

No. B337889

**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT, DIVISION 5**

DOUGLAS KRUSCHEN

Respondent-Plaintiff

v.

ANNANDALE TOWNHOUSE ASSOCIATION, INC., *et al.*

Appellant-Defendants

APPEAL FROM JUDGMENT

**SUPERIOR COURT FOR THE COUNTY OF LOS ANGELES
CASE NO. 23VECV05191
THE HON. ERIC P. HARMON, JUDGE PRESIDING**

**RESPONDENT'S OPPOSITION TO APPELLANT'S
MOTION TO AUGMENT RECORD ON APPEAL**

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Document received by the CA 2nd District Court of Appeal.

**RESPONDENT’S OPPOSITION TO APPELLANT’S
MOTION TO AUGMENT RECORD ON APPEAL**

TO THE HONORABLE JUSTICES OF THE COURT OF
APPEAL OF THE STATE OF CALIFORNIA, SECOND
APPELLATE DISTRICT, DIVISION 5, AND TO ALL PARTIES
AND THEIR ATTORNEYS OF RECORD:

I. INTRODUCTION

Appellant Annandale Townhouse Association (“Appellant”) seeks by its Motion To Augment Record On Appeal (“Motion”) to add allegedly factual material to the appellate record in the form of a post-judgment declaration that:

- was never filed in the trial court,
- contains impossible factual and demonstrably false assertions, and
- concerns subject matter currently being litigated in a separate pending case—Case No. 25STLC01381, filed February 20, 2025, in Los Angeles Superior Court.

It intends to accomplish this despite disregard for the California Rules of Court and avoiding serious engagement with substantive law. Permitting Appellant to supplement the record with unreliable, post-judgment fabrications—particularly regarding a matter now pending before another trial court—not only contravenes binding authority but also risks conflicting judicial outcomes and undermines the integrity of the appellate process. The Motion is poorly conceived and should be denied.

II. FACTS

The Motion purports to be bound by and to comply with California Rules of Court, Rule 8.155(a) (“Rule 8.155(a)”), and Code of Civil Procedure section 909 (“section 909”).

In substance, the Motion requests this Court to receive and consider a document styled “Declaration of Victor Martinez Regarding Association Election” (the “Declaration”). The Declaration was signed April 4, 2024, and yet purports to establish facts occurring in September 2024—more than five months *after* the Declaration was signed. (Declaration at 2:17.) Additionally, the Declaration asserts that James Lingl is an attorney who served as an Inspector of Elections. However, at no time since 2021 has Mr. Lingl been licensed to practice law in California. (See, Motion for Judicial Notice, [“MJN”] Exhibit [“Ex.”] 1 [filed concurrently herewith].) Furthermore, the Declaration is presented on pleading paper, is captioned as if it might have been filed in the trial court, and yet bears no filing stamp.

An election (of sorts) did occur in September 2024. However, its validity is contested. (See, MJN Ex. 2 [Complaint in Los Angeles Superior Case No. 25STLC01381, filed February 20, 2025].)

III. LAW

Appellant relies upon—but does not quote—Rule 8.155(a), which governs augmentation of the record. It states:

“(1) At any time, on motion of a party or its own motion, the reviewing court may order the record augmented to include:

“(A) Any document filed or lodged in the case in superior court; or

“(B) A certified transcript--or agreed or settled statement--of oral proceedings not designated under rule 8.130.”

Appellant also relies upon section 909, which states in pertinent part as follows:

[T]he reviewing court may make factual determination . . . in addition to those made by the trial court. . . . The reviewing court may for the purpose of making the factual determinations or for any other purpose in the interests of justice, take additional evidence of or concerning facts occurring at any time prior to the decision of the appeal, and may give or direct the entry of any judgment or order and may make any further or other order as the case may require. This section shall be liberally construed to the end among others *that, where feasible, causes may be finally disposed of by a single appeal and*

without further proceedings in the trial court except where in the interests of justice a new trial is required on some or all of the issues.” (Italics added.)

While section 909 gives an appellate court limited authority to take new evidence, “[a]bsent exceptional circumstances, no such findings should be made.” (*In re Zeth S.* (2003) 31 Cal.4th 396, 405.) “The power created by the statute is discretionary and should be invoked sparingly, and only to affirm the case.” (*Golden West Baseball Co. v. City of Anaheim* (1994) 25 Cal.App.4th 11, 42; see also, *Monsan Homes, Inc. v. Pogrebneak* (1989) 210 Cal.App.3d 826.) “For this court to take new evidence pursuant to statute (Code Civ. Proc., § 909) and court rule 23(b) (Cal. Rules of Court), the evidence normally must enable the Court of Appeal to affirm the judgment, not lead to a reversal.” (*Philippine Export & Foreign Loan Guarantee Corp. v. Chuidian* (1990) 218 Cal.App.3d 1058, 1090].)

Further, a reviewing court’s discretion to consider post-judgment facts is constrained by the principle that appellate review must not be distorted by materials never considered by the trial court. The California Supreme Court emphasized in *Vons Companies, Inc. v. Seabest Foods, Inc.* (1996) 14 Cal.4th 434, 444, fn. 3, that “normally ‘when reviewing the correctness of a trial court's judgment, an appellate court will consider only matters which were part of the record at the time the judgment was

entered.” (Citing, *Reserve Insurance Co. v. Pisciotto* (1982) 30 Cal.3d 800, 813.)

Pursuant to California Rules of Court, Rule 8.252(b) (“Rule 8.252(b)”), “[a] party may move that the reviewing court make findings under Code of Civil Procedure section 909. The motion *must* include proposed findings.” (Italics added.)

The referenced authorities militate in favor of confining the appellate record to what was properly before the trial court. The Court should deny the Motion.

IV. ARGUMENT

The motion fails on multiple independent grounds, each of which compels denial.

A. Appellant Failed To Comply With The California Rules of Court

i. The Motion Cites And Then Ignores Rule 8.155(a)

Appellant cites to and relies on Rule 8.155(a) and yet, strangely, offers no facts that demonstrate compliance. It does not even bother to argue that the Declaration was either “filed or lodged in the superior court” or comprises in any sense a “certified transcript--or agreed or settled statement--of oral proceedings not designated under rule 8.130.” The closest Appellant comes to even suggesting compliance is to present the Declaration on pleading paper with a caption for the underlying superior court case. This appears to be a poor attempt at disguise. In reality, the Declaration

played absolutely no role in the trial court and Appellant presents nothing to the contrary.

The Motion not only fails to present facts showing compliance with Rule 8.155(a), it also affirmatively demonstrates the impossibility of compliance. The Declaration signature date is April 4, 2024, but judgment was entered March 26, 2024. (Clerk's Transcript 207.) (See also, *In re K.M.* (2015) 242 Cal.App.4th 450, 456 ["The augmentation procedure cannot be used to bring up matters occurring during the pendency of the appeal because those matters are outside the superior court record."])

Rule 8.155(a) cannot be a basis for this Court considering the Declaration. The Court should deny the Motion.

ii. The Motion Violates Rule 8.252(b)

Rule 8.252(b) governs any motion brought under section 909. It requires proposed findings of fact. Nowhere does the Motion provide any proposed findings of fact. Appellant's noncompliance with a patent requirement for obtaining relief under section 909 deprives the Court of authority to act as requested. The Court should deny the Motion.

B. The Declaration Is Temporally Impossible And Unreliable

On April 4, 2024, Victor Martinez executed the Declaration under penalty of perjury. And yet in it, he purported to describe events occurring in September 2024—five months *after* he signed

the Declaration. No explanation is provided for his purported ability to reliably predict future events.

