

1 Stephen L. Schreiner [SBN 112802]
SOLOMON WARD SEIDENWURM & SMITH LLP
2 401 B Street, Suite 1200
San Diego, California 92101
3 Tel: (619) 231-0303
Fax: (619) 231-4755
4 Email: sschreiner@swsslaw.com

5 Attorneys for Plaintiffs and Petitioners
ROBERT WHITNEY and MICHAEL MORTON
6
7

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **IN AND FOR THE COUNTY OF SAN DIEGO**
10 **(Central Division)**

11 ROBERT WHITNEY, an individual; and
MICHAEL MORTON, an individual,

12 Plaintiffs and Petitioners,

13 v.

14 LA JOLLA COMMUNITY PLANNING
ASSOCIATION, a California non-profit
15 public benefit corporation; CITY OF SAN
DIEGO, a California municipality;
16 JOSEPH LaCAVA, an individual; and
DOES 1 through 50, inclusive,

17 Defendants and Respondents.
18

CASE NO. _____

**COMPLAINT FOR DECLARATORY RELIEF
AND PETITION FOR WRIT OF MANDATE**
**[Code of Civil Procedure sections 1060,
1085, and 1094; Corporations Code
sections 5617 and 7616]**

19
20 Plaintiffs and Petitioners Robert Whitney and Michael Morton allege as follows:

21 **JURISDICTION AND VENUE**

22 1. The matters alleged in this complaint are within the jurisdiction of this Court
23 pursuant to California Code of Civil Procedure sections 1060, 1085, and 1094, and
24 California Corporations Code sections 5617 and 7616.

25 2. Venue is proper in this Court because (1) at all relevant times, the parties to
26 this action resided or did business in San Diego County, California, and (2) the acts,
27 omissions, events, injuries, and resulting damages complained of herein occurred in San
28 Diego County, California.

PARTIES

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

3. Plaintiffs and petitioners Robert E. Whitney (“Whitney”) and Michael Morton (“Morton”) are, and at all relevant times were, residents of La Jolla, California, a community of the City of San Diego, California.

4. Whitney and Morton are informed and believe and thereon allege that defendant and respondent La Jolla Community Planning Association (“LJCPA”) is a non-profit public benefit or mutual benefit corporation formed under the laws of the State of California. LJCPA is a “recognized community planning group” under City of San Diego Council Policy 600-24.

5. Defendant and respondent City of San Diego (the “City”) is a municipality formed and located within the State of California.

6. Defendant and respondent Joseph LaCava (“LaCava”) is an individual resident of the City of San Diego. At various times relevant to this action, LaCava has been, or has purported to be, a Trustee and the President of LJCPA. In addition, LaCava is currently Chair of the City’s Community Planners Committee.

7. Whitney and Morton are, and at all relevant times were, members in good standing of LJCPA.

8. Whitney and Morton are informed and believe and thereon allege that defendants Does 1 through 50, inclusive, are persons or entities whose exact identities are currently unknown to Whitney and Morton, but who are in some fashion responsible for the acts, omissions, events, injuries, and resulting damages alleged herein. Whitney and Morton will seek leave to amend this complaint to state the true names and capacities of Does 1 through 50, inclusive, when they have been ascertained.

9. Whitney and Morton are informed and believe and thereon allege that, at all relevant times, each of the defendants, including Does 1 through 50, inclusive, was the agent, servant, employee, or authorized representative of each of the remaining defendants, and was acting within the scope and purpose of such agency, employment, or service, with the knowledge, consent, and permission of the other defendants.

1 **GOVERNING DOCUMENTS**

2 **Formation and Operation of LJCPA**

3 10. LJCPA was originally incorporated under the name "La Jollans, Inc." in Articles
4 of Incorporation filed with the California Secretary of State on April 27, 1964.

5 11. On August 7, 1973, La Jollans, Inc. filed with the California Secretary of State
6 a Certificate of Amendment of Articles of Incorporation stating that:

7 The specific and primary purposes for which this corporation is
8 formed are to engage in community planning activities for the
9 community of La Jolla in the City of San Diego, State of
California, and to protect, improve and beautify all areas of La
Jolla.

10 The 1973 Certificate of Amendment further provided that:

11 The general purposes for which this corporation is formed are to
12 conduct studies and to make comprehensive planning
13 recommendations concerning land use in the community of La
14 Jolla, to assist in the implementation of any adopted community
plans in the community of La Jolla, and to do everything necessary,
suitable or proper to for the accomplishment of any one of the
purposes or any one or more of the objectives herein enumerated.

15 12. On April 6, 1992, La Jollans, Inc., filed with the California Secretary of State of
16 California a Certificate of Amendment of Articles of Incorporation changing the name of the
17 corporation to "La Jolla Community Planning Association."

18 **Council Policy 600-24**

19 13. City of San Diego Council Policy 600-24 ("Council Policy 600-24") governs
20 "standard operating procedures and responsibilities of recognized community planning
21 groups" such as LJCPA. The San Diego City Council adopted the current version of Council
22 Policy 600-24 on April 5, 2012. (A true and correct copy of Council Policy 600-24 is
23 attached as Exhibit 1 to this complaint.)

24 14. The stated "purpose of Council Policy 600-24 is to identify responsibilities and
25 to establish minimum operating procedures governing the conduct of planning groups when
26 they operate in their officially recognized capacity." (Council Policy 600-24 at p. 2
27 ["Purpose"].)

1 15. Council Policy 600-24 was adopted with reference to the following
2 background:

3 Community planning groups have been formed and recognized by the City
4 Council to make recommendations to the City Council, Planning
5 Commission, City staff, and other governmental agencies on land use
6 matters, specifically, concerning the preparation of, adoption of,
7 implementation of, or amendment to the General Plan or a land use plan
8 when a plan relates to each recognized community planning group's
9 planning area boundaries. Planning groups also advise on other land use
10 matters as requested by the City or other governmental agencies. This Policy
11 applies to the 12 to 20 elected members of a recognized community
12 planning group, herein referred to as members.

13 Planning groups are private organizations. The City does not direct or
14 recommend the election of specified individual members, nor does the City
15 appoint members to planning groups, or recommend removal of individual
16 members by a planning group. The City does not delegate legal authority to
17 planning groups to take action on behalf of the City. Planning groups are
18 voluntarily created and maintained by members of communities within the
19 City. Council Policy 600-24 was created to provide the guidance for
20 organizations operating as officially recognized planning groups.

21 (Council Policy 600-24 at p. 1 ["Background"].)

22 16. Council Policy 600-24 also specifies the relationship between the Policy itself
23 and the Bylaws of community planning groups formed pursuant to the Policy:

24 It is the policy of the City Council to require each recognized community
25 planning group, as a condition of official recognition by the City of San Diego,
26 to submit a copy of its own operating procedures and responsibilities,
27 otherwise known as "bylaws," to the City. These bylaws must contain, at a
28 minimum, all the provisions addressed in this Policy, and conform to the
criteria contained herein, including the standardized bylaws shell attached to
this Policy. Individual planning groups' bylaws may utilize options within the
standardized bylaws shell and may also expand on provisions in this Policy to
better meet the needs of diverse communities. However, all bylaws must
remain in conformance with the provisions of this Policy to maintain official
recognition by the City. The original bylaws for each planning group and the
initial members and terms of each planning group seat and member will be
submitted for approval by resolution of the City Council.

***Failure of a planning group to comply with the approved operating
procedures and responsibilities will be cause for the City Council to
withdraw official recognition.***

***Planning groups must utilize Council Policy 600-24 and their adopted bylaws to
guide their operations.*** City staff is assigned to prepare and maintain Administrative
Guidelines in consultation with the Community Planners Committee.

27 (Council Policy 600-24 at p. 2 ["Policy"] [emphasis added].)

28

1 17. Council Policy 600-24 contains the following provisions regarding community
2 planning group elections:

3 Members of a recognized community planning group shall be elected to serve for
4 fixed terms of two to four years with expiration dates during alternate years to provide
5 continuity. . . . No person may serve on a planning group for more than eight
6 consecutive years if members are elected to two- or four-year terms, or nine
7 consecutive years if members are elected to three-year terms. The eight or nine year
8 limit refers to total service time, not to individual seats held. After a one-year break in
9 service as a planning group member, an individual who had served for eight or nine
10 consecutive years shall again be eligible for election to the committee.

11 This Policy provides an exception for a planning group to retain some members who
12 have already served for eight or nine consecutive years to continue on the planning
13 group without a break in service ***if not enough new members are found to fill all
14 vacant seats as follows:***

15 A planning group member who has served eight or nine consecutive years may
16 appear on the ballot with new candidates. ***After open seats are filled with qualified
17 new members, and if open seats still remain, the following provisions may be
18 utilized:*** A member may serve in excess of eight or nine consecutive years (as
19 specified above) if that person is reelected to a remaining open seat by at least a two-
20 thirds majority of the votes cast by eligible community members participating in the
21 regular election. . . .

22 (Article III [“Community Planning Group Organizations”], § 4, p. 7 [emphasis added].)

23 Elections of recognized community planning group members shall be held
24 during the month of March in accordance with procedures specified in
25 adopted planning group bylaws. . . . In the election process, the planning
26 group shall seek enough new candidates to exceed the number of seats open
27 for election ***in order to allow those who have served for eight or nine
28 consecutive years to leave the group for at least one year.***

 In order to be a candidate in the March election, an eligible member of the
community must have documented attendance at three of the planning group’s
last 12 meetings prior to the February regular meeting preceding the election.

(Article V [“Elections”], § 1, p. 9.)

 The City shall publicize the elections of recognized community planning
groups through the City website, City TV24 programming, electronic mail, the
City’s webpage, and other available effective means.

 The planning group shall make a good faith effort to utilize means appropriate
to their communities to publicize the planning group’s eligibility requirements
for candidacy and the upcoming elections.

(Article V [“Elections”], § 2, p. 10.)

 Voting shall be by secret written ballot. . . . ***Under no circumstances is proxy
voting for elections allowed.***

(Article V [“Elections”], § 3, p. 10 [emphasis added].)

1 18. Council Policy 600-24 also specifies that community planning groups or their
2 duly elected or appointed members who fail to comply with the policy, or with the planning
3 group’s own bylaws, may lose the rights they might otherwise have under certain municipal
4 ordinances to be defended and indemnified by the City of San Diego. In addition to loss of
5 those rights, Council Policy 600-24 provides that a community planning group that fails to
6 cure violations of the policy is subject to forfeiture of its status as a recognized advisory body
7 to the City. More specifically, Council Policy 600-24 states as follows:

8 Indemnification and Representation: A recognized community planning
9 group and its ***duly elected or appointed members*** have a right to
10 representation by the City Attorney and a right to indemnification by the
11 City under Ordinance O-17086 NS if: ***the claim or action against them***
12 ***resulted from their obligation to advise and assist the City and its agencies***
with land use matters as specified in Policy 600-24, Article II, Section 1;
their conduct was in conformance with Policy 600-24 and the Bylaws of
the community planning group; and all findings specified in the ordinance
can be made.

13 (Article IX [“Rights and Liabilities of Recognized Community Planning Groups”], § 1, p. 22
14 [emphasis added].)

15 ***A planning group member or planning group found to be out of compliance with***
16 ***the provisions of this policy, or the planning group’s adopted bylaws, risks loss of***
17 ***indemnification [legal protection and representation] pursuant to Ordinance No. O-***
17086 NS, and any future amendments thereto.

18 (Article III [“Community Planning Group Organizations”], § 6, p. 8 [emphasis added].)

19 Council Policy 600-24 Violations and Remedies

20 Council Policy 600-24 provides various remedies for violation of its provisions
21 by recognized community planning groups or their elected members. Where
22 a planning group does not cure a violation by itself, it may forfeit its status as a
23 recognized advisory body and lose its right to indemnification and defense by
24 the City.

