

1 **BAINBRIDGE LAW APC**  
JAMES BAINBRIDGE (SBN 75741)  
2 *jimb@bainbridgelawapc.com*  
1801 Century Park East, 24th Floor  
3 Los Angeles, California 90067  
Telephone: (310) 556-9672  
4 Facsimile: (310) 231-0175

5 **MARK ANCHOR ALBERT & ASSOCIATES**  
MARK ANCHOR ALBERT (SBN 137027)  
6 *albert@lalitygators.com*  
JASON T. RIDDICK (SBN 235980)  
7 *riddick@lalitygators.com*  
445 South Figueroa Street, Suite 3100  
8 Los Angeles, California 90071  
Telephone: (213) 699-1355

9 Attorneys for Defendant and Cross-Complainant JOHN SPAHI

10  
11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
12 **COUNTY OF LOS ANGELES, WEST DISTRICT (SANTA MONICA COURTHOUSE)**

13 OCEAN TOWERS HOUSING  
CORPORATION, a California corporation,

14  
15 Plaintiff,

16 v.

17 JOHN SPAHI; JOSEPH ORLANDO;  
JOSEPH INCAUDO; OMAR SPAHI;  
18 DOROTHEA SCHIRO; APEX  
INVESTMENTS GROUP LTD., d/b/a/  
19 APEX INVESTMENTS INC.; PATRICK  
AMBROSE; SHELDON STEIN; KAZOU  
20 "KAY" YOSHIKAWA; PETER  
ALEVIZOS; and DOES 5 to 100,  
21 inclusive,

22 Defendants.

23 JOHN SPAHI, an individual,

24 Cross-Complainant,

25 v.

26 OCEAN TOWERS HOUSING  
CORPORATION, a California  
corporation; and ROES 1 to 10, inclusive,

27 Cross-Defendants.  
28

Case No. SC124263

[Assigned for All Purposes to Hon. H. Jay  
Ford, Dept. O]

**FIRST AMENDED CROSS-COMPLAINT  
FOR:**

**1. DECLARATORY AND INJUNCTIVE  
RELIEF (FIRST AND SECOND CROSS-  
CLAIMS); and**

**2. BREACH OF CONTRACT (THIRD  
CROSS-CLAIM)**

Underlying Complaint filed: June 3, 2015  
Seventh Am. Compl. filed: April 8, 2021  
Trial Date: April 25, 2022

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

**TABLE OF CONTENTS**

I. INTRODUCTION.....4

II. THE PARTIES .....7

III. JURISDICTION AND VENUE.....8

IV. COMMON ALLEGATIONS.....8

A. CROSS-COMPLAINANT SPAHI HAS OWNERSHIP OR AGENCY INTERESTS IN, INCLUDING PROXIES, FOR MULTIPLE UNITS AT OCEAN TOWERS.....8

B. AS AN OCEAN TOWERS SHAREHOLDER, CROSS-COMPLAINANT SPAHI HAS STANDING UNDER THE DAVIS-STIRLING ACT AND UNDER THE CORPORATIONS CODE TO ENFORCE OCEAN TOWER’S “GOVERNING DOCUMENTS” .....10

C. OCEAN TOWERS’ AMENDED RESOLUTION IS ILLEGAL, *ULTRA VIRES*, INVALID, AND UNENFORCEABLE .....15

1. THE AMENDED RESOLUTION VIOLATES THE SUPERMAJORITY VOTE REQUIREMENT FOR BYLAW AMENDMENTS.....20

2. THE AMENDED RESOLUTION VIOLATES CIVIL CODE SECTION 4360 .....23

3. THE AMENDED RESOLUTION IS INVALID AND UNENFORCEABLE UNDER CIVIL CODE SECTION 4350 AND UNDER THE BYLAWS AND PROPRIETARY LEASE, BECAUSE IT IS NOT REASONABLE, UNIFORM, OR OBJECTIVE.....24

D. CROSS-DEFENDANT HAS SUFFERED SUBSTANTIAL DAMAGES DUE TO OCEAN TOWERS’ ILLEGAL, INVALID, *ULTRA VIRES*, AND UNENFORCEABLE AMENDED RESOLUTION .....26

F. OCEAN TOWERS HAS ILLEGALLY AND IMPROPERLY SUSPENDED CROSS-COMPLAINANT SPAHI’S VOTING RIGHTS AND IMPOSED OTHER PENALTIES IMPROPERLY .....29

G. CROSS-COMPLAINANT’S CROSS-COMPLAINT IS NOT SUBJECT TO THE DAVIS-STIRLING ACT’S ADR REQUIREMENTS .....33

V. CROSS-CLAIMS .....35

A. *FIRST CROSS-CLAIM*: FOR DECLARATORY AND INJUNCTIVE RELIEF REGARDING CROSS-COMPLAINANT’S RIGHT TO VOTE PURSUANT TO CIVIL CODE, § 5105, SUBD. (g)(1).....35

B. *SECOND CROSS-CLAIM*: FOR DECLARATORY AND INJUNCTIVE RELIEF REGARDING CROSS-COMPLAINANT’S RIGHT TO SUBLEASE AND SELL THE SUBJECT UNITS WITHOUT UNLAWFUL RESTRICTIONS, PROHIBITIONS, AND ESCROW REQUIREMENTS.....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

C. *THIRD CROSS-CLAIM: FOR BREACH OF CONTRACT* .....39  
VI. PRAYER FOR RELIEF .....41  
CERTIFICATION OF EXEMPTION FROM ADR REQUIREMENTS.....44

<b><u>INDEX OF EXHIBITS</u></b>	
<b>Exhibit Letter</b>	<b>Document Description</b>
<b>A</b>	Ocean Towers’ Memorandum of Proprietary Lease
<b>B</b>	Ocean Towers’ Articles of Incorporation
<b>C</b>	Ocean Towers’ Bylaws
<b>D</b>	Ocean Towers’ Policies and Procedures for Election of Directors and Voting on Proposals and Amendments
<b>E</b>	Amended Resolution of the Board of Directors of Ocean Towers Housing Corporation, a California Corporation



1 In accordance with California Code of Civil Procedure sections 428.10, 428.30, and 428.50,  
2 in connection with the Seventh Amended Complaint filed on April 8, 2021, by Plaintiff Ocean  
3 Towers Housing Corporation (“Ocean Towers,” “OTHC,” the “HOA,” or “Cross-Defendant”) in  
4 this lawsuit, Defendant and Cross-Complainant John Spahi (“Cross-Complainant” or “Spahi”)  
5 hereby asserts his First Amended Cross-Claim against Ocean Towers under Sections 525, 526 and  
6 1060 of the California Code of Civil Procedure, Section 5145 of the Davis-Stirling Common Interest  
7 Development Act, Civ. Code, § 4000 *et seq.* (formerly §§ 1350–1376 [the “Davis-Stirling Act”]),  
8 Section 7616 of the California Corporations Code, and Ocean Towers’ Bylaws, its Memorandum of  
9 Proprietary Lease (the “Proprietary Lease”), its Articles of Incorporation, and its Policies and  
10 Procedures for Election of Directors and Voting on Proposals and Amendments (the “Election  
11 Procedures”), as follows:

12 **I. INTRODUCTION**

13 1. Cross-Defendant Ocean Towers is a common interest development formed as a  
14 California stock cooperative corporation that owns and operates a luxury 317-unit cooperative  
15 residential complex located at 201 Ocean Avenue in Santa Monica, California, 90402. Ocean  
16 Towers is supposed to be formed and operated for the benefit of its shareholders, who purchase  
17 shares of stock in the corporation and lease Units under a Proprietary Lease. Under Ocean Towers’  
18 “Governing Documents,” including but not limited to its Bylaws, Articles of Incorporation,  
19 Proprietary Lease, and Election Procedures, Ocean Tower shareholders are allocated shares of stock  
20 which have voting rights appurtenant to each Unit leased to them under the Proprietary Lease.  
21 Defendant and Cross-Complainant Spahi owns interests in, directly or indirectly (as a trustee of  
22 family trusts), or manages and holds proxies for, approximately 37 or more Units at the building –  
23 listed in the table set forth below on or about pages 8 or 9 hereof (the “Subject Units”) – almost all  
24 of which were rental income properties that were subleased to subtenants. For many years, until  
25 2018, Cross-Complainant Spahi also was an officer and a Director of Ocean Towers.

26 2. By this Cross-Complaint, Cross-Complainant seeks to hold Cross-Defendant Ocean  
27 Towers accountable for its statutory violations and contractual breaches in adopting, and in  
28 imposing against Cross-Complainant, an illegal, *ultra vires*, invalid, and unenforceable so-called

1 “Amended Resolution,” by which Ocean Towers has improperly prevented Cross-Complainant from  
2 subleasing, selling, or remodeling the Subject Units, causing more than \$3.8 million in losses to  
3 date. The Amended Resolution’s true intent and purpose were to provide “legal cover” for the  
4 incumbent Board’s illegal campaign of systematic harassment of Cross-Complainant designed to  
5 prevent him from subleasing or selling Units he owns interests in, directly or indirectly, or has  
6 management/agency responsibilities for. This harassment campaign sought to deprive Cross-  
7 Complainant of funds and to strip him of his shareholder voting rights, thereby facilitating the  
8 Incumbent Board’s improper effort to entrench itself as Ocean Towers’ governing body. Ocean  
9 Towers’ illicit harassment and entrenchment campaign so far has succeeded as planned.

10 3. Ocean Towers’ misconduct directly and proximately caused Cross-Complainants’  
11 inability to pay HOA dues and property taxes on the Subject Units. Seizing upon the inability of  
12 Cross-Complainant to pay HOA dues and property taxes caused by Cross-Defendant’s own statutory  
13 and contractual breaches, Cross-Defendant has declared that Cross-Complainant is in default under  
14 Ocean Tower’s Governing Documents. Taking advantage of its own misconduct and wrongdoing,  
15 Ocean Towers has declared that it has commenced foreclosure proceedings against the Subject  
16 Units. Compounding its breaches, since March 25, 2021, Cross-Defendant also improperly has  
17 suspended Cross-Complainant’s shareholder voting rights in anticipation of a critical Ocean  
18 Towers’ Board of Directors election, now scheduled for on or about June 22, 2021, with an Annual  
19 Meeting of Shareholders scheduled for on or about June 23, 2021, thereby preventing Cross-  
20 Complainant from advocating for alternative candidates and policies that directly impact his vested  
21 property rights as a shareholder and resident at the building.

