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**ENDORSED FILED**  
**SAN MATEO COUNTY**

MAR 13 2018

Clerk of the Superior Court  
By BROOKE N. JIMENEZ  
DEPUTY CLERK

7 Attorneys for Applicant IRENE LAUDEMAN

8  
9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

10 **COUNTY OF SAN MATEO**

11 IRENE LAUDEMAN, an individual,  
12 Applicant,

13 v.

14 PALO ALTO PARK MUTUAL WATER  
COMPANY, a California corporation,  
15 Respondent.

Case No. **18CIV01274**

**MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF AN  
APPLICATION PURSUANT TO  
CORPORATIONS CODE § 601(C) FOR  
AN ORDER SUMMARILY DIRECTING  
THE GIVING OF THE NOTICE OF A  
SPECIAL SHAREHOLDERS'  
MEETING**

Date: March 28, 2018  
Time: 9:00 a.m.  
Dept: \_\_\_\_\_

[Filed concurrently with Notice of  
Application, Application, [Proposed] Order,  
Affidavit of Shannon Pekary, and Affidavit  
of Irene Laudeman]

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**I. INTRODUCTION**

Because of the continuing failure of the Palo Alto Park Mutual Water Company (“Company”) to give notice of a special shareholders’ meeting as required by section 601, subdivision (c), of the Corporations Code, Applicant Irene Laudeman, who represents at least one third of the Company’s shares via proxy, seeks an order summarily directing the Company to give notice of and convene a special shareholders’ meeting where, *inter alia*, an election for all five seats of the Company’s Board of Directors (“Board”) will be held. (Corp. Code, § 601, subd. (c).) Ms. Laudeman requests that this meeting occur on Saturday, April 14, 2018, at 12:00 p.m., at the Company’s executive office, 2190 Addison Avenue, East Palo Alto, CA, 94303 and that it be conducted pursuant to the attached proposed order.

**II. PARTIES**

Ms. Laudeman is now, and at all times mentioned in this Application has been, a resident of San Mateo County, California. (Affidavit of Irene Laudeman (“Laudeman Aff.”) ¶ 1.) She is the owner of record and holder of 2.16 shares of the Company’s common stock. (*Id.*, Ex. B.) On December 14, 2017 and through the present, Ms. Laudeman has held proxies for more than one-third of all outstanding Company shares. (*Id.* at ¶¶ 6, 7, Exs. E & G.) Ms. Laudeman thus has standing to make this Application and to request that the Company give notice and convene the special shareholders’ meeting. (Corp. Code, §§ 600, subd. (d), 601, subd. (c); Laudeman Aff. Exs. B, E, & G.)

The Company is, and at all times mentioned in this Application was, a corporation organized and existing under the laws of the State of California, with its principal place of business in East Palo Alto, California. (Laudeman Aff. ¶ 1, Ex. A.)

**III. JURISDICTION AND VENUE**

The Court has jurisdiction over this matter pursuant to section 601, subdivision (c), of the Corporations Code, which provides that “[i]f the notice is not given within 20 days after receipt of the request . . . the superior court of the proper county shall summarily order the giving of the notice.” (Corp. Code, § 601, subd. (c).) Moreover, section 601, subdivision (c), further provides a court with the discretion to “issue orders as may be appropriate, including, without limitation,

1 orders designating the time and place of the meeting, the record date for determination of  
2 shareholders entitled to vote and the form of notice.” (*Id.*)

3 Jurisdiction is proper in this County because the Company maintains its executive office  
4 in East Palo Alto, California, and the special meeting of the shareholders that was called would  
5 have been held in this County. Furthermore, the special shareholders’ meeting that Ms.  
6 Laudeman hereby asks this Court to direct the Company to issue notice of and hold at its  
7 executive office would be held in this County.

8 Venue is proper in this County pursuant to sections 395(a) and 395.5 of the Code of Civil  
9 Procedure because the Company has its executive office in East Palo Alto, California.

