

Douglas Kruschen
P.O. Box 465
Agoura Hills, CA 91376-0465
(818) 927-1040
(Plaintiff Pro Se)

Electronically FILED by
Superior Court of California,
County of Los Angeles
11/20/2023 6:29 PM
David W. Slayton,
Executive Officer/Clerk of Court,
By A. Salcedo, Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES
UNLIMITED CIVIL JURISDICTION

DOUGLAS KRUSCHEN, an individual,

Plaintiff,

v.

ANNANDALE TOWNHOUSE
ASSOCIATION, INC., a California nonprofit
mutual benefit corporation; VICTOR RENE
MARTINEZ, an individual; ANTHONY
WAGNER, an individual; JAMES
GROSSMAN, an individual; SCOTT PERL,
an individual; JEFFERY ATKINSON, an
individual; and DOES 1 through 10,
inclusive,

Defendants.

Case No.: 23VECV05191

VERIFIED COMPLAINT FOR:

- (1) DECLARATORY RELIEF (Corp.
Code §7616);
- (2) DECLARATORY RELIEF (Civ.
Code §5145);
- (3) RESTITUTION AND OTHER
EQUITABLE RELIEF (Civ. Code
§5145)

Case Filed: November 21, 2023

PARTIES AND VENUE

1. Plaintiff DOUGLAS KRUSCHEN ("Kruschen") is, and at all times relevant was, an individual owner and resident of a separate interest unit at a residential project commonly known as Annandale Townhouse Association, Inc. in Agoura Hills, California, County of Los Angeles. Membership in the Association is appurtenant to ownership of a separate interest unit within the Project. Kruschen was a Director and Officer of Annandale

1 Townhouse Association, Inc. from election in 2020, until the disputed election giving rise to
2 this litigation in October, 2023.

3 2. Defendant Annandale Townhouse Association, Inc. (“the Association”) is,
4 and was, a seven-acre 292 separate interest unit nonprofit mutual benefit corporation under
5 the Nonprofit Mutual Benefit Corporation Law (Corp. Code §7110 et seq.) and formed under
6 the laws of the State of California in 1973. The principal place of business for Annandale
7 Townhouse Association, Inc. is within the City of Agoura Hills in the County of Los
8 Angeles. Annandale Townhouse Association, Inc. is a common interest development under
9 the Davis Stirling Common Interest Development Act (the “Davis-Stirling Act”) (Civ. Code
§4000 et seq.).

10 3. Defendants Martinez, Wagner, Grossman, Perl, and Atkinson are individuals
11 residing in the County of Los Angeles, State of California, are the owners of separate interest
12 units located within the Project, and are acting on behalf of the Association, engaging in
13 Association business, and conducting Association affairs.

14 4. Kruschen is informed and believes, and thereon alleges, that Defendants Does
15 1 through 10 inclusive, and each of them, are unknown to Plaintiff who therefore sues those
16 DOE Defendants by such fictitious names. Plaintiff will amend this complaint to show such
17 true names and capacities when they have been ascertained. Plaintiff is further informed and
18 believes, and thereon alleges, that all DOE Defendants are individuals, corporations, general
19 partnerships, and/or limited partnerships organized and existing by virtue of the laws of the
20 State of California and/or are individuals either residing or doing business in the State of
21 California. Plaintiff is informed and believes and based thereon alleges that each fictitiously
22 named defendant is responsible in some manner for the wrongful conduct herein alleged and
that Plaintiff's damages as alleged herein were proximately caused by their conduct.

23 5. The named Defendant and DOE Defendants (collectively “Defendants”), and
24 each of them, were at all times herein mentioned, the agents and/or co-conspirators of each of
25 the other Defendants, and at all times herein mentioned were acting in the course and scope
of said agency, service, and in furtherance of a joint venture and/or conspiracy.

26 6. Venue in the Central District is appropriate under Code of Civil Procedure
27 §395 because Defendant does business in Los Angeles County, in this judicial district.
28

A. Relevant Provisions of the Davis-Stirling Act (Civ. Code §4000 et seq.).

8. Relevant to this lawsuit, California Civil Code §4040(a)(1) provides that, “If a provision of this act requires an association to deliver a document by ‘individual delivery’ or ‘individual notice,’ the association shall deliver that document in accordance with the preferred delivery method specified by the member pursuant to Section 4041.”

10. Relevant to this lawsuit, California Civil Code §4045(b) provides that, “...if a member requests to receive general notices by individual delivery, all general notices to that member, given under this section, shall be delivered pursuant to Section 4040. The option provided in this subdivision shall be described in the annual policy statement prepared pursuant to Section 5310.”

12. Relevant to this lawsuit, California Civil Code §4926(b) provides that, “*Subdivision (a) does not apply to a meeting at which ballots are counted and tabulated pursuant to Section 5120.*” (Emphasis added.)

VERIFIED COMPLAINT

1 14. Relevant to this lawsuit, California Civil Code §5105(a)(7) provides that,
2 “The candidate list shall include **name and address of individuals nominated** as a
3 candidate for election to the board of directors.” (Emphasis added.)

