

FILED

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

JUN 29 2021
MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

ROBERT J. KULICK, DBA Leisure Village
News,

Plaintiff-Appellant,

v.

LEISURE VILLAGE ASSOCIATION,
INC., a Senior Retirement Community
Homeowner Association, official capacity;
et al.,

Defendants-Appellees.

No. 20-56059

D.C. No. 2:20-cv-06079-DSF-PVC

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Dale S. Fischer, District Judge, Presiding

Submitted June 21, 2021**

Before: SILVERMAN, WATFORD, and BENNETT, Circuit Judges.

Robert J. Kulick appeals pro se from the district court's judgment dismissing his 42 U.S.C. § 1983 action alleging First Amendment violations. We have

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See Fed. R. App. P. 34(a)(2).*

jurisdiction under 28 U.S.C. § 1291. We review de novo a district court’s dismissal for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6). *Sheppard v. David Evans & Assoc.*, 694 F.3d 1045, 1048 (9th Cir. 2012). We affirm.

The district court properly dismissed Kulick’s action because Kulick failed to allege facts sufficient to establish that any defendant was acting under color of state law. *See West v. Atkins*, 487 U.S. 42, 48 (1988) (“To state a claim under § 1983, a plaintiff must . . . show that the alleged deprivation was committed by a person acting under color of state law.”); *Kirtley v. Rainey*, 326 F.3d 1088, 1092 (9th Cir. 2003) (identifying circumstances under which a private party may be said to be acting under color of state law); *see also Polk County v. Dodson*, 454 U.S. 312, 317-19, 325 (1981) (a private attorney or a public defender does not act under color of state law within the meaning of § 1983)); *Hudgens v. NLRB*, 424 U.S. 507, 519 (1976) (requiring a private party to perform “the full spectrum of municipal powers and [stand] in the shoes of the State” to be considered a state actor under the public function test).

We do not consider matters not specifically and distinctly raised and argued in the opening brief, or arguments and allegations raised for the first time on appeal. *See Padgett v. Wright*, 587 F.3d 983, 985 n.2 (9th Cir. 2009).

Kulick’s motion for this court to review arguments he made in three prior

cases (Docket Entry No. 7) is granted.

AFFIRMED.

R 10/1/21

FILED

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UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

ROBERT J. KULICK, DBA Leisure Village
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Plaintiff-Appellant,

v.

LEISURE VILLAGE ASSOCIATION,
INC., a Senior Retirement Community
Homeowner Association, official capacity;
et al.,

Defendants-Appellees.

No. 20-56059

D.C. No. 2:20-cv-06079-DSF-PVC
Central District of California,
Los Angeles

ORDER

Before: SILVERMAN, WATFORD, and BENNETT, Circuit Judges.

Kulick's petition for panel rehearing (Docket Entry No. 10) and motion for additional arguments (Docket Entry No. 11) are denied.

No further filings will be entertained in this closed case.

5.45.2., EXHIBIT B, 5. of 5.

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8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**

10
11 ROBERT J. KULICK,
12 Plaintiff,
13 v.
14 LEISURE VILLAGE ASSOCIATION,
15 INC., et al.,
16 Defendants.

Case No. CV 20-6079 DSF (PVC)

**ORDER ACCEPTING FINDINGS,
CONCLUSIONS AND
RECOMMENDATIONS OF UNITED
STATES MAGISTRATE JUDGE**

17
18 Pursuant to 28 U.S.C. § 636, the Court has reviewed the Complaint, all the records
19 and files herein, the Report and Recommendation of the United States Magistrate Judge,
20 and Plaintiff's Objections. After having made a *de novo* determination of the portions of
21 the Report and Recommendation to which Objections were directed, the Court concurs
22 with and accepts the findings and conclusions of the Magistrate Judge.

23
24 IT IS ORDERED that the Complaint is dismissed and Judgment shall be entered
25 dismissing this action without prejudice for lack of jurisdiction.

26 \\

27 \\

28 \\

1 IT IS FURTHER ORDERED that the Clerk serve copies of this Order and the
2 Judgment herein on Plaintiff at his current address of record.

3
4 LET JUDGMENT BE ENTERED ACCORDINGLY.

5 DATED: September 24, 2020


6 Honorable Dale S. Fischer
7 UNITED STATES DISTRICT JUDGE

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

ROBERT J. KULICK,

Plaintiff,

v.

LEISURE VILLAGE ASSOCIATION,
INC., et al.,

Defendants.

Case No. CV 20-6079 DSF (PVC)

**REPORT AND RECOMMENDATION
OF UNITED STATES MAGISTRATE
JUDGE**

This Report and Recommendation is submitted to the Honorable Dale S. Fischer,
United States District Judge, pursuant to 28 U.S.C. § 636 and General Order 05-07 of the
United States District Court for the Central District of California.

I.

INTRODUCTION

On July 6, 2020, Plaintiff Robert J. Kulick, a California resident proceeding *pro se*,
filed a civil rights complaint pursuant to 42 U.S.C. § 1983. (“Complaint,” Dkt. No. 1).
Plaintiff is a resident and owner of a unit at Leisure Village Association (“LVA”), a

1 residential community located in Camarillo, California. (*Id.* at 10). Plaintiff is the editor
2 and publisher of Leisure Village News, a community newsletter for LVA residents. (*Id.* at
3 10–11). In the Complaint, Plaintiff sues Leisure Village Association, Inc., the general
4 manager of LVA, the directors of the board of directors of LVA, and the law firm and
5 attorneys representing LVA, for selectively imposing a fine on Plaintiff’s publication. (*Id.*
6 at 10–12). Plaintiff claims that the fine stifled his “First Amendment right to free speech
7 and press.” (*Id.* at 12).

8

9 On August 7, 2020, the Court issued an Order to Show Cause Why Plaintiff’s
10 Complaint Should Not Be Dismissed Because His Claim Is Not A Cognizable Civil
11 Rights Claim Under 42 U.S.C. § 1983. (“OSC,” Dkt. No. 5). The Court informed
12 Plaintiff that he could discharge the OSC by filing a declaration, signed under penalty of
13 perjury, explaining why this action is not barred. (*Id.* at 3). Plaintiff filed a response to
14 the OSC on August 11, 2020. (“OSC response,” Dkt. No. 7). In the response, Plaintiff
15 contended that LVA is a state actor and thus renders his civil rights claim cognizable
16 under section 1983. (OSC response at 1). According to Plaintiff, LVA is a homeowners’
17 association (“HOA”), which, as a “common interest development,” is recognized as a
18 state actor under California law according to California Attorney General Opinion No. 07-
19 804. (*Id.*). In a separate filing accompanying his OSC response, Plaintiff also requested a
20 copy of a blank notice of dismissal in the event that the Court disagreed with his
21 contention that a homeowner’s association and its agents qualify as state actors. (Dkt. No.
22 6). The Court granted the request on August 19, 2020. (Dkt. No. 8). On August 23,
23 2020, Plaintiff filed a reply to the Court’s August 19 order in which he restated his
24 contention that a homeowner’s association is a state actor. (Dkt. No. 9).

25

26 Dismissal is warranted here because Plaintiff’s Complaint fails to name a state
27 actor. Therefore, his sole claim is not cognizable under 42 U.S.C. § 1983. Plaintiff is
28 well aware of this defect because he previously attempted to sue the same homeowner’s

1 association for purported civil rights violations. (*See Robert J. Kulick v. Leisure Village*
 2 *Assoc., Inc., et al.*, CV 19-7630 E). That action was summarily dismissed for the same
 3 reasons recommended in this Report: the Court lacks subject matter jurisdiction because a
 4 private homeowner's association is not a state actor for purposes of section 1983. (*Id.*,
 5 Dkt. No. 11 at 4). Any attempt at amending the instant Complaint would be futile.
 6 Accordingly, it is recommended that this action be dismissed without prejudice, but
 7 without leave to amend, for lack of jurisdiction.

