

IN THE SUPREME COURT OF THE STATE OF NEVADA

K. J. BROWN, L.L.C., A NEVADA LIMITED	)	Supreme Court No. 82824
LIABILITY COMPANY; et al.,	)	District Case No. 2020-CV-00124
	)	Electronically Filed
Appellants,	)	May 18 2021 04:26 p.m.
	)	Elizabeth A. Brown
v.	)	Clerk of Supreme Court
	)	
ELK POINT COUNTRY CLUB	)	<b>DOCKETING STATEMENT</b>
HOMEOWNERS', ASSOCIATION, INC.,	)	<b>CIVIL APPEALS</b>
et al.,	)	
Respondent.	)	
_____	)	

GENERAL INFORMATION

Appellants must complete this docketing statement in compliance with NRAP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, identifying issues on appeal, assessing presumptive assignment to the Court of Appeals under NRAP 17, scheduling cases for oral argument and settlement conferences, classifying cases for expedited treatment and assignment to the Court of Appeals, and compiling statistical information.

WARNING

This statement must be completed fully, accurately and on time. NRAP 14(c). The Supreme Court may impose sanctions on counsel or appellant if it appears that the information provided is incomplete or inaccurate *Id.* Failure to fill out the statement completely or to file it in a timely manner constitutes grounds for the imposition of sanctions, including a fine and/or dismissal of the appeal.

A complete list of the documents that must be attached appears as Question 27 on this docketing statement. Failure to attach all required documents will result in the delay of your appeal and may result in the imposition of sanctions.

This court has noted that when attorneys do not take seriously their obligations under NRAP 14 to complete the docketing statement properly and conscientiously, they waste the valuable judicial resources of this court, making the imposition of sanctions appropriate. *See KDI Sylvan Pools v. Workman*, 107, Nev. 340, 810 P.2d 1217, 1220 (1991). Please use tab dividers to separate any attached documents.

1. Judicial District: Ninth Department: 1  
County: Douglas Judge: Nathan Tod Young

District Ct. Case No. 2020-CV-0124

2. **Attorney filing this docketing statement:**

Gayle A. Kern, Esq. Tel: (775) 324-5930  
Sophie A. Karadanis, Esq. Fax: (775) 324-6173  
Leach Kern Gruchow Anderson Song Email: gkern@lkglawfirm.com  
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Reno, Nevada 89511

Richard H. Bryan, Esq. Tel: (702) 692-8000  
Fennemore Craig, P.C. Email: rbryan@fennemorelaw.com  
300 South Fourth Street, Suite 1400  
Las Vegas, NV 89101

Client(s): 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

3. **Attorney(s) representing respondent(s):**

Prescott Jones, Esq. Tel: (702) 997-3800  
Joshua Ang, Esq. Fax: (702) 997-3800  
Resnick & Louis, P.C. Email: pjones@rlattorneys.com  
8925 W. Russell Road, Suite 200 jang@rlattorneys.com  
Las Vegas, Nevada 89148

Client(s): Elk Point Country Club Homeowners, Association, Inc., also known as  
Elk Point Country Club, Inc.

4. **Nature of disposition below (check all that apply):**

- |   |   |
|---|---|
| <input type="checkbox"/> Judgment after bench trial                   | <input type="checkbox"/> Dismissal:                                     |
| <input type="checkbox"/> Judgment after jury verdict                  | <input type="checkbox"/> Lack of jurisdiction                           |
| <input type="checkbox"/> Summary Judgment                             | <input type="checkbox"/> Failure to state a claim                       |
| <input type="checkbox"/> Judgment                                     | <input type="checkbox"/> Failure to prosecute                           |
| <input type="checkbox"/> Grant/Denial of NRCP 60(b) relief            | Other (specify): _____  |
| <input checked="" type="checkbox"/> <b>Grant/Denial of Injunction</b> | <input type="checkbox"/> Divorce Decree:                                |
| <input type="checkbox"/> Grant/Denial of declaratory relief           | <input type="checkbox"/> Original <input type="checkbox"/> Modification |
| <input type="checkbox"/> Review of agency determination               | <input type="checkbox"/> Other disposition (specify): _____             |

5. **Does this appeal raise issues concerning any of the following:** Not Applicable (“N/A”)

- ☐ Child custody
- ☐ Venue
- ☐ Termination of parental rights

6. **Pending and prior proceedings in this court.** List the case name and docket number of all appeals or original proceedings presently or previously pending before this court that are related to this appeal:

*Elk Point Country Club Homeowners, Association, Inc., et al. v. K. J. Brown, L.L.C., et al.*, In the Supreme Court of the State of Nevada, Docket No. 82484, filed on February 17, 2021.

