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8 SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES
9 CENTRAL DISTRICT – STANLEY MOSK COURTHOUSE
10

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).
18
19
20
21

CASE NO. BS169638

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

**RESPONDENT'S OPPOSITION TO
PETITIONER'S BRIEF RE: LOWER
QUORUM OF HOMEOWNERS
ASSOCIATION**

[Corp.Code Section 7515]

Hearing Date: October 10, 2017
Time: 9:00 a.m.
Dept.: 72

[Filed Concurrently with Declaration of
Sidney Croft in Support of Respondent's
Opposition]

Action Filed: May 17, 2017

22
23 Respondent PALOS VERDES HOMES ASSOCIATION ("Respondent," "PVHA," or the
24 "Association") hereby submits its Opposition to Petitioner's Brief Regarding Lower Quorum of
25 the Homeowners Association dated August 25, 2017. This Brief explains why Petitioners,
26 RESIDENTS FOR OPEN BOARD ELECTIONS, ("Petitioners," or "ROBE") do not have
27 standing to pursue changes to the Association's Bylaws, and provides other grounds for
28 dismissing ROBE's Petition.

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 This case arises from Petitioner’s dissatisfaction with the existing Palos Verdes Homes
4 Association’s (“Respondent,” “PVHA,” or the “Association”) Board of Directors, and the Board’s
5 approval of a 2012 multi-party Memorandum of Understanding (“MOU”) adopted to settle costly
6 litigation with the Palos Verdes Peninsula Unified School District. Shortly thereafter, an activist
7 group with essentially the same membership as Petitioner filed suit to challenge the MOU (the
8 “CEPC Litigation”). The matter is currently pending on appeal.

9 While the CEPC Litigation is pending, Petitioner has attempted to circumvent the MOU by
10 replacing the incumbent Board of Directors. However, Petitioner has been unsuccessful in
11 securing sufficient support to reach a quorum from the Association Members, as required by the
12 Association’s Bylaws. Petitioner now seeks to change the Association’s Bylaws in order to lower
13 the quorum requirements for Board elections, among other costly, impractical, and in some
14 instances, illegal changes to the Association’s election procedures.

15 The Association objects to ROBE’s Petition re: Lowering Quorum Requirements (the
16 “Petition”) on the grounds that Petitioner does not have standing to pursue changes to the
17 Association’s Bylaws (the “Bylaws”). Petitioner’s argument that it has standing under Corp. Code
18 Section 7515(a) is inconsistent with case law interpretation of this provision. Assuming *arguendo*
19 that Petitioner has standing under Corp. Code Section 7515(a), this standing is limited to
20 petitioning the Court for a meeting or other compliance with the Association’s Bylaws. Section
21 7515(a) standing does not allow ROBE to petition for changes to the Association’s Bylaws,
22 particularly without support from the Association. Petitioner cannot otherwise establish that it has
23 standing under Corp. Code Section 7515(a). This alone provides sufficient reason to dismiss the
24 petition.

25 However, ROBE’s Petition should also be dismissed because it is merely an attempt to
26 resolve a pending matter, by replacing the Association’s governance structure with changes that
27 are inconsistent with the Association’s purpose, financially burdensome for the Association’s
28 Members, and inconsistent with the relevant provisions of California Code. Because ROBE’s

1 petition is a byproduct of previous litigation, it is crucial to understand the history of the related
2 litigation, the Association, and the Association's governing documents in order to fully understand
3 the complexities of this case.