4 15. Relevant to this lawsuit, California Civil Code §5110(a) provides that, “The
5 association shall select an independent third party or parties as an inspector of elections. The
6 number of inspectors of elections shall be one or three.”

7 16. Relevant to this lawsuit, California Civil Code §5110(d) provides that, “An
8 inspector of elections shall perform all duties impartially, in good faith, to the best of the
9 inspector of election's ability, as expeditiously as is practical, and in a manner that protects
10 the interest of all members of the association.”

11 17. Relevant to this lawsuit, California Civil Code §5115(a) provides that, “An
12 association shall provide general notice of the procedure and deadline for submitting a
13 nomination at least 30 days before any deadline for submitting a nomination. Individual
14 notice ***shall be delivered*** pursuant to Section 4040 if individual notice is requested by a
15 member.” (Emphasis added.)

16 18. Relevant to this lawsuit, California Civil Code §5115(b) provides that, “For
17 elections of directors and for recall elections, an association ***shall provide general notice*** of
18 all of the following at least 30 days before the ballots are distributed:

19 (1) The date and time by which, and the physical address where, ballots are to be
20 returned by mail or handed to the inspector or inspectors of elections.

21 (2) The date, time, and location of the meeting at which ballots will be counted.

22 (3) The list of all candidates' names that will appear on the ballot.

23 (4) Individual notice of the above paragraphs ***shall be delivered*** pursuant to
24 Section 4040 if individual notice is requested by a member.” (Emphasis added.)

25 19. Relevant to this lawsuit, California Civil Code §5120(a) provides that, “All
26 votes shall be counted and tabulated by the inspector or inspectors of elections, or the
27 designee of the inspector of elections, ***in public at a properly noticed open meeting*** of the
28 board or members. Any candidate or other member of the association may witness the
counting and tabulation of the votes.” (Emphasis added.)

1 20. Relevant to this lawsuit, California Civil Code §5120(b) provides that,
2 “Within 15 days of the election, the board ***shall give general notice*** pursuant to Section 4045
3 of the tabulated results of the election.” (Emphasis added.)

4 21. Relevant to this lawsuit, California Civil Code §5130(b) provides that,
5 “Proxies ***shall not be*** construed or used in lieu of a ballot.” (Emphasis added.)

6 22. Relevant to this lawsuit, California Civil Code §5130(b) provides that, “Any
7 instruction given in a proxy issued for an election that directs the manner in which the
8 proxyholder is to cast the vote shall be set forth on a separate page of the proxy that can be
9 detached and given to the proxyholder to retain. The proxyholder shall cast the member’s
vote by secret ballot.”

10 23. Relevant to this lawsuit, California Civil Code §5145(a) provides that, “A
11 member of an association may bring a civil action for declaratory or equitable relief for a
12 violation of this article by the association, including, but not limited to, injunctive relief,
13 restitution, or a combination thereof, within one year of the date that the inspector or
14 inspectors of elections notifies the board and membership of the election results or the cause
15 of action accrues, whichever is later. If a member establishes, by a preponderance of the
16 evidence, that the election procedures of this article, or the adoption of and adherence to rules
17 provided by Article 5 (commencing with Section 4340) of Chapter 3, were not followed, a
18 ***court shall void any results of the election*** unless the association establishes, by a
19 preponderance of the evidence, that the association's noncompliance with this article or the
20 election operating rules did not affect the results of the election. The findings of the court
shall be stated in writing as part of the record.” (Emphasis added.)

21 24. Relevant to this lawsuit, California Civil Code §5145(b) provides that, “A
22 member who prevails in a civil action to enforce the member's rights pursuant to this article
23 shall be entitled to reasonable attorney's fees and court costs, and the court may impose a
24 civil penalty of up to five hundred dollars (\$500) for each violation...A prevailing
25 association shall not recover any costs, unless the court finds the action to be frivolous,
unreasonable, or without foundation.”

1 **B. Relevant Provisions of the Nonprofit Mutual Benefit Corporation Law (Corp.**
2 **Code §7110 et seq.).**

3 25. The California Nonprofit Mutual Benefit Corporation Law establishes a
4 unified statutory framework to regulate nonprofit mutual benefit corporations, such as most
5 HOAs, in California. Subject to the provisions of the California Nonprofit Mutual Benefit
6 Corporation Law, and any limitations in the Association's Governing Documents, the
7 business and affairs of the Association are vested in and exercised by the Association's
8 Board of Directors.

9 26. Relevant to this lawsuit, California Corporations Code §7220(a) provides that,
10 "...directors shall be elected for terms of not longer than four years, as fixed in the articles or
11 bylaws."

12 27. Relevant to this lawsuit, California Corporations Code §7510(f) provides that,
13 "A corporation shall not conduct a meeting of members solely by electronic transmission by
14 and to the corporation, electronic video screen communication, conference telephone, or
15 other means of remote communication unless: *(A) all of the members consent*; or (B) the
16 board determines it is necessary or appropriate because of an emergency, as defined in
17 paragraph (5) of subdivision (m) of Section 7140." (Emphasis added.)

