

1 **LEWIS BRISBOIS BISGAARD & SMITH LLP**  
BRANT H. DVEIRIN, SB# 130621  
2 E-Mail: Brant.Dveirin@lewisbrisbois.com  
SARA E. ATSBABA, SB# 310049  
3 E-Mail: Sara.Atsbaha@lewisbrisbois.com  
633 West 5<sup>th</sup> Street, Suite 4000  
4 Los Angeles, California 90071  
Telephone: 213.250.1800  
5 Facsimile: 213.250.7900

6 Attorneys for Respondents/Real Party in Interest,  
PALOS VERDES HOMES ASSOCIATION  
7

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

11 L. RIED SCHOTT, an individual,  
12 Petitioner,  
13 vs.

14 PALOS VERDES HOMES ASSOCIATION,  
a California non-profit mutual benefit  
15 corporation,  
16 Respondent/Real Party in Interest.  
17  
18  
19

CASE NO. BS169638

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

**RESPONDENT/REAL PARTY IN  
INTEREST, PALOS VERDES HOMES  
ASSOCIATION'S OBJECTIONS TO  
PETITIONER'S FIRST AMENDED  
PETITION, DECLARATION OF JOHN  
HARBISON, AND MOTION TO STRIKE  
PORTIONS OF PETITIONER'S BRIEF.**

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

21  
22 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD HEREIN:  
23

24 Respondent/Real Party in Interest, PALOS VERDES HOMES ASSOCIATION submits its  
25 Evidentiary Objections to Petitioner L. RIED SCHOTT's First Amended Petition, the Declaration  
26 of John Harbison in support of Petitioner's Brief, and Petitioner's Brief. For the reasons set forth  
27 herein, Petitioner's proffered evidence is objectionable.  
28

4816-7789-5253.3

1

**RESPONDENT/REAL PARTY IN INTEREST, PALOS VERDES HOMES ASSOCIATION'S  
OBJECTIONS TO PETITIONER'S FIRST AMENDED PETITION AND MOTION TO STRIKE PORTIONS  
OF PETITIONER'S BRIEF**

1 INTRODUCTION/EVIDENTIARY RULES

2 A party is not permitted to rely on hearsay to prove the truth of the matter asserted. Cal.  
3 Evid. Code Section 1200. In Petitioner’s First Amended Petition (“FAP”) the Declaration of John  
4 Harbison in Support of Petitioner’s Brief (“Harbison Decl.,”) and in Petitioner’s Brief dated Oct.  
5 26, 2017, (“Supporting Brief”) Petitioner relies heavily on decades-old newspaper clippings to  
6 offer “proof” of community sentiments and political leanings within the Palos Verdes Homes  
7 Association over time, that are hearsay and also irrelevant (addressed below), as the articles are  
8 prior to the transfer of title of properties to the City of Palos Verdes Estates and are decades old.

9 A party is also not permitted to offer statements into evidence without foundation or  
10 personal knowledge. Cal. Evid. Code Section 403. In the FAP, the Harbison Decl., and in the  
11 Supporting Brief, Petitioner uses newspaper clippings and meeting minutes to draw conclusions  
12 without factual bases, support, or personal knowledge.

13 A party cannot prove the contents of a writing by oral evidence. Cal. Evid. Code Sections  
14 1521,1523 (Best Evidence Rule). The oral testimony about the contents of meeting minutes in the  
15 Harbison Decl., and in the Supporting Brief is improper. It is not an excuse to claim that the  
16 declarant was refused permission to copy the documents, as copies are only required by a written  
17 demand under the Corporations Code (Sections 8311, 8333). Moreover, Petitioner can request  
18 minutes through discovery and failed to do so. The minutes are the best evidence of what they say,  
19 not someone who read and claims he remembered the minutes.

20 Finally, testimony that is not relevant is inadmissible. Cal. Evid. Code Sections 210, 350,  
21 410. Petitioner’s testimony on practices that predate the Association’s transfer of property to the  
22 City of Palos Verdes is irrelevant.

23 For these reasons, the following portions of Petitioner’s FAP should not be admitted as  
24 evidence, and should be struck from the record. The Harbison Decl. should also not be admitted as  
25 evidence, and should be struck in its entirety. The corresponding references in Petitioner’s  
26 Supporting Brief to both the FAP and the Harbison Decl. should also be struck from the record.

27 ///

1 I. **OBJECTIONS TO FIRST AMENDED PETITION**

<b><u>MATERIAL OBJECTED TO</u></b>	<b><u>GROUND FOR OBJECTION</u></b>	<b><u>RULING ON OBJECTION</u></b>
<p>2 <b>Page 3 ¶ 8(a)-(b), Ins. 7-10</b></p> <p>3</p> <p>4 The Homes Association has no</p> <p>5 nominating committee for Directors.</p> <p>6 There are no term limits for</p> <p>7 Directors (meaning they can be re-</p> <p>8 nominated for an unlimited number of</p> <p>9 three year terms), which has enabled one</p> <p>10 current Director to serve for 20 years and</p> <p>11 another to serve for 13 years. (FAP ¶ 8(b)).</p>	<p>Best Evidence Rule; Lack of</p> <p>personal knowledge;</p> <p>Irrelevant</p>	<p>Sustained _____</p> <p>Overruled _____</p>
<p>12 <b>Page 3 ¶ 8(c)-(d), Ins. 9-23</b></p> <p>13 To attract and inform members who</p> <p>14 may want to serve on the Board and have</p> <p>15 their names placed on a ballot, no notice of</p> <p>16 nomination procedures has been provided</p> <p>17 by mailings to members or posted in the</p> <p>18 Homes Association office. The only</p> <p>19 reference indicating a member could run in</p> <p>20 an election has been difficult to find on the</p> <p>21 Homes Association website and was not</p> <p>22 posted at all until the summer of 2016.</p> <p>23 When a member wanted to have</p> <p>24 their name on a ballot in 2012, the manager</p> <p>25 of the Homes Association told that member</p> <p>26 that they could only be placed on the ballot</p> <p>27 if they were invited to do so by the Board.</p> <p>28 When this issue came up at the following</p> <p>annual meeting, a Director said the</p> <p>manager responded incorrectly and that all</p> <p>a member had to do to have their name</p> <p>appear on the ballot was to submit their</p> <p>qualifications. This member did that the</p> <p>following year, but never heard back from</p> <p>anyone.</p>	<p>Hearsay; Lack of personal</p> <p>knowledge; Irrelevant</p>	<p>Sustained _____</p> <p>Overruled _____</p>