25 Alleged Violations by a Member of a Recognized Community Planning Group

26 In the case of an alleged violation of this Policy or a recognized community
27 planning group’s adopted bylaws by a planning group member, the planning
28 group shall conduct an investigation consistent with the Administrative
Guidelines and adopted planning group bylaws.

 If the planning group, after a thorough investigation, determines that the
individual member has violated a provision of this Policy or the planning
group’s bylaws, the planning group shall, where feasible, seek a remedy that
corrects the violation and allows the member to remain as a member of the
planning group.

1 If corrective action or measures are not feasible, the planning group may
2 remove a member by a two-thirds vote of the planning group. The vote to
3 remove the group member shall occur at a regularly scheduled public meeting
subject to the procedures outlined in the Administrative Guidelines and in
adopted planning group bylaws.

4 A member found to be not in compliance with the provisions of this Policy not
5 subject to Brown Act or adopted bylaws risks loss of indemnification [legal
6 protection and representation] pursuant to Ordinance No. O-17086 . . . and
any future amendments thereto.

7 Alleged Violations by a Recognized Community Planning Group

8 ***In [the case] of an alleged violation of this Policy or adopted planning group***
9 ***bylaws by a recognized community planning group as a whole or multiple***
10 ***members of the planning group, the violation shall be forwarded in writing***
to the City for investigation by the Mayor's office. The City will engage in a
dialogue with the planning group, determining the validity of the complaint,
and seeking resolution of the issue or dispute.

11 ***If a violation against a recognized community planning group as a whole is***
12 ***proven and there is a failure of the planning group to take corrective action,***
13 ***the planning group will forfeit its rights to represent its community as a***
14 ***community planning group recognized under Council Policy 600-24.*** Such a
15 determination resulting in the forfeiture of a seated group's right to represent
its community shall be based on a recommendation by the Mayor's office to
the City Council. A planning group shall not forfeit its recognized status until
there is an action by the City Council to remove the status. The City Council
may also prescribe conditions under which official recognition will be
reinstated.

16 A planning group found to be out of compliance with the provisions of
17 Council Policy 600-24 that are not subject to the Brown Act or with its
18 adopted bylaws risks loss of indemnification [legal protection and
representation] pursuant to Ordinance No. O-17086 NS.

19 (Article IX ["Rights and Liabilities of Recognized Community Planning Groups"], § 3,
20 pp. 23-24 [emphasis added].)

21 Administrative Guidelines for Council Policy 600-24

22 19. In July 1991, the City of San Diego adopted Administrative Guidelines
23 regarding Council Policy 600-24. At various times since adopting the Administrative
24 Guidelines, the City of San Diego amended the guidelines. The Administrative Guidelines
25 were most recently updated in April 2010. (True and correct copies of the current
26 Administrative Guidelines are attached as Exhibit 2 to this complaint.)

27 20. The currently operative Administrative Guidelines specify that, "These
28 Administrative Guidelines are intended to explain and elaborate upon Council Policy

1 600-24 and give community planning groups additional guidance on how to operate in
2 conformance with the Policy and the Brown Act.” (“Policy,” p. 5.)

3 21. With respect to community planning group elections, the Administrative
4 Guidelines specify as follows:

5 Terms and Limits: The basic term limitations in Council Policy 600-24 allow
6 members to serve for up to eight or nine years, depending on the length of
their fixed terms. . . .

7 Members who have served more than eight or nine years may serve in excess
8 of the term limits without a break in service, **if a good faith effort has been**
9 **made by the planning group to develop a list of potential new candidates**
that exceeds the number of seats that are open for election, and subject to
the following:

10 1. If a candidate with beyond eight or nine years of service is to
11 appear on the ballot with new candidates, the ballot should identify that the
12 candidate exceeds the planning group’s allowable term limits and that the
13 candidate must receive a two-thirds vote of all ballots cast by eligible
14 community members participating in the regular election, to be elected. **The**
ballot should also indicate that this candidate will not be seated if there are a
sufficient number of new candidates to fill the vacant seats, i.e., a new
candidate has priority over candidates exceeding the term limits.

15 2. **After open seats are filled with new members, candidates with**
service beyond eight or nine years, who received a two-thirds vote, may be
considered for remaining open seats, with the highest vote recipient exceeding
16 the eight or nine year limitation taking the first open seat that they qualify for,
17 etc. . . . **A candidate with service beyond eight or nine years may be**
nominated to fill a mid-term vacancy only if there are no other nominations.
For such a candidate to be elected a two-thirds vote is required . . .

18 (Article III [“Community Planning Group Organizations”], § 4, pp. 12-13 [emphasis added].)

19 Election Procedures: Article V addresses planning group election procedures.
20 **The planning group must make the election fair, open, objective, and**
accessible, to the entire community of eligible voters. [Council Policy] 600-24
21 establishes a few mandatory election requirements but charges each planning
22 group with the responsibility to adopt specific election procedures. . . .

23 General elections shall be held during the month of March every year or every
24 other year. **Planning groups should seek enough new candidates to exceed**
the number of seats open for election. Planning group bylaws may establish
25 a minimum number of meetings required to have attended in order to be a
26 candidate for election. However, candidates must have attended a minimum
of one of the group’s last 12 meetings prior to the February noticed regular or
special meeting of the full planning group.

27 Publicity for Elections: **Planning groups shall demonstrate a good faith effort**
to publicize planning group elections and candidate eligibility requirements.

28 (Article V [“Elections”], §§ 1-2, pp. 15-16 [emphasis added].)

1 22. The Administrative Guidelines reiterate that the failure by a community
2 planning group or its members to comply with Council Policy 600-24 or the planning
3 groups own bylaws may lead to forfeiture of rights the group or its members may have to be
4 defended or indemnified under applicable City of San Diego ordinances:

5 Risk of Loss of Indemnification: Section 6 introduces the potential loss to
6 planning groups and planning group members of legal defense and
7 indemnification under the Ordinance O-19883 Providing for Defense and
8 Indemnification of Community Planning Groups for violating CP 600-24, the
bylaws, or the requirements of the Brown Act. Although the Council Policy lists
the Ordinance as 0-17086 NS, this ordinance was revised in 2009 and planning
groups should refer to O-19883 for up-to-date indemnification guidance. . . .

9 (Article III [“Community Planning Group Organizations”], § 6, p. 14.)

10 Indemnification and Representation: Section 1 requires planning group
11 members to comply with [Council Policy] 600-24, and their own adopted
12 group bylaws to qualify for representation and legal defense pursuant to the
Ordinance Providing for Defense and Indemnification of Community Planning
Groups (O-19883).

13 (Article IX [“Rights and Liabilities of Recognized Community Planning Groups”], § 1, p. 30.)

14 Council Policy 600-24 Violations and Remedies. Section 3 discusses how
15 planning groups address violations by individual members and by the
planning group as a whole. Violations should be lodged by written complaint.

16 (a) Alleged Violations by a Member of the Planning Group.

17 It is the responsibility of the planning group, not the City, to address alleged
18 violations of [Council Policy] 600-24 by individual members. [Council Policy]
19 600-24 does not contemplate either the [City Planning & Community
20 Investment Department] or the City Attorney taking decisive action against
21 planning group members for violations of [Council Policy] 600-24, although
22 [the City Planning & Community Investment Department] may, upon request
23 by a planning group, offer advice on how to proceed, based on experience
with how other planning groups have addresse[d] similar situations. Planning
groups are authorized to conduct an investigation, and where feasible take
corrective action, as is deemed appropriate by the group. Investigation
procedures are outlined and incorporated into the standard planning group
Bylaws Shell attached to [Council Policy] 600-24.

24 When corrective action is not feasible, removal of a planning group member
25 may be necessary. There may be extenuating circumstances where the benefit
of removing a planning group member without any doubt outweighs
attempting to continue to operate with that member. . . .

26 (b) Alleged Violations by a Planning Group

27 It is the responsibility of [the City Planning & Community Investment
28 Department] to investigate, and attempt to resolve, alleged violations against
the multiple members or against the entire planning group.

1 The phrase “investigation by the Mayor’s office,” as used in this subsection,
2 does not mean a formal criminal or civil investigation. It refers to an informal
3 process, shaped by the nature of the allegations, and will usually involve
4 discussions with individual members, or with the entire planning group, as
5 well as discussions with the planning group members and others, and review
of planning group minutes, correspondence, or other documents, based on
their experience with how other planning groups have addressed similar
situations, and may discuss the matter with the [Community Planners
Committee].

6 (Article IX [“Rights/Liabilities of Recognized Community Planning Groups”], § 3, pp. 30-31.)

7 **City of San Diego Elections Handbook**

8 23. The City’s Planning Department has promulgated an Elections Handbook. (A
9 true and correct copy of the Elections Handbook is attached as Exhibit 3 to this complaint.)
10 The purpose of the handbook is “to help promote effective elections within the City of San
11 Diego’s community planning committees.” (Elections Handbook at p. 1.)

12 24. The Elections Handbook represents a compilation of current Council Policy
13 600-24, the Administrative Guidelines, current community planning committee bylaws, and
14 references from Robert’s Rules of Order. The handbook is revised to reflect any changes to
15 Council Policy 600-24 and the Administrative Guidelines.

16 25. The Election Handbook summarizes and reinforces many of the key provisions
17 of Council Policy 600-24 and the Administrative Guidelines, including:

- 18 • “In order to operate successfully with broad community participation,
19 elections must reflect the integrity of the committee, the bylaws, Council
Policy 600-24, and the membership.”
- 20 • “Election procedures are more likely to be successful if a sincere effort is made
21 by the planning committee to disclose election details early and to make the
process open and accessible to the community.”
- 22 • One of the most important points for committee members to take from this
23 handbook is that members should have a clear understanding of their bylaws.”
- 24 • “The ultimate goal is a smooth election, a seamless transition, and broad
community participation”

25 (Election Handbook at p. 1.)

26
27
28

1 LJCPA's Bylaws

2 26. In or about March of 2013, LJCPA's members approved revised La Jolla
3 Community Planning Association Corporate Bylaws (the "Bylaws"). Effective June 27, 2013,
4 pursuant to Council Policy 600-24, the City of San Diego approved LJCPA's amended
5 Bylaws. (True and correct copies of LJCPA's Bylaws and a City of San Diego memorandum
6 certifying approval of the Bylaws are attached as Exhibit 4 to this complaint.)

7 27. As approved on June 27, 2013, the Bylaws specified that LJCPA's Board
8 consisted of eighteen trustees:

9 LJCPA Board of Trustees: The LJCPA Board of Trustees shall consist of a total
10 of eighteen Trustees. Trustees shall be elected by the Members of the LJCPA.
11 The Members of the LJCPA and the Board of Trustees of the LJCPA shall
constitute the officially recognized La Jolla community planning group for
purposes of these Bylaws and Council Policy 600-24.

12 (Article III, § 2, p. 5.)

13 Trustee Terms: Trustees of LJCPA shall be elected to serve for fixed terms of 3
14 years with expiration dates during successive years to provide continuity.
***Except as noted in this Section, no person may serve on the LJCPA for more
15 than six consecutive years. After a one-year break in service as an LJCPA
Trustee, an individual who has served for six consecutive years shall again be
16 eligible for election to the LJCPA Board of Trustees.***

***The LJCPA will actively seek new members to the extent feasible. If not
17 enough new members are found to fill all vacant seats on the LJCPA Board of
Trustees, the LJCPA may retain some Trustees who have already served for six
18 consecutive years to continue on the Board of Trustees without a break in
service. Such Trustees must receive a 2/3 majority of the votes cast in order to
19 serve more than six consecutive years. . . . Trustee terms shall otherwise
20 conform to Council Policy 600-24, Article III, Section 3.***

(Article III, § 3, p. 5 [emphasis added].)

