice for collection and processing of mail in this office; that in the ordinary course of business said document would be deposited with the US Postal Service in Walnut Creek on that same day. I understand that service shall be presumed invalid upon motion of a party served if the postal cancellation date or postage meter date on the envelope is more than one day after the date of deposit for mailing contained on this declaration.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on September 15, 2003, at Walnut Creek, California.


JAY P. RENNEISEN