Pursuant to Code of Civil Procedure section 2015.5, the affirmation required for a declaration must be based on personal knowledge of present or past events—not speculation about the future. (See also, Evid. Code § 702 [testimony is “inadmissible unless [the witness] has personal knowledge of the matter”].) The Declaration’s date of signing confirms that its contents include rank speculation. The Declaration lacks foundation and therefor is inadmissible for its presented purpose.

Additionally, the Declaration asserts that the September 2024 Board election was supervised by “James Lingl, a California attorney[.]” (Declaration 1:27.) This cannot be true. According to the State Bar of California, James Peter Lingl (Bar No. 74708) has been on inactive status since December 31, 2021, and has not been authorized to practice law in California at any time relevant to these proceedings. (See, MJN Ex. 1.)

The Declaration constitutes a serious departure from established legal norms. Acceptance of such material would cause unfair prejudice to Respondent, introducing contested factual assertions that were never tested in the lower court. Allowing post-judgment speculation into the appellate record risks reversible error. The Court should deny the Motion.

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C. The September 2024 Election Is Subject To Active Litigation

Beyond its factual defects, the Declaration addresses subject matter that is now pending before another court. The 2024 election of directors for Appellant referenced by the Declaration is currently under judicial review in *Douglas Kruschen v. Victor Rene Martinez, et al.*, Case No. 25STLC01381. (See, MJN Ex. 2.) That case, filed February 20, 2025, is pending before the Los Angeles Superior Court. The validity, process, and outcome of the election are at issue in that proceeding.

Permitting this Court to consider a declaration affirming the legitimacy of an election being challenged in parallel litigation risks judicial inconsistency and interferes with the superior court's jurisdiction. The Court should deny the Motion.

D. Relief Is Not Warranted Under Section 909

The California Supreme Court advises that “[a]lthough appellate courts are authorized to make findings of fact on appeal by Code of Civil Procedure section 909 . . . the authority should be exercised sparingly.” (*Tyrone v. Kelley* (1973) 9 Cal.3d 1, 13 [citing, *De Angeles v. Roos Bros., Inc.* (1966) 244 Cal.App.2d 434, 443].) The Supreme Court has further noted that “[a]bsent exceptional circumstances, no such findings should be made.” (*Id.* [citing, *Green v. American Cas. Co.* (1971) 17 Cal.App.3d 270, 273.]

In considering section 909, the court in *Monsan Homes, Inc. v. Pogrebneak* found as follows:

“The basic teaching of the Supreme Court is that the statute did not affect the respective provinces of the trial and reviewing courts, nor change the established rule against appellate weighing of evidence. The power to invoke the statute should be exercised sparingly, ordinarily only in order to affirm the lower court decision and terminate the litigation, and in very rare cases where the record or new evidence compels a reversal with directions to enter judgment for the appellant[.]”

((1989) 210 Cal.App.3d 826, 830 [citing, *Tupman v. Haberkern* (1929) 208 Cal. 256, 269].)

Section 909 holds as its express aim “that, where feasible, causes may be finally disposed of by a single appeal and without further proceedings in the trial court[.]” Here, the Court is not faced with a situation where absent the Declaration, it would be obligated to return the matter to the trial court for further proceedings. Rather, as the record demonstrates (and as will be further discussed in Respondent’s Brief), substantial evidence supports the judgment and warrants affirmation.

Appellant asserts that *Chantiles v. Lake Forest II Master Homeowners Assn.* (1995) 37 Cal.App.4th 914 (“*Chantiles*”) supports the Motion. It does not. In *Chantiles*, a community

association director filed a petition for access to association records pursuant to his rights as a director under Corporations Code section 8334. (*Id.* at 919.) The trial court issued an order. (*Id.* at 920.) The director appealed. (*Id.*) After the appeal was filed, the respondent HOA sought (and was granted) permission under section 909 for the appellate court to consider evidence that the appellant was not re-elected at a subsequent election and was, therefore, no longer a director—a point the appellant conceded. (*Id.* at 920, fn. 2.) From that, the respondent HOA argued the appeal was moot because the appellant could no longer exercise the statutory rights of a director. (*Id.* at 920.) The court found that the appeal was not moot and affirmed. (*Id.* at 922, 927.)

Chantiles is distinguishable. In *Chantiles*, the respondent HOA sought consideration of new evidence to establish that the *appeal* was moot. But here, the appellant HOA seeks consideration of new evidence to support an argument that the *judgment* is moot. In *Chantiles*, the new evidence was that the appellant was no longer a director. In the instant matter, the proffered material purports to establish that a valid election occurred in September 2024. In *Chantiles*, there was no apparent dispute regarding the consideration of new evidence. However, in this case, a pending lawsuit challenges the material proffered under section 909. Therefore, *Chantiles* is distinguishable and does not support the requested relief.

Moreover, assuming Appellant could overcome the multitude of impediments to consideration of the Declaration, the

Motion’s argument as to mootness is unsupported conjecture. (See, Brachman Decl., para. 6.) Even if the fact of a September 2024 election were properly before this Court, as noted above, the September 2024 election is being challenged as invalid. (See, MJN Ex. 2.) Moreover, even if the September 2024 election is at some future date deemed valid, this Court properly may decide the pending appeal (as will be further discussed in Respondent’s Brief). (See, *e.g.*, *Edelstein v City & County of San Francisco* (2002) 29 Cal.4th 164, 172 [election challenge presented issue of “broad public interest that is likely to recur” and therefore not moot based on subsequent events].) The Court should deny the Motion.

E. Acceptance Would Prejudice Respondent And Undermine The Integrity Of Review

Permitting the Declaration into the appellate record would unfairly prejudice Respondent by introducing contested factual assertions that were never subjected to trial court scrutiny. Respondent had no opportunity in the trial court to cross-examine the declarant, challenge the content of the Declaration, or present rebuttal evidence—each of which are fundamental safeguards. Acceptance of such material risks distorting appellate review by inviting reliance on untested, unreliable claims.

Moreover, allowing a party to manipulate the record after judgment with a *post hoc* declaration undermines the orderly and fair administration of appellate justice. Such tactics threaten the integrity of the review process, weakens procedural norms, and could lead to public mistrust in the judicial system. The risk is

especially acute here, where the Declaration concerns the validity of an election already under judicial review in a pending lawsuit. Introducing this Declaration now not only interferes with that court's jurisdiction but also risks conflicting rulings and confusion over the same set of facts. The Court should deny the Motion.

V. CONCLUSION

The Motion should be denied for numerous independent and compounding reasons. The Motion ignores California Rules of Court, Rules 8.155(a) and 8.252(b). The Declaration is unreliable. The September 2024 election is the subject of a pending lawsuit. The extraordinary circumstances required for relief under section 909 are not present. The Motion is so weak as to raise the question whether sanctions might be warranted pursuant to a separate motion under California Rules of Court, Rule 8.276(a)(3), which permits the imposition of sanctions for frivolous motions or abuse of appellate procedure. The Court should deny the Motion.

Respectfully submitted,

MYERS, WIDDERS, GIBSON,
JONES & FEINGOLD, LLP

Dated: April 18, 2025

By: /s/ James E. Perero

James E. Perero, Esq.

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PROOF OF SERVICE
Appeal Case No B337889

STATE OF CALIFORNIA, COUNTY OF VENTURA

I am employed in the County of Ventura, State of California. I am over the age of eighteen (18) and not a party to the action; my business address is 39 N. California St., Ventura, California 93001.

On April 18, 2025, I served the foregoing document described as **RESPONDENT'S OPPOSITION TO APPELLANT'S MOTION TO AUGMENT RECORD ON APPEAL** on the interested party(ies) in this action:

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SCOTT PER; and JEFFERY
ATKINSON

[X] (BY ELECTRONIC SERVICE E-MAIL) As follows I transmitted a PDF version of this document by electronic mail to the party (s) identified on the above service list using the e-mail address (es) indicated.

