IN THE SUPREME COURT OF THE STATE OF NEVADA

ELK POINT COUNTRY CLUB HOMEOWNERS, ASSOCIATION, INC., also known as ELK POINT COUNTRY CLUB, INC., a Nevada non- profit, non-stock Corporation,

Appellant,

v.

K.J. BROWN, L.L.C., a Nevada limited liability company; TIMOTHY D. GILBERT and NANCY AVANZINO GILBERT, as trustees of the TIMOTHY D. GILBERT AND NANCY AVANZINO GILBERT REVOCABLE FAMILY TRUST DATED DECEMBER 27, 2013,

Respondent.

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Supreme Court Case No.: 82484

District Court Case Number: 2020-CV-0124

APPELLANT'S APPENDIX

VOLUME 2

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Docket 82484 Document 2021-29977

INDEX

TITLE IN CHRONOLOGICAL ORDER	*VOLUME*	*PAGE RANGE*
Motion for Preliminary Injunction	1	1- 42
First Amended Complaint	2	43- 63
Defendant Elk Point Country Club's Opposition to the Motion for Preliminary Injunction	3	64- 84
Defendant's Answer to First Amended Complaint	4	85- 95
Plaintiff's Reply in Support of Motion for Preliminary Injunction	5	96-187
Plaintiff's Hearing Exhibits	6 (Part 1)	188-237
Plaintiff's Hearing Exhibits	6 (Part 2)	238-337
Plaintiff's Hearing Exhibits	6 (Part 3)	338-362
Plaintiff's Hearing Exhibits	6 (Part 4)	363-388
Plaintiff's Hearing Exhibits	6 (Part 5)	389-541
Plaintiff's Hearing Exhibits	6 (Part 6)	542-591
Notice of Entry of Order Granting Preliminary Injunction	7	592-604
Plaintiff's Motion to Partially Strike Respondents' Reply in Support of Motion for Preliminary Injunction	8	605-616
Plaintiff's Notice of Appeal	9	617-633
Transcript of Proceedings for Motion for Preliminary Injunction	10	6334-879

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IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR COUNTY OF DOUGLAS

K. J. BROWN, L.L.C., a Nevada limited liability company; and TIMOTHY D. GILBERT and NANCY AVANZINO GILBERT, as trustees of the TIMOTHY D. GILBERT AND NANCY AVANZINO GILBERT REVOCABLE FAMILY TRUST DATED DECEMBER 27, 2013,

Plaintiffs,

v.

ELK POINT COUNTRY CLUB HOMEOWNERS, ASSOCIATION, INC., also known as ELK POINT COUNTRY CLUB, INC., a Nevada non-profit, non-stock corporation; and DOES 1-50, inclusive,

Defendant.

_____/

CASE NO.: 2020 CV 00124

DEPT. NO.: I

FIRST AMENDED COMPLAINT

[Exemption from Arbitration Program under NAR 3(A)]

Plaintiffs, K. J. BROWN, L.L.C., and TIMOTHY D. GILBERT and NANCY AVANZINO GILBERT, as trustees of the TIMOTHY D. GILBERT AND NANCY AVANZINO

GILBERT REVOCABLE FAMILY TRUST dated December 27, 2013 (collectively referred to as "Plaintiffs"), complain and allege against the above-named Defendant as follows:

NAR 3(A) CERTIFICATION

Plaintiffs claim an exemption from mandatory arbitration on the basis that their damages, exclusive of interest and costs, exceed $50,000. Plaintiffs' Complaint also includes an action for declaratory and injunctive relief.

GENERAL ALLEGATIONS

1. Plaintiff, K. J. Brown, L.L.C., is a Nevada limited liability company and the owner of certain real property commonly referred to as 456 Lakeview, Zephyr Cove, Nevada, located within the Elk Point subdivision.

2. Plaintiffs, Timothy D. Gilbert and Nancy Avanzino Gilbert, as trustees of the Timothy D. Gilbert and Nancy Avanzino Gilbert Revocable Family Trust dated December 27, 2013, own certain real property commonly referred to as 464 Elks Avenue, Zephyr Cove, Nevada located within the Elk Point subdivision.

3. Plaintiffs are informed and believe that Defendant, Elk Point Country Club Homeowners, Association, Inc., also known as Elk Point Country Club, Inc., is a Nevada non-profit, non-stock corporation, and Internal Revenue Code ("IRC") Section 501(c) (7) social club with its principal place of business located in Douglas County, Nevada. Elk Point Country Club Inc., is the homeowner's association for the Elk Point subdivision (hereinafter referred to as "EPCC HOA" or "Defendant"), the planned unit development in which Plaintiffs' properties are located.