21 28. The Bylaws also contain detailed guidelines for annual Trustee elections:

22 Annual Elections: Annual elections of LJCPA Trustees shall be held during the
23 month of March in accordance with the election procedures found in this Article.

24 (Article V, § 1(A), at p. 6.)

25 Elections Committee and Candidate Forum for Annual Elections: ***The LJCPA's
26 Election Committee shall be established no later than the first week of
January and shall solicit Members to become candidates. The LJCPA shall
27 make a good faith effort to utilize means appropriate to publicize the
LJCPA's eligibility requirements for candidacy and the upcoming election. A
28 candidate forum shall be advertised and held at the regularly scheduled
February meeting or at a special meeting held in February. In February, the***

1 Election Committee shall present to the Board of Trustees a complete list of
2 interested candidates collected up to that point including verification that each
interested individual is qualified to be a candidate.

3 (Article V, § 2, pp. 6-7 [emphasis added].)

4 Candidate Qualifications: Persons interested in running for a Trustee seat shall
5 express their interest in writing or by electronic communication to the Election
6 Committee. The deadline to qualify for candidacy in the March election shall
7 be at the conclusion of the regular or special February meeting. Candidates
8 may announce their interest in running and be added to the list at the February
meeting subject to their being qualified as a candidate. In order to be a
candidate in an election to become a Trustee, a Member of the LJCPA must
have documented attendance at three of the LJCPA's meetings in the
preceding 12-month period.

9 ***In the election process, the LJCPA shall seek enough new Trustee candidates***
10 ***to exceed the number of Trustee seats open for election in order to allow***
11 ***those who have served for six consecutive years to leave the group for at***
12 ***least one year.***

13 (Article V, § 3, p. 7 [emphasis added].)

14 Voting Policies: All voting policies are established with the goal of assuring
15 fair access to the election process and to avoid voting improprieties. . . .
16 The ballot presented to LJCPA Members to vote will clearly identify which
17 candidates are running, how many candidates can be elected, and which
18 candidates, if any, must receive a 2/3 majority of the vote due to service
beyond six consecutive years of service. . . .

19 Write-in candidates are allowed. If it is later determined that the write-in
20 candidate is ineligible, any vote cast for a write-in candidate is an invalid vote
21 and will not be counted. . . .

22 (Article V, § 4, p. 7.)

23 Election Procedures: The Elections Handbook, which is attached to the
24 Administrative Guidelines, provides general guidance for Planning Group
elections. The following are procedures pertaining to all LJCPA elections:

25 A. The President of the LJCPA will appoint and the Board of Trustees
26 shall ratify an Election Committee consisting of 4 to 7 members. Said Election
27 Committee shall not include any Trustee who will stand for re-election of any
28 Member that is running in the election. The primary purpose of this committee
is to supervise the election preparation as well as the election itself. The
election committee shall also review the eligibility of candidates between the
time a candidate applies to run and the preparation of the ballot.

B. Voting is done by secret ballot placed in a box, with the Election
Committee monitoring to ensure voters that their ballot has been cast in
secrecy. A plurality of votes cast will determine the election of candidates. Six
(6) of the eighteen (18) elected trustees shall be elected by written secret ballot
at each annual meeting and shall hold office for three (3) years thereafter. Each
LJCPA member may cast votes equal to the number of vacant Trustee positions.
They may cast fewer votes than the number of vacant positions, but not more.

1 They may not cast more than one vote for any candidate. If any ballot is
2 received which indicates votes exceeding the number of positions available or
3 more than one vote per candidate, then that ballot will be void and will not be
4 counted. The individuals who receive the most votes will be elected, with
those receiving the greatest number of votes being assigned the longest
available term. The Election Committee is responsible for determining the
validity of ballots.

5 (Article V, § 5, pp. 7-8.)

6 Election Results and Challenges: The annual election becomes final one week
7 after announcing the validated election results at the conclusion of the
8 noticed, regular March monthly LJCPA meeting ***if no challenge to the election
results has been filed.*** The President is responsible for preparing, certifying,
and forwarding the election results to the City.

9 (Article V, § 6, p. 8 [emphasis added].)

10 Rules Regarding All Committees and Boards: . . . All committee appointees
11 appointed by the LJCPA shall be appointed by the President and ratified by the
Trustees. . . .

12 (Article VI, § 2(C), p. 14.)

13 29. Article VI, Section 2(B), of the Bylaws provides that, “The LJCPA may establish
14 standing and ad hoc committees when their operation contributes to more effective
15 discussions at regular LJCPA meetings.” Under Article VI, Section 2(B)(1), of the Bylaws,
16 LJCPA is required to maintain a standing Membership Committee, whose “purpose . . . is to
17 maintain a current roster of LJCPA Members and periodically update the list,” and which is
18 “responsible to document all individuals that choose to register their attendance at the
19 monthly LJCPA meetings and to ensure that the sign-in sheets at each LJCPA meeting are
20 properly executed and retained for record keeping by the Secretary.”

21 30. The Bylaws require LJCPA and its Trustees to adhere to City of San Diego
22 Council Policy 600-24 (“Council Policy 600-24”) and the City of San Diego Administrative
23 Guidelines for Implementation of Council Policy 600-24 (the “Administrative Guidelines”).
24 Failure to comply with Council Policy 600-24 and the Administrative Guidelines may cause
25 LJCPA or its Trustees to forfeit the rights they might otherwise have under certain municipal
26 ordinances to be defended and indemnified by the City of San Diego:

27 Policies: The LJCPA Bylaws incorporate policies and procedures found in City
28 of San Diego Council Policy 600-24. Additional policies and procedures are
found in Council Policy 600-24 Administrative Guidelines and Election

1 Handbook, listed as attachments to these Bylaws. **Where there is a conflict**
2 **between these Bylaws, Council Policy 600-24, the Administrative Guidelines**
and the Election Handbook, these Bylaws shall prevail.

3 (Article VIII, § 1, p. 17 [emphasis added].)

4 ***Procedures: Any procedures found in Exhibits to these Bylaws shall have the***
5 ***same effect as if they were incorporated directly into Articles I through VII***
of these Bylaws.

6 (Article VIII, § 2, p. 17 [emphasis added].)

7 Indemnification and Representation: Members of the LJCPA and its duly
8 elected Trustees have a right to representation by the City Attorney and a right
9 to indemnification by the City under Ordinance O-19883, and any future
10 amendments thereto, **if the claim or action against them resulted from their**
11 **obligation to advise and assist the City and its agencies with land use matters**
as specified in Policy 600-24, Article II, Section 1; their conduct was in
conformance with Policy 600-24 [excluding any City Council approved
deviations from Council Policy 600-24] and the Bylaws; and all findings
specified in the ordinance can be made.

12 (Article IX, § 1, p. 20 [emphasis added].)

13 Council Policy 600-24 Violations and Remedies

14 A. In cases of alleged violations of the LJCPA Bylaws or Council Policy
15 600-24 by a Trustee, the Board of Trustees shall conduct an investigation consistent
with the Administrative Guidelines and these Bylaws.

16 B. A complaint that a Trustee violated one or more provisions of the
17 LJCPA's Bylaws or Council Policy 600-24 may be submitted to the LJCPA President
by any individual, including another Trustee. The complaint should be filed within
18 90 days of knowledge of the alleged violation.

19 C. If, after a thorough investigation by the President and at least two
20 other Officers, the Board of Trustees determines that a Trustee has violated a
provision of these Bylaws or Council Policy 600-24, the Board of Trustees shall,
21 where feasible, seek a remedy that corrects the violation and allows the Trustee to
22 remain on the Board of Trustees.

23 D. If corrective action or measures are not feasible, the Board of Trustees
24 may remove a Trustee by a two-thirds vote of the Board; except for specific cases
outlined in Article III, Section 4 where a majority vote is sufficient for removal.

25 E. The vote to remove the Trustee shall occur at a regularly scheduled
26 public meeting subject to the procedures outlined in the Administrative Guidelines
and these Bylaws.

27 F. A trustee found to be out of compliance with the provisions of these
Bylaws or Council Policy 600-24 risks loss of indemnification [legal protection and
representation] pursuant to Ordinance No. O-19883 and any future amendments
thereto.

28 (Article IX, § 3, pp. 20-21.)

1 Alleged Violations By the LJCPA as a Whole: In the case of an alleged
2 violation of the LJCPA's Bylaws or of Council Policy 600-24 by the LJCPA
3 as a whole or multiple Trustees of the LJCPA, the violation shall be
4 forwarded in writing to the City. The Mayor's Office will engage in a
5 dialogue with the Board of Trustees, determining the validity of the
6 complaint, and seeking a resolution of the issue or dispute. The LJCPA
7 will work with the City toward a solution and the LJCPA recognizes that,
8 in accordance with Council Policy 600-24, the City may consult with the
9 Community Planners Committee.

10 ***If a violation against the LJCPA as a whole is proven and there is a
11 failure of the LJCPA to take corrective action, the LJCPA will forfeit its
12 rights to represent its community as a community planning group
13 recognized under Council Policy 600-24.*** Such a determination resulting
14 in the forfeiture of a seated group's rights to represent its community shall
15 be based on a recommendation by the Mayor's Office to the City Council.
16 The LJCPA shall not forfeit its recognized status until there is an action by
17 the City Council to remove the status. The City Council may also
18 prescribe conditions under which official recognition will be reinstated.

19 ***If the LJCPA is found to be out of compliance with the provisions of
20 Council Policy 600-24, with the exception of Council-approved
21 deviations thereto, or its adopted Bylaws, it risks loss of indemnification
22 [legal protection and representation] pursuant to Ordinance No. 0-
23 19883, and any future amendments thereto.***

24 (Article IX, § 4(E), p. 22 [emphasis added].)

25 **FACTUAL BACKGROUND**

26 **LJCPA's Failure to Appoint an Election Committee and Related Bylaw Violations**

27 31. Under Article V, Section 5(A), of LJCPA's Bylaws, LJCPA's President is
28 required to appoint, and the Board of Trustees is required to ratify, an Election Committee of
four to seven members. Article V, Section 2, of the Bylaws specifies that the Election
Committee must be established no later than the first week of January of the year in which
election of LJCPA Trustees is to take place.

32. Under Article V, Section 2, of LJCPA's Bylaws, the Election Committee is
required to "make a good faith effort to utilize means appropriate to publicize the LJCPA's
eligibility requirements for candidacy and the upcoming election," including scheduling and
advertising a candidate forum during February of the election year, and "present[ing] to the
Board of Trustees a complete list of interested candidates collected up to that point in time
including verification that each interested individual is qualified to be a candidate.

1 37. Nine candidates ran for the seven LJCPA Board seats, including:
2 (a) Morton, Ovanessoff, Outwater, and Collins;
3 (b) Write-in candidates Robert Mapes, Jim Ragsdale, and Rob Whittemore,
4 each of whom declared his candidacy on election night; and
5 (c) Termed-out Trustees LaCava and Fitzgerald, who were on the ballot
6 only because, at the February 6, 2014 candidates' forum, there were only four announced
7 candidates for six seats.

8 38. There were enough new members (or candidates who had not already served
9 for six consecutive years) to fill all seven open LJCPA Board seats. Therefore, under Article
10 III, Section 3, of LJCPA's Bylaws, the termed-out Trustees – LaCava and Fitzgerald – should
11 not have been permitted to run for the available seats. Nevertheless, LJCPA placed LaCava
12 and Fitzgerald on the ballot for the 2014 election of Trustees.

13 39. Moreover, even if LaCava and Fitzgerald had properly been allowed to run in
14 LJCPA's 2014 election, Article III, Section 4(1), of the Administrative Guidelines required the
15 ballot to indicate that, as termed-out Trustees, they would not be seated if there were
16 enough new candidates to fill the open seats – in other words, new candidates have priority
17 over Trustees who have exceeded term limits. However, in violation of the Administrative
18 Guidelines, the March 2014 election ballot did not contain the required language.

