



ORDINARY CIVIL TRIAL. [REDACTED] ET AL.

VS.

REGIME IN PROPERTY IN CONDOMINIUM "HACIENDAS PALO VERDE".

Subject: Initial application.

La Paz, Baja California Sur; September 18, 2023.

JUDGE OF FIRST INSTANCE OF THE CIVIL BRANCH, IN TURN,  
OF THE JUDICIAL DISTRICT OF LA PAZ.

Present.

Licens. REYES ALFREDO MACHADO GARCÍA, SERGIO ALBERTO PAZ RAYMUNDO and ENRIQUE MIGUEL MOLINA ALCANTÁRA, in our capacity as legal representatives of [REDACTED] and [REDACTED] with general power of attorney for lawsuits and collections, a personality that we accredit with public instrument number 28,487, book number 557, folio number 13,730, of April 24, 2023, passed before the faith of Mr. ALEJANDRO MENDOZA ALMADA, Notary Public number 08 in the State of Baja California Sur, with residence in this city, which I exhibit in original and simple copy, for comparison, requesting the return of the original document; indicating as the address to hear and receive notifications the law firm called "MR Abogados" located at Calle San Antonio No. 14, between Forjadores and San José de Comondú, colonia Bellavista, in this city; appointing ALEXIA BRICEÑO SANTANA, a law graduate in terms of Articles 2500 and 2501 of the Civil Code for the Free and Sovereign State of Baja California Sur, as judicial representative; Similarly, in terms of Article 127 BIS, of the Code of Civil Procedure for the State of Baja California Sur, I request that access to the electronic file of this matter be authorized, with the following e-mails: amachado([annrabogados-bcs.com](mailto:annrabogados-bcs.com)) enriquemolina2323([aicloud.conn](mailto:aicloud.conn)) and alexia.briceno([amrabogado.com](mailto:amrabogado.com)), which



are in the name of REYES ALFREDO MACHADO GARCÍA, ENRIQUE MIGUEL MOLINA ALCANTARA and ALEXIA BRICEÑO SANTANA, respectively, who are duly registered on the electronic portal of the JUDICIAL BRANCH OF THE STATE OF BAJA CALIFORNIA SUR, on the microsite of the electronic court, while to hear and receive notifications and all kinds of documents and impose orders on GAEL ALEJANDRO LÓPEZ ESTRADA and JUANA ELIZABETH CURIEL DELGADO; Before you, with all due respect, we appear:

### EXPOSE

That, by means of this document and in terms of Articles 1, 2, 15 and 254 of the Code of Civil Procedure for the State of Baja California Sur, in the ordinary civil proceedings and in exercise of the action for absolute nullity provided for in Articles 8 and 2130 of the Civil Code for the Free and Sovereign State of Baja California Sur, I come to sue the REGIME IN CONDOMINIUM PROPERTY "HACIENDAS PALO VERDE", through [REDACTED] in her capacity as ADMINISTRATOR OF THE REGIME IN PROPERTY IN CONDOMINIUM "HACIENDAS PALO VERDE", with address at Vista Mar Street, without number, colonia Ampliación Centenario, zipcode: 23201, in this city, the following:

### BENEFITS

- a) The judicial declaration of absolute nullity of the Ordinary General Assembly of the Property Regime in Haciendas Palo Verde Condominium, held at 08:00 hours on January 28, 2023, which was protocolized in public instrument number 59,406, book number 2,119, pages numbers 243,523 to 243,528, of April 14, 2023, passed before the faith of Mr. JORGE LEONCIO ÁLVAREZ GAMEZ, Notary Public number 11 in the State of Baja California Sur;



- b) The judicial declaration of nullity of all the resolutions taken in the aforementioned assembly, as well as all subsequent actions;
- c) The judicial declaration of the nullity and cancellation of public instrument number 59,406, book number 2,119, folios numbers 243,523 to 243,528, of April 14, 2023, which was given before the faith of Mr. JORGE LEONCIO ÁLVAREZ GAMEZ, Notary Public number 11 in the State of Baja California Sur and which contains the protocolization of the Ordinary General Assembly of the Property Regime in Condominium Haciendas Palo Verde, held at 08:00 a.m. on January 28, 2023 and, if applicable, the nullity and cancellation of its registration in the Directorate of the Property and Commerce Registry of the Municipality of La Paz, Baja California Sur; and
- d) And payment of the costs and expenses incurred in connection with the present case;