4. Plaintiffs are informed and believe that EPCC HOA is managed and controlled by the Board of Directors of the Elk Point Country Club Homeowners Association ("Board"). The Board is elected to serve at the pleasure of the Unit Owners and its social club Members within the Elk Point subdivision, and thereby authorized to maintain, oversee, and control the activities of EPCC HOA.

5. Plaintiffs do not know the true names and capacities of Defendants sued herein as DOES 1 through 50, inclusive, and therefore sue these Defendants by fictitious names. Plaintiff

are informed and believe, and thereon allege, that each of these fictitiously named Defendants is jointly and severally liable to Plaintiffs under the claims for relief set forth below and Plaintiffs will amend this Complaint when the true names and capacities of such Defendants are ascertained.

6. Plaintiffs are informed and believe the Defendants individually referred to herein were the agents and/or employees of the other Defendants and/or were acting within the course, scope and authority of said agency; that each Defendant approved, ratified and authorized the acts, or omission to act, of each of the other Defendants as herein alleged; that each Defendant was authorized to act for each and all of the other Defendants; and that each Defendant is a successor in interest to each of the other Defendants.

7. Plaintiffs are further informed and believe that Defendants, and each of them, benefited from and furthered a conspiracy to cause damages to Plaintiffs by cooperating and lending aid and encouragement to, and ratifying and adopting the acts of the Defendants, and each of them, as set forth herein.

8. Plaintiffs are informed and believe EPCC HOA maintains, controls and manages the common area of the association which includes a gated a subdivision with private roads, private parking, a private beach, marina, boat storage, private water system and water tank, beach deck, and barbeque area. Plaintiffs are further informed and believe EPCC HOA holds water rights certificates for approximately 89-acre feet, and also owns and operates a large water tank and water pumping system installed in 1997, which is maintained by a licensed and certified caretaker for delivery of water to all Units within the Association. Plaintiffs are further informed and believe EPCC HOA employs a full-time caretaker who resides within a common area designated residential home, to care for and manage the association's property.

9. Plaintiffs are informed and believe that EPCC HOA was established in 1925 by filing its Articles of Incorporation of Nevada Elks Tahoe Association, which Articles were subsequently amended to change the name of the association to Elk Point Country Club, Inc Plaintiffs are further informed and believe that since its inception, EPCC HOA has operated as a private membership only social club and has been granted exemption from federal income taxes

under IRC Section 528, granted tax-exempt status under IRC Section 501(c)(7) and exempted from Nevada state property taxes.

10. Plaintiffs are informed and believe that IRC Section 501(c) (7) provides an exemption from federal income tax of clubs organized for pleasure, recreation and other nonprofitable purposes, when substantially all of the activities of which are for such purpose and no part of the net earnings of which inure to the benefit of any one of the private members/shareholders. Plaintiffs are further informed and believe that if any part of the organization's net earnings "inures" to the benefit of any person having a personal and private interest in the organization's activities, the tax exemption is not permitted nor authorized.

11. Plaintiffs are informed and believe EPCC HOA is a member's only social club. When buyers purchase a Unit of real property within the EPCC HOA subdivision, each potential buyer is required to apply to become a member. Membership is not open to the public. Each private Member (also known as "Unit Owner" or "Member") is required to pay an initial upfront and significant membership fee, which is paid through escrow. Each new member is required to acknowledge that they have read, reviewed and understood the EPCC HOA governing documents. Each Unit Owner must also pay annual membership assessments to retain their membership in the social club in good standing to be allowed to continue to use the common area amenities.

12. Plaintiffs are informed and believe that EPCC HOA's tax-exempt IRC Section 501(c) (7) status provides significant benefits to the Unit Owners/Members, such as Plaintiffs including, but not limited to, not having to pay property taxes on the common property of the Association including, but not limited to, 13.04 acres of beachfront property on Lake Tahoe. This in turn results in a significant reduction in annual assessments. Plaintiffs are further informed and believe that if EPCC HOA is found to be out of compliance with the tax-exempt requirements under IRC Section 501(c) (7), the Internal Revenue Service could revoke its tax-exempt status. That would expose EPCC HOA to the risk of having to pay all applicable income and property taxes upon all of its common areas, including potential excise tax, to the great damage and detriment of Unit Owners/Members.