7. **Pending and prior proceedings in other courts.** List the case name, number and court of all pending and prior proceedings in other courts, which are related to this appeal (e.g., bankruptcy, consolidated, or bifurcated proceedings) and their dates of disposition: N/A.

8. **Nature of the action.** Briefly describe the nature of the action and the result below:

Plaintiffs/Appellants filed a Complaint seeking injunctive relief, and concurrently filed a Motion for Preliminary Injunction (“MFPI”). Plaintiffs/Appellants are members and property owners within the Elk Point Country Club (“EPCC”), a private, members-only, Internal Revenue Code (“IRC”) 501(c)(7) tax-exempt social club. The MFPI sought to enforce the governing documents of EPCC to enjoin all for-profit use of units within EPCC because said for-profit commercial use of properties within the social club runs afoul of the Internal Revenue Service’s requirements for an IRC 501(c)(7) tax-exempt social club. As a result, the social club’s long-standing tax-exempt status will likely be lost. On October 23, 2020, the district court entered an oral ruling granting Plaintiffs/Appellants’ MFPI following a hearing, and on December 15, 2020, the district court entered its written order granting the MFPI (“Preliminary Injunction Order”). The notice of entry of the Preliminary Injunction Order was filed January 6, 2021. The Preliminary Injunction Order requires the EPCC Board of Directors to enforce its Bylaws and prohibits EPCC and its members from deriving any revenue or profit through the operation of its properties and facilities, and requires EPCC to prohibit, prevent, and enjoin any rental use of any portion of EPCC’s property and facilities, including member’s Units, and that said use expressly includes both transient commercial use and long-term rental use of any Unit. On February 22, 2021, Defendant/Respondent filed a Motion to Stay the Preliminary Injunction Pending its Interlocutory Appeal in Supreme Court Case No. 82484. On March 15, 2021, the district court entered an Order Granting Stay of Preliminary Injunction Pending Resolution of the Interlocutory Appeal (“Stay Order”). The Stay Order entered by the district court is a complete reversal of the Preliminary Injunction Order and thus dissolved the preliminary injunction.

9. **Issues on appeal.** State concisely the principal issue(s) in this appeal (attach separate sheets as necessary:

The district court's Stay Order, dissolving the Preliminary Injunction Order, was clearly erroneous and an abuse of its discretion. The district court's decision was not supported or justified by any evidence in the record and the district court did not satisfy any one of the factors set forth in *Mikon Gaming Corp. v McCrea*, 120 Nev. 248, 251, 89 P.3d 36, 38 (2004), which is required when addressing whether to issue a stay pending disposition of an appeal.

10. **Pending proceedings in this court raising the same or similar issues.** If you are aware of any proceeding presently pending before this court, which raises the same or similar issues raised in this appeal, list the case name and docket number and identify the same or similar issues raised:

See Nevada Supreme Court Case No. 82484.

11. **Constitutional issues.** If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employee thereof is not a party to this appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

☒ N/A

☐ Yes

☐ No

If not, explain

12. **Other issues.** Does this appeal involve any of the following: N/A

☐ Reversal of well-settled Nevada precedent (identify the case(s))

☐ An issue arising under the United States and/or Nevada Constitutions

☐ A substantial issue of first-impression

☐ An issue of public policy

☐ An issue where en banc consideration is necessary to maintain uniformity of this court's decisions

☐ A ballot question

If so, explain

13. **Assignment to the Court of Appeals or retention in the Supreme Court.** Briefly set forth whether the matter is presumptively retained by the Supreme Court or assigned to the Court of Appeals under NRAP 17, and cite the subparagraph(s) of the Rule under which the matter falls. If appellant believes that the Supreme Court should retain the case despite its presumptive assignment to the Court of Appeals, identify the specific issue(s) or circumstances(s) that warrant retaining the case, and include an explanation of their importance or significance:



This matter is presumptively assigned to the Court of Appeals. This case falls under NRAP 17(b)(12)(Cases challenging the grant or denial of injunctive relief).