18 28. Relevant to this lawsuit, California Corporations Code §7514(a) provides that,
19 "Any form of proxy or written ballot distributed to 10 or more members of a corporation with
20 100 or more members shall afford an opportunity on the proxy or form of written ballot to
21 specify a choice between approval and disapproval of each matter or group of related matters
22 intended, at the time the written ballot or proxy is distributed, to be acted upon at the meeting
23 for which the proxy is solicited or by such written ballot, and shall provide, subject to
24 reasonable specified conditions, that where the person solicited specifies a choice with
25 respect to any such matter the vote shall be cast in accordance therewith."

26 29. Relevant to this lawsuit, California Corporations Code §7514(c) provides that,
27 "Failure to comply with this section shall not invalidate any corporate action taken, but may
28 be the basis for challenging any proxy at a meeting or written ballot and the superior court
may compel compliance therewith at the suit of any member."

30. Relevant to this lawsuit, California Corporations Code §7527 provides that,
"An action challenging the validity of any election, appointment or removal of a director or

1 directors must be commenced within nine months after the election, appointment or
2 removal.”

3 31. Relevant to this lawsuit, California Corporations Code §7616(a) provides that,
4 “Upon the filing of an action therefore by any director or member or by any person who had
5 the right to vote in the election at issue, the superior court of the proper county shall
6 determine the validity of any election or appointment of any director of any corporation.”

7 32. Relevant to this lawsuit, California Corporations Code §7616(c) provides that,
8 “Upon the filing of the complaint, and before any further proceedings are had, the court shall
9 enter an order fixing a date for the hearing, which shall be within five days unless for good
10 cause shown a later date is fixed, and requiring notice of the date for the hearing and a copy
11 of the complaint to be served upon the corporation and upon the person whose purported
12 election or appointment is questioned and upon any person (other than the plaintiff) whom
13 the plaintiff alleges to have been elected or appointed, in the manner in which a summons is
14 required to be served, or, if the court so directs, by registered mail; and the court may make
15 such further requirements as to notice as appear to be proper under the circumstances.”

16 33. Relevant to this lawsuit, California Corporations Code §7616(d) provides that,
17 “The court, consistent with the provisions of this part and in conformity with the articles and
18 bylaws to the extent feasible, may determine the person entitled to the office of director or
19 may order a new election to be held or appointment to be made...and may direct such other
20 relief as may be just and proper.”

21 **C. Relevant Provisions of the Association’s Covenants, Conditions and**
22 **Restrictions.**

23 34. The Association is subject to a Declaration of Covenants, Conditions and
24 Restrictions, recorded on June 6, 2008, in the Official Records of Los Angeles County,
25 California (hereinafter, the "CC&Rs"). The CC&Rs are binding on owners and the
26 Association’s residents alike. (See *Civil Code §5975(a)*; *Nahrstedt v. Lakeside Village*
Condominium Assn. (1994) 8 Cal.4th 361; *Martin v. Bridgeport Community Assn., Inc.*
27 (2009) 173 Cal.App.4 1024.) A true and correct copy of which is attached hereto as Exhibit
28 A and incorporated herein.

35. Relevant to this lawsuit, the CC&Rs, at Article 4, Paragraph 5.1, provide that,
“Every Owner of a Condominium shall be a Member of the Association and shall hold one

1 membership in the Association for each Condominium owned. The membership shall be
2 appurtenant to such Condominium.”

3 36. Relevant to this lawsuit, the CC&Rs, at Article 4, Paragraph 5.3, provide that,
4 “Each Member of the Association shall be entitled to one vote for each Condominium owned
5 by said Member. When more than one person holds an interest in any Condominium, all such
6 persons shall be Members, although in no event shall more than one vote be cast with respect
7 to any Condominium.”

8 37. Relevant to this lawsuit, the CC&Rs, at Article 4, Paragraph 5.6, provide that,
9 “The Association shall have the responsibility of managing and maintaining the Common
10 Areas and Common Facilities and discharging the other duties and responsibilities imposed
11 on the Association by the Governing Documents.”

12 **D. Relevant Provisions of the Association’s Bylaws.**

13 38. The Bylaws of the Association were recorded on April 2, 1973, (hereinafter,
14 “the Bylaws”). The Bylaws were amended by order of Judge Huey Cotton on September 22,
15 2020, concluding Los Angeles Superior Court Case No. 19VECP00459. A true and correct
16 copy of which is attached hereto as Exhibit B and incorporated herein.

17 39. Relevant to this lawsuit, the Bylaws, at Article II, Section 2 provide that, “As
18 used in these Bylaws the term ‘majority of owners’ shall mean those holding 51 percent of
19 the vote.”

20 40. Relevant to this lawsuit, the Bylaws, at Article II, Section 3 provide that,
21 “Except as otherwise provided these Bylaws, the presence in person or by proxy of a
22 ‘majority of owners’ as defined in Section 2 of this Article shall constitute a quorum.”

23 41. Relevant to this lawsuit, the Bylaws, at Article II, Section 4 provide that,
24 “Proxies must be filed with the Secretary before the appointed time of each meeting.”

25 42. Relevant to this lawsuit, the Bylaws, at Article II, Section 5 provide that,
26 “Every condominium owner entitled to vote at any election for Directors of the Association
27 may cumulate his votes and give one candidate a number of votes equal to the number of
28 Directors to be elected, or distribute his votes on the same principle among as many
candidates as he thinks fit.”

