EDWARD M. TEYSSIER (SBN 234872)
Law Offices of Edward M. Teyssier
3200 Highland Avenue, 3d Fl, Suite 300
National City, CA 91950
Tel: (619) 274-6432
Email: edwardtlp@sbcglobal.net

Attorney for Plaintiff,
Catherine Rucker

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF MARIN

Catherine RUCKER, an individual,
Plaintiff,

vs.

POINTE MARIN ASSOCIATION, II, a non-profit mutual benefit corporation; DOES 1-10, inclusive,

Defendants,

Civil Limited Case №.: CV0001667

PLAINTIFF'S MOTION FOR ATTORNEY FEES & CIVIL PENALTIES

[Civil Code § 5145 (b)]

I/C Judge: Judge Mark A. Talamones
Courtroom: L

Hearing Date: 5/1/2026
Hearing Time: 1:30 p.m.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

TABLE OF AUTHORITIES (Continued)

Statutes

Other Authorities

I. INTRODUCTION

Plaintiff CATHERINE RUCKER ("Plaintiff") hereby files her motion for attorney fees, costs and civil penalties under article 4 ("Article 4") of chapter 6 of the Davis-Stirling Act (beginning with Civil Code section 5100, for "Member Elections"), after successfully accomplishing her litigation goals of forcing Defendant Association to end the election it was carrying out to fill only 3 of the 5 director positions and to instead carry out an election to fill all five of Association's director positions, with staggered terms; cease requiring a candidate "certification;" and caused other, specified corrections to Defendant's conduct of the election.

This motion comes after this Court mooted Defendant's Motion for Summary Judgment Or Alternatively Summary Adjudication ("MSJ"). In May 2025, Defendant filed its MSJ seeking to have this case dismissed on the grounds of mootness. Defendant contends, and Plaintiff agrees, that this case is moot because Plaintiff achieved all her litigation goals, and that, "[t]his Court can no longer grant the relief that Plaintiff seeks because the Board complied with Plaintiff's wishes …Any Court ruling would have no practical effect." (Rucker Decl., Exhibit 33, Def's Memo Pts & Auth. ISO PMA's MSJ/A, at 9:15-16.)

Plaintiff primarily brought this action to compel Defendant POINT MARIN ASSOCIATION ("PMA" or "Association" or "Defendant") to hold an election to fill all five Board of Director Seats, with staggered terms, that PMA cease the election to fill just three of the five positions that it had started in October 2023 and that it had planned to restart in December 2023, and that the Association cease attempting to disqualify candidates who had sued or were planning to sue PMA through a "certification" ("Certification") on the candidate nomination form. Plaintiff achieved these litigation goal when Association stopped using the certification statement on August 16, 2024, when, during the March 2024, board meeting, it decided to end the election to fill only three of the five director positions and to instead hold an election to fill all five director positions, with staggered terms. The election to fill all five positions was concluded on April 10, 2025.

All along the way to accomplishing these primary goals, she also accomplished several ancillary objectives as she successfully shepherded the Association towards carrying out an election that followed the requirements in the Davis-Stirling Act and PMA's bylaws.

II. STATEMENT OF FACTS

Since May 2021, The Association's Amended Bylaws require that it have a five-member Board of Directors ("Board") with annual elections for the purpose of allowing the membership to elect those directors. Prior to this lawsuit, there were there were only three directors and there had not been an "annual" election since May of 2021. The Amended Bylaws required PMA to carry out a second election in 2021 to fill the three vacant director positions. The Amended Bylaws also required annual elections in 2022, 2023, and 2024 – which did not occur. Instead, PMA's Board used temporary "appointments" to choose two directors – thereby trampling upon the members' right to choose their own directors through the required annual elections.

By June of 2023, PMA's Board had failed to hold the specified election to bring the number of directors from three to five. The Board had also failed to call and carry out the annual election for 2022. And after PMA had amended its election rules in June 2023, the Board refused to carry out, or call, or even announce an annual election for 2023. The two directors, whose terms had expired in May 2023, and one director who had been appointed in June 2023, were perpetuating their power by "holding over" by simply not calling any election. (Rucker Decl. ¶¶ 9, 12, 13, 14.) Because if that previous board with three directors simply did not call for elections, the three directors would not have to share their power with other directors or have to face the membership to retain their seats by running for their own re-election and risk losing.

