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8 Catherine Rucker

**ELECTRONICALLY FILED**  
Superior Court of California  
County of Marin  
~~FOR DECH~~  
James M. Kim, Clerk of the Court  
D. Harrison, Deputy

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
12 **COUNTY OF MARIN**

14 Catherine RUCKER, an individual, )

15 Plaintiff, )

16 vs. )

17 )  
18 POINTE MARIN ASSOCIATION, a )  
19 non-profit mutual benefit corporation; )  
20 DOES 1-10, inclusive, )

21 Defendants. )

Case No.: 0X000F111

**VERIFIED COMPLAINT FOR  
DECLARATORY AND INJUNCTIVE  
RELIEF.**

[ Civ. C. §§ 5100(a)(2), 5105(c) & 5145;  
Corp. C. §§ 7510(e) & 7511(c)]

[ Limited Civil Case]

I/C Judge:

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**I. INTRODUCTION**

2. The Plaintiff, Catherine Rucker, is a member of the Defendant Pointe Marin Association (“PMA” or “Association”). She brings this action seeking declaratory relief that a.) the two PMA Director positions, which Ms. Pat Eklund and Mr. Michael Christian were elected to on May 13, 2021 expired two years later in May 2023; and b.) the PMA Board’s “certification statement” on the “Nomination Application & Candidate Statement Form” (Nomination Form) that purports to allow the PMA Board to disqualify nominees for Director positions who are “...seeking or engaged in legal action against the Association and/or the Board of Directors and/or any individual Board Member” is unlawful.
2. Also, Plaintiff seeks injunctive relief for a.) the PMA to cease and desist with the election it announced on October 16, 2023, to fill only three of the five PMA Director positions, because the election is excluding the two expired Director positions and because the PMA Board included an unlawful “certification statement” on the Nomination Form, and b.) the PMA to comply with the July 7, 2023, Member Petition by providing notice for and carrying out a “Special Membership Meeting” for an election to fill all five of the PMA’s Director positions, to include the two positions that expired in May 2023, in accord with the requirements within the Davis-Stirling Act’s Article for “Member Election” as soon as possible.

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**II. GENERAL ALLEGATIONS**

3. On May 13, 2021, in a PMA “Member Election,” Ms. Pat Eklund and Mr. Michael Christian were elected to two of the PMA’s three Director positions - for 2-year terms.
4. In a separate PMA “Member Election” that also culminated on May 13, 2021, the PMA “Amended Bylaws” were approved. One of the main amendments was to increase the number of Directors from three to five.
5. Although the PMA “Amended Bylaws” required the PMA to carry out an election in 2021 to fill the remaining three Director positions, the PMA failed to do so.

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6. Although the PMA “Amended Bylaws” requires annual elections for a portion of the PMA Director positions, in 2022, the PMA Board failed to carry out the required election to fill the three “even-numbered year” Director positions.
7. In May 2023, two years after their election, the Director positions for Pat Eklund and Michael Christian expired.
8. On July 7, 2023, the PMA received a “Member Petition.” The Member Petition had been signed by 19 PMA Members, including the Plaintiff. The Member Petition demanded an election to fill all five of the PMA’s Director positions because the two Director positions “being held by” Pat Eklund and Michael Christian had expired in May 2023 and because the PMA had failed to hold an election in 2022 to fill the three other Director positions.
9. Since July 7, 2023, when the PMA received the Member Petition for an election to fill all five PMA Director positions, the PMA has failed to comply with the Member Petition.
10. On September 14, 2023, the PMA Board decided to hold an election to fill *only three* of the five PMA Director positions, to conclude on January 11, 2024.
11. On October 12, 2023, the PMA Board decided that the election would conclude on February 8, 2024.
12. On October 16, 2023, the PMA Board issued a “Notice of Election and Call for Candidates” (Notice) to the members. The Notice stated that there would be an Annual Membership Meeting on February 8, 2024, “to conduct an election for three Board positions as called for in our Bylaws that were amended by the homeowners on May 13, 2021.”
13. But the Notice excludes the two “odd-numbered year” Director positions that expired in May 2023 and that are “being held by” Pat Eklund and Michael Christian from the February 8, 2024 election.

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14. On October 16, 2023, the PMA attached its “Nomination Application & Candidate Statement Form” (Nomination Form) to the Notice for the February 8, 2024, election, and the Nomination Form includes the following “certification statement”:

“I also certify that I am not seeking or engaged in legal action against the Association and/or the Board of Directors and/or any individual Board Member.”

