

United States District Court
For the Northern District of California

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

SEASIDE CIVIC LEAGUE, INC., and DEL MONTE MANOR, INC.,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, and SHAUN DONOVAN, in his official capacity as Secretary of United States Department of Housing and Urban Development

Defendants.

Case No. C-14-1823-RMW

ORDER RE: EVIDENTIARY HEARING; DISMISSING CASE PURSUANT TO NOTICE OF VOLUNTARY DISMISSAL

[Re: Docket Nos. 52, 65]

An evidentiary hearing was held in this case on Tuesday, October 7, 2014 to determine who has standing to pursue (or dismiss) the pending action purportedly brought by the Seaside Civic League, Inc. (“Seaside Civic League”) and Del Monte Manor, Inc. (“DMM”). *See* Dkt. No. 65. The court held the evidentiary hearing to resolve two subsidiary questions: (1) whether several new Seaside Civic League board members were properly appointed, and (2) whether Kathleen Clack or Richard Glenn is the attorney for Seaside Civic League. *Id.* The court finds that the new Seaside Civic League board members were properly appointed, and that because Kathleen Clack was subsequently dismissed as counsel for plaintiffs, she is not authorized to pursue this matter on behalf

1 of the Seaside Civic League and DMM. Accordingly, the court dismisses the action pursuant to
2 plaintiffs' Rule 41(a)(1)(A)(i) notice of voluntary dismissal.¹

3 I. BACKGROUND

4 A. The Current Litigation

5 This case arises out of a dispute between DMM and HUD over subsidies paid by HUD to
6 Section 8 housing facilities. The court's May 23, 2014 order denying plaintiff's motion for a
7 preliminary injunction describes in detail the origins of the dispute. *See* Dkt No. 22, at 2–3.

8 DMM filed the instant action through its counsel Kathleen Clack on April 21, 2014 against
9 the United States Department of Housing and Urban Development ("HUD") and Shaun Donovan,
10 secretary of HUD. *See* Dkt. No 1. In its complaint, DMM alleged seven causes of action: breach of
11 contract, interference with contract, "statutory violations," violation of due process, violation of
12 equal protection, "violation of civil rights," and "abuse of power." *Id.* Along with its complaint,
13 DMM filed for a temporary restraining order, a preliminary injunction, and a permanent injunction.
14 *See* Dkt. Nos. 2-4. On April 22, 2014, the court denied DMM's application for a temporary
15 restraining order without prejudice. Dkt. No. 10. The next day, DMM re-filed for a temporary
16 restraining order, which the court denied, requiring notice to be given to defendants. Dkt. No. 12.
17 After holding a hearing on the matter, on May 23, 2014 the court denied DMM's request for a
18 preliminary injunction, finding that DMM had failed to show irreparable harm would result absent
19 an injunction, and that the public interest weighed against such an injunction. Dkt. No. 22.

20 On June 15, 2014 DMM filed a first amended complaint ("FAC"). Dkt. No. 25. The FAC
21 alleges three claims for relief: (1) failure to make subsidy payments to DMM in amounts required
22 by the United States Housing Act of 1937, 42 U.S.C. § 1437; (2) Racial discrimination, disparate
23 treatment of minorities, improper demands and threats, and failure to provide DMM with notice and
24 due process in violation of Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 1983, and
25 Amendments Five and Fourteen of the U.S. Constitution; and (3) requiring DMM to charge rents at
26 its unsubsidized units which were lower than the available market rate, in violation of the Fifth
27 Amendment's prohibition on the taking of private property without just compensation. *Id.* On

28 ¹ In light of this order and plaintiffs' voluntary dismissal of this case, all other pending motions are
moot. Dkt. Nos. 4, 32, 40, 44, 47.

