

1 **LEWIS BRISBOIS BISGAARD & SMITH LLP**
BRANT H. DVEIRIN, SB# 130621

2 E-Mail: Brant.Dveirin@lewisbrisbois.com

3 KELLEY E. HARMAN, SB# 266133

E-Mail: Kelley.Harman@lewisbrisbois.com

633 West 5th Street, Suite 4000

Los Angeles, California 90071

Telephone: 213.250.1800

Facsimile: 213.250.7900

6 Attorneys for Defendant, PALOS VERDES
HOMES ASSOCIATION

8 SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

9 CENTRAL DISTRICT – STANLEY MOSK COURTHOUSE

11 RESIDENTS FOR OPEN BOARD
ELECTIONS, an unincorporated association;
12 L. RIED SCHOTT, an individual,

13 Petitioner(s),

14 vs.

15 PALOS VERDES HOMES ASSOCIATION,
a California non-profit mutual benefit
16 corporation, ,

17 Respondent(s).

CASE NO. BS169638

Assigned for All Purposes to:
JUDGE: Hon. Ruth A. Kwan
DEPT.: 72

**RESPONDENT'S VERIFIED ANSWER
TO PLAINTIFFS' PETITION**

Action Filed: May 17, 2017
Trial Date: None Set

18
19 COMES NOW Respondent PALOS VERDES HOMES ASSOCIATION ("Respondent"),
20 and in response to the Verified Petition to Lower Quorum of Homeowners Association Pursuant to
21 Corporations Code section 7515, hereby states the following:

- 22 1. Respondent denies the allegations in Paragraph 1.
- 23 2. Respondent admits the allegations in Paragraph 2.
- 24 3. Respondent lacks sufficient information to admit or deny the allegations in
25 Paragraph 3, and denies the allegations on that basis.
- 26 4. Respondent admits the allegations in Paragraph 4.
- 27 5. Respondent admits that the By Laws of the Association speak for themselves.

28 Except as admitted, Respondent lacks sufficient information to admit or deny the allegations in

1 Paragraph 5, and denies the allegation on that basis.

2 6. Respondent lacks sufficient information to admit or deny the allegations in
3 Paragraph 6, and denies the allegations on that basis.

4 7. Respondent admits that the By Laws of the Association speak for themselves.
5 Except as admitted, Respondent lacks sufficient information to admit or deny the allegations in
6 Paragraph 7, and denies the allegation on that basis.

7 8. Respondent denies the first or title sentence in Paragraph 8. Respondent admits
8 that the following documents speak for themselves, the By Laws, newspaper articles quoting
9 Sydney Croft, Resolution 177, the Palos Verdes Homes Association Website. Except as admitted,
10 Respondent lacks sufficient information to admit or deny the allegations in Paragraph 8, and
11 denies the allegation on that basis.

12 9. Respondent denies the allegations in Paragraph 9.

13 10. Respondent denies the first three sentences in Paragraph 10. Respondent admits
14 that Association president Mark Paulin resigned in 2015. Respondent admits that it hired a third
15 party in 2017 related to the election. Respondent admits what is on Next Door media speaks for
16 itself. Respondent admits that the Association's mailing list, the By Laws, the ruling in *Citizens*
17 *for Enforcement of Parkland Covenants v. Palos Verdes Homes Association*, LASC Case No. BS
18 142768 speaks for itself. Except as admitted, Respondent denies the allegations in Paragraph 10.

19 11. Respondent lacks sufficient information to admit or deny the allegations in
20 Paragraph 11, and denies the allegations on that basis.

21 12. Respondent lacks sufficient information to admit or deny the allegations in
22 Paragraph 12, and denies the allegations on that basis.

23 13. Respondent admits that the By Laws of the Association speak for themselves.
24 Except as admitted, Respondent lacks sufficient information to admit or deny the allegations in
25 Paragraph 13, and denies the allegation on that basis.

26 14. Respondent admits that the By Laws of the Association speak for themselves.
27 Except as admitted, Respondent lacks sufficient information to admit or deny the allegations in
28 Paragraph 14, and denies the allegation on that basis.