13. EPCC HOA is subject to the Amended Bylaws of Elk Point Country Club, Inc., recorded as Document No. 0653319 on August 26, 2005, including all subsequent amendments incorporated therein ("Amended Bylaws"), as well as the Articles of Incorporation, and the Elk Point Country Club Homeowners Rules, Regulations and Guidelines (collectively referred to as "Governing Documents").

14. The Amended Bylaws at Article XVI, Property Right of Unit Owners, Section 5, confirm that the Governing Documents run with the land and are binding on all unit owners who purchase an interest within the Association. It states:

> The grantee or grantees of any property or premises, and the property and premises within the tract of the corporation, shall be subject at all times to the Articles of Incorporation, Bylaws, rules and regulations of the corporation which shall in turn bind every subsequent grantor, his or her executors, administrators, successors or assigns.

15. The Amended Bylaws explicitly prohibit Unit Owners/Members from engaging in transient commercial use. The Amended Bylaws explicitly prohibit Unit Owners/Members from using any portion of the property within the Association for profit. Specifically, the Amended Bylaws at Article XVI, Property Right of Unit Owners, and Section 2 provide (***emphasis added***): "***The property of Unit Owners shall be used for single family residential purposes only.***"

16. Plaintiffs are informed and believe that since the time EPCC HOA was established in March of 1925, and continuing thereafter, commercial use and activities upon any property within the EPCC HOA has been prohibited. The EPCC HOA Bylaws specifically state the intention of the EPCC HOA is not to operate to provide a profit to its unit owners/members.

16.1. The Bylaws Preamble, set forth in the Bylaws for Elk Point Country Club recorded in 1927("1927 Bylaws") stated in pertinent part:

> The Elk Point Country Club, hereinafter called Corporation, is a membership corporation organized under the General Non-Profit Corporation Laws of the State of Nevada. ***Its primary purpose is hereby affirmed to be to provide its members the pleasure of fellowship and recreation, and its corporate functioning shall be designed to achieve in highest measure such purpose. It shall not operate its properties or facilities with the view of providing profit to its members but rather such***

> ***properties and facilities shall be held, operated, and made available to the use and enjoyment of its members*** upon payment of such assessments and charges as will fairly meet its costs of operation and provide a reasonable accumulation of funds for repairs, replacements and additions. (***Emphasis added.***)

16.2. The 1927 Bylaws at Article XIX, Property Rights of Members, which were amended in 1929; states in pertinent part (***emphasis added***):

> Each membership shall be entitled the legal holder thereof to the use and occupation during the life of his membership of one lot of land owned by the club...Each member shall use the lot as assigned to him for himself, his immediate family and temporary guests. He shall not permit improvements to be erected thereon by others and ***shall have no power to lease, sublet or otherwise part with the exclusive ownership and control or the whole or any part of the assigned to him.***

16.3. The 1961 Bylaws, at Article XVII, Section 2, stated: "The property of members shall be used for strictly residential purposes."

16.4. The Elk Point Country Club Homeowners Rules, Regulations and Guidelines, adopted in 1961, at Section 10 stated: "No persons shall operate any business on club premises or their individual property within the Club."

17. According to Amended Bylaws, at Article XV, no Unit Owner has the right to transfer, lease, rent, or assign his or her private membership, or membership privileges, to any other non-member third party. A Unit Owner/Member's transient commercial use for profit is an unauthorized assignment of the Unit Owner/Member's private membership privileges to non-member public third parties.

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18. The Elk Point Rules and Regulations, adopted on July 4, 1998 and revised April 24, 2017, at Section 1, General Rules and Regulations, paragraph 14, provides that a unit owner may engage in business activity within their residence as long as there is no customer-employee contact within EPCC, and that EPCC facilities, including the beach and beach deck, shall not be used for any business activity.

19. Plaintiffs are informed and believe that Defendant has a duty, obligation and responsibility to ensure uniform compliance and enforcement of EPCC HOA's Governing Documents in order to prevent any damage, destruction, loss of value, emotional distress, and any other unreasonable interference with the quiet enjoyment, pleasure, fellowship, and recreation of Unit Owners/Members and their respective properties within the Elk Point subdivision.

20. Plaintiffs are informed and believe that Defendant has a duty, obligation, and responsibility to ensure that all activities in and upon the properties within the Elk Point subdivision comply with all State and Local laws and ordinances, NRS Chapter 116, and the provisions of its Governing Documents.