1 August 5, 2014 HUD moved to dismiss the FAC. Dkt. No. 32. DMM filed an opposition on August
2 20, 2014. Dkt. No. 35. Also on August 20, 2014 DMM filed a motion for leave to file a second
3 amended complaint (“SAC”). Dkt. Nos. 40, 37. DMM then moved on August 29, 2014 to join
4 various indispensable parties, including several former and current Seaside Civic League board
5 members, the City of Seaside, the Seaside City Manager and Deputy City Manager, the Seaside
6 Police Department, and several Seaside police officers. *See* Dkt. No. 44. On September 2, DMM
7 moved to amend the SAC. Dkt. No 46. The amended SAC contains several additional claims,
8 including constitutional violations under the Fourth, Fifth, and Fourteenth Amendments, statutory
9 violations under 42 U.S.C. §§ 1981, 1982, 1985(2), as well as common law tort claims for tortious
10 interference, conversion, fraud, gross negligence, and trespass. *Id.*

11 On September 5, 2014 several tenants at Del Monte Manor moved to intervene as party
12 defendants. Dkt. No. 47. HUD filed a reply in support of its motion to dismiss the FAC, an
13 opposition to DMM’s motion for leave to file the SAC, and a response to DMM’s motion to join
14 additional parties on September 12, 2014. Dkt No. 53. On September 18, 2014 HUD filed a
15 statement of non-opposition to the tenants’ motion to intervene. Dkt. No. 61. On September 19,
16 DMM filed a reply in support of its motions for leave to file the SAC and to join additional parties.
17 Dkt. No. 64.

18 The issue now before the court concerns plaintiffs’ representation in this matter. As is
19 discussed in the following section, in August, 2014 Richard Glenn was hired as counsel for Seaside
20 Civic League and DMM. On September 8, 2014, Mr. Glenn filed a notice of appearance as counsel
21 for DMM and Seaside Civic League. Dkt. No. 48. Mr. Glenn also filed a notice of voluntary
22 dismissal pursuant to Rule 41(a)(1)(A)(i) of the Federal Rules of Civil Procedure on behalf of DMM
23 and Seaside Civic League. *See* Dkt. No. 52.

24 **B. The August 11, 2014 Meeting of the Seaside Civic League Board of Directors**

25 The dispute over DMM’s representation centers on the August 11, 2014 Seaside Civic
26 League board meeting, at which Ms. Clack was dismissed as counsel for DMM and Mr. Glenn
27 retained.²

28 ² It is unclear from the record and the representations of the parties exactly whether the Seaside
Civic League and DMM boards must be composed of the same individuals, whether they must

1 The Seaside Civic League has six members, all of which are local civic organizations and
2 churches. Dkt. No. 56 (“Seaside Civic League bylaws”), Art. III, § 1. The current members of the
3 Seaside Civic League are: (1) the Seaside Chamber of Commerce; (2) the Seaside Lions Club; (3)
4 the Seaside Rotary Club; (4) the Seaside Kiwanis Club; (5) Ocean View Baptist Church; and (6)
5 Greater Victory Temple Church. *See* Dkt. No. 68 (“Glenn Brief”), at 5. The Seaside Civic League
6 articles and bylaws provide that the member organizations will each appoint one director to serve on
7 the Seaside Civic League board of directors. Seaside Civic League bylaws, Art. III, § 2. Del Monte
8 Manor’s bylaws provide that its directors are to be selected from the directors or members of the
9 Seaside Civic League. Dkt. No 57, at ECF p. 22–26. Although Seaside Civic League and Del Monte
10 Manor are separate California non-profit corporations and Del Monte Manor is subordinate to the
11 Seaside Civic League, several witnesses testified at the evidentiary hearing that the same individuals
12 have historically served as directors of both corporations.

13 On August 7, 2014 three Seaside Civic League directors called a special meeting of the
14 Seaside Civic League board to be held on August 11, 2014. Dkt. No. 67, Ex. 1, at ECF p. 2. The
15 meeting was called by: (1) Monica Mapp, appointed by the Seaside Chamber of Commerce; (2)
16 Wayne Dalton, appointed by the Seaside Rotary Club; and (3) Cyndi Dorsey, appointed by the
17 Seaside Kiwanis Club. *Id.* Present at the August 11 meeting were five directors appointed by the
18 member organizations and one non-participating observer sent in the place of Norah Saffold, the
19 director appointed by Greater Victory Temple Church. Dkt. No. 67, Ex. 3, at ECF p. 11–12. At the
20 meeting, three individuals presented written authorizations for appointment to the Seaside Civic
21 League board and were seated as new directors. *Id.* The board also elected officers, and appointed
22 three Seaside Civic League officers—Rick Medina, Cyndi Dorsey, and Jim Vossen—to serve as the
23 three members of the DMM board. *Id.*