15. The Plaintiff, Catherine Rucker, alleges that Defendant Pointe Marin Association (“PMA” or “Association”), and DOES 1-10, violated and is violating Civil Code Section 5100(a)(2), which is within the Davis-Striling Act Article for “Member Election” and the PMA Bylaws, because it is allowing Pat Eklund and Michael Christian to continue to “hold over” in their respective Director positions that expired in May 2023 – without an election.

16. In addition, the Plaintiff alleges that the Defendant, PMA, is violating Civil Code Section 5105(c), which is within the Davis-Stirling Act Article for “Member Election,” because the PMA is attempting to unlawfully disqualify nominees from being candidates for Director positions who are “seeking or engaged in legal action” against the PMA.

17. Further, the Plaintiff alleges that the Defendant, PMA, is violating Civil Code Section 5100(a)(2) and the PMA Bylaws by commencing an election that excludes the two expired Director positions that are “being held by” Pat Eklund and Michael Christian.

18. Furthermore, the Plaintiff alleges that the Defendant, PMA, is violating Corporations Code Section 7511, Civil Code Section 5100(a)(2), and the PMA Bylaws for its failure to comply with the July 7, 2023 “Member Petition.”

19. Plaintiff suggests that this case be identified as “RUCKER v POINTE MARIN ASSOCIATION II,” to avoid confusion with another case, Marin County Superior Court Case, RUCKER v POINTE MARIN ASSOCIATION, case No. CIV 2100262.

**III. JURISDICTION & VENUE**

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20. This court has jurisdiction over the claims alleged herein, under California Code of Civil Procedure section 410.10.

21. The Marin County Superior Court has jurisdiction over the Defendant Association because the Association manages a common interest development, which is located in the State of California, County of Marin.

22. Venue is proper in this Marin County, under the Code of Civil Procedure Section 395.5, because liability arises in this Marin County. The Defendant Association has committed the acts alleged herein in Marin County, and the Association is violating the rights of the Association’s members in Marin County.

**IV. PARTIES**

23. Plaintiff Catherine Rucker, an individual, is and at all times relevant herein was a member of the Association, due to her ownership of two “separate interest” properties within the common interest development that the Association manages. For example, the Plaintiff is the “Trustee” of the Trust that holds the two properties.

24. Defendant PMA is a non-profit mutual benefit corporation formed to manage the “Pointe Marin” common interest development, and the development is physically located in Novato, California, within Marin County.

25. Under Civil Code Section 5145(a), the Plaintiff, as a member of the PMA, has standing to bring civil actions for declaratory or equitable relief for violations by the PMA of the Davis-Stirling Act Article for “Member Election” in Civil Code Sections 5100-5145.

26. Under Corporations Code Section 7511(c), the Plaintiff, as a member of the PMA, and as a representative of the 19 signers of the Member Petition, has standing to request that the Marin Superior Court order the PMA to give the notice for a special meeting of the members for an election to fill all five PMA Director positions – because the

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PMA failed to provide such required notice within 20 days of its receipt of the Member Petition on July 7, 2023.

27. The Plaintiff is currently unaware of the true identities of DOES 1-10, inclusive, and will seek leave to amend her complaint when their true names, capacities, connections, and responsibilities are ascertained.

28. The Plaintiff is informed and believes, and on that basis alleges, that each of the Defendants is the agent, ostensible agent, alter ego, master, servant, trustor, trustee, employer, employee, representative, franchiser, franchisee, lessor, lessee, joint venturer, parent, subsidiary, affiliate, related entity, partner, or associate, or such similar capacity, of each of the other Defendants, and was at all times acting and performing, or failing to act or perform, within the course and scope of such similar capacities mentioned above, and with the authorization, consent, permission or ratification of each of the other Defendants, and is personally responsible in some manner for the acts and omissions of the other Defendants in proximately causing the violations and damages complained of herein, and have participated, directed, and have ostensibly or directly approved or ratified each of the acts or omissions of each of the other Defendants, as herein described.

**V. CAUSES OF ACTION**

**A. First Cause of Action**

(Against all defendants)

(Declaratory Relief that the Two PMA Director Positions That Are “Being Held By” Pat Eklund and Michael Christian expired in May 2023. ((Civ. C. § 5100(a)(2)

Plaintiff realleges and re-incorporates here all above allegations.

29. Civil Code Section 5100(a)(2) requires elections, “...at the expiration of the corresponding director’s term and at least once every four years.”

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30. Because section 6.3 of the PMA “Original Bylaws” provides that each director’s term is two years.