21. NRS 116.340(4) defines "transient commercial use" as the rental of a unit of property for less than 30 consecutive days. NRS 116.340 only allows transient commercial use of a unit if all of the following specifics have been met: 1) the Governing Documents specifically state that they do not prohibit transient commercial use; 2) the Board has specifically stated within the governing documents of the association that it has approved transient commercial usage; and 3) the unit within the association has been properly zoned for transient commercial use. Because transient commercial use is not permitted according to the EPCC HOA Bylaws, the requirements set forth in NRS 116.340 for allowing transient commercial use in the Association are not met. Therefore, under Nevada law, transient commercial use is prohibited in EPCC HOA.

22. Plaintiffs are informed and believe that Unit Owners/Members are being allowed by the Board of Directors to engage in transient commercial use of their Units located within the Elk Point subdivision despite nothing within EPCC HOA's Bylaws that specifically authorizes transient commercial use within the Association.

23. Plaintiffs are informed and believe that since on or around July 2018, four of the five members of the Board have personally engaged in transient commercial use of their own Units, or those of their family members, for profit.

24. Plaintiffs are informed and believe that the rental of Member Units to non-members of the public, and enticing non-members within the public to rent Units within EPCC HOA has, and will continue to overtax the association's common elements, has and will continue to overtax the capacity of the association's property, and has resulted in increased expenditures to maintain the Association's common areas, all without any direct and equal benefit to each and all of the Unit Owners/Members; and it places EPCC HOA's tax-exempt status, including the individual members, under IRC Section 501(c)(7) at risk.

25. Plaintiffs are informed and believe that Defendant has failed, refused and declined to enforce EPCC HOA's Bylaws which prohibit transient commercial use, and by doing so are putting EPCC HOA's exemption under IRC Section 501(c)(7) at risk.

26. Plaintiffs are informed and believe that as a direct result of the acts and omissions to act by the EPCC HOA, as described herein, there has been unfettered commercial use of association property and unfettered commercial gain by a portion of the Unit Owners/Members who are engaged in transient commercial use within the EPCC HOA subdivision, all in direct violation of its Governing Documents.

27. Plaintiffs are informed and believe that some of the Unit Owner/Members who rent their units as vacation rentals for transient commercial use to non-members advertise their Units with specific references to EPCC HOA's private gated community, private beach access, private beach deck, and private marina. Some rental units offer use of the marina and watercraft to the public, non-members despite the governing documents prohibiting same, thereby adding increased liability to the remaining Unit Owners/Members. Plaintiffs are further informed and believe that the advertised features lure potential transient commercial use renters into EPCC HOA. Plaintiffs are further informed and believe EPCC HOA's private common area features provide significant increased profits to the Unit Owners/Members who engage in the unauthorized transient commercial use.

28. Plaintiffs are informed and believe that because of the intense advertising used to lure transient commercial use to non-members which increases parking demands upon a very limited common area parking capacity, non-member's renters and their guests continue to place unwanted demand upon parking capacity far beyond safe limitations, and encroach within the designated fire lanes and common area roadway system creating life and safety issues for the Unit Owners/Members.

29. Plaintiffs are informed and believe that Unit Owners/Members have asserted numerous complaints about problems resulting from the ongoing transient commercial use within the Elk Point subdivision, and that the Board has failed, refused, and declined to take any action in response. Instead, the Board has asserted that the problems relating to transient commercial use, if any, are not within their "control" or that they are unable to enforce the Association's Governing Documents as they pertain Unit Owners/Members who engage in transient commercial use for profit or gain, and to "supplement their lifestyle."

30. The complaints made by Unit Owners/Members that have been wrongfully and intentionally ignored by the EPCC HOA, include, but are not limited to the following:

a. Use by renters (and their non-Member guests) of EPCC HOA common areas for the profit of Unit Owners/Members who are engaged in transient commercial use of their Unit and the association property all of which compromises the IRC Section 501(c)(7) tax-exempt status of the Association;

b. Use by renters (and their non-Member guests) of EPCC HOA common areas which creates increased liability and exposure to remaining Unit Owners/Members;

c. Renters (and their non-Member guests) failing to comply with EPCC HOA's Rules and Regulations including: (1) excessive noise and parties after the 10:00 p.m. curfew speeding on the narrow common area roadway system; parking in fire lanes; parking in designated parking to be available to Unit Owners/Members and their guests parking in the roadway system; and inappropriate trash storage and disposal;

d. Parking violations by renters (and their non-Member guests) include; parking on common areas and common area roadways, and not in designated private parking

spots on Members' lot(s); overnight parking in the common areas; parking on property owned by the U.S. Department of Forestry which creates life and safety issues for the Unit Owners/Members, and Zephyr Cove Fire Department's access into the subdivision in case of fire, medical, ambulance or other emergency services; and otherwise impeding authorized parking access for Unit Owners/Members;

e. The Board failing, refusing and declining to establish and enforce any rental policies necessary for the safety, welfare and quiet enjoyment of each of the Unit Owners/Members; and,

f. The Board failing, refusing and declining to enforce the Association's Governing Documents concerning transient commercial use within the Association, but instead have been allowing such unauthorized transient commercial use.