14. **Trial.** If this action proceeded to trial, how many days did the trial last? N/A.

Was it a bench or jury trial? N/A.

15. **Judicial disqualification.** Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal. If so, which Justice? N/A.

### **TIMELINESS OF NOTICE OF APPEAL**

16. **Date of entry of written judgment or order appealed from:** March 15, 2021.

If no written judgment or order was filed in the district court, explain the basis for seeking appellate review: N/A.

17. **Date written notice of entry of judgment or order served:** March 23, 2021

Was service by:

- ☐ Delivery  
☒ Mail/electronic/fax

18. **If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCP 50(b), 52 (b), or 59)**

- (a) Specify the type of motion, and the date and method of service of the motion, and date of filing.

- ☐ NRCP 50(b)      Date of filing \_\_\_\_\_  
☐ NRCP 52(b)      Date of filing \_\_\_\_\_  
☐ NRCP 59      Date of filing \_\_\_\_\_

**Note: Motions made pursuant to NRCP 60 or motions for rehearing or reconsideration may toll the time for filing a notice of appeal. See AA Primo Builders v. Washington, 126 Nev. \_\_\_\_, 245 P.3d 1190 (2010).**

- (b) Date of entry of written order resolving tolling motion: \_\_\_\_\_

- (c) Date of written notice of entry of order resolving motion served: \_\_\_\_\_

Was service by:

- ☐ Delivery  
☐ Mail

19. **Date notice of appeal was filed:** Appellants herein filed their Notice of Appeal with the District Court on April 20, 2021. Thereafter, Appellants Notice of Appeal was entered on the Nevada Supreme Court docket on April 28, 2021.

If more than one party has appealed from the judgment or order, list date each notice of appeal was filed and identify by name the party filing the notice of appeal:

Respondents herein, Elk Point Country Club Homeowners, Association, Inc. ("EPCC") filed its Notice of Appeal with the District Court on February 4, 2021. Thereafter, EPCC's Notice of Appeal was entered on the Nevada Supreme Court docket on February 17, 2021. (*See, Elk Point Country Club Homeowners, Association, Inc., et al. v. K. J. Brown, L.L.C., et al.*, In the Supreme Court of the State of Nevada, Docket No. 82484.)

20. **Specify statute or rule governing the time limit for filing the notice of appeal, e.g., NRAP 4(a) or other:**

NRAP 4(a)(1)

#### **SUBSTANTIVE APPEALABILITY**

21. **Specify the statute or other authority granting this court jurisdiction to review the judgment or order appealed from:**

(a)

- |  |                                       |
|--|---------------------------------------|
| <input type="checkbox"/> NRAP 3A(b)(1)                   | <input type="checkbox"/> NRS 38.205   |
| <input type="checkbox"/> NRAP 3A(b)(2)                   | <input type="checkbox"/> NRS 233B.150 |
| <input checked="" type="checkbox"/> <b>NRAP 3A(b)(3)</b> | <input type="checkbox"/> NRS 703.376  |
| <input type="checkbox"/> Other (specify)_____            |                                       |

(b) Explain how each authority provides a basis for appeal from the judgment or order:

Appellant appeals the District Court's Order Granting Defendant/Respondent's Motion to Stay, which has the practical effect of dissolving the Court's preliminary injunction Order dated December 15, 2020.

22. **List all parties involved in the action or consolidated actions in the district court:**

(a) Parties:

#### **APPELLANTS:**

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

**RESPONDENTS:**

Elk Point Country Club Homeowners, Association, Inc., aka Elk Point Country Club, Inc.