We base our decision on the following considerations of fact and law:

#### FACTS

1. On June 9, 2008, the "Haciendas Palo Verde" Condominium Property Regime was established, with headquarters in this city, as evidenced by the certified copy of public instrument number 39,160, book number 1,291, passed before the faith of Mr. JORGE L. ÁLVAREZ GÁMEZ, Notary Public number 11 in the State of Baja California Sur, which is located in El Centenario, zip code: 23205, municipality of La Paz, Baja California Sur and consists of lots of private area, common area, service area and federal concession zones.

2. Our clients have the quality of condominium owners within the "Haciendas Palo Verde" Condominium Property Regime, in accordance with article 2º section VII, of the Law on the Condominium Property Regime of the State of Baja California Sur, since they are owners and/or holders of the rights



trusts of lots located in the "Haciendas Palo Verde" Condominium Property Regime, as explained below:

Name	Domicile
[REDACTED]	Lot located at Vista Mar Street number 80, within the Property Regime in Condominium "Haciendas Palo Verde", located in El Centenario, zip code: 23205, municipality of La Paz, Baja California Sur
[REDACTED]	Lot located at Vista Mar Street number 27, within the Property Regime in Condominium "Haciendas Palo Verde", located in El Centenario, zip code: 23205, municipality of La Paz, Baja California Sur

For this purpose, a certified copy of public deed number 9,110, volume number 232, dated June 18, 2019, passed before the faith of Mr. GUILLERMO SANTILLÁN MEZA, Notary Public number 20 in the State of Baja California Sur, as well as the certified copy of public deed number 111,784, volume number 2,029, is attached . dated January 22, 2020, passed before the faith of Mr. JOSÉ ALBERTO CASTRO SALAZAR, Notary Public number 07 in the State of Baja California Sur.

3. Condominiums are legally created persons, in accordance with article 25, section VIII, of the Civil Code for the Free and Sovereign State of Baja California Sur, that is, they are legal entities and are administered by the natural or legal person designated by the assembly, under the terms of article 37, of the Law on the Condominium Property Regime of the State of Baja California Sur, being the case that, since 2017, [REDACTED] who holds the position of Administrator of the Property Regime in Condominium "Haciendas Palo Verde", who has her offices at Vista Mar Street, without number, colonia Ampliación Centenario, zip code: 23201, in this city and who is responsible for convening the respective assemblies, in accordance with the provisions



in article 40, section XI, of the Law on the Condominium Property Regime of the State of Baja California Sur.

4. In mid-December 2022, our clients received in their emails, a pdf file sent from the email hpv.hoa.ariana@gmail.com, which is used by [REDACTED] who holds the position of Administrator of the Condominium Property Regime "Haciendas Palo Verde", under the name of AGENDA 2023, which contains the Call to hold the Ordinary General Assembly of the Property Regime in Haciendas Palo Verde Condominium, held at 08:00 a.m. on January 28, 2023, which is attached hereto and is as follows:

*"Date & Time: January 28, 2023 - 8:00 AM (We start with coffee and snacks)*

*Location: Km 14 Restaurant, Carretera Transpeninsular al norte km74, Frente a calle francisco Villa, El Centenario, La Paz, BCS, Mexico*

*In accordance with the provisions of articles 32, 33, 34, 35 of the Law on the Condominium Property Regime of the State of Baja California Sur and other relative and applicable Regulations of the Master Condominium Property Regime called "HACIENDAS PALO VERDE", the owners and/or condominiums and/or legal representatives and/or holders of trustee and/or registered tenant rights are summoned, to the present ORDINARY GENERAL ASSEMBLY OF THE CONDOMINIUM PROPERTY REGIME "HACIENDAS PALO VERDE" to be held on first call on January 28, 2023, at 8:00 a.m. at the Club House of the Subdivision subject to Condominium Property Regime "HACIENDAS PALO VERDE".*

*In the event that the required quorum of attendance is not met, "This is also served as a second and third call for the assembly to be held at 8:45 a.m., in the same place if a minimum of 51% is gathered. If this percentage does not meet fifteen minutes later also in the same place, the assembly will be held on third call with the attendees present at that time.*