In June 2023, Plaintiff, a member of PMA who was frustrated with both the overbearing rules and fines being created by the then 2-member board and their failure to call for any elections, circulated a petition, as authorized under Corporations Code section 7510 (e), demanding that a special meeting of the members be called for an election for all five authorized director seats, with staggered terms. That member-signed petition ("Petition") was served on PMA in July, 2023. (Rucker Decl. ¶15; Exh. 3.)

Rather than schedule the special membership meeting for an election for all five seats as demanded by the petition and as required by statutes as well as PMA's own Amended Bylaws and Election Rules, the Board side stepped the entire issue by instead calling a special membership meeting, in August 2023, for the members to pass a resolution for a two-seat election (i.e., so that the two incumbent directors would not have to stand for re-election, yet would remain in power). (Rucker Decl. ¶¶ 17, 19, 20, 21, 23, 24, Exhibit 4.) Due to a lack of quorum, that meeting was reconvened. At the reconvened meeting, quorum was still not achieved. Rucker Dec. ¶27.)

Because the Board was ignoring the Petition, on August 10, 2023, Plaintiff requested ADR as a precursor to filing a lawsuit, as required under Civil Code section 5930. (Rucker Decl. ¶ 25) As part of that request, she reasonably specified no-cost mediation, as provided by the Marin County District Attorney's Office, thereby offering mediation at cost to either herself or to PMA. (Rucker Decl. Exhibit 5.)

Plaintiff's ADR request was served on August 10, 2023, with a deadline for acceptance 30 days later, on September 9, 2023. But her ADR request was not timely accepted and so, by law, was considered rejected. (See § 5935 (c)[1], Rucker Decl. ¶¶ 28,31.) PMA did other things showing it had no intent to engage in ADR with the intent of compromise. Even before the deadline to respond to Plaintiff's ADR request, Association had already filed a claim on its directors and officers (D&O) insurance policy, indicating it was planning on litigating rather than mediating. (Rucker Decl. ¶29, Exhibit 6, ¶33, Exhibit 29.) On September 16, 2023, Association's counsel counter-offered with its own terms for ADR. Not only was Association's counter-offer a rejection of Rucker's offer of ADR, it was too late, and it was also unreasonable because, if accepted, would have required Rucker spend a 50 percent share of the cost for expensive private mediation – with no guarantee there would be any settlement, or even that Association would negotiate in good faith. (Rucker Decl. ¶¶27, 34, 35, 36, exhibits 7, 8) But even though Association had rejected Plaintiff's offer of ADR she did not file a lawsuit right away. Thereby allowing additional time for PMA board to

[1] Statutory references are to the Civil Code unless otherwise specified.

comply with the request of the Petition (See, date of Complaint, filed on 12/21/23, which is well after ADR deadline; Rucker Decl. ¶9.)

Even though counsel for PMA was purporting to offer their own version of ADR, with exorbitantly-priced mediation, PMA had incongruently forged ahead with its position to commence a three-seat election, thereby ignoring the Member Petition for all five seats, with staggered terms. and also allowing the two incumbent directors to further extend their already expired terms. (Rucker Dec. ¶¶ 42-45, Exhibits 9,10). Also, the Board had inserted an additional qualification for prospective candidates. PMA's October 2023 Nomination Application & Candidate Statement Form (aka, the previously identified "Certification") which required the prospective candidate to sign the following statement: "I also certify that I am not seeking or engaged in legal action against the Association and/or Board of Directors and/or any individual Board Member." (Rucker Decl. Exhibit 11;) Because Rucker was the only person who had previously sued PMA for unlawful election rules and appeared to be considering litigation, this statement was obviously directed at Plaintiff, in a blatant discriminatory attempt to single her out and disqualify her from being a candidate in the election.