1 43. Relevant to this lawsuit, the Bylaws, at Article III, Section 2 provide that,
2 “Meetings of the Association shall be held at the principal office of the project or such other
3 suitable place convenient to the owners as may be designated by the Board of Directors.”

4 44. Relevant to this lawsuit, the Bylaws, at Article III, Section 5 provide that, “It
5 shall be the duty of the Secretary to mail a notice of each annual meeting stating the purpose
6 thereof as well as the time and place where it is to be held to each owner of record, at least
7 seven (7) but not more than fifteen (15) days prior to such meeting.”

8 45. Relevant to this lawsuit, the Bylaws, at Article III, Section 6, as amended by
9 Order, provide that, “If any meeting of owners cannot be organized because a quorum has
10 not attended, the owners who are present, either in person or by proxy, may adjourn the
11 meeting in a time not less than Forty-Eight (48) hours nor more than Thirty (30) days from
12 the time the original meeting was called at which time the quorum shall be reached by
13 Thirty-Three and One Third Percent (33 1/3%) of owners present either in person or by
14 proxy.”

15 46. Relevant to this lawsuit, the Bylaws, at Article IV, Section 1 provide that,
16 “The affairs of the Association shall be governed by a Board of Directors composed of five
17 persons, all of whom must be owners of units in the project.”

18 47. Relevant to this lawsuit, the Bylaws, at Article IV, Section 5 provide that, “At
19 the expiration of the initial term of office of each respective Director, his successor shall be
20 elected to serve a term of three (3) years. The Directors shall hold office until their
21 successors have been elected and hold their first meeting.”

22 **E. Relevant Provisions of the Association’s Election and Voting Rules**

23 48. The Association’s operative Election and Voting Rules (the “Election Rules”),
24 as required by Civil Code §5105(a), were adopted by the Association in January, 2020, and
25 amended by resolution on January 17, 2023. A true and correct copy of which is attached
26 hereto as Exhibit C and incorporated herein.

27 49. Relevant to this lawsuit, the Election Rules, at Paragraph 1(b) provide that,
28 “At least thirty (30) days before the ballots are distributed, the Association will provide
general notice of (1) the date and time by which, and address where, ballots are to be
returned; (2) the date, time and location of the meeting to tabulate the ballots; and (3) the list
of all candidates' names that will appear on the ballot.”

1 50. Relevant to this lawsuit, the Election Rules, at Paragraph 1(d) provide that,
2 “At least thirty (30) days before the election, the inspectors of election will deliver to each
3 Member: (1) the ballot and voting instructions; and (2) a copy of the Election Rules. Note,
4 the Election Rules may be provided by individual delivery or by posting same on an internet
5 site and providing the corresponding internet site web address on the ballot with the phrase,
6 in at least 12-point font: ‘The rules governing this election may be found here:[Insert Web
Address]’.”

7 51. Relevant to this lawsuit, the Election Rules, at Paragraph 2(d) provide that,
8 “The secret ballot itself must be inserted into an envelope and sealed ("inner envelope") This
9 inner envelope is then inserted into a second envelope that is sealed ("outer envelope"). In the
10 upper left-hand corner of the second envelope, the voter prints and signs his or her name and
11 address that entitles him or her to vote. The second envelope is addressed to the inspectors of
12 election of the Association, who will-be tallying the voles. Failure to do so will invalidate the
ballot and Member's vote.”

13 52. Relevant to this lawsuit, the Election Rules, at Paragraph 2(d)(i) provide that,
14 “Members may return their secret ballot by mail, hand deliver it to the meeting or complete
15 the ballot at the meeting, and is deemed cast when so delivered or mailed; provided, only
16 those ballots which are delivered to the inspectors of election **prior to the polls closing** shall
17 be counted.” (Emphasis added.)

18 53. Relevant to this lawsuit, the Election Rules, at Paragraph 4(i) provide that,
19 “The Board may remove and replace any inspector of election prior to the tabulation of
20 ballots if an inspector of election resigns or if the Board reasonably determines that an
21 inspector of election will not be able to perform his or her duties impartially and in good
22 faith.”

23 54. Relevant to this lawsuit, the Election Rules, at Paragraph 5(a) provide that,
24 “The Board of Directors shall determine the date, time and place of said Annual Meeting in
25 accordance with the Association's Bylaws. Notice of Annual Meeting ("Notice") **shall be**
26 **sent to all Members** pursuant to the Governing Documents, these Election Rules and
applicable state statute.” (Emphasis added.)

27 55. Relevant to this lawsuit, the Election Rules, at Paragraph 7(c) provide that,
28 “Members may nominate themselves or another person.”

1 56. Relevant to this lawsuit, the Election Rules, at Paragraph 7(d) provide that,
2 “Any candidate nominated by another person *will be contacted* to confirm that such
3 candidate consents to having his or her name placed in nomination for election to the Board.”
4 (Emphasis added.)

5 57. Relevant to this lawsuit, the Election Rules, at Paragraph 7(e) provide that,
6 “All candidates who meet the qualifications to serve on the Board if any and, if appropriate,
7 have confirmed their willingness to run for election to the Board, shall be listed on the secret
8 ballot.”