22 4. Pursuant to Section 5145 of the Davis-Stirling Act, Sections 526 and 527 of the  
23 California Code of Civil Procedure, and Section 7616 of the California Corporations Code, this  
24 Cross-Complaint seeks to (A) enforce certain provisions of Ocean Towers’ Governing Documents  
25 regarding Cross-Complainant Spahi’s contractual and statutory rights to vote at Ocean Towers’  
26 shareholder meetings and elections – including but not limited to the upcoming Board of Director  
27 election scheduled for on or about June 22, 2021, with an Annual Meeting of Shareholders  
28 scheduled for on or about June 23, 2021 – and (B) enforce Cross-Complainant’s rights to sublease

1 and sell the Subject Units without unreasonable, illegal, and *ultra vires* restrictions and prohibitions  
2 being imposed by the current, incumbent Board of Directors, acting for Cross-Defendant Ocean  
3 Towers. Under the Davis-Stirling Act, “Governing documents” means the declaration and any  
4 other documents, such as bylaws, operating rules, articles of incorporation, or articles of association,  
5 which govern the operation of the common interest development or association.” (Cal. Civ. Code,  
6 § 4150.) Under Civil Code § 4150, Ocean Towers’ “Governing Documents” consist of:

7 (a) Ocean Towers’ Memorandum of Proprietary Lease (the “Proprietary Lease”),  
8 recorded in the Official Records of Los Angeles County on November 21, 1978, a true and  
9 correct copy of which is attached hereto as **Exhibit A** and incorporated herein by this  
10 reference in full;

11 (b) its Articles of Incorporation, filed with the California Secretary of State on  
12 November 14, 1978 (the “Articles”), a true and correct copy of which is attached hereto as  
13 **Exhibit B** and incorporated herein by this reference in full;

14 (c) its Bylaws, adopted as of November 15, 1978, a true and correct copy of which is  
15 attached hereto as **Exhibit C** and incorporated herein by this reference in full;

16 (d) its Policies and Procedures for Election of Directors and Voting on Proposals and  
17 Amendments (the “Ocean Towers Election Procedures”), adopted in or about August 2009, a  
18 true and correct copy of which is attached hereto as **Exhibit D** and incorporated herein by  
19 this reference in full; and

20 (e) its Amended Resolution of the Board of Directors of Ocean Towers Housing  
21 Corporation, a California Corporation (the “Amended Resolution”), adopted in or about  
22 August 2019, a true and correct copy of which is attached hereto as **Exhibit E** and  
23 incorporated herein by this reference in full.

24 5. As shown below, Cross-Complainant’s First Cross-Claim for declaratory and  
25 injunctive relief seeks a judicial declaration by this Court establishing and enforcing Cross-  
26 Complainant’s voting, rights under Ocean Towers’ Governing Documents, the Davis-Stirling Act,  
27 and the California Corporations Code. Cross-Defendant also seeks a corresponding prohibitory  
28 injunction barring Cross-Defendant from suspending Cross-Complainant’s voting rights in

1 connection with Ocean Towers' Board of Directors election scheduled for June 22, 2021. Cross-  
2 Complainant's Second Cross-Claim for declaratory and injunctive relief seeks a judicial declaration  
3 by the Court that the Amended Resolution is invalid and unenforceable. Cross-Complainant also  
4 seeks related injunctive relief prohibiting Ocean Towers from enforcing or applying the sale and  
5 subleasing restrictions in the Amended Resolution as to the Subject Units. Cross-Complaint also  
6 may seek injunctive relief prohibiting Ocean Towers from taking any actions to record liens against  
7 any of the Subject Units or to foreclose any interest in any recorded liens except as expressly  
8 permitted under the Davis-Stirling Act and as approved by this Court. Cross-Complainants' Third  
9 Cross-Claim for breach of contract seeks monetary damages against Ocean Towers for its breaches  
10 of the subleasing and sale provisions under the Bylaws and Proprietary Lease.

11 **II. THE PARTIES**

12 6. Ocean Towers is a cooperative housing corporation organized and existing under  
13 California law. It operates a 317-Unit luxury cooperative complex located at 201 Ocean Avenue in  
14 Santa Monica, California, 90402, for the benefit of Unit-owners, who are shareholders of the  
15 corporation.

16 7. Cross-Complainant John Spahi is an individual who resides in the Ocean Towers  
17 complex, located in this Judicial District, and is a shareholder of Ocean Towers.

18 8. The true names and capacities, whether individual, corporate or otherwise, of Cross-  
19 Defendants ROES 1 through 10, inclusive, are presently unknown to Plaintiff, who therefore sues  
20 them by such fictitious names. Cross-Complainant is informed and believes, and on that basis  
21 alleges, that each fictitiously named Cross-Defendant is responsible in some manner for the acts,  
22 omissions and occurrences herein alleged, and thus the proximate cause of Plaintiff's damages.  
23 Plaintiff will seek leave of Court to amend this Complaint to identify the true names and capacities  
24 of the fictitiously-named Cross-Defendants when the same have been ascertained.

25 9. Cross-Complainant is informed and believes and thereon alleges that at all times  
26 herein mentioned each Cross-Defendant was the agent, servant or employee of each other Cross-  
27 Defendant, and in doing the things alleged was acting within the course and scope of that agency,  
28 service or employment.



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

UNIT NO.	NAME	SHARES	TOTAL CUMULATIVE SHARES
0302B	Zia Jamali	151	1,057
0403P	Cavour Partners Ltd LLC	307	2,149
0409P	Spahi Family Trust	505	3,535
0501B	Zia Jamali	361	2,527
0502B	Zia Jamali	155	1,085
0508B	Cavour Partners Ltd LLC	402	2,814
0509B	Spahi Family Trust	468	3,276
0609P	Cavour Partners Ltd LLC	478	3,346
0703B	Spahi Family Trust	314	2,198
0803B	Cavour Partners Ltd LLC	316	2,212
0808P	Cavour Partners Ltd LLC	377	2,639
0903P	Spahi Family Trust	297	2,079
0904P	Spahi Family Trust	427	2,989
0909P	Spahi Family Trust	485	3,395
0910B	Cavour Partners Ltd LLC	359	2,513
0910P	Horizon Trust	359	2,513
1105B	Spahi Family Trust	289	2,023
1203B	Ascar Family Trust	324	2,268
1403B	Cavour Partners Ltd LLC	305	2,135
1408B	Cavour Partners Ltd LLC	419	2,933
1409B	Miramar Trust	524	3,668
1504B	Cavour Partners Ltd LLC	437	3,059
1505B	Spahi Family Trust	295	2,065
1509P	Windsor Prop Trust	526	3,682
1601B	Breeze Trust	412	2,884
1603B	Cavour Partners Ltd LLC	330	2,310
1604P	Cavour Partners Ltd LLC	470	3,290

UNIT NO.	NAME	SHARES	TOTAL CUMULATIVE SHARES
1703P	Spahi Family Trust	312	2,184
1705P	Spahi Family Trust	289	2,023
1709B	Breeze Trust	499	3,493
1803B	Spahi Family Trust	334	2,338
1805P	David Hantman	301	2,107
1809P	Spahi Family Trust	501	3,507
1903P	Cavour Partners Ltd LLC	330	2,310
1904P	Cavour Partners Ltd LLC	464	3,248
1905P	Ascar Family Trust	309	2,163
1908B	Ascar Family Trust	412	2,884
	<b>TOTALS</b>	<b>13,843</b>	<b>96,901</b>

**B. AS AN OCEAN TOWERS SHAREHOLDER, CROSS-COMPLAINANT SPAHI HAS STANDING UNDER THE DAVIS-STIRLING ACT AND UNDER THE CORPORATIONS CODE TO ENFORCE OCEAN TOWER’S “GOVERNING DOCUMENTS”**

13. The Davis-Stirling Act, codified at §§ 4000-6150 of the California Civil Code, regulates common interest developments, including stock cooperatives, such as Cross-Defendant Ocean Towers. The Davis-Stirling Act “applies and a common interest development is created whenever a separate interest is coupled with an interest in the common area or membership in the association[.]” The Davis-Stirling Act also provides that an “Association means a nonprofit corporation or unincorporated association created for the purpose of managing a common interest development.” (Cal. Civ. Code § 4080). Because Ocean Towers also is a California corporation, the California Corporations Code also applies to it.

14. “Shareholders” (such as Spahi) of stock cooperatives (such as Ocean Towers) – like members of homeowners associations – are subject to the Davis-Stirling Act’s provisions, including its enforcement rights and voting protections, since both homeowners associations and stock

1 cooperatives are defined as “common interest developments” subject to the Act. (*See* Civil Code, §  
2 4080 [“‘Association’ Defined. ‘Association’ means a nonprofit corporation or unincorporated  
3 association created for the purpose of managing a common interest development”].) There is no  
4 legitimate dispute that Spahi is a shareholder or is otherwise is a trustee of a shareholder, who owns  
5 legal interests in Ocean Towers’ Units that entitle him to vote and to assert his rights under Civil  
6 Code, § 5145 and Corporations Code, § 7616. As shown below, a stock cooperative corporation  
7 such as Ocean Towers falls under the Davis-Stirling Act as a common interest development, and a  
8 “member,” like a shareholder, is defined under the Davis-Stirling Act as “an owner of a separate  
9 interest.” California Civil Code section 4200 of the Davis-Stirling Act reads in part as follows:  
10 “This act applies and a common interest development is created whenever a separate interest  
11 coupled with an interest in the common area or membership in the association is, or has been,  
12 conveyed provided certain documents have been recorded.”

13 15. Clearly a shareholder in a stock cooperative is the “owner of a separate interest” in  
14 that stock cooperative. Civil Code § 4160 states that a “‘Member’ means an owner of a separate  
15 interest.” Civil Code § 4190 states that “**The owners’ interest in the corporation, whether  
16 evidenced by a share of stock, a certificate of membership, or otherwise, shall be deemed to be an  
17 interest in a common interest development . . .**” (Emphasis added.)

18 16. Civil Code § 4640, entitled “Stock cooperative,” provides as follows:

19 “**In a stock cooperative, any** conveyance, judicial sale, or other  
20 voluntary or involuntary **transfer of the separate interest** includes the  
21 ownership interest in the corporation, however evidenced. Any  
22 conveyance, judicial sale, or other voluntary or involuntary transfer of the  
23 owner’s entire estate **also includes the owner’s membership interest in  
24 the association.**” (Emphasis added.)

25 This juxtaposition of the transfer of a “separate interest” in a “stock cooperative” with the  
26 “owner’s membership interest in the association,” further makes clear that an owner of a  
27 separate interest in a stock cooperative is deemed to be equivalent to or the same as a  
28 “member of an association” under the Davis-Stirling Act.

1           17.     It is undisputed that Cross-Complainant Spahi was a Member of the Board of  
2 Directors of Ocean Towers for approximately 18 years, ending in 2018. Civil Code §5105 (b) makes  
3 clear that only a member of the HOA can be a Member of the Board of Directors: “An association  
4 shall disqualify a person from a nomination as a candidate for not being a member of the association  
5 at the time of the nomination.”

6           18.     Also, Article 1, §1.4 of Ocean Towers’ Policies and Procedures for Election of  
7 Directors states the following:

8                   “1.4 Candidate Qualification. The date to determine eligibility for  
9 candidacy to the Board of Directors shall be the fifth day after the close of  
10 nominations. Bylaw §3.17 requires that in order to qualify as a Director  
11 and to continue in the office as a Qualified Director each nominee must as  
12 of the date on which nominations are filed: a. **Be a Shareholder of**  
13 **record in the Corporation holding equitable title to a unit.**” (Emphasis  
14 added)

15           19.     Ocean Tower’s recent Seventh Amended Complaint has an entire section, No. IV  
16 (starting at ¶ 48 at pg. 14), entitled “**JOHN SPAHI OWNS AND CONTROLS SIXTY (60)**  
17 **UNITS.**” The Seventh Amended Complaint goes on to expressly state, at paragraph 50, at page 15,  
18 that “**John Spahi controls (either directly or indirectly) up to sixty (60) Units in the Co-op[].**”  
19 (Emphasis added.) The fact that the individual Units at issue may be owned in the name of a family  
20 trust, such as the “Spahi Family Trust,” does not mean that Cross-Complainant Spahi does not  
21 control the right to vote for the trust, because he is a trustee of the Spahi Family Trust (or he has  
22 powers of attorney or proxies for other family trusts with respect to other Subject Units). That is  
23 because, unlike a corporation, a trust is not a standalone legal entity. Legal title to property owned  
24 by a family trust is held by the trustee, even if title names the family trust as the owner, because the  
25 trustee is deemed, as a matter of law, to be the owner of the trust’s property. Given that a family  
26 trust is not a “natural person,” only trustees — in this instance Spahi —and not the family trusts  
27 themselves—can hold legal title to property and exercise voting rights appurtenant thereto. In that  
28 regard, Cal. Probate Code, § 16234, entitled “Voting rights with respect to corporate shares,

1 memberships, or property,” provides in pertinent part as follows:

2           **With respect to any shares of stock of a domestic . . . corporation,** any  
3 membership in a nonprofit corporation, or any other property, **a trustee**  
4 **has the power to do any of the following: . . . (a) Vote in person, and**  
5 **give proxies to exercise, any voting rights with respect to the shares,**  
6 memberships, or property.