By November 2023, Plaintiff and her attorney realized that attempting or waiting for informal resolution as to Petition's demand for a five seat election was pointless. For example, in August and September 2023, PMA had held and reconvened a "special membership meeting" about whether there should be an election to fill only 2 of the 5 director positions; on September 26, 2023, PMA rejected Plaintiff's offer to mediate by making a counter-offer to use private mediators and to split the cost 50/50. Not only did the required mediation costs make that offer an empty gesture, but even previous to purporting to offer to mediate PMA had already filed a claim on its Directors & Officers insurance policy, indicating it was intending to litigate in any event. (Rucker Decl at. ¶¶29,30,31,Ex. 6, 29.); Meanwhile, PMA was also proceeding to conduct a 3-seat election, in direct conflict with the Petition's demand for a five-seat election with staggered terms; PMA's call for candidates for that election included the unlawful "Certification" as part of the nomination form –

solely for the purpose of disqualifying Plaintiff. [2] (Rucker Decl. ¶ 48.) Rucker's attorney responded to PMA's mediation offer by saying, "…if the parties are willing then the parties can work out their differences between themselves. No mediator is needed." (Rucker Decl. ¶42,43, Ex.(9). Then PMA's attorney declined, by saying, "As we explained in our September 27, 2023 letter, Ms. Rucker's demand of electing all five directors in a single election is not permitted by the Bylaws…". (Rucker Dec. ¶ 44, Exhibit 10). In other words, they were never intending to agree to Plaintiff's Petition and, apparently, their intent in proposing expensive mediation was to forestall litigation while driving up Plaintiff's costs. Even at its December 2023 meeting the Board was still going ahead with a 3- seat election. (Rucker Dec. ¶45, Exhibit 12.)

With all her attempts at informal resolution having failed, and after allowing over four months for PMA to accept her 8/10/23 offer to mediate through the Marin DA's no-cost mediation program, Plaintiff filed her lawsuit on 12/21/23. In addition to a five-seat election, she also sought declaratory relief that the Certification was unlawful under Civil Code section 5105 (c). That section prohibits an association from excluding prospective nominees for any but four specified reasons. The Certification was an unlawful fifth exclusion. (See, Complaint.)

Unexpectedly, in February, and with their client now under litigation, opposing attorneys emailed an offer of settlement that included proposing to a five-seat election and also retracting the offending Candidate Statement. But that's all it was…it was not an offer. It wasn't an agreement. (Rucker Decl. ¶ 48, 49, 50, 51).

By March, 2024, the Board had voted to hold a five-seat election and to hire Pro-Elections as its Inspector of Elections. (Rucker Decl. ¶52, 53, Exhibit 13.) But by April, and after a contract with Pro-Elections had been signed, it became apparent to Plaintiff that Pro-Elections wasn't qualified to be an inspector of elections because it could not conduct the in-person meeting required by Civil Code section 5125. (Rucker Decl. ¶¶ 54, 55, 56, 57, 58, 59, Exh. 14,15.)

It was the end of July, 2024, before PMA Board got around to finding another inspector. (Rucker Decl. ¶ 62, Exhibit 17.) Even though Plaintiff found suggested an Inspector that appeared

[2] Plaintiff was the apparent target of the Certification because she had previously sued to force corrections to the multiple violations of the Davis-Stirling Act in its Election Operating Rules. See, *Rucker v Pointe Marin Association*, Marin Superior Ct CV21-000162.

to be qualified, right away. (Rucker Decl. ¶¶ 60, 61, Exhibit 16.) But PMA did not interview nor apparently even consider Plaintiff's suggestion and instead contracted with another HOA inspector firm they'd found. As explained more fully below, this new Inspector ("AIOE" or "Mr. Shabber") turned out to not any more qualified than Pro Elections.

On or about August 8, 2024 PMA sent notices for an election for all five seats, to be held December 30, 2024. But along with that notice, PMA again imposed its Certification as a qualification for any prospective candidates. (Rucker Decl. ¶¶ 64, 65, 66, Exhibit 18.)

The offending Certification had been removed when the notices were re-sent later that same month, on or about August 16, 2024. (Rucker Decl.¶ 67, Exhibit 19.) But even with that correction, and even though it appeared, at that point, that Association was finally on the way to a legitimate five-seat election, there still followed a whole litany of mis-steps made by the PMA board that were violative of various Article 4 statutes, and even PMA's own Bylaws.

For example: PMA provided notice to the members that the property manager would collect the completed ballots; that the election would be in Sausalito instead of "as close as possible" to the development in Novato, as required by the Bylaws; stating an incorrect quorum requirement; Not including the election Rules, or even an Internet link to them, in the Notice; Not timely sending notice of the reconvened meeting. Plaintiff objected to each of these mis-steps. And after a letter or email from Plaintiff's attorney, PMA ultimately corrected each one. Each one was easily avoidable, and each one caused the election to be further delayed. Rucker Decl. ¶¶ 69, 70, 71, 72, 73, 80,81,82, Exhibits 20, 21, 22, 23, 24, 25, 27,28.)