(b) If all parties in the district court are not parties to this appeal, explain in detail why those parties are not involved in this appeal *e.g.*, formally dismissed, not served, or other: N/A.

23. **Give a brief description (3 to 5 words) of each party's separate claims, counterclaims, cross-claims or third-party claims, and the date of formal disposition of each claim.**

Plaintiffs/Appellants asserted the following causes of action: Violations of NRS Chapter 116; Nuisance; Negligence; Trespass; Breach of Contract; Breach of Covenant of Good Faith and Fair Dealing; Contractual and Tortious Breach; and Declaratory Relief. All claims remain pending. No counterclaims were asserted by Respondent.

24. **Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action or consolidated actions below:**

☐ Yes  
☒ No

25. **If you answered "No" to question 24, complete the following:**

(a) Specify the claims remaining pending below: The underlying action remains.

(b) Specify the parties remaining below: The underlying parties remain.

(c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b):

☐ Yes  
☒ No

(d) Did the district court make an express determination, pursuant to NRCP 54(b), that there is no just reason for delay and an express direction for the entry of judgment:

☐ Yes  
☒ No

26. **If you answered "No" to any part of question 25, explain the basis for seeking appellate review (*e.g.*, order is independently appealable under NRAP 3A(b)):**

The Stay Order dissolved the Preliminary Injunction Order and is independently appealable under NRAP 3A(b)(3).

**27. Attach file-stamped copies of the following documents:**

- The latest-filed complaint, counterclaims, cross-claims, and third-party claims
- Any tolling motion(s) and order(s) resolving tolling motion(s)
- Orders of NRCP 41(a) dismissals formally resolving each claim, counterclaims, cross-claims and/or third-party claims asserted in the action or consolidated action below, even if not at issue on appeal
- Any other order challenged on appeal
- Notices of entry for each attached order

**VERIFICATION**

I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this docketing statement.

Signed this 18<sup>th</sup> day of May 2021 in Washoe County, State of Nevada.

***Appellants:***

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

***Appellants' Counsel of Record:***

***Leach Kern Gruchow Anderson Song***

/s/ Sophie A. Karadanis, Esq.

GAYLE A. KERN, ESQ.

Nevada Bar No. 1620

SOPHIE A. KARADANIS, ESQ.

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***and***

RICHARD H. BRYAN, ESQ.

Nevada Bar No. 2029

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E-Mail: rbryan@fennemorelaw.com

Attorneys for Appellants

**CERTIFICATE OF SERVICE**

Pursuant to NRAP 25(c), I certify that I am an employee of the law firm of Leach Kern Gruchow Anderson Song, and that on this day I served the foregoing document described as *Docketing Statement Civil Appeals* on the parties set forth below, at the address listed below by:

  X   Electronic means to registered user of the court's electronic filing system consistent with NEFCR 9:

*Prescott Jones, Esq. | Resnick & Louis, P.C. | Las Vegas*

*Gayle A. Kern, Esq. | Leach Kern Gruchow Anderson Song | Reno*

  X   Notification by traditional means must be sent to the following:

David Wasick  
Settlement Judge  
P.O. Box 568  
Glenbrook, NV 89413

Richard H. Bryan, Esq.  
c/o Fennemore Craig, P.C.  
300 S. Fourth St., Ste. 1400  
Las Vegas, NV 89101

Joshua Ang, Esq.  
c/o Resnick & Louis, P.C.  
8925 W. Russell Rd., Ste 220  
Las Vegas, NV 89148

DATED this 18<sup>th</sup> day of May 2021.

/s/ Arielle Navarro  
ARIELLE NAVARRO

Document Part “1”

Document Part “1”

1 **JOHN E. LEACH, ESQ.**

Nevada Bar No. 1225

2 **GAYLE A. KERN, ESQ.**

Nevada Bar No. 1620

3 **SOPHIE A. KARADANIS, ESQ.**

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9 *Attorneys for Plaintiffs*

**RECEIVED**

JUL - 2 2020

Douglas County  
District Court Clerk

**FILED**

2020 JUL -2 AM 9:06

BOBBIE R. WILLIAMS  
CLERK

BY **A. NEWTON** DEPUTY

10 **IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**

11 **IN AND FOR COUNTY OF DOUGLAS**

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

CASE NO.: 2020 CV 00124

DEPT. NO.: I

17 Plaintiffs,

18 v.