24
25 differ, and if so, how. At the October 7, 2014 evidentiary hearing, Ms. Clack and Mr. Glenn agreed
26 that the same individuals serve on both boards. What is clear is that at the August 11 Seaside Civic
27 League meeting, the Seaside Civic League board elected three of its directors to serve as officers of
28 the Seaside Civic League board, and resolved that these three directors would serve as the DMM
board. *See* Dkt. No. 46, Ex. 3, at ECF p. 12. Ms. Clack argued at the evidentiary hearing that this
amounted to an improper structural change to the DMM board, but the propriety of the actions of
the Seaside Civic League board aside from the dismissal of Ms. Clack as DMM counsel are not
before this court.

1 **C. Seaside Civic League and DMM Representation in the Current Litigation**

2 On August 12, 2014 the newly constituted DMM board held a special meeting, at which the
3 board hired Richard Glenn as general counsel for DMM.³ *See* Dkt. No. 67, Ex. 5, at ECF p. 26.
4 Newly-elected Seaside Civic League and DMM President Rick Medina sent Ms. Clack a letter dated
5 the same day requesting a copy of Ms. Clack’s legal services agreement, and directing Ms. Clack to
6 have no communication of any kind regarding the instant litigation with any individual other than
7 Medina himself. Dkt. No. 67, Ex. 6, at ECF p. 30. Mr. Madina and Mr. Glenn received no response.
8 Glenn Brief, at 4. The following day, August 13, 2014, Ms. Clack filed a state court action against
9 all Seaside Civic League, Inc. board members, with the exception of Norah Saffold, seeking
10 declaratory and injunctive relief. *See* Dkt. No. 67, Ex. 7, at ECF p. 35.

11 On August 15, 2014, at the direction of Mr. Medina, Mr. Glenn, as general counsel for
12 DMM, sent Ms. Clack a letter terminating her representation of both Seaside Civic League and
13 DMM and requesting an accounting of funds received and expended on behalf of DMM and Seaside
14 Civic League, billing statements, and related documents. Dkt. No. 67, Ex. 8, at ECF p. 43; *see also*
15 Glenn Brief, at 4. Mr. Glenn’s letter also directed Ms. Clack not to act in any manner with respect to
16 the instant litigation and to provide Mr. Glenn with a substitution of attorney form. Dkt. No. 67, Ex.
17 8, at ECF p. 43.

18 Mr. Glenn subsequently filed a notice of voluntary dismissal in this case on behalf of DMM
19 and Seaside Civic League. *See* Dkt. No. 52. Ms. Clack disputes Mr. Glenn’s status as counsel for
20 DMM and Seaside Civic League, alleging various improprieties and defects in the procedure by
21 which she was dismissed and Mr. Glenn was hired, and seeks to continue the instant action. *See*
22 Dkt. No. 54, at 2–9.

23 The court held an evidentiary hearing for October 7, 2014 to resolve the question of DMM’s
24 representation. Mr. Glenn and Ms. Clack both filed briefs in advance of the hearing. Dkt. Nos. 68,
25 69 (“Clack Brief”).

28 ³ The Seaside Civic League board hired Mr. Glenn as general counsel for Seaside Civic League
several days later at the regular meeting on August 21, 2014. *See* Dkt. No. 67, Ex. 5, at ECF p. 27.
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1 **II. ANALYSIS**

2 Whether Mr. Glenn is authorized to dismiss this case on behalf of Seaside Civic League and
3 DMM pursuant to his notice of voluntary dismissal depends on the identity of counsel representing
4 Seaside Civic League and DMM in this action. Mr. Glenn has introduced board resolutions
5 authorizing his hiring, and letters documenting Ms. Clack’s dismissal. *See* Dkt. No. 67, Exs. 5, 6, 8,
6 at ECF p. 25–32, 42–44. However, Ms. Clack contests Mr. Glenn’s authority to represent plaintiffs
7 in this case by challenging several appointments and corporate acts that preceded and led to her
8 dismissal. Specifically, Ms. Clack disputes the replacement of several Seaside Civic League
9 directors by their designating member organizations, and the calling of a special meeting at which
10 several new directors were seated.⁴ Clack Brief, at 2–4. For the reasons discussed below, the court
11 finds Ms. Clack was dismissed by the Seaside Civic League board, and that consequently she is not
12 authorized to pursue this case on behalf of either corporation.