31. Beginning on or around August 2018, Unit Owners/Members have made demands to place on the agendas for EPCC HOA's Board of Director's Meetings, a number of Unit Owner/Member complaints regarding transient commercial use, including the Board's failure and refusal to enforce the Bylaws prohibiting such use. Defendant has intentionally ignored those demands and has instead continued to approve transient commercial use within the Association.

32. Plaintiffs are informed and believe Defendant has failed, refused and declined to recognize that its Board of Directors, and each of them, have an inherent conflict of interest because each have engaged, or continue to engage in the transient commercial use of their lots for profit within EPCC HOA.

33. Plaintiffs are informed and believe that Defendant has ignored or otherwise refused to acknowledge the results of a December 2018 Unit Owner(s) Survey concerning transient commercial use within EPCC HOA, and Unit Owners/Members disapproval of same.

34. Plaintiffs are informed and believe Defendant had refused to disclose and/or share with the EPCC HOA membership a fair and accurate representation of the overall results of the Unit Owners'/Members' surveys regarding transient commercial use.

35. Plaintiffs are informed and believe Defendant has failed to prohibit non-member usage of EPCC HOA's social club common areas.

36. Plaintiffs are informed and believe that despite requests, Defendant has failed to impose a moratorium on transient commercial use within EPCC HOA until such time as the issue is resolved by a vote of a majority of the EPCC HOA membership, as required by the Governing Documents;

37. Plaintiffs are informed and believe Defendant knew or should have known that as a IRC Section 501(c)(7) tax-exempt corporation, EPCC HOA, including its assets, common areas and Units within the Association, should not, and cannot, be used by any Unit Owner for his or her own personal gain or profit, or as commercial businesses.

38. Plaintiffs are informed and believe Defendant knew or should have known that any for-profit, commercial usage of any portion of any property within EPCC HOA has completely altered the overall character of the community and created a divisive environment.

39. Plaintiffs are informed and believe Defendant knew or should have known that the Governing Documents strictly limit use of a Unit within the association to "residential use only" and that no commercial business activities for profit are allowed within the association.

40. Plaintiffs are informed and believe the Defendant is violating the Governing Documents of the Association and risking EPCC HOA's loss of its IRC Section 501(c) (7) tax-exempt status which will significantly and negatively impact each of the Unit Owners/Members and such intentional and wrongful misconduct has been for the economic gain of the Board and with a reckless disregard to the rights of the Unit Owners/Members.

41. Plaintiffs are informed and believe that Defendant has no enforcement system or any other mechanism to oversee, control, or enforce the Governing Documents as it pertains to prohibiting transient commercial use within the association, nor has Defendant engaged in any efforts to implement and enforce same.

42. On or about August 2, 2019, Plaintiffs filed an Alternative Dispute Resolution Claim Form ("ADR Claim") with the State of Nevada Real Estate Division ("NRED"), setting forth the allegations giving rise to this Complaint.

43. On September 16, 2019, EPCC HOA was served with Plaintiffs' ADR Claim.

44. On February 4, 2020, the NRED mediator, following mediation, issued a notice that the parties had satisfied the requirements set forth in NRS 38.310 and the NRED matter was subsequently closed. A true and correct copy of the NRED closure letter is attached as Exhibit 1.

45. Plaintiffs have exhausted all efforts to mediate its ADR Claim in compliance with NRS 38.300 to 38.360, inclusive.

46. This complaint is brought according to NRS 38.330 and is properly before this Court because the Plaintiffs have exhausted all efforts to mediate the issues addressed in this complaint as required by NRS Chapter 38.

FIRST CAUSE OF ACTION

(Violations of NRS Chapter 116)

47. Plaintiffs herein re-allege each and every allegation as contained above, and hereby incorporate them by this reference as if fully set forth herein.