7 (Cal. Probate Code, § 16234 [Emphasis added].)

8           20. As an aggrieved member/shareholder of Ocean Towers, Cross-Complainant Spahi, in  
9 his capacity as a trustee of family trusts which are the lessees under the Proprietary Lease and owner  
10 of Share Certificates for various Subject Units, has statutory standing to bring this Cross-Complaint  
11 as a direct, non-derivative action under California Civil Code § 5145(a), which provides that:

12                   “A member of an association may bring a civil action for declaratory or  
13 equitable relief for a violation of this article by the association, including,  
14 but not limited to, injunctive relief, restitution, or a combination thereof,  
15 within one year of the date the cause of action accrues. Upon a finding that  
16 the election procedures of this article, or the adoption of and adherence to  
17 rules provided by Article 5 (commencing with Section 4340) of Chapter 3,  
18 were not followed, a court may void any results of the election.”

19           21. As an aggrieved Ocean Towers member/shareholder, Cross-Complainant Spahi, in  
20 his capacity as a trustee of family trusts which are the lessees under the Proprietary Lease and  
21 owner of Share Certificates for various Subject Units, also has statutory standing to bring this  
22 Cross-Action as a direct, non-derivative action under California Corporations Code section 7616, to  
23 enjoin the improper suspension of his statutory and contractual voting rights. California  
24 Corporations Code section 7616 provides as follows:

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

1 (b) In the case of a corporation holding assets in charitable trust,  
2 any person bringing an action under this section shall give notice of the  
3 action to the Attorney General, who may intervene.

4 (c) Upon the filing of the complaint, and before any further  
5 proceedings are had, the court shall enter an order fixing a date for the  
6 hearing, which shall be within five days unless for good cause shown a  
7 later date is fixed, and requiring notice of the date for the hearing and a  
8 copy of the complaint to be served upon the corporation and upon the  
9 person whose purported election or appointment is questioned and upon  
10 any person (other than the plaintiff) whom the plaintiff alleges to have  
11 been elected or appointed, in the manner in which a summons is required  
12 to be served, or, if the court so directs, by registered mail; and the court  
13 may make such further requirements as to notice as appear to be proper  
14 under the circumstances.

15 (d) The court, consistent with the provisions of this part and in  
16 conformity with the articles and bylaws to the extent feasible, may  
17 determine the person entitled to the office of director or may order a new  
18 election to be held or appointment to be made, may determine the validity,  
19 effectiveness and construction of voting agreements and voting trusts, the  
20 validity of the issuance of memberships and the right of persons to vote  
21 and may direct such other relief as may be just and proper.”

22 22. As an aggrieved member/shareholder of Ocean Towers, Cross-Complainant Spahi, in  
23 his capacity as a trustee of family trusts which are the lessees under the Proprietary Lease and owner  
24 of Share Certificates for various Subject Units, also has statutory standing under California Civil  
25 Code § 5975 to enforce Ocean Towers’ “Governing Documents.” Section 5975 provides in  
26 pertinent part as follows:

27 “a. The covenants and restrictions in the declaration shall be  
28 enforceable equitable servitudes, unless unreasonable, and shall inure to the

1 benefit of and bind all owners of separate interests in the development. Unless the  
2 declaration states otherwise, these servitudes may be enforced by any owner of a  
3 separate interest or by the association, or by both.

4 b. A governing document other than the declaration may be enforced  
5 by the association against an owner of a separate interest or by an owner of a  
6 separate interest against the association.” (Emphasis added.)

7 **C. OCEAN TOWERS’ AMENDED RESOLUTION IS ILLEGAL, *ULTRA VIRES*,**  
8 **INVALID, AND UNENFORCEABLE**

9 23. After Cross-Complainant Spahi and the other defendant Directors were removed  
10 from Ocean Towers’ Board in 2018, new members were appointed to the Board, which now  
11 controls and operates Cross-Defendant Ocean Towers. Shortly thereafter, in August 2019 – **without**  
12 **providing prior notice to Ocean Towers shareholders and without seeking or obtaining their**  
13 **approval by a shareholder vote** – the Board enacted a so-called “Amended Resolution” purporting  
14 to establish new draconian subleasing, assignment, sale, and transfer restrictions, as well as  
15 imposing arbitrary remodeling restrictions. The Amended Resolution’s true intent and purpose were  
16 to provide “legal cover” for the incumbent Board’s illegal campaign of systematic harassment of  
17 Cross-Complainant designed to prevent him from subleasing or selling Units he owns interests in,  
18 directly or indirectly, or has management/agency responsibilities for (“Subject Units”). This  
19 harassment campaign sought to deprive Cross-Complainant of funds and to strip him of his  
20 shareholder voting rights, thereby facilitating the Incumbent Board’s improper effort to entrench  
21 itself as Ocean Towers’ governing body. Ocean Towers’ illicit harassment and entrenchment  
22 campaign so far has succeeded as planned.

23 24. By means of the Amended Resolution, Ocean Towers sets forth new and draconian  
24 subleasing, sale and transfer restrictions, and remodeling restrictions, that have crippled the ability  
25 of Cross-Complainant to sell or sublease (or remodel) the Subject Units. This has resulted in  
26 multiple Units remaining vacant, unleased, and unsalable, causing millions of dollars in losses to the  
27 Subject Units, and rendering Cross-Complainant unable to pay HOA dues and assessments, and  
28 property taxes. The new and draconian subleasing sale and transfer restrictions are set forth in the

1 Amended Resolution in Section I — the so-called “Financial Qualification Standards;” in Section II  
2 — the so-called “Sublease Qualification Standards; and in Sections V(A) and V(B) — the so-called  
3 “Financial Protection Measures.” (See Amended Resolution, **Exhibit E** hereto.)

4 25. The Financial Qualifications Standards establish debt-to-income ratios, income and  
5 net worth requirements, and post-closing liquidity requirements that unreasonably eliminate the vast  
6 majority of potential sublessees and purchasers, reducing the universe of acceptable candidates to a  
7 tiny fraction of the available market. The Sublease Qualification Standards only superficially  
8 appear uniform and objective, since in their application by Ocean Towers, they serve as a pretext to  
9 disqualify potential sublessees for arbitrary and capricious reasons unrelated to their credit history,  
10 background check results, or ability to pay: namely, to punish Cross-Complainant John Spahi and  
11 deprive him of his ability to generate income from subleasing the Subject Units.

12 26. The “Financial Protection Measures” constitute an illegal and *ultra vires* amendment  
13 to the Bylaws that unfairly target Cross-Complainant Spahi to starve him of cash flow and sale  
14 proceeds, and forcing him into default, so as to permit Ocean Towers to foreclose on the Subject  
15 Units in order to confiscate the equity in them and force Cross-Complainant out of the building.

16 27. In particular, Section V, subsections A and B of the Amended Resolution purports to  
17 impose the following draconian sublease and transfer and sale restrictions regarding the Subject  
18 Units:

19 “A. If a Shareholder seeks the Corporation’s consent to the assignment or  
20 sublease of his or her unit and the Shareholder (or a principal or  
21 controlling person of the Shareholder) owes money to the Corporation,  
22 including, but not limited to, by way of regular or special assessments or  
23 any obligation under the Bylaws, proprietary lease, contract or other  
24 instrument, then, in order to obtain the required consent, **the applying**  
25 **Shareholder must fully satisfy his, her or its financial obligation to the**  
26 **Corporation prior to any assignment or sublease, as applicable.**

27 However, if the shareholder is unable to fully satisfy the obligation to the  
28 Corporation prior to the completion of the assignment or sublease, as



1 applicable, of the unit, then he, she or it may, instead, execute and deliver  
2 such documents and/or instruments that are reasonably necessary to  
3 ensure that the proceeds from the assignment or sublease, as applicable,  
4 either will be used to satisfy in full or reduce the obligation (as the case  
5 may be) or to set aside those proceeds if the Shareholder notifies the  
6 Board of a dispute regarding an amount owed.”

7 **“B. If a Shareholder seeks the Corporation’s consent to the**  
8 **assignment of his, her or its Unit and the Shareholder** (or a principal  
9 **or controlling person of the Shareholder) is in litigation with the**  
10 **Corporation concerning financial harm caused by such Shareholder**  
11 **(or a principal or controlling person of the Shareholder) to the**  
12 **Corporation, then consent to the assignment shall not be given unless**  
13 **the applying Shareholder agrees to either to (1) execute and deliver**  
14 **such documents and/or instruments that are reasonably necessary to**  
15 **ensure that the proceeds from the assignment will be set aside in**  
16 **escrow pending the conclusion of the litigation through trial and**  
17 **until all appeals are exhausted);** or (2) provides other security mutually  
18 agreeable by the Corporation and the Shareholder in favor of the  
19 Corporation for the monetary relief sought through the pending litigation.  
20 This subdivision shall only apply if an independent analysis of the  
21 Corporation’s operations and finances has been made by a court-appointed  
22 neutral party who has found that the Corporation has suffered financial  
23 harm caused by such shareholder’s breach of duty owed to the  
24 corporation.” (Emphasis added).

25 (See Amended Resolution, Section V, subsection A & B **[Exhibit E]** hereto).)

26 28. Subdivision (a) of Section 11.03 of Article XI of the Bylaws, entitled “Subletting,”  
27 provides in pertinent part as follows:

28 “a Shareholder shall have the right, from time to time, to sublet all, but not

1 less than all, of his Apartment to any Qualified Individual provided that  
2 the term of any such sublease shall be not less than three (3) months and  
3 such subtenant may occupy the Apartment only in conformance with the  
4 terms and conditions set forth in the Articles of Incorporation, these  
5 Bylaws and the Proprietary Lease.”

6 (See Ocean Towers Bylaws, Article XI, Section 11.03, subd. (a) [**Exhibit C** hereto].)

7 Subdivision (b) of Section 11.03 of Article XI provides in pertinent part as follows:

8 “Subletting may only occur if consent to such subletting shall have been  
9 duly given by an instrument in writing signed by a duly authorized  
10 representative of the Board. **Such consent shall not be unreasonably**  
11 **withheld. The standards employed in determining whether consent**  
12 **shall be given shall be uniform and objective.”** (Emphasis added).

13 (See Ocean Towers Bylaws, Article XI, Section 11.03, subd. (b) [**Exhibit C** hereto].)