9 58. Relevant to this lawsuit, the Election Rules, at Paragraph 8(b) provide that,
10 “All candidates, including those who are not incumbents, and all Members advocating a
11 point of view, including those not endorsed by the Coard, for purposes, reasonably related to
12 the election, *shall be provided equal access to any common area meeting space*, if any
13 exists, during a campaign at no cost.” (Emphasis added.)

14 59. Relevant to this lawsuit, the Election Rules, at Paragraph 11(d) provide that,
15 “After the counting of the ballots and the certification of the election results by the inspectors
16 of election, the ballots shall be transferred to the Association.”

17 60. Relevant to this lawsuit, the Election Rules, at Paragraph 12(a) provide that,
18 “All secret ballot votes shall be counted and tabulated by the inspector(s) of election *in*
19 *public at a properly noticed open meeting* of the Members or of the Board, at which a
20 quorum of Members or a quorum of Board members, as the case may be, must be present.”
21 (Emphasis added.)

22 61. Relevant to this lawsuit, the Election Rules, at Paragraph 13(c) provide that,
23 “Within fifteen (15) days of the election, the Board shall publicize the results of the election
24 in a communication directed to all members.”

FIRST CAUSE OF ACTION

(For Declaratory Relief Against All Defendants Pursuant to Corp. Code §7616)

25 62. Plaintiff incorporates the allegations in paragraphs 1 through 61 above as if
26 each of those allegations were set forth in full in this paragraph.

27 63. Corporations Code §7616 permits a Court to adjudicate the validity of an
28 election of corporate directors and order a new election to be held. Plaintiff seeks an order
invalidating the results of the October 19, 2023, election and an order that a new election

1 shall be held, due to the Association's extensive violations of California Civil Code,
2 California Corporations Code, the Association's Bylaws, and the Association's Election and
3 Voting Rules as they relate to the 2023 election of Directors. Such conduct necessitated this
4 instant action for judicial declaration pursuant to Corporations Code §7616 to determine the
5 validity of the election.

6 64. The Corporations Code provides only two methods to become a director: 1)
7 election by the members; or 2) appointment by the Board to fill a vacancy. (See *Corporations*
8 *Code* §§ 7220(a) and 7224.) Pursuant to Corporations Code §7220(b), a director "shall hold
9 office until the expiration of the term for which elected and until a successor has been elected
10 and qualified, unless the director has been removed from office."

11 65. As of the record date for the Association's 2023 election of Directors, Plaintiff
12 and Jennifer Campbell, Mohammad Danesh, Steven Gittleman, and William Springer,
13 comprised the Board of Directors.

14 66. Civil Code §5110(a) requires that the Association engage the services of an
15 independent third-party Inspector of Elections ("Inspector") to administer its elections.

16 67. In September, 2022, Plaintiff, in the course and scope of his volunteer
17 employment as a Director and Officer of the Association, in attempt to ensure the
18 Association complied with its legal responsibilities, first requested that the Association
19 procure at least three (3) competitive bids for inspector services to administer the
20 Association's 2023 election of Directors. The acquisition and review of at least three (3)
21 competitive bids was required by the professional management contract and is an industry
22 standard to meet the fiduciary duty Directors have.

23 68. On April 18, 2023, Plaintiff, in the course and scope of his volunteer
24 employment as a Director and Officer of the Association, and the rest of the Board of
25 Directors present, reviewed and discussed competitive bids for inspector services to
26 administer the Association's 2023 election of Directors as provided by the management
27 company. The Directors, Plaintiff included, discussed the critical need to ensure state law and
28 the governing documents were respected due to failures occurring annually. The Directors
present, on a motion made by Plaintiff, voted unanimously in favor of engaging agent
Inspector, Correct Elect, LLC, to administer an in-person combined annual member meeting

1 and 2023 election of Directors as reflected in the meeting's minutes. A true and correct copy
2 of the meeting minutes is attached hereto as Exhibit D and incorporated herein.

3 69. The Association is required to distribute all election materials by mail to all
4 titled members based on each owner's mailing preferences designated pursuant to Civil Code
5 §4040 and done so on an annual basis. Beginning with the first materials mailing in early
6 May, 2023, the Association only addressed election materials to one member per separate
7 interest. Plaintiff and his non-party spouse are titled co-owners of their separate interest unit
8 each enjoying separate and distinct Association membership rights. Plaintiff and his non-
9 party spouse have designated two separate and distinct mailing (primary and secondary)
10 addresses to the Association. Despite this, the Association failed to provide Plaintiff with
11 election materials opting to address and mail materials only to his non-party spouse and at
12 only one of their two designated addresses.

13 70. On May 23, 2023, and again on August 15, 2023, Plaintiff, in the course and
14 scope of his volunteer employment as a Director and Officer of the Association brought the
15 mailing discrepancy to the attention of the Association. Plaintiff was told by the management
16 agent that the problem would be corrected. It was not. Plaintiff is also aware of other affected
17 Association members who can competently testify thereto.