4 **II. STATEMENT OF FACTS**

5 **A. History and Role of the Association**

6 The Association was created in the early 1920s to govern and enforce land use policies and
7 construction in the City of Palos Verdes Estates (the "City"). (Declaration of Sidney Croft ("Croft
8 Decl." ¶ 6; *see also* Exhibits A, B to Croft Decl.). The Association's Board of Directors selects
9 the Art Jury, which governs architecture, construction practices, and design approval within the
10 Association's jurisdiction. (Croft Decl. ¶ 6). The Association and the Art Jury share the roles of
11 preserving the quality and character of new developments, and the unique charm and aesthetics of
12 the neighborhood. (Croft Decl. ¶¶ 6; 52). The Association is also responsible for governing
13 parcel use for recreation and open space within its jurisdiction. (*Id.*). These roles are vested in the
14 Association and its Board of Directors as described in the Association's Bylaws and the Articles
15 of Incorporation. For this reason, the Association's institutional stability and consistency of the
16 Association's land use policies are necessary to serve the Association's purpose, and the founder's
17 intentions. (Croft Decl. ¶ 52). The Association's founders provided several mechanisms in the
18 Bylaws in order to maintain this institutional stability.

19 **B. The Association's Bylaws**

20 The Association is a non-profit, cooperative association and subject to the California
21 Corporations Code. (Croft Decl. ¶ 10). The Association's Bylaws were drafted to protect
22 democratic election procedures while preserving institutional stability. (Croft Decl. ¶¶ 10, 52;
23 Exhibit C). For example, in order to validate an election to the Association's Board of Directors,
24 the Bylaws require a majority quorum. (Article IV, Section 1)¹. The Bylaws also state that no
25 Association business can be conducted without titleholders representing a majority of building

26 _____
27 ¹ All citations in this brief to Articles and Section are to the Association's Bylaws attached as Exhibit C to the
28 Declaration of Sidney Croft filed concurrently.

1 sites within the Association’s jurisdiction. (Article V, Section 1). These measures were included
2 to promote democratic governance of the Association by ensuring that the Association’s policies,
3 including its land use policies, are supported by a majority of members. The Bylaws also provide
4 for staggered elections in order to prevent mass turnover on the Board of Directors. (Article IV,
5 Section 1). Directors must be elected by secret ballot. *Id.*

6 When there are vacancies on the Board, the existing Directors appoint interim Directors to
7 serve until the election at the next annual or special meeting. (Article IV, Section 2). Because
8 these meetings and elections are annual, the interim Directors do not serve for longer than one
9 year. (Croft Decl. ¶ 11). However, if no quorum is reached at the next annual or special meeting,
10 the existing Directors again appoint interim Directors who serve until the next election. This cycle
11 continues until a quorum of Members is motivated to change the status quo at the next annual or
12 special meeting. (Croft Decl. ¶ 18). In order to change the Bylaws, a quorum of 2/3 is required.
13 (Article XXII). Petitioner is the first to take issue with the structure of the Bylaws regarding the
14 Association’s election procedures in nearly 100 years of governance. (Croft Decl. ¶ 56).

15 **C. Prior Litigation**

- 16 1. *Palos Verdes Peninsula Unified School District v. Palos Verdes Homes*
17 *Association, Los Angeles Superior Court Case No. BC431020.*

18 In 1938, the Association conveyed 13 parcels of property to Palos Verdes Peninsula
19 Unified School District (the “District”). (Croft Decl. ¶ 21; Exhibit D). These parcels were
20 conveyed subject to a deed restriction prohibiting any use beyond “the establishment and
21 maintenance of public schools, playgrounds, and/or recreation areas.” *Id.* The Association
22 determined that this language prohibited the District from selling these parcels or portions thereof
23 for development purposes. (Croft Decl. ¶ 21). By 2010, the District suffered from significant
24 financial burdens, and intended to sell two lots titled Lots “C” and “D” to developers in order to
25 raise funding for District operations. (Croft Decl. ¶ 23). However, Lots C and D were also
26 subject to the restrictions in the 1938 Deed. On February 1, 2010, the District filed suit for a
27 declaratory judgment that the 1938 Deed restrictions were inapplicable to the District, *Palos*
28 *Verdes Peninsula Unified School District v. Palos Verdes Homes Association, Los Angeles*