8

9
II.10 **ALLEGATIONS OF THE COMPLAINT**
 11

12 Plaintiff alleges that the following defendants violated his civil rights: (1) Leisure
 13 Village Association, Inc., a senior retirement community homeowner's association
 14 ("HOA"); (2) Robert Schaeffer, General Manager of LVA; (3) Linda Grant, Director of
 15 LVA's Board of Directors; (4) Robert Riveles, Director of LVA's Board of Directors; (5)
 16 Theodore Lansing, Director of LVA's Board of Directors; (6) Patrick Price, Director of
 17 LVA's Board of Directors; (7) Charles Kiskaden, Director of LVA's Board of Directors;
 18 (8) John Mayer, Director of LVA's Board of Directors; (9) Donald Marquardt, Director of
 19 LVA's Board of Directors; (10) Rita Linsey, Director of LVA's Board of Directors; (11)
 20 Gerald Rosen, Director of LVA's Board of Directors; (12) Beaumont, Gitlin & Tashjian,
 21 Law Firm of Attorneys at Law, Counsel for LVA; (13) Jeffrey A. Beaumont, Attorney at
 22 Law; (14) Larry F. Gitlin, Attorney at Law; (15) Lisa A. Tashjian, Attorney at Law; and
 23 (16) Tara Radley, Attorney at Law.

24

25 The Complaint broadly alleges that LVA and other defendants are a "quasi-
 26 government entity" or employees or agents of a "quasi-government entity" acting under
 27 color of state law. (Complaint at 2-9). Plaintiff claims that LVA and its agents
 28 suppressed his First Amendment rights to freedom of speech and freedom of press by

1 selectively imposing a fine on Plaintiff's publication, LVN, for allegedly violating Rule
2 2.08 of LVA's Rules & Regulations prohibiting owners, members or residents from
3 distributing or posting any anonymous documents within LVA. (*Id.* at 11). However,
4 Plaintiff alleges that at the time of the incident, a total of three publications were being
5 circulated to the residents and owners of LVA: LVN, the Village Voice, and Inside
6 Leisure Village—all of which did not disclose the owners and/or principals of those
7 publications, but only LVN was targeted and fined \$100. (*Id.* at 12).

8

9 Plaintiff then filed a lawsuit against LVA, claiming that he was unable to publish
10 LVN until he obtained a court determination permitting the publication of LVN without
11 being fined. (*Id.*). Before the court made its final ruling, Plaintiff dismissed his civil
12 rights action on December 30, 2019. (*Id.* at 14).

13

14 Plaintiff's request for relief appears to be related to the previously dismissed
15 complaint. Plaintiff requests that the Complaint be remanded back to state court and that
16 the state court strike all awards granted all Defendants based on the civil rights complaint.
17 The requested relief is inapplicable to this case. (*Id.* at 15).

18

19

III.

20

21

STANDARD

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Although Plaintiff is proceeding *pro se*, he has paid the full filing fee and is not proceeding *in forma pauperis*. Nonetheless, under Rule 12(b)(6), “[a] trial court may act on its own initiative to note the inadequacy of a complaint and dismiss it for failure to state a claim” *Sparling v. Hoffman Const. Co.*, 864 F.2d 635, 638 (9th Cir. 1988) (quoting *Wong v. Bell*, 642 F.2d 359, 361 (9th Cir. 1981)). Generally, “the district court must give notice of its *sua sponte* intention to dismiss and provide the plaintiff with ‘an opportunity to at least submit a written memorandum in opposition to such motion.’”

1 *Seismic Reservoir 2020, Inc. v. Paulsson*, 785 F.3d 330, 335 (9th Cir. 2015) (quoting
 2 *Wong*, 642 F.2d at 362, and affirming trial court’s *sua sponte* dismissal of counterclaim on
 3 the ground that the court lacked authority to grant relief requested by plaintiff)).
 4 However, the Ninth Circuit has even upheld *sua sponte* dismissals of claims or actions
 5 “without notice where the claimant cannot possibly win relief.” *Omar v. Sea-Land Serv.,*
 6 *Inc.*, 813 F.2d 986, 991 (9th Cir. 1987); *see also Baker v. Director, U.S. Parole Comm’n*,
 7 916 F.2d 725, 726 (D.C. Cir. 1990) (per curiam) (adopting the Ninth Circuit’s position in
 8 *Omar* and noting that a *sua sponte* dismissal in the appropriate context “is practical and
 9 fully consistent with plaintiff’s rights and the efficient use of judicial resources”). Indeed,
 10 trial courts may even dismiss claims *sua sponte* under Rule 12(b)(6) without leave to
 11 amend. *See Ricotta v. State of Cal.*, 4 F. Supp. 2d 961, 979 (S.D. Cal. 1998), aff’d 173
 12 F.3d 861 (9th Cir. 1999) (dismissing *sua sponte* RICO claim brought by California
 13 resident proceeding *pro se* where “under no circumstances can Plaintiff state a RICO
 14 claim based on the alleged acts of the Defendants”). “*Sua sponte* dismissal may be made
 15 before process is served on defendants.” *Herrejon v. Ocwen Loan Servicing, LLC*, 980 F.
 16 Supp. 2d 1186, 1194 (E.D. Cal. 2013) (dismissing California resident *pro se* claims *sua*
 17 *sponte* under Rule 12(b)(6) and entering judgment in favor of defendants prior to service
 18 of complaint where complaint failed to allege viable claims).

19
 20 When a plaintiff appears *pro se* in a civil rights case, the court must construe the
 21 pleadings liberally and afford the plaintiff the benefit of any doubt. *Karim-Panahi v. Los*
 22 *Angeles Police Dep’t.*, 839 F.2d 621, 623 (9th Cir. 1988). In giving liberal interpretation
 23 to a *pro se* complaint, the court may not, however, supply essential elements of a claim
 24 that were not initially pled. *Ivey v. Bd. of Regents of Univ. of Alaska*, 673 F.2d 266, 268
 25 (9th Cir. 1982). A court must give a *pro se* litigant leave to amend the complaint unless it
 26 is “absolutely clear that the deficiencies of the complaint could not be cured by
 27 amendment.” *Karim-Panahi*, 839 F.2d at 623 (citation and internal quotation omitted).

28

1 Here, the Court gave Plaintiff notice in its Order to Show Cause that his action
2 appears to be subject to dismissal for failure to state a cognizable claim, and Plaintiff has
3 explained to the Court why he believes the Court's analysis is wrong. Accordingly, the
4 Court has satisfied the conditions for *sua sponte* dismissal by notifying Plaintiff of its
5 intention to dismiss this action for lack of subject matter jurisdiction and by providing
6 Plaintiff an opportunity to file a written response. *See Seismic Reservoir 2020*, 785 F.3d
7 at 335. Additionally, Plaintiff will have the opportunity to file objections to this Report
8 and Recommendation.

7

IV.

11

DISCUSSION

12

13 To state a claim under section 1983, a plaintiff must allege that the deprivation of a
14 right secured by the federal constitution or statutory law was committed by a person
15 acting under color of state law. *Anderson v. Warner*, 451 F.3d 1063, 1067 (9th Cir.
16 2006). “While generally not applicable to private parties, a § 1983 action can lie against a
17 private party when he is a willful participant in joint action with the State or its agents.”
18 *Kirtley v. Rainey*, 326 F.3d 1088, 1092 (9th Cir. 2003).