Finally, after Plaintiff necessarily intervened these several times to ensure that the election was being carried out properly, the election concluded on April 10th, 2025. (Rucker Decl. ¶85.)

But even after the election was concluded, Plaintiff had to intervene yet again. On April 22, 2024, PMA's Inspector of Election, Mr. Shabber, provided the election results to the members. In the notice, Mr. Shabber incorrectly stated that the election had been carried out pursuant to Civil Code Section 5103, which is about "election by acclamation." Plaintiff's attorney, yet again, notified PMA about this error. On May 2, 2024, Mr. Shabber issued a corrected notice with the election results. (Rucker Decl. ¶¶86, 87, 88, 89; Exhibit 30.)

After successfully achieving her litigation objectives by causing PMA to stop its plans to carry out an election to only fill 3 of the 5 director positions, to stop using its "Certification" to disqualify candidates who had sued or were planning to sue PMA, and to carry out and election to fill all five seats, with staggered terms, and having successfully caused Defendant's corrections, Plaintiff now brings this motion for summary judgement seeking her costs, attorney fees, and civil penalties, pursuant to section 5145 (b).

III. LEGAL ARGUMENT

A. Plaintiff is Entitled to her Costs And Attorney Fees

As a matter of law, Plaintiff is entitled to an award of her reasonable attorney fees, costs, and civil penalties under Civil Code section 5145 (b).

Under the "American Rule," each party to an action must pay its own attorney fees unless a statute or contract requires the opposing part to pay them. (Civil Code § 5145 (b); *Tract 19051 Homeowners Assn. v. Kempt* (2015) 60 Cal 4th 1135, 1142.) No contractual attorney fee provision is at issue here. Rather, Plaintiff seeks recovery of her attorney fees and costs as provided under the statute.

Article 4 dictates the requirements for the conduct of homeowner association elections. The statutes of Article 4 are a recodification of part of Senate Bill 61, (2005-2006 Reg. Sess.), that sought to "provide substantial new voting protections" to members of homeowner associations designed to "guarantee that basic democratic principles are in place during elections," which had previously been "contaminated by manipulation, oppression and intimidation of members, as well as outright fraud" (Assem. Com. On Judiciary, Analysis of Sen. Bill 61 (2005-2006 Reg. Sess.) as amended Apr. 12, 2005, pp. 1-2.) It is thus remedial in nature. "A statute which is remedial in nature and in the public interest is to be liberally construed to the end of fostering its objectives … . "The rule of law in the construction of remedial statutes requires great liberality, and wherever the meaning is doubtful, it must be so construed as to extend the remedy." (see, *Wittenburg v Beachwalk HOA,* (2013) 217 Cal App 4th 654, 666, citing *People ex rel. Dept. of Transportation v. Muller* (1984) 36 Cal. 3d 263, 269.)

In order to encourage member enforcement, the Legislature also provides an asymmetric attorney fee provision in section 5145 (which is part of Article 4):

> "A member who prevails in a civil action to enforce the member's rights pursuant to [Article 4] **shall** be entitled to reasonable attorney's fees and court costs, and the court may impose a civil penalty of up to five hundred dollars ($500) for each violation, except that each identical violation shall be subject to only one penalty if the violation affects each member of the association equally. A prevailing association shall not recover any costs, unless the court finds the action to be frivolous, unreasonable, or without foundation." (§5145 (b), emph. added.)

The use of the word "shall," means that an award of attorney fees to the prevailing party is mandatory. The statement of Civil Code section 5145 that the member who prevails, …shall be entitled to reasonable attorney's fees and court costs…", connotes the legislature's mandatory intent. In a 1995 case, this was explained:

> "The words "shall be [[entitled]] reflect a legislative intent that [the prevailing party] receive attorney fees as a matter of right (and that the trial court is therefore obligated to award attorney fees) whenever the statutory conditions have been satisfied." (*Hsu v. Abbara* (1995) 9 Cal.4th 863, 872 [39 Cal.Rptr.2d 824, 891 P.2d 804], double bracketed item added.]