#### 10 IV. RELEVANT FACTS

11 Ms. Laudeman and the shareholders she represents by proxy have had long-running  
12 concerns with the current management and operations of the Company, which provides water to  
13 her and other residents of East Palo Alto. (Laudeman Aff. at ¶ 3.) In an effort to improve the  
14 management and direction of the Company, Ms. Laudeman and other shareholders sought the  
15 opportunity to elect new individuals to fill all five seats on the Board on September 23, 2017, the  
16 date of the Ninety-Third Annual Shareholders’ Meeting. (*Id.* at ¶¶ 3, 5.) All five Board seats  
17 were to be filled that day because all the directors’ terms were ending. (*Id.* at ¶ 4.) Specifically,  
18 three board members had served their three year terms because they were elected at the Ninetieth  
19 Annual Shareholders’ Meeting. (*Id.* at art III of Ex. D [the Company’s Bylaws].) The other two  
20 board members had also completed their terms, because they had been appointed to fill vacancies  
21 on the Board, and, pursuant to Article III of the Bylaws, those seats were to be filled by the  
22 shareholders at the next annual meeting. (*Id.*)

23 However, at the Ninety-Third Annual Shareholders’ Meeting, the agenda that the  
24 Company’s incumbent leadership gave to the shareholders stated that only two seats were to be  
25 filled by election at that meeting. (*Id.* at ¶ 5.) And when Ms. Laudeman and other shareholders  
26 asked for clarification and attempted to call for the election of all five Board members, the  
27 incumbent leadership insisted that (1) the meeting could not continue unless they agreed to the  
28 agenda stating that only two members would be elected, (2) that no amendments to the agenda

1 could be made until after that agenda was adopted, and, paradoxically, (3) once the agenda was  
2 adopted, no amendments could be made. (*Id.*) Although Ms. Laudeman and other shareholders  
3 continued to remind the Company’s representatives that shareholders had the right to vote for all  
4 five Board seats, their efforts were simply ignored. (*Id.*) No public and duly noticed election of  
5 Board members occurred at or since that meeting. (*Id.*)

6 Thereafter, on December 14, 2017, Ms. Laudeman, representing the holders of over one-  
7 third of Company shares, called for a January 20, 2018 special shareholders’ meeting for the  
8 main purpose of electing a new Board and submitted a written request to the Company to issue  
9 notice of that meeting. (*Id.* at ¶¶ 6-7, Exs. F & G; Affidavit of Shannon Pekary (“Pekary Aff.”)  
10 ¶ 3.) Along with the request, Ms. Laudeman submitted to the Company copies of proxies for  
11 673.38 shares, forty-three percent (43%) of all outstanding shares. (Laudeman Aff. at ¶¶ 6-7, Ex.  
12 G.; Pekary Aff. ¶ 3.)

13 More than twenty days have passed since the Company received that written request, yet  
14 the Company did not issue the requisite notice. (Laudeman Aff. at ¶ 8; Pekary Aff. at ¶ 4.)

## 15 V. ARGUMENT

16 This Court should issue an order compelling the Company to provide notice and convene  
17 a special shareholders’ meeting. Respondent’s legal duty to call such a meeting is clear: “Upon  
18 request in writing to the corporation addressed to the attention of the chairperson of the board . .  
19 or secretary by any person . . . entitled to call a special meeting of shareholders, the officer  
20 forthwith *shall* cause notice to be given to the shareholders entitled to vote that a meeting will be  
21 held at a time requested by the person or persons calling the meeting.” (Corp. Code, § 601, subd.  
22 (c) [emphasis added].) Even the Company’s own bylaws require its Board to “call a [special  
23 shareholders’] meeting at any time upon written request of Stockholders holding one-third of all  
24 the capital stock.” (Laudeman Aff. Ex. D at art. IV [the Company’s Bylaws].)

25 Moreover, as a representative of over forty percent of the Company’s shares, Ms.  
26 Laudeman is entitled to request this relief from the Court because section 600 of the  
27 Corporations Code requires only ten percent of shares to call a special meeting, and the  
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1 Company's Bylaws require one-third of shares to call a special meeting. (Corp. Code, § 600,  
2 subd. (d); Laudeman Aff. at art. IV. of Ex. D.)

3 Ms. Laudeman has also satisfied the other requirements of section 601, subdivision (c).  
4 She addressed the written request to the Company's General Manager Loudd and Secretary  
5 Mitchell, and she allowed enough time to call the meeting—more than the requisite thirty five  
6 days but less than sixty days before their intended meeting on January 20, 2018. (See Corp.  
7 Code, § 601, subd. (c); Laudeman Aff. at Ex. F.)

8 Because the Company did not provide the requested notice, Ms. Laudeman is entitled to  
9 judicial relief under the plain terms of section 601, subdivision (c), which states that “[i]f the  
10 notice is not given within 20 days after receipt of the request . . .the superior court of the proper  
11 county shall summarily order the giving of the notice.” Moreover, and pursuant to section 305,  
12 subdivision (c), of the Corporations Code, any hearing of this matter shall “take precedence over  
13 all other matters not of a similar nature pending on the date set for the hearing.” (See also Corp.  
14 Code, § 601, subd. (c) [applying the procedure in section 305, subdivision (c), to an application  
15 asking the court for an order summarily compelling the Company to give the notice].)