- 1 15. Respondent denies the allegations in Paragraph 15.
- 2 16. Respondent admits that Corporations Code Section 7515 speaks for itself. Except
3 as admitted, Respondent denies the allegations in Paragraph 16.
- 4 17. Respondent admits that Corporations Code Section 7515 speaks for itself. Except
5 as admitted, Respondent denies the allegations in Paragraph 17.
- 6 18. Respondent admits that the April 13, 2017 request attached as Exhibit 1, and the
7 Homes Association's April 28, 2017 response attached as Exhibit 2 speaks for itself. Except as
8 admitted, Respondent denies the allegations in Paragraph 18.
- 9 19. Respondent admits that the ballot attached as Exhibit 3 speaks for itself. Except as
10 admitted, Respondent denies the allegations in Paragraph 19.
- 11 20. Respondent admits that the Daily Breeze articles attached as Exhibits 4 and 5 speak
12 for themselves. Except as admitted, Respondent denies the allegations in Paragraph 20.
- 13 21. Respondent admits that Resolutions 177 and 179 attached as Exhibits 6 and 7 speak
14 for themselves. Except as admitted, Respondent denies the allegations in Paragraph 21.
- 15 22. Respondent admits that the Candidate Petition Instructions attached as Exhibit 8
16 speaks for itself. Except as admitted, Respondent denies the allegations in Paragraph 22.
- 17 23. Respondent admits that the exemplar of the Boards' ballot mailing attached as
18 Exhibit 9 speak for itself. Except as admitted, Respondent lacks sufficient information to admit or
19 deny the allegations in Paragraph 23, and denies the allegation on that basis.
- 20 24. Respondent lacks sufficient information to admit or deny the allegations in
21 Paragraph 24, and denies the allegations on that basis.
- 22 25. Respondent lacks sufficient information to admit or deny the allegations in
23 Paragraph 25, and denies the allegations on that basis.
- 24 26. Respondent admits that By Laws attached as Exhibit 12 speak for themselves.
25 Except as admitted, Respondent denies the allegations.
- 26 27. Respondent admits that it is a non-profit mutual benefit corporation. Respondent
27 admits that Corporation Code Sections 5059, 7110 et. seq, and the Davis Stirling Act, speak for
28 themselves. Except as admitted, Respondent denies the allegations in Paragraph 27.

28. Respondent admits that Corporations Code Section 7515 speaks for itself. Except as admitted, Respondent denies the allegations in Paragraph 28.

29. Respondent admits that Corporations Code Section 7520 speaks for itself. Except as admitted, Respondent denies the allegations in Paragraph 29.

30. Respondent admits that Corporations Code Section 7520 speaks for itself. Except as admitted, Respondent denies the allegations in Paragraph 30.

PRAYER

The remainder of the Petition contains a prayer for relief, to which no response is required. To the extent required, Respondent denies each and every allegation contained therein and specifically denies that Petitioner is entitled to any relief whatsoever. Except as expressly admitted above, Respondent denies each and every allegation in the Petition.

FIRSTAFFIRMATIVE DEFENSE

(Failure to State a Cause of Action)

1. The Petition fails to state facts sufficient to constitute a viable cause of action upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

(Failure to Sue in Name of Proper Party)

2. Action is barred since it is not filed in the name of the real party in interest as required under Code of Civil Procedure Section 367 and *Greenback Townhomes Homeowners Ass'n v Rizan* (1985) 166 CA3d 843).

THIRD AFFIRMATIVE DEFENSE

(Avoidable Consequences)

2. Petitioner failed to take precautions which would have avoided and/or diminished the damages, if any, alleged to have been suffered as a result of the conduct of Defendants.

FOURTH AFFIRMATIVE DEFENSE

(Laches)

3. Petitioner delayed an unreasonable period of time in commencing this action, and

1 thereby unduly prejudiced Respondents.

2 **FIFTH AFFIRMATIVE DEFENSE**

3 **(Estoppel)**

4 4. By virtue of his own conduct, Petitioner is estopped from recovering from
5 Respondent for the claims and causes of action in the Petition.

6 **SIXTH AFFIRMATIVE DEFENSE**

7 **(Unjust Enrichment)**

8 5. The Petition and all causes of action stated therein, are barred in whole or in part
9 because Petitioner would otherwise be inequitably and unjustly enriched.

10 **SEVENTH AFFIRMATIVE DEFENSE**

11 **(Failure to Mitigate)**

12 6. Petitioner failed to take proper care, and failed to reduce and mitigate any damages
13 alleged to have been suffered as a result of Respondent's conduct.

14 **EIGHTH AFFIRMATIVE DEFENSE**

15 **(Failure to Take Adequate Precautions)**

16 7. Petitioner failed to take precautions which would have avoided any/or diminished
17 its alleged injuries and damages.

18 **NINTH AFFIRMATIVE DEFENSE**

19 **(Waiver)**

20 8. Petitioner's claims are barred, or any recovery should be reduced, by the doctrine
21 of waiver.

22 **TENTH AFFIRMATIVE DEFENSE**

23 **(Unclean Hands)**

24 9. Plaintiff's claims are barred, or any recovery should be reduced, by the doctrine of
25 unclean hands.

26 **ELEVENTH AFFIRMATIVE DEFENSE**

27 **(Statutes of Limitations)**

28 10. Petitioner's claims are barred by applicable provisions of the California *Code of*

1 Civil Procedure including but not limited to Sections 337 and 343. Petitioner's claims are barred,
2 or any recovery should be reduced, pursuant to applicable statutes of limitations or other
3 administrative, contractual or judicially-imposed limitations of actions, including but not limited
4 to applicable provisions of *Code of Civil Procedure* Sections 315 through 349.4.