13 **A. Appointments to the Seaside Civic League Board**

14 Ms. Clack was fired by Mr. Glenn following his retention as general counsel for Seaside
15 Civic League and DMM. Dkt. No. 67, Ex. 8, at ECF p. 43. Ms. Clack argues that board resolutions
16 hiring Mr. Glenn are void because several directors on the board at the time of Mr. Glenn’s hiring
17 had not been “elected and qualified” by the sitting board, and were therefore not proper directors.
18 Clack Brief, at 2–4. The result, according to Ms. Clack, is that her dismissal was ineffective. *Id.* The
19 court must therefore first address the question of appointment to the Seaside Civic League board.

20 California Corporations Code § 5220 contains provisions regarding the terms of office,
21 election, designation, and selection of directors of nonprofit public benefit corporations. Ms. Clack
22 focuses her argument on § 5220(b),⁵ which provides that “. . . each director, including a director

23 ⁴ Ms. Clack also challenges many actions taken by the newly-constituted Seaside Civic League
24 board, such as their appointment of new officers to serve as the board for DMM, as well as their
25 decision to dismiss this lawsuit. Clack Brief, at 5–6. However, none of these actions are before this
26 court. Because the court resolves that Ms. Clack was properly dismissed by the Seaside Civic
27 League board and no longer represents plaintiffs in this matter, she has no authority to prosecute the
28 suit on behalf of the plaintiffs, nor does she herself have standing to do so. The court notes that Ms.
Clack and aggrieved former directors may find recourse in state court by bringing, for example, a
derivative action under Cal. Corp. Code § 5710.

⁵ Ms. Clack also cites Article IV of the Del Monte Manor articles of incorporation, but this
provision, in addition to being relevant only for the DMM board and not the Seaside Civic League
board, relates to the process for electing and length of terms for *officers* of the corporation, not
directors. *See* Dkt. No. 57, at ECF p. 31.

1 elected to fill a vacancy, shall hold office until the expiration of the term *for which elected* and until
2 a successor has been elected and qualified, unless the director has been removed from office.” Cal.
3 Corp. Code § 5220(b) (emphasis added). However, reading § 5220(b) together with the remainder
4 of § 5220 makes clear that that the election and qualification requirements in § 5220(b) apply only
5 in the case of *elected* directors, rather than designated directors such as the directors of the Seaside
6 Civic League.

7 As § 5220(b) details the process by which an *elected* director’s terms expires and he or she is
8 replaced, it should be read in light of the preceding subdivision, § 5220(a), which governs the length
9 of terms to which directors may be elected: “[*e*]xcept as provided in subdivision (d), directors shall
10 be elected for the terms, not longer than four years, as are fixed in the articles or bylaws.” In
11 contrast to §§ 5220(a) and (b), which govern the terms of office and expiration of such terms in the
12 case of an elected director, § 5220(d) provides different rules for *designated* directors. Section
13 5520(d) reads, in relevant part:

14 Subdivisions (a) through (c) notwithstanding, all or any portion of the
15 directors authorized in the articles or bylaws of a corporation may hold
16 office by virtue of designation or selection by a specified designator as
17 provided by the articles or bylaws rather than by election. Such directors
18 shall continue in office for the term prescribed by the governing article or
19 bylaw provision, or, if there is no term prescribed, until the governing
20 article or bylaw provision is duly amended or repealed

21 Cal. Corp. Code § 5220(d). Accordingly, where a director is designated (or appointed) rather than
22 elected, the director serves not until a successor is elected and qualified, but rather “for the term
23 prescribed by the governing article or bylaw provision, or, if there is no term prescribed, until the
24 governing article or bylaw provision is duly amended or repealed.” Cal. Corp. Code § 5220(d). As a
25 result, where, as here, a corporation’s bylaws and articles provide for designation of directors
26 without providing a term of office, designated directors serve until the governing provision is
27 amended or repealed.