As the fee shifting provision of section 5145 is mandatory, the only remaining issue as to her entitlement to fees is the determination of Plaintiff as the "prevailing party."

B. Plaintiff Rucker is the Prevailing Party Because, "On a Practical Level," She Achieved Her Main Litigation Objectives.

1. Plaintiff prevailed under the Rancho Mirage standard

The objective of Plaintiff's enforcement action, including the prelitigation ADR process, is reasonably characterized broadly as seeking to force Defendant Association to properly "carry out"[3] an election for all five director positions, with staggered terms. She is the prevailing party, even without a final judgment, because she was successful in achieving that goal:

> "The analysis of who is a prevailing party under the fee-shifting provisions of the [Davis-Stirling] Act focuses on who prevailed 'on a practical level' by achieving [her] main litigation objectives…" *Rancho Mirage Country Club Homeowners Assn. v Hazelback* (2016) 2 Cal. App. 5th 252, 259-260) ("*Rancho Mirage*").

[3] See, Complaint, ¶¶ 39, 48: Plaintiff sought, "…the court to order the PMA to provide notice for and "**carry out**"… an election to fill all five Director positions, as specified by …Petition." Id at ¶39.

In *Rancho Mirage*, the court awarded fees and costs to the prevailing party absent a ruling as to the merits of the causes of action. In that case, the plaintiff association sued when the defendant homeowners failed to comply with their written agreement previously made during alternative dispute resolution proceedings. During the course of the litigation, and before there was a judgment, the homeowners caused the lawsuit to become effectively moot by correcting the architectural issues that precipitated the lawsuit. "Because the Association achieved that main litigation objective, it was properly considered to have prevailed in the action as a practical matter, even though the only judgment resulting from the case related to the award of fees and costs, not the merits of the complaint." (*Rancho Mirage Country Club HOA v Hazelbaker* (2016) 2 Cal.App.5th 252 ("*Rancho Mirage*"), at 262, italics added.)

Here, as in *Rancho Mirage*, the underlying causes of action were mooted before there was judgment on the merits of the complaint. Similarly to *Rancho Mirage*, during the course of litigation and before there was a judgment, the Defendant in this case caused the lawsuit to become effectively moot by correcting the election issues that precipitated the lawsuit. Here, as in *Rancho Mirage*, Plaintiff is the prevailing party even though her causes of action have been deemed moot, because, she prevailed on a practical level by forcing Association to "carry out" an election to fill all 5 director positions, with staggered terms, sans requirement for Certification.

2. Plaintiff Prevailed under the *Champir, LLC* Standard

In *Champir, LLC v Fairbanks Ranch*, plaintiffs were awarded attorney fees and costs even without a final judgment on the merits. That court held,

> "The [Davis-Stirling Act ("Act")] does not define "prevailing party." However, it is well established that "[t]he analysis of who is a prevailing party under the fee-shifting provisions of the Act focuses on who prevailed `on a practical level' by achieving its main litigation objectives." [citation]; [citation]; see *Villa De Las Palmas Homeowners Assn. v. Terifaj* (2004) 33 Cal.4th 73, 94 [14 Cal.Rptr.3d 67, 90 P.3d 1223] (*Villa De Las Palmas*) [affirming trial court's determination that an association was the prevailing party because "[o]n a `practical level' [citation], [it] `achieved its main litigation objective'"]; *Almanor Lakeside Villas Owners Assn. v. Carson* (2016) 246 Cal.App.4th 761, 773 [201 Cal.Rptr.3d 268] (Almanor) ["[T]he test for prevailing party is a pragmatic one, namely whether a party prevailed on a practical level by achieving its main litigation objectives."].)" (*Champir, LLC v Fairbanks Ranch Association* (2021), 66 Cal.App.5th 583, at 590, ("*Champir*").)

The *Champir* plaintiffs sought to force their association to comply with a bylaw requiring an

election and an affirmative vote before the placing of a signal light on or near their property. Before there was a judgment on the merits, these issues were mooted by the Association voluntarily holding the election and receiving the required membership approval. Even without a judgment on the merits, and even though the plaintiffs failed to prevent the installation of the traffic light, the C*hampir* court nevertheless upheld the lower court's award to plaintiff homeowners their attorney fees on the ground that they achieved their primary litigation objective by having the defendant association carry out the election. (*Champer*, Id., at 595.)