31. An actual controversy has arisen and now exists between the parties concerning their respective rights, duties, and obligations under Civil Code Sections 5100(a)(2) as applied under the PMA “Original Bylaws,” Section 6.3. Specifically, Plaintiff seeks a declaration that the two PMA Director positions, which Pat Eklund and Michael Christian were elected to on May 13, 2021, expired two years later, in May 2023.

**B. Second Cause of Action**

(Against all defendants)

(Request for Declaratory Relief That the PMA’s “Certification Statement” on the Nomination Form is “Unlawful.” (Civil C. § 5105(c).)

Plaintiff realleges and re-incorporates here all above allegations.

32. Under Civil Code Sections 5105(c), the Plaintiff requests that the court declare that the October 16, 2023, PMA “Nomination Application & Candidate Statement Form’s” (“Nomination Form”) “certification statement” is unlawful.

33. Civ. C. Section 5105 sets out the four reasons why an association may disqualify member nominees for director positions. But the certification statement that the PMA added to its Nomination Form is in excess of those four reasons – and so it is unlawful.

34. Here, an actual controversy has arisen and now exists between the parties concerning their respective rights, duties, and obligations under the nominee disqualification provisions of the Davis-Stirling Act. Plaintiff contends that the PMA Board cannot add a reason to disqualify nominees that was not specified under Civil Code Section 5105(c).

35. Plaintiff seeks a declaration that the PMA Nomination Form statement: “I also certify that I am not seeking or engaged in legal action against the Association and/or the Board of Directors and/or any individual Board Member” is unlawful.

1 **C. Third Cause of Action**

2 (Against all defendants)

3 (Request for Injunctive Relief to Stop the PMA’s Election That Excludes  
4 the Two Expired Director Positions. (Civil C. § 5100 (a) (2).)

5 Plaintiff realleges and re-incorporates here all above allegations.

6 36. Under Civil Code Section 5100(a)(2) and Section 6.3 of the PMA “Original Bylaws,”  
7 the Plaintiff requests equitable relief through an injunction to order the PMA Board to  
8 cease and desist from carrying out the election it provided notice to the members for  
9 on October 16, 2023, to fill only three of the five Director positions.

10 37. Plaintiff contends that the PMA Board is violating Civil Code Section 5100(a)(2) and  
11 Section 6.3 of the PMA “Original Bylaws” by excluding the two Director positions,  
12 that are “being held by” Pat Eklund and Michael Christian and that expired in May  
13 2023, from the currently-noticed election by instead holding an election to fill the  
14 other three Director positions, and that the PMA members have the right to the  
15 opportunity to replace each Director after each corresponding 2-year term has been  
16 completed – through a member election.

17 38. Plaintiff also contends that there will be irreparable harm to the members if the PMA  
18 is allowed to proceed with the February 8, 2024 election, to only fill three of the  
19 Director positions, because, in effect, the PMA is allowing Pat Eklund and Michael  
20 Christian to “hold over” in their Director positions for an unlimited amount of time –  
21 and is unlawfully excluding their two positions from *any and all* elections.

22 **D. Fourth Cause of Action**

23 (Against all defendants)

24 (Request for Injunctive Relief to Order the PMA to Hold an Election  
25 to Fill All Five Director Positions. (Corp. C. §§ 7510(e) & 7511(c); Civil C. § 5100 (a)(2).))

26 Plaintiff realleges and re-incorporates here all above allegations.  
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- 39. For the court to order the PMA to provide notice for and carry out a special membership meeting for an election to fill all five Director positions, as specified by the Member Petition.
- 40. Corporations Code section 7510(e) provides in relevant part, "... special meetings of members for any lawful purpose may be called by 5 percent or more of the members." (Corp. C. §7510 (e).)
- 41. Under Corp. C. section 7511(c), the PMA was required to provide notice for such a meeting within 20 days when the PMA Board received the Member Petition on July 7, 2023.
- 42. But the PMA did not provide a notice for an election to fill all five PMA Director positions within the 20-day period.
- 43. Plaintiff contends that the PMA is a non-profit mutual benefit corporation that manages the Pointe Marin Common Interest Development that is located in Novato, California; that the PMA received the Member Petition on July 7, 2023, to call a special membership meeting to hold an election to fill all five Director positions, with staggered terms; and that the PMA failed to provide notice to the members about such a special membership meeting and an election within 20 days after receipt of the Member Petition.
- 44. Because the PMA failed to comply with the July 7, 2023, Member Petition, after the PMA has been provided notice to give it an opportunity to be heard, the Marin Superior Court has statutory authority to summarily order the PMA to give notice of a "Special Membership Meeting" for an election to fill all five Director positions. In addition, to comply with the staggered term provisions in Section 6.3 of the PMA "Amended Bylaws," the court order should specify that three top vote-getting candidates shall be elected to 2-year terms, and the fourth and fifth vote-getting candidates shall be elected to 1-year terms.