*In terms of Chapter I of Title Three of the Law on the Condominium Property Regime of the State of Baja California Sur and other related articles of the "Regulations of the HACIENDAS PALO VERDE Condominium", the convened Assembly will deal with the matters contained in the following:*

**AGENDA:**

T 612 121 4909 1 E [MRABOGADOSBCS@HOTMAIL.COM](mailto:MRABOGADOSBCS@HOTMAIL.COM)



- I. Opening of the session and remarks by the moderator of the Assembly, Mr. Juan Carlos Pérez. (9:00-9:10)*
- 11. Request and submit an AGM volunteer for English-Spanish, Spanish-English interpreter. (9:10-9:15)*
- 111. Preparation and subscription of the attendance list in physical presence or by means of a power of attorney. (9:15-9:25)*
- IV. Declaration of the existence of a quorum and therefore the Assembly is validly installed. (9:25-9:30)*
- V. Proof or evidence of the notification to the condominium owners of the call to the Assembly. (9:30-9:35)*
- VI. Election and appointment of three tellers to the Assembly. (9:35-9:40)*
- VII. Review and Approval of the 2022 minutes presented by the administrator. (9:40-9:50)*
- VIII. Supervisory Committee Report (9:50-10:00)*
- IX. Reporting by Administrator Arjona Gisela Sanchez Toyes (10:00-10:25) 2 of 2*
- X. Financial Report: April - December 2022, by C.P. Jorge Ibarra (10:25-10:35)*
- XI. Janet Wheelock's Proposal: Trash Can Storage (10:35-10:50) \* 5 minutes of explanation + 10 minutes of deliberation and voting*
- XII. Martin Levman's proposal: Pool heater Clubhouse. (10:50-11:05) \* 5 minutes of explanation + 10 minutes of deliberation and voting*
- XIII. Legitimize the volunteer member to manage the official website of the HOA HPV (11:05-11:10)*
- XIV. Coffee break. (11:10-11:30)*
- XV. Contingency Reserves Discussion (11:30-11:50)*
- XVI. Presentation of the Annual Budget and Fee of the Settlers Association, discussion and approval for the fiscal year 2023. (11:50-12:20)*
- XVII. Appointment of the Chairman, Secretary and Treasurer of the 2023 Supervisory Committee through nomination and voting. (12:20-12:45)*
- XVIII. 2023 Administrator Candidate Nomination (12:45-12:50)*
- XIX. Appointment of the Director for fiscal year 2023 (12:50-12:55) XX. Open Forum. (12:55-1:25) XXI. Preparation, reading and approval of the minutes of the Shareholders' Meeting. (1:25-1:30)*
- XXII. Designation of a special delegate of the assembly to appear before a Notary Public of the locality to protocolize the minutes of the Assembly itself. (1:30-1:35)*
- XXIII. Declaration to close the 2023 Assembly. (1:35-1:40)"*

This Call is not signed by the aforementioned Administrator of the Condominium Property Regime "Haciendas Palo Verde", in contravention of numeral 14.7, of the Regulations of the Condominium "Haciendas Palo Verde", since it does not even contain the name, position and signature of the convener, however, it reads



expressly that it will be held on first call on January 28, 2023, at 8:00 a.m. at the Club House of the Subdivision subject to the Condominium Property Regime "HACIENDAS PALO VERDE".

5\_ It is the case that, at 08:00 a.m. on January 28, 2023, at the premises located at Km 14 Restaurant, Transpeninsular Highway north km 14, in front of Francisco Villa Street, El Centenario, La Paz, B.C.S, Mexico, the Ordinary General Assembly of the Property Regime in Haciendas Palo Verde Condominium was held, in the terms established in the public instrument number 59,406, book number 2,119, folios numbers 243,523 to 243,528, of April 14, 2023, passed before the faith of JORGE LEONCIO ÁLVAREZ GAMEZ , Notary Public number 11 in the State of Baja California Sur, which contains the protocolization of the aforementioned Ordinary General Assembly of the Property Regime in Condominium Haciendas Palo Verde and of which, under oath to tell the truth, it is unknown if it was registered in the Directorate of the Registry of Property and Commerce of the Municipality of La Paz, Baja California Sur.

