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SAN DIEGO COUNTY, CA

1 STEVEN W. HASKINS (State Bar No. 145395)
2 CYRUS E. SERADJ (State Bar No. 179500)
3 JUSTIN R. DORR (State Bar No. 221839)
4 HASKINS & ASSOCIATES APC
5 4045 BONITA ROAD, SUITE 206
6 BONITA, CALIFORNIA 91902-1336
7 TEL: (619) 479-9811
8 FAX: (619) 479-0337
9 E-mail steveh@haskinslaw.com

10 Attorney For Plaintiffs

11 SUPERIOR COURT FOR THE STATE OF CALIFORNIA
12 COUNTY OF SAN DIEGO, CENTRAL BRANCH

13 LA JOLLANS FOR CLEAN GOVERNMENT,)
14 INC., a California non-profit corporation,)
15 SALLY FULLER, an individual, and DONNA)
16 REICHART, an individual,)

17 Plaintiffs,

18 v.

19 LA JOLLA COMMUNITY PLANNING)
20 ASSOCIATION, INC., a California non-profit)
21 corporation, and DOES 1-50, inclusive,)

22 Defendants.

Case No. GIC 865370

FIRST AMENDED COMPLAINT FOR
DECLARATORY RELIEF RE:
BROWN ACT; ACTION TO ENFORCE
INSPECTION RIGHTS OF SALLY
FULLER; FOR DECLARATORY
RELIEF RE: INSPECTION OF PUBLIC
RECORDS PURSUANT TO THE
CALIFORNIA PUBLIC RECORDS
ACT; DECLARATORY RELIEF RE:
INTERFERENCE WITH CAL. CONST.
ART. I, §3; DECLARATORY RELIEF
RE: VIOLATION OF COUNCIL
POLICIES; DECLARATORY RELIEF
RE: VIOLATION OF BUSINESS &
PROFESSIONS CODE; §17200;
DECLARATORY RELIEF RE:
VIOLATION OF CONSTITUTIONAL
RIGHTS IN CREATION OF
UNREASONABLE IMPEDIMENT TO
RIGHT TO PETITION AND PUBLIC
PARTICIPATION

23 Plaintiffs allege that at all times relevant hereto:

24 ALLEGATIONS COMMON TO ALL CAUSES OF ACTION

25 Parties

26 1. Plaintiff LA JOLLANS FOR CLEAN GOVERNMENT(hereinafter referred to as
27 "LA JOLLANS") is a California non-profit corporation organized to investigate and expose
28 corruption and conflicts of interest in local government sponsored boards and committees in the

1 community of La Jolla, California.

2 2. Plaintiff SALLY FULLER is an individual residing in the community of La Jolla,
3 City of San Diego, San Diego County, California. SALLY FULLER is also a statutory member of
4 the defendant LA JOLLA COMMUNITY PLANNING ASSOCIATION, INC.

5 3. Plaintiff DONNA REICHART is an individual residing in the community of La
6 Jolla, City of San Diego, San Diego County, California.

7 4. Defendant LA JOLLA COMMUNITY PLANNING ASSOCIATION, INC. (hereafter
8 "LJCPA") is a California non-profit public benefit corporation organized pursuant to San Diego City
9 Council Policies Nos. 600-05 and 600-24.

10 5. The true names and capacities, whether individual, corporate or otherwise, of
11 defendants Does 1 through 50, are unknown to plaintiffs, who therefore sue and defendants by such
12 fictitious names and will ask leave to amend this complaint to show their true names and capacities
13 when the same have been ascertained. Plaintiff is informed and believes and thereon alleges that
14 each of the defendants designated herein as a Doe is in some manner legally responsible for the
15 events and happenings herein referred to and proximately caused the injuries and damages to
16 plaintiffs as herein alleged.

17 6. Plaintiffs are informed and believe and thereon allege that at all times herein
18 mentioned, each defendant was the agent and employee of each other defendant and, in doing the
19 things hereinafter alleged, was acting in the scope of said agency and employment and with the
20 permission and consent of each defendant, and each defendant ratified the acts of each other
21 defendant.

22 **Jurisdiction and Venue**

23 7. Jurisdiction and venue are proper for the San Diego Superior Court because defendant
24 LJCPA is a California corporation operating and headquartered in the community of La Jolla, City
25 of San Diego, San Diego County, because the purpose of the LJCPA as stated in its by-laws is
26 community planning for the community of La Jolla, San Diego County, California and to conduct
27 studies and to make comprehensive planning recommendations concerning land use in the
28 community of La Jolla, San Diego County, California, and because the acts and events

1 complained of herein occurred in San Diego County. The court also has jurisdiction pursuant to
2 Corporations Code §6336 and Government Code §6258.