14 29. The Proprietary Lease provides, in pertinent part, at page 1, Section B of its  
15 RECITALS, as follows:

16 “By executing this Lease, Tenant has acknowledged that Tenant’s use and  
17 occupancy shall be governed by the terms and conditions of this Lease and  
18 the hereafter referenced Unrecorded Lease, the Articles and Bylaws of  
19 Landlord, and the reasonable rules and regulations from time to time  
20 adopted by the Board of Directors (the “Board”) of Landlord pursuant to  
21 authority granted by the Articles, the Bylaws and any amendments thereto  
22 which may be adopted by the shareholders of Landlord. The Articles and  
23 Bylaws of Landlord. . .are hereby incorporated in this Lease as if fully set  
24 forth.”

25 (See Ocean Towers Proprietary Lease, page 1, Section B [**Exhibit A** hereto].)

1           30.       As shown below, the Amended Resolution is illegal, *ultra vires*, and unenforceable  
 2 for at least three reasons, each of which is independently dispositive.

3                   **First**, the Amended Resolution in effect constitutes a substantive amendment to the  
 4 sale and transfer (and remodeling) provisions of Ocean Towers’ Bylaws. But, pursuant to  
 5 Article XIV, section 14.01 of the Bylaws, “[a]ny amendment or repeal of Articles VII,  
 6 **VIII, X and XI of the By-Laws requires the vote or written consent of the holders of**  
 7 **sixty-six and two-thirds percent (66-2/3%) of the Shares of the Corporation.**” (Emphasis  
 8 added). Article XI of the Bylaws specifically addresses voluntary Assignment, which  
 9 includes sales and transfers of interests in Units (section 11.02), subletting (section 11.03),  
 10 hypothecation of a shareholder’s interests (section 11.06), and transfers of shares (section  
 11 11.09). Yet, as an end run around this mandatory requirement within Ocean Towers’  
 12 Bylaws of the necessity of obtaining a two-thirds vote of the shareholders for any  
 13 amendment to these Article XI of Ocean Towers’ Bylaws, Ocean Towers permitted the  
 14 Board of Directors to circumvent this mandatory requirement by merely having the Board of  
 15 Directors vote to implement the so-called Amended Resolution. No shareholder vote of any  
 16 kind approved of this so-called Amended Resolution.

17                   **Second**, in the alternative, to the extent that the Amended Resolution is deemed to be  
 18 new and revised “Operating Rules,” rather than amendments to the Bylaws, the Amended  
 19 Resolution is invalid and unenforceable because Ocean Towers did not provide 28 days’  
 20 advance notice of it to shareholders, as required under Civ. Code, § 4360, subd. (a). If the  
 21 Board adopted it without notice to shareholders on an emergency basis (of which they also  
 22 failed to provide notice to shareholders), then the Amended Resolution expired by statute  
 23 120 days after it was adopted (in December 2019), under Civil Code, § 4360, subd. (d).

24                   **Third**, the Amended Resolution is not valid and enforceable under Civil Code §  
 25 4350 because: (a) the subleasing, sale and remodeling restrictions and escrow requirement  
 26 in the Amended Resolution are unreasonable; (b) they are not uniformly and objectively  
 27 applied as to all Ocean Towers’ shareholders, but instead are selectively enforced against  
 28 Cross-Complainant; (c) they were not adopted in good faith; and (d) they conflict with

1 governing law because the Amended Resolution was not provided to shareholders at least 28  
2 days before the Board enacted it, in violation of Civil Code § 4360.

3 **1. THE AMENDED RESOLUTION VIOLATES THE SUPERMAJORITY VOTE**  
4 **REQUIREMENT FOR BYLAW AMENDMENTS**

5 31. Article XIV, Section 14.01 of the Bylaws, entitled “Amendments,” provides, in  
6 pertinent part, that:

7 “Any amendment or repeal of Articles VII, VIII, X and XI of these  
8 Bylaws requires the vote or written consent of the holders of sixty-six and  
9 two-thirds percent (66-2/3%) of the Shares of the Corporation.”

10 (*See* Ocean Towers Bylaws, Article XIV, Section 14.01 [**Exhibit C** hereto].)

11 32. OTHC’s Articles similarly provide, at Section IV, as follows:

12 “Any amendment of Articles VII, VIII, X and XI of the Bylaws requires  
13 the approval of the holders of sixty-six and two-thirds percent (66-2/3) of  
14 the outstanding shares.”

15 (*See* Ocean Towers Articles of Incorporation, Section IV [**Exhibit B** hereto].)

16 33. By means of the Amended Resolution, the Board did an improper and illegal  
17 circumvention of the supermajority vote requirement in Article XIV of the HOA’s Bylaws (and the  
18 related provisions of the Articles and Proprietary Lease cited above). Article XIV of Ocean  
19 Towers’ Bylaws states that any amendment to the Bylaw provisions in Article XI governing  
20 subleasing, sales and transfers of Units—which are effectively amended or replaced by the  
21 Amended Resolution—must be accomplished by a 2/3 vote of the Shareholders. No such vote was  
22 ever requested and no such supermajority voter approval was ever granted.

23 34. Despite these clear contractual obligations, and in derogation of the supermajority  
24 vote and approval requirements for Bylaws and Article amendments, the Board never presented the  
25 Amended Resolution in general, or its transfer and sale restrictions, or escrow requirements, in  
26 Section V, subsections A and B, to the shareholders at Ocean Towers for any vote, let alone for the  
27 mandatory 2/3 vote of the shareholders that would have been needed to make this type of an  
28 amendment to Ocean Towers’ Bylaws. Put another way, no supermajority approval was ever

1 requested or obtained for these transfer and sale restrictions, and for the new draconian escrow  
2 requirements for those who might be in litigation against Ocean Towers, such as the Cross-  
3 Complainant.

4 35. The California Legislature has just reaffirmed by statute that OTHC’s Board was  
5 prohibited under the Davis-Stirling Act, from enacting and enforcing these transfer and sale  
6 restrictions, and escrow requirements, in subsections A and B of Section V of the Amended  
7 Resolution. In particular, effective January 1, 2021, our Legislature has enacted amendments to the  
8 Davis-Stirling Act which strictly prohibit and prevent bylaw amendments or other provisions in an  
9 HOA’s “Governing Documents” that “unreasonably restricts the rental or leasing of any of the  
10 separate interests . . .” (See Cal. Civ. Code, § 4741(a).) Such restrictions and prohibitions,  
11 according to Civ. Code section 4741(f), are effective and enforceable no later than “January 1, 2021,  
12 regardless of whether the common interest development has revised their governing documents to  
13 comply with this section.” (See Cal. Civ. Code, § 4741, subd. (f).) Cal. Civ. Code § 4741, subd. (g)  
14 states that “[a] common interest development that willfully violates this section shall be liable to the  
15 applicant or other party for actual damages.”

16 36. The Amended Resolution is inapplicable as to Cross-Complainant and to the Subject  
17 Units because Cross-Complainant owned or controlled the Subject Units before the Amended  
18 Resolution was passed by the Board of Directors on or about August 2019. On information and  
19 belief, 100% of the Cross-Complainant’s interests in the Subject Units were acquired by the Cross-  
20 Complainant before the Amended Resolution came into existence and into effect on or about August  
21 2019. Civil Code § 4740, subdivision (a) provides in pertinent part the following:

22 **“An owner of a separate interest in a common interest development**  
23 **shall not be subject to a provision in a governing document or an**  
24 **amendment to a governing document that prohibits the rental or**  
25 **leasing of any of the separate interests in that common interest**  
26 **development to a renter, lessee, or tenant unless that governing**  
27 **document, or amendment thereto, was effective prior to the date the**  
28 **owner acquired title to their separate interest.”**

1 (See also, Cal. Civ. Code, § 4741, subd. (a) and (f), which reinforce the Davis-Stirling Act’s  
2 commitment to not permitting an HOA to unreasonably restrict the rental or leasing of an owner’s  
3 separate interest in a common interest development.)

4 37. Civil Code section 4741, subdivisions (a) and (f), provide as follows:

5 **“(a) An owner of a separate interest in a common interest**  
6 **development shall not be subject to a provision in a governing**  
7 **document or an amendment to a governing document that prohibits,**  
8 **has the effect of prohibiting, or unreasonably restricts the rental or**  
9 **leasing of any of the separate interests, accessory dwelling units, or**  
10 **junior accessory dwelling units in that common interest development**  
11 **to a renter, lessee, or tenant.**

12 \* \* \*

13 **(f) A common interest development shall comply with the prohibition**  
14 **on rental restrictions specified in this section on and after January 1,**  
15 **2021, regardless of whether the common interest development has**  
16 **revised their governing documents to comply with this section.**  
17 **However, a common interest development shall amend their**  
18 **governing documents to conform to the requirements of this section**  
19 **no later than December 31, 2021.”**

20 (Cal. Civ. Code, § 4741, subd. (a) & (f), added by Stats. 2020 ch 198 § 2 (AB 3182), effective  
21 January 1, 2021 [Emphasis added].)

22 38. Yet, in blatant violation of Civil Code sections 4740 and 4741, Ocean Towers’  
23 Amended Resolution – which improperly revised and amended the subleasing and transfer  
24 provisions of Ocean Towers’ Bylaws and Proprietary Lease and which Amended Resolution was  
25 not “effective prior to the date the owner acquired title to their separate interest” (Cal. Civ. Code, §  
26 4740(a)) – purports to restrict any subleasing or transfer of the Subject Units, and purports further  
27 to restrict any remodeling of Units, without prior approval of the Board based on grossly  
28 unreasonable criteria, while requiring the deposit of any and all money that is obtained from any sale

1 or lease payments for the Subject Units into an HOA-controlled escrow account for as long as the  
2 litigation between the Cross-Complainant and the HOA continues.

3           **2.     THE AMENDED RESOLUTION VIOLATES CIVIL CODE SECTION**  
4                   **4360**

5           39.     Even if, *arguendo*, the Amended Resolution did not constitute an illegal and *ultra*  
6 *vires* amendment to the By-Laws (it was, however illegal and *ultra vires* and should be so deemed),  
7 the subleasing and sale restrictions and confiscatory escrow requirement in the Amended Resolution  
8 nonetheless is invalid and unenforceable under Civil Code, § 4360, entitled “Approval of rule  
9 change by board.” Section 4360 provides in pertinent part, in subdivision (a), that “The board **shall**  
10 **provide** general notice pursuant to Section 4045 of a proposed rule change **at least 28 days before**  
11 **making the rule change.**” (*See* Civil Code § 4360, subd. (a) [Emphasis added].) **No such advance**  
12 **notice was given by Ocean Towers to its shareholders prior to its adoption of the Amended**  
13 **Resolution in August 2019. Consequently, it is invalid and unenforceable under Civil Code §**  
14 **4360, subd. (a).** Section 4360(a) uses the mandatory words “shall provide,” which does not provide  
15 the Board of Directors or the HOA with the discretion of providing 28 day notice “before making  
16 the rule change.” To the contrary, the command words “shall provide” demonstrate the  
17 Legislature’s clear intention that this 28-day notice is not discretionary.