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

<u>MATERIAL OBJECTED TO</u>	<u>GROUND FOR OBJECTION</u>	<u>RULING ON OBJECTION</u>
<p><b>Page 3-4 ¶8(e) Ins. 24-28; 1-15</b></p> <p>Prior to 2015, Homes Association members had not been provided any meaningful choice for Directors on a ballot for decades, other than the five incumbent Directors. Until 2015, the Homes Association did not allow any names listed on the ballot that had not been preselected by the Board to appear on the ballot. In 2015, ROBE (Residents for Open Board Elections) forced the Homes Association to accept the names of four Candidates for Board positions who were not incumbents. To do so, a petition with over 100 signatures was obtained for these Candidates. However, a mailing of ballots had already been sent out by the Homes Association without the names of these four Candidates. Since the Homes Association refused to pay for another mailing of ballots, the members supporting these alternative Candidates raised funds for a mailing, which was done. As this additional mailing was sent out, the attorney for the Homes Association, Sidney Croft, stated in the local newspaper that members who had already voted would be able to change their vote with the new ballot. Possibly fearful that the incumbents would lose the election, Mr. Croft reversed his position shortly before the annual meeting in January 2016 and disqualified the new ballots by members who had already voted. Therefore, this prevented the changed ballots from being counted.</p>	<p>Hearsay; Improper opinion; Lacks foundation; Lack of personal knowledge; Irrelevant</p>	<p>Sustained _____</p> <p>Overruled _____</p>
<p><b>Pages -4-5 ¶ 8(f), Ins. 16-28; 1-15</b></p> <p>After non-incumbent candidates for Director were finally successful in having their names added to the Homes Association ballot in 2015 (according to the rules in place at the time), the Directors changed this process the following year. They made it much more difficult for any member of the Homes Association to run for the Board. Sometime in the summer of 2016, the Homes Association created a</p>	<p>Hearsay; Improper opinion; Lacks foundation; Lack of personal knowledge; Best Evidence Rule; Irrelevant</p>	<p>Sustained _____</p> <p>Overruled _____</p>

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

<u>MATERIAL OBJECTED TO</u>	<u>GROUND FOR OBJECTION</u>	<u>RULING ON OBJECTION</u>
<p>formalized and more detailed process for nominations known as Resolution 177. This resolution was approved on May 24, 2016 – which was the only Board Meeting held in the first half of 2016 when a ROBE observer was not present (ROBE did not attend that meeting because ROBE thought the meetings were on the last Tuesday of each month rather than the fourth Tuesday). The Home Association Board took advantage of ROBE’s absence and passed Resolution 177 on that day, but then did not disclose the existence of the Resolution to any ROBE members even when asked in June and July 2016 by ROBE members whether any action had been taken on procedures. Instead, Resolution 177 was quietly posted by the Homes Association on its website at (<a href="http://Homes Association.org/board-election/">http://Homes Association.org/board-election/</a>). The Homes Association did not solicit member input about Resolution 177. Resolution 177 requires that each candidate who wished to appear on the ballot obtain the signatures of 100 Homes Association members on a written petition. Each petition nominating an individual Candidate is required to be filled out in front of a witness and that witness is required to have that petition notarized. Therefore, if multiple witnesses obtain member signatures for one or more Candidates, each of these witnesses needs to have each petition notarized. This made it much more difficult for a member to become a Candidate than the year before, or what was stated as the prior policy by a Director in a previous annual meeting. Nevertheless, ROBE followed the process and obtained over 200 signatures for each of the Candidates, and had each petition duly notarized.</p>		

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

<u>MATERIAL OBJECTED TO</u>	<u>GROUND FOR OBJECTION</u>	<u>RULING ON OBJECTION</u>
<p><b>Page 6 ¶ 10a-10b, Ins. 3-25</b></p> <p>The Homes Association is dominated by an entrenched Board of Directors that have avoided free elections. In the infrequent situation when a Board seat is vacated, the Directors select a replacement themselves, even though they could fill a vacancy using a regular election. Besides avoiding an open election to fill a vacant position, Board Members have recently also taken several steps that essentially prevent annual elections, as intended by the By-Laws, by making it exceedingly more difficult for a quorum to be reached. By way of example,</p> <p>The Board in past years approved multiple ballot mailings to members between September and December before the Annual Meeting in order to increase the number of votes cast by members. However, since 2014, the Board has restricted ballot mailings to one mailing in advance of the election. In reviewing past election data, it appears quorums were only achieved when there were multiple mailings. Such additional mailings were usually processed with envelopes marked as "Second Notice" and "Third and Final Notice." The incumbent Directors have discontinued the practice of multiple mailings.</p> <p>Over the last couple of years, instead of mailing ballots in September or October as in the past, the Board has delayed the mailing of ballots until early November or December during a period of heavy mailings for government elections and Holidays. The late mailing of these ballots not only makes it more difficult for members to be able to identify the mailing from the Homes Association, but it is a time when many members are traveling</p>	<p>Hearsay; Improper opinion; Lacks foundation; Lack of personal knowledge; Irrelevant</p>	<p>Sustained _____</p> <p>Overruled _____</p>

<u>MATERIAL OBJECTED TO</u>	<u> GROUNDS FOR OBJECTION</u>	<u>RULING ON OBJECTION</u>
and unable to return their ballots in a timely manner.		
<p><b>Page 6 -7 ¶ 10c-10d, Ins. 26-27; 1-8</b></p> <p>Prior to the January 2017 election, the Board previously accepted ballots via walk-in, e-mail or facsimile. The Board no longer accepts ballots handed in at the Homes Association office, submitted via e-mail or submitted via facsimile.</p> <p>Prior to the January 2017 election, the Board previously accepted a ballot that was dropped off by a member in person at the annual meeting. In 2016, the policy was changed to disallow proxies and walk-in votes at the Annual Meeting beginning with the January 2017 Annual Meeting. This remains the new policy, even though the By-Laws allow proxies and they have always been accepted before.</p>	Best Evidence Rule; Improper opinion; Lacks foundation; Irrelevant	<p>Sustained _____</p> <p>Overruled _____</p>
<p><b>Page 7 ¶ 10e-10f, Ins. 9-28; 1-2</b></p> <p>After the president of the Homes Association (Mark Paulin) resigned during the election in December 2015, a replacement for a Director was needed. There were four new Candidates on the ballot that year, besides the incumbents. These Candidates requested the Directors install the Candidate who received the most votes in the election. The votes were counted and such a determination could easily have been made. It was believed this would provide a Director whom the members chose and would be a reasonable method of filling the vacant position. The Directors were indecisive on filling this position, and they waited for eight months, until August 2016, to do so. However, rather than fill the vacancy with someone elected by the members, the Board continued their self-perpetuating practice</p>	Best Evidence Rule; Lacks personal knowledge; Improper Opinion; Lacks foundation; Irrelevant	<p>Sustained _____</p> <p>Overruled _____</p>