19 40. In the March 2014 Trustee election, the candidates received the following
20 vote totals:

21	Fitzgerald	68
22	LaCava	68
23	Outwater	67
24	Collins	66
25	Whittemore	58
	Ragsdale	54
	Mapes	49
	Ovanessoff	26
	Morton	14

26 41. At its April 2014 meeting, based on these vote totals, LJCPA certified the
27 election of seven candidates: Collins, Fitzgerald, La Cava, Mapes (but for only a one-year
28 term), Outwater, Ragsdale, and Whittemore.

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

The Challenge to LJCPA’s 2014 Trustee Election

42. On March 11, 2014, Whitney, as a Founding Committee Member of the La Jolla Association for Creditable Representation (“LJA”), filed a formal written challenge (the “Election Challenge”) to LJCPA’s March 2014 Trustee election. The Election Challenge was timely under Article V, Section 6, of LJCPA’s Bylaws. (A true and correct copy of the Election Challenge is attached as Exhibit 5 to this complaint.)

43. The Election Challenge identified a number of problems with LJCPA's March 2014 Trustee election, including the facts that:

- LJCPA had failed to establish an Election Committee, in violation of Article V, Sections 2 and 5(A), of its Bylaws;
- In the absence of an Election Committee, LJCPA had not made the required good-faith effort to (a) solicit Members to become Trustee candidates, (b) utilize all appropriate means to publicize LJCPA’s Trustee eligibility requirements and the upcoming election, or (c) seek enough potential new candidates to exceed the number of Trustee seats open for election, thereby allowing those who had served six consecutive years to leave the group for at least a year, in further violation of Article V, Sections 2 and 5(A), of the Bylaws.
- Due to LJCPA’s failure to appoint an Election Committee and failure to publicize the March 2014 election, not enough potential new Trustees declared their candidacy at LJCPA’s February 2014 meeting and candidates’ forum.
- The election ballot included two termed-out candidates – LaCava and Fitzgerald. As required under Article III, Section 4(1), of the Administrative Guidelines, the election ballot identified LaCava and Fitzgerald as candidates who had exceeded LJCPA’s six-year term limits, and stated that they must receive a two-thirds majority of all ballots cast by eligible community members participating in the election to be elected. However, in violation of the Administrative Guidelines, the ballot did not indicate that new candidates have priority over Trustees who have exceeded term limits, and that the termed-out Trustees would not be seated if there were enough new candidates to fill the open seats.

1 48. In the March 25 letter, Crisafi and Whittemore acknowledged that Article VI,
2 Section 2(C), of LJCPA's Bylaws requires that, "All committee appointees appointed by the
3 LJCPA shall be appointed by the President and ratified by the Trustees." However, Crisafi
4 and Whittemore asserted that, "There is no requirement that the President **publicly** select
5 committee members, rather the requirement is that the Board of Trustees ratify the
6 appointees." [Emphasis added.]

7 49. Crisafi and Whittemore also claimed that Crisafi had, in fact, appointed an
8 Election Committee on January 28, 2014. However, Crisafi and Whittemore acknowledged
9 that, due to a "lack of timeliness" on his part, Crisafi had neither appointed Election
10 Committee members by the first week of January (as required under Article V, Section 2, of
11 LJCPA's Bylaws), nor sought ratification of his appointees by LJCPA's Board **at any time**
12 before the March 2014 Trustee election (as required under Article V, Section 5(A), and
13 Article VI, section 2(C), of the Bylaws. Crisafi and Whittemore went on to state that Crisafi
14 had planned to ask the Board of Trustees to ratify his Election Committee appointments at
15 LJCPA's April 3, 2014 meeting. Crisafi and Whittemore asserted that the Election Committee
16 – whose members, other than the chair, were not identified in the March 25 letter – had, in
17 fact, carried out its duties. Based on that assertion and Crisafi's pending request for after-the-
18 fact ratification of the Election Committee by LJCPA's Board of Trustees, Crisafi and
19 Whittemore claimed that, "the LJCPA officers feel that there has been substantial
20 conformance with the requirement that the Election Committee be established 'no later than
21 the first week of January' and [t]he Board of Trustees will be advised that no corrective action
22 is necessary or possible."

23 50. Similarly, the March 25 letter asserted that, "The Elections Committee did in
24 fact 'solicit Members to become candidates' and the LJCPA did in fact 'make a good faith
25 effort to utilize means appropriate to publicize the LJCPA's eligibility requirements for
26 candidacy and the upcoming election' as required by" Article V, Section 2, of the Bylaws.
27 Crisafi and Whittemore claimed that Election Committee members "personally contacted
28 individuals who were eligible to serve or could have been eligible by attending the February

1 meeting," but that "none of them was eligible to serve for various reasons." Crisafi and
2 Whittemore argued that, "the fact that three write-in candidates filed their intentions to seek
3 office is a direct result of the Election Committee[']s efforts and shows that those efforts were
4 effective." However, Crisafi and Whittemore did not address the acknowledged fact that he
5 was nearly a month late in appointing the Election Committee (which cut the committee's
6 effective working time by half), or the contribution of that delay to the committee's inability
7 to present a full field of Trustee candidates by the time of LJCPA's February 2014 monthly
8 meeting.

9 51. In their March 25 letter, Crisafi and Whittemore claimed that publicity for the
10 2014 Trustee election consisted of (a) the announcement by LJCPA's Secretary at the start of
11 each meeting of the three-meeting requirement for being a Board candidate, (b) a press
12 release regarding the election, (c) notice of the upcoming election on LJCPA's website, and
13 (d) statements referring to the election contained in the minutes of LJCPA's January and
14 February meetings. Notwithstanding the apparent ineffectiveness of these limited
15 approaches – as evidenced by the fact that only six candidates (including two ineligible
16 termed-out former LJCPA Board members) had declared their candidacy for the March 2014
17 Trustee election by the February meeting deadline – Crisafi and Whittemore blithely
18 asserted that "no corrective action need be taken" regarding the election. (This assertion
19 turned out to be as inaccurate as it was dismissive: as explained below, by November 2014,
20 in order to correct its past errors, LJCPA had already established an Election Committee for
21 its March 2015 Trustee election.)

22 52. Crisafi and Whittemore also rejected the contention that, with seven otherwise
23 eligible candidates for the seven open seats on LJCPA's Board, the termed-out Trustees
24 (LaCava and Fitzgerald) were ineligible to run in the March 2014 election. The March 25
25 letter asserts that, "according to Article III Section 2 when it became a fact that there were
26 not enough eligible candidates to fill the vacant seats trustees LaCava and Fitzgerald became
27 eligible to run." Crisafi and Whittemore went on to argue that:

28

1 The logical application of these provisions in the instant case is that
2 when there are insufficient candidates to fill the seats by the end of the
3 February 2014 meeting then a member may serve in excess of six years
4 (per the LJCPA Bylaws) and that member may appear on the ballot with
5 new candidates. Once on the ballot the only remaining requirement is
6 that these candidates receive enough votes to be elected and at least a
7 two-thirds majority of the votes cast. The fact that one or more write-in
8 candidates were elected is irrelevant. Your interpretation leads to the
9 absurd result that Mr. LaCava and Mr. Fitzgerald could be eliminated
10 by a single write-in vote. Such an outcome clearly contradicts the
11 intentions of the LJCPA membership and the City Council.

12 53. As LaCava himself quickly pointed out in an email the following day
13 (discussed in detail below), it is actually Crisafi's and Whittemore's reading of LJCPA's
14 Bylaws, not Whitney's, which is illogical. Crisafi's and Whittemore's approach tortures both
15 the language and the intent of Article III, Section 3, of the Bylaws, as well as the corollary
16 provisions of Council Policy 600-24 and the Administrative Guidelines, all of which are
17 clearly designed to prevent what happened here: termed-out Trustees taking Board seats that
18 otherwise could and would have gone to eligible new candidates.

19 54. Moreover, Crisafi and Whittemore focused solely on the number of candidates
20 that had declared as of February 2014, rather than the full slate that was ultimately presented
21 on the March 2014 ballot. This approach again ignores the fact that Crisafi's inexcusable
22 delay in appointing an Election Committee, coupled with his utter failure to seek
23 confirmation of his committee appointments before the election, was undoubtedly a
24 substantial factor contributing to the fact the slate of candidates did not fill up until the night
25 of the election.

26 55. Finally, with respect to Whittemore's own candidacy, Crisafi and Whittemore
27 took the position that Whittemore had satisfied the requirement of that Trustee candidates
28 have "documented attendance at three LJCPA meetings" set forth in Article V, Section 3 of
LJCPA's Bylaws. In their March 25 letter, Crisafi and Whittemore claimed that Whittemore
had attended LJCPA's February 2014 meeting. Crisafi and Whittemore admitted that
Whittemore did not sign the attendance sheet for that meeting (as he had done at the other
two meetings he attended), but argued that "it is not required that a member sign the
attendance sheet in order to document his attendance, although that is the most convenient

1 way to do so.” According to Crisafi and Whittemore, LJCPA’s Secretary “later corrected the
2 attendance sheets showing that Mr. Whittemore did, in fact, document attendance at three
3 meetings as required . . .” This “correction” was based, at least in part, on Whittemore’s
4 own say-so: “His attendance at the February meeting is documented by an email from him
5 stating that he attended the meeting and that a number of attendees and Trustees saw him
6 there, and requested recognition that he did so attend.” On the basis of this self-serving and
7 after-the-fact “correction” of LJCPA’s own documents, Crisafi and Whittemore advised
8 Whitney that “the Officers will report to the Board of Trustees that your [challenge to
9 Whittemore’s eligibility] is without merit and do find that Mr. Whittemore be seated at the
10 April 2014 meeting.” (A true and correct copy of LJCPA’s February 2014 attendance record
11 is attached as Exhibit 7 to this complaint.)

12 56. Crisafi’s and Whittemore’s March 25 letter ignores an even more fundamental
13 problem with Whittemore’s candidacy. Assuming for sake of argument that Whittemore did
14 attend LJCPA’s February 2014 meeting, he still did not satisfy the requirement of Article V,
15 Section 3, of the Bylaws. That Section provides as follows (emphasis added):

16 Candidate Qualifications: Persons interested in running for a Trustee seat shall
17 express their interest in writing or by electronic communication to the Election
18 Committee. The deadline to qualify for candidacy in the March election shall
19 be at the conclusion of the regular or special **February meeting**. Candidates
20 may announce their interest in running and be added to the list at the
February meeting subject to their being qualified as a candidate. In order to
be a candidate in an election to become a Trustee, a Member of the LJCPA
must have documented attendance at three of the LJCPA’s meetings in the
preceding 12-month period.

21 The unambiguous language of this Section – with its references to the “February meeting”
22 and its requirement of attendance at three LJCPA meetings in the “preceding” twelve months
23 – makes clear that Trustee candidates must meet satisfy the attendance requirement in the
24 twelve months “preceding” the “February meeting”; in other words, attendance at the
25 February meeting does not count toward the three-meeting requirement for that year’s
26 election. Without counting his claimed attendance at LJCPA’s February 2014 meeting,
27 Whittemore did not satisfy the three-meeting requirement for the 2014 Trustee election.
28 Therefore, even as a write-in candidate, he was not qualified to run in that election.