18           40.     To the extent Ocean Towers were to make an after-the-fact claim that advance notice  
19 of the Amended Resolution was not required because “the board determine[d] that an immediate  
20 rule change [was] necessary to address an imminent threat to public health or safety or imminent  
21 risk of substantial economic loss to the association” (Civil Code § 4360, subd. (a)), in that case, no  
22 such emergency declaration was ever reported to Spahi or the other shareholders, and on  
23 information and belief, no such emergency declaration was ever recorded in the minutes of the  
24 meetings of the Board of Directors. But even if the Amended Resolution were otherwise valid and  
25 enforceable under Civ. Code, § 4350, on the basis of a valid emergency declaration by the Board,  
26 the Amended Resolution automatically expired and was and is no longer enforceable after 120 days  
27 following its adoption by the Board, under Civil Code, § 4360, subd. (d), which provides in  
28 pertinent part the following: **“An emergency rule change is effective for 120 days, unless the rule**

1 **change provides for a shorter effective period.** A rule change made under this subdivision may  
2 not be readopted under this subdivision.” (See Cal. Civ. Code, § 4360, subd. (d).) Under Civil  
3 Code section 4360, the Amended Resolution, even if it had been adopted on an “emergency” basis  
4 without notice to shareholders, it would have necessarily expired under Civil Code § 4360 not later  
5 than sometime in December 2019 (120 days after August 2019), and therefore it is necessarily  
6 invalid and unenforceable.

7           **3. THE AMENDED RESOLUTION IS INVALID AND**  
8           **UNENFORCEABLE UNDER CIVIL CODE SECTION 4350 AND**  
9           **UNDER THE BYLAWS AND PROPRIETARY LEASE, BECAUSE IT**  
10           **IS NOT REASONABLE, UNIFORM, OR OBJECTIVE**

11           41. In addition to the need for the HOA to fully comply with the mandatory 28-day  
12 notice requirement of Civil Code § 4360, as stated above, the HOA must also comply with the  
13 mandatory requirements contained in Civil Code § 4350. Section 4350, entitled “Requirements for  
14 validity and enforceability,” provides in pertinent part as follows:

15                   “An operating rule is valid and enforceable **only if all of the following**  
16                   **requirements are satisfied:**

- 17                   (a) The rule is in writing.  
18                   (b) The rule is within the authority of the board conferred by law or by the  
19                   declaration, articles of incorporation or association, or bylaws of the  
20                   association.  
21                   (c) The rule is not in conflict with governing law and the declaration,  
22                   articles of incorporation or association, or bylaws of the association.  
23                   (d) The rule is adopted, amended, or repealed in good faith and in  
24                   substantial compliance with the requirements of this article.  
25                   (e) The rule is reasonable.”

26 (See Cal. Civ. Code, § 4350 [Emphasis added].)  
27  
28

1 In Article VI of Ocean Towers’ Propriety Lease, entitled “Assignment and Subletting,”  
2 Section 6.01, entitled “Subletting,” provides in pertinent part in subdivision (b), as follows:

3 Subletting may only occur if consent to such subletting shall have been  
4 duly given by an instrument in writing signed by a duly authorized  
5 representative of the Board. **Such consent shall not be unreasonably**  
6 **withheld. The standards employed in determining whether consent**  
7 **shall be given shall be uniform and objective.** Such standards shall not,  
8 under any circumstances, include qualifications based upon race, creed,  
9 color, sex or national origin.

10 (See Proprietary Lease, Art. VI, § 6.01, subd. (b) [**Exhibit A** hereto].)

11 As to the sale of any Units, which would be accomplished in part by an assignment of rights  
12 and obligations under the Proprietary Lease, Section 6.02 of the Proprietary Lease, entitled  
13 “Voluntary Assignment,” provides in pertinent part, in the preamble and subdivision (e), as follows:

14 Tenant shall not assign this Lease or transfer the Shares to anyone other  
15 than a Qualified Individual, and no such assignment or transfer shall take  
16 effect for any purposes unless and until the following conditions have  
17 been met:

18 \* \* \*

19 (e) Consent to such assignment shall have been duly given by an  
20 instrument in writing which is to be signed by a duly authorized  
21 representative of the Board. **Such consent shall not be unreasonably**  
22 **withheld. The standards employed in determining whether consent**  
23 **shall be given shall be uniform and objective.**

24 (See Proprietary Lease, Art. VI, § 6.02, subd. (e) [**Exhibit A** hereto; Emphasis added].)

25 The reasonableness requirement for subleasing and sale “Operating Rules” or  
26 “Standards” also is contained in Ocean Towers’ Bylaws. Section 11.03 of the Bylaws,  
27 entitled “Subletting,” provides in pertinent part in subdivision (b), as follows:

28 (b) Subletting may only occur if consent to such subletting shall have been

1           duly given by an instrument in writing signed by a duly authorized  
2           representative of the Board. **Such consent shall not be unreasonably**  
3           **withheld. The standards employed in determining whether consent**  
4           **shall be given shall be uniform and objective.** Such standards shall not,  
5           under any circumstances, include qualifications based upon race, creed,  
6           color, sex or national origin.

7 (See Bylaws, § 11.03, subd. (b) [**Exhibit C** hereto; Emphasis added].)

8           The Amended Resolution is not valid and enforceable under Civil Code § 4350 and the  
9 Bylaws and Proprietary Lease for the following reasons:

10           (a)     The subleasing and sale restrictions and escrow requirement in the Amended  
11 Resolution are unreasonable, because they limit the universe of acceptable subleasing and sale  
12 candidates to a tiny fraction of the luxury real estate market niche;

13           (b)     The Amended Resolution was not uniformly and objectively applied as to all Ocean  
14 Towers' shareholders, but instead was selectively enforced against Cross-Complainant, with the  
15 escrow requirement being applied solely to Cross-Complainant and the other former Director  
16 Defendants in litigation with Cross-Defendant;

17           (c)     The Amended Resolution was not adopted in good faith, because, among other  
18 reasons, Cross-Defendant did not give notice to the shareholders, let alone the mandated 28-day  
19 notice to the shareholders required prior to the adoption or enactment of the Amended Resolution  
20 (Civil Code § 4360), and Cross-Defendant also did not give Cross-Complainant any notice of the  
21 adoption of the Amended Resolution or any hearing or other due process before it imposed the  
22 confiscatory escrow requirement upon him; and

23           (d)     The Amended Resolution conflicts with governing law because the Amended  
24 Resolution was not provided to shareholders at least 28 days before the Board enacted it, in  
25 violation of Civil Code § 4360, and it was not voted upon or approved by the Shareholders as  
26 specifically required under Article XIV, Section 14.01 of the Bylaws.

27           **D.     CROSS-DEFENDANT HAS SUFFERED SUBSTANTIAL DAMAGES DUE**  
28           **TO OCEAN TOWERS' ILLEGAL, INVALID, *ULTRA VIRES*, AND**



1 Complainant Spahi has been denied the opportunity to sell or sublease the Subject Units. This has  
 2 resulted in approximately 23 Units remaining vacant at the present time, including, on information  
 3 and belief, Unit Nos. 403P, 409P, 509B, 609P, 703B, 803B, 903P, 904P, 909P, 910B, 910P, 1105B,  
 4 1403B, 1409B, 1504B, 1505B, 1509P, 1604P, 1610P, 1809P, 1904P, 1905P, and 1908B.

5 46. Because the Units are vacant and are not generating any income, lost lease income  
 6 from the time the Amended Resolution was implemented and enforced, commencing in August  
 7 2019, until March 31, 2021, totals approximately **\$3,438,800**, as shown in the following table,  
 8 which amount continues to rise substantially every month:

UNIT	DATES VACANT	TOTAL MONTHS VACANT	MONTHLY RENT	RENT LOSS AMOUNT
403P	10.01.19 - 01.23.20 (3.5 months), 05.24.20 - 03.31.21 (10.5 months)	14	7,000.00	98,000.00
409P	06.01.20 - 03.31.21	10	16,000.00	160,000.00
504B	08.01.19 - 03.31.21	20	10,000.00	200,000.00
509B	10.01.19 - 03.31.21	18	8,750.00	157,500.00
609P	02.01.20 - 03.31.21	14	17,000.00	238,000.00
703B	08.01.20 - 01.31.21	6	7,500.00	45,000.00
803B	06.01.20 - 03.31.21	10	8,500.00	85,000.00
903P	01.01.20 - 03.31.21	15	8,000.00	120,000.00
904P	07.01.20 - 03.31.21	9	7,950.00	71,550.00
909P	11.01.20 - 03.31.21	5	13,500.00	67,500.00
910B	05.01.20 - 03.31.21	11	10,000.00	110,000.00
910P	09.01.19 - 03.31.21	19	8,500.00	161,500.00
1105B	01.01.20 - 03.31.21	15	6,000.00	90,000.00
1403B	11.01.19 - 12.31.19 (2 months), 02.01.21 - 03.31.21 (2 Month)	4	7,500.00	30,000.00
1409B	11.01.19 - 03.15.20	2.5	15,000.00	37,500.00

UNIT	DATES VACANT	TOTAL MONTHS VACANT	MONTHLY RENT	RENT LOSS AMOUNT
1504B	07.15.19 - 03.31.21	20.5	15,000.00	307,500.00
1505B	04.01.20 - 03.31.21	12	6,000.00	72,000.00
1509P	09.15.19 - 03.31.21	18.5	15,000.00	277,500.00
1604P	02.01.20 - 03.31.21	14	19,500.00	273,000.00
1610P	08.01.19 - 03.31.21	20	7,500.00	150,000.00
1809P	06.01.19 - 03.31.21	22	18,000.00	396,000.00
1904P	12.01.20 - 03.31.21	4	12,500.00	50,000.00
1905P	03.15.20 - 03.31.21	12.5	6,500.00	81,250.00
1908B	09.01.19 - 01.31.20 (5 months), 05.01.20 - 03.31.21 (11 months)	16	10,000.00	160,000.00
			<b>261,200.00</b>	<b>3,438,800.00</b>

47. Due to the improper and illegal Amended Resolution, Cross-Complainant has been unable to keep current on his HOA dues, assessments, and property taxes with respect to the Subject Units. As of April 1, 2021, Ocean Towers claims that Cross-Complainant owes \$730,084.45 in past due HOA dues and assessments, exclusive of past due property taxes, costs, and attorneys' fees (which Ocean Towers has not identified), with respect to Units 403P, 409P, 508B1, 609P, 703B, 803B, 808P, 903P, 904P, 909P, 910B, 910P, 1105B, 1403B, 1408B, 1409B, 1504B, 1505B, 1509P, 1601B, 1604P, 1610P, 1703P, 1705P, 1803B, 1809P, 1903P, 1904P, and 1905P.

**F. OCEAN TOWERS HAS ILLEGALLY AND IMPROPERLY SUSPENDED CROSS-COMPLAINANT SPAHI'S VOTING RIGHTS AND IMPOSED OTHER PENALTIES IMPROPERLY**

48. In connection with a disciplinary hearing held by Ocean Towers' Board of Directors on March 16, 2021, Ocean Towers (acting through its Board) gave notice by letter dated March 25, 2021, by Tara Radley, Esq., its HOA attorney, that it was commencing foreclosure proceedings with respect to the Units. It also indicated that it was suspending Cross-Complainant Spahi's voting

1 rights (together with other penalties and restrictions).

2 49. Tara Radley made this claim of commencing foreclosure proceedings even though  
3 the Cross-Complainant, through his attorneys, accepted Tara Radley's offer to engage in alternative  
4 dispute resolution procedures pursuant to the Davis-Stirling Act, which procedures must take place  
5 before any affirmative foreclosure actions, including the placing of any liens against any of the  
6 Subject properties, is permitted to take place by Ocean Towers pursuant to the Davis-Stirling Act.