[x] (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on April 18, 2025, at Ventura, California.

Sandra Puga

Sandra Puga

Document received by the CA 2nd District Court of Appeal.

No. B337889

**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT, DIVISION 5**

DOUGLAS KRUSCHEN

Respondent-Plaintiff

v.

ANNANDALE TOWNHOUSE ASSOCIATION, INC., *et al.*

Appellant-Defendants

APPEAL FROM JUDGMENT

**SUPERIOR COURT FOR THE COUNTY OF LOS ANGELES
CASE NO. 23VECV05191
THE HON. ERIC P. HARMON, JUDGE PRESIDING**

**RESPONDENT'S MOTION FOR JUDICIAL NOTICE IN
SUPPORT OF RESPONDENT'S OPPOSITION TO
APPELLANT'S MOTION TO AUGMENT RECORD ON
APPEAL; MEMORANDUM; [PROPOSED] ORDER**

**MYERS, WIDDERS, GIBSON, JONES & FEINGOLD, LLP
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**Attorneys for Respondent and Plaintiff
Douglas Kruschen**

MOTION FOR JUDICIAL NOTICE

Pursuant to Evidence Code sections 549 and 542, Respondent Douglas Kruschen hereby moves that this Court take judicial notice of the following two items:

1) The State Bar of California's public profile for James Peter Lingl (Bar No. 74708). The profile is viewable at <https://apps.calbar.ca.gov/attorney/Licensee/Detail/74708>. A PDF of the profile is submitted herewith as Exhibit 1.

2) The complaint in the matter of *Douglas Kruschen v. Annandale Townhouse Association, Inc., et al.*, Los Angeles Superior Court Case No. 25STLC01381, filed February 20, 2025. A copy of the complaint is submitted herewith as Exhibit 2.

This Motion is based on the attached Memorandum.

Respectfully submitted,

MYERS, WIDDERS, GIBSON,
JONES & FEINGOLD, LLP

Dated: April 18, 2025

By: /s/ James E. Perero

James E. Perero, Esq.

MEMORANDUM

The Evidence Code authorizes this Court to take judicial notice of items referenced in Respondent's Opposition To Appellant's Motion To Augment Record On Appeal (the "Opposition"), filed concurrently herewith, and which items are further described herein. Evidence Code section 459(a) provides that "[t]he reviewing court may take judicial notice of any matter specified in Section 452." Evidence Code section 452 provides that this Court may take judicial notice of

"(c) Official acts of the legislative, executive, and judicial departments of the United States and of any state of the United States.

"(d) Records of (1) any court of this state or (2) any court of record of the United States or of any state of the United States.

...

"(h) Facts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy."

The first item for which Respondent seeks judicial notice is the State Bar of California's public profile for James Peter Lingl

(Bar No. 74708) (the “Profile”). It is available for review online at <https://apps.calbar.ca.gov/attorney/Licensee/Detail/74708>. A PDF of the Profile is attached hereto as Exhibit 1.

Respondent requests that the Court take judicial notice of the Profile pursuant to Evidence Code section 452(c) (official acts of judiciary). (See, *Younger v. Solomon* (1974) 38 Cal.App.3d 289, 299 [judicial notice of findings of disciplinary board of State Bar]; *Rodas v. Spiegel* (2001) 87 Cal.App.4th 513, 518, as modified (Feb. 28, 2001) [official acts include records of government agencies].) Alternatively, Respondent requests that the Court take judicial notice of the Profile pursuant to Evidence Code and 452 (h) (facts not reasonably subject to dispute).

As detailed in the Opposition, the Declaration of Victor Martinez Regarding Association Election (the “Declaration”) purports to identify Mr. Lingl as an attorney. The statement conflicts with the Profile and is therefore unreliable. The Profile is relevant to the credibility of the Declaration and whether the Court will consider the Declaration pursuant to Code of Civil Procedure section 909.

The second item for which Respondent seeks judicial notice is the complaint in the matter of *Douglas Kruschen v. Annandale Townhouse Association, Inc., et al.*, Los Angeles Superior Court Case No. 25STLC01381, filed February 20, 2025 (“Complaint”). A PDF of the complaint is attached hereto as Exhibit 2. Respondent requests that the Court take judicial notice of the Complaint

pursuant to Evidence Code section 452(d) (records of any court of this state).

As detailed in the Opposition, the Declaration purports to establish that a *bona fide* director election occurred in September 2024. Respondent disputes the assertion, which is reflected in the Complaint.

Respondent respectfully requests that the Court rule on this motion concurrently with its ruling on Appellant's Motion To Augment Record On Appeal.

Respectfully submitted,

MYERS, WIDDERS, GIBSON,
JONES & FEINGOLD, LLP

Dated: April 18, 2025

By: /s/ James E. Perero

James E. Perero, Esq.

Exhibit 1



James Peter Lingl #74708

License Status: **Inactive**

Address: Lingl & Joshi, 3075 E Thousand Oaks Blvd, Thousand Oaks, CA 91362

Phone: 818-991-0079 | Fax: 818-991-0292

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More about This Attorney ▾

All changes of license status due to nondisciplinary administrative matters and disciplinary actions.

Date	License Status	Discipline	Administrative Action
Present	Inactive		
12/31/2021	Inactive		
6/28/1977	Admitted to the State Bar of California		

Additional Information:

- About the disciplinary system

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Exhibit 2

Douglas Kruschen
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Electronically FILED by
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County of Los Angeles
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David W. Slayton,
Executive Officer/Clerk of Court,
By G. Delgado, Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES
LIMITED CIVIL CASE

DOUGLAS KRUSCHEN, an individual,

Plaintiff,

v.

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

Defendants.

Case No.: 25STLC01381

VERIFIED COMPLAINT FOR:

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

*AMOUNT DEMANDED EXCEEDS
\$10,000.*

PARTIES AND VENUE

1. Plaintiff DOUGLAS KRUSCHEN (“Plaintiff”) is, and at all times relevant was, a titleholder of real property at a residential project commonly known as Annandale Townhouse Association, Inc. (“Association”) in Agoura Hills, California, County of Los Angeles. Membership in the Association is appurtenant to each titleholder of real property within the Project.

1 2. Defendant Association is a nonprofit mutual benefit corporation under the
2 Nonprofit Mutual Benefit Corporation Law (Corp. Code § 7110 et seq.) and formed under
3 the laws of the State of California in 1973. The principal place of business for the
4 Association is in the City of Covina, County of Los Angeles. The Association is a common
5 interest development under the Davis Stirling Common Interest Development Act (“Davis-
6 Stirling Act”) (Civ. Code § 4000 et seq.). A true and correct copy of the Association’s
7 Secretary of State Statement of Information is attached hereto as **Exhibit C** and incorporated
8 herein.

9 3. Defendants Greico, Grossman, Martinez, Perl, and Wagner (“Individual
10 Defendants”) are individuals residing in the County of Los Angeles, State of California, and
11 are members of the Association whose election or appointment is contested.

12 4. Plaintiff is informed and believes, and thereon alleges, that Defendants DOEs
13 1 through 10 inclusive (“DOE Defendants”), and each of them, are unknown to Plaintiff who
14 therefore sues those DOE Defendants by such fictitious names. Plaintiff will amend this
15 complaint to show such true names and capacities when they have been ascertained. Plaintiff
16 is further informed and believes, and thereon alleges, that all DOE Defendants are
17 individuals, corporations, general partnerships, and/or limited partnerships organized and
18 existing by virtue of the laws of the State of California and/or are individuals either residing
19 or doing business in the State of California. Plaintiff is informed and believes and based
20 thereon alleges that each fictitiously named defendant is responsible in some manner for the
21 wrongful conduct herein alleged and that Plaintiff’s damages as alleged herein were
22 proximately caused by their conduct.