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45. Furthermore, Corporations Code Section 7511(c) allows the court to issue detailed orders about the “Special Membership Meeting” for the election. For example, Section 7511(c) states: “The court may issue such orders as may be appropriate, including, without limitation, orders designating the time and place of the meeting, [...] and the form of notice.”

46. Further, the relevant parts of Corporations Code Section 7510(f) only allow a corporation to conduct a “meeting of members” entirely by Zoom if either: 1) all of the members consent, or 2) the board determines that a Zoom meeting would be necessary “because of an emergency.” But the PMA’s October 16, 2023, “Notice of Election and Call for Candidates” states that the February 8, 2024, “Annual Meeting of the Membership” will be “held via Zoom Teleconference to conduct an election...” Because the 342 sets of members have not consented and because there is no “emergency,” the PMA’s plan to hold a Member Meeting entirely by Zoom is unlawful.

47. Under Corporations Code Section 7511(c), the Marin Superior Court should order the PMA to hold the Special Membership Meeting, for an election to fill all five Director positions, at a physical location in Novato, California. In addition, to ensure that the PMA complies with the Corporations Code Section 7510(f) requirements to not have the Special Membership Meeting held entirely by Zoom and to hold the meeting at a physical location, the court should also order that the PMA shall hold the “Special Membership Meeting,” for an election to fill all five Director positions, at a physical location in Novato, California. Corp. C. §§ 7511(c) & 7510(f). For example, the City of Novato’s Parks, Recreation, & Community Services “Hamilton War Room” at 500 Palm Drive in Novato, California, would be an ideal location for the meeting because the PMA has held numerous meetings at that location.

48. Plaintiff also contends that irreparable harm to the members will only be avoided if the PMA is ordered to carry out an election to fill all five Director positions, with

1 staggered terms, so that the outstanding issue of the two expired Director positions  
2 will actually be resolved.

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5 **VI. PRAYER FOR RELIEF**

6 WHEREFORE, Plaintiff respectfully requests that this Court:

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8 **A. For the First Cause of Action**

9 1. Provide the requested relief by issuing a declaration that the two PMA Director  
10 positions, which Pat Eklund and Michael Christian were elected to on May 13, 2021, expired in  
11 May 2023.

12 **B. For the Second Cause of Action:**

13 2. Provide the requested relief by issuing a declaration that the PMA’s October 16, 2023  
14 “Nomination Application & Candidate Statement Form’s” “certification statement” is  
15 unlawful because it includes an additional reason for the PMA to disqualify nominees  
16 that Civil C. Section 5105(c) does not allow.

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18 **C. For the Third Cause of Action**

19 3. Provide the requested injunctive relief by issuing an Order for the PMA Board to  
20 cease and desist with the election it announced on October 16, 2023 – to fill only three of the PMA  
21 Director positions – because the election is unlawfully excluding the two Director positions that  
22 expired in May 2023, that are “being held by” Pat Eklund and Michael Christian, and because the  
23 October 16, 2023, PMA Nomination Form included an unlawful “certification statement.”

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25 **D. For the Fourth Cause of Action**

26 4. Provide the requested injunctive relief by “summarily” issuing an Order for the PMA  
27 to immediately give notice for an election to fill all five PMA Director positions, with  
28 staggered terms, and for the election to culminate in a “Special Membership Meeting”

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within 100 days of the initial notice, after the Association has been given notice and opportunity to be heard.

**E. As to All Causes of Action**

- 5. For reasonable attorney fees and court costs, under Civil C. Section 5145 (b).
- 6. For civil penalties of up to the maximum of \$500 per violation, as provided under Section 5145 (b).
- 7. Award such other and further relief as the Court may deem just and proper.

Respectfully submitted,

Dated: December 20, 2023

*Edward M. Teyssier*

By: \_\_\_\_\_

Edward M. Teyssier,  
Attorney for Plaintiff Catherine Rucker

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2 **VERIFICATION**

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4 I am the Plaintiff in the above-entitled action. I have read the foregoing complaint titled  
5 Catherine Rucker v Pointe Marin Association, II, and know its contents. The Facts stated in the  
6 complaint are true based on my own knowledge, except as to those matters stated on information  
7 and belief, and as to those matters, I believe them to be true.

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

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13 Dated: December 20, 2023

14 By: *Catherine Rucker*  
15 Catherine Rucker  
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