<u>MATERIAL OBJECTED TO</u>	<u>GROUND FOR OBJECTION</u>	<u>RULING ON OBJECTION</u>
<p>of selecting a replacement themselves, as they have for decades. This further demonstrates the Board's unwillingness to have Directors replaced by an election and their rejection of a democratic process.</p> <p>The Board, in advance of the January 2017 election, hired a third-party accounting firm to tabulate the ballots. However, there were mailing irregularities where the envelope provided to return ballots had an address error which directed the envelope to a dog grooming business in West Los Angeles rather than the accounting firm. The Post Office claims that all envelopes provided were received at the correct address because the bar code directed collection to a sorting site that relied on the bar code rather than the printed mailing address.</p>		
<p><b>Pages 8- ¶ 10g-10i, lns. 3-24</b></p> <p>Many members expressed concerns about the address error, and sought a process to confirm that their ballot had been received. ROBE formally wrote to the Homes Association and suggested posting a list on its website or in its offices, or provide a phone number to call to verify receipt of a ballot. The Homes Association rejected all these suggestions and refused to do anything to address this legitimate concern of its members that the ballots might be lost in the mail, and hence provide a means of confirmation that the ballots had been received.</p> <p>Even though return addresses were included on the envelopes with ballots, it does not appear the mailing list of members was always fully updated, since some members reported they did not</p>	<p>Hearsay; Best Evidence Rule: Lacks personal knowledge; Improper opinion; Lacks foundation; Irrelevant</p>	<p><b>Sustained</b> _____</p> <p><b>Overruled</b> _____</p>



<u>MATERIAL OBJECTED TO</u>	<u>GROUND FOR OBJECTION</u>	<u>RULING ON OBJECTION</u>
<p>1 receive ballots in past elections. This is 2 documented both on social media (Next 3 Door) and in a recent Survey. The Homes 4 Association's mailing list of members does 5 not appear to be current and up to date.</p> <p>6 The Board has refused to publish 7 biographies and position statements of the 8 Candidates running for office along with 9 the ballots. Even though such 10 qualifications were supplied on the Homes 11 Association's website, ROBE advocated 12 that this information should also be 13 supplied with the ballot (as done by other 14 organizations in the community such as the 15 Palos Verdes Golf Club, the Palos Verdes 16 Tennis Club and the Palos Verdes Beach 17 and Athletic Club) and that it would help 18 voters become more informed as well as 19 help increase the number of members that 20 vote.</p>		
<p>21 <b>Page 9 ¶ 10(l), Ins. 9-14</b></p> <p>22 Members of the Homes Association 23 have repeatedly made requests to return to 24 some of the previous practices that were 25 believed to encourage voting (e.g. multiple 26 mailings, allowing proxies, dropping off 27 ballots at the office where a lock-box 28 would be provided), submitting ballots at the annual meeting, and even sending out another ballot after the election as permitted by the By-Laws). However, the Board has repeatedly refused these efforts.</p>	<p>Hearsay; Best Evidence Rule; Lacks personal knowledge; Improper opinion; Lacks foundation; Irrelevant</p>	<p>Sustained _____</p> <p>Overruled _____</p>
<p>29 <b>Page 9 ¶ 10m-10n, Ins. 15-28; 1-13</b></p> <p>30 When a quorum is not obtained and 31 Directors are not elected, the By-Laws 32 provide that the annual meeting is to 33 "adjourn from day to day" - until a quorum 34 is achieved and an election occurs. 35 However, the Board has ignored this</p>	<p>Best Evidence Rule; Lacks personal knowledge; Improper opinion; Lacks foundation; Irrelevant</p>	<p>Sustained _____</p> <p>Overruled _____</p>

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

<u>MATERIAL OBJECTED TO</u>	<u>GROUND FOR OBJECTION</u>	<u>RULING ON OBJECTION</u>
<p>provision. Instead, the Directors have insisted that they must wait a full year (i.e., the next January) to determine whether there will be enough members voting in that following election to achieve a quorum and have a valid election. Consequently, with no quorums obtained in eight years, there have been no elections and no official annual meetings over this period. And, with the recent nomination and voting restraints the Directors have placed upon members as previously mentioned, it seems their intention is to prevent the possibility of a quorum and election from ever occurring. Not only is this contrary to democratic principles, but it is not believed to be in compliance with the intent of the By-Laws of the Homes Association, which specifically state in Article V, Section 1, that:</p> <p style="padding-left: 40px;">“At such annual meeting of the members, Directors for the ensuing year shall be elected by secret ballot ... If, however, for want of a quorum or other cause, a member's meeting shall not be held... or should the members fail to complete their elections ...those present may adjourn from day to day until the same shall be accomplished.”</p> <p>The Board has been advised as to its election procedures by its general counsel Sidney Croft. Mr. Croft has been general counsel for the Homes Association since 1968. As he approaches his fiftieth year of employment by the Homes Association, he has a vested interest in his continued employment by the Homes Association by not having any changes in the composition of the Board that would question his judgment, including his misguided advocacy for leading the Homes Association into selling parkland in 2012 to an encroaching private owner</p>		

<u>MATERIAL OBJECTED TO</u>	<u>GROUND FOR OBJECTION</u>	<u>RULING ON OBJECTION</u>
(in spite of deed restrictions forbidding such a sale).		
<p><b>Page 10 ¶124, lns. 21-28; 1-7</b></p> <p>The voting turnout in Palos Verdes Estates (whether in National, State or Local election years) is typically rather low and below the 50% quorum threshold required by the Homes Association By-Laws, further indicating that the stated quorum amount is simply too high. For example, in a recent March 7, 2017 election, residents in Palos Verdes Estates voted to elect City Council Members and a local tax measure called Measure D that directly affects the property taxes of PVE residents and the level of services they receive. This was a hotly contested election, with multiple mailers sent to all residents and an advertisement supporting Measure D featuring the Mayor was aired on a cable network. Even with importance and increased public attention from this most recent election, the turnout was only about 35% of all registered PVE voters. While there is a difference in that Homes Association elections grant one vote per lot to the owner (whether or not the owner is a citizen), and in municipal elections in Palos Verdes Estates elections each citizen gets a vote, the high overlap between the two electorates makes the comparison meaningful.</p>	Best Evidence Rule; Irrelevant; Lacks personal knowledge; Lacks foundation	<p><b>Sustained</b> _____</p> <p><b>Overruled</b> _____</p>
<p><b>Page 11 ¶ 14-15, lns. 12-26</b></p> <p>The By-Laws have been virtually unchanged since they were established in 1924 and have only been changed in a minor way, if at all, and then only in early years when few homes had been sold (due to the Great Depression) and the developer (The Palos Verdes Project) still owned over 67% of the lots. The By-Laws require</p>	Best Evidence Rule; Lacks personal knowledge; Lacks foundation; Irrelevant	<p><b>Sustained</b> _____</p> <p><b>Overruled</b> _____</p>