48. Based on the facts described herein, Defendant has violated the provisions of NRS Chapter 116 by committing the acts and omissions to act as described above, including, but no limited to, failing to comply with the terms and conditions set forth in the Governing Documents permitting ongoing transient commercial use within EPCC HOA in violation of NRS 116.340 and exposing the Unit Owners/Members, including Plaintiffs, to the loss of the Association's IRC 501(c)(7) tax-exempt status, exposing Plaintiffs to be subject to paying State property taxes upor the common area properties, all resulting in significant damages.

49. Defendant is liable to Plaintiffs according to NRS 116.3111 for its tort and contrac liability in relation to the unauthorized and impermissible transient commercial use within EPC HOA.

50. Defendant is liable to Plaintiffs according to NRS 116.31183 and NRS 116.3118 for their harassment and retaliation against certain Plaintiffs and other Unit Owners/Member who do not engage in transient commercial use.

51. As a sole, direct, and proximate result of the foregoing acts by Defendant, Plaintif has sustained general damages in an amount in excess of $15,000.00, with the detailed amount c damages proven at trial.

52. As a further direct and proximate result of the foregoing acts by Defendant, Plaintiffs have been required to retain the services of the law firm of Leach Kern Gruchow Anderson Song and, therefore, is entitled to recovery of its attorneys' fees and costs in accordance with NRS 18.010(2), 18.020(1) & (3) and NRS 116.4117(6).

SECOND CAUSE OF ACTION

(Nuisance)

53. Plaintiffs herein re-allege each allegation as contained above, and hereby incorporate them by this reference as if fully set forth herein.

54. The acts and omissions to act by Defendant, in authorizing and allowing transient commercial use within the Association has resulted in the overuse and overtaxing of the common elements and common resources within the Association and has caused damage and destruction to the common elements, all without the approval or authorization from Plaintiffs who own an equal share of said common elements and resources.

55. The acts and omissions to act by Defendant in allowing transient commercial use jeopardizes EPCC HOA's IRC 501(c)(7) tax-exempt status, which affords Unit Owners/Members a substantial reduction in the exposure to pay property taxes upon, penalties, back interest, and back taxes.

56. The acts and omissions to act as described herein by Defendant has significantly affected the value of Plaintiffs' properties.

57. The acts and omissions to act as described herein by Defendant constitute a substantial and unreasonable interference in Plaintiffs' quiet and peaceful enjoyment and use of their property and has caused safety concerns for all Unit Owners/Members.

58. The acts and omissions to act as described herein by Defendant have significantly altered the overall intended character and charm of the social club association and has created significant acrimony and divisiveness between its Unit Owners/Members.

59. The Defendant has failed to exercise the appropriate standard of care in its respective dealings with Plaintiffs.

60. As a sole, direct and proximate result of the foregoing acts of Defendant, Plaintiffs have sustained general damages in the sum in excess of $15,000.00 to be more precisely proven at trial.

61. Defendant's acts and omissions, as described herein, were undertaken with a willful and conscious disregard of Plaintiffs, with the intent to take unfair advantage of Plaintiffs for their own economic gain, and with a reckless disregard for Plaintiffs' rights, on account of which fraudulent, oppressive, and malicious conduct, Plaintiffs are entitled to an award of punitive damages against Defendant in a sum in excess of $15,000.00, according to proof at trial.

62. As a sole, direct and proximate result of the foregoing acts of Defendant, Plaintiffs were required to retain the service of the law firm of Leach Kern Gruchow Anderson Song and is entitled to attorney's fees and costs in accordance with NRS 18.010(2), 18.020(1) & (3), and NRS 116.4117(6).

THIRD CAUSE OF ACTION

(*Negligence*)

63. Plaintiffs herein re-allege each and every allegation as contained above, and hereby incorporate them by this reference as if fully set forth herein.

64. Defendant has duties, fiduciary and otherwise, to exercise ordinary care in its business affairs relating to the community so as to avoid any reasonably foreseeable injuries to the Unit Owners/Members, including Plaintiffs.

65. Defendant has breached its duties to Plaintiffs by, among other things: (a) failing to take steps to prohibit transient commercial use within the Association; (b) failing to require transient commercial use property owners to carry commercial liability insurance to protect the association and its Unit Owners/Members; (c) failing to establish and enforce rental rules, regulations, and/or policies within the association and upon its common areas; (d) failing to protect the Association from the potential loss of its IRC 501(c)(7) tax-exempt status; and (e) failing to evaluate the overall impact of encouraging, authorizing and/or permitting transient commercial use within the Association. It was reasonably foreseeable that Defendant's failures to timely and properly take the necessary steps to prohibit transient commercial use in and upon

the association, including upon its common areas, so as to prevent the loss of the association's IRC 501(c)(7) tax-exempt status, would result in significant damages to Plaintiffs.