7 50. The HOA claims that its suspension of voting rights is authorized under Article X,  
8 Section 10.09 of OTHC's Bylaws, which provides in pertinent part as follows:

9 "10.09 Suspension of Voting and Other Rights. In any period during  
10 which a Shareholder shall be in default in the payment of any sums due  
11 pursuant to the Bylaws or such Shareholder's Proprietary Lease, the  
12 voting rights of such member shall be suspended by the Board until such  
13 assessments have been paid."

14 (See Ocean Towers' Bylaws, Section 10.09 [Exhibit C hereto].)

15 51. Similarly, the Ocean Towers Election Procedures provide as follows:

16 "2.2 Eligibility to Vote. Shareholders of record on the date of the  
17 annual Shareholder meeting (Bylaw §2.10), who have not had their voting  
18 rights suspended as provided for below, shall be entitled to vote.

19 2.3 Suspension of Voting Rights. The voting rights of a  
20 Shareholder may be suspended (a) if he or she is delinquent in paying any  
21 rent or other sums due to the Corporation or, (b) after notice from the  
22 Board and the conduct of the hearing, if requested by the Shareholder, for  
23 violations of the Rules and Regulations relating to the Common Areas  
24 (Bylaw §10.09). If suspended for nonpayment, a Shareholder's voting  
25 privileges shall remain suspended until such time as the delinquency,  
26 including any accumulated penalties, interest and costs of collection, have  
27 been paid to Corporation in full. Voting rights shall be reinstated once all  
28 delinquent amounts are paid in full. Personal checks will be accepted but

1 voting rights will not be reinstated until the check clears the bank. Rights  
2 shall be reinstated immediately if payment is made by cashier's check."

3 (See Ocean Towers' Election Procedures, §§ 2.2 & 2.3 [**Exhibit D** hereto].)

4 52. However, Cross-Defendant Ocean Towers' suspension of the voting rights with  
5 respect to the above Units, based on Section 10.09 of the Bylaws and Section 2.3 of the Election  
6 Procedures, is illegal, void, *ultra vires*, and impermissible, because Section 10.09 of the Bylaws and  
7 Section 2.3 of the Election Procedures have been statutorily abrogated and rendered unenforceable  
8 by a recent amendment adding subdivision (g)(1) to Section 5105 of the Davis-Stirling Act.  
9 Effective January 1, 2020, the California Legislature has enacted and implemented Civ. Code §  
10 5105, subd. (g)(1), an amendment to the Davis-Stirling Act governing cooperative associations such  
11 as Ocean Towers, which provides that a shareholder's voting rights can no longer be suspended on  
12 account of HOA assessment delinquencies and arrearages, or for the shareholder's failure to pay  
13 property taxes or "**for any reason** other than not being a member at the time when ballots are  
14 distributed." (Emphasis added). Section 5105(g)(1) expressly provides as follows:

15 "Notwithstanding any other law, the rules adopted pursuant to this section  
16 shall do all of the following: ¶ (1) **Prohibit the denial of a ballot to a**  
17 **member for any reason** other than not being a member at the time when  
18 ballots are distributed" (Emphasis added)

19 (See Cal. Civ. Code § 5105, subd. (g)(1).)

20 53. Cross-Complainant Spahi has formally requested of Ocean Towers, in writing, and  
21 by formal petition to the Inspector of Elections, that his right to vote be restored – in connection  
22 with Ocean Towers' Board of Director election — now scheduled for on or about June 22, 2021 —  
23 and otherwise – based on Civil Code section 5105(g)(1)'s plain meaning and intent, *i.e.*, to preserve  
24 the voting rights of shareholder/members in all cases "**for any reason** other than not being a  
25 member at the time when the ballots are distributed" (*Id.*) (Emphasis added).

26 54. Notwithstanding the clear letter, spirit and Legislative intent of Cal. Civ. Code §  
27 5105, subd. (g)(1), Ocean Towers has refused to restore Cross-Complainant's right to vote. Ocean  
28 Towers has contended that, notwithstanding the clear purpose and intent of Section 5105(g)(1),

1 Ocean Towers still can suspend voting rights as a penalty for nonpayment of HOA dues and for  
2 other alleged misconduct so long as it provides ballots to the shareholder being disciplined.

3 55. Rules of statutory construction require an ascertainment of the intent of the  
4 Legislature to effectuate the purpose of the law. (*DeYoung v. City of San Diego* (1983) 147  
5 Cal.App.3d 11, 17-18.) Our Supreme Court has repeatedly adhered to the rule that statutes are to be  
6 interpreted in the light of reason and common sense. (*See People v. Mulholland* (1940) 16 Cal.2d  
7 62, 69 [“We are unable to accept such a construction of the law. It is the duty of the courts to  
8 construe such enactments in the light of reason.”]; *Great Western Distillery Products, Inc. v. John A.*  
9 *Wathen Distillery Co.* (1937) 10 Cal.2d 442, 446 [“Statutes are interpreted in light of reason and  
10 common sense[”].) It is equally well established that statutes must be construed in a manner  
11 necessary to avoid absurd results. (*People v. Mendoza* (2000) 23 Cal.4th 896, 908 [courts must  
12 “avoid a construction that would produce absurd consequences, which we presume the Legislature  
13 did not intend”].)

14 56. The HOA’s interpretation and application of Section 5105(g)(1) defies logic and  
15 common sense. It defeats the entire purpose of the amended provision. If the HOA’s interpretation  
16 were correct, the HOA could turn Section 5105(g)(1) on its head and deny shareholder voting rights  
17 to any shareholder for non-payment of rents, or for other misconduct that the Board of Directors, in  
18 its discretion, decides is reasonable, so long as the HOA sends a ballot to the shareholder that the  
19 HOA knows that it will not count or honor. According to Ocean Towers’ extraordinarily strained  
20 interpretation of the plain meaning of Section 5105(g)(1) and the clearly stated Legislative intent as  
21 expressed through its Judiciary Committee at the time of the passage of Senate Bill (SB) 323, which  
22 includes Cal. Civ. Code § 5105(g)(1), the Legislature may have prohibited HOAs from depriving  
23 shareholders of ballots “for any reason other than not being a member at the time when the ballots  
24 are distributed,” but it did not prohibit HOAs from suspending shareholder voting privileges for  
25 ballots it distributes for any other reasons. That is an absurd and novel construction of Section  
26 5105(g)(1), which is contrary to the obvious intent of the Legislature in enacting it, which was to  
27 limit the ability of cooperative associations to strip shareholders of their voting rights except in  
28 cases where the voter is not a shareholder at the time ballots are distributed. It is that simple.

1           57.     In that regard, if there were any legitimate question about the Legislature’s plain  
2 meaning in “[p]rohibiting the denial of a ballot to a member for any reason other than not being a  
3 member at the time when ballots are distributed” (there should not be, since the language means  
4 what it says straightforwardly), Cross-Complainant’s position is buttressed by the “Bill Analysis”  
5 dated April 1, 2019 of Bill S.B. 323 by the Senate Judiciary Committee of the State of California  
6 (Senator Hannah-Beth Jackson, Chair.” At page 5 of 14, at Section (8)(a) the Bill Analysis, which  
7 reflects the Senate Judiciary Committee’s then real time analysis, states the following:

8                   **“[This Bill] Requires an HOA’s election rules to do all of the**  
9                   **following: ¶ a) prohibit the denial of a ballot to a member for any**  
10                   **reason other than not being a member at the time when ballots are**  
11                   **distributed”** (Emphasis added.)

12           58.     The Bill Analysis goes on to explain, in the “COMMENTS” section, at paragraph 4  
13 on page 8, the purpose and intent of the bill as follows:

14                   **“SB 323 would not allow associations to disqualify members from**  
15                   **voting for the board just because they are behind on payments.**  
16                   **Instead, the bill would prohibit associations from adopting rules**  
17                   **denying members a ballot for any reason other than not being a**  
18                   **member at the time when ballots are distributed, thus guaranteeing**  
19                   **the broadest possible franchise.”** (Emphasis added.)

20 Ocean Towers’ contrary interpretation turns Civil Code § 5105(g)(1) on its head, contrary  
21 its plain meaning and the Legislature’s clearly-expressed intent. Ocean Towers’  
22 suspension of Cross-Complainant’s voting rights therefore should be declared illegal and  
23 invalid, and should be prohibited and enjoined in conformity with the obvious, clearly  
24 stated intent of the Legislature, including the intent of the Judiciary Committee in  
25 enacting SB 323, which incorporated Civil Code § 5105(g)(1).

26           **G.     CROSS-COMPLAINANT’S CROSS-COMPLAINT IS NOT SUBJECT TO**  
27           **THE DAVIS-STIRLING ACT’S ADR REQUIREMENTS**  
28

1           59.       Cross-Complainant’s Cross-Complaint is not subject to the Alternative Dispute  
2 Resolution requirements of Civil Code, § 5930, entitled “ADR prerequisite to enforcement action,”  
3 because that “section applies only to an enforcement action” (§ 5930, subd. (b)), and Civil Code  
4 section 5925, subd. (b), defines an “Enforcement action” to “mean[] a civil action or proceeding,  
5 **other than a cross-complaint**, for any of the following purposes . . . (See Cal. Civ. Code, § 5925,  
6 subd. (b) [Emphasis added].) Accordingly, Cross-Complaints, like this one, are excluded from the  
7 definition of an “enforcement action” subject to the Davis-Stirling Act’s ADR provisions. In  
8 addition, pursuant to Civil Code section 5950, Cross-Complainant also is relieved of the ADR  
9 requirements of the Davis-Stirling Act because temporary and preliminary injunctive relief is  
10 necessary, for the reasons stated here, within the meaning of § 5950, subd. (a)(3). A certificate  
11 stating that “preliminary or temporary injunctive relief is necessary” is appended at the end of this  
12 Cross-Complaint, in compliance with the requirements of Civ. Code, § 5950.

13           60.       On his First and Second Cross-Claims, for declaratory and injunctive relief, Cross-  
14 Complainant seeks a declaration by this Court establishing and enforcing his voting, subleasing, and  
15 sale rights under Ocean Towers’ Governing Documents, the Davis-Stirling Act, and the California  
16 Corporations Code. Cross-Claimant also seeks a prohibitory injunction barring Cross-Defendant  
17 from suspending Cross-Complainant’s voting rights in connection with the Ocean Towers’ Board of  
18 Directors election scheduled for on or about June 22 2021, and from enforcing the provisions of the  
19 Amended Resolution that illegally and unreasonably interfere with or preclude Cross-Complainant’s  
20 ability to sublease or sell the Subject Units. Cross-Complainant may also seek to enjoin Ocean  
21 Towers from taking any actions to record liens against any of the Subject Units or to foreclose any  
22 interest in any recorded liens except as expressly permitted under the Davis-Stirling Act and as  
23 approved by this Court. On his Third Cross Claim, for breach of contract (based on Ocean Towers’  
24 violations of Cross-Complainant’s rights under Ocean Towers’ Governing Documents), Cross-  
25 Complainant seeks monetary damages against Ocean Towers, for, among its other misconduct, its  
26 breaches of Spahi’s subleasing, sale, and transfer rights s under the Bylaws and Proprietary Lease.

27 ///

28 ///

V. CROSS-CLAIMS

A. **FIRST CROSS-CLAIM: FOR DECLARATORY AND INJUNCTIVE RELIEF REGARDING CROSS-COMPLAINANT’S RIGHT TO VOTE PURSUANT TO CIVIL CODE, § 5105, SUBD. (g)(1)**

61. Cross-Complainant Spahi realleges paragraphs 1 through 60 of this Cross-Complaint and incorporates them by reference as though fully set forth.