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

27 6. Venue in the Central District is appropriate under Code of Civil Procedure §
28 395. Defendants’ principal place of business is in Los Angeles County, in this judicial
district.

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

8. 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. 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. California Civil Code § 5105(a)(7) provides that, “The candidate list shall include name and address of individuals nominated as a candidate for election to the board of directors.”

14. California Civil Code § 5115(a) provides that, “An association shall provide general notice of the procedure and deadline for submitting a nomination at least 30 days

1 before any deadline for submitting a nomination. **Individual notice shall be delivered**
2 pursuant to Section 4040 if individual notice is requested by a member.” (Emphasis added.)

3 15. California Civil Code § 5115(b) provides that, “For elections of directors and
4 for recall elections, an association **shall provide general notice** of all of the following at
5 least 30 days before the ballots are distributed:

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

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

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

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

12 16. California Civil Code § 5120(a) provides that, “All votes shall be counted and
13 tabulated by the inspector or inspectors of elections, or the designee of the inspector of
14 elections, **in public at a properly noticed open meeting** of the board or members. Any
15 candidate or other member of the association may witness the counting and tabulation of the
16 votes.” (Emphasis added.)

17 17. California Civil Code § 5120(b) provides that, “Within 15 days of the
18 election, the board **shall give general notice** pursuant to Section 4045 of the tabulated results
19 of the election.” (Emphasis added.)

20 18. California Civil Code § 5130(b) provides that, “Proxies shall not be construed
21 or used in lieu of a ballot.”

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

26 20. California Civil Code § 5145(a) provides that, “A member of an association
27 may bring a civil action for declaratory or equitable relief for a violation of this article by the
28 association, including, but not limited to, injunctive relief, restitution, or a combination
thereof, within one year of the date that the inspector or inspectors of elections notifies the
board and membership of the election results or the cause of action accrues, whichever is
later. If a member establishes, by a preponderance of the evidence, that the election

1 procedures of this article, or the adoption of and adherence to rules provided by Article 5
2 (commencing with Section 4340) of Chapter 3, were not followed, a **court shall void any**
3 **results of the election** unless the association establishes, by a preponderance of the evidence,
4 that the association's noncompliance with this article or the election operating rules did not
5 affect the results of the election. The findings of the court shall be stated in writing as part of
6 the record.” (Emphasis added.)

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

13 22. California Civil Code § 5210(b) provides that, “When a member properly
14 requests access to association records, access to the requested records shall be granted...
15 within 10 business days following the association’s receipt of the request.”

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

18 23. The California Nonprofit Mutual Benefit Corporation Law establishes a
19 unified statutory framework to regulate nonprofit mutual benefit corporations, such as most
20 HOAs, in California. Subject to the provisions of the California Nonprofit Mutual Benefit
21 Corporation Law, and any limitations in the Association's Governing Documents, the
22 business and affairs of the Association are vested in and exercised by the Association’s
23 Board of Directors.

24 24. California Corporations Code § 7220(a) provides that, “...directors shall be
25 elected for terms of not longer than four years, as fixed in the articles or bylaws.”

26 25. California Corporations Code § 7514(a) provides that, “Any form of proxy or
27 written ballot distributed to 10 or more members of a corporation with 100 or more members
28 shall afford an opportunity on the proxy or form of written ballot to specify a choice between
approval and disapproval of each matter or group of related matters intended, at the time the
written ballot or proxy is distributed, to be acted upon at the meeting for which the proxy is
solicited or by such written ballot, and shall provide, subject to reasonable specified

1 conditions, that where the person solicited specifies a choice with respect to any such matter
2 the vote shall be cast in accordance therewith.”

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

7 27. California Corporations Code § 7527 provides that, “An action challenging
8 the validity of any election, appointment or removal of a director or directors must be
9 commenced within nine months after the election, appointment or removal.”

10 28. California Corporations Code § 7616(a) provides that, “Upon the filing of an
11 action therefore by any director or member or by any person who had the right to vote in the
12 election at issue, the superior court of the proper county shall determine the validity of any
13 election or appointment of any director of any corporation.”

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

23 30. California Corporations Code § 7616(d) provides that, “The court, consistent
24 with the provisions of this part and in conformity with the articles and bylaws to the extent
25 feasible...may order a new election to be held...and may direct such other relief as may be
26 just and proper.”

27 **C. Relevant Provisions of the Association’s Covenants, Conditions and**
28 **Restrictions.**

31. The Association is subject to a Declaration of Covenants, Conditions and
Restrictions, recorded on June 6, 2008, in the Official Records of Los Angeles County,
California (hereinafter, the "CC&Rs"). The CC&Rs are binding on the Association,

1 titleholders, and non-owner residents alike. (See *Civil Code* § 5975(a); *Nahrstedt v. Lakeside*
2 *Village Condominium Assn.* (1994) 8 Cal.4th 361; *Martin v. Bridgeport Community Assn.,*
3 *Inc.* (2009) 173 Cal.App.4 1024.)

4 32. The CC&Rs, at Article 4, Paragraph 5.1, provide that, “Every Owner of a
5 Condominium shall be a Member of the Association and shall hold one membership in the
6 Association for each Condominium owned. The membership shall be appurtenant to such
7 Condominium.”

8 33. The CC&Rs, at Article 4, Paragraph 5.3, provide that, “Each Member of the
9 Association shall be entitled to one vote for each Condominium owned by said Member.
10 When more than one person holds an interest in any Condominium, all such persons shall be
11 Members...”

12 34. The CC&Rs, at Article 4, Paragraph 5.6, provide that, “The Association shall
13 have the responsibility of managing and maintaining the Common Areas and Common
14 Facilities and discharging the other duties and responsibilities imposed on the Association by
15 the Governing Documents.”

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

17 35. The Bylaws of the Association were recorded on April 2, 1973, (“Bylaws”).
18 The Bylaws were amended by Order (“Order”) of Hon. Huey Cotton on September 22, 2020,
19 concluding litigation brought by Plaintiff, in Los Angeles Superior Court Case No.
20 19VECP00459. A true and correct copy of the Order is attached hereto as **Exhibit A** and
21 incorporated herein.

22 36. The Bylaws, at Article II, Section 2 provide that, “As used in these Bylaws the
23 term ‘majority of owners’ shall mean those holding 51 percent of the vote.”

24 37. The Bylaws, at Article II, Section 3 provide that, “Except as otherwise
25 provided these Bylaws, the presence in person or by proxy of a ‘majority of owners’ as
26 defined in Section 2 of this Article shall constitute a quorum.”

27 38. The Bylaws, at Article II, Section 4 provide that, “Proxies must be filed with
28 the Secretary before the appointed time of each meeting.”

39. The Bylaws, at Article II, Section 5 provide that, “Every condominium owner
entitled to vote at any election for Directors of the Association may cumulate his votes and

1 give one candidate a number of votes equal to the number of Directors to be elected, or
2 distribute his votes on the same principle among as many candidates as he thinks fit.”

3 40. The Bylaws, at Article III, Section 5 provide that, “It shall be the duty of the
4 Secretary to mail a notice of each annual meeting stating the purpose thereof as well as the
5 time and place where it is to be held to each owner of record, at least seven (7) but not more
6 than fifteen (15) days prior to such meeting...Notice of all meetings shall be mailed to the
7 Director of the local insuring office of the Federal Housing Administration.”

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

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

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

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

22 44. Upon information and belief, the Association’s operative Election and Voting
23 Rules (“Election Rules”), as required by Civil Code § 5105(a), were adopted by the
24 Association in January, 2020, and amended by resolution on January 17, 2023.