1 Superior Court Case No. BC431020 (the “District Litigation”).

2 While the District Litigation was pending, the Association was negotiating a similar
3 dispute with private residents, the Luglianis. (Croft Decl. ¶ 24). Over the years, a retaining wall
4 and other prohibited improvements had been developed on the steep hillside property adjacent to
5 the Lugliani’s property known as “Area A.” (Croft Decl. ¶ 24). Area A was also subject to the
6 1938 Deed restrictions and designated as “open space.” *Id.* Shortly after the 1938 conveyance to
7 the District, the Association conveyed all areas designated as “open space” to the City because the
8 Association did not have the resources to operate or maintain the open space properties. (Croft
9 Decl. ¶ 22). On receiving the open space properties from the Association, it became the City’s
10 responsibility to maintain these properties and enforce the development restrictions. During the
11 City’s dispute with the Luglianis, the City attempted to enforce the development restrictions as to
12 Area A. However, these attempts resulted in threats of litigation. (Croft Decl. ¶ 24).

13 In the course of these disputes, the Association incurred costs in excess of \$450,000, and
14 determined that settlement of the matter would be in the best interest of the Association because of
15 the costs of continuing litigation, and the related political rifts within the community. (Croft Decl.
16 ¶ 26). On April 19, 2012, the Association’s Board approved a Memorandum of Understanding
17 (“MOU”) with the District and the Luglianis to reiterate that the 1938 Deed restrictions continued
18 to apply to the District, and to resolve the Luglianis’ encroachment into Area A. (Croft Decl. ¶¶
19 27-32; Exhibit F). The MOU required that the District convey Lots C and D back to the
20 Association, that all lots conveyed to the District were subject to the 1938 Deed restrictions, and
21 that the District would comply with these restrictions. (Croft Decl. ¶ 27). The MOU also
22 provided that the Association trade Lots C and D to the City, subject to use for open space or
23 recreation in exchange for the City’s transfer of Area A to the Association. (Croft Decl. ¶ 27).
24 The Association then sold Area A to the Luglianis for \$500,000, subject to an open space
25 easement. *Id.* The Luglianis also donated \$1.5 million to the District, although not part of the
26 terms of the MOU. *Id.* Pursuant to the MOU, the 1938 Deed restrictions were preserved, the City
27 received two additional lots for use as open space, the District received the funding that it needed,
28 and the Luglianis received Area A, allowing continued use of some of their existing improvements



1 while preserving the remainder of the parcel with an open space easement. *Id.* These provisions
2 allowed for all aspects of the threatened litigation with the Luglianis and the litigation with the
3 District to be resolved without further expense.

4 2. *Citizens for Enforcement of Parkland Covenants v. City of Palos Verdes*
5 Los Angeles Superior Court Case No. BS142768

6 In 2013, a group of citizens called “Citizens for Enforcement of Parkland Covenants”
7 (“CEPC”) and Association Member John Harbison, (“Harbison”) challenged the MOU on the
8 grounds that the Association’s conveyance of Area A to the Luglianis was an “ultra vires” act, and
9 violated the 1938 Deed restrictions. (Croft Decl. ¶¶ 34-36). Although the Association has broad
10 authority under the Bylaws and Articles of Incorporation to buy, sell, or otherwise govern land use
11 policies within the Association, the trial court rejected the Association’s argument that
12 participation in the MOU was an appropriate exercise of the Association’s business judgement,
13 and well within the Board’s authority. (Croft Decl. ¶¶ 35-36). The trial court found for CEPC and
14 Harbison on the grounds that the Board’s actions relating the MOU were “ultra vires” acts. This
15 matter is currently pending in the Court of Appeal. (Croft Decl. ¶ 36).

16 While this appeal is pending, CEPC, Harbison and Petitioners have lobbied the Palos
17 Verdes City Council and the Association to dismiss the appeal, which would effectively nullify the
18 MOU. (Croft Decl. ¶ 37). The membership of CEPC and ROBE overlaps significantly, and these
19 organizations have partnered with Harbison in past attempts to circumvent the MOU by replacing
20 the Association’s Board of Directors. *Id.* To date, these efforts have been unsuccessful.