The facts with *Champir* are completely analogous to the facts in this case. Here, Plaintiff, as did the Plaintiffs in *Champir*, sought to enforce their association to conduct an election according to legally enforceable mandates. (Here, Plaintiff's Complaint seeks to enforce the election provisions of Article 4 of the Davis-Stirling Act. While in *Champir*, plaintiffs sought to enforce the rules of their association regarding the conduct of their elections.)

The plaintiffs in *Champir* were awarded their fees and costs even though they did not accomplish their "litigation dream"[4] goal of preventing the installation of the traffic light. Rather they only accomplished their stated *litigation* goal of forcing an election. The plaintiffs in *Champir*, were found to have prevailed because their litigation achieved getting Association to carry out a lawful election.

Here, Plaintiff prevailed because she achieved her litigation goal to get Association to correct its various election misconducts and to finally "carry out" an election for all five seats, with staggered terms. Here, as in both *Rancho Mirage*, and *Champir*, Plaintiff is the prevailing party because she prevailed on a practical level by achieving her main litigation objectives.

3. It is Undisputed Plaintiff Achieved All her Litigation Objectives.

Prior to Plaintiff's filing of this instant Plaintiff's Motion for Attorney Fees, Defendant Pointe Marin Association filed its Motion for Summary Judgement/Adjudication, arguing that this case is moot because, due to "changed circumstances," the Court can no longer give any effective relief, and/or, "…any ruling by this court can have no practical impact or provide the parties effectual relief." (See, Rucker Decl. Exhibit 33, "Memorandum of Points and Authorities in

[4] Refers to *Champir*, at 596: Plaintiff's "prevailed" even though traffic light was still installed.

Support of Defendant Point Marin Association's Motion for Summary Judgment or in the Alternative, Summary Adjudication," or simply, "Def's MPA," at 7:23.5-24.5; 9:1-2)

In those moving papers, Defendant flat-out concedes, "[t]his Court can no longer grant the relief that Plaintiff seeks because the Board complied with Plaintiff's wishes and a new board has been elected. Any Court ruling would have no practical effect." (Ex. 33, Def's MPA at 9:14-16.)

Plaintiff's First COA sought declarations that the terms for directors Eklund and Christian had expired in May of 2023 and that PMA had violated Civil Code section 5100(a)(2), for failing to hold an election when the terms expired. Defendant admits Plaintiff succeeded as to this COA, Defendant writes, "[t]he Board agreed that these positions were expired and acted accordingly." (Rucker Decl, Ex. 33, Def's MPA for MSJ/A, at 8:8.) Hence, it is undisputed that Plaintiff completely prevailed as to her First COA.

Plaintiff's Second COA sought a declaration that the Certification PMA was requiring candidates to sign in its October 16, 2023, "Nomination Application & Candidate Statement Form" was unlawful under section 5105 (c). On August 8, 2024, PMA used the same unlawful Certification. It is undisputed that after the second time Plaintiff challenged this requirement, Defendant removed the unlawful Certification from the August 26, 2024, "Nomination Application & Candidate Statement Form." (Rucker Decl. Ex. 33, Def's MPA at 8:13-19.)

Plaintiff's Third COA sought an injunction to stop PMA from conducting an election that would have only filled three of the five director positions. Defendant admits that, "[n]ew directors have been appointed and the relief sought by Plaintiff has been granted, without court intervention." (Def's MPA for MSJ/A, at 9:9-10, emph. added.) Note: The term "appointed," as used by the Defendant is incorrect. This is because all five directors were "elected" by the members, in a formal election, with secret ballots. Nonetheless, Defendant inadvertently admits that Plaintiff completely prevailed as to her Third COA. In addition, during the March 2024 Board meeting, when the Board decided to hold an election to fill all 5 director positions, with staggered terms, it effectively ended the election to fill only 3 of the 5 director positions that it had decided upon during the December 2023 Board meeting.