62. Under California Code of Civil Procedure section 1060, an actual controversy has arisen and now exists between Cross-Complainant Spahi, on the one hand, and Cross-Defendant Ocean Towers, on other hand, in that Cross-Complainant contends, and Cross-Defendant disputes, that under Civil Code, § 5105, subd. (g)(1), Cross-Defendant was prohibited from denying ballots to Cross-Complainant – or suspending his voting rights with respect to any ballots that were or are distributed to him – “for any reason other than not being a member at the time when the ballots are distributed” (*Id.*)

63. In particular, Cross-Complainant seeks a judicial declaration and determination that Article X, Section 10.09 of OTHC’s Bylaws, entitled “10.09 Suspension of Voting and Other Rights” (which provides in pertinent part that “In any period during which a Shareholder shall be in default in the payment of any sums due pursuant to the Bylaws or such Shareholder’s Proprietary Lease, the voting rights of such member shall be suspended by the Board until such assessments have been paid”) and Section 2.3 of Ocean Towers’ Bylaws (which provides in pertinent party that “The voting rights of a Shareholder may be suspended . . . if he or she is delinquent in paying any rent or other sums due to the Corporation[.]”) are both invalid and unenforceable in light of the Legislature’s recent adoption of Civil Code, § 5105, subd. (g)(1), which prohibits the suspension of shareholder voting rights “**for any reason** other than not being a member at the time when the ballots are distributed.” (Emphasis added).

64. A judicial declaration and determination of Cross-Complainant’s voting rights under the Bylaws and section 5105, subdivision (g)(1) of the Davis-Stirling Act is necessary and appropriate so that both Cross-Complainant and Cross-Defendant can be advised of their respective rights and obligations thereunder.

1           65.       Cross-Complainant has no adequate remedy at law for the breach of the election  
2 provisions of the Davis-Stirling Act and the denial of his voting rights under Ocean Tower’s  
3 Governing Documents, identified above. There is a serious risk of irreparable harm and prejudice to  
4 Cross-Complainant if declaratory and injunctive relief is not granted to him immediately, because  
5 Ocean Towers’ currently plans to hold a shareholder election for the Board of Directors on or about  
6 June 22, 2021, and Cross-Complainant’s right to vote, directly and by proxy, is directly implicated  
7 and in jeopardy of being unlawfully denied pursuant to Civil Code, § 5105, subd. (g)(1). Cross-  
8 Defendant’s statutory and contractual breaches, which purport to suspend Cross-Complainant’s  
9 shareholder voting rights, if not corrected and enjoined, are likely to alter the outcome of this  
10 disputed Board of Directors election. Consequently, Cross-Complainant seeks a judicial declaration  
11 and determination (1) that he has a right to cast ballots for the upcoming election on about June 22,  
12 2021, (2) that Ocean Tower’s suspension of his voting rights is null and void, and (3) that Ocean  
13 Towers is permanently and temporarily enjoined from enforcing its voting suspension penalty as to  
14 Cross-Complainant Spahi. Cross-Complainant is likely to prevail on the merits of this claim.

15           **B.       SECOND CROSS-CLAIM: FOR DECLARATORY AND INJUNCTIVE**  
16                   **RELIEF REGARDING CROSS-COMPLAINANT’S RIGHT TO SUBLEASE**  
17                   **AND SELL THE SUBJECT UNITS WITHOUT UNLAWFUL**  
18                   **RESTRICTIONS, PROHIBITIONS, AND ESCROW REQUIREMENTS**

19           66.       Cross-Complainant Spahi realleges paragraphs 1 through 65 of this Cross-Complaint  
20 and incorporates them by reference as though fully set forth.

21           67.       Under California Code of Civil Procedure section 1060, an actual controversy has  
22 arisen and now exists between Cross-Complainant Spahi, on the one hand, and Cross-Defendant  
23 Ocean Towers, on other hand, in the following matters:

24                   A. Cross-Complainant contends, and Cross-Defendant disputes, that the  
25                   Amended Resolution is invalid and unenforceable in its entirety under  
26                   Civil Code, §§ 4350 and 4360;

27                   B. Cross-Complainant contends, and Cross-Defendant disputes, that (1) the  
28                   so-called “Financial Qualifications Standards” in Section I of the

1 Amended Resolution (Exhibit E hereto), (2) the “Sublease Qualification  
2 Standards” in Section II of the Amended Resolution (Exhibit E hereto),  
3 and (3) the so-called “Financial Protection Measures” in Section V of the  
4 Amended Resolution (Exhibit E hereto), are collectively and individually  
5 unenforceable and invalid because each of these Sections of the Amended  
6 Resolution was not approved by a 2/3 vote of Ocean Towers shareholders  
7 as required under Article XIV, Section 14.01 of the Bylaws, entitled  
8 “Amendments,” which provides, in pertinent part, that “Any amendment  
9 or repeal of Articles VII, VIII, X and XI of these Bylaws requires the vote  
10 or written consent of the holders of sixty-six and two-thirds percent (66-  
11 2/3%) of the Shares of the Corporation” (Exhibit C hereto) and as  
12 required under Section IV of Ocean Towers’ Articles of Incorporation,  
13 which provide that “Any amendment of Articles VII, VIII, X and XI of the  
14 Bylaws requires the approval of the holders of sixty-six and two-thirds  
15 percent (66-2/3) of the outstanding shares.” (See Exhibit A hereto.)

- 16 C. Cross-Complainant contends, and Cross-Defendant disputes, that the so-  
17 called “Financial Qualifications Standards” in Section I of the Amended  
18 Resolution (**Exhibit E** hereto), and the “Sublease Qualification Standards”  
19 in Section II of the Amended Resolution (**Exhibit E** hereto), are invalid  
20 and unenforceable under Civil Code, § 4740, subd. (a), to the extent that  
21 they purport to prohibit the rental or leasing of any Subject Units to any  
22 renter, lessee, or tenant because those provisions, which modified Ocean  
23 Tower’s Bylaws and Proprietary Lease, were not effective prior to the date  
24 that Cross-Complainant Spahi acquired interests in, directly or indirectly,  
25 or management/agency responsibilities for, the Units at issue.
- 26 D. In addition, Cross-Complainant contends, and Cross-Defendant disputes,  
27 that (1) the so-called “Financial Qualifications Standards” in Section I of  
28 the Amended Resolution (Exhibit E hereto), and (2) the “Sublease

1 Qualification Standards” in Section II of the Amended Resolution (Exhibit  
2 E hereto), are invalid and unenforceable under Civil Code, § 4741, subd.  
3 (a), to the extent that they “have the effect of prohibiting, or unreasonably  
4 restricts the rental or leasing of any of the separate interests, accessory  
5 dwelling units, or junior accessory dwelling units in that common interest  
6 development to a renter, lessee, or tenant.” (*Id.*)

7 E. In the alternative, Cross-Complainant contends, and Cross-Defendant  
8 disputes, that (1) the so-called “Financial Qualifications Standards” in  
9 Section I of the Amended Resolution (**Exhibit E** hereto), and (2) the  
10 “Sublease Qualification Standards” in Section II of the Amended  
11 Resolution (**Exhibit E** hereto), are otherwise invalid and unenforceable  
12 because they constitute unreasonable restraints on alienation, are  
13 otherwise unreasonable under the Bylaws and Proprietary Lease, and/or  
14 are not applied as to Cross-Complainant in a uniform and objective  
15 manner.

16 F. Cross-Complainant contends, and Cross-Defendant disputes, that the so-  
17 called “Financial Protection Measures” in Section V of the Amended  
18 Resolution (**Exhibit E** hereto) are otherwise unenforceable and invalid  
19 because they constitute unreasonable restraints on alienation and are  
20 unreasonable under the Bylaws and Proprietary Lease, and are not applied  
21 in a uniform and objective manner.

22 68. A judicial declaration and determination of Cross-Complainant’s leasing and sale  
23 rights under the Bylaws, Articles, and Proprietary Lease are necessary and appropriate so that both  
24 Cross-Complainant and Cross-Defendant can be advised of their respective rights and obligations  
25 thereunder.

26 69. Cross-Complainant has no adequate remedy at law for unreasonable restraints on  
27 alienation and violations of his statutory and contractual rights to lease and sell the Subject Units.  
28 There is a serious risk of irreparable harm and prejudice to Cross-Complainant if declaratory and

1 injunctive relief is not granted to him immediately, because Ocean Towers has indicated that it  
2 intends to commence foreclosure proceedings on the Subject Units. Cross-Complainant needs to be  
3 able to lease or sell the Subject Units in order to pay HOA dues and assessments, and property taxes,  
4 on the Units, as well to pay interest and principal on the loans on them. Cross-Defendant’s statutory  
5 and contractual breaches, which purport to prohibit, in practical effect, Cross-Complainant’s ability  
6 to earn any income on the Subject Units, if not corrected and enjoined, are likely to result in the loss  
7 of the Units, which represent unique real property assets with special characteristics and value.  
8 Consequently, Cross-Complainant seeks a judicial declaration and determination that Sections I, II,  
9 and V of the Amended Resolution are invalid and unenforceable. Cross-Complainant is likely to  
10 prevail on the merits of this claim.

11 **C. THIRD CROSS-CLAIM: FOR BREACH OF CONTRACT**

12 70. Cross-Complainant Spahi realleges paragraphs 1 through 69 of this Cross-Complaint  
13 and incorporates them by reference as though fully set forth.

14 71. Ocean Towers’ Governing Documents, *i.e.*, its Proprietary Lease, Bylaws, Articles of  
15 Incorporation, and Election Procedures, constitute a unitary contract under Civil Code, § 1642,  
16 which provides that “[s]everal contracts relating to the same matters, between the same parties, and  
17 made as parts of substantially one transaction, are to be taken together.” The Governing  
18 Documents are deemed to incorporate applicable statutory law, including in particular, in the case of  
19 a common interest development like Ocean Towers, the provisions of the Davis-Stirling Act.

20 72. As a matter of common law and statutory law, including but not limited to Civil  
21 Code, § 4350, subd. (e), and pursuant to Sections 11.02, 11.03, 11.06, and 11.09 of Article XI of the  
22 Bylaws (**Exhibit B** hereto), entitled “”Voluntary Assignment,” “Subletting,” “Hypothecation,” and  
23 “Transfers,” respectively, and pursuant to Section 6.01 and Section 6.02 of Article VI of the  
24 Proprietary Lease (**Exhibit A** hereto), consent by Ocean Towers for Cross-Complainant to sublease  
25 or transfer (sell or assign) the Subject Units “shall not be unreasonably withheld” and “[t]he  
26 standards employed in determining whether consent shall be given shall be uniform and objective.”

27 73. In addition, as set forth above, the Bylaws, Proprietary Lease, and the Articles  
28 require an affirmative 2/3 vote of OTHC’s Shareholders before any amendment to the provisions of

1 the Bylaws in Article XI governing subletting, assignments (and related sales), hypothecation, and  
2 transfer of shares can be modified or amended. The Proprietary Lease comprises part of the same  
3 unitary contract, and therefore is subject to the same 2/3 supermajority vote requirement for lease  
4 authorization changes or Unit-interest assignment or sale changes under the Bylaws.