18 71. The nomination period for the Association's 2023 election of Directors ended
19 on or about July 24, 2023. By the close of nominations, over 200 Association members were
20 third-party nominated pursuant to Paragraph 7(c) of the Election Rules, including Plaintiff,
21 by at least four members. The Association, however, did not contact the third-party
22 nominated persons "to confirm that such candidate consents to having his or her name placed
23 in nomination for election to the Board," as required, Plaintiff included. Plaintiff brought this
24 to the attention of the Association in August, 2023, even suggesting at the time that the
25 Association send a mailing to each nominee requesting to confirm their consent to
26 nomination to comply with the Rules. The Association refused.

27 72. Based on the strict timeline elections must follow, in August, 2023, the
28 Association was required to distribute the candidate list, also known as a pre-ballot notice, to
all Association members by mail. Civil Code §5105(a)(7) requires that the candidate list
include the "...name and address of individuals nominated as a candidate for election to the
board of directors." The candidate list distributed by the Association did not include

1 candidate addresses as required. A true and correct copy of the candidate list is attached
2 hereto as Exhibit E and incorporated herein.

3 73. Civil Code §5225 provides all Association members the right to obtain a
4 mailing list of all other Association members for the purposes of elections solicitation and
5 campaigning. On the other hand, Association members have the right to opt-out of having
6 their information included in the mailing list, so Corporations Code §8330 requires the
7 Association to provide an alternative means of being contacted for those purposes that also
8 protects members' privacy.

9 74. On August 28, 2023, Plaintiff requested, in writing, a copy of the
10 Association's mailing list for the purposes of campaigning and explicitly invoked the right to
11 use the "alternative method of contacting those owners" who were opted-out. On August 29,
12 2023, the managing agent replied to Plaintiff and provided the mailing list sans the opted-out
13 members and advised that "...owners who have opted out can receive copies via management
14 mailing- I can provide you the number and amount for postage if you would like to mail a
15 check in. That is how I have done this in the past." On the same day, Plaintiff advised the
16 managing agent in prompt reply email, "Yes, please provide the count and cost so we can
17 decide on what action we would like to take, if any." The Association failed to reply to
18 Plaintiff and his right to campaign and solicit were violated as a result. A true and correct
19 copy of the communication is attached hereto as Exhibit F and incorporated herein.

20 75. Secret ballots were distributed in late September, 2023. The Bylaws, at Article
21 IV, Section 5 provide for three (3) year terms of Directorship for all positions but the ballots
22 themselves included lesser terms.

23 76. Civil Code §5105(g)(4) requires the delivery of the Association's Election and
24 Voting Rules to all members at least 30-days before an election. This can be accomplished by
25 individual delivery or by the posting of the "...operating rules to an internet website and
26 including the corresponding internet website address on the ballot..." While the ballot did
27 contain an interest website address, the rules were and are not posted on the referenced
28 website as required.

77. The Election Rules, at Paragraph 1(d) require that, "At least thirty (30) days
before the election, the inspectors of election will deliver to each Member: (1) the ballot and
voting instructions; and (2) a copy of the Election Rules. Note, the Election Rules may be

1 provided by individual delivery or by posting same on an internet site and providing the
2 corresponding internet site web address on the ballot with the phrase, in at least 12-point
3 font: 'The rules governing this election may be found here:[Insert Web Address]'. While the
4 ballot did contain an internet website address, the rules were and are not posted on the
5 referenced website as required.

6 78. The Bylaws, at Article III, Section 5 provide that, "It shall be the duty of the
7 Secretary to mail a notice of each annual meeting stating the purpose thereof as well as the
8 time and place where it is to be held to each owner of record, at least seven (7) but not more
9 than fifteen (15) days prior to such meeting." The Association did not comply.

10 79. On October 12, 2023, Plaintiff informed the Association, its general counsel
11 included, in writing, again, of many of the legal violations outlined in this lawsuit and urged
12 the Association to fulfill its duties to its members by voluntarily restarting the election
13 process to cure its defects and avoid not only liability for civil penalties, but avoid the
14 election being invalidated by this court. A true and correct copy of Plaintiff's communication
15 is attached hereto as Exhibit G and incorporated herein.

16 80. On October 17, 2023, the Association's annual member meeting and 2023
17 election of Directors was convened in person at its on-site Clubhouse. The polls were opened
18 at approximately 7:00 p.m. and closed at approximately 7:18 p.m. After the polls closed, the
19 Inspector announced that only 131 secret ballots had been received thus the required quorum
20 of 51% had not been met but that the second attempt reduced quorum of 33 1/3% had been
21 exceeded.

22 81. Based on the failure to achieve quorum (51%) participation, a majority of the
23 members present at the meeting made and passed a motion from the floor to temporarily
24 adjourn the meeting for a period of 48-hours pursuant to the Association's amended Bylaws,
25 at Article III, Section 6, and reconvene electronically (Zoom) only at that time. A true and
26 correct copy of the notice and agenda for the October 19, 2023, reconvened meeting is
27 attached hereto as Exhibit H and incorporated herein.