1 LaCava's Rebuttal of LJCPA's Response to the Election Challenge

2 57. Even LaCava acknowledged that he had not been duly elected. In a March 26,
3 2012 email to LJCPA's Trustees, LaCava first noted that (as Vice President of LJCPA at the
4 time), he had been one of the investigating officers mentioned in Crisafi's March 25, 2014
5 response to the Election Challenge. LaCava stated that, because his candidacy was "directly
6 affected by the outcome of the response," he did not participate in the investigators'
7 deliberations or Crisafi's response. Instead, "I made my statement to the other Officers,
8 recused myself, and left their meeting." (Interestingly, Whittemore, who was also directly
9 affected by the outcome of the investigation, did not adopt a similarly neutral approach; to
10 the contrary, he wrote the March 25 response to Whitney's election challenge. Moreover,
11 Whittemore was not an LJCPA Trustee at the time the response to the Election Challenge
12 was drafted, and should not even have been at the meeting from which the response
13 stemmed.)

14 58. In his March 26 email, LaCava specifically rebutted Crisafi's and Whittemore's
15 conclusion that he had been properly elected as a LJCPA Trustee:

16 Second and more importantly, **I disagree with the investigating Officers**
17 **response as to whether I was duly elected under the bylaws.** While Article V
18 Section 2 validates me being on the ballot, we must look to Article III Section
19 3 as to whether I was duly elected. The plain language of Article III, Section 3
20 is quite clear "If not enough new members are found to fill all vacant seats on
21 the LJCPA Board of Trustees, the LJCPA may retain some Trustees . . ." The 4
22 announced candidates (excluding termed out candidates) plus the 3 write-in
23 candidates total 7; undeniably, have been found to fill the 7 vacant seats. This
24 means that one part of the two-part threshold needed for a termed-out trustee
25 to return was not satisfied; **therefore, my bid to return as an elected trustee**
was not successful.

22 While the example used in the response letter does not apply in this case, the
23 absurdity that a qualified write-in candidate with a single vote would be
24 sufficient to thwart a termed-out trustee from returning is exactly the very low
25 threshold intended to encourage turnover of trustees. . . .

26 **I do not offer this rebuttal lightly but the integrity of the organization is**
27 **more important than any individual.** [Emphasis in original.]

28 (A true and correct copy of LaCava's March 26, 2014 email to his fellow LJCPA Trustees is
attached as part of Exhibit 8 to this complaint.)

1 **Whitney’s Reply to LJCPA’s Rejection of the Election Challenge**

2 59. On March 31, 2014, Whitney and La Jolla Association replied to Crisafi’s and
3 Whittemore’s March 25, 2014 letter rejecting the Election Challenge. Whitney requested
4 and received public assurance that his March 31 letter and LaCava’s March 26 email would
5 be read in into the record at LJCPA’s next meeting, on April 3, 2014; however, they never
6 were. (A true and correct copy of Whitney’s March 31, 2014 letter to Crisafi is attached as
7 Exhibit 9 to this complaint.)

8 60. In his March 31 reply, Whitney pointed out that the March 25 letter addressed
9 situations involving an alleged violation of Council Policy 600-24 by a single LJCPA Trustee.
10 Whitney made clear that the Election Challenge involved irregularities of the “whole group”
11 of LJCPA Trustees, thereby triggering the provisions of Council Policy 600-24 applicable to
12 “an alleged violation of this Policy or adopted planning group bylaws by a recognized
13 community planning group as a whole or multiple members of the planning group.” (See
14 Council Policy 600-24, Article IX, Section 3, p. 24), including forwarding a complaint
15 regarding the violation to the Mayor of the City of San Diego for investigation. Whitney’s
16 March 31 letter reminded Crisafi that, “If after the Mayor’s office investigation, the
17 irregularities are verified and the LJCPA fails to take corrective action, the LJCPA could forfeit
18 its rights to represent our community as a community planning group and risks the loss of
19 indemnification pursuant to Ordinance No. O-17086 NS.

20 61. With respect to Whittemore’s eligibility to be a candidate in the March 2014
21 Trustee election, Whitney’s March 31 reply observed that:

22 Pursuant to **Article V Section 3** of the LJCPA bylaws, to qualify as an eligible
23 candidate a member must have documented their attendance at three LJCPA
24 meetings in the preceding 12-month period. At each LJCPA monthly meeting, the
25 LJCPA Secretary, Ms. Helen Boyden, clearly states that there are only two methods in
26 which to have your attendance documented; (i) you must sign in at the back of the
27 room or (ii) if you want your attendance recorded without signing in, you must hand
28 to the Secretary “before” the end of the meeting a piece of paper with your printed
full name, signature and a statement that you want your attendance recorded. It is
absurd for the LJCPA officers to now assert, that picking one’s roommate up at the
end of a monthly meeting qualifies as a documented attendance, pursuant to the
intent of [Council Policy] 600-24 and/or the LJCPA bylaws. Additionally it is
disingenuous to retroactively allow a member to document his attendance by email
and/or hearsay after a challenge had been filed, as in Mr. Whittemore’s case.

1 62. On the basis of the foregoing, and in light of the serious consequences of the
2 Election Challenge, Whitney’s March 31 letter requested that LJCPA re-consider the
3 challenge. Specifically, Whitney’s letter asked LJCPA to take the following corrective actions
4 at its April 2014 meeting:

5 (a) Swear in candidates Collins, Morton, Mapes, Outwater, Ragwell, and
6 Ovanessoff; and

7 (b) Request that Trustee Brady remain in office until August 2014, thereby
8 fulfilling the term he had been elected to serve.

9 **LJCPA’s Certification of 2014 Trustee Candidates**

10 63. At its April 3, 2014 meeting, LJCPA’s Board purported to ratify Crisafi’s
11 appointment to the Election Committee. The appointees included Chair Jamie Emerson
12 (who acknowledged that she had been appointed only a week before the March 6 election),
13 Helen Boyden (LJCPA’s Secretary), Gail Forbes, Brady, and Fitzgerald. However, Fitzgerald
14 apparently removed himself from the Election Committee when he became a Trustee
15 candidate. (A true and correct copy of the final minutes of LJCPA’s April 3, 2014 meeting is
16 attached as Exhibit 10 to this complaint.)

17 64. At or before the LJCPA’s April 2014 meeting, but after the March 2014 Trustee
18 election, Ovanessoff, who had received 26 votes in the election, attempted to withdraw his
19 candidacy. In an April 1, 2014 email Ovanessoff advised Crisafi, “Therefore, I would like to
20 respectfully withdraw my name as a candidate to serve on the LJCPA Board if doing so
21 would mean that Mr. LaCava can resume his seat.” (A true and correct copy of Ovanessoff’s
22 April 1, 2014 email is attached as Exhibit 11 to this complaint.) Similarly, during the April
23 2014 meeting, Ovanessoff admitted that the reason for his withdrawal was to open up the
24 seat and allow LaCava – who had previously acknowledged that he was not duly elected as
25 a Trustee – to come into it.

26 65. During the April 2014 meeting, Fitzgerald acknowledged that, like LaCava, he
27 believed that the fact that there were seven candidates in the March 2014 election who were
28 not termed out precluded LaCava and him (who were termed out) from being elected or

1 seated as Trustees. In fact, Fitzgerald admitted that, because the other seven candidates
2 received votes, he and LaCava were “automatically excluded” from further service.
3 However, Fitzgerald also explained that, in light of Ovanessoff’s purported withdrawal of his
4 candidacy (after the election results had been counted), he and LaCava “by mutual decision”
5 reached a “mutual agreement” that “it was appropriate for Joe [LaCava] to continue as a
6 Trustee and then I would step aside.”

7 66. As explained above, La Cava had already acknowledged in his March 26,
8 2014 email that he had not been duly elected. However, on April 3, 2014, LaCava (who
9 was apparently out of the country at the time) sent an email to LJCPA’s Secretary, Helen
10 Boyden, stating that he was not only willing to serve as a Trustee, but he would accept the
11 position of President of LJCPA, if nominated. Boyden promptly made the nomination.

12 67. Under the clear and unambiguous provisions its own Bylaws, Council Policy
13 600-24, and the Administrative Guidelines – and particularly of the In light of the candid
14 acknowledgement by both LaCava and Fitzgerald that they had not been elected as Trustees
15 – LJCPA should have proceeded to certify the election of the remaining seven candidates.
16 Unfortunately, LJCPA did not do so. Instead, the Board voted unanimously to certify the
17 election of LaCava and Fitzgerald, along with Collins, Outwater, Ragsdale, Whittemore, and
18 Mapes (for a one-year term). Moreover, notwithstanding LaCava’s prior statement that he
19 was ineligible to serve as a Trustee, the Board unanimously elected him President.

20 68. Within minutes after certification, Fitzgerald admitted that, because the other
21 seven candidates received votes, he and LaCava were “automatically excluded” from further
22 service on LJCPA’s Board. Therefore – and somewhat confusingly in light of his belief that
23 he had not been properly elected – Fitzgerald resigned his Trustee seat. Instead of seating
24 Michael Morton, a candidate who was actually qualified to run in the March 2014 Trustee
25 election, in the seat “vacated” by Fitzgerald, LJCPA decided to hold a special election to fill
26 the seat at an unspecified future date.

27
28

1 **La Jolla Association’s Request for Investigation By the Mayor of the City of San Diego**

2 69. On May 16, 2014, counsel for La Jolla Association delivered to City of San
3 Diego Mayor Kevin Faulconer a formal written request (the “Investigation Request”) that the
4 Mayor’s office investigate LJCPA’s March 2014 Trustee election. (A true and correct copy of
5 the Investigation Request, less exhibits, is attached as Exhibit 12 to this Complaint.)

6 70. The Investigation Request was made pursuant to Article IX, Section 3, of
7 Council Policy 600-24. The Investigation Request outlined the above-described
8 irregularities in LJCPA’s 2014 Trustee election, and proposed the following remedial action:

9 • Treat LaCava and Fitzgerald as termed-out trustees under LJCPA’s
10 Bylaws, Council Policy 600-24, and the Administrative Guidelines, and seat properly-elected
11 Trustees Morton and Ovanessoff in their places.

12 • Disqualify Whittemore as a Trustee candidate for failure to satisfy the
13 requirement of documented attendance specified in Article V, Section 3, of LJCPA’s Bylaws,
14 and in Article V, Section 1, of Council Policy 600-24.

15 • Request that Tom Brady (who attempted to resign from LJCPA’s Board
16 shortly before the March 2014 Trustee election) to complete the term the community elected
17 him to serve – on the basis that Trustees should not be allowed to resign prematurely from
18 the terms for which they were elected in order to jockey for position in the LJCPA’s next
19 annual election of trustees – and appoint newly-elected Trustee Robert Mapes to a full three-
20 year (rather than one-year) term.

21 **LJCPA’s Scheduled Special Election and Objections Thereto**

22 71. As explained above, during the April 2014 meeting at which it purported to
23 certify the results of the March 2014 Trustee election, LJCPA’s Board expressed an intent to
24 hold a special election to fill the Trustee seat supposedly vacated by Fitzgerald, as well as a
25 second seat vacated by Gail Forbes, who had moved out of La Jolla. LJCPA took this
26 approach instead of simply designating Morton, a valid and duly-elected candidate on the
27 March 2014 ballot, to fill the spot. At LJCPA’s May 1, 2014 monthly meeting, LaCava (now
28 acting as President) announced that the special election was scheduled for July 3, 2014.

1 72. On May 29, 2014 – with its May 16 Investigation Request to Mayor Faulconer
2 – still outstanding – La Jolla Association’s counsel again wrote to the Mayor. The May 29
3 letter reminded Mayor Faulconer that there were significant factual and legal questions
4 regarding which (if any) Trustee candidates were properly elected in the March 2014
5 election, and pointed out the those issues needed to be resolved before LJCPA would be in
6 position to hold any sort of election—“special” or otherwise – to select new or different
7 Trustees. Therefore, the May 29 letter requested that the Mayor’s office intervene as soon as
8 possible, and direct LJCPA to cancel or to postpone its proposed special election pending
9 resolution of the numerous issues surrounding the March 2014 election and questions
10 concerning the composition of the LJCPA Board. (A true and correct copy of the May 29,
11 2014 Investigation Request is attached as Exhibit 13 to this complaint.)