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

46. The Election Rules, at Paragraph 1(d) provide that, “At least thirty (30) days
before the election, the inspectors of election will deliver to each Member: (1) the ballot and

1 voting instructions; and (2) a copy of the Election Rules. Note, the Election Rules may be
2 provided by individual delivery or by posting same on an internet site and providing the
3 corresponding internet site web address on the ballot with the phrase, in at least 12-point
4 font: 'The rules governing this election may be found here:[Insert Web Address]'."

5 47. The Election Rules, at Paragraph 2(d)(i) provide that, "Members may return
6 their secret ballot by mail, hand deliver it to the meeting or complete the ballot at the
7 meeting, and is deemed cast when so delivered or mailed; provided, only those ballots which
8 are delivered to the inspectors of election prior to the polls closing shall be counted."

9 48. The Election Rules, at Paragraph 4(i) provide that, "The Board may remove
10 and replace any inspector of election prior to the tabulation of ballots if an inspector of
11 election resigns or if the Board reasonably determines that an inspector of election will not be
12 able to perform his or her duties impartially and in good faith."

13 49. The Election Rules, at Paragraph 5(a) provide that, "The Board of Directors
14 shall determine the date, time and place of said Annual Meeting in accordance with the
15 Association's Bylaws. Notice of Annual Meeting ("Notice") *shall be sent to all Members*
16 pursuant to the Governing Documents, these Election Rules and applicable state statute."
17 (Emphasis added.)

18 50. The Election Rules, at Paragraph 7(c) provide that, "Members may nominate
19 themselves or another person."

20 51. The Election Rules, at Paragraph 7(e) provide that, "All candidates who meet
21 the qualifications to serve on the Board if any and, if appropriate, have confirmed their
22 willingness to run for election to the Board, shall be listed on the secret ballot."

23 52. The Election Rules, at Paragraph 11(d) provide that, "After the counting of the
24 ballots and the certification of the election results by the inspectors of election, the ballots
25 shall be transferred to the Association."

26 53. The Election Rules, at Paragraph 12(a) provide that, "All secret ballot votes
27 shall be counted and tabulated by the inspector(s) of election **in public at a properly noticed**
28 **open meeting** of the Members or of the Board, at which a quorum of Members or a quorum
of Board members, as the case may be, must be present." (Emphasis added.)

54. The Election Rules, at Paragraph 13(c) provide that, “Within fifteen (15) days of the election, the Board shall publicize the results of the election in a communication directed to all members.”

FIRST CAUSE OF ACTION

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

55. Plaintiff incorporates the allegations in paragraphs 1 through 54 above as if each of those allegations were set forth in full in this paragraph.

56. Corporations Code § 7616 grants the Court jurisdiction to adjudicate the validity of an election of corporate directors and to order a new election to be held. Plaintiff seeks an order invalidating the results of the 2024 election and an order that a new election shall be held, due to the Association's violations of California Civil Code, California Corporations Code, its Bylaws, and its Election and Voting Rules as they relate to the election of its corporate directors. Such conduct necessitated this instant action for judicial declaration pursuant to Corporations Code § 7616 to determine the validity or in this case, the invalidity, of its election.

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

58. As of the record date for the Association's election of corporate directors held in 2024, Plaintiff, and Jennifer Campbell, Mohammad Danesh, and William Springer, comprised the Board of Directors pursuant to the Judgment entered by Hon. Eric Harmon on March 26, 2024, in Los Angeles Superior Court Case No. 23VECV05191. A true and correct copy of which is attached hereto as **Exhibit B** and incorporated herein.

59. The Association has asserted a stay of enforcement pending two appeals it has filed, it has not and does not recognize Plaintiff as a Director, and Plaintiff has not participated in the administration of the Association's business since October 19, 2023.

60. Upon information and belief, the Association also has not and does not recognize Jennifer Campbell, Mohammad Danesh, and William Springer as Directors and

1 none has participated in the administration of the Association's business since October 19,
2 2023.

3 61. The Association's Bylaws (Article III, Section 3) require that "...the annual
4 meetings of the Association shall be held on the first Tuesday of June of each succeeding
5 year. At such meetings there shall be elected by ballot of the owners the Board of Directors
6 in accordance with the requirements of Section 5 of Article IV of these Bylaws." An annual
7 member meeting was not convened "the first Tuesday of June" 2024.

8 62. The Davis-Stirling Act requires the Association to distribute election materials
9 by mail to each owner of record based on the owner's self-designated mailing preferences
10 pursuant to Civil Code § 4040. Plaintiff has annually exercised his right to designate two
11 addresses for all communications from the Association, one being that of his attorney-in-fact.
12 The Association did not comply with Plaintiff's designations.

13 63. Upon information and belief, the Association distributed a call for
14 candidates/nominations in May, 2024, to some but not each owner of record and not to all of
15 the addresses designated by all owners for such mailings. The Association did not distribute a
16 call for candidates/nominations to Plaintiff at the two designated mailing addresses on record
17 with the Association thus denying Plaintiff his right to self-nominate for placement on the
18 ballot and denying Plaintiff his right to nominate other eligible owners of record for
19 placement on the ballot. The Association's failures unequivocally affected the results of the
20 election as Plaintiff's name was absent from the candidate list and ballot and it is impossible
21 for the Association to establish, by a preponderance of the evidence, that the noncompliance
22 did not affect the results of the election.

23 64. Upon information and belief, the Association did not distribute a call for
24 candidates/nominations to Plaintiff at the two designated mailing addresses on record with
25 the Association in retaliation for Plaintiff's history of litigation against the Association
26 including Los Angeles Superior Court Case No. 23VECV05191 that resulted in its October,
27 2023, election's invalidation and voiding by the court. The Association's failures
28 unequivocally affected the results of the election as Plaintiff's name was absent from the
candidate list and ballot and it is impossible for the Association to establish, by a
preponderance of the evidence, that the noncompliance did not affect the results of the
election.

1 65. The Association is abundantly aware of Plaintiff's intent to be a candidate to
2 serve another term on its Board of Directors in 2024. It has two unique mailing addresses on
3 file for Plaintiff and it has been involved in multiple legal matters with Plaintiff at all times
4 relevant. When it did not receive a nomination from Plaintiff, the Association failed to use
5 common sense and, out of an abundance of caution, contact any one of Plaintiff's counsels of
6 record to inquire as to his intentions without any prejudice to it or its members.

7 66. Civil Code § 5103 gives discretion to Associations of all sizes to allow
8 candidates to be elected by acclamation if the number of qualified candidates is not more
9 than the number of vacancies to be elected, so long as proper notices and other conditions
10 have been met. In 2020, the Association's Board of Directors made attempting election by
11 acclamation mandatory. The Association's 2020 Election and Voting Rules § 12(i) require
12 that "...in the event the number of candidates at the close of nominations is the same as the
13 number of open positions on the Board, those candidates **shall** be automatically elected, by
14 acclamation, without further action, and the results shall be announced as required by these
15 Rules and law." [Emphasis added.]

16 67. Civil Code § 5103(b)(1) requires that associations that choose to attempt
17 election by acclamation provide their members "Initial notice at least 90 days before the
18 deadline for submitting nominations." The Association did not mail such notice to Plaintiff
19 and other members. Upon information and belief, the Association provided 30-days' notice
20 to some members. The Association did not mail any notice to Plaintiff and other members.
21 The Association's failures unequivocally affected the results of the election as Plaintiff's
22 name was absent from the candidate list and ballot making it impossible for the Association
23 to establish, by a preponderance of the evidence, that the noncompliance did not affect the
24 results of the election.

25 68. Civil Code § 5103(a)(3) requires the Association "...shall adopt [election]
26 operating rules...that specify...procedures for the nomination of candidates..." The
27 Association's 2020 Election and Voting Rules § 7(c) require that "Members may nominate
28 themselves or another person." The Association's failures to notify Plaintiff and other
members of the opening of nominations unequivocally affected the results of the election as
those members were denied their right to "nominate themselves or another person" making it

1 impossible for the Association to establish, by a preponderance of the evidence, that the
2 noncompliance did not affect the results of the election.