28 82. Despite the desires of the members present, the Association, however, was
legally precluded from holding an electronic meeting, such as an election of Directors, on
myriad grounds:

- 1 a. Corporations Code §7510(f) requires the consent of all Association
2 members for it to hold a member meeting electronically. Plaintiff has
3 expressly not consented and has a “non-consent” on file with the
4 Association. A true and correct copy of Plaintiff’s non-consent to
5 electronic meetings is attached hereto as Exhibit I and incorporated herein.
6 b. Civil Code §4926(b) expressly prohibits electronic only meetings “at
7 which ballots are counted and tabulated.”
8 c. Civil Code §5120(a) requires that “...votes shall be counted and tabulated
9 by the inspector...**in public** at a properly noticed open meeting of the
10 board or members.”
11 d. The Election Rules, at Paragraph 12(a) require that, “...votes shall be
12 counted and tabulated by the inspector(s) of election **in public** at a
13 properly noticed open meeting of the Members or of the Board...”
14 e. The Bylaws, at Article III, Section 2 require that “Meetings of the
15 Association shall be held at the **principal office** of the project or such
16 other suitable **place** convenient to the owners as may be designated by the
17 Board of Directors,”
18 f. The Election Rules, at Paragraph 1(b) require that “At least thirty (30)
19 days before the ballots are distributed, the Association will provide
20 general notice of...(2) the date, time and **location** of the meeting to
21 tabulate the ballots...”

22 83. Nevertheless, the Association reconvened to an electronic-only member
23 meeting on October 19, 2023. The Inspector appeared from her residence in Pico Rivera. The
24 meeting was recorded by the Zoom meeting organizer. At the meeting, notwithstanding the
25 prohibited nature of an electronic-only meeting, the Inspector muted herself depriving
26 attendees of hearing all conversations she was having, lost her connection for an extended
27 period of time depriving attendees of observing and monitoring her actions, and perhaps most
28 problematic, announced that she counted 181 ballots.

84. The Election Rules, at Paragraph 2(d)(i) provide that, “...only those ballots
which are delivered to the inspectors of election **prior to the polls closing** shall be counted.”
Notwithstanding the prohibited nature of an electronic-only meeting, pursuant to the

1 Association's legal notice and agenda for the reconvened October 19, 2023, meeting, the
2 polls were not re-opened as "quorum established at reduced quorum." At most, only the
3 ballots in the possession of the Inspector at the meeting by the close of the polls on October
4 17, 2023, if deemed valid, could be counted.

5 85. On November 8, 2023, Plaintiff was afforded the opportunity to inspect the
6 elections materials and did so as witnessed by the Association's attorney. Plaintiff observed
7 the following problems with proxies:

- 8 a. The Bylaws, at Article II, Section 4 require that, "Proxies must be filed
9 with the Secretary before the appointed time of each meeting." No proxies
10 were filed with the Secretary before the appointed time of each meeting
11 yet were used in the election.
- 12 b. Civil Code §5130(b) requires that, "Any instruction given in a proxy
13 issued for an election that directs the manner in which the proxyholder is
14 to cast the vote shall be set forth on a separate page of the proxy that can
15 be detached and given to the proxyholder to retain. The proxyholder shall
16 cast the member's vote by secret ballot." Upon information and belief,
17 proxyholders did not cast votes by secret ballot and the Inspector retained
18 secret proxies.
- 19 c. Civil Code §5130(b) prohibits proxies from being construed or used in
20 lieu of a ballot. Upon information and belief, proxies were used in lieu of
21 ballots.
- 22 d. Corporations Code §7514(a) requires that "...a choice between approval
23 and disapproval of each matter or group of related matters..." be included
24 within a directed proxy. Upon information and belief, proxies failed to
25 direct voting regarding the ballot's IRS 70-604 question rendering them,
26 and ballots voted predicated thereupon, void.

27 86. Civil Code §5120(b) requires, within 15 days of an election, that the
28 Association "...shall give general notice pursuant to Section 4045 of the tabulated results of
the election." Plaintiff has not been provided such notice at his mailing addresses on file with
the Association.

1 87. The Election Rules, at Paragraph 13(c), requires that “Within fifteen (15) days
2 of the election, the Board shall publicize the results of the election in a communication
3 directed to all members.” Plaintiff has not been provided such notice at his mailing addresses
4 on file with the Association.

5 88. An actual controversy has arisen and now exists between Plaintiff on the one
6 hand, and Defendants on the other, regarding the validity of the 2023 election of Directors.

7 89. Based on a preponderance of evidence, the totality of the circumstances as
8 alleged, and the inability of the Association to cure the defects without invalidating the
9 election, this instant action is with merit and relief is warranted.

10 90. Pursuant to Corporations Code Section §7616(c), Plaintiff requests that this
11 matter be adjudicated on an expedited basis and that this Court issue any interim orders that
12 in the interests of justice are warranted to protect Plaintiff, protect the Association and each
13 of its other members, and protect the assets of Plaintiff, the Association, and each of its other
14 members.

SECOND CAUSE OF ACTION

(For Declaratory Relief Against All Defendants Pursuant to Civ. Code §5145)

15 91. Plaintiff incorporates the allegations in paragraphs 1 through 90 above as if
16 each of those allegations were set forth in full in this paragraph.

17 92. Pursuant to Civil Code §5145(a), Plaintiff seeks that the court “void any
18 results of the election” and that “The findings of the court shall be stated in writing as part of
19 the record.”