21 **D. 2016 and 2017 Board Elections**

22 ROBE, Harbison, and members of CEPC have attempted two unsuccessful campaigns to
23 replace the incumbent Directors. ROBE’s first campaign began in late 2015 for the January, 2016
24 annual meeting. (Croft Decl. ¶¶ 38; 39). However, ROBE waited until mere weeks before the
25 scheduled election to begin campaigning. *Id.* For the 2016 election, four ROBE members in
26 collaboration with Harbison began an aggressive, but short campaign strategy for the incumbent
27 Directors’ seats. This strategy included multiple statements to local media outlets and mailings to
28 Association Members, claiming (incorrectly) that the Board was giving away the Association’s

1 parkland. (Croft Decl. ¶ 40; Exhibit J).

2 Dedicated to the integrity of the Association’s elections process, the Association made
3 multiple efforts to accommodate ROBE during the 2016 election, including allowing ROBE to
4 provide its own ballots, providing ROBE with the Association’s membership list, and hiring Judge
5 Michael Latin as an election monitor after ROBE’s unfounded accusations that the Association
6 was mishandling the election ballots. (Croft Decl. ¶¶ 39-42; *see also* Exhibits G, H and I to Croft
7 Decl.). Hiring Judge Latin cost the Association and its Members \$26,000.00, of which ROBE
8 contributed nothing. (Croft Decl. ¶ 42). Despite the Association’s attempts to work with ROBE
9 during the election, ROBE’s efforts failed to persuade the Association’s Members, and the ROBE
10 challengers received only approximately 1900 ballots of the required 2722 required to reach a
11 majority quorum in accordance with the Association’s Bylaws. (Croft Decl. ¶ 43).

12 ROBE tried campaigning again in 2016 for the 2017 Annual Meeting using the same
13 arguments that the Board was selling the Association’s parkland. However, this time, ROBE
14 **received even fewer ballots than in the previous election**, reaching approximately 1700 ballots
15 of the required 2722. (Croft Decl. ¶ 45). The Association hired Judge Latin for a second time,
16 again with no contribution from ROBE. *Id.* Having failed to gain the support of the Association’s
17 members in the past two elections, and with the recent election results indicating that ROBE’s
18 support is waning, ROBE now files suit to lower the quorum requirements for Board Elections.

19 **III. ROBE LACKS STANDING TO PURSUE CHANGES TO THE ASSOCIATION’S**
20 **BYLAWS**

21 ROBE does not have standing to petition the Court to change the Association’s Bylaws.
22 While any association member subject to the Corporations Code has standing to petition the court
23 for a meeting under Corp. Code Section 7515, this standing does not extend to petitions to change
24 an association’s bylaws brought by an individual member, director, or officer in his or her own
25 capacity, instead of on behalf of the association. Corp. Code 7515; *See also Greenback*
26 *Townhomes Homeowners Assn. v. Rizan*, (1985) 166 Cal.App.3d 843; *Fourth La Costa*
27 *Condominium Owners Ass’n v. Seith*, (2008)159 Cal.App.4th 563. Petitioner’s argument that it
28 has standing under Corporations Code Section 7515 to change the Bylaws is not supported by case

1 law. Corporations Code Section 7515 states that:

2 “If for any reason it is **impractical or unduly difficult** for any corporation to call or
3 conduct a meeting of its members, delegates, or directors, or otherwise obtain their
4 consent, in the manner prescribed by its articles or bylaws or this part, then the superior
5 court ... upon petition of a director, officer, delegate, or member, may order that **such a
meeting be called or that a written ballot or other form of obtaining the vote of
members** ... be authorized, in such a manner as the court finds **fair and equitable** under
6 the circumstances.” (emphasis added).