28 While a designated director may be appointed to serve what is effectively an indefinite term
so long as the bylaws do not specify otherwise, the Corporations Code contains provisions for their
removal, with or without cause. *See* Cal. Corp. Code § 5222. In support of her argument that
directors may not be removed by their designating organization until their terms expire, Ms. Clack

1 cites § 5222(d),⁶ which provides that “[e]xcept as provided in this section . . . a director may not be
2 removed prior to the expiration of the director's term of office.” Clack Brief, at 5. However,
3 subdivision (d) must be read in light of subdivision (f), which provides an exception in the case of
4 designated directors:

5 “If by the provisions of the articles or bylaws a designator is entitled to
6 designate one or more directors, then: (1) Unless otherwise provided in the
7 articles or bylaws at the time of designation, any director so designated
8 may be removed without cause by the designator of that director.”

9 Cal. Civil Code § 5222(f); *see also Am. Ctr. for Educ., Inc. v. Cavnar*, 80 Cal. App. 3d 476, 492–93
10 (Ct. App. 1978) (“As a general rule, the power to remove either a director or a corporate officer is
11 incidental to the power to appoint or elect.”) (citing *Stott v. Stott Realty Co.*, 246 Mich. 267 (1929);
12 Annot., Power of Directors of Private Corporation to Remove Officers or Fellow Directors (1929)
13 63 A.L.R. 776, 776–777; 19 Am.Jur.2d, Corporations, § 1105, at 545). The Seaside Civic League
14 bylaws provide only that each member organization may appoint one representative to the board,
15 and contain no provisions regarding the removal of directors. *See Seaside Civic League bylaws*, Art.
16 III, § 2. Section 5222(f) therefore applies, and empowers the member organizations to remove and
17 appoint directors as they see fit.

18 The remainder of Ms. Clack’s citations in support of her argument—that member
19 organizations may not appoint and remove designated directors at will—are to sections of the
20 California Corporations Code that do not apply to this case. *See Clack Brief*, at 5, 6. First, § 5341 is
21 relevant to the termination of *members*, not directors. *See Cal. Corp. Code* § 5341(a) (“No member
22 may be expelled or suspended, and no membership or membership rights may be terminated or
23 suspended, except according to procedures satisfying the requirements of this section.”). Second, §
24 5224(a) provides that board vacancies *may* be filled by approval of the board, except for, as here, a
25 vacancy created by the removal of a director. *Cal. Civ. Code* § 5224(a). Where a director vacancy is
26 the result of director removal, the board may fill the vacancy only if the bylaws provide the board

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28 ⁶ Ms. Clack citation is to § 7222(d), which is essentially identical to § 5222(d), but applies to nonprofit mutual benefit corporations, rather than nonprofit public benefit corporations. In any event, neither section is applicable here.

1 with such authority. *Id.* Because the Seaside Civic League bylaws provide the board with no such
2 authority, § 5224 is inapplicable under the facts of this case.

3 Lastly, the court notes that all the testimony Ms. Clack elicited at the October 7, 2014
4 evidentiary hearing appeared designed to show that the Seaside Civic League board had for some
5 time followed the custom of voting in new directors.⁷ However, Ms. Clack introduced no testimony
6 nor provided any argument which would explain why this evidence should trump both corporate
7 bylaws and California law. In certain circumstances custom may be evidence that a bylaw was
8 adopted or amended, but such a claim has not been made in this case. *See* 8 Fletcher Cyc. Corp. §
9 4180 (“[A]mendments may also be proven by proof of custom or usage or by implication.”). No
10 testimony was given at the evidentiary hearing which would suggest that the Seaside Civic League
11 board’s practice of voting on new directors was a formally adopted practice, rather than a
12 nonbinding custom. While custom may be used to show that a bylaw was adopted or amended,
13 bylaws may not be adopted by custom. *See Powers v. Marine Engineers’ Beneficial Ass’n, No. 35,*
14 *52 Cal. App. 551, 555 (1921)* (“There are a few cases which hold that a by-law may be proved by
15 implication and by custom; but [none] which goes to the length of holding that a by-law may be
16 created or adopted by usage. . . .”); *see also* 8 Fletcher Cyc. Corp. § 4180 n.5. Ultimately, Ms. Clack
17 has provided the court no reason to find that the procedures set forth in the corporations’ bylaws and
18 in the California Corporations Code do not apply to the appointment of directors to Seaside Civic
19 League.