12 **The City’s Interim Responses to the Election Challenge and Investigation Request**

13 73. On June 5, 2014, Brian Schoenfisch, a Principal Planner for the City of San
14 Diego, sent LaCava a partial response addressing one of the irregularities described in the
15 Investigation Request:

16 It is the intent of this letter to address the issue of the seating of Mr. Michael
17 Morton, as listed in the complaint, and describe ways in which the La Jolla
18 Community Planning Association can act to cure and correct operations in
19 order to be in conformance with their bylaws and City Council Policy 600-24.

20 City staff has reviewed the results of La Jolla Community Planning Association’s
21 March 2014 Trustee Elections and determined that due to the resignation of two
22 of the newly-elected members after the election but prior to the certification of
the March 2014 election results, two open seats remained on the Board of
Trustees. The first seat should have been filled by Mr. Michael Morton, who
received the next highest vote total in the election. Since there were no
additional candidates, the second open seat should be filled by a special
election of the La Jolla Community Planning Association at its July 3rd meeting.

23 (A true and correct copy of Schoenfisch’s June 5, 2014 letter is attached as Exhibit 14 to this
24 complaint.)

25 74. On June 8, 2014, Whittemore sent an email to LJCPA’s officers and to Lesley
26 Henegar, a Senior Planner for the City in Planning, Neighborhoods and Economic
27 Development, describing several “critical and fatal errors” in Schoenfisch’s June 5, 2014
28 letter. Among other things, Whittemore asserted that:

- 1 • LJCPA’s 2014 “election results were ‘certified’ on March 6, 2014 after
2 the Election Committee reported the results to the LJCPA President”; and
3 • “There were no resignations or even indications of willingness to resign
4 until well after the certification of the election.”

5 On the basis of these assertions, Whittemore argued that Schoenfisch’s “conclusion that ‘two
6 open seats remained’ is clearly wrong.” (A true and correct copy of Whittemore’s June 8,
7 2014 email is attached as Exhibit 15 to this complaint.)

8 75. On June 10, 2014, in response to Whittemore’s June 8 email, Henegar sent a
9 letter to LaCava. (A true and correct copy of Henegar’s June 10, 2014 letter is attached as
10 Exhibit 16 to this complaint.)

11 76. In her June 10 letter, Henegar reminded LaCava that, under Article V, Section
12 6 (“Election Results and Challenges”) of LJCPA’s Bylaws:

13 “The annual election becomes final one week after announcing the validated
14 election results at the conclusion of the notice[d], regular March monthly
15 LJCPA meeting if no challenge to the election results has been filed. The
President is responsible for preparing, certifying and forwarding election
results to the City.”

16 Henegar’s June 10 letter also correctly pointed out that, “A challenge to the election was
17 filed by Mr. Whitney on March 11, 2014, five days after the March 6, 2014 election.”
18 (Underlining in original.)

19 77. Henegar’s June 10 letter went on to state that, under Article V, section 5(E), of
20 the Bylaws:

21 *“Upon final verification of the count, the Election Committee shall report the
22 results to the LJCPA President who shall certify and immediately announce the
results.”*

23 (Italics in original.) In this regard, Henegar observed (again correctly) that:

24 There was no vote . . . taken to certify the election results at the March 6,
25 2014 LJCPA meeting, contrary to the LJCPA Bylaws. (See March 6, 2014
26 meeting minutes.) According to the meeting minutes, the election was not
27 certified, but the election results were reported out by President Mr. Crisafi. In
the meeting minutes, item 8. President’s Report, the announcement was made
28 that candidates Bob Collins, Jim Fitzgerald, Joe LaCava, Alex Outwater, Jim
Ragsdale and Rob Whittemore had been elected to three-year terms, and Bob
Mapes elected to the one-year term.

1 It was at the April 3 meeting, that the election certification item was placed
2 on the agenda, item 3. Certify Election. (See LJCPA meeting minutes from
3 April 3, 2014.) Prior to the vote on the certification of the March election,
4 Mr. Ovanessoff stated that he was withdrawing from being a Trustee and
5 Mr. Fitzgerald resigned. (See item 3. Election, C. Certify Election, pages 1
6 and 2.) The approved motion does not have Mr. Fitzgerald counted in the
7 vote.

8 (Underlining in original.)

9 78. Citing the conflicting provisions of Article V, Section V(E), and Article VI,
10 Section 6, Henegar observed that, "There is currently confusion in the LJCPA Bylaws
11 regarding when the election results are to be certified." In light of that confusion, Henegar
12 and the City of San Diego Staff referred to Article V, section 5 "(Finalizing Election Results"),
13 of the Administrative Guidelines, "which recommends that":

14 An election becomes final after announcing the election results at a noticed
15 planning group meeting unless explicitly stated otherwise in the planning group's
16 bylaws. Time must be allowed for voting to be conducted, votes counted, results
17 announced, and for a challenge to be submitted to the Election Subcommittee.
18 The ability and criteria to challenge the election must be clarified as part of the
19 publicity of the election. This allows for the seating of the new planning group
20 members in April as required by the Council Policy 600-24.

21 79. In her June 10 letter, Henegar noted that ". . . staff considered the LJCPA
22 Bylaws, Council Policy 600-24, Administrative Guidelines and what occurred at both the
23 March and April 2014 meetings as memorialized in the final meeting minutes, prior to
24 making a recommendation to the LJCPA Board of Trustees." Henegar summed up this
25 review as follows:

26 To summarize, according to the meeting minutes, the election was not certified
27 at the March meeting but was certified at the April meeting. Mr. Ovanessoff
28 withdrew from the election and Mr. Fitzgerald resigned from the Board prior to
the April meeting, item 3, Certify Election vote was taken. This left one seat
vacant prior to the item 3, Certify Election vote was taken in April.

(Underlining in original.)

80. On the basis of this sequence of events, Henegar conveyed the position of the
City of San Diego:

***Staff recommends to remedy the confusion and mistake of the March
election by promptly seating Mr. Morton as a Trustee, and continuing with
filling any [of] the newly vacant seats with a special election.***

(Emphasis added.)

1 The City's Formal Response to the Investigation Request

2 81. In a letter dated June 26, 2014, William Fulton, the Director of Planning,
3 Neighborhoods and Economic Development for the City of San Diego, formally responded
4 to the May 16, 2014 Investigation Request. (A true and correct copy of Fulton's June 26,
5 2014 letter is attached as Exhibit 17 to this complaint.)

6 82. In his June 26 letter, Fulton acknowledged that, "To the extent the La Jolla
7 CPA election subcommittee did not publicly appoint or ratify an election committee and
8 chairperson, the La Jolla CPA did remedy the error by ratifying the election subcommittee
9 actions at the April 3, 2014 La Jolla CPA [meeting]." Fulton also disagreed with other
10 improprieties asserted in the Investigation Request, including Whittemore's eligibility as a
11 candidate, Ovanesoff's "withdrawal" of his candidacy, Fitzgerald's resignation, and Mapes'
12 appointment to a one-year (rather than a three-year) term.

13 83. With respect to the ballot format for the March 2014 LJCPA Trustee election,
14 Fulton's June 26 letter stated that:

15 According to Council Policy 600-24 Administrative Guidelines there is a set
16 format of information that is recommended to be included on the ballot for
17 candidates who have served more than six years. Staff has reviewed the ballot
18 and found that while it listed the requirement for termed out candidates to
19 receive a 2/3 vote, it did not mention that 'new candidates would have priority
20 over candidates exceeding the term limits.' The other recommendations for
21 ballot information appear to have been met.

19 84. On the crucial issue of which of the March 2014 election candidates should
20 have seated as LJCPA Trustees, Fulton arrived at the same conclusion that Henegar reached
21 in her June 10 letter:

22 At the end of the voting, and prior to the Certification of the election on April
23 3, 2014, there were seven elected candidates for seven spaces on the Board.
24 **Mr. Morton, being one of them, however, was not seated.**

24 Therefore, Fulton, like Henegar, concluded that:

25 There is still an open eighteenth seat of the La Jolla CPA Trustees. **Staff**
26 **recommends that Mr. Michael Morton, who was elected in March but not**
27 **seated, be seated in the vacant seat on the Board.**

27 (Emphasis added.) Predictably, and as explained in more detail below, LJCPA and its
28 Trustees refused to follow the City's recommendation to seat Morton on the Board.

1 LJCPA's July 2014 Special Election

2 85. On July 3, 2014, LJCPA held a special election for two Trustee seats. One
3 seat, which expires in March 2017, was the spot purportedly vacated by Fitzgerald during
4 LJCPA's April 2014 meeting. The other seat, which expires in March 2015, opened due to
5 the resignation of Gail Forbes, a Trustee who has moved out of the area.

6 86. At a subsequent LJCPA meeting, LaCava publicly acknowledged that the City
7 of San Diego told him (based on a request from La Jolla Association) not to hold the special
8 election. However, on his own initiative, LaCava decided to move forward with the special
9 election.

10 87. There were three candidates for the two Trustee seats during the July 2014
11 special election: Cindy Greatrex (who received 52 votes), Michael Costello (43 votes), and
12 Morton (15 votes). At a special meeting on July 9, 2014, LaCava announced that Greatrex
13 had been elected to the term expiring in March 2017, and Costello had been elected to the
14 term expiring in March 2016.

15 88. During a special meeting of LJCPA on July 9, 2014, LaCava (acting as LJCPA's
16 President) reported the results of the special election, and announced that any challenge to
17 the election results must be filed no later than July 16, 2014. At the special meeting, the
18 LJCPA Trustees also voted to postpone consideration of an agenda item regarding the City's
19 response to the March 2014 election challenge to LJCPA's August 7, 2014 regular meeting.

20 Challenges to LJCPA's Special Election

21 89. On July 9, 2014, after the conclusion of LJCPA's special meeting, Morton
22 submitted a written challenge to the special election results to Fulton and to Bob Steck, the
23 Chair of LJCPA's Election Committee. (A true and correct copy of Morton's July 9, 2014
24 election challenge is attached as Exhibit 18 to this complaint.) Morton's election challenge
25 asked the City of San Diego and LJCPA to void the elections of both of the termed-out
26 Trustees – Fitzgerald and LaCava – purportedly certified after the March election. Morton
27 also protested as an illegal "proxy vote" the "resignation" by a duly elected candidate
28 (Ovanesoff) in order to allow LaCava to assume a seat on LJCPA's Board.

1 90. In his July 9 challenge, Morton noted that:

2 The . . . special election was for two open seats vacated by a “termed
3 out” trustee that was allow[ed] to be elected and take the seat and then
4 “resigned.” The second seat was for a trustee who moved out of the
5 district. The second seat should have been given to the next highest
6 candidate on the March 2014 election, by vote count of that election
7 (Michael Morton).

8 Tonight the trustee[s] moved to have the challenge to the March
9 election moved to the August meeting (for new information that the
10 trustees should read before acting on the March election challenge).
11 This is a clear attempt to allow the results of the . . . special election to
12 be “certified”.

13 The current trustees of the LJCPA are trying to deny a minority of the
14 membership a “voice” by denying minority candidates seats on the
15 board of trustee[s]. I request that you inform the LJCPA that they
16 immediately seat the elected candidate for the March 2014 election,
17 and stop all attempts to prevent “elected” candidates and members of
18 the LJCPA seats as trustee[s] . . .

19 91. In a letter to Steck dated July 15, 2014, counsel for La Jolla Association also
20 submitted a challenge to LJCPA’s July 2014 special election. The July 15 letter recited the
21 history of LJCPA’s Trustee elections, and pointed out that:

22 LJCPA’s July 3, 2014 special election has only exacerbated the problems
23 described in LJA’s March 2014 election challenge. The special election has
24 further confused the community about who was duly elected in March 2014,
25 and created uncertainty now as to who should have been elected in the special
26 election. Notwithstanding the City of San Diego’s June 26, 2014 response to
27 LJA’s election challenge, significant factual and legal questions concerning
28 which LJCPA Trustees have been properly elected remain unresolved.