7 We understand this to mean that a member has standing to petition the court to call a
8 meeting, or to hold a vote when it is otherwise “impractical or unduly difficult” to comply with an
9 association’s bylaws. Although we have found only two cases citing this provision of the code,
10 this argument is consistent with the existing case law. For example, in *Greenback Townhomes
Homeowners Assn. v. Rizan*, the Court held that an association, in addition to a Director, Officer,
11 Delegate, or Member on behalf of the association had standing to challenge the Bylaws where an
12 association had decided to reduce its 75% quorum. *Greenback Townhomes Homeowners Assn. v.
Rizan*, (1985) 166 Cal.App.3d 843. (“*Greenback Townhomes*”). Similarly, in *Fourth La Costa
Condominium Owners Ass’n v. Seith*, the association sought to reduce its own 75% quorum, and
13 upon failing to reach the necessary quorum to implement changes, the association petitioned the
14 Court on its own behalf to reduce the quorum requirement. *Fourth La Costa Condominium
Owners Ass’n v. Seith*, (2008)159 Cal.App.4th 563. (“*Fourth La Costa*”).²

15 There is a crucial distinction between the petitions in these cases, and ROBE’s petition.
16 The petitions in *Greenback Townhomes* and *Fourth La Costa*, had the support of their
17 associations, but the *associations* were unable to change the bylaws to reflect this support due to a
18 lack of quorum. In each of these cases, the association filed a petition on its own behalf or on its
19 own behalf via representative to change the quorum requirements. By contrast, ROBE’s petition
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24 ² There is relatively little case law because courts are generally loathe to become involved in such disputes and will
25 instead defer to the presumption of the validity of the acts of homeowners associations. A homeowners association
26 board wields considerable power as it manages and regulates development and enforcement of its rules and
27 regulations. Thus, all owners buy units knowing of this discretionary power and accepting the risk that the
28 association’s decisions may benefit the group as a whole and not necessarily advance the interest of individual
owners. Allowing individual owners to impose their will on all other owners and in contravention of the good faith
decision by the leadership of the association would turn this principle on its head. *Lamden v. La Jolla Shores
Clubdominium Homeowners’ Ass.* (1999) 21 Cal.4th 249, 270, fn. 10.

1 (2003) 109 Cal.App.4th 1162, 1173. Finally, ROBE’s interpretation of Corporations Code Section
2 7515(a) is impractical for policy reasons. If, as ROBE asserts, Corp. Code Section 7515(a)
3 extends standing to any delegate, officer, director or member for any purpose, then every Board
4 decision would be subject to litigation because of internal Association politics. This would create
5 unreasonable barriers for the function or operation of any association, including PVHA. This
6 would also discourage dispute resolution using the mechanisms provided in the Association’s
7 Bylaws, such as the Annual Meetings, Special Meetings and elections. Petitioner’s interpretation
8 of the Code enables any aggrieved party tied to the association to “skip” internal dispute resolution
9 mechanisms and pursue litigation, creating a significant burden on the courts, as well as other
10 association members. The California Legislature cannot have intended that internal association
11 governance be stymied in this way. This indicates that Petitioner’s interpretation of Corp. Code
12 Section 7515(a) is incorrect.

13 Petitioner’s argument that it has standing to change the Association’s Bylaws without
14 support from the Association’s Members is thereby unsupported by Code or by case law.
15 Petitioner’s interpretation of the Code is also impractical as a matter of policy. For these reasons,
16 the Court would be justified in dismissing ROBE’s Petition based on Petitioner’s lack of standing
17 to change the Bylaws.