THIRD CAUSE OF ACTION

(For Restitution and Other Equitable Relief Against All Defendants Pursuant to Civ. Code §5145)

22 93. Plaintiff incorporates the allegations in paragraphs 1 through 92 above as if
23 each of those allegations were set forth in full in this paragraph.

24 94. Pursuant to Civil Code §5145(b), Plaintiff seeks the court’s imposition of civil
25 penalties of five hundred dollars (\$500) for each violation, not to exceed the \$25,000
26 jurisdictional limit of the court.

1 **PRAYER FOR RELIEF**

2 Wherefore, Plaintiff respectfully requests that the Court issue the following relief:

3 **ON THE FIRST CAUSE OF ACTION:**

4 1. For judgment in favor of Plaintiff and against Defendants, and each of them;

5 2. For a declaration and order, pursuant to Corporations Code §7616, that the
6 Association's October 2023 election of Directors is invalid;

7 3. For a declaration and order, pursuant to Corporations Code §7616, that
8 Defendants Martinez, Wagner, Grossman, Perl, and Atkinson do not comprise the
9 Association's Board of Directors;

10 4. For a declaration and order, pursuant to Corporations Code §7616, that
11 Defendants Martinez, Wagner, Grossman, Perl, and Atkinson are not authorized to act on
12 behalf of the Association, engage in Association business, or conduct Association affairs;

13 5. For a declaration and order, pursuant to Corporations Code §7616, that
14 Defendants shall cause all Association records and funds in their possession, or in the
15 possession of their agents or employees, to be delivered to the Association's management
16 company Sunrise Property Management Group within seven (7) days;

17 6. For a declaration and order, pursuant to Corporations Code §7616, that
18 Plaintiff and President Jennifer Campbell, Vice President Mohammad Danesh, and Secretary
19 William Springer comprise the Association's Board of Directors until successors have been
20 appointed or elected;

21 7. For a declaration and order, pursuant to Corporations Code §7616 and the
22 stipulated settlement executed on November 14, 2023, in the matter of *Kruschen v.*
23 *Annandale Townhouse Association, Inc. and Steven Richard Gittleman* (Los Angeles County
24 Superior Court Case No. 23VECP00088) that Steven Gittleman is not a Director and not
25 authorized to act on behalf of the Association, engage in Association business, or conduct
26 Association affairs;

27 8. For a declaration and order, pursuant to Corporations Code §7616, that a new
28 election shall be held in compliance with the relevant laws of the State of California and the
Association's CC&Rs, Bylaws, and Election and Voting Rules;

1 9. For a declaration and order, pursuant to Corporations Code §7616, that the
2 Association engage a new Inspector of Elections to begin conducting a new election and that
3 they begin soliciting nominations within 14-days.

4 10. For a declaration and order, pursuant to Corporations Code §7616, that the
5 Inspector of Elections, pursuant to Election and voting Rules, Paragraph 7(d), contact all
6 candidates nominated by another person “to confirm that such candidate consents to having
7 his or her name placed in nomination for election to the Board.”;

8 11. For a declaration and order, pursuant to Corporations Code §7616, that the
9 Inspector of Elections, pursuant to Election and voting Rules, Section 12(a), count and
10 tabulate ballots “in public at a properly noticed open meeting of the Members.”;

11 12. For a declaration and order, pursuant to Corporations Code §7616, that,
12 pursuant to Bylaws, Article IV, Section 5, each elected Director shall “serve a term of three
13 (3) years.”;

14 13. For a declaration and order, pursuant to Corporations Code §7616, that the
15 Defendants shall pursue claim(s) for damages against Correct Elect, LLC.; and

16 14. For a restraining order, preliminary injunction, and permanent injunction
17 prohibiting Defendants from holding themselves out as acting on behalf of the Association or
18 purporting to conduct business on behalf of the Association, pursuant to Corporations Code
19 §7616.

20 **ON THE SECOND CAUSE OF ACTION:**

21 1. For judgment in favor of Plaintiff and against Defendants, and each of them;

22 2. For a declaration and order, pursuant to Civil Code §5145(a), that Association
23 noncompliance affected the results of its 2023 election of Directors election;

24 3. For a declaration and order, pursuant to Civil Code §5145(a), that the results
25 of the Association’s 2023 election of Directors are void; and

26 4. For a declaration and order, pursuant to Civil Code §5145(a), that the
27 Association engage a new Inspector of Elections to begin conducting a new election and that
28 they begin soliciting nominations within 14-days.

ON THE THIRD CAUSE OF ACTION:

 1. For judgment in favor of Plaintiff and against Defendants, and each of them;
and

2. For an award of civil penalties of five hundred dollars (\$500) for each violation, according to proofs.

ON ALL CAUSES OF ACTION:

1. For reasonable attorney's fees and costs of suit;
2. For prejudgment interest according to law; and
3. For such further and different relief as this Court may deem just and proper.

DATED: November 21, 2023

Respectfully submitted,



DOUGLAS KRUSCHEN
(Plaintiff Pro Se)

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

2

3
4
5
6

7
8

9

9

10
11

13

14