19

20 The Ninth Circuit has identified four circumstances under which a private person
21 may be said to be acting under color of state law. Under the “public function” test, “when
22 private individuals or groups are endowed by the State with powers or functions
23 governmental in nature, they become agencies or instrumentalities of the State and subject
24 to its constitutional limitations.” *Id.* at 1093 (quoting *Lee v. Katz*, 276 F.3d 550, 554–55
25 (9th Cir. 2002)). Under the joint action test, a court will consider whether “the state has
26 so far insinuated itself into a position of interdependence with the private entity that it
27 must be recognized as a joint participant in the challenged activity” and “knowingly
28 accepts the benefits derived from unconstitutional behavior.” *Kirtley*, 326 F.3d at 1093

1 (quoting *Parks Sch. of Bus., Inc. v. Symington*, 51 F.3d 1480, 1486 (9th Cir. 1995)).
2 Under the “governmental coercion or compulsion” test, the court considers “whether the
3 coercive influence or ‘significant encouragement’ of the state effectively converts a
4 private action into a government action.” *Kirtley*, 326 F.3d at 1094 (quoting *Sutton v.*
5 *Providence St. Joseph Medical Center*, 192 F.3d 826, 836-37 (9th Cir. 1999)). Finally,
6 under the “government nexus” test, the court asks whether “there is such a close nexus
7 between the State and the challenged action that the seemingly private behavior may be
8 fairly treated as that of the State itself.” *Kirtley*, 326 F.3d at 1095 (quoting *Brentwood*
9 *Academy v. Tennessee Secondary School Athletic Ass’n*, 531 U.S. 288, 295, 121 S. Ct.
10 924, 148 L. Ed. 2d 807 (2001)).

11

12 In this action, Plaintiff alleges that LVN and its employees and agents are a “quasi-
13 government entity” acting under color of state law. (Complaint at 2-9). However,
14 Plaintiff has not shown that Defendants satisfy any of the tests under which a private
15 citizen may be deemed a state actor, *i.e.*, that they were exercising a traditionally and
16 exclusively governmental function; that the State incurred any benefit from Defendants’
17 actions; that Defendants were not acting independently but under coercion of the State; or
18 that they had any official connection with the State such that Defendants’ actions may be
19 fairly attributable to the State.

20

21 In fact, the Ninth Circuit has expressly held that “[a] private homeowners’
22 association is not the equivalent of a municipality or a purported ‘quasi-government’
23 entity.” *See Snowdon v. Preferred RV Resort Owners Ass’n*, 379 Fed. App’x 636, 637
24 (9th Cir. 2010) (Nevada homeowners’ association is not a state actor because the
25 association did not perform the traditional and exclusive function of municipal
26 governance; rather, it provided “an assortment of basic amenities and simple services to
27 its paying members, all within the fenced-in confines of its private property”); *see also*
28 *Hupp v. Solera Valley Greens Ass’n*, 2015 WL 13447707, at *3 (C.D. Cal. Oct. 8, 2015)

1 (rejecting contention that homeowners' association was a "quasi-government agency" and
2 hence acted under color of law within the meaning of section 1983); *Wong v. Village*
3 *Green Owners' Ass'n*, 2014 WL 12587040, at *4 (C.D. Cal. June 26, 2014) (the fact that
4 state law governs the formation and operation of a homeowners' association does not
5 make the association a state actor); *Yan Sui v. 2176 Pacific Homeowners Ass'n*, 2012 WL
6 6632758, at *11-12 (C.D. Cal. Aug. 30, 2012), adopted, 2012 WL 4900427 (C.D. Cal.
7 Oct. 16, 2012), aff'd in part, remanded in part on other grounds, 582 Fed. App'x 733 (9th
8 Cir.), cert. denied, 135 S. Ct 709 (2014) (homeowners' association is not a state actor;
9 distinguishing state cases referring to an association's functions as "quasi-governmental,"
10 none of which concerned issue of whether the association acted under color of law for
11 purposes of section 1983).

12

13 Despite Plaintiff's assertions to the contrary in his OSC response, the specific
14 Attorney General's opinion he relies on does not support the contention that a
15 homeowner's association acts under color of state law, and even if it did, an Attorney
16 General's opinion is not binding precedent. (See OSC response at 1). The Attorney
17 General's opinion reached conclusions unrelated to Plaintiff's assertions, finding in part
18 that: (1) neither a specific section of California's Vehicle Code nor any other state law
19 "authorizes private property owners to issue citations imposing monetary sanctions to
20 owners of vehicles parked on their property"; and (2) private property owners do not have
21 "the right to issue parking citations imposing monetary sanctions to the owners of vehicles
22 parked on their property." 94 Ops. Cal. Att'y. Gen. 51 (2011).

23

24 Furthermore, the Ninth Circuit has held that federal courts are not bound by state
25 Attorney General's opinions, although they are generally regarded as highly persuasive.
26 *Cedar Shake and Shingle Bureau v. City of Los Angeles*, 997 F.2d 620, 625-26 (9th Cir.
27 1993) (citing *Prescott v. United States*, 731 F.2d 1388, 1393 (9th Cir. 1984) and *Harris*
28 *Cty. Comm'r's Court v. Moore*, 420 U.S. 77, 87 n.10 (1975)); see, e.g., *Price v. Akaka*, 3

1 F.3d 1220, 1225 (9th Cir. 1993) (“an Attorney General’s opinion cannot by itself establish
2 ‘clearly established law.’”); *Price v. State of Hawaii*, 921 F.2d 950, 957 (the Attorney
3 General’s opinion had no affect on the court’s analysis); *Guardian Plans, Inc. v. Teague*,
4 870 F.2d 123, 129 (4th Cir. 1989) (Attorney General’s opinion “does not have the force of
5 law”); *Nicholson v. Gant*, 816 F.2d 591, 595 (11th Cir. 1987) (The Attorney General’s
6 opinion “is not law and not binding”). Because an Attorney General’s opinion is neither
7 binding upon this Court nor clearly established law, Plaintiff’s arguments to the contrary
8 are not persuasive.

9

10 Accordingly, it is recommended that this action be DISMISSED without prejudice
11 for lack of subject matter jurisdiction.

12

13

V.

14

RECOMMENDATION

15

16

IT IS RECOMMENDED that the District Court issue an Order: (1) accepting and
17 adopting this Report and Recommendation and (2) directing that Judgment be entered
18 dismissing this action without prejudice, but without leave to amend, for lack of subject
19 matter jurisdiction.

20

21

DATED: September 14, 2020

22

23


PEDRO V. CASTILLO
UNITED STATES MAGISTRATE JUDGE

24

25

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27

28

Local Ad of the Institute of Lection
(805) 383-2324
Terry of action, also info
From Williamson, also info

2225 W. 4th St., San Jose 95110.
Circumstances
Situations

Local Ad Co-Auth

TV is not under the VA at all, so requesting to them is wasted effort. I am
as editor of the paper; my co-editor is currently on a cruise around Cape Horn.
no ad's are not responsible to the Star for our content. So you pay the Star or
call or write to the General Star and take out a display ad; you will have
information you will need below.

If you wish to continue advertising your orphan house in TV, you will have to
call or write to the General Star and take out a display ad; you will have
to pay them at the rate of \$5.00 an inch for each issue. I include all the
information you will need below.

Inside Letter Village has an ad for selling the same house for over 2
years now at the same price of \$1.00 each.

Dear Mr. Kullick,

Dec. 16, 1997

12197

W.E. = When from suns; in 19-3-22 for to 800,114

R6.138

38106 Village 38
Camarillo, CA 93012
June 11, 1998

R. J. Kulick
1377 So. Beverly Glen Bl. #405
Los Angeles, CA 90024

Dear Mr. Kulick:

Our Ombudsman Panel met with Leisure Village Association General Manager Gembala today. We explored your dispute with L.V.A. We find that we cannot be of help to you since this problem is one that appears to necessitate a legal decision, which is out of our area of expertise.