20 Having established that each member organization has essentially unfettered discretion
21 under the Seaside Civic League bylaws to appoint and remove its designated director, the court
22 turns to the specific appointments at issue in this case and the calling of the August 11, 2014 special
23 meeting of the Seaside Civic League board.

24 **B. The Appointments of Cyndi Dorsey, Jim Vossen, Willie Pearson, and Rick Medina**
25 **to the Seaside Civic League Board**

26 Ms. Clack’s position that her dismissal was ineffective rests primarily on the argument that
27 the August 11, 2014 special meeting of the Seaside Civic League board was improperly called.

28 ⁷ Additionally, the court finds the testimony of several of Ms. Clack’s witnesses at the evidentiary
hearing largely irrelevant. What little relevant testimony was presented the court finds unpersuasive.
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1 Clack Brief, at 2. Because that meeting saw the sitting of several new directors on the board, it set
2 the stage for a differently-composed board to hire Mr. Glenn at the regular meeting which followed
3 on August 21, 2014. *See* Dkt. No. 67, Ex. 5, at ECF p. 26.

4 The Seaside Civic League bylaws require that special meetings be called by three directors
5 or the president. Seaside Civic League bylaws, Art. V, § 3. The August 11, 2014 special meeting in
6 question was called on August 7, 2014 by Monica Mapp, Wayne Dalton, and Cyndi Dorsey. Dkt.
7 No. 67, Ex. 2, at ECF p. 2. Ms. Clack contends that of the three individuals who called the special
8 meeting on August 7, 2014, only two—Monica Mapp and Wayne Dalton—were properly seated
9 directors.⁸ Clack Brief, at 3. According to Ms. Clack, Cyndi Dorsey “had not been formally and
10 properly qualified by the SCL Board of Directors,” and so “was not a validly seated board member
11 for purposes of calling a meeting on August 7, 2014.” *Id.* at 3. Ms. Clack concludes because the
12 special meeting call was not made in compliance with the bylaws, actions taken at and subsequent
13 to that meeting constitute invalid corporate acts. *Id.* at 3–4.

14 As discussed above, the member organizations may remove and appoint their designated
15 director without the consent of the sitting board. Ms. Dorsey was appointed in writing by the
16 Seaside Kiwanis Club on June 24, 2014. Dkt. No. 67, Ex. 4, at ECF p. 22. According to testimony at
17 the evidentiary hearing, Ms. Dorsey attempted to sit on the Seaside Civic League board at the
18 regular meeting in June, but was blocked by the existing directors. However, she apparently
19 succeeded at the next regular meeting in July. The court therefore finds that as she was appointed in
20 writing by the Seaside Kiwanis Club as required under the bylaws, and was seated at the regular
21 board meeting in July, Ms. Dorsey was a validly seated board member at the time of the call of the
22 August 11, 2014 on August 7, 2014.

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24 ⁸ Ms. Clack also contends that insufficient notice of the special meeting was provided to existing
25 board members. Clack Brief, at 4. However, the standard she cites, which requires notice be given at
26 least 10 and no more than 90 days prior to the meeting, applies only “[w]henever *members* are
27 required or permitted to take any action at a meeting.” Cal. Corp. Code § 5511(a). Because there is
28 no suggestion that the member organizations were required or permitted to take action at the August
11, 2014 special meeting, § 5211(a)(2) applies. Under § 5211(a)(2), notice of a special meeting
must be given 48 hours or 4 days in advance, depending on the form of notice. Cal. Corp. Code §
5211(a)(2). Here, notice was personally delivered four days in advance to each existing board
member, at the direction of board secretary Monica Mapp. *See* Glenn Brief, at 2; *see also*
Declaration of James A. Vossen, Dkt No. 67, Ex. 2; Declaration of Richard Glenn, Dkt. No. 67, Ex.
3. The court finds such notice sufficient under § 5211(a)(2).