<u>MATERIAL OBJECTED TO</u>	<u>GROUND FOR OBJECTION</u>	<u>RULING ON OBJECTION</u>
<p>important revisions and amendments that were acknowledged by past Board members nearly two decades ago. However, any changes to the By-Laws currently require a vote by two-thirds of the membership. Considering the difficulty in obtaining even 30 percent of members voting in annual elections, it is doubtful that any needed changes can ever be made to the By-Laws affecting not only voting issues and elections, but administrative and other matters.</p> <p>It has not only become impractical and unduly difficult for the Homes Association to hold a Board of Directors election and an annual meeting, but the Board has adopted practices and resolutions as described above that make it unlikely that the Homes Association will ever again reach a quorum to have an open election or hold an annual meeting.</p>		

II. OBJECTIONS TO THE DECLARATION OF JOHN HARBISON

<u>MATERIAL OBJECTED TO</u>	<u>GROUND FOR OBJECTION</u>	<u>RULING ON OBJECTION</u>
<p>Page 3 ¶ 7, lns. 1-8</p> <p><b>Myth No. 1: Failure to Obtain a Quorum is Only a Recent Phenomenon</b></p> <p>The Homes Association argues that the failure to obtain a quorum is only a recent phenomenon with most years in the 1980's and 1990's resulting in a quorum. In 2016, I asked the Homes Association to provide me information about quorum counts from 1980 – 2016. They provided me a table with the exception of 1982 where minutes of the Annual Meeting seem to be missing. I have prepared a graph summarizing the information provided to me. The graph fairly and accurately summarizes the information the</p>	<p>Hearsay; Improper opinion; Lacks foundation; Best Evidence Rule; Lack of personal knowledge</p>	<p>Sustained _____</p> <p>Overruled _____</p>

<u>MATERIAL OBJECTED TO</u>	<u>GROUND FOR OBJECTION</u>	<u>RULING ON OBJECTION</u>
<p>1 Homes Association provided me. The 2 graph is attached hereto and 3 incorporated herein as <b>Exhibit "A."</b></p>		
<p>4 <b>Page 3 ¶ 8, Ins. 9-17</b></p> <p>5 By going through the old 6 Homes Association Board minute 7 books and the old newspaper articles 8 reporting on the annual meeting, I 9 have been able to put together a more 10 complete picture of the history of the 11 annual meetings of the Homes 12 Association over the last 90 years, 13 1928 - 2017. I have prepared a graph 14 that summarizes the information I 15 learned from the Homes Association 16 minute books and old newspaper 17 articles. The graph I created is a fair 18 and accurate summary of the 19 information I obtained. A true and 20 correct copy of that graph is attached 21 hereto and incorporated herein as 22 <b>Exhibit "B."</b> Overall, a quorum was 23 achieved in 39 of the 90 years. 24 However, a clearer picture can be 25 obtained by breaking the voting and 26 quorum data into periods:</p>	<p>Hearsay; Improper opinion; Lacks foundation; Best Evidence Rule; Lack of personal knowledge; Irrelevant</p>	<p><b>Sustained</b> _____</p> <p><b>Overruled</b> _____</p>
<p>18 <b>Page 3 ¶8(a) Ins. 18-26</b></p> <p>19 <b>1928 – 1940:</b> During these 20 initial years, most lots were still 21 unsold and hence the Trustee (Bank of 22 America/Palos Verdes Inc.) could (and 23 did) reach the quorum just by voting 24 the unsold lots they controlled. They 25 also used their super majority to make 26 changes to the by-laws in the early 27 years, although no one at the Homes 28 Association has been able to produce documents explaining those changes. The fact that quorums were achieved when votes were consolidated or controlled in a few hands is not a relevant indication of whether the fifty percent quorum requirement is a reasonable method of ensuring democratic elections for separately</p>	<p>Hearsay; Best Evidence Rule; Irrelevant</p>	<p><b>Sustained</b> _____</p> <p><b>Overruled</b> _____</p>

<u>MATERIAL OBJECTED TO</u>	<u>GROUND FOR OBJECTION</u>	<u>RULING ON OBJECTION</u>
owned lots.		
<p><b>Pages 3-4 ¶ 8b-8c, Ins. 27-28; 1-4</b></p> <p>1970 – A unique year in which a quorum was achieved because of a concerted effort to mail 3 sets of ballots (see below for more description of that year).</p> <p>1941 – 1969: During this period of 29 years, a quorum was never reached; moreover, in all but one year the total was less than 900 (when a quorum would have been 2,640 in the early years and 2,716 in the later years due to additional lots created).</p>	Hearsay; Best Evidence Rule; Lack of personal knowledge; Irrelevant	<p>Sustained _____</p> <p>Overruled _____</p>
<p><b>Page 4 ¶ 8d-8e, Ins. 5-7</b></p> <p>1971 - 1973: No quorum in those three years. It is not known whether the ballot procedure was modified.</p> <p>1974 - 2001: A quorum was achieved in 22 of these 28 years.</p> <p>See also ¶ 8f-8h, Ins. 8-12.</p>	Hearsay; Best Evidence Rule; Lack of personal knowledge; Irrelevant	<p>Sustained _____</p> <p>Overruled _____</p>
<p><b>Page 4 ¶ 9, Ins. 13-19</b></p> <p>In conclusion, when the votes were in the hands of owners rather than the developer (i.e. excluding the years before 1940), a quorum was achieved in only 26 of the 77 years since 1940. Furthermore, in the years in which a quorum was achieved, the Board seems to have taken a more active role in terms of sending multiple ballots and making phone calls by individual Board Directors to get out the vote. In contrast, the current Board is at best passive, and arguably has placed many obstacles</p>	Improper opinion; Lacks foundation	<p>Sustained _____</p> <p>Overruled _____</p>