18 **IV. AS DRAFTED, THE HOA BYLAWS PROVIDE NECESSARY INSTITUTIONAL**
19 **STABILITY AND ARE CONSISTENT WITH CALIFORNIA CORPORATIONS**
20 **CODE AND BEST PRACTICES**

21 **A. The Bylaws Were Drafted to Provide Stable, Consistent Governance**

22 Because the Board of Directors is responsible for governing the Association’s land use
23 practices, institutional continuity and stable governance are crucial to preserving the character and
24 charm of the Palos Verdes neighborhood. Anticipating the importance of this stability, the
25 founders implemented several measures to prevent wholesale turnover amongst the Board of
26 Directors, and encourage consistent land use governance. (Croft Decl. ¶¶ 15-18). For example,
27 the Bylaws provide for staggered elections, which require at least two annual election cycles to
28 elect a new majority (Croft Decl. ¶ 10, Exhibit C; Article IV, Section 1). To prevent any

1 prolonged vacancies on the Board, the Bylaws also allow the Board to fill any vacancies with
2 interim Directors, who serve until the next Annual or Special Meeting. (Article IV, Section 2). If
3 a quorum is not reached at the next Annual or Special Meeting, the incumbent Directors again
4 select interim Directors to serve until the next election, or for up to one year. This provides stable
5 governance on the Board, while allowing annual opportunities for challengers to campaign for
6 vacant or termed-out seats.

7 To ensure that this stability weathered future elections, the founders incorporated into the
8 Bylaws a majority quorum requirement to elect new members to the Board of Directors. (Article
9 IV, Section 1). Maintaining at least a majority quorum requirement preserves stable governance
10 of the association by ensuring that a majority of members are interested in changing the status quo
11 before significant changes are made. (Croft Decl. ¶ 16). Because changes to the Bylaws represent
12 a significant shift in the Association’s governance, the quorum requirements for changing the
13 Association’s Bylaws require a 2/3 vote from the Association’s Members. (Article XXII).

14 **B. The Bylaws are Consistent with the Corporate Code and the DSA**

15 The Association is a non-profit, cooperative association subject to the Corporations Code.
16 (Croft Decl. ¶ 10). Although the Association is not subject to the Davis-Stirling Act, (Cal. Civ.
17 Code Sections 4000 et. seq.) (the “DSA”) which governs common interest developments such as
18 homeowner’s associations, the Bylaws are consistent with the DSA, indicating consistence with
19 industry “best practices.” For example, the DSA requires compliance with any quorum
20 requirement in the governing documents. Civ. Code Section 5115(b). Similarly, the Corporations
21 Code establishes a one-third quorum, unless the bylaws provide otherwise. Corp. Code Section
22 7512(a). The Association’s majority quorum requirement is consistent with both the DSA and the
23 Corporations Code because the Bylaws require a majority quorum for Board elections. (Article
24 IV, Section 1). The Association strictly complies with this requirement in its election procedures.
25 By contrast, Petitioner has asked the Court to impose a mere 25% quorum requirement for Board
26 elections, significantly less than the default quorum requirement in the Corporations Code. As
27 drafted, the Association’s Bylaws comply with the both California Code and industry “best
28 practices” as demonstrated by the Association’s discretionary compliance with the DSA.



1 Petitioner's requests are less mindful of restrictions imposed by the Corporations Code, the
2 Bylaws, or the DSA. Accordingly, it is important that any adjustments to the Association's
3 Bylaws comply with the relevant laws.

4 **V. SOME OF PETITIONER'S REQUESTED CHANGES ARE COSTLY,**
5 **IMPRACTICAL OR ILLEGAL**

6 **A. Petitioner's Requested 25% Quorum Allows Agitators to Control the HOA**

7 Petitioner's requested changes to the Association Bylaws conflict with the founder's
8 intention to preserve stable governance for the Association. For example, Petitioner's request to
9 reduce the quorum from 50% to 25% is an extreme measure which would allow a subset of
10 agitators to elect new members to the Board of Directors every time they are dissatisfied with a
11 Board decision. This low quorum requirement undermines the stable, efficient governance that
12 has allowed the Association to thrive for nearly 100 years. (Croft Decl. ¶ 4). Furthermore,
13 allowing merely 25% of members to validate a Board election strikes the wrong balance between
14 encouraging participation in Association elections, and representing the will of the majority of the
15 Association's members. Petitioner's requested changes to the Bylaws risk overwhelming the
16 preferences of the majority.

