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9 THE RANCHO TEHAMA ASSOCIATION,
10 a California Nonprofit Mutual Benefit Corporation

11
12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 IN AND FOR THE COUNTY OF TEHAMA
14

15 In the Matter of THE RANCHO TEHAMA) Case No. 71271
16 ASSOCIATION, a California nonprofit mutual)
17 benefit corporation,) PETITION TO REDUCE REQUIRED
18) VOTING PERCENTAGE
19) [Corporations Code §7515]
20) HEARING
21) Date: November 6, 2017
22) Time: 1:30 p.m.
23) Dept.: 5
24)

25 Petitioner, THE RANCHO TEHAMA ASSOCIATION (the "Petitioner" or
26 "Association") brings this Petition pursuant to Corporations Code §7515 for an Order to reduce
27 the required voting percentage to the number of ballots received for the director election in
28 order to allow the Association to conclude its director election despite being unable to reach a
quorum. Corporations Code §7515(a) provides:

*If for any reason it is impractical or unduly difficult for any corporation to call or
conduct a meeting of its members, delegates or directors, or otherwise obtain
their consent, in the manner prescribed by its articles or bylaws, or this part, then
the superior court of the proper county, upon petition of a director, officer,
delegate or member, may order that such a meeting be called or that a written
ballot or other form obtaining a vote of the members, delegates or directors be*

1 *authorized, in such a manner as the court finds fair and equitable under the*
2 *circumstances.*

3 Section 7515 goes on to provide in relevant part:

4 *(c) The order issued pursuant to this section may dispense with any*
5 *requirement relating to the holding of and voting at meetings or obtaining of*
6 *votes, including any requirement as to the quorums....*

7 The purpose of this provision is to overcome membership voting apathy. (*Fourth La*
8 *Costa Condominium Owners Assn v. Seith* (2008) 159 Cal.App.4th 563, 583.)

9 The Association alleges as follows:

10 1. The Association is, and at all times stated in this Petition has been, a California
11 nonprofit mutual benefit corporation with its principal place of business in Tehama County,
12 California.

13 2. The Association is the homeowners association which owns and maintains the
14 common areas and all facilities thereon within the planned development known as Rancho
15 Tehama (the "Development"). The Association is run by a Board of Directors (the "Board")
16 which is elected by the membership. There are approximately 2,016 lots within the
17 Development which spans approximately 4,100 acres in Tehama County. The membership is
18 comprised of the owners of lots within the Development. There are 1,346 members that are
19 eligible to vote.

20 3. The description of the Association's purposes, the rights, preferences, and
21 privileges of its members, and the duties and obligations of its board of directors and officers
22 are regulated by the By-Laws of the Rancho Tehama Association executed on December 31,
23 1968 (the "Bylaws") as amended by the First Amendment to the Bylaws of the Rancho Tehama
24 Association (the "Amendment") executed May 29, 1998 and recorded on June 2, 1998 in Book
25 1794, Page 562, in the Official Records of Tehama County. (A true and correct copy of the
26 Bylaws is attached as Exhibit A to the Request for Judicial Notice. A true and correct copy of
27 the Amendment is attached hereto as **Exhibit B** to the RJN.)

28 4. Pursuant to Article III, Section 5 of the Bylaws, as amended by the Amendment,
 one-third (1/3) of the voting power represented in person or by proxy shall constitute a quorum

1 at a meeting of members (see Exhibit B). Pursuant to Civil Code §5100, elections of directors
2 must be held by secret ballot. Therefore, if less than one-third (1/3) of the ballots for the
3 director election are received, there is not a quorum for purposes of electing the directors.

4 5. The Association now seeks an order reducing the required voting percentage to
5 reach quorum for the current election of directors pursuant to Corporations Code §7515.

6 **I.**
7 **THERE ARE COMPELLING REASONS FOR AUTHORIZING THE WRITTEN**
8 **BALLOTS**

9 6. It is impractical and unduly difficult to conclude the director election because of
10 member apathy with respect to the election. Despite significant efforts to reach a quorum, the
11 Association has been unsuccessful and further efforts have proven to be fruitless as evidenced
12 by the relatively few ballots returned during the last two months of the election period.