Sincerely,


Robbie Karlin

Copy: Jim Gembala, LVA Ass'n Gen. Mgr.

4. & 4.a., EXHIBIT A, 2 of 17

COPY

(9-2-98: Re fax: addition of item #5 inadvertently not included in item #13)

R. J. Kulick

9-2-98

Board of Directors, Leisure Village Assn Inc
 Attn: Bo Humphrey, President
 Fax #: (805) 987-9069 / via U.S. mail
 Re: Agenda requested by James Lingl, Esq for Hearing

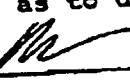
1377 So. Beverly Glen Bl #405
 Los Angeles, CA 90024, USA
 (310) 474-1848
 38122 V 38

Dear Mr. Humphrey:

The following are specific issues to be discussed/resolved at hearing:

- ✓ 1. Use of L.V. name by ILV w/o Board approval a violation of CC&Rs.
- ✓ 2. Use of Recreation Center for collection of payments/ads by ILV w/o Board approval a violation of CC&Rs.
- ✓ 3. Installation/attachment of large wooden collection box on inside wall of Recreation Center for use by ILV w/o Board approval
- ✓ 4. Any use of Recreation Center by ILV as an agent for outside commercial interests (Camarillo Star) which is a profit making enterprise w/o Board approval a violation of CC&Rs. Co-ordinators are LV residents (ILV).
- ✓ 5. Questionable practices by ILV/Lois Atz (discrimination, restraint of trade, and libel/slander by ILV/"Ccs:BM"...Betty Murray) which initiated this dispute w/LVA and subsequent discovery of numerous violations of CC&Rs and lack of due process and questionable conflict of interest by Robert Atz and questionable conspiracy amongst some Board members to ignor, white-wash (stonewall)/bully (Dtrs/Lingl) in order to continue use of L.V. name by ILV w/o Board's official (written) approval and also use per above items #s 2,3, & 4. Again, foregoing remains to be proven as stated prior.
- ✓ 6. Retaliation by LVA taking away our decals/per Alma with a special ruling against me in this regards because of my protesting this double standard after having decals w/approval of administration/security dept for over 10 yrs. while permitting violations of CC&RS in re: ILV.
- ✓ 7. Approval of Board for me to have same use of L.V. name for a newspaper to be called "IN & Out Leisure Village" and with same use as ILV in Recreation Center. Which Star open to discuss printing same status as ILV.
- ✓ 8. An estimate from Mr. Lingl for attorney fees/costs to bring a lawsuit against me which I estimate will cost me a min. of \$25,000 to defend/counter sue including extensive deposition of all concerned parties.
- ✓ 9. CC&Rs ambiguous in regards to a resident - owned vacated home - \$3 extra person charge for non-vacate status - basic rate(vacant vs non-vacant).
- ✓ 10. Failure to have my phone calls returned for concerns even when it's O.K. to call me collect.
- ✓ 11. Failure to perform maintenance of my property
- ✓ 12. Unequal assessments by double standard/favoritism/lack of maintenance/use of maintenance funds to directly/indirectly support activities of ILV per above. LVA has control/authority over any person/entity(private property).
- ✓ 13. Allegations of Supreme Court Case #8070422/testimony of Jim Gembala in Ventura Small Claims court/our outside conversations, especially.. in re: enforcement of CC&Rs. I believe items #1,2,3,4,6,9,10,11,12,13 true, etc.

I await your prompt reply as to date of this hearing per 8/28 fax.

Sincerely, R.J. Kulick  c: Gregory Segal, Esq/Paul Cohen, Esq.

4, of 4.a., EXHIBIT A, 3, of 17

8-29-01

Frederick H. Bysshe, JR., Judge
Superior Court, County of Ventura
P.O. Box 6489
Ventura, CA 93009

R.J. Kulick
P.O. Box 241555
L.A. CA 90024

Dear Mr. Bysshe: Re: VCSC Case#CIV197917 Leisure Village et al v. Kulick

Now that this case has been decided and your ruling of 8-23-01 entered, I now request that this letter be inserted in the court file and a stamped, court file date from court clerk on copy of this letter be sent to myself via enclosed stamped, self-addressed envelope for this return copy.

The point of this letter is to address a remark you made on 8-21-01 hearing which as you informed at that time was not relevant to this case matter, "had you not filed these Small Claims actions you won't be here today (and, in the same breath, 'you're a person of passion')". Well, your Honor what you informed was true but I didn't have an opportunity to respond which prompts this letter since what you had to say is on the court record without my chance to reply and trust my response now will also be included in the court file too as follows.

It was not my desire or intent to go to Small Claims Court but was forced to since Board of Directors refused to give me a hearing to resolve original defective conditions which I addressed. As of this writing, the membership of our association has no knowledge of the actions taken by the Board of Directors against myself which they have kept secret. Had, this "knowledge" not been kept secret, it's most likely this Board of Directors would have been recalled from office based upon questionable malfeasance and counsel replaced for malicious prosecution/abuse of process which I believe based upon the facts as I know them to be. I am passionate about justice and just as passionate against injustice which is all very relevant to this case matter. I'm sure your Honor you value as much as I do my reputation/good family name and would do whatever is legally appropriate to defend when unjustly attacked as I have done. My mother/father left me their good name in tact and my deceased brother, who was brutally murdered in an attempted robbery, who was an attorney (graduated from UCLA law school '59) also left our family name in "good tact" too, so yes, I'm, "a person of passion".

Judge Sirica received a letter from James McCord without a motion in Watergate case which did much to help resolve this case and preserve our justice system. I too at that time before the smoking gun was discovered requested and got back my political contribution from the Republican National Committee because of my "passion" for our unique American way of life as embodied in our Constitution & Bill of Rights.

Thanking you in advance for your kind consideration of the above and look forward to your earliest reply. All of the foregoing are my opinions.

Sincerely,
R.J. Kulick

c: Jonathan S. Vick, Esq. attorney of record for Leisure Village et al

(1) encl: stamped, self-addressed reply envelope for your convenience

4 & 4.a., EXHIBIT A, 4 of 11.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF VENTURA

JUDGE: FREDERICK H. BYSSHE, JR. DATE: September 20, 2001 TIME: _____CLERK: SALLY A. LINEBACK BAILIFF: BYRON KIRK CASE NO. CIV 197917TYPE OF CASE:

LEISURE VILLAGE ASSOCIATION

v.

R. J. KULICK

NATURE OF PROCEEDINGS: **MINUTE ORDER**

Upon receipt of a letter from Mr. Kulick indicating that the action has been completed and there is not going to be an appeal, Mr. Kulick's letter of August 29, 2001 is ordered filed.

FLORENCE PRUSHAN, Superior Court Acting Executive Officer and Clerk.

By: Sally A. Lineback
Deputy ClerkMINUTES4.4 4.a., EXHIBIT A, 5 of 17

1 R.J. Kulick (Name:)

2 38122 Village 38 (Address:)

3 Camarillo, CA93012 (Address:)

4 310-474-1848 (Phone Number)

5 Plaintiff in Pro Per

6

7

8 **UNITED STATES DISTRICT COURT**

9 **CENTRAL DISTRICT OF CALIFORNIA**

10 R.J. Kulick

11 Case No:

12) (1) Unconstitutional Contracts
13) And Invalid Contracts;
14) (2) Violation of Americans With
15) Disabilities Act of 1990;
16) (3) Declaratory Relief;
17) (4) Injunctive Relief; And
18) (5) Filing Of Magistrate Judge's
19) Report And Recommendation
20) Before This Court Dis-
21) misses This Case For Any
22) Reasons; And
23) (6) Unconstitutional State Courts
24) Judgement Awards of
25) Attorneys Fees And Costs.