66. Defendant has failed to timely and appropriately perform its responsibilities, obligations, and duties owed to Plaintiffs, as required in its Governing Documents.

67. Defendant knew or should have known that the misconduct described herein would result in significant damages, property losses, loss of value, loss of fair market value, emotional distress, loss of quiet enjoyment, and the loss of use to Plaintiffs.

68. As a sole, direct, and proximate result of Defendant's acts, Plaintiffs have sustained general damages in an amount in excess of $15,000.00, with the detailed amount of damages proven at trial. As a further direct and proximate result of Defendant's foregoing acts, Plaintiffs have been required to retain the services of the law firm of Leach Kern Gruchow Anderson Song and, therefore, is entitled to recovery of its attorneys' fees and costs in accordance with NRS 18.010(2), 18.020(1) & (3), and NRS 116.4117(6).

FOURTH CAUSE OF ACTION

(*Trespass*)

69. Plaintiffs herein re-allege each and every allegation as contained above, and hereby incorporate them by this reference as if fully set forth herein.

70. The transient commercial use within the Association, authorized and approved by Defendant has resulted in the overuse and overtaxing of the common elements and common resources within the Association. That use has caused damage and destruction to the common elements of the Association without the approval or authorization from allof the Uni Owners/Members, including Plaintiffs, each of whom own equal shares of the Association' common elements and resources.

71. Defendant did not and could not obtain permission or authorization from Plaintiff to cause the damages, loss of value, loss of enjoyment and use in and upon the common elements inclusive of their ownership interests in the common elements of the Association.

72. The disruption, damage, disturbance, and alterations of Plaintiffs' ownership interest of the common elements of the Association, as a result of Defendant's acts and failures to act, constitute trespass.

73. Based on the facts described herein and attested to in Plaintiffs attached Motion for Preliminary and Permanent Injunction, Plaintiffs holds a reasonable probability of success on the merits of its claims and has no other adequate remedies at law. Therefore, Plaintiffs are entitled to a preliminary injunction against Defendant, prohibiting transient commercial use within the association during the pendency of this action, and afterwards, permanently.

74. As a sole, direct, and proximate result of Defendant's foregoing acts, Plaintiffs have sustained general damages in an amount in excess of $15,000.00, with the detailed amount of damages proven at trial. As a further direct and proximate result of Defendant's foregoing acts, Plaintiffs have been required to retain the services of the law firm of Leach Kern Gruchow Anderson Song and, therefore, is entitled to recovery of its attorneys' fees and costs in accordance with NRS 18.010(2), 18.020(1) & (3), and NRS 116.4117(6).

FIFTH CAUSE OF ACTION

(Breach of Contract)

75. Plaintiffs herein re-allege each and every allegation as contained above, and hereby incorporate them by this reference as if fully set forth herein.

76. Defendant's acts and omissions to act in relation to allowing and engaging in transient commercial use of properties within the Association is in violation of the terms and conditions of EPCC HOA's Governing Documents.

77. Defendant knew, or reasonably should have known, that its conduct is likely to cause serious and irreparable damage and injury to Plaintiffs. Notwithstanding Defendant's actual knowledge, or duty of reasonable inquiry that its actions would cause damage to Plaintiffs, it negligently and/or intentionally engaged in the misconduct described herein.

78. Defendant threatens to, and unless immediately restrained, will continue to permit transient commercial use within the Association, to Plaintiffs' significant and irreparable injury.

79. Defendant's acts as described herein constitute a breach of terms and conditions set forth in the Governing Documents, thereby breaching its contractual obligations owed to Plaintiffs.

80. Based on the facts described herein and attested to in Plaintiffs' attached Motion for Preliminary and Permanent Injunction, Plaintiffs hold a reasonable probability of success on the merits of its claims and has no other adequate remedies at law. Therefore, Plaintiffs are entitled to a preliminary injunction against Defendant, placing a moratorium on transient commercial use within the association during the pendency of this action, and afterwards, permanently.

81. As a sole, direct, and proximate result of Defendant's foregoing acts, Plaintiffs have sustained general damages in an amount in excess of $15,000.00, with the detailed amount of damages proven at trial.

82. As a further direct and proximate result of Defendant's foregoing acts, Plaintiffs have been required to retain the services of the law firm of Leach Kern Gruchow Anderson Song and, therefore, is entitled to recovery of its attorneys' fees and costs in accordance with NRS 18.010(2), 18.020(1) & (3), and NRS 116.4117(6).