5 **TWELTH AFFIRMATIVE DEFENSE**

6 **(Failure to Serve All Members of the Association)**

7 11. Petitioner has failed to serve all members of the Association with the Petition as
8 required in Civil Code Section 4425.

9 **THIRTEENTH AFFIRMATIVE DEFENSE**

10 **(Reservation of Right to Assert Additional Defenses)**

11 12. Respondent has not completed their investigation of the matters alleged in the
12 Petition, do not have sufficient information to determine whether they may have other defenses,
13 and therefore reserve the right to amend their pleadings and assert additional defenses when they
14 are identified and confirmed.

15 WHEREFORE, Respondent prays as follows:

- 16 1. That Petitioner take nothing by way of its Petition and that the Petition be dismissed
17 with prejudice;
18 2. That Petitioner's prayer be stricken;
19 3. That judgment be awarded against Petitioner and in favor of Respondent;
20 4. For costs of suit incurred herein;
21 5. For attorneys' fees as allowed and provided by contract and/or law; and
22 6. For such other and further relief as the court deems just and proper.

23 DATED: July 18, 2017

LEWIS BRISBOIS BISGAARD & SMITH LLP

24
25 By: 

26 BRANT H. DVEIRIN
27 KELLEY E. HARMAN
28 Attorneys for Respondent PALOS VERDES
HOMES ASSOCIATION

VERIFICATION FORM

Residents for Open Board Elections, et al. v. Palos Verdes Homes Association, et al.
Case No. BS169638 - File No. 38009-02

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I have read the foregoing **RESPONDENT'S VERIFIED ANSWER TO PLAINTIFFS' PETITION** and know its contents.

☐ I am a party to this action. The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

☒ I am a representative for **PALOS VERDES HOMES ASSOCIATION**, a party to this action, and am authorized to make this verification for and on its behalf, and I make this verification for that reason. ☒ I am informed and believe and on that ground allege that the matters stated in the foregoing document are true. ☐ The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

☐ I am one of the attorneys for , a party to this action. Such party is absent from the county where such attorneys have their offices, and I make this verification for and on behalf of that party for that reason. I am informed and believe and on that ground allege that the matters stated in the foregoing document are true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on July 14, 2017, at Palos Verdes Estates, California.


(Signature)

PHILIP J. FRENKS, ITS PRESIDENT
Representative for: PALOS VERDES
HOMES ASSOCIATION

CALIFORNIA STATE COURT PROOF OF SERVICE

Residents for Open Board Elections, et al. v. Palos Verdes Homes Association, et al.
Case No. BS169638 - File No. 38009-02

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

At the time of service, I was over 18 years of age and not a party to the action. My business address is 663 West 5th Street, Suite 4000, Los Angeles, California 90071.

On the below date, I served the following document(s) described as: **RESPONDENT'S VERIFIED ANSWER TO PLAINTIFFS' PETITION** on the following persons at the following addresses (including fax numbers and e-mail addresses, if applicable):

Jeffrey Lewis, Esq.
Kelly Broedlow Dunagan, Esq.
BROEDLOW LEWIS LLP
734 Silver Spur Road, Suite 300
Rolling Hills Estates, CA 90274
Telephone: (310) 935-4001
Facsimile: (310) 872-5389
Email: jeff@broedlowlewis.com
*Attorneys for Petitioners, RESIDENTS FOR
OPEN BOARD ELECTIONS and L. RIED SCHOTT*

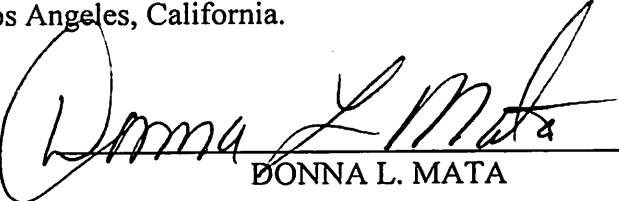
☒ (BY U.S. MAIL) I enclosed the above-stated document(s) in a sealed envelope or package addressed to the person(s) at the address(es) listed by placing the envelope or package for collection and mailing, following our ordinary business practices. I am readily familiar with the firm's practice for collection and processing correspondence for mailing. Under that practice, on the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the U.S. Postal Service, in a sealed envelope or package with the postage fully prepaid thereon. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

☐ (VIA ELECTRONIC MAIL) Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission, I caused the above-stated document(s) to be sent to the person(s) at the e-mail address(es) listed. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

☐ (BY OVERNIGHT DELIVERY) I enclosed the documents in an envelope or package provided by an overnight delivery carrier and addressed to the persons at the addresses listed above. I placed the envelope or package for collection and delivery at an office or a regularly utilized drop box of the overnight delivery carrier.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on July 18, 2017, at Los Angeles, California.


DONNA L. MATA