Plaintiff's Fourth COA sought an injunction for an election to fill all five director seats, with staggered terms. PMA commenced such an election on August 26, 2024, when it issued its corrected "call for candidates notice," and the member election was concluded on April 10, 2025. Again, Defendant concedes that Plaintiff got what she asked for: "This Court can no longer grant the relief that Plaintiff seeks because the Board complied with Plaintiff's wishes and a new Board has been elected." (op. cit. at 9:14-15.) Plaintiff prevailed, "on a practical level" as to her Fourth COA.

Plaintiff is the prevailing party because, on at least a "practical level" if not completely, Plaintiff got everything she sought in her Complaint. Furthermore, she was also able to get Defendant to make multiple corrections to the legal errors it introduced during the election process Among other things, Defendant attempted to hold an entirely remote election (which was not warranted given that Covid-19 state of emergency has long since subsided) ; attempted to hold the in-person meeting in Sausalito, when PMA Amended Bylaws require that the membership meeting for the election is required to be held in Novato (i.e, "as close as possible" to the development); attempted to have the property manager, instead of the legally required IOE, collect and safeguard completed ballots; stated an incorrect quorum amount; and issued a notice for the election results that inferred that the election had been held "by acclamation," when it had not been (there were 6 candidates for 5 positions, and the election involved secret ballots).

Hence, by the *Rancho Mirage*, and *Champir* standard of "practical level" as applied to Civil Code section 5145 (b), Plaintiff is the prevailing party because on a practical level, she accomplished all her main litigation goal, to cause PMA to "carry out" a lawfully conducted election.

C. Plaintiff Is Entitled to An Award For Her Entirety of Attorney's Fees Incurred Throughout the Litigation, As Those Fees are Reasonable.

"The fee setting inquiry in California ordinarily begins with the 'lodestar', i.e., the number of hours reasonably expended multiplied by the reasonable hourly rate prevailing in the community for similar work." (*Ketchum v Moses* (2001) 24 Cal. 4th 1122, 1136, ("Ketchum".) The starting point for calculating attorneys' fees begins with prelitigation ADR. Since ADR mandated by the

Davis-Stirling Act it is the start of litigation. (*Grossman v. Park Fort Washington Ass'n* (2012) 212 Cal App 4th 1128, at 1134.)

As of December 31, 2025, Plaintiff's counsel reasonably spent 275.9 hours in prosecuting this case on its merits. Going forward, he anticipates another 34.6 hours prosecuting and defending Plaintiff's claims for fees, costs and penalties, including this instant motion, as shown on his hours/fees spreadsheet. (Teyssier Decl. Ex. 1.) Plaintiff claims an "unadorned" fee award of (275.9 + 34.6) hours x $450/hour = $139,725.00.

That Teyssier's claimed hourly rate of $450 per hour is reasonable and consistent with the rates of skilled HOA attorneys in the San Franciso Bay Area, and perhaps even a bit low, is beyond the opposition's reasonable dispute, because it is supported by the memorandum of points and authorities referencing the declarations of some of these same attorneys from the same law firm as Defendant's in another HOA action, and which attorneys have less experience than Teyssier, and yet are charging higher hourly rates. (Teyssier Decl. ¶¶__, Ex. 2, Pacific Ridge Neighborhood HOA's fee motion in San Diego Sup. Ct. Case 37-2023-00050446, 9:1-15.)

D. Plaintiff Is Entitled To A Fee Multiplier of 1.5

"""The amount of attorney fees awarded pursuant to the lodestar adjustment method may be increased or decreased. The purpose of such adjustment is to fix a fee at the fair market value for the particular action. In effect, the court determines, retrospectively, whether the litigation involved a contingent risk or required extraordinary legal skill justifying augmentation of the unadorned lodestar in order to approximate the fair market value of professional services rendered in his court, and while his judgment is of course subject to review, it will not be disturbed unless the appellate court is convinced that it is clearly wrong."""" Such an adjustment is commonly referred to as a "fee enhancement" or "multiplier." (*Ketchum*, Id., at 1132.)

The Supreme Court has "set forth a number of factors the trial court may consider in adjusting the lodestar figure. These include: `(1) the novelty and difficulty of the questions involved, and the skill displayed in presenting them; (2) the extent to which the nature of the litigation precluded other employment by the attorneys; [and] (3) the contingent nature of the fee award, both from the point of view of eventual victory on the merits and the point of view of

establishing eligibility for an award.'" (*Press v. Lucky Stores, Inc.* (1983) 34 Cal.3d 311, 321-324 [193 Cal.Rptr. 900, 667 P.2d 704]; fn. 12.)