SIXTH CAUSE OF ACTION

(Breach of Covenant of Good Faith and Fair Dealing: Contractual & Tortious Breach)

83. Plaintiffs herein reallege each and every allegation as contained above and hereby incorporate them by this reference, as if fully set forth herein.

84. Defendant's acts as described herein are not in conformance with the Governing Documents.

85. The EPCC HOA Governing Documents include an implied covenant of good faith and fair dealing.

86. There is a special element of reliance existing between Plaintiffs and Defendant, by way of Defendant being placed in a superior or entrusted position to ensure it would enforce and uphold the Governing Documents. By way of the parties' relationship, Plaintiffs placed a

special trust in Defendant that its conduct would not adversely affect Plaintiffs or any other Unit Owner/Member.

87. Defendant knew or should have known that transient commercial use activities were prohibited by the Governing Documents. Defendant intentionally declined to enforce and uphold the Governing Documents and instead has permitted unauthorized transient commercial use activities .

88. Defendant's acts described herein constitutes a contractual and tortious breach of the covenant of good faith and fair dealing.

89. As a sole, direct and proximate result of the foregoing acts of Defendant, Plaintiffs have sustained general damages in the sum in excess of $15,000.00 to be more precisely proven at trial.

90. Defendant's acts and failures to act, were undertaken with an ill will, reckless and conscious disregard of the rights of Plaintiffs, with the intent to take unfair advantage of Plaintiff for its own economic gain, and with a reckless disregard for Plaintiffs' rights. Because of Defendant's fraudulent, oppressive, and malicious conduct, Plaintiffs are entitled to an award of punitive damages against Defendant in a sum in excess of $15,000.00, according to proof at trial.

91. As a sole, direct and proximate result of the foregoing acts of Defendant, Plaintiffs were required to retain Leach Kern Gruchow Anderson Song and is entitled to attorney's fees and costs in accordance with NRS 18.010(2), 18.020(1) & (3), CC&Rs § 29, and NRS 116.4117(6).

SEVENTH CAUSE OF ACTION

(Declaratory Relief)

92. Plaintiffs herein reallege each and every allegation as contained above and hereby incorporate them by this reference, as if fully set forth herein.

93. There is an actual, present and justiciable controversy between Plaintiffs and Defendant concerning the interpretation and construction of the terms, conditions, and provisions of the Governing Documents, specifically as they related to the Bylaws and Unit

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Owners/Members' ability to engage in transient commercial use of their properties within the Association.

94. Plaintiffs are entitled to judgment against Defendant for confirmation of the interpretation, applicability and enforcement of the Governing Documents.

95. As a sole, direct and proximate result of the foregoing acts of Defendant, Plaintiffs were required to retain Leach Kern Gruchow Anderson Song and is entitled to attorney's fees and costs in accordance with NRS 18.010(2), 18.020(1) & (3), CC&Rs § 29, and NRS 116.4117(6).

96. Plaintiffs are entitled, among other things, to have the Court determine questions concerning the interpretation and/or construction of the foregoing described legal documents to obtain a declaration of rights, status and other legal relations thereto pursuant to NRS Chapter 30.

PRAYER

WHEREFORE, Plaintiffs pray for judgment against EPCC HOA, as follows:

1. For a money judgment against Defendant in a sum in excess of $15,000.00 to be more precisely proven at trial;
2. For a money judgment against Defendant in a sum in excess of $15,000.00, as and for punitive damages in an amount to be proven at trial;
3. For a preliminary injunction against Defendant placing a moratorium on any transient commercial use during the pendency of this action, and afterwards permanently;
4. For entry of judgment according to the declaratory relief sought confirming the interpretation, applicability and enforcement of the Governing Documents as they relate to a prohibition of transient commercial use;
5. For leave to amend;
6. For reasonable attorneys' fees and costs of suit; and

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7. For such other, further and additional relief as seems just to the Court in the premises.

AFFIRMATION

Pursuant to NRS 239B.030, the undersigned does hereby affirm that this ***First Amended Complaint*** filed in the above-entitled case does not contain the social security number of any person.

DATED this 1st day of July, 2020.

LEACH KERN GRUCHOW ANDERSON SONG

By: _____

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INDEX OF EXHIBITS

Exh No.	Description	Pages
1.	Copies of letters from NRED confirming closure of ADR 20-32, 20-31, and 20-27.	4