3 8. The LJCPA has repeatedly and deliberately violated its own by-laws. The LJCPA
4 by-laws were originally approved by the City of San Diego on January 2, 1992. The approved
5 LJCPA by-laws create a structure for community input. This begins with a definition of the
6 membership of the LJCPA to include adult residents of La Jolla or La Jolla property owners or
7 persons whose principal place of business is in La Jolla, who attend a specific number of meetings
8 and who apply for membership. The would-be member must first attend three meetings within a
9 calendar year and so not become members until the next year. The directors of the LJCPA are
10 called trustees. The trustees are the individuals who have the power to meet and discuss projects
11 and plans with the staff of the San Diego City Development Services Department and who vote
12 on the recommendations made to the City of San Diego. The trustees are elected by the members.
13 The LJCPA has violated these provisions as a way to stop certain individuals from becoming
14 members and/or trustees and, to limit the membership and trusteeship to those members or
15 trustees who will vote in a predetermined way. Instances of these actions are as follows:

16 A. In December 2005 the LJCPA cancelled a meeting so that would-be
17 members would not have the three meetings necessary to be eligible to vote for trustees in the next
18 trustee election. The cancellation was unilateral, was without just cause and was done deliberately
19 to prevent specified prospective members from having any influence on the elections.

20 B. The LJCPA cancelled a recent April meeting with just a few hours notice
21 claiming no quorum existed when in fact a quorum did exist to avoid a vote. The president did
22 not appear at the meeting despite having a quorum. The secretary decided that no election could
23 be held under these circumstances.

24 C. At a meeting in 2003 the incumbent was defeated in his bid to be reelected
25 and Orrin Gabsch was elected. A representative from the City of San Diego helped to count the
26 votes and declared Gabsch the winner. After the election member and trustee Mark Lyon was left
27 alone with the ballots in a back room and decided that one ballot had been marked "incorrectly."
28 This changed the election results. Certain trustees used this information to declare the election

1 invalid and refused to attend meetings making it impossible to obtain a quorum. The election was
2 ultimately reversed in favor of the prior president due to these violations.

3 D. The LJCPA has allowed trustees to continue in their position even though
4 they were not qualified to be trustees or members under the by-laws.

5 E. The LJCPA has manipulated agendas to push items from one meeting to
6 another, and manipulated meeting dates to insure that certain trustees would be there to vote on
7 certain items.

8 F. The LJCPA has refused to allow access by trustees, members and even its
9 own secretary to the attendance lists to determine who vote in elections.

10 G. On October 3, 2002 the LJCPA by-laws were amended. Under the
11 amendment proxy voting was prohibited. Despite the amendment each year for the years 2003, 2004,
12 2005 and 2006 the trustees have been elected by proxy voting.

13 H. Article VI of the LJCPA by-laws requires disclosure of direct economic
14 interest by any trustee in any project that comes before the board and further requires that said
15 trustee recuse himself or herself from voting on the project or plan or even participating in any
16 manner in the discussion or vote. In violation of this by-law, several architects who are voting
17 trustees of the LJCPA have proposed projects within the boundaries of the LJCPA and will
18 receive direct economic benefits if and when certain proposed changes to the La Jolla Planned
19 District Ordinance are approved.

20 I. Article IX requires that the president must solicit testimony from members
21 of the public attending each meeting and that when there is a vote on a public issue, the president
22 must take a vote of the members of the public in attendance at that meeting and record such votes
23 in the minutes of the meetings. The LJCPA has consistently refused to take the room counts even
24 when demanded by members of the public in attendance at the meetings.

25 **FIRST CAUSE OF ACTION**

26 **ACTION FOR DECLARATORY RELIEF RE: VIOLATION OF THE BROWN ACT**

27 **(By plaintiff LA JOLLANS)**

28 9. The LA JOLLANS repeat and reallege the preceding paragraphs.

1 10. The LA JOLLANS have standing to bring this action for declaratory relief as it is an
2 "interested person" under to Government Code §54960.

3 11. The LJCPA was created pursuant to San Diego City Council policy for the purpose
4 of conducting studies of areas, making comprehensive planning recommendations to the City of San
5 Diego concerning land use in La Jolla, and to assist in the implementation of any adopted
6 Community Plan. The City of San Diego required the LJCPA to adopt specified by-laws for the
7 LJCPA operating procedures and responsibilities. The City of San Diego required that the LJCPA
8 submit those by-laws to the City for prior approval. The City had approval authority of the official
9 name of the LJCPA. The by-laws were submitted and pre-approved by the City Attorney and the
10 Deputy City Manager/Acting Planning Director.