13 7. The quorum for the director election is one-third (1/3) of the members eligible to
14 vote. For this election, 449 ballots were required to reach quorum. Despite the efforts by the
15 Association, as more fully set forth below, it has been unable to conclude the director election
16 due to failure to reach quorum. Ballots for the election were sent to each member eligible to
17 vote on June 20, 2017 with the election originally set to conclude on August 5, 2017. As of the
18 date of this Petition, 291 valid ballots have been received. This represents approximately
19 Twenty Five percent (25%) of the eligible members, leaving the election 158 ballots short of a
20 quorum.

21 8. As a result of not being able to reach the quorum, the Association is being served
22 by a Board made up of two directors who are in office past their term as no new directors have
23 been elected to take their seats. This raises questions as to the validity of all decisions made by
24 the Board.

25 9. The foregoing circumstances, taken with the efforts described below,
26 demonstrate that it is impractical and unduly difficult to conclude the director election and
27 therefore there is a compelling reason to reduce the required voting percentage to the votes
28 received.

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II.

SUBSTANTIAL EFFORT HAS BEEN DEVOTED TO REACHING QUORUM

10. The following timeline shows the efforts the Association has undertaken in an attempt to reach quorum and demonstrates that reaching a quorum is impractical and unduly difficult as a result of apathetic members who will not vote in the election.

- a) On June 20, 2017, the Association sent out ballots to every member eligible to vote in the director election. The election was set to close on August 5, 2017.
- b) The Association reminded owners of the upcoming deadline to vote in the election at the top of the June, July and August 2017 newsletters - the "Trailblazer" which is mailed to every member of the Association each month and is posted on the Association's website. This reminder also stated that replacement ballots could be obtained from the Association.
- c) On August 5, 2017, only 252 valid ballots had been received and the election was extended to September 1, 2017, due to the inability to reach quorum.
- d) The Association put up three (3) banners - each six feet by two and a half feet (6' x 2.5') stating "Election Time, Cast Your Ballot". These banners were hung in three highly trafficked areas - near the Association's office, near the post office, and at the corner of Rancho Tehama Road and Stagecoach.
- e) The Association has received 291 ballots which is 158 ballots short of a quorum.

11. As can be seen by the vote tallies listed above, there was initially a decent return of ballots. However, despite the efforts by the Association, the returns quickly dwindled. This is likely due to voter apathy. As this Court knows, the Association has experienced similar issues with reaching a quorum in the past and has noted that there are many members who often participate in elections and meetings and there is a large share of "absentee owners" who are apathetic and do not participate in elections. Due to the very large size of the Association and the high proportion of these "absentee owners," further efforts by the Association would be very

1 costly in terms of time, effort, and expense with no guarantee that the quorum would actually be
2 reached. Therefore, further effort would prove impractical and unduly difficult due to voter
3 apathy.

4 12. To date, approximately 25% of the ballots have been received, though 158 more
5 ballots are needed to reach quorum. The current count is sufficiently large such that the ballots
6 received likely represent a fair sampling of all members, thereby demonstrating that an order
7 granting this Petition will be fair and equitable.

8 13. The efforts taken by the Association and the poor voter response in return
9 demonstrates that it is unduly difficult and impractical to obtain the votes from more than one-
10 third (1/3) of the membership due to voter apathy. Therefore, there is sufficient grounds to
11 issue the order as requested herein.

12 **III.**

13 **PRAYER**

14 WHEREFORE, the Association requests an Order from this Court:

15 1. Granting the Association's petition by dispensing with the requirement that the
16 director election reach a quorum of one-third (1/3) of the voting power of the Association and
17 substituting the Court's Order that the election be authorized on the basis of the affirmative
18 votes received during the balloting period.

19 2. Permitting the Association to provide notice of the meeting at which the ballots
20 will be deemed authorized by inclusion within the monthly newsletter.

21 3. For such other and further relief, including giving appropriate notice of these
22 proceedings to the Association's members, as this Court deems proper under the circumstances.

23 DATED: September 18, 2017

THOMAS & ASSOCIATES

24 By: _____

25 MICHAEL W. THOMAS
26 Attorneys for Petitioner,
27 THE RANCHO TEHAMA ASSOCIATION
28

VERIFICATION

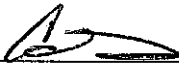
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I, Carrie Lee, state:

I am the manager of The Rancho Tehama Association, a California nonprofit mutual benefit corporation and the petitioner in this matter. I have read the foregoing Petition to Reduce Required Voting Percentage. I am informed, believe, and allege that the matters stated in the petition are true.

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

Date: 9-18-17



Carrie Lee, Manager