1 Although Ms. Clack does not challenge the right of Ms. Mapp to call the special meeting,⁹
2 Mr. Glenn has presented evidence that the Seaside Chamber of Commerce appointed Jim Vossen to
3 replace her on April 3, 2014. Dkt. No. 67, Ex. 4, at ECF p. 15. If Mr. Vossen had replaced Ms.
4 Mapp prior to the call of the August 11, 2014 meeting, he should have called the meeting along with
5 Ms. Dorsey and Mr. Dalton, not Ms. Mapp.

6 However, the court finds the appointment of Mr. Vossen distinguishable from that of Ms.
7 Dorsey, and concludes that the August 11, 2014 was properly called. Unlike Ms. Dorsey's
8 replacement of Mr. Wood as the Seaside Kiwanis Club's representative on the board, Mr. Vossen
9 apparently was not seated on the board until the August 11, 2014 meeting itself. At the evidentiary
10 hearing, Mr. Glenn represented that Mr. Vossen's designating organization, the Seaside Chamber of
11 Commerce, decided not to have Mr. Vossen sit on the board despite his appointment as a means of
12 keeping the peace at a time of turmoil for the Seaside Civic League and DMM. Ms. Clack contested
13 this, asserting that Mr. Vossen had "proselytized" for months that he should be accepted as a board
14 member. However, Ms. Clack apparently does not dispute that Mr. Vossen was not officially seated
15 as a board member at a Seaside Civic League board meeting and his appointment noted in the
16 minutes until the August 11, 2014 meeting.

17 Although the court does not go so far as to find that an appointment could only be effective
18 when a designated director is received at a board meeting, seated, and his appointment noted in the
19 minutes, under the circumstances it would make no sense to find that it should have been Mr.
20 Vossen, and not Ms. Mapp, who called the meeting with the two other directors. The law favors
21 substance over form. Cal. Civil Code § 3528. At the point the August 11, 2014 meeting was called,
22 the other directors may have been aware that Mr. Vossen had been appointed back in April, but Ms.
23 Mapp continued to serve on the board for several months. The court finds that the acquiescence of
24 both the Seaside Chamber of Commerce and Mr. Vossen to Ms. Mapp's continued service in the
25 intervening months between Mr. Vossen's appointment and the call of the August 11, 2014 meeting
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28 ⁹ In fact, Ms. Clack concedes that Ms. Mapp was a sitting director at the time of the call of the
special meeting. See Clack Brief, at 3 ("On August 7, Mapp and Dalton were both properly seated
board members.").

1 was sufficient to render his appointment ineffective until he finally did take his seat and have his
2 appointment recorded at the August 11 meeting.¹⁰

3 Accordingly, the court finds that the August 11, 2014 meeting was properly called. Because
4 Ms. Clack has failed to show any legitimate defect in the call of the August 11, 2014 meeting, or in
5 the appointment of new directors to the Seaside Civic League board, the court also finds that in light
6 of her dismissal by the Seaside Civic League and DMM, she no longer has authority to prosecute
7 this lawsuit on their behalf.

8 **III. ORDER**

9 For the foregoing reasons, the court recognizes and accepts the dismissal of this case
10 pursuant to plaintiffs' notice of voluntary dismissal.

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12 Dated: October 15, 2014



13 RONALD M. WHYTE
14 United States District Judge

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27 ¹⁰ The court also notes that ultimately the member organizations have full control over the
28 appointment of their representatives to the Seaside Civic League board. While the bylaws require a
writing, they do not specify the process. Permitting the designating organization discretion over the
appointment process is consistent with the statutory scheme granting such organizations full control
to designate and remove representatives.