16 As noted above, this Court has the discretion to “issue orders as may be appropriate,  
17 including, without limitation, orders designating the time and place of the meeting, the record  
18 date for determination of shareholders entitled to vote and the form of notice.” (Corp. Code §  
19 601, subd. (c).) Ms. Laudeman therefore requests that the Court's order directing the Company  
20 to convene and hold a special meeting also clearly define the agenda and the terms for that  
21 meeting, such as who may conduct the meeting and the form of notice the Company must give.  
22 These additional terms are appropriate in light of the past instances of the Company's incumbent  
23 leadership failing or refusing to carry out their duties, including at the Ninety-Third Annual  
24 Shareholders' Meeting. (Laudeman Aff. ¶¶ 4-5.) Such an order will also better ensure that the  
25 special meeting occurs with minimal disruption, confusion, or delay. Thus, as set forth in the  
26 attached proposed order, Ms. Laudeman respectfully requests this Court to summarily order the  
27 Company, through its officers and representatives, to:  
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- 1 1. Convene and hold a shareholders' meeting on Saturday, April 14, 2018 at 12:00 p.m.,  
2 at the Executive Office of the Company, located at 2190 Addison Avenue, East Palo  
3 Alto, California, 94303;
- 4 2. Allow Company shareholder Shannon Pekary to conduct and lead the shareholders'  
5 meeting according to the following agenda:
- 6 • Opening remarks;
  - 7 • Presentation and counting of proxies;
  - 8 • Confirming the existence of a quorum;
  - 9 • Voting on the removal of the current members of the Board;
  - 10 • Nominating candidates for the Board, including the following:
    - 11 1. Shannon Pekary;
    - 12 2. Norman Picker Jr.;
    - 13 3. Delphine Hill;
    - 14 4. Ramiro Macias; and
    - 15 5. Kumar Chaudhari;
  - 16 • Electing Board members;
  - 17 • Considering and voting on amendments to the Company's Bylaws;
  - 18 • Announcing the first meeting of the newly elected Board; and
  - 19 • Adjourning.
- 20 3. Issue the following notice on or before April 2, 2018 by first-class mail to the  
21 Company's shareholders of record—the Company's record shareholders as of the  
22 date next preceding the date the notice is sent:

23 **NOTICE OF SPECIAL SHAREHOLDERS' MEETING**  
24 **TO ELECT THE BOARD OF DIRECTORS**  
25 **FOR THE PALO ALTO PARK MUTUAL WATER COMPANY**

26 Dear Shareholder:

27 The Palo Alto Park Mutual Water Company hereby gives notice that a meeting of the  
28 shareholders will take place as follows:

1 Location: Executive Office of the Palo Alto Park Mutual Water Company  
2 2190 Addison Avenue  
3 East Palo Alto, CA 94303

3 Date: Saturday, April 14, 2018

4 Time: 12:00 p.m.

5 Shareholder Shannon Pekary will conduct the meeting pursuant to the following meeting agenda:

- 6 • Opening remarks;
- 7 • Presentation and counting of proxies;
- 8 • Confirming the existence of a quorum;
- 9 • Voting on the removal of the current members of the Board of Directors (“Board”);
- 10 • Nominating candidates for the Board, including the following:
  - 11 1. Shannon Pekary;
  - 12 2. Norman Picker Jr.;
  - 13 3. Delphine Hill;
  - 14 4. Ramiro Macias; and
  - 15 5. Kumar Chaudhari;
- 16 • Electing Board members;
- 17 • Considering and voting on amendments to the Company’s Bylaws;
- 18 • Announcing the first meeting of the newly elected Board; and
- 19 • Adjourning.

20 No other business will be transacted at the meeting.

## 21 V. CONCLUSION

22 For the foregoing reasons, Ms. Laudeman respectfully asks this Court to summarily direct  
23 the Company to hold a shareholders’ meeting where an election will take place and pursuant to  
24 the terms set forth in the accompanying Proposed Order.

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1 Dated: March 13, 2018

MAYER BROWN LLP  
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Cristina A. Henriquez

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4 By: Christopher J. Kelly  
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Attorneys for Applicant IRENE LAUDEMANN

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