5 74. In light of the foregoing contractual provisions, that are binding on OTHC, it is clear  
6 that by issuing and enforcing the illegal and *ultra vires* Amended Resolution, the HOA has  
7 materially breached the Bylaws, Articles, and Proprietary Lease provisions cited above by  
8 impermissibly and illegally restraining the rights to lease, assign, or sell the Subject Units by means  
9 of the Amended Resolution that was not presented to, or approved by, 2/3 of OTHC's Shareholders.

10 75. Alternatively, even if the Amended Resolution did not constitute an impermissible  
11 amendment of the subletting, assignment/sale, hypothecation, and transfer of shares provisions of  
12 the Bylaws and Proprietary Lease, its adoption and enforcement by Ocean Towers nonetheless  
13 constitutes a breach of the Bylaws and Proprietary Lease because the subleasing and sale restrictions  
14 and escrow requirement in the Amended Resolution are unreasonable, because:

15 (a) They limit the universe of acceptable subleasing and sale  
16 candidates to a tiny fraction of the luxury real estate market niche;

17 (b) They are not uniformly and objectively applied as to all Ocean  
18 Towers' shareholders, but instead are selectively enforced against Cross-  
19 Complainant, with the escrow requirement being applied solely to Cross-  
20 Complainant and the other former Director Defendants in litigation with Cross-  
21 Defendant;

22 (c) They were not adopted in good faith, since Cross-Defendant did  
23 not give notice of the Amended Resolution to the shareholders before it was  
24 adopted, and Cross-Defendant also did not give Cross-Complainant notice of  
25 Amended Resolution or any hearing or other due process before it imposed the  
26 confiscatory escrow requirement upon him; and

27 (d) They conflict with governing law because the Amended Resolution  
28 was not provided to shareholders at least 28 days before the Board enacted it, in

1 violation of Civil Code § 4360, and it was not voted upon or approved by the  
2 Shareholders as required under Article XIV, Section 14.01 of the Bylaws.

3 76. The HOA's material breaches of OTHC's Bylaws, Articles, and Proprietary Lease  
4 excused Cross-Complainant's performance of contractual HOA dues obligations with respect to the  
5 Subject Units.

6 77. As a direct, proximate, and inevitable result of Ocean Towers' illegal, *ultra vires*, and  
7 unreasonable prohibitions and restrictions on Cross-Complainant's subleasing and sale rights, by  
8 means of Section I, Section II, and Section V of the August 2019 Amended Resolution, Cross-  
9 Complainant Spahi has been denied the opportunity to sell or sublease the Subject Units. This has  
10 resulted in approximately 23 Units remaining vacant at the present time, including, on information  
11 and belief, Unit Nos. 403P, 409P, 509B, 609P, 703B, 803B, 903P, 904P, 909P, 910B, 910P, 1105B,  
12 1403B, 1409B, 1504B, 1505B, 1509P, 1604P, 1610P, 1809P, 1904P, 1905P, and 1908B. Because  
13 the Units are vacant and are not generating any income, lost lease income from the time the  
14 Amended Resolution was implemented and enforced, commencing in August 2019, until March 31,  
15 2021, totals approximately \$3,438,800 and is substantially increasing on a monthly basis. Because  
16 of the loss of the sale of Unit 1809P, as detailed above, Cross-Complainant lost an additional  
17 amount of approximately \$1,200,000 from the loss of that sale as a result of the Ocean Towers'  
18 breaches of contract.

19 **VI. PRAYER FOR RELIEF**

20 WHEREFORE, Cross-Complainant prays for the following relief:

21 ***ON THE FIRST CROSS-CLAIM FOR DECLARATORY AND INJUNCTIVE***  
22 ***RELIEF:***

- 23 A. A judicial declaration and determination that Cross-Defendant's purported  
24 suspension of Cross-Complainant's Shareholder voting rights is invalid and  
25 unenforceable pursuant to Civil Code section 5105, subd. (g)(1);
- 26 B. A temporary, preliminary, and permanent injunction, enjoining Cross-Defendant, and  
27 its agents, servants, employees, attorneys, and all other persons acting under, for, or  
28 in concert with Cross-Defendant, from enforcing its voting suspension penalty as to

1 Cross-Complainant, as to the now scheduled election of the Board of Directors,  
2 which is now scheduled to take place on or about June 22, 2021, and as to any other  
3 Shareholder election, “for any reason other than not being a member at the time when  
4 the ballots are distributed,” pursuant to Civil Code section 5105, subd. (g)(1);

5 ***ON THE SECOND CROSS-CLAIM FOR DECLARATORY AND INJUNCTIVE***  
6 ***RELIEF:***

- 7 A. A judicial declaration and determination that the “Financial Qualifications Standards”  
8 in Section I of the Amended Resolution (**Exhibit E** hereto) and the “Sublease  
9 Qualification Standards” in Section II of the Amended Resolution (**Exhibit E** hereto)  
10 are invalid and unenforceable;
- 11 B. A judicial declaration and determination that the “Financial Protection Measures” in  
12 Section V of the Amended Resolution (**Exhibit E** hereto) are invalid and  
13 unenforceable;
- 14 C. A temporary, preliminary, and permanent injunction, enjoining Cross-Defendant, and  
15 its agents, servants, employees, attorneys, and all other persons acting under, for, or  
16 in concert with Cross-Defendant, from enforcing the “Financial Qualifications  
17 Standards,” the “Sublease Qualifications Standards,” or the “Financial Protection  
18 Measures” as against Cross-Complainant;

19 ***ON THE FIRST AND SECOND CROSS-CLAIMS FOR DECLARATORY AND***  
20 ***INJUNCTIVE RELIEF:***

- 21 A. For civil penalties and attorneys’ fees under Civil Code, § 5145, subd. (b);

22 ***ON THE THIRD CROSS-CLAIM FOR BREACH OF CONTRACT:***

- 23 A. For money damages according to proof at trial.

24 ***ON ALL CROSS-CLAIMS:***

- 25 A. For attorneys’ fees as may be permitted by the Bylaws, Proprietary Lease, and other  
26 Ocean Towers Governing Documents;
- 27 B. For costs of suit;
- 28 C. For such other relief as may be just and proper.

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

DATED: May 10, 2021

**BAINBRIDGE LAW APC  
MARK ANCHOR ALBERT & ASSOCIATES**

By: 

---

Mark Anchor Albert  
Attorneys for Defendant and Cross-Complainant  
JOHN SPAHI

1 **DEFENDANT AND CROSS-COMPLAINANT JOHN SPAHI'S CERTIFICATION OF**  
2 **EXEMPTION FROM ADR PRE-FILING REQUIREMENT EFFORTS UNDER THE**  
3 **DAVIS-STIRLING ACT [CIVIL CODE, § 5950]**

4 Defendant and Cross-Complainant John Spahi, by and through his undersigned counsel,  
5 hereby certifies, pursuant to Section 5950 of the Davis-Stirling Common Interest Development Act,  
6 Civ. Code, § 4000 *et seq.*, Cross-Complainant's Cross-Claim for declaratory and injunctive relief,  
7 and for breach of contract, is not subject to the Alternative Dispute Resolution requirements of Civil  
8 Code, § 5930, entitled "ADR prerequisite to enforcement action," because that "section applies only  
9 to an enforcement action" (§ 5930, subd. (b)), and Civil Code, § 5925, subd. (b), defines an  
10 "Enforcement action" to "mean[] a civil action or proceeding, **other than a cross-complaint**, for  
11 any of the following purposes . . . (See Cal. Civ. Code, § 5925, subd. (b) [Emphasis added].)  
12 Accordingly, Cross-Complaints, like this one, are excluded from the definition of an "enforcement  
13 action" subject to the Davis-Stirling Act's ADR provisions.

14 In addition, pursuant to Civil Code, § 5950, Cross-Complainant also is relieved of the ADR  
15 requirements of the Davis-Stirling Act because temporary and preliminary injunctive relief is  
16 necessary, for the reasons stated in the Cross-Complaint, within the meaning of Civil Code, § 5950,  
17 subd. (a)(3).

18  
19 DATED: May 10, 2021

**BAINBRIDGE LAW APC**  
**MARK ANCHOR ALBERT & ASSOCIATES**

21 By: 

22  
23 Mark Anchor Albert  
24 Attorneys for Defendant and Cross-Complainant  
25 JOHN SPAHI  
26  
27  
28

**PROOF OF SERVICE**

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is 445 South Figueroa Street, Suite 3100, Los Angeles, California 90071. On May 10, 2021, I caused to be served a true copy of the following documents:

**FIRST AMENDED CROSS-COMPLAINT FOR:**

**1. DECLARATORY AND INJUNCTIVE RELIEF (FIRST AND SECOND CROSS-CLAIMS); and**

**2. BREACH OF CONTRACT (THIRD CROSS-CLAIM)**

- By transmitting via e-mail, per mutual agreement, the document(s) listed above to the e-mail addresses set forth below on the date indicated. The above transmission was reported as complete and without error.
- By placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Los Angeles, California, addressed as set forth below.
- By placing the document(s) listed above in a sealed envelope, with the overnight delivery charge prepaid, addressed as set forth below, and deposited in a box or facility regularly maintained by an overnight delivery service carrier
- By hand delivery via Instant Process courier service.

I am readily familiar with the firm’s practice of collection and processing correspondence and other material for mailing. Under that practice, and in the ordinary course of our business, outgoing mail is deposited with the U.S. Postal Service with postage fully prepaid thereon. I am aware that on motion of the party served, service may be presumed invalid if the postal cancellation date or postage meter date is more than one day after the date of deposit for mailing as set forth in this Proof of Service.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on May 10, 2021, at Los Angeles, California.

  
\_\_\_\_\_  
Mark Anchor Albert

**Service list for Case No. SC124263**

<p>Donald A. Miller          LOEB &amp; LOEB LLP          10100 Santa Monica Blvd, Suite 2200          Los Angeles, CA 90067          Telephone: 310.282.2000          Facsimile: 310.282.2200          dmiller@loeb.com          mcanderson@loeb.com          vmanssourian@loeb.com</p> <p><i>Attorneys for Plaintiff Ocean Towers Housing Corporation</i></p>	<p>James Goldman          Minh-Van T. Do          Miller Barondess LLP          1999 Avenue of the Stars, Suite 1000          Los Angeles, CA 90067          jgoldman@millerbarondess.com          mdo@millerbarondess.com</p> <p><i>Attorneys for Plaintiff Ocean Towers Housing Corporation</i></p>
<p>David Rosen          Murphy &amp; Rosen LLP          1 00 Wilshire Blvd.          Suite 1300          Santa Monica, CA 90401          drosen@murphyrosen.com</p> <p><i>Attorneys for Defendant Joseph Orlando</i></p>	<p>Alfred Joseph Verdi          Verdi Law Group PC          29160 Heathercliff Road, Suite 4133          Malibu, CA 90264          al@verdilaw.com</p> <p><i>Attorneys for Apex Investments Group Ltd., Dorothea Schiro, and Omar Spahi</i></p>
<p>Tara Radley          Beaumont Tashjian LLP          21650 Oxnard St., Suite 1620          Woodland Hills, California 91367          Telephone: (866) 788-9998          E-mail: TRadley@HOAAttorneys.com</p> <p><i>Attorneys for Plaintiff and Cross Defendant Ocean Towers Housing Corporation.</i></p>	<p>James Bainbridge          Bainbridge Law APC          1801 Century Park East, 24<sup>th</sup> Floor          Los Angeles, CA 90067          jim@bainbridgelawapc.com</p> <p><i>Attorneys for Defendant John Spahi</i></p>