17 **B. Petitioner's Request for Proxy Voting Violate the Bylaws and the**
18 **Corporations Code**

19 The Corporations Code also restricts proxy voting unless so provided in an association's
20 bylaws. Corp. Code Sections 7510(d); 7613(a). The Association's Bylaws also mandate that the
21 Directors be elected only by secret ballot. (Croft Decl. ¶10; Exhibit C; Article V, Section 1).
22 Because the Association's Bylaws do not provide for proxy voting, and because voting by proxy
23 does not constitute a "secret ballot" ROBE's requests require alteration to the Association's
24 bylaws in order to comply with the Corporations Code. The Association's Bylaws can be changed
25 only by a 2/3 vote. (Article XXII). However, ROBE has failed to secure even a majority vote in
26 its recent election campaigns. (Croft Decl. ¶ 46). Changing the Bylaws to permit proxy voting
27 would require a two-part change, including: (1) removal of the secret ballot requirement, and (2)
28 providing for proxy voting in the Bylaws. The Association's Members have been satisfied with

1 the status quo regarding proxy voting since the Bylaws were adopted. Furthermore, ROBE has
2 produced no evidence that there is Member support for changing the Bylaws to accommodate a
3 proxy vote. For these reasons, changing the Association's election procedures with regard to
4 proxy voting should be left to the Association's Members, and cannot be accomplished legally
5 without the 2/3 vote required in the Bylaws.

6 The Association's Bylaws were drafted to strike a delicate balance between the needs of
7 the community for stable governance, and compliance with the relevant statutes regarding election
8 procedures. Of note, in nearly 100 years of governance, Petitioner presents the first challenge to
9 an election proceeding. (Croft Decl. ¶ 56). If granted, Petitioner's request will destroy this
10 delicate balance without consideration for the legality or functionality of its requested changes, or
11 the impacts that these changes will impose on the community.

12 **VI. THE ASSOCIATION HAS REACHED QUORUMS IN THE PAST**

13 ROBE has only attempted to reach a quorum twice. (Croft Decl. ¶ 46). In 2015, while the
14 CEPC Litigation was pending in trial court, four members of ROBE unsuccessfully attempted to
15 secure seats on the Association's Board of Directors. (Croft Decl. ¶ 38). However, ROBE was
16 unable to reach a quorum. (Croft Decl. ¶ 43). ROBE tried to secure seats on the Association's
17 Board of Directors for the second time in 2016, but again, was unable to reach a quorum. (Croft
18 Decl. ¶ 45). Of note, ROBE received fewer ballots in the recent election than it did in 2015,
19 indicating that the Association Members are interested in preserving the status quo. (Croft Decl.
20 ¶¶ 45;55). In past elections, a quorum has been reached when the community is dissatisfied with
21 the status quo. For example, 14 quorums were established between 1981 and 2001. (Croft. Decl.
22 ¶ 53). It is not the Association's responsibility to establish a quorum for Petitioner. The
23 Association has reached a quorum before, indicating that it is not the Bylaws that inhibit
24 Petitioner's election success, but rather the member's interest in preserving the status quo and
25 stability provided by the existing Board. (Croft Decl. ¶ 53). Petitioner has several effective
26 campaigning options to facilitate reaching a quorum that it has not used. For example, Petitioner
27 could coordinate additional mailings, phone-banking, and other community outreach efforts, but
28 has not done so. Petitioner may also wish to begin campaigning earlier in the season. This may

1 explain why Petitioner has been unable to secure sufficient votes from Association members to
2 reach a quorum, and why Petitioner received fewer ballots in the most recent election.