<u>MATERIAL OBJECTED TO</u>	<u>GROUND FOR OBJECTION</u>	<u>RULING ON OBJECTION</u>
<p>1 to make it harder to achieve a 2 quorum (see discussion below and 3 in ROBE's Complaint). 4</p>		
<p>5 <b>Page 4 ¶ 10, Ins. 20-28</b> 6 <b>Myth No. 2: Proxies are not</b> 7 <b>Allowed, Are Never Used and that's</b> 8 <b>How the Members Like it.</b></p> <p>9 The Homes Association brief 10 argues that proxies are not allowed and 11 "[Homes] Association's Members 12 have been satisfied with the status quo 13 regarding proxy voting since the 14 Bylaws were adopted." (Brief, p. 14- 15 15). My research reveals that proxies 16 were accepted throughout the first 17 eight decades of the Homes 18 Association – going back to the 1920s. 19 In some years, they listed the people 20 who were holding the proxies. For 21 instance: a. 1929: "3327 building sites 22 were represented by proxies" 23 (February 1929 Palos Verdes Bulletin 24 published by Homes Association).</p> <p>25 See also Page 5 ¶ 10, Ins. 1-14</p>	<p>Lacks personal knowledge; Lacks foundation; Irrelevant</p>	<p>Sustained _____  Overruled _____</p>
<p>19 <b>Pages 5 ¶ 11a-11b, Ins. 15-28</b> 20 <b>Myth No. 3: This is the First</b> 21 <b>Challenge to Election Procedures in</b> 22 <b>100 years of governance.</b></p> <p>23 Croft's declaration states that 24 this action is the first time a group of 25 Homes Association members have 26 challenged election procedures and 27 the integrity of the election process. 28 (Croft Decl., ¶ 56; Homes Association Brief, p. 14). The Homes Association's assertion that no one ever brought a challenge to lower the quorum is patently wrong. It happened in 1954 and I have</p>	<p>Lacks personal knowledge; Best Evidence Rule: Irrelevant</p>	<p>Sustained _____  Overruled _____</p>

<u>MATERIAL OBJECTED TO</u>	<u>GROUND FOR OBJECTION</u>	<u>RULING ON OBJECTION</u>
<p>1 collected multiple articles from 1954</p> <p>2 with statements about broad public</p> <p>3 support for lowering the quorum to</p> <p>4 30%. The Homes Association is even</p> <p>5 quoted as being fully supportive of</p> <p>6 that effort. Below are relevant dates</p> <p>7 and documents pertaining to the 1954</p> <p>8 challenge to the quorum.</p> <p>9</p> <p>10 a. 1/14/1954 No</p> <p>11 <b>Quorum:</b> Committee</p> <p>12 formed to lower quorum to</p> <p>13 10%. A true and correct</p> <p>14 copy of this January 14,</p> <p>15 1954 article is attached</p> <p>16 hereto and incorporated</p> <p>17 herein as <b>Exhibit "C."</b></p> <p>18 b. 1/24/154: Proxy</p> <p>19 committee formed to deal</p> <p>20 with lowering quorum.</p> <p>21</p> <p>22 <b>See also Page 6 ¶ 11c-11g, lns. 1-24</b></p>		
<p>16 <b>Page 6-7 ¶ 12, lns. 25-28; 1-2</b></p> <p>17 <b>Myth No. 4: There has never been</b></p> <p>18 <b>any frustration expressed over a</b></p> <p>19 <b>lack of quorum.</b></p> <p>20</p> <p>21 Croft declares and the Homes</p> <p>22 Association argues that there has never</p> <p>23 been any frustration expressed by</p> <p>24 Homes Association members over a</p> <p>25 lack of quorum. This is untrue. For 29</p> <p>26 years from 1941-1969) there was</p> <p>27 annual frustration expressed at most</p> <p>28 Homes Association Annual Meetings,</p> <p>as reported by the Palos Verdes News.</p> <p>For examples:</p> <p><b>See also Page 7-11 ¶ 12(a)-(q)</b></p>	<p>Hearsay; Best Evidence Rule; Irrelevant</p>	<p>Sustained _____</p> <p>Overruled _____</p>



<u>MATERIAL OBJECTED TO</u>	<u>GROUND FOR OBJECTION</u>	<u>RULING ON OBJECTION</u>
<p>1 Page 11 ¶ 13, Ins. 5-7</p> <p>2</p> <p>3 <b>Myth No. 5: The Homes Association</b></p> <p>4 <b>argues that it has never adjourned</b></p> <p>5 <b>day-to-day until a quorum is</b></p> <p>6 <b>reached.</b></p> <p>7 However, I found several</p> <p>8 examples where adjournment has been</p> <p>9 allowed to enable more votes to be</p> <p>10 cast and a quorum reached:</p> <p>11</p> <p>12 <b>See Also Page 11 ¶ 13(a)-(e)</b></p>	<p>Hearsay; Best Evidence Rule;</p> <p>Irrelevant</p>	<p>Sustained _____</p> <p>Overruled _____</p>
<p>10 Page 11-12 ¶ 14, Ins. 27-28; 1-4</p> <p>11 <b>Myth No. 6: The Homes Association</b></p> <p>12 <b>argues that the number of ballot</b></p> <p>13 <b>mailings is not relevant to</b></p> <p>14 <b>establishing a quorum.</b></p> <p>15 The 1970 election was the first</p> <p>16 in 30 years that got a quorum, with</p> <p>17 3027 voting (up from 771 in 1969).</p> <p>18 One person found this so surprising</p> <p>19 that he asked for verification of the</p> <p>20 count. As such, in the January 13,</p> <p>21 1970 Homes Association minutes was</p> <p>22 a full accounting which revealed a</p> <p>23 glimpse into the importance of</p> <p>24 multiple ballots to achieve a quorum</p> <p>25</p> <p>26 <b>See Also Page 12 ¶ 14(a)-(d)</b></p>	<p>Hearsay; Best Evidence Rule;</p> <p>Irrelevant; Lacks personal</p> <p>knowledge; Lacks foundation</p>	<p>Sustained _____</p> <p>Overruled _____</p>
<p>20 Page 12 ¶ 15, Ins. 15-18</p> <p>21 <b>Myth No. 7: ROBE's challenge of</b></p> <p>22 <b>proposing alternative candidates is</b></p> <p>23 <b>the first time this has happened at</b></p> <p>24 <b>the Homes Association – there have</b></p> <p>25 <b>never been more than five</b></p> <p>26 <b>candidates.</b></p> <p>27 My review of Homes</p> <p>28 Association minutes and newspaper</p> <p>articles reveals that statement to be</p> <p>untrue:</p> <p><b>See Also Page 12-13 ¶ 15(a)-(b)</b></p>	<p>Hearsay; Best Evidence Rule; Lacks</p> <p>personal knowledge; Lacks</p> <p>foundation</p>	<p>Sustained _____</p> <p>Overruled _____</p>