At its July 9, 2014 meeting, LJCPA and its putative Trustees only intensified the
community’s confusion by manipulating the publicly-posted agenda and
refusing to address the election challenge and the City’s written response.
First, the Trustees moved consideration of the special election from agenda
item 14 (out of a total of 16) to the top of the agenda, at the beginning (rather
than the end) of the meeting. Then, instead of openly discussing issues
pertaining to the special election, the Trustees approved a motion offered by
Rob Whittemore – whose own eligibility to become a Trustee is in question –
to postpone discussion of the election challenge to LJCPA’s August 2014
meeting.

In light of the events described above, as well as the issues outlined in LJA’s
prior election challenge and correspondence with the City of San Diego, this
letter constitutes LJA’s formal challenge to LJCPA’s July 3, 2014 special
election. The special election cannot be certified until resolution of the
numerous issues surrounding the March 2014 election and questions
concerning the current composition of LJCPA’s Board of Trustees, all as
outlined in our prior correspondence.

1 Our community regrets that LJCPA's actions require filing a
2 second election challenge. However, the community truly believes the
3 integrity of the organization is more important than the political
4 aspirations of any individual, and hopes that rational and sound-
minded Trustees will review the merits of our appeals, comply with San
Diego City Council Policy 600-24, honor LJCPA's bylaws, and prevent
costly and divisive legal action.

5 (A true and correct copy of the July 15, 2014 challenge to the special election is attached as
6 Exhibit 19 to this complaint.)

7 92. Neither Steck nor any other LJCPA officer ever responded to either of the
8 challenges to the special Trustee election.

9 LJCPA's Rejection of the City's Recommendations

10 93. At its regular monthly meeting on August 7, 2014, LJCPA finally considered
11 the City of San Diego's recommendations (as set forth in Fulton's June 26, 2014 letter) for
12 curing and correcting various procedural violations in the March 2014 Trustee elections.
13 After discussion, LJCPA's Board voted seven to five (with LaCava abstaining) to reject the
14 City's recommendation to seat Morton as a Trustee, and instead supported LJCPA's officers'
15 prior rejection of the challenge to the March 2014 election and the Trustees' April 3, 2014
16 certification of the election results. (A true and correct copy of the final minutes of LJCPA's
17 August 7, 2014 meeting is attached as Exhibit 20 to this complaint.)

18 The City's Threat to Decertify LJCPA

19 94. LJCPA's rejection of the City of San Diego's recommendation that Morton be
20 seated as a Trustee triggered a meeting among representatives of LJCPA, the City Planning
21 Department, and the City Attorney's Office. After that meeting, on behalf of the City, Fulton
22 sent La Cava a letter dated August 27, 2014, which stated, in pertinent part:

23 At issue was the lack of compliance with the LJCPA Bylaws regarding the
24 seating of a newly elected candidate, Mr. Michael Morton. As a result of
25 the LJCPA's position not to seat Mr. Morton, an election challenge was
26 brought forth by Mr. Whitney. The City recommends that the LJCPA
27 complies with its currently adopted bylaws and City Council Policy 600-
24, as described below, and seats the newly elected candidate, Mr.
Michael Morton. Unless this occurs, ***City staff will proceed with the
process to recommend that the City Council remove the LJCPA's status
as a recognized community planning group.***

28

1 Fulton went on to summarize the issues clouding LJCPA's 2014 Trustee election:

2 At the end of voting at the March 2014 LJCPA elections, there were six
3 candidates on the election ballot with three write-in candidates. All
4 candidates received votes and the two termed-out candidates received more
5 than 2/3 votes of the general membership. The LJCPA Bylaws state in several
6 places (see below) that new candidates should be sought, that write-in
7 candidates are allowed, and that if enough new candidates are forthcoming,
8 they should be seated first, only then may a termed out candidate receiving
9 more than a 2/3 vote be seated. Following the direction of the LJCPA Bylaws
10 would have meant that Michael Morton, a new candidate, would have been
11 seated. However, Mr. Morton was not announced as winning a seat on the
12 Board of Trustees that evening.

13 95. After setting forth the relevant provisions of the Bylaws and Council Policy
14 600-24, Fulton's August 27, 2014 letter correctly observed that:

15 An election challenge was lodged by Mr. Whitney within the prescribed
16 time frame after the March election. Because of that, the election was not
17 final[iz]ed at that time. City staff sent a letter to the LJCPA dated June 26,
18 2014, recommending that the LJCPA take action to seat Mr. Michael
19 Morton. The LJCPA considered the letter, but voted 7-5-1 to not follow the
20 City's recommendation to seat Mr. Michael Morton at the August 7, 2014
21 meeting.

22 96. Finally, after reference to applicable Article IX, Section 4(E) of the Bylaws
23 ("Alleged Violations By the LJCPA As a Whole"), Fulton's August 27, 2014 letter concluded:

24 ***Therefore, based on the above provision, the next step would be for City
25 staff to schedule this item for City Council as an action item to remove the
26 LJCPA as the recognized group as outlined in Council Policy 600-24, unless
27 the LJCPA chooses to remedy the election challenge by seating Mr. Michael
28 Morton.***

(A true and correct copy of Fulton's August 27, 2014 letter is attached as Exhibit 21 to this
complaint [emphasis added].)

29 LJCPA Again Rejects the City's Recommendation

30 97. At its regular monthly meeting on September 4, 2014, LJCPA's Board again
31 rejected the City of San Diego's recommendation to seat Morton as a Trustee, this time by a
32 10-1-4 vote. The Board also voted to ask LaCava, as LJCPA's President, to appoint an *ad hoc*
33 committee to recommend Bylaw changes to deal with the issues raised in Fulton's August
34 27, 2014 letter. (A true and correct copy of the final minutes of LJCPA's September 4, 2014
35 meeting is attached as Exhibit 22 to this complaint.)

36

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

LJCPA's Ad Hoc Bylaw Update Committee

98. In response to the Board's request, LaCava appointed an *ad hoc* Bylaw Update Committee consisting of Chair Cindy Greatrex, Ray Weiss, and Whittemore. At its regular meeting on October 2, 2014, LJCPA's Board ratified LaCava's appointment of the Bylaw Update Committee. (A true and correct copy of the final minutes of LJCPA's October 2, 2014 meeting is attached as Exhibit 23 to this complaint.)

The City's Proposed Remedy for LJCPA's Election Violations

99. Whitney and Morton are informed and believe and thereon allege that, on or about October 13, 2014, LJCPA's officers met with Sherri Lightner (the San Diego City Council representative for District 1, which encompasses LJCPA's jurisdiction), members of Mayor Kevin Faulconer's staff, and City of San Diego staff members regarding the pending challenges to the March 2014 and July 2014 Trustee elections.

100. Whitney and Morton are further informed and believe and thereon allege that, during the October 13 meeting, the City advised LJCPA's officers that the City had determined that it had been proven that LJCPA as a whole had violated Council Policy 600-24 and LJCPA's Bylaws, and that LJCPA was therefore required to take corrective action in order to avoid decertification.

101. Whitney and Morton are further informed and believe and thereon allege that the City's proposed remedy for the election violations was:

- (a) To amend LJCPA's Bylaws to create a new, temporary 19th Trustee seat that would expire April 1, 2015;
- (b) To place Morton in the new temporary seat;
- (c) To amend the Bylaws in the future to clarify the election procedures, including provisions for write-in candidates; and
- (d) To ask the City to monitor the 2015 elections, including preparation of ballots.

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

LJCPA’s October 29, 2014 Special Meetings

102. LaCava scheduled special meetings of LJCPA’s general membership and Board for October 29, 2014. The purpose of the special meetings was to discuss and vote on the City’s proposed remedy for the election violations.

103. Councilperson Lightner attended LJCPA’s special meetings on October 29. At the meetings, Lightner urged LJCPA’s members to accept the City’s proposal in order to avoid loss of recognition (decertification) and loss of indemnification by the City.

LJCPA’s General Membership Resolution

104. During its special meeting on October 29, LJCPA’s general membership voted to amend Article III, Section 2, of the Bylaws to read as follows:

The LJCPA Board of Trustees shall consist of a total of eighteen Trustees, except that for the period November 1, 2014 through April 1, 2015 there shall be nineteen Trustees. The additional Trustee shall be known as the “19th Trustee.”

(A true and correct copy of the final minutes of LJCPA’s October 29, 2014 special membership meeting is attached as Exhibit 24 to this complaint [emphasis in original].)

LJCPA’s Board Resolution

105. During the special Board meeting convened after the general membership vote, LJCPA’s Trustees voted to approve a similar resolution, with the added conditions of “no admission of wrongdoing and pending the City dropping the complaint and assuring indemnification consistent with the ordinance.” Councilperson Lightner assured the Trustees of the City’s intentions in that regard. (A true and correct copy of the final minutes of LJCPA’s October 29, 2014 special Board meeting is attached as Exhibit 25 to this complaint.)

106. At no time prior to the special meetings on October 29 did any representative of LJCPA or the City ever discuss the proposed corrective action with Whitney or Morton, ask Morton whether the City’s suggested remedy was acceptable to him, or inquire as to whether he would accept the “19th Trustee” seat on the terms proposed.

107. After the conclusion of LJCPA’s October 29 meetings, Whittemore tendered his resignation from his seat as an LJCPA Trustee.

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

Morton Declines the Temporary “19th Trustee” Seat

108. At LJCPA’s regular monthly meeting on November 6, 2014, LaCava announced the results of the October 29, 2014, special meeting vote to amend the Bylaws to add a temporary 19th Trustee seat. LaCava also attempted to swear in Morton as the temporary “19th Trustee.” However, Morton declined to take the temporary seat, stating that various actions by LJCPA’s Trustees had reduced his term to several months in duration. (A true and correct copy of the draft minutes of LJCPA’s November 6, 2014 monthly meeting is attached as Exhibit 26 to this complaint.)

FIRST CAUSE OF ACTION

**Against All Defendants and Respondents For Declaratory Relief
(Code of Civil Procedure Section 1060)**

109. Whitney and Morton hereby refer to and incorporate paragraphs 1 through 108 of this complaint as if set forth fully herein.

110. Code of Civil Procedure section 1060 provides authority for this Court to grant declaratory relief. In pertinent part, section 1060 provides that:

Any person . . . who desires a declaration of his or her rights or duties with respect to another, . . . may, in cases of actual controversy relating to the legal rights and duties of the respective parties, bring an original action or cross-complaint in the superior court for a declaration of his or her rights and duties . . . He or she may ask for a declaration of rights or duties, either alone or with other relief; and the court may make a binding declaration of these rights or duties, whether or not further relief is or could be claimed at the time. The declaration may be either affirmative or negative in form and effect, and the declaration shall have the force of a final judgment.

111. Corporations Code section 5617, which governs election of board members of non-profit **public** benefit corporations, specifies in pertinent part that:

(a) Upon the filing of an action therefor by any director or member, or by any person who had the right to vote in the election at issue, the superior court of the proper county shall determine the validity of any election or appointment of any director of any corporation. . . .

(d) The court, consistent with the provisions of this part and in conformity with the articles and bylaws to the extent feasible, may determine the person entitled to the office of director or may order a new election to be held or appointment to be made, may determine the validity of the issuance of memberships and the right of persons to vote and may direct such other and further relief as may be just and proper.

1 Similarly, Corporations Code section 7616, which applies to election of board members of
2 non-profit *mutual* benefit corporations, provides in pertinent part that:

3 (a) Upon the filing of an action therefor by any director or
4 member or by any person who had the right to vote in the election at
5 issue, the superior court of the proper county shall determine the validity
6 of any election or appointment of any director of any corporation. . . .