11 12. The LJCPA is the officially recognized community planning group for La Jolla. It
12 has advisory responsibilities over an area established by the La Jolla Community Plan adopted by
13 the City. The LJCPA is to make recommendations to the City Council, Planning Commission, City
14 staff and other governmental agencies on land use matters specifically concerning the preparation
15 of adoption of implementation of or amendment to the General Plan. The LJCPA receives technical
16 advice and administrative direction from various City officials including the City Attorney, the
17 Development Services Department and Council member Scott Peters who has appeared at various
18 meetings and advised the trustees and members.

19 13. The City has authority to adopt and enforce a community plan for the City of San
20 Diego. The City's authority includes conducting studies of areas, making comprehensive plans for
21 land use in La Jolla, and to assist in the implementation of any adopted community plan. The City's
22 actions have resulted in a delegation of part of its functions to the LJCPA. The LJCPA is, therefore,
23 a legislative body as described in Government Code §54952. The LJCPA must, therefore, comply
24 with the open meeting requirements of The Brown Act codified in Government Code §54950 et seq.

25 14. The by-laws of the LJCPA specifically require that all meetings of the members
26 and/or the trustees shall be public except those devoted to litigation or personnel.

27 15. The LJCPA has failed to comply with The Brown Act which requires that all
28 meetings shall be open and public, requires that no action be taken by secret ballot whether

1 preliminary or final and requires that agendas be posted 72 hours prior to the meeting. The LJCPA
2 has held meetings that have not been properly noticed. A majority of the trustees have held secret
3 meetings through e-mails and telephone conferences. Once a majority had been established for a
4 particular course of action they will then hold a public meeting simply to confirm the outcome of the
5 secret meetings. Public meetings have been cancelled to insure a preset majority vote at a later
6 meeting, that is, to insure that certain trustees will be able to attend, and, therefore, the minority votes
7 will stay in the minority.

8 16. The plaintiffs seek a declaration from this court that the LJCPA is subject to the
9 requirements of the Brown Act; and that the LJCPA has violated the Brown Act.

10 **SECOND CAUSE OF ACTION**

11 **ACTION TO ENFORCE INSPECTION RIGHTS OF SALLY FULLER**

12 **(By Plaintiff SALLY FULLER)**

13 17. SALLY FULLER repeats and realleges the preceding paragraphs.

14 18. SALLY FULLER is a statutory member of LJCPA and was a statutory member at all
15 times relevant to this complaint. As a member of the LJCPA attends the regular meetings of the
16 LJCPA, owns property or resides in La Jolla or has her principal place of business or employment
17 in La Jolla. SALLY FULLER votes for the Trustees of the LJCPA. SALLY FULLER votes
18 regarding the adoption, amendment or repeal of the by-laws of the LJCPA.

19 19. SALLY FULLER is entitled to inspect certain records of the LJCPA pursuant to
20 Corporations Code §6333. These records are kept in San Diego County, California.

21 20. By letter dated April 24, 2006 SALLY FULLER demanded to inspect various books
22 and records of the LJCPA including:

23 •All minutes of every meeting of the La Jolla Community Planning Association for
24 the past five (5) years.

25 •Sign-in list for every meeting of the La Jolla Community Planning Association
26 for the past five (5) years.

27 •All e-mails/communications between officers/trustees concerning matters to be
28 voted on during meetings.

- 1 •Any and all corporate files of the La Jolla Community Planning Association.
- 2 •All resolutions of the Board of Trustees of the La Jolla Community Planning
- 3 Association.

4 21. The LJCPA failed and refused to allow said inspection at that time and continues to
5 today to refuse to allow the inspection of the records. Said refusal by the LJCPA is in violation of
6 the Corporations Code §6336.

7 22. The requested inspection is reasonably related to SALLY FULLER's interests as a
8 member.

9 23. SALLY FULLER seeks an order from this court permitting her to inspect and copy
10 the listed records of the LJCPA pursuant to Corporations Code §6336.

11 **THIRD CAUSE OF ACTION**

12 **ACTION FOR DECLARATORY RELIEF RE: INSPECTION OF PUBLIC RECORDS**
13 **PURSUANT TO THE CALIFORNIA PUBLIC RECORDS ACT**

14 **(By plaintiff LA JOLLANS)**

15 24. LA JOLLANS repeat and reallege the preceding paragraphs.