<u>MATERIAL OBJECTED TO</u>	<u>GROUND FOR OBJECTION</u>	<u>RULING ON OBJECTION</u>
<p>1 Page 13 ¶ 16, Ins. 4-15</p> <p>2</p> <p>3 <b>Myth No. 8: ROBE's challenge to</b></p> <p>4 <b>the election procedures relates to the</b></p> <p>5 <b>pending appeal by the Homes</b></p> <p>6 <b>Association's illegal sale of</b></p> <p>7 <b>parkland.</b></p> <p>8 In 2012, I was involved in the</p> <p>9 filing of litigation against the Homes</p> <p>10 Association involving the illegal sale</p> <p>11 of parkland, LA Superior Court Case</p> <p>12 No. BS142768. I prevailed in that</p> <p>13 litigation. The issues were so clear that</p> <p>14 the Los Angeles Superior Court</p> <p>15 granted a plaintiffs summary judgment</p> <p>16 motion on the illegality of the Homes</p> <p>17 Association's actions. The papers filed</p> <p>18 by the Homes Association in this</p> <p>19 action suggest that this challenge to the</p> <p>election procedures by ROBE relates</p> <p>to that parkland litigation. Not so.</p> <p>Judgment was entered against the</p> <p>Homes Association in that parkland</p> <p>case in 2015. The Homes Association</p> <p>has appealed and that case is now</p> <p>pending before the court of appeal case</p> <p>number B267816. Briefing in the</p> <p>Appeal has been completed. A result is</p> <p>expected in early 2018. It is doubtful</p> <p>that the outcome of the Homes</p> <p>Association election would have any</p> <p>meaningful impact on the illegal</p> <p>parkland case.</p>	<p>Lacks foundation; Improper opinion</p>	<p>Sustained _____</p> <p>Overruled _____</p>
<p>20 Page 13 ¶ 17, Ins. 16-21</p> <p>21 It is true that ROBE has been critical</p> <p>22 of the incumbents of the Homes</p> <p>23 Association for approving the illegal</p> <p>24 sale of parkland and for their decision</p> <p>25 to appeal the adverse judgment. But</p> <p>26 ROBE and its candidates have also</p> <p>27 enumerated other issues and decisions</p> <p>28 that the Board has made in recent</p> <p>years, leading many (including</p> <p>members of ROBE) to conclude that</p> <p>the current Directors have been poor</p> <p>stewards and should be replaced.</p>	<p>Lacks foundation; Improper opinion</p>	<p>Sustained _____</p> <p>Overruled _____</p>

1  
2 **III. OBJECTION TO PETITIONER'S SUPPORTING BRIEF**

<b><u>MATERIAL OBJECTED TO</u></b>	<b><u>GROUND FOR OBJECTION</u></b>	<b><u>RULING ON OBJECTION</u></b>
<p>3 <b>Page 12 ¶ 2, Ins. 12-19</b></p> <p>4</p> <p>5 Fourth, the Homes Association</p> <p>6 President Phil Frengs separately</p> <p>7 stated in the Summer 2017 Palos</p> <p>8 Verdes Bulletin (the official</p> <p>9 newsletter for the Homes</p> <p>10 Association): "As you may recall,</p> <p>11 there was a spirited campaign by the</p> <p>12 group representing the petition</p> <p>13 candidates, including websites, lawn</p> <p>14 signs, candidate forums, email blasts</p> <p>15 and direct mail... In spite of the</p> <p>16 group's herculean efforts, 512 fewer</p> <p>17 parcels participated." This public</p> <p>18 statement directly contradicts the</p> <p>19 Homes Association's assertion that</p> <p>20 the challengers can be successful</p> <p>21 without changing anything in the</p> <p>22 process just by "trying harder."</p>	<p>Hearsay; Best Evidence Rule; Lack</p> <p>of personal knowledge; Cites to no</p> <p>supporting evidence</p>	<p>Sustained _____</p> <p>Overruled _____</p>

16 **IV. MOTION TO STRIKE PORTIONS OF THE PETITIONERS' BRIEF RELYING**

17 **ON IMPROPERLY PROFERRED EVIDENCE**

18 The respondents move to strike the portions of Plaintiff's First Amended Complaint above,

19 the entirety of the Harbison Decl. above, and the portions of the Plaintiffs' Supporting Brief where

20 the improperly asserted evidence was referenced. The Respondents' Motion to Strike is based on

21 the authorities set forth above.

22 **RESPONDENTS' MOTION TO STRIKE REFERENCES TO FIRST AMENDED**

23 **COMPLAINT AND HARBISON DECLARATION MADE IN PETITIONER'S**

24 **SUPPORTING BRIEFING**

25 **Materials to Strike**

26 **III. THE RECENT HISTORY OF THE BOARD TO BLOCK CHALLENGERS**

27 **FROM APPEARING ON THE BALLOT AND TO AVOID ACHIEVING A**

28 **QUORUM**

Page 7 ¶ 1, Ins. 7-8

1 **RESPONDENTS' MOTION TO STRIKE REFERENCES TO FIRST AMENDED**  
2 **COMPLAINT AND HARBISON DECLARATION MADE IN PETITIONER'S**  
3 **SUPPORTING BRIEFING**

4 **Materials to Strike**

5 The Homes Association has no nominating committee. (FAP 8 (a)). There are no term  
6 limits for current Board members. One Board member has served for over twenty years and  
7 another for over thirteen years. (FAP ¶ 8(b)).

8 **Page 7 ¶ 1, Ins. 9-1**

9 Prior to the Summer of 2016, there were no rules or publications establishing how a  
10 challenger could appear on the ballot. (FAP ¶ 8(c)).

11 In 2012, when one member wanted to appear on the 2012 ballot, the Homes Association  
12 manager informed him that he could only appear on the ballot if invited to do so by the Board.  
13 (FAP 8(d)).

14 **Pages 7-8 ¶ 2, Ins. 14-28; 1-2**

15 In 2015, non-party<sup>2</sup> Residents for Open Board Elections ("ROBE") decided to run a slate  
16 of candidates for the January 2016 Board election. (FAP 8(e)). Citing sections of the Corporate  
17 Code, ROBE obtained the 100 signatures and presented them the same week in November 2016  
18 that the

19 Homes Association mailed out the ballots for the January 2016. However, since the ballots  
20 had been printed already, only the incumbents appeared on that ballot. The Homes Association  
21 refused to send an additional ballot with all nine of the candidates listed unless ROBE paid for the  
22 mailing and the price quoted was three times what it would cost the Homes Association to mail an  
23 amended ballot. ROBE prepared a second ballot with all nine candidates and those ballots were  
24 mailed out by ROBE at ROBE's expense. The Homes Association's attorney announced in the  
25 local newspaper that they would count the last ballot received, but then a few days later he  
26 rescinded that statement and said they'd only count the first one. No quorum was reached in the  
27 January 2016 election so the current directors declared themselves to be directors for the  
28 following year. (FAP ¶ 8(e)).