All of these factors are present here: 1.) The difficulty of the questions and skill of Plaintiff's attorney is evident because, even PMA's attorneys were not cognizant of the mis-steps by either their client or its Inspector, until such was brought to their attention by Plaintiff; 2.) That this litigation precluded Plaintiff's attorney from other employment is evident by the number of hours logged; 3.) Plaintiff hired her attorney on contingent fee basis. (Rucker Decl. ¶__ Hence, her attorney's fees were entirely at risk.

In accord with the holding in *Pelligrino v Robert Half Int'l, Inc.,* (2010) 182 Cal. App. 4th 278, at 296, Plaintiff has separated her attorney hours incurred on the merits of this litigation (i.e., 275.9 hours), from her actual and anticipated attorney hours for enforcing her fee and cost motion (i.e., 34.6 hours), and only requests the 1.5 multiplier as to those former hours. Assuming this Court grants the 1.5 multiplier, Plaintiff's total fee award would be:

[(275.9 hours x 1.5) + (34.6 hours)] x $450./hour = $201,802.50 //

E. Plaintiff Also Entitled to $3,000 in Civil Penalties

Plaintiff is undoubtedly entitled to her fees. But, also as a matter of the public policy embodied in section 5145 (b), Defendant and its legal counsel need to know that flagrant violations of Article 4 have consequences. Civil Code section 5145 (b) provides this Court may award a civil penalty of $500 *for each* violation of an Article 4 violation. (See, Civ. C. §5145 (b).)

As to the First COA, Plaintiff is entitled to a total amount $1,000 (i.e., twice $500) because the 2-year terms for Directors Pat Eklund and Michael Christian had expired in May 2023, and PMA, and filed to carry out an annual election in 2024, and failed to actually put those two positions up for election until the subject election in April 10, 2025. Those two Directors effectively doubled their own 2-year terms into 4-year terms. (PMA's Board, i.e., Eklund and Christian, unlawfully and egregiously "held over" in their expired positions an additional *two years*, from May 2023 until April 10, 2025.)

As to her Second COA, Plaintiff is also entitled to $1,000 in civil penalties (i.e., $500 per violation), for the Board's imposing the unlawful Certification in the "Nomination Application &

Candidate Statement Form" on October 16, 2023, and doing it again on August 8, 2024. Its sole purpose, apparently, was to keep Plaintiff Catherine Rucker from running for a seat on the Board as she was the only person who had already sued the Association.[5]

Each time Plaintiff and her attorney objected to the Board imposition of this requirement. Plaintiff prevailed because on August 16, 2024, PMA issued a corrected nomination form, which did not include the Certification.

Plaintiff is also entitled to a civil penalty of $500 as to her Third COA—for injunctive relief to stop the election for three directors instead of the five directors as requested by Plaintiff, because ' Board ended that election when it decided to hold an election to fill all 5 director positions on March 13, 2024.

As to her Fourth COA—for injunctive relief to order an election for all five director positions—Plaintiff is also entitled to a civil penalty of $500 because on April 10, 2025, PMA completed the member election for 2025 to fill all 5 director positions, with staggered terms.

Therefore, Plaintiff is entitled for up to $3,000 in civil penalties. Viz: $1,000 + $1,000, + $500 + $500 = $3,000.

IV. CONCLUSION

In summary, Plaintiff requests a 1.5 multiplier applied to her fees (because of the contingent nature of her attorney's fee arrangement) for $201,802.50, and $3,000.00 in civil penalties.

Plaintiff is entitled to these attorney fees and civil penalties under section 5145 (b) because she brought this case to enforce the provisions of Article 4 and, under the *Rancho Mirage* case standard, she is the prevailing party because, on a practical level, she accomplished her litigation goals, of a lawful election, thereby benefiting the entire PMA membership.

DATED: January 29, 2026

Law Offices of Edward M. Teyssier

Edward M. Teyssier

Edward M. Teyssier,
Attorney for Plaintiff, Catherine Rucker

[5] Plaintiff had previously filed Marin Sup. Ct Case CIV21-000162 on January 7, 2021 (for invalid election rules) and again, with the instant litigation, on December 21, 2023 (Board's failure to hold elections).