During this Ordinary General Assembly of the Haciendas Palo Verde Condominium Property Regime, various agreements were approved, including the appointment of [REDACTED] as president of the Assembly and [REDACTED] as Secretary; the Approval of the 2022 Minutes presented by [REDACTED] in her capacity as Administrator of the "Haciendas Palo Verde" Condominium Property Regime; the Report of the Supervisory Committee; the Report presented by [REDACTED] in her capacity as Administrator of the "Haciendas Palo Verde" Condominium Property Regime; the Annual Budget and Quota of the Settlers Association for the 2023 fiscal year; the Supervisory Committee that will serve as of 2023; and the appointment of [REDACTED] as Administrator of the "Haciendas Palo Verde" Condominium Property Regime , for the 2023 financial year.

However, this Ordinary General Assembly was held in contravention of the provisions of the Law on the Condominium Property Regime of the State of



Baja California Sur and the Regulations of the "Haciendas Palo Verde" Condominium, as explained below:

- a) The Assembly was held in a different place than the one indicated in the Call, since it mentions that ORDINARY GENERAL ASSEMBLY OF THE CONDOMINIUM PROPERTY REGIME "HACIENDAS PALO VERDE" to be held on first call on January 28, 2023, at 8:00 a.m. in the Clubhouse of the Subdivision subject to Condominium Property Regime "HACIENDAS PALO VERDE", however, the Assembly was held at the premises located at Km 14 Restaurant, Transpeninsular Highway north km 14, in front of Francisco Villa Street, El Centenario, La Paz, B.C.S, Mexico, in contravention of article 34 section I, of the Law on the Condominium Property Regime of the State of Baja California Sur;
- b) The Assembly was not presided over by [REDACTED] in her capacity as Administrator of the "Haciendas Palo Verde" Condominium Property Regime, nor [REDACTED] in his capacity as President of the Supervisory Committee of the aforementioned Condominium Property Regime, acted as Secretary, in breach of numeral 14.13, of the Regulations of the "Haciendas Palo Verde" Condominium. despite the fact that they were present at the Assembly, Mr. [REDACTED] SÁMANO, served as President of the Assembly, while [REDACTED] served as Secretary, whose numeral reads:

*"14.13. The Assemblies shall be presided over by the Administrator; the Chairman of the Supervisory Committee shall act as secretary. In his absence, the Assembly shall appoint a president and a secretary."*





- c) The Assembly did not have the legal quorum for the first call, since 75% of the condominiums or owners were not present, transgressing article 33, second paragraph, of the Law on the Condominium Property Regime of the State of Baja California Sur, numeral 14.3, of the Regulations of the Condominium "Haciendas Palo Verde" and the Call itself, since it was noted that the assembly counted the participation of 54 attendees representing 51% of the total number of condominiums, without it being noted that they have waited for the second or third Call, to begin at 8:45 a.m. on the same day, as referred to in the aforementioned Call, namely:

*"In the event that the required quorum of attendance is not met, this shall also serve as a second and third summons for the assembly to be held at 8:45 a.m., in the same place if a minimum of 51% is gathered. If this percentage is not met fifteen minutes later also in the same place, the assembly will be held on third call with the attendees present at that time."*

- d) The minutes of the Assembly were not distributed by the Secretary of the Assembly, duly signed by the President and Secretary, in violation of numeral 14.15, of the Regulations of the "Haciendas Palo Verde" Condominium, which states:

*"14.15. The minutes of the Assembly shall be signed by the President and the Secretary, and the corresponding attendance list shall be attached. Such minutes shall be distributed by the secretary to all condominiums, to the Administrator and to the Supervisory Committee"; and*

- e) During the Assembly, article 35, section II, of the Law on the Condominium Property Regime of the State of Baja California Sur, in relation to numeral 14.2 subsection e), of the Regulations of the "Haciendas Palo Verde" Condominium, was not complied with, since the remuneration to be paid to the Administrator was not determined. nor the terms under which it will provide its services, even though said numeral refers that the Condominium Assemblies must be held once a year on the last Saturday of January and will deal with at least that point.