29 **Pages 8 ¶ 2, Ins. 3-21**

30 In the Summer of 2016, the Homes Association issued two Resolutions defining the  
31 process for allowing alternative candidates to be nominated. Under these Resolutions, the Homes  
32 Association required that all candidates submit 100 signatures to appear on the ballot. The  
33 incumbent directors were not excluded from this requirement per the Resolution but nevertheless  
34 the incumbents did not comply with the 100 signatures requirement. The process as defined in  
35 the Resolution was onerous and the signatures had to be present on a specific form and each  
36 signature gatherer had to notarize the submitted signature form. Even though the incumbents did

1 **RESPONDENTS' MOTION TO STRIKE REFERENCES TO FIRST AMENDED**  
2 **COMPLAINT AND HARBISON DECLARATION MADE IN PETITIONER'S**  
3 **SUPPORTING BRIEFING**

4 **Materials to Strike**

5 not follow their own process, they automatically appeared on the ballot despite the fact that the  
6 incumbents' terms had expired years ago. Note that all candidates for Palos Verdes City Council  
7 (including incumbents) need to collect 25 signatures to be listed as a candidate. The Homes  
8 Association Director challengers — a slate of three candidates backed by ROBE — submitted  
9 the necessary 100 signatures and appeared on the ballot. No quorum was reached in the January  
10 2017 election so the current directors declared themselves to be directors for the following year.  
11 (FAP ¶ 8(f)). The Homes Association By-Laws allow "adjournment day-to-day" in the event of a  
12 non-quorum thus keeping the election open, and this has occurred in the past. But in the 2017  
13 election, the Board explicitly voted against following their own bylaws in this regard.

14 **Page 8 ¶ 3, Ins. 22-27; 1-2**

15 In past years, the Board approved multiple mailings of ballots to increase the number of  
16 ballots received. Since 2014, the Board restricted mailings to only one. In reviewing past election  
17 results, quorums were only achieved when multiple ballot mailings were performed. (FAP ¶  
18 10(a)). In past years, the ballot mailings commenced earlier (in October). In more recent years,  
19 the ballot mailings commenced in late November or December, thereby shortening the window of  
20 time when ballots are reviewed by members and accepted, and increasing the risk they are lost  
21 in the holiday mail. (FAP ¶ 10(b)).

22 **Page 9 ¶ 2, Ins. 3-11**

23 Prior to the January 2017 election, the Board had previously accepted ballots via walk-in,  
24 e-mail or facsimile. The Board no longer accepts ballots handed in at the Homes Association  
25 office, submitted via e-mail or submitted via facsimile. (FAP ¶ 10(c)). Prior to the January 2017  
26 election, the Board previously accepted a ballot that was dropped off by a member in person at the  
27 annual meeting. In 2016, the policy was changed to disallow proxies and walk-in votes at the  
28 Annual Meeting beginning with the January 2017 Annual Meeting. This remains the new policy,  
even though the By-Laws allow proxies and they have always been accepted before. (FAP ¶  
10(d)).

29 **Page 9 ¶ 3, Ins. 14-23**

30 In the middle of ballot submission in December 2015, the President of the Homes  
31 Association (Mark Paulin) unexpectedly resigned. A replacement was needed to fill the  
32 vacancy. The Board could have very easily counted the votes at the January 2016 election and  
33 appointed the candidates who received the top votes. The Board had the discretion to do so  
34 even though there was no quorum met. Filling the vacancy in this fashion would have been  
35 reasonable. Instead, the Board waited eight months and then continued their self-perpetuating  
36 practice of selecting a replacement themselves and ignored the submitted votes; the person  
37 they selected had not appeared on the ballot and had not collected any nominating signatures.  
38 (FAP ¶ 10 (d)).

**RESPONDENTS' MOTION TO STRIKE REFERENCES TO FIRST AMENDED COMPLAINT AND HARBISON DECLARATION MADE IN PETITIONER'S SUPPORTING BRIEFING**

**Materials to Strike**

**Page 10 ¶ 1, Ins. 1-7**

Many members expressed concerns about the address error, and sought a process to confirm that their ballot had been received. ROBE formally wrote to the Homes Association and suggested posting a list on its website or in its offices, or provide a phone number to call to verify receipt of a ballot. The Homes Association rejected all these suggestions and refused to do anything to address this legitimate concern of its members that the ballots might be lost in the mail, and hence provide a means of confirmation that the ballots had been received. (FAP ¶ 10(e)-(f)).

**Page 10 ¶ 2, Ins. 8-11**

The mailing list used by the Homes Association is not fully updated since some members reported they did not receive ballots in past or the most recent election. This is documented both on social media (Nextdoor) and in a recent survey conducted by ROBE. (FAP ¶ 10(g)).

**Page 10 ¶ 3, Ins. 12-19**

The Board has refused to publish biographies and position statements of the candidates running for office along with the ballots. Even though biographies (but not positioning statements) were supplied on the Homes Association's website, ROBE advocated that this information should also be supplied with the ballot (as done by other organizations in the community such as the Palos Verdes Golf Club, the Palos Verdes Tennis Club and the Palos Verdes Beach and Athletic Club) and that it would help voters become more informed as well as help increase the number of members that vote. (FAP ¶ 10(h)).

**Page 10 ¶ 4, Ins. 20-26**

The Homes Association has not made any efforts to gather and use email addresses to increase member voting or participation in annual elections. The Homes Association has also chosen not to use the Internet to supplement member voting in elections, which may be another way to improve voting turnout. They have no email list or notification functionality built into their website (unlike the City of Palos Verdes Estates which encourages residents to sign-up for communications). (FAP ¶ 10(i)).

**Page 10 ¶ 5, Ins. 26-28;1-11**

When a quorum is not obtained and Directors are not elected, the By-Laws provide that the annual meeting is to "adjourn from day to day" - until a quorum is achieved and an election occurs. However, the Board has ignored this provision each January. Not only is this contrary to democratic principles, but it is not believed to be in compliance with the intent of the By-Laws of the Homes Association, which specifically state in Article V, Section 1, that:

1                   **RESPONDENTS' MOTION TO STRIKE REFERENCES TO FIRST AMENDED**  
2                   **COMPLAINT AND HARBISON DECLARATION MADE IN PETITIONER'S**  
3                   **SUPPORTING BRIEFING**

4                   **Materials to Strike**

5                   At such annual meeting of the members, Directors for the ensuing year shall be elected by  
6                   secret ballot ... If, however, for want of a quorum or other cause, a member's meeting shall not be  
7                   held... or should the members fail to complete their elections ...those present may adjourn from day  
8                   to day until the same shall be accomplished.