16 25. LA JOLLANS are members of the public as that term is defined in the California
17 Public Records Act.

18 26. The LJCPA is a local agency for purposes of the California Public Records Act.

19 27. On March 23, 2006 LA JOLLANS sent the LJCPA a letter requesting the LJCPA
20 produce the following documents:

21 •All minutes of every meeting of the La Jolla Community Planning Association for
22 the past five (5) years.

23 •Sign-in list for every meeting of the La Jolla Community Planning Association
24 for the past five (5) years.

25 •All e-mails/communications between officers/trustees concerning matters to be
26 voted on during meetings.

27 •Any and all corporate files of the La Jolla Community Planning Association.

28 •All resolutions of the Board of Trustees of the La Jolla Community Planning

1 Association.

2 28. The LJCPA failed to respond as required by law and, therefore, refused to produce
3 the requested documents.

4 29. The LA JOLLANS' request was made pursuant to the California Public Records
5 Act. The LA JOLLANS are entitled to inspect and copy the records.

6 30. The LA JOLLANS seek a declaration from this court that they are entitled to
7 inspect and copy the requested records.

8 **FOURTH CAUSE OF ACTION**

9 **ACTION FOR DECLARATORY RELIEF RE:**

10 **UNLAWFUL INTERFERENCE WITH RIGHTS UNDER CAL. CONST. ART. I, §3**

11 **(By Plaintiff DONNA REICHART)**

12 31. DONNA REICHART repeats and realleges the preceding paragraphs.

13 32. The LJCPA has acted to deprive La Jolla residents including DONNA REICHART
14 of their rights to participate in the LJCPA.

15 33. The LJCPA has created restrictions on membership that make it difficult or
16 impossible to become a member. Further, the trustees manipulate the meetings to keep people
17 from being able to qualify as members. Said manipulation is the willful cancelling of meetings
18 at the end of the year to keep people from obtaining the required three meetings within a year to
19 qualify for membership.

20 34. The LJCPA has refused membership to some members who have qualified by
21 willfully losing sign-in sheets for meetings and/or failing to make the required record for
22 attendance at meetings.

23 35. The LJCPA has willfully refused to create a standard procedure for taking
24 attendance.

25 36. The LJCPA has disqualified prospective members after they have signed in by
26 creating a temporary rule that a signature as well as a printed name must appear on the sign in
27 sheet.

28 37. The LJCPA has started meetings without allowing sufficient time for people to sign

1 in and then refused to allow these people to sign in after the meeting.

2 38. The LJCPA was created pursuant to San Diego City Council policy for the purpose
3 of conducting studies of areas, making comprehensive planning recommendations to the City of San
4 Diego concerning land use in La Jolla, and to assist in the implementation of any adopted
5 Community Plan. The LJCPA operates under the auspices of the City. The City of San Diego
6 increasingly uses organizations such as the LJCPA to aid in governance. A citizen's ability to
7 instruct their representatives, that is, to have any say in the government of the City is directly
8 connected to their ability to participate in organizations like the LJCPA.

9 39. The California Const. Art. I, §3 states: "(a) The people have the right to instruct their
10 representatives, petition government of redress of grievances, and assemble freely to consult for the
11 common good."

12 40. Through their action the LJCPA has unlawfully interfered with the DONNA
13 REICHART's constitutional rights granted under California Const. Art. I, §3.

14 41. DONNA REICHART seeks a declaration from this court that the LJCPA acted in
15 violation of her rights under the California Const. Art. I, §3 by depriving her of the right to
16 participate in LJCPA by improper cancellation of meetings; and/or by failure to make required
17 records of attendance at meetings; and/or by implementing and enforcing restrictions on
18 membership in the LJCPA; and/or by manipulating the rules to disqualify members; and/or by
19 failing to create a standard procedure for taking attendance at the meetings.

20 **FIFTH CAUSE OF ACTION**

21 **ACTION FOR DECLARATORY RELIEF FOR VIOLATION OF COUNCIL POLICIES**

22 **(By plaintiff LA JOLLANS)**

23 42. The plaintiff repeat and reallege the preceding paragraphs.

24 43. Through the actions listed above the LJCPA has violated Council Policy 600-24
25 of the policies of the City of San Diego including Articles VI §1, 7, 8, and 10 regarding conflicts
26 of interest of its trustees and/or members, by conduct that is detrimental to the planning group,
27 and by failure to have all substantive discussions about agenda items or possible group positions
28 on agenda items occur at noticed planning group meetings.