3 69. Upon information and belief, the Association did notify and provide some
4 members a call for candidates/nominations but it did not contain, as required by Civil Code §
5 5103(b)(1)(D), “a statement informing members that if, at the close of the time period for
6 making nominations, there are the same number or fewer qualified candidates as there are
7 board positions to be filled, then the board of directors may, after voting to do so, seat the
8 qualified candidates by acclamation without balloting.”

9 70. Civil Code § 5103(b)(2) requires that associations that exercise discretion to
10 use election by acclamation provide their members “A reminder notice between 7 and 30
11 days before the deadline for submitting nominations.” The Association did not provide such
12 notice to Plaintiff and other members. The Association’s failures unequivocally affected the
13 results of the election as Plaintiff’s name was absent from the candidate list and ballot
14 making it impossible for the Association to establish, by a preponderance of the evidence,
15 that the noncompliance did not affect the results of the election.

16 71. Upon information and belief, on or around July 11, 2024, the Association
17 distributed a candidate list and notice of annual meeting to be held September 24, 2024, to
18 some but not each owner of record and not to all of the addresses designated by all owners
19 for such mailings. The Association did not distribute a candidate list and notice of annual
20 meeting to be held September 24, 2024, to Plaintiff and his attorney-in-fact at the two
21 designated mailing addresses on record. It is mathematically and otherwise impossible for the
22 Association to establish, by a preponderance of the evidence, that its failures did not affect
23 the results of the election.

24 72. Civil Code § 5105(h)(4) requires the delivery of the Association’s Election
25 and Voting Rules to all members at least 30-days before an election. This can be
26 accomplished by individual delivery or by the posting of the “...operating rules to an internet
27 website and including the corresponding internet website address on the ballot...” Upon
28 information and belief, the Association did not distribute the Rules by individual delivery to
any of its members, including to Plaintiff and his attorney-in-fact at the two designated
mailing addresses on record, nor was there an “internet website address [printed] on the
ballot” whereby members, including Plaintiff, could obtain the current Rules in effect. It is

1 mathematically and otherwise impossible for the Association to establish, by a
2 preponderance of the evidence, that its failures did not affect the results of the election.

3 73. Upon information and belief, the Association and Inspector negligently
4 directed members to obtain the Rules from an internet website address
5 (www.AnnandaleTownhomes.com) not owned, maintained, controlled, nor operated by the
6 Association and not containing the Rules at all. It is mathematically and otherwise impossible
7 for the Association to establish, by a preponderance of the evidence, that its failures did not
8 affect the results of the election.

9 74. The Bylaws, at Article III, Section 5 require that, "It shall be the duty of the
10 Secretary to mail a notice of each annual meeting stating the purpose thereof as well as the
11 time and place where it is to be held to each owner of record, at least seven (7) but not more
12 than fifteen (15) days prior to such meeting." Upon information and belief, Association did
13 not distribute a notice to any owner of record, including Plaintiff and his attorney-in-fact at
14 the two designated mailing addresses on record. It is mathematically and otherwise
15 impossible for the Association to establish, by a preponderance of the evidence, that its
16 failures did not affect the results of the election.

17 75. The Bylaws, at Article III, Section 5 require that, "Notice of all meetings shall
18 be mailed to the Director of the local insuring office of the Federal Housing Administration."
19 Upon information and belief, Association did not comply. It is mathematically and otherwise
20 impossible for the Association to establish, by a preponderance of the evidence, that its
21 failures did not affect the results of the election.

22 76. Civil Code § 5105(h)(1) prohibits "the denial of a ballot to a member for any
23 reason other than not being a member at the time when ballots are distributed." The
24 Association unequivocally denied "a ballot to a member for" reasons other than not being a
25 member and the Association's failure unequivocally affected the results of the election.

26 77. Civil Code § 5105(h)(2) prohibits "the denial of a ballot to a person with a
27 general power of attorney for a member." The Association, as with each of the other failed
28 mailings referenced in this pleading, failed to comply with Plaintiff's mailing designations.
The Association unequivocally denied "a ballot to a person with a general power of attorney
for" Plaintiff and the Association's failure unequivocally affected the results of the election.

1 78. Civil Code § 5105(h)(3) requires “the ballot of a person with general power of
2 attorney for a member to be counted if returned in a timely manner.” Because the
3 Association, as with each of the other failed mailings referenced in this pleading, refused to
4 comply with Plaintiff’s long-standing mailing designations, the Association denied Plaintiff’s
5 attorney-in-fact/agent the opportunity to return a ballot for counting in a timely matter on his
6 behalf. The Association’s failure unequivocally affected the results of the election.

7 79. Civil Code § 5105(h)(4)(A) requires “the inspector or inspectors of elections
8 to deliver, or cause to be delivered, at least 30 days before an election, to each member...the
9 ballot or ballots.” The Association unequivocally failed to comply and the Association’s
10 failure unequivocally affected the results of the election.

11 80. Civil Code § 5120(b) requires, within 15 days of an election, that the
12 Association “...shall give general notice pursuant to Section 4045 of the tabulated results of
13 the election.” The Association did not provide this general notice to Plaintiff at his two
14 designated mailing addresses on record with the Association.

15 81. The Election Rules, at Paragraph 13(c), requires that “Within fifteen (15) days
16 of the election, the Board shall publicize the results of the election in a communication
17 directed to all members.” The Association did not provide this communication to Plaintiff at
18 his two designated mailing addresses on record with the Association.

19 82. Upon information and belief, the Association failed to comply with the
20 Bylaws, at Article IV, Section 5 which specify Director term length. The Association’s
21 failure unequivocally affected the results of the election.

22 83. On December 23, 2024, Plaintiff delivered a Civil Code § 5200 demand for
23 inspection of the Association election materials to the Association’s counsel of record via
24 overnight delivery and demanded per Civil Code § 5205(h), to receive the records
25 electronically via machine-readable storage media (CD/DVD/USB Flash Storage). The
26 Association did not comply.

27 84. An actual controversy has arisen and now exists between Plaintiff on the one
28 hand, and Defendants on the other, regarding the validity of the 2024 election of corporate
directors.

 85. Based on a preponderance of evidence, and the totality of the circumstances as
alleged, this instant action is with merit and relief is warranted.

1 86. Pursuant to Corporations Code Section § 7616(c), Plaintiff requests that this
2 matter be adjudicated on an expedited basis and that this Court issue any interim orders that
3 in the interests of justice are warranted to protect Plaintiff, protect the Association and each
4 of its other members, and protect the assets of Plaintiff, the Association, and each of its other
5 members.

6 **SECOND CAUSE OF ACTION**

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

8 87. Plaintiff incorporates the allegations in paragraphs 1 through 86 above as if
9 each of those allegations were set forth in full in this paragraph.

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

13 **THIRD CAUSE OF ACTION**

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

16 89. Plaintiff incorporates the allegations in paragraphs 1 through 88 above as if
17 each of those allegations were set forth in full in this paragraph.

18 90. Pursuant to Civil Code § 5145(b), Plaintiff seeks the court’s imposition of
19 civil penalties of five hundred dollars (\$500) for each violation.