8                   (FAP ¶ 10(1).

9                   **Page 12 ¶ 2, lns. 12-19**

10                  Fourth, the Homes Association President Phil Frengs separately stated in the Summer 2017  
11                  Palos Verdes Bulletin (the official newsletter for the Homes Association): "As you may recall,  
12                  there was a spirited campaign by the group representing the petition candidates, including  
13                  websites, lawn signs, candidate forums, email blasts and direct mail... In spite of the group's  
14                  herculean efforts, 512 fewer parcels participated." This public statement directly contradicts the  
15                  Homes Association's assertion that the challengers can be successful without changing  
16                  anything in the process just by "trying harder."

14                  **VI. THE COURT SHOULD REJECT THE HOMES ASSOCIATION'S THIRD**  
15                  **DEFENSE THAT THE QUORUM HAS BEEN REACHED IN THE PAST AND**  
16                  **THAT ANY FAILURE TO REACH THE QUORUM IS A TACIT APPROVAL**  
17                  **BY THE MEMBERSHIP OF THE HOMES ASSOCIATION**

16                  **Page 13 ¶ 2, lns. 13-27**

17                  The Homes Association sees each year's failed quorum as a referendum that the  
18                  thousands of members of the Homes Association are pleased with current leadership. It is  
19                  this attitude that has resulted in year after year of failed quorums. The complaint about the  
20                  artificially high quorum is not new. It is a recurring complaint that has been voiced  
21                  repeatedly by Homes Association members over the decades. Local papers have published  
22                  complaints about the lack of the quorum in 1942, 1949, 1950, 1968, 1969, 1971, 1973 and  
23                  1976. (Harbison Decl., ¶ 12). In the 1950's, an editorial ran in the local paper about the  
24                  annual failure to reach a quorum:

22                  The annual farce in the procedure to hold an annual meeting is just that —  
23                  a farce. The local resident property owners had no voice in electing the  
24                  Board of Directors of the Homes Association. The Board of Directors has  
25                  become a "perpetual" Board.... It is not a question of whether or not the  
26                  members of the Board of Directors are doing what is right...it is the  
27                  principle in question —a real American principle where the people govern  
28                  themselves by FREE election.

27                  (Harbison Decl. ¶ 11, Ex. F).

1 **RESPONDENTS' MOTION TO STRIKE REFERENCES TO FIRST AMENDED**  
2 **COMPLAINT AND HARBISON DECLARATION MADE IN PETITIONER'S**  
3 **SUPPORTING BRIEFING**

4 **Materials to Strike**

5 Page 14 ¶ 2, Ins. 5-22

6 The Homes Association argues that the failure to obtain a quorum is only a recent  
7 phenomenon. However, a review of voting data dating back to 1928 demonstrates that the Homes  
8 Association annual meetings have been plagued with a lack of quorum. Although quorums were  
9 regularly reached between 1928 and 1940 (when many lots were still unsold and owned by the  
10 developer/bank), after 1940, quorums were infrequent. (Harbison Decl., ¶¶ 78, Exs. A-B).

- 11 ➤ Between 1941 and 1969, a quorum was never reached.
- 12 ➤ In 1970, a quorum was reached with three ballot mailings.
- 13 ➤ Between 1971 and 1973, no quorum was reached.
- 14 ➤ Between 1974 and 2001, a quorum was reached in 22 of the 28  
15 years.
- 16 ➤ Between 2002 and 2006, there was no quorum.
- 17 ➤ Between 2007 and 2009: Quorums were reached because Board members took  
18 an active role in the election and ensured there were three mailings and  
19 telephone calls.
- 20 ➤ Between 2010 and 2017: There were 8 years without a quorum.

(Harbison Decl., ¶ 8, Ex. B).

21 Page 14 ¶ 4, Ins. 23-25

22 In the years since 1940 when the votes were in the hands of owners rather than the developer, a  
23 quorum was achieved in only 26 of 77 years. (Harbison Decl., ¶ 9).

24 **VII. THE COURT SHOULD REJECT THE HOMES ASSOCIATION'S FOURTH**  
25 **DEFENSE THAT THE HOMES ASSOCIATION HAS NEVER ADJOURNED**  
26 **DAY-TO-DAY UNTIL A QUORUM IS REACHED.**

27 Page 15 ¶ 2, Ins. 7-14

28 One remedy sought herein is that for years where the quorum is not reached, the  
election should be held open and more votes should be allowed to be cast. The Homes  
Association argues that has never been done. But the By-Laws provide for this. And in years  
past rather than simply declaring incumbents to be Board members for a full year, the Board  
held the election open for additional time to allow additional votes to be cast until a quorum is  
reached. (Harbison Decl., ¶ 13). This occurred in 1929, 1930, 1931, 1941, 1942, 1969 and  
1971. (Harbison Decl., ¶ 13).



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

DATED: November 22, 2017

**LEWIS BRISBOIS BISGAARD & SMITH LLP**

By: 

BRANT H. DVEIRIN  
SARA E. ATSBAHA  
Attorneys for Respondent.  
PALOS VERDES HOMES ASSOCIATION

1 **CALIFORNIA STATE COURT PROOF OF SERVICE**

2 *L. Reid Schott, v. Palos Verdes Homes Association, et al.*

3 *Case No. BS169638 - File No. 50031-28*

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/REAL  
8 PARTY IN INTEREST, PALOS VERDES HOMES ASSOCIATION'S OBJECTIONS TO  
9 PETITIONER'S FIRST AMENDED PETITION** on the following persons at the following  
10 addresses (including fax numbers and e-mail addresses, if applicable):

11 Jeffrey Lewis, Esq.  
12 LAW OFFICES OF JEFFREY LEWIS  
13 609 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*

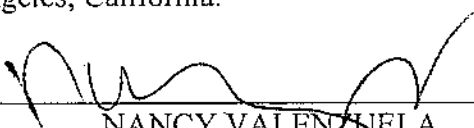
20  (BY U.S. MAIL) I enclosed the above-stated document(s) in a sealed envelope or  
21 package addressed to the person(s) at the address(es) listed by placing the envelope  
22 or package for collection and mailing, following our ordinary business practices. I  
23 am readily familiar with the firm's practice for collection and processing  
24 correspondence for mailing. Under that practice, on the same day that  
25 correspondence is placed for collection and mailing, it is deposited in the ordinary  
26 course of business with the U.S. Postal Service, in a sealed envelope of package  
27 with the postage fully prepaid thereon. I am aware that on motion of the party  
28 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 **November 22, 2017**, at Los Angeles, California.

  
\_\_\_\_\_  
NANCY VALENZUELA