1 44. LJCPA has been repeatedly warned both by the public, by members of LJCPA and
2 by City officials to stop its violations of the City Council policies.

3 45. The LA JOLLANS seeks a declaration from this court that is the LJCPA has
4 violated Council Policy 600-24.

5 **SIXTH CAUSE OF ACTION**

6 **ACTION FOR DECLARATORY RELIEF RE: VIOLATION OF**
7 **BUSINESS & PROFESSIONS CODE §17200 et seq.**

8 **(By plaintiff LA JOLLANS)**

9 46. The plaintiffs repeat and reallege the preceding paragraphs.

10 47. By reason of the deception, unfair and other wrongful actions of the defendants as
11 herein described, these defendants have committed one or more acts of unfair competition within
12 the meaning of Business and Professions Code §17200, et seq.

13 48. The plaintiffs seek a declaration from this court that the actions of the defendants
14 are in violation of the Business and Professions Code §17200, et seq.

15 **SEVENTH CAUSE OF ACTION**

16 **ACTION FOR DECLARATORY RELIEF RE:**
17 **VIOLATION OF CONSTITUTIONAL RIGHTS IN CREATION OF UNREASONABLE**
18 **IMPEDIMENT TO RIGHT TO PETITION AND PUBLIC PARTICIPATION**

19 **(By plaintiff LA JOLLANS)**

20 49. LA JOLLANS repeat and reallege the preceding paragraphs.

21 50. LA JOLLANS represents the citizens of La Jolla and has the right the petition the
22 government.

23 51. The actions of the LJCPA have created restrictions on membership make it difficult
24 or impossible to become a member and, therefore, create an unreasonable impediment to public
25 participation and the right to petition the government.

26 52. Through their action the LJCPA has unlawfully interfered with the LA JOLLANS'
27 constitutional rights.

28 53. The LA JOLLANS seeks a declaration from this court that the LJCPA acted in

1 violation of their constitutional rights by implementing and enforcing restrictions on membership
2 in the LJCPA.

3 **RELIEF**

4 **A. FIRST CAUSE OF ACTION**

5 WHEREFORE, the LA JOLLANS pray for judgment against Defendant as follows:

6 1. For a declaration that the LJCPA is subject to the requirements of the Brown Act; and
7 that the LJCPA has violated the Brown Act.

8 2. For attorney fees;

9 3. For costs of suit;

10 4. For such other and further relief as Court may deem just and proper.

11 **B. SECOND CAUSE OF ACTION**

12 WHEREFORE, SALLY FULLER prays for judgment against Defendant as follows:

13 1. For an order from this court permitting her to inspect and copy the listed records
14 of the LJCPA pursuant to Corporations Code §6336;

15 2. For attorney fees;

16 3. For costs of suit;

17 4. For such other and further relief as Court may deem just and proper.

18 **C. THIRD CAUSE OF ACTION**

19 WHEREFORE, the LA JOLLANS pray for judgment against Defendant as follows:

20 1. For a declaration they are entitled to inspect and copy the requested records
21 pursuant to the Public Records Act.

22 2. For attorney fees;

23 3. For costs of suit;

24 4. For such other and further relief as Court may deem just and proper.

25 **C. FOURTH CAUSE OF ACTION**

26 WHEREFORE, DONNA REICHART prays for judgment against Defendant as follows:

27 1. For a declaration that the LJCPA acted in violation of her rights under the
28 California Const. Art. I, §3 by depriving her of the right to participate in LJCPA by improper

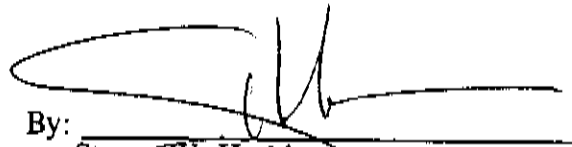
1 **F. SEVENTH CAUSE OF ACTION**

2 WHEREFORE, the LA JOLLANS pray for judgment against Defendant as follows:

- 3 1. For a declaration that is the LJCPA has acted in violation of their rights under the
4 California Const. Art. I, §3 by creating an unreasonable impediment to public participation by
5 2. For attorney fees;
6 3. For costs of suit;
7 4. For such other and further relief as Court may deem just and proper.

8 Date: May 17, 2006

HASKINS & ASSOCIATES APC

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11 By: _____
12 Steven W. Haskins
13 Attorneys for Plaintiffs
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