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

22 Defendant.

23 **FIRST AMENDED COMPLAINT**

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

25 Plaintiffs, K. J. BROWN, L.L.C., and TIMOTHY D. GILBERT and NANCY  
26 AVANZINO GILBERT, as trustees of the TIMOTHY D. GILBERT AND NANCY AVANZINO  
27  
28

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

3 **NAR 3(A) CERTIFICATION**

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

7 **GENERAL ALLEGATIONS**

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

11 2. Plaintiffs, Timothy D. Gilbert and Nancy Avanzino Gilbert, as trustees of the  
12 Timothy D. Gilbert and Nancy Avanzino Gilbert Revocable Family Trust dated December 27,  
13 2013, own certain real property commonly referred to as 464 Elks Avenue, Zephyr Cove, Nevada  
14 located within the Elk Point subdivision.

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

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

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



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

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

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

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

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

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

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

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

19 12. Plaintiffs are informed and believe that EPCC HOA's tax-exempt IRC Section  
20 501(c) (7) status provides significant benefits to the Unit Owners/Members, such as Plaintiffs,  
21 including, but not limited to, not having to pay property taxes on the common property of the  
22 Association including, but not limited to, 13.04 acres of beachfront property on Lake Tahoe. This  
23 in turn results in a significant reduction in annual assessments. Plaintiffs are further informed and  
24 believe that if EPCC HOA is found to be out of compliance with the tax-exempt requirements  
25 under IRC Section 501(c) (7), the Internal Revenue Service could revoke its tax-exempt status.  
26 That would expose EPCC HOA to the risk of having to pay all applicable income and property  
27 taxes upon all of its common areas, including potential excise tax, to the great damage and  
28 detriment of Unit Owners/Members.

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

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

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

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

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

22           16.1.    The Bylaws Preamble, set forth in the Bylaws for Elk Point Country Club,  
23 recorded in 1927("1927 Bylaws") stated in pertinent part:

24                   The Elk Point Country Club, hereinafter called  
25                   Corporation, is a membership corporation organized under  
26                   the General Non-Profit Corporation Laws of the State of  
27                   Nevada. *Its primary purpose is hereby affirmed to be to*  
28                   *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*

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

5                    16.2.        The 1927 Bylaws at Article XIX, Property Rights of Members, which were  
6                    amended in 1929; states in pertinent part (*emphasis added*):

7                    Each membership shall be entitled the legal holder thereof  
8                    to the use and occupation during the life of his membership  
9                    of one lot of land owned by the club...Each member shall  
10                  use the lot as assigned to him for himself, his immediate  
11                  family and temporary guests. He shall not permit  
12                  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.*

13                  16.3.        The 1961 Bylaws, at Article XVII, Section 2, stated: "The property of  
14                  members shall be used for strictly residential purposes."

15                  16.4.        The Elk Point Country Club Homeowners Rules, Regulations and  
16                  Guidelines, adopted in 1961, at Section 10 stated: "No persons shall  
17                  operate any business on club premises or their individual property within  
18                  the Club."

19  
20                  17.        According to Amended Bylaws, at Article XV, no Unit Owner has the right to  
21                  transfer, lease, rent, or assign his or her private membership, or membership privileges, to any  
22                  other non-member third party. A Unit Owner/Member's transient commercial use for profit is an  
23                  unauthorized assignment of the Unit Owner/Member's private membership privileges to non-  
24                  member public third parties.

25                  ///

26                  ///

27                  ///

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1           18.     The Elk Point Rules and Regulations, adopted on July 4, 1998 and revised April  
2 24, 2017, at Section 1, General Rules and Regulations, paragraph 14, provides that a unit owner  
3 may engage in business activity within their residence as long as there is no customer-employee  
4 contact within EPCC, and that EPCC facilities, including the beach and beach deck, shall not be  
5 used for any business activity.

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

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

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

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

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

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