3 While the Association has committed to upholding the Bylaws and election requirements,
4 it is Petitioner's burden to secure the votes of interested members. To date, Petitioner has been
5 unable to do so. Petitioner is not an HOA, and therefore has more flexibility to pursue other
6 avenues of reaching a quorum than changing the Bylaws. It would be prudent for Petitioner to
7 attempt other means of securing the necessary votes instead of attempting to change the Bylaws
8 and restructuring the Association. The Association cannot be expected to change the Bylaws
9 every time an agitated vocal minority is unable to secure the requisite number of votes.

10 **VII. THE BYLAWS REPRESENT 100 YEARS OF SUCCESSFUL ASSOCIATION**
11 **GOVERNANCE, AND COURT INTERFERENCE IS NOT WARRANTED**

12 As noted above, the Association's governing documents, including the Bylaws are
13 consistent with the relevant provisions of the Corporations Code and the Davis Stirling Act. The
14 Bylaws have served the Association's needs successfully for nearly 100 years. (Croft Decl. ¶ 54).
15 It is telling that in nearly a century, Petitioner is the first to take issue with the election procedures.
16 Petitioner would have the Court interfere to restructure the Association's Bylaws, threatening the
17 purpose of the Association and the stable, effective governance that the founders sought to
18 provide. (Croft Decl. ¶ 52). Instead, it would be more prudent for Petitioners to increase their
19 election campaign efforts, or accept that the majority of Association Members do not appear
20 interested in ROBE's cause. This solution protects the will of the majority without forcing the
21 Association to restructure otherwise effective governance. It is crucial that any resolution of this
22 matter maintains the delicate balance between the needs of the community, and the complexities
23 of relevant code restraints.

24 **VIII. CONCLUSION**

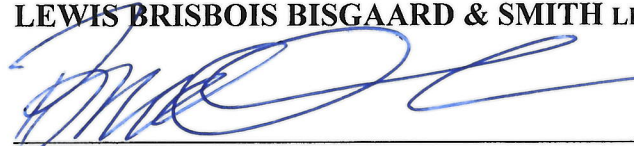
25 ROBE's Petition should be dismissed because it misstates the standing requirements under
26 Corporations Code Section 7515. Per case law interpretation of this provision, ROBE does not
27 have standing to pursue changes to the Association's Bylaws without support from the
28 Association's Members. ROBE's requested changes to the Bylaws are expensive, impractical, and

1 unsupported by the Association's Membership. Changing the Bylaws without support from the
2 Association or a representative cross-section of its Members is drastic and unreasonable, given
3 ROBE's waning support in recent elections. This Petition is nothing more than an effort to
4 dismiss the pending appeal in the CEPC Litigation. For these reasons, ROBE's petition should be
5 dismissed.

6 DATED: September 25, 2017

LEWIS BRISBOIS BISGAARD & SMITH LLP

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8 By:



9 BRANT H. DVEIRIN
10 SARA E. ATSBABA
11 Attorneys for Respondent.
12 PALOS VERDES HOMES ASSOCIATION
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1 CALIFORNIA STATE COURT PROOF OF SERVICE

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

4 STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

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

7 On the below date, I served the following document(s) described as: **RESPONDENT'S
8 OPPOSITION TO PETITIONER'S BRIEF RE: LOWER QUORUM OF HOMEOWNERS
9 ASSOCIATION** on the following persons at the following addresses (including fax numbers and
10 e-mail addresses, if applicable):

11 Jeffrey Lewis, Esq.
12 LAW OFFICES OF JEFFREY LEWIS
13 Deep Valley Drive, Suite 200
14 Rolling Hills Estates, CA 90274
15 Telephone: (310) 935-4001
16 Facsimile: (310) 872-5389
17 Email: jeff@jefflewislaw.com
18 *Attorneys for Petitioners, RESIDENTS FOR
19 OPEN BOARD ELECTIONS and L. RIED SCHOTT*

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

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

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

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

Executed on **September 25, 2017**, at Los Angeles, California.

39 
40 DONNA L. MATA