26 Plaintiff,

27 vs.

28 Beverly Vandermeulen, Robert

29 Bueling, Richard Loomis, Charles

30 Kiskaden, George Jones, Robert

31 Scheaffer, Beaumont Tashjian,

32 Jeffrey A. Beaumont, Lisa A.

33 Tashjian, Tara Radley, Michelman

34 & Robinson, LLP, & Howard I.

35 Camhi, Jeff F. Tchakarov, Edward

36 D. Vaisbort, Kelly Hagemann,

37 Robert Riveles, Patrick Price,

38 Donald Marquardt, Manny Segovia, Daniel Rivas,

39 Eugene Rubinstein, Leisure Village Association, Inc.)

40 Linda Grant, & Does 1-100, Inclusive)

41 Defendant(s))

42 **I. Jurisdiction**

43 This court has jurisdiction under 28 U.S.C. Section 1331
44 (federal question) & Americans With Disabilities Act Of 1990 &

(d) Once received by the Association, a written or electronic ballot may not be revoked or changed.

ARTICLE IX

Officers and Their Duties.

Section 1. Enumeration of Officers. The officers of the Association shall be a President, a Vice-President, a Secretary and Treasurer, and such other subordinate officers as the Board may from time to time deem necessary. Only the offices of Secretary and Treasurer may be held by the same person. No person shall simultaneously hold more than one of any of the other offices.

Section 2. Election of Officers. The election of officers shall take place at the first regular meeting of the Board following each annual meeting of the Members.

Section 3. Term. The officers of the Association shall be elected annually by the Board, and each shall hold office for one (1) year unless they shall sooner resign, or shall be removed, or otherwise become disqualified to serve.

Section 4. Resignation and Removal. Any officer may be removed from office with or without cause by the Board. Any officer may resign at any time by giving written notice to the Board, the President or the Secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 5. Vacancies. A vacancy in any office may be filled in the manner prescribed for regular election. The officer elected to such vacancy shall serve for the remainder of the term of the officer replaced.

Section 6. Duties. The duties of the officers are as follows:

(a) The President shall preside at all meetings of the Board and the Members; shall see that orders and resolutions of the Board are carried out; and shall, if required by the Board, sign all written instruments and co-sign all checks and promissory notes.

(b) The Vice President shall act in the place and stead of the President in the event of his or her absence, inability or refusal to act, and shall exercise and discharge such other duties as may be required of him by the Board.

(c) The Secretary shall supervise the recording of the votes and supervise the keeping of the minutes of all meetings and proceedings of the Board and of the Members; keep the corporate seal of the Association and affix it to all papers requiring said seal; supervise the serving of notice of meetings of the Board and of the Members; supervise the keeping of appropriate current records showing the Members of the Association, together with their addresses; and shall perform such other duties as are required by the Board.



May 2011

Leisure Village News is an Opinion and Analysis publication on the Leisure Village Association, Inc., independent and **NOT** part of the LVA. It publishes documented facts, believed true and correct without malicious intent. LVN will continue to publish and exercise its rights protected under the U.S. Constitution in Freedoms of the Press and Speech. If a few readers do **NOT** want to read it, we suggest just throwing it away like one turning to another T.V. channel. When LVN first published, the Board was informed, and anything they wanted to reply to would be published in the LVN. **However, the Board did not reply.**

The reason why current CC&Rs, ByLaws and Rules are invalid is because at the time of re-statement the 3rd quorum election process was in violation of standing CC&Rs and ByLaws by going door to door using Emergency Service members in soliciting that "quorum" and using intimidation tactics. A pattern of violations afterward by past and current Board members has not stopped, and the fact that these documents are ambiguous and, under the law, invalid, too. Association attorney **Jeffrey A. Beaumont** was paid an estimated \$36,000 plus for the foregoing undertaking. A recent letter, dated 4/20/11, from Board estimated cost at \$2,500 plus is another example of wasteful spending.

Now, Association attorneys **Beaumont and Jasime M. Termain**, Esq., of the law firm **Beaumont Gitlin Tashjian**, sent a letter dated April 11, 2011 to All Owners, in RE: March 2011 Leisure Village News edition, continuing their pattern of making statements replete with incorrect and untrue facts filled with distortions, fabrications and hearsay. **Beaumont and Termain** have twisted these facts, as some attorneys often do, to make their case, whether these facts are true or not. The State Bar of California has evidence of **Beaumont's** violations of the Rules of Professional Conduct and the State Bar Act, especially his extortion methods. A member under the Davis-Stirling Act may seek an injunction against the Board when it engages in any unmerited and/or abusive illegal actions, and the Association must pay all that member's cost to litigate, subjecting the Board and Association attorneys to pay these costs, too. If the Association prevails it **CANNOT** recover its costs to litigate under the law. Any disciplinary actions undertaken by the Board against a member would be invalid, too, **especially when the Board makes a judgement in the setting of a kangaroo court**; injunctive relief then becomes operative under above prevailing circumstance(s). The Board has a **double standard and discriminates** since it will **NOT** take any disciplinary action against a Board member that violates CC&Rs, ByLaws and Rules. The Board must stop violating the Rules during an Open Board Meeting, especially by making any comments on Homeowner/Resident Comments or Correspondences read, and stop using LTV to broadcast the foregoing. This gives readers and T.V. audiences false and misleading information filled with distortions, fabrications and hearsay. The LVN does **NOT** advocate or support any candidate for election to Board. It just addresses a candidate's position, etc. Since **Robert Kulick** is unable to attend the May 19, 2011 Candidates Nite, **Kulick's Candidates Information Sheet** is enclosed with his position and qualifications. Moderator **Joe Benti**, on Candidates Nite, must stop violating the Rules by making comments and reading questions that are personal and offensive attacks, especially hate-mongering statements. Moderator, **Benti** permitted, aided and abetted candidate/Board member **Linda Grant's** violations of CC&Rs and her hate-mongering statements in prior Candidates Nite against another candidate. The Board and its partisans must stop their hate-mongering and unjust gossip against a member with only one side of the story.

A lot in the above is **public record**, especially **Grant** as an ugly and vicious person. The Board erroneously uses assessments to prosecute incorrect violations of CC&Rs against any member that opposes their **misconduct**. Because the nominating committee and Candidates Nite are **rigged**, the next Board will continue its **"misconduct"**. The **silent majority** can still elect an **independent candidate** to make a **constructive difference**. If you wish to make a **donation** to support the LVN, just mail your check to its P.O. Box. God bless our country and the Village.