20 **PRAYER FOR RELIEF**

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

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

- 23 1. For judgment in favor of Plaintiff and against Defendants, and each of them;
- 24 2. For a declaration and order, pursuant to Corporations Code § 7616, that the
25 Association’s 2024 election of corporate directors is invalid;
- 26 3. For a declaration and order, pursuant to Corporations Code § 7616, that the
27 results of the Association’s 2024 election of corporate directors are invalid;
- 28 4. For a declaration and order, pursuant to Corporations Code § 7616, that the
results of the Association’s 2024 election of corporate directors are void;

5. For a declaration and order, pursuant to Corporations Code § 7616, that a new 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; and

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

ON THE SECOND CAUSE OF ACTION:

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

2. For a declaration and order, pursuant to Civil Code § 5145(a), that noncompliance by the Association, including its agents, affected the results of the 2024 election of corporate directors;

3. For a declaration and order, pursuant to Civil Code § 5145(a), that the results of the Association's 2024 election of corporate directors are void; and

4. For a declaration and order, pursuant to Civil Code § 5145(a), that the results of the Association's 2024 election of corporate directors are invalid.

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 but in no event greater than the \$35,000 jurisdictional limit of the Court.

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: January 19, 2025

Das Kuschen

DOUGLAS KRUSCHEN
(Plaintiff Pro Se)

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EXHIBIT A

1 VICTOR A. RAPHAEL, ESQ. – State Bar No. 213268
2 **HARTSUYKER, STRATMAN & WILLIAMS-ABREGO**

3 Mailing Address:

4 P.O. Box 258829

5 Oklahoma City, OK 73125-8829

6 Physical Address:

7 560 E. Hospitality Lane, Suite 460

8 San Bernardino, CA 92408

9 Phone: (909) 890-3900

10 Email: victor.raphael@farmersinsurance.com

11 Attorney for Defendant,

12 ANNANDALE TOWNHOUSE ASSOCIATION, INC.

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES, NORTHWEST**

DOUGLAS KRUSCHEN, on behalf of Annandale
Townhouse Association, Inc.,

Plaintiff,

vs.

ANNANDALE TOWNHOUSE ASSOCIATION,
INC., a California non-profit mutual benefit
corporation,

Defendants.

Case No.: 19VECP00459
UNLIMITED JURISDICTION

ASSIGNED TO FOR ALL PURPOSES;
HON. HUEY COTTON
DEPT: A

**STIPULATION FOR ORDER AMENDING
THE BYLAWS OF THE ANNANDALE
TOWNHOUSE ASSOCIATION, INC.**

IT IS HERBY STIPULATED by and among all parties to this action and their attorneys of
record that the Bylaws of the ANNANDALE TOWNHOUSE ASSOCIATION, INC. be amended as
follows:

1. **Article III, Section 6** are amended set forth in italics as follows: If any meeting of owners
cannot be organized because a quorum has not attended, the owners who are present, either
in person or by proxy, may adjourn the meeting in a time not less than Forty-Eight (48) hours
nor more than Thirty (30) days from the time the original meeting was called *at which time*

1 *the quorum shall be reached by Thirty-Three and One Third Percent (33 1/3%) of owners*
2 *present either in person or by proxy;*

- 3 2. **Article VII, Section 1** are amended set forth in italics as follows: These Bylaws may be
4 amended by the Association in a duly constituted meeting for such purpose and no
5 amendment shall take effect unless approved by owners representing at least *Fifty One*
6 *Percent (51%)* of all units in the project as shown in Declaration.

7
8 DATED: September 10, 2020

NESBITT LAW, PC

9
10 BY: 

PAUL B. NESBITT, ESQ.

Attorney for Plaintiff, Douglas Kruschen

11
12
13 DATED: September 9, 2020

14
15 
16 Plaintiff, DOUGLAS KRUSCHEN

17 DATED: September 9, 2020

BEAUMONT TASHJIAN

18
19 BY: 

20 A.J. JAHANIAN, ESQ.

Attorney for ANNANDALE TOWNHOUSE

ASSOCIATION, INC.

21
22
23 DATED: September 9, 2020

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25 
26 Defendant,

ANNANDALE TOWNHOUSE ASSOCIATION,
27 INC.
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ORDER

IT IS HEREBY ORDERED that the Stipulation for Order Amending Bylaws in Case No. 19VECP00459 is GRANTED.

Dated: 09/22/20



Huey Cotton

the Superior Court

Huey P. Cotton / Judge

EXHIBIT B

FILED
Superior Court of California
County of Los Angeles

03/26/2024

David W. Slayton, Executive Officer / Clerk of Court

By: J. Trujillo Deputy

SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

DOUGLAS KRUSCHEN, an individual

Plaintiff,

vs.

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

(Unlimited Civil)

Assigned to Hon. Eric P. Harmon, Dept. 107

~~PROPOSED~~ JUDGMENT

On February 27, 2024, the above-captioned action came on for a bench trial in Department 107 of the Los Angeles Superior Court, Van Nuys Courthouse West, 14400 Erwin St., in Van Nuys, California, the Honorable Eric P. Harmon, Judge presiding. The Plaintiff DOUGLAS KRUSCHEN ("Plaintiff") appeared by attorney James E. Perero of the law firm Myers, Widders, Gibson, Jones & Feingold, LLP. The Defendants ANNANDALE TOWNHOUSE ASSOCIATION, INC., VICTOR RENE MARTINEZ, ANTHONY WAGNER, JAMES GROSSMAN, SCOTT PERL, and JEFFERY ATKINSON (collectively, "Defendants") appeared by attorney Gerard Kilroy of the law firm Kulik Gottesman Siegel & Ware LLP.

Over the course of three days from February 27 through 29, 2024, witnesses were sworn and testified. Exhibits were entered in evidence. Arguments were presented. On February 29, 2024, the Court took the matter under submission. After considering the evidence and arguments of counsel, the Court issued a tentative ruling. On the morning of March 20, 2024, the Court heard further argument regarding its tentative ruling. After further considering the evidence and arguments of counsel, on the afternoon of March 20, 2024, the Court issued a final Minute Order. The Minute Order directed Plaintiff to prepare, submit, and serve a proposed Judgment.

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that pursuant to Corporations Code §7616 and Civil Code §5145(a), Plaintiff DOUGLAS KRUSCHEN is entitled to and hereby obtains judgment against Defendant ANNANDALE TOWNHOUSE ASSOCIATION, INC. (the "Association"), VICTOR RENE MARTINEZ, ANTHONY WAGNER, JAMES GROSSMAN, SCOTT PERL, and JEFFERY ATKINSON, as follows:

1. The Association's October 2023 director election (the "Election") is invalid and void.
2. Defendants VICTOR RENE MARTINEZ, ANTHONY WAGNER, JAMES GROSSMAN, SCOTT PERL, and JEFFERY ATKINSON (the "Individual Defendants") do not comprise the Association's Board of Directors, and are not authorized to act on behalf of the Association, engage in Association business, or conduct Association affairs.
3. The Individual Defendants shall cause all Association records and funds in their possession, or in the possession of their agents or employees, to be delivered to the Association's management company within seven (7) days.
4. Plaintiff, Jennifer Campbell, Mohammad Danesh, and William Springer comprise the Association's Board of Directors until successors have been appointed or elected.
5. A new director 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.
6. The Association shall engage a new inspector of elections to begin conducting a new director election, including the solicitation of nominations, which election process shall begin at the earliest reasonably practical time.

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7. Plaintiff is the prevailing party in this action.

8. Plaintiff is awarded costs pursuant to memorandum in the amount of _____ (to be determined).

9. Plaintiff is awarded attorney fees pursuant to motion in the amount of _____ (to be determined).

Dated: 03/26/2024, 2024



By: 

Hon. ERIC P. HARMON
Judge of the Superior Court
Eric Harmon / Judge

Document received by the CA 2nd District Court of Appeal.

EXHIBIT C



Secretary of State
Statement of Information and
Statement by Common Interest
Development (CID) Association
(California Nonprofit CID)

NP/CID

For Office Use Only

-FILED-

File No.: BA20250261619

Date Filed: 2/3/2025

This form is due within 90 days of initial registration and every two years thereafter.

This is a combined form, with a total fee of \$35.00.