7 (d) The court, consistent with the provisions of this part and in
8 conformity with the articles and bylaws to the extent feasible, may
9 determine the person entitled to the office of director or may order a new
10 election to be held or appointment to be made, may determine the
11 validity, effectiveness and construction of voting agreements and voting
12 trusts, the validity of the issuance of memberships and the right of persons
13 to vote and may direct such other and further relief as may be just and
14 proper.

15 112. Whitney and Morton are informed and believe and thereon allege that there
16 have arisen and now exist between Whitney and Morton, on one hand, and LJCPA, the City,
17 and LaCava, on the other hand, actual controversies concerning the parties' respective rights
18 and obligations under Council Policy 600-24, the Administrative Guidelines, the Election
19 Handbook, and the Bylaws, and with respect to LJCPA's March 2014 and July 2014 Trustee
20 elections.

21 113. Specifically, and contrary to the positions previously asserted by LJCPA, the
22 City, and LaCava, Whitney and Morton contend that:

23 (a) LJCPA's President did not appoint, and the Board of Trustees did not
24 publicly ratify, an Election Committee of four to seven members prior to the first week of
25 January of 2014. LJCPA and its existing Trustees did not make a good faith effort to
26 publicize the upcoming election, and LJCPA's membership was not presented with enough
27 new and interested Trustee candidates to exceed the number of open Trustee seats and to
28 allow termed-out candidates to leave the group for at least one year. Thus, the election
29 process was not fair, open, and accessible to the entire community of eligible voters.

30 (b) Because LJCPA did not form an Election Committee in a timely matter
31 as required under its Bylaws, there were three unexpected write-in candidates on the night
32 of the March 2014 Trustee election. Including those unsolicited write-in candidates, there
33 were nine candidates for seven seats on the LJCPA Board the night of the election. Termed-

1 out candidates La Cava and Fitzgerald, who had served six consecutive years as LJCPA
2 Trustees, were therefore no longer eligible for re-election. Neither La Cava nor Fitzgerald
3 should have been sworn into office.

4 (c) The election ballot used for the March 2014 election failed to indicate
5 that termed-out candidates would not be seated if there was a sufficient number of new
6 candidates to fill the vacant seats (in other words, new candidates have priority over
7 candidates exceeding the term limits).

8 (d) Morton and Ovanessoff, both of whom were new and qualified
9 candidates, were duly elected in LJCPA's March 2014 election. Morton and Ovanessoff
10 should have been sworn in as elected Trustees with new three year terms.

11 (e) Ovanessoff could not arbitrarily and unilaterally withdraw his
12 candidacy after the March 2014 election had taken place. He could have chosen not to
13 accept the seat or to resign his seat; however, he could not assign his seat to a termed-out
14 candidate such as La Cava (or, for that matter, to anyone else).

15 (f) La Cava did not have the authority to hold a special election on July 3,
16 2014, in violation of City staff instructions.

17 (g) Whitney and Morton have adhered to the terms and conditions of
18 Council Policy 600-24, the Administrative Guidelines, the Election Handbook, and LJCPA's
19 Bylaws; however, LJCPA, the City, and La Cava have not done so.

20 (h) LJCPA's agreement with the City – reached nearly eight months after
21 the March 2014 Trustee election, and without approval or even input from Whitney or
22 Morton – to amend its Bylaws to create a temporary new "19th Trustee" seat and to offer that
23 seat to Morton for a few months, does not constitute a proper or sufficient correction of or
24 remedy for the acknowledged deficiencies in LJCPA's 2014 Trustee election process.

25 (i) LJCPA should be decertified for its lengthy and ongoing refusal to
26 remedy the violations in its March 2014 Trustee election and its July 2014 special election.

27 (j) The City should not defend or indemnify LJCPA or LaCava in
28 connection with this action, because:

- 1 • LaCava was not duly elected and therefore is not entitled to the
2 protections offered under pursuant to Ordinance No. O-17086; and
- 3 • The claims asserted against LJCPA and LaCava in this action do
4 not result from their obligation to advise and assist the City and its agencies with land use
5 matters, but instead arise out of repeated and uncorrected violations by LJCPA and LaCava of
6 Council Policy 600-24, the Administrative Guidelines, the Election Handbook, and LJCPA's
7 Bylaws.

8 114. Whitney and Morton are informed and believe and thereon allege that LJCPA,
9 the City, and LaCava deny Whitney's and Morton's contentions, and instead claim that:

10 (a) In April 2014, a month after the March 2014 election, LJCPA's
11 President appointed, and the Board of Trustees did ratified, an Election Committee. Thus,
12 LJCPA made a good faith effort to recruit enough new and interested Trustee candidates to
13 exceed the number of Trustee seats open, and to allow termed-out Trustees to leave the
14 group for at least one year. Therefore, the election process was fair, open, and accessible to
15 the entire community of eligible voters.

16 (b) The March 2014 election ballot complied with Council Policy 600-24,
17 the Administrative Guidelines, the Election Handbook, and LJCPA's City-approved Bylaws.

18 (c) Termed-out candidates La Cava and Fitzgerald received more than 2/3
19 of the votes cast, and were therefore duly elected. New candidates who received fewer
20 votes, such as Morton, did not have priority over candidates exceeding their term limits,
21 such as LaCava and Fitzgerald, who receive a 2/3 vote.

22 (d) Morton was not duly elected.

23 (e) Ovanessoff withdrew his candidacy before the election, and therefore
24 was also not duly elected.

25 (f) By virtue of its agreement with the City to amend its Bylaws to create a
26 temporary new "19th Trustee" seat and to offer that seat to Morton for a few months, LJCPA
27 has correct the acknowledged deficiencies in its 2014 Trustee election process, and should
28 not be decertified.

1 (g) La Cava's authority to schedule the special election for July 3, 2014
2 supersedes the City's recommendation and advice to LJCPA not to not conduct the special
3 election.

4 (h) LJCPA, the City, and LaCava have adhered to the terms and conditions
5 of Council Policy 600-24, the Administrative Guidelines, the Election Handbook, and
6 LJCPA's Bylaws.

7 (i) The City should defend and indemnify LJCPA and LaCava against the
8 claims alleged in this lawsuit.

9 115. Whitney and Morton have no adequate and speedy remedy to resolve their
10 disagreements with LJCPA, the City, and LaCava other than a declaratory judgment from this
11 Court.

12 116. Because of the urgency and importance of the issues presented by the parties'
13 disagreements, it is appropriate for this Court to resolve those disputes by issuing a judicial
14 declaration determining the respective rights and obligations of the parties under Council
15 Policy 600-24, the Administrative Guidelines, the Election Handbook, and the Bylaws, and
16 with respect to LJCPA's March 2014 and July 2014 Trustee elections, and specifically
17 declaring that Whitney's and Morton's contentions, as set forth above, are correct.

18 **SECOND CAUSE OF ACTION**

19 **Against All Defendants and Respondents For Issuance of a Writ of Mandamus**

20 **(Code of Civil Procedure Sections 1085 and 1094)**

21 117. Whitney and Morton hereby refer to and incorporate paragraphs 1 through
22 116 of this complaint as if set forth fully herein.

23 118. In pertinent part, Code of Civil Procedure section 1085, subdivision (a),
24 provides as follows:

25 A writ of mandate may be issued by any court to any inferior
26 tribunal, corporation, board, or person, to compel the performance of
27 an act which the law specifically enjoins, as a duty resulting from an
28 office, trust, or station, or to compel the admission of a party to the use
and enjoyment of a right or office to which the party is entitled, and
from which the party is unlawfully precluded by that inferior tribunal,
corporation, board, or person.

1 119. Code of Civil Procedure section 1086 specifies that:

2 The writ must be issued in all cases where there is not a plain,
3 speedy, and adequate remedy, in the ordinary course of the law. It must
be issued upon the verified petition of the party beneficially interested.

4 120. As members of LJCPA, Whitney and Morton have a beneficial interest in the
5 conduct of LJCPA's 2014 Trustee elections, and specifically in ensuring that LJCPA follows
6 the non-discretionary election procedures set forth in Council Policy 600-24, the
7 Administrative Guidelines, the Election Handbook, and LJCPA's own Bylaws. In addition,
8 Morton, as a candidate who was properly elected but not seated as a Trustee in LJCPA's
9 March 2014 Trustee election, has a particular beneficial interest in ensuring that LJCPA
10 follows these non-discretionary election procedures.

11 121. As residents of the City of San Diego and of the geographical area assigned to
12 the jurisdiction of LJCPA, Whitney and Morton have a beneficial interest in the City's
13 enforcement of Council Policy 600-24, the Administrative Guidelines, and the Election
14 Handbook, particularly as those rules pertain to decertification of community planning
15 groups that violate the rules as a whole, as LJCPA has done in this case, and denial of
16 indemnification in litigation for violations of those rules by such community planning groups
17 and their individual members.

18 122. Whitney and Morton have no plain, speedy, or adequate remedy, in the
19 ordinary course of law, to correct the deficiencies in LJCPA's 2014 Trustee elections. More
20 specifically, both LJCPA and the City have refused to correct or to cure the above-described
21 violations of Council Policy 600-24, the Administrative Guidelines, the Election Handbook,
22 and the Bylaws. Instead, many months after the election at which Morton was properly
23 elected an LJCPA trustee, LJCPA, the City, and the District 1 councilperson negotiated a deal
24 – without any agreement, approval, or input by Whitney or Morton – pursuant to which
25 Morton was offered a watered-down seat as a "19th Trustee" for a term of only a few months.

26 123. Based on the facts set forth in this verified petition, Whitney and Morton are
27 entitled to, and hereby petition this Court for issuance of, a writ of mandate containing the
28 following terms and provisions:

1 (a) Ordering LJCPA immediately to seat Morton for a full three-year term as
2 Trustee.

3 (b) Requiring La Cava immediately to resign as a Trustee and as the
4 President of LJCPA for a period of at least one year.

5 (c) Requiring La Cava to step down as Chair of the City of San Diego's
6 Community Planners Committee – a position for which he was eligible only by virtue of the
7 the fact that he was LJCPA's President – for a period of at least one year.

8 (d) Barring LJCPA and La Cava from being defended or indemnified by the
9 City pursuant to Ordinance No. O-17086 against the claims asserted against them in this
10 lawsuit.

11 (e) Precluding the City from officially recognizing LJCPA as a community
12 planning group under Council Policy 600-24, and requiring the City to decertify LJCPA as a
13 community planning group.

14 124. Absent issuance of a writ of mandate as requested above, Whitney and Morton
15 will suffer great and irreparable injury. Issuance of the writ of mandate is necessary to
16 prevent such great and irreparable injury. Moreover, the issues presented by this petition
17 are of great public importance, and implicate the rights of representation on LJCPA's Board
18 of Trustees of Whitney, Morton, other LJCPA members, and LJCPA's general constituency.

19 **PRAYER FOR RELIEF**

20 Wherefore, Whitney and Morton pray for relief as follows:

21 A. For a determination by this Court of the rights and obligations of the parties
22 under Council Policy 600-24, the Administrative Guidelines, the Election
23 Handbook, and the Bylaws, and with respect to LJCPA's March 2014 and July
24 2014 Trustee elections;

25 B. For a declaration that Whitney's and Morton's contentions, as set forth above,
26 are correct;

27 C. For issuance of a writ of mandate with the terms and provisions set forth
28 above;

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

- D. For costs of suit;
- E. For reasonable attorneys' fees pursuant to Code of Civil Procedure section 1021.5; and
- F. For such other and further relief as this Court may deem proper.

DATED: December 4, 2014

SOLOMON WARD SEIDENWURM & SMITH LLP

By: _____

STEPHEN L. SCHREINER
Attorneys for Plaintiffs ROBERT WHITNEY
and MICHAEL MORTON