5-14-21, Via U.S. mail & C/o VCSC fax for forward to: Isabel Alarcon,
Court Judicial Secretary for Hon. Ronda J. McKaig, VCSC,
Case#56-2012-00552646, Dept. 41: From: R.J. Kulick, As Member of
Leisure Village Association, Inc., Respondents:

Dear Ms. Alarcon: Re: Your letter dated 5-11-21 in Re: Ex-parte
Communication, in reply to my 4-30-21 letter to
Hon. McKaig, & related matters:

1. "You may also re-send your letter, with indication (cc:) that you mailed a copy to counsel for the Petitioner, Tara Radley". Today, faxed a copy to Tara Radley of a copy of this letter to you & copy of 4-30-21 letter to Hon. McKaig with its Amendment dated today.
2. Request you forward a copy of this fax to Hon. McKaig as follows:
 - a. Amendment to enclosed copy of 4-30-21 to Hon. McKaig: Your Honor: Do not--understand how you granted a hearing on 4-14-21 when, as a Respondent---Tara Radley did not notify me of this hearing? That seems a "violation" of applicable statute, please correct me if the foregoing true or not. There a number of questionable, constitutional issues involved--in this matter as addressed to you in that 4-30-21 letter, which now includes, & whether all Respondents were also "notified of 4-14-21 hearing? It seems that you will decide in favor of Petitioner at 5-28-21 hearing, which gives an opportunity to seek U.S. District Court opinion on the questionable, constitutional issues addressed in this matter.
 - b. Please note: mail to my POB 2254, Camarillo, CA 93011 usually only pick-up every Thursday, Ms. Alarcon's 5/11 letter was rec'd on 5-13-21. If, you review all the Cases referred to in my 4/30 letter to you, you will find more than enough evidence to postpone your decision on Petitioner's request for that approval of restatement of governing documents until 9th Cir. decides that the LVA as a homeowners HOA for jurisdiction in federal not state court among other issues in their decision. Paramount in questionable, constitutional--issues would be that a quorum was not achieved which that "restatement" could not be approved, & a "majority"/can not over-rule that lack of a "quorum". vote/
 - c. It would better serve to have a federal intervention in this matter to establish that the issues involved here are federal not state jurisdictions.

Await your written confirm of receipt of this correspondance to Hon. McKaig & its status in all the above. Tara Radley was copied prior via c: LVA, Attn: BOD...forward to/legal vendor of this Petition, Re: 4/30 letter. Sincerely, R.J. Kulick *[Signature]* its/ c:"(cc;)" via fax to: Tara Radley/ concerned parties

(3) pages of encls: Please further note: that (I), R.J. Kulick, declare under penalty of perjury that all the above is true & correct to the best of my knowledge & belief, especially that (I) copied this letter via Tara Radley's fax #818-884-1087. Signed: R.J. Kulick *[Signature]* dated: 5-14-21

4.4.4.a., EXHIBIT A, 9 of 17

4-30-21, fax time not reset: Extremely Urgent: & Via U.S. mail

Via VCSC fax # for forward to: Judge: Hon. Ronda J. McKaig, VCSC, Case #56-2012-00552646, Dept. 41:

From: R.J. Kulick, POB 2254, Camarillo, CA 93011, A Member of Leisure Village Association, Inc. for 34 years & love Village but not the ill-treatment by past & current BOD & their legal/insurance vendors:

Your Honor:

1. This letter to you in reply to a letter dated 4-16-21 by Beaumont Tashjian, Tara Radley, Esq. enclosed in a LVA mailing envelope rec'd on 4-29-21 with USPS cancellation date of 4-21-21 which included your Order Setting Hearing & Notice dated & signed by you on 4-14-21:
 - a. It would be futile for a Member to file opposition to this Order or stop this Petition To Reduce The Approval Requirement To Amend The Declaration of Covenants, Condition, And Restrictions ("CC&Rs") & to either hire an attorney or do in Pro Per & be subject to paying Plaintiff's court costs & attorney fees, if this filing fails to stop this Petition, etc. Please excuse/typo errors-have Dyslexia. any(in this letter to you)/
2. With all due respect, it's less futile to file a Federal Complaint with U.S. District Court, Central District of CA, for their opinion whether your Order & subsequent ruling of approval of this Petition was in error & constitutional & jurisdictional, this (I) intend to do in Pro Per. (I) do not have computer & under ADA permanently & medical hardship-have!
 - a. Please note: Currently, U.S. Court of Appeals for 9th Cir. has yet to rule in Case #20-56059 & as of this date, have not rec'd this ruling whether VCSC, Case#478277 had jurisdiction to hear that case. Your Case #552646 will give another bite out of the apple to test the above reasons to stop this Petition. Request that you review the following U.S. Supreme Court Cases #s: 18-6383, Kulick v. Rein & 18-6743, Kulick v. Leisure Village & 18-6907, Kulick v. Leisure Village, et al, besides your review of 9th Cir. Case#20-56059, Kulick v. Leisure Village Assn., I. et al, because these cases have relevant facts that will have impact on your forthcoming decision on Petition.
 - b. To give your some idea how LVA's past/current BOD behave & their legal/insurance vendors behave too & other(s) as well-et al, enclosed please read a copy of Leisure Village News, edition June 2015 which in retaliation LVA's BOD sued (me) in VCSC, Case#444977 which (I) lost, a travesty of justice-including witnesses perjuries, etc.-see above U.S. Supreme Court Case(s) which details these travesties of justice.
 - c. Now, upcoming LVA election for BOD on 6-24-21, its processes are unconstitutional & pending a Complaint with same U.S. District Court It's in good conscience that (I) do what (I) believe right thing to do! I, R.J. Kulick, declare under the penalty of perjury that all the above statements are true & correct to the best of my knowledge & belief.

Signed, R.J. Kulick *RM* dated: 4-30-21
(2) pgs. follow in transmission

c: Leisure Village Association, Inc., Attn: BOD & their forward a copy of this 4-30-21 fax to: Hon. McKaig, to its legal vendor of this Petition

4. & 4.a., EXHIBIT A, 10 of 17



June 2015

Leisure Village News is an OPINION & ANALYSIS publication of Leisure Village Association, Inc., independent of the LVA, and provides facts not found in the Village Voice or elsewhere. What is published are documented facts, believed true and correct, without malicious intent. When only one side of a story is given to members of the LVA, then LVN will provide the other side.

Here is the other side of the story, especially the questionable, fraudulent practices engaged in as follows:

LVN's May 2014 edition addressed a legal action that, in essence, claims that a "member" has violated the current LVA governing documents (CC&Rs). The Board – Linda Grant, Robert Riveles, Theodore Lansing, John Mayer, Rita Linsey – and its legal vendors – Jeffrey A. Beaumont, Larry F. Gitlin, Lisa A. Tashjian and Tara Radley of the law firm Beaumont Gitlin Tashjian – have filed a lawsuit without merit, which is an abuse of process, and a bogus and malicious prosecution against an LVA "member" of 28+ years. The court in judicial error issued a Temporary Restraining Order (TRO) against this "member" based on heresay. The CC&Rs & ByLaws are invalid, being ambiguous and a defective election process. That lawsuit is also based on perjury, obstruction of justice, and the appearance of civil RICO and patterns of racketeering, libel and slander. The State Bar of California has evidence of Beaumont's pattern of violations of the Rules of Professional Conduct and the State Bar Act, especially his extortion methods. The Declarations of Robert Scheaffer, LVA General Manager, and of Denise D. Sutton, employed by Tolman & Wiker Insurance Services – the Board's insurance vendor – were perjurious statements, and false and misleading statements to the court constituting an obstruction of justice.

The Board, Beaumont and a small clique are inciting unjust resentment and hatred against this "member" when this "member" exercised good conscience and due diligence in LVA matters. This lawsuit is a retaliation against this "member" for this "member's" concern about Board members that engage in unlawful activities to cover-up their fiduciary failure to correct legitimate defective conditions, especially current invalid LVA governing documents. Beaumont received about \$36,000+ in legal fees for current governing documents. If the Board had to pay out of their own pockets do you think for one second that they would bring this kind of lawsuit against this "member". The LVA election processes were rigged; the nominating committee and Candidates Nite are still rigged. It is meaningless to vote for a candidate when that elected candidate can then be removed by the Board without any reason. About 65% of eligible voters do not vote, which makes about less than 35% of eligible voters electing Board members. LVA election process is in violation of a Superior Court ruling against any rules that impede a candidate's ability to have their name on the ballot without a nominating committee endorsement or via petition. Public statements made at Open Board Meeting and published in Village Voice, and sent via U.S. mail by Grant and Beaumont, were hate-mongering tactics against this "member" to suppress existing defective conditions created by past and current Boards and its dishonest legal and insurance vendors. Grant, current President of LVA, has a pattern of hate-mongering and violation of the CC&Rs that is public record. Beaumont has the same hate-mongering pattern.