- **The Statement of Information (\$20.00 Filing Fee); and**
- **The Statement by Common Interest Development (\$15.00 Filing Fee).**

Certified Copy Fee (Optional) – \$5.00

- 1. Corporation Name** (Enter the **exact** name of the corporation as it is recorded with the California Secretary of State)

Annandale Townhouse Association, Inc.

This Space For Office Use Only

- 2. Secretary of State Entity Number**

C0675379

3. Business Addresses

a. Street Address of California Principal Office, if any - Do not enter a P.O. Box	City (no abbreviations)	State	Zip Code
1275 Center Court Drive	Covina	CA	91724
b. Mailing Address of Corporation, if different than item 3a	City (no abbreviations)	State	Zip Code
1275 Center Court Drive	Covina	CA	91724

4. Officers

The Corporation is required to enter the names and addresses of **all** three of the officers set forth below. An additional title for Chief Executive Officer or Chief Financial Officer may be added; however, the preprinted titles on this form must not be altered.

a. Chief Executive Officer/	First Name	Middle Name	Last Name	Suffix
Victor			Martinez	
Address	City (no abbreviations)	State	Zip Code	
1275 Center Court Drive	Covina	CA	91724	
b. Secretary/	First Name	Middle Name	Last Name	Suffix
Scott			Perl	
Address	City (no abbreviations)	State	Zip Code	
1275 Center Court Drive	Covina	CA	91724	
c. Chief Financial Officer/	First Name	Middle Name	Last Name	Suffix
Frank			Greico	
Address	City (no abbreviations)	State	Zip Code	
1275 Center Court Drive	Covina	CA	91724	

5. Service of Process (Must provide either Individual **OR** Corporation.)**INDIVIDUAL** – Complete Items 5a and 5b only. Must include agent's full name and California street address.

a. California Agent's First Name (if agent is not a corporation) Don	Middle Name	Last Name Melching	Suffix
b. Street Address (if agent is not a corporation) - Do not enter a P.O. Box 1275 Center Court Drive	City (no abbreviations) Covina	State CA	Zip Code 91724

CORPORATION – Complete Item 5c only. Only include the name of the registered agent Corporation.

c. California Registered Corporate Agent's Name (if agent is a corporation) – Do not complete Item 5a or 5b

Statement by Common Interest Development Association

The corporation is an association formed to manage a common interest development under the Davis-Stirling Common Interest Development Act (California Civil Code section 4000, et seq.) or under the Commercial and Industrial Common Interest Development Act (California Civil Code section 6500, et seq.).

6. The Association is formed to manage a common interest development under the following law (select only one):

<input checked="" type="checkbox"/> Davis-Stirling Common Interest Development Act. (Complete remaining items: 6-13)
<input type="checkbox"/> Commercial and Industrial Common Interest Development Act. (Complete remaining items: 6-8 and 10-13)

7. Street Address of the Business or Corporate Office of the Association, if any

Street Address – Do not list a P.O. Box 1275 Center Court Drive	City (no abbreviations) Covina	State CA	Zip Code 91724	Telephone Number (626) 967-7921
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8. Street Address of Association's Onsite Office (If different from the street address of the business or corporate office or, if no onsite office, the address of the Association's Responsible Officer or Managing Agent of the Association.)

Street Address – Do not list a P.O. Box 1275 Center Court Drive	City (no abbreviations) Covina	State CA	Zip Code 91724
If the address listed above is that of the Responsible Officer of the Association, check the following box: <input type="checkbox"/>	Telephone Number or Email Address 626-967-7921		

9. President of the Association - Davis-Stirling Association ONLY (Name, address and either the daytime telephone number or email address. The address and telephone number **must be different** from the address and telephone number of the Association's Onsite Office or Managing Agent. Note: Commercial and Industrial Associations do not need to provide this information.)

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10. **Association's Managing Agent, if any** (Name, street address, and daytime telephone number. For Davis-Stirling Corporations, the address and telephone number **must be different** from the address and telephone number of the President of the Association.)

Name Lordon Management		Telephone Number (626) 967-7921	
Street Address – Do not list a P.O. Box 1275 Center Court Drive	City (no abbreviations) Covina	State CA	Zip Code 91724

11. **Physical Location of the Common Interest Development**

Front Street Driver Avenue	Near Cross Street Argos Street
City (if in an unincorporated area, enter the city closest in proximity.) Agoura Hills	County or Counties Los Angeles

12. **Type of Common Interest Development Managed by the Association - Check the applicable box:**
(At least one of the types listed below must be checked. If Davis-Stirling Common Interest Development, refer to California Civil Code section 4100 for definitions. If Commercial and Industrial Common Interest Development, refer to California Civil Code section 6534 for definitions.)

- ☐ Community Apartment Project (Note: A commercial and Industrial Development **cannot** be a Community Apartment Project.)
- ☒ Condominium Project
- ☐ Planned Development
- ☐ Stock Cooperative

13. **Separate Interests** (Note: Must have at least one Separate Interest. Do not enter zero or none, and do not leave blank.)

Number of Separate Interests in the Development
292 Units

14. **Email Notifications**

Provide an email address to opt-in to receive entity related notifications, including Statement of Information reminders, by email rather than USPS mail. Note: If no email address is provided, you will continue to receive notices and reminders by USPS mail.

Yes, I opt-in to receive entity notifications via email: Email Address: _____

To change your option after filing, you must submit a new complete Statement of Information and Statement by Common Interest Development Association.

The information contained herein, including in any attachments, is true and correct.

01/27/2025

Date

Don Melching

Type or Print Name

Agent

Title

Signature

No. B337889

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT, DIVISION 5

DOUGLAS KRUSCHEN

Respondent-Plaintiff

v.

ANNANDALE TOWNHOUSE ASSOCIATION, INC., *et al.*

Appellant-Defendants

APPEAL FROM JUDGMENT

SUPERIOR COURT FOR THE COUNTY OF LOS ANGELES
CASE NO. 23VECV05191
THE HON. ERIC P. HARMON, JUDGE PRESIDING

[PROPOSED] ORDER

GOOD CAUSE APPEARING THEREFOR:

IT IS HEREBY ORDERED that Respondent's Motion for Judicial Notice In Support Of Respondent's Opposition To Appellant's Motion To Augment Record is GRANTED.

Dated: _____ By: _____

Administrative Presiding
Justice

PROOF OF SERVICE
Appeal Case No B337889

STATE OF CALIFORNIA, COUNTY OF VENTURA

I am employed in the County of Ventura, State of California. I am over the age of eighteen (18) and not a party to the action; my business address is 39 N. California St., Ventura, California 93001.

On April 18, 2025, I served the foregoing document described as **RESPONDENT'S MOTION FOR JUDICIAL NOTICE IN SUPPORT OF RESPONDENT'S OPPOSITION TO APPELLANT'S MOTION TO AUGMENT RECORD ON APPEAL; MEMORANDUM; [PROPOSED] ORDER** on the interested party(ies) in this action:

Leonard Siegel, Esq.
Mitchell Brachman, Esq.
KULIK GOTTESMAN SIEGEL &
WARE LLP
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Sherman Oaks, California 91403
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Attorneys for Defendants,
ANNANDALE TOWNHOUSE
ASSOCIATION, INC.; VICTOR
RENE MARTINEZ; ANTHONY
WAGNER; JAMES GROSSMAN;
SCOTT PER; and JEFFERY
ATKINSON

[X] (BY ELECTRONIC SERVICE E-MAIL) As follows I transmitted a PDF version of this document by electronic mail to the party (s) identified on the above service list using the e-mail address (es) indicated.

[x] (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on April 18, 2025, at Ventura, California.

Sandra Puga

Sandra Puga

Document received by the CA 2nd District Court of Appeal.