6. By virtue of the foregoing and in view of the failure to comply with the formal requirements at the time of the Ordinary General Assembly of the Haciendas Palo Verde Condominium Property Regime, held at 08:00 a.m. on January 28, 2023, on behalf of the plaintiffs, we request that the Ordinary General Assembly of the Haciendas Palo Verde Condominium Property Regime be declared null and void, held at 08:00 a.m. on January 28, 2023, which was protocolized in Public Instrument number 59,406, book number 2,119, folios numbers 243,523 to 243,528, of April 14, 2023, passed before the faith of Mr. JORGE LEONCIO ÁLVAREZ GAMEZ, Notary Public number 11 in the State of Baja California Sur, as well as the nullity of all the agreements taken in the aforementioned assembly, as well as all subsequent actions, the nullity and cancellation of the aforementioned public instrument number containing the protocolization of the Ordinary General Assembly of the Property Regime in Condominium Haciendas Palo Verde, held at 08:00 hours on January 28, 2023 and if applicable, the nullity and cancellation of its registration in the Directorate of the Property and Commerce Registry of the Municipality of La Paz, Baja California Sur; and, of course, the payment of the expenses and costs arising in connection with the present case.

#### RIGHT

I. This Honorable Court is competent to hear the present case, in accordance with the provisions of Articles 152 and 156, section III, of the Code of Civil Procedure for the State of Baja California Sur, in relation to Article 43, section II, of the Organic Law of the Judicial Power of the State of Baja California Sur and numeral 21.7, of the Regulations of the "Haciendas Palo Verde" Condominium, which reads:

*"21.7. Jurisdiction. -----*

*For all matters related to the fulfillment of the obligations and the exercise of the rights contained in this instrument, the parties expressly submit to the jurisdiction of the competent Courts of the city of La Paz, B.C.S., thereby waiving any other jurisdiction to which they may be entitled by reason of their present or future domiciles for any other reason. In the event of any discrepancy between the condominium owner*



*and of the other condominiums, such discrepancy shall be subject to the consideration of the competent courts of the city of La Paz, B. C. S., or to an arbitration proceeding, as provided for in the Code of Civil Procedure of B.C.S., Mexico."*

II. Articles 8, 25 section VIII, 943, 946, 951, 952, 2130, 2131, 2132 and other related articles of the Civil Code of the Free and Sovereign State of Baja California Sur are applicable on the merits; 1st, 2nd sections I, VI and VII, 3rd, 4th, 5th, 18th, 19th, 20th, 27th, 28th, 32nd, 32 Bis 37, 33, 34 sections I and II, 40 and other relatives, of the Law on the Condominium Property Regime of the State of Baja California Sur.

III. The procedure is governed by the provisions of Title Six Ordinary Civil Trial, of the Code of Civil Procedure for the State of Baja California Sur.

#### POINTS REQUESTS

In view of the above, we respectfully ask that you serve:

FIRST. We are hereby considered to have presented the documents and copies that I enclose, demanding in the ordinary civil proceedings the REGIME IN PROPERTY IN CONDOMINIUM "HACIENDAS PALO VERDE", through [REDACTED], in her capacity as ADMINISTRATOR OF THE REGIME IN PROPERTY IN CONDOMINIUM "HACIENDAS PALO VERDE", the aforementioned benefits.

SECOND. To admit the complaint and order that the defendant be summoned, with the copies exhibited for that purpose, to answer the complaint within the term of law.

THIRD. At the appropriate time, following legal procedures, to issue a ruling in favor of the benefits claimed in this trial.



MR ABOGADO  
LEGAL SERVICES

WE PROTEST AS MUCH AS NECESSARY

MR. REYES ALFREDO MACHADO GARCÍA. MR. SERGIO ALBERTO PAZ RAYMUNDO.

ENRIQUE MIGUEL MOLINA ALCANTÁRA

This signature sheet corresponds to the lawsuit of ordinary civil trial, filed on behalf of [REDACTED] and [REDACTED] against the REGIME IN PROPERTY IN CONDOMINIUM "HACIENDAS PALO VERDE", for the absolute nullity of the ordinary general assembly.

T 612 121 4909 1 E [MRABOGADOSBCS@HOTMAIL.COM](mailto:MRABOGADOSBCS@HOTMAIL.COM)

Q.. AN ANTONIO #14, ENTRE FUERZARES Y SAN JOSÉ DE nNm nNn' I  
COLONIA BELLAVIST. A LA PAZ, B.C.S.

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