On May 27, 2015, there was a VCSC Mandatory Settlement Conference for this "member" and the Board. Unfortunately, the Board refused a very generous out of court settlement. The court appointed settlement officer, VCSC Judge Frederick Bysshe, informed this "member" that he was a person of integrity, while Bysshe chastised Beaumont for illegal writing in his Brief. Now this case is scheduled for a jury trial on November 2, 2015, VCSC Case #56-2013-00444977-CU-BC-VTA, Leisure Village Association vs. Robert Kulick (this "member"). Any member can go to the court records department to review this case file, which is not the version that the Board and Beaumont falsely allege.

4.44 a., EXHIBIT A, 11 of 17

Thus far, not including Beaumont's legal fees and costs for that Mandatory Settlement Conference and its Brief were "at least \$35,000 and counting." Should the Board prevail, this case will go into the Appeal process and, if necessary, as far as the U.S. Supreme Court to protect seniors nationwide in senior retirement communities from dishonest Board of Directors and their dishonest legal and insurance vendors. When this "member" sought the California Office of Attorney General about LVA's Board, he was informed that the CA Office of Attorney General was given no law enforcement powers in the Davis-Stirling Act by the legislators, and to go to local D.A. But, the VCD.A. does not get involved in disputes within a senior retirement community. Those Boards refused to respond, and stonewalled in a pattern of violations of the Davis-Stirling Act that has been well documented. So, now what's ahead are a lot of litigation expenses that could generate in the millions of dollars and may necessitate special assessments. There is also the possibility that because of their ill-actions in this current litigation, the Board may be forced to put the LVA into bankruptcy. Grant violated the rules of Candidates Nite by making personal attacks on this "member", and she admits to having a "big mouth". Her former husband, while they were still married, was found by the State Bar, CA of practicing law without a license, and did so from their residence in LVA.

Grant, in cahoots with her then husband, Arnold Grant, had a letter sent to this "member" with threats against him, amongst other things, which are public record. This "member's" experience(s) with Grant has found her to be a degenerate liar and cheat. The Board refused to take any disciplinary actions against them in using their LVA residence for business purposes, and for Grant's violation of the rules of conduct on Candidate Nite. There were other violations by members of the Board and members that the Board refused to enforce any violation of the CC&R, which is a double standard. When a member expresses some concerns about how the LVA is run, that member is told "if you don't like it here, why don't you move?" That's easy to say, but for most members, who are not in the best of health and maybe a financial hardship, it's not easy to up and move. The Boards have a small clique of supporters who get projects to benefit themselves, which most members don't participate in. Significant assessments are wasted in maintenance and the running of LVA operations. The Board created the most serious insurance coverage situation and has blamed this "member" for it. This "member" had every right to contact the insurance carrier about this situation, and the CA Department of Insurance found the insurance carrier in violation of their rules.

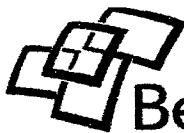
So, one must be patient and non-judgemental before all of this story has been revealed. Otherwise, this lynch mob mentality will continue to exist, spreading like a cancer. One should not jump to rash, emotional judgements based on what Grant and Beaumont, Board members Riveles, Lansing, Mayer and Linsey, or this small clique have said about this "member".

The LVN very much appreciated the donations made by members to help support the cost to publish the Leisure Village News. The LVA is a great place to live and enjoy the good life, just as long as you don't voice any questionable legitimate concerns of wrongdoing by the Board and just pay your assessments.

God bless our country and the Village.

Joe Byrne, Editor

4.44.a., EXHIBIT A, 123 of 177



Beaumont Tashjian

Turning Common Interests Into Common Ground

R27

File No. 14843

April 16, 2021

To All Members of
Leisure Village Association, Inc.

RE: **LEISURE VILLAGE ASSOCIATION, INC.**
PETITION TO REDUCE THE APPROVAL REQUIREMENT TO AMEND
THE DECLARATION OF COVENANTS, CONDITIONS, AND
RESTRICTIONS ("CC&Rs")

Dear Members:

This firm serves as legal counsel to Leisure Village Association, Inc. ("Association"). The purpose of this correspondence is to notify you that the Association has filed a petition with the superior court to reduce the approval requirement to amend the CC&Rs. Pursuant to Civil Code Section 4275, the notice of the hearing is set by the Court through an Ex Parte Application, which was heard on April 14, 2021. The Court signed and entered the Order that is being provided to you with this mailing. The Association is required to send the notice of hearing to the membership pursuant to Civil Code Section 4275 and the Court's Order.

Please find enclosed a copy of the Court's Order. The hearing on the petition to amend the CC&Rs is set for May 28, 2021 at 8:20 a.m. in Department 41 of the Ventura County Superior Court. The case number is **50-2021-00552646-CU-PT-VTA**.

Should you wish to view a copy of the Association's petition, it will be available for your review, inspection, and copying (at your sole cost) during regular business hours at the management office: 200 Leisure Village Dr., Camarillo, CA 93012. Please contact Leisure Village Association Office should you wish to schedule an appointment to review the petition or if you would like to receive a copy of same via email.

Thank you.

Very truly yours,

BEAUMONT TASHJIAN

TARA RADLEY, ESQ.

TR:sk
Enclosure

RECEIVED

VENTURA SUPERIOR COURT

04/8/21

VENTURA
SUPERIOR COURT
FILED

APR 16 2021

MICHAEL D. PLANET
Executive Officer and Clerk
BY: AMY GATES, Deputy
AMY GATES

1 **BEAUMONT TASHJIAN**
2 Tara Radley, Bar No. 273350
3 21650 Oxnard Street, Suite 1620
4 Woodland Hills, CA 91367
5 Telephone: (818) 884-9998
6 Facsimile: (818) 884-1087
7 tradley@hoaattorneys.com

8 Attorneys for Petitioner
9 Leisure Village Association, Inc.

10
11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **FOR THE COUNTY OF VENTURA - UNLIMITED JURISDICTION**

13 **IN RE THE MATTER OF:**

14 Leisure Village Association, Inc., a California
15 non-profit mutual benefit corporation,

16 Petitioner,

17 **vs.**

18 The Members of Leisure Village Association,
19 Inc.,

20 Respondents.

21 **CASE NO.: 56-2021-00552646-CU-PT-VTA**

22 Judge: Hon. Ronda J. McKaig
Dept: 41

23 **[PROPOSED] ORDER SETTING
24 HEARING AND NOTICE**

25 **[PURSUANT TO CIVIL CODE § 4275]**

26 **DATE: April 14, 2021**
27 **TIME: 8:30 a.m.**
28 **DEPT: 41**
RESERVATION: 2560639

ORDER

The *ex parte* application of Leisure Village Association, Inc., a California non-profit corporation, for an order setting a hearing and prescribing the manner and timing of notice of that hearing came before this Court on April 14, 2021 at 8:30 a.m. in Department 41 of the above-entitled court. Pursuant to Civil Code Section 4275, the *ex parte* application requests an order setting a hearing, and prescribing the manner and timing of notice of that hearing, pertaining to a petition filed by Petitioner, in which the Petitioner is asking the Court to accept the prior vote taken on September 4, 2019, by which a majority of Association members approved the restatement of the governing documents of the Association.

Satisfactory proof having been made, and good cause appearing,

IT IS ORDERED that:

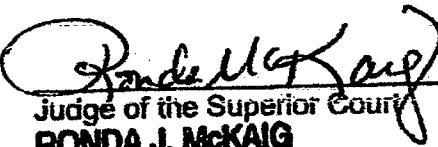
1. A hearing be held on the petition on May 28, 2021 in Department 41 at 8:20 a.m./p.m., or as soon thereafter as the matter may be heard.

2. Petitioner shall mail to each of Petitioner's members, on or, before April 21, 2021 via First Class U.S. Mail, at their respective addresses as shown in the corporate records maintained by Petitioner, a copy of the Notice herein. Petitioner shall make a copy of the Petition AVAILABLE FOR INSPECTION AND COPY located at Petitioner's management office, Attn: General Manager, 200 Leisure Village Drive, Camarillo, CA 93010, during regular business hours and upon reasonable request with advance notice. Upon request, a Member may request a copy of the Petition be delivered via electronic mail (e-mail).

3. Any opposition is to be filed and served on or before May 14, 2021. Any opposition shall be filed, in writing, with the Court and a copy of said opposition shall also be served via first class mail delivery on Petitioner's counsel at Beaumont Tashjian, 21650 Oxnard Street, Suite 1620, Woodland Hills, California, 91367, Attention: Tara Radley, Esq.

1 4. Any reply by Petitioner shall be filed and served on or before
2 May 20. Service of any reply shall be via overnight mail/delivery.
3 5. Any Association member may attend the hearing. via Court Call
4 6. IT IS FURTHER ORDERED.

5
6 DATED: April 14, 2021

7 
8 Judge of the Superior Court
9 RONDA J. MCKAIG

of homes valued at \$200,000 do.ough homeowner equity has increased in the last year, 10 million homeowners still have equity stakes — less 1% — and that puts risk should property tumble again.

another bust is no in sight, thanks to underwriting and oversight. So you're one of the arrivals to positive equities or you've enjoyed it, the new year looks good.

ney@earthlink.net
ited by Washington
ters Group.

SHOULD BE
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322% APR.



751

APR 3rd monthly
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10/2013. Other

205
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ocean views, the distinctive house has a dramatic curved roofline that follows the shape of one side of the swimming pool.

Built in 1960, the 3,645-square-foot house features its original block walls,

2004 for \$2.4 million, public records show, and had been leasing it out between attempts to sell the property in 2007 and 2010.

Jeff Kohl of the Agency was the listing agent. Gregory Dean of Dean Co. represented the buyer.

area, a spa and a fire pit. The partial basement has a wine cellar. There are five bedrooms and four bathrooms in 4,067 square feet of living space.

McDonough, 47, recently starred as future LAPD chief William Parker in the

Leslie Romenesko of Keller Williams was the listing agent. Cindy Chang of Home Team Realty represented the buyer.

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ASSOCIATIONS

Documents don't have to be updated

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BY DONIE VANITZIAN

Question: Our homeowners association board of directors has been terrorized by our management company and lawyers who have been hounding directors into redoing all our governing documents by saying they are out of date and the board is at risk of being sued.

They say it is now the law we have to synchronize all of our documents. We are sick and tired of spending money on legal fees and redoing all our documents. Every time management and their lawyers say "jump" we're supposed to say "how high" and pay them for the privilege! They want to do rewrites again and again. Please tell us if these changes are mandated and how we are to proceed.

Answer: A board shouldn't subject titleholders to the expense of changing governing documents just because it can. These needless recommendations will result in needless expenditures for your association. The declaration and/or covenants, conditions and restrictions (CC&Rs) recorded when your project was built are just as good today as brand-new ones. Don't touch them and don't let anyone persuade you otherwise.

That governing documents must be rewritten because they are out of date is a false premise lawyers and management use because it sounds dire. If that were true, the day after they were rewritten, they would be out of date again.

There is no such thing as "keeping up with the law." If this were the case, every time legislation passed, you would have to hire an attorney and rewrite governing documents, keeping advi-

sors and consultants perpetually on the payroll. A good lawyer will advise an association that a change in the law negating a portion of the existing declaration or CC&Rs automatically takes precedence and that the change does not have to be written in.

Warnings to redo your governing documents or "risk being sued" are alarmist. The law defines standards for the development and takes into consideration that not all projects are alike. When courts review conflicts between private documents and the law, as a general rule, the law prevails.

Your management company and attorneys are probably referring to SB 745, which was signed into law by California's governor Aug. 27 and takes effect Jan. 1. It states, Civil Code section 4205 is amended to read:

■ To the extent of any conflict between the governing documents and the law, the law shall prevail.

■ To the extent of any conflict between the articles of incorporation and the declaration, the declaration shall prevail.

■ To the extent of any conflict between the bylaws and the articles of incorporation or declaration, the articles of incorporation or declaration shall prevail.

■ To the extent of any conflict between the operating rules and the bylaws, articles of incorporation, or declaration, the bylaws, articles of incorporation or declaration shall prevail.

As it relates to "conflicts," SB 745 attempts to clear up the hierarchy of control should there be ambiguities among certain governing documents or should such documents conflict with the law. Simply, this means that changes in law will take effect regardless of possibly

outdated governing documents.

By agreeing to change the declaration or CC&Rs at this time, the board in essence assumes an obligation, if not a duty, to rewrite the governing documents every time the law changes.

This is costly and inefficient; enforcement of long-standing rules is much easier than ones that are constantly changing. Nothing prevents boards from performing their duties of reviewing documents and streamlining operating rules and procedures, but not for the purpose of matching the latest legislation.

It is important to remember that constant changes and updates take their toll not only on the board and association coffers but on the individual titleholders as well. Each new set of documents is recorded against each owner's title and is generally reviewed by potential buyers and their banks.

Any confusion or overly burdensome changes could have unintended consequences of lost sales or

diminished property values. Such changes may also require additional enforcement by the association. Situations like this could weigh heavy on quality-of-life issues and the residents' stress level living under such restrictions.

Advice to boards from lawyers is just that, but it is only an attorney's opinion of the law, not what the courts may ultimately decide, and petitioning the courts is yet another expensive, time-consuming endeavor with unpredictable results driving up the costs for all homeowners.

Slow down! In this case it is probably better to leave your governing documents alone.

Zachary Levine, partner at Wolk & Levine, a business and intellectual property law firm, co-wrote this column. Vanitzian is an arbitrator and mediator. Send questions to Donie Vanitzian, JD, P.O. Box 10490, Marina del Rey, CA 90295 or noexit@mindspring.com.

Weekly mortgage rates

Survey of 20 Orange and L.A. County lenders as of 12/18/2013

| | Week ended 12/12/2013 | Week ended 12/19/2013 | Week ended 12/19/2013 |
|--------------------------------|--------------------------|--------------------------|--------------------------|
| Loans to \$417,000 | | | |
| 30-year fixed | 4.51%+ .51pt | 4.47%+ .52pt | 4.01%+ .28pt |
| 15-year fixed | 3.61%+ .38pt | 3.55%+ .33pt | 3.20%+ .24pt |
| \$417,000 and up | | | |
| 30-year fixed | 4.34%+ .39pt | 4.34%+ .53pt | 4.13%+ .18pt |
| 15-year fixed | 3.59%+ .36pt | 3.63%+ .42pt | 3.46%+ .21pt |
| Home equity lines | 5.82% | 5.74% | 5.44% |
| Home equity loans | 7.64% | 7.67% | 7.52% |
| 6-month LIBOR | 0.35% | 0.34% | 0.41% |
| 1-year Treasury | 0.14% | 0.13% | 0.14% |
| 6-month Treasury | 0.10% | 0.10% | 0.08% |
| 6-month CD | 0.27% | 0.27% | 0.25% |
| Prime rate | 3.25% | 3.25% | 3.25% |
| 11th District cost of funds | 10/2013 | 9/2013 | 4/2013 |
| | 0.963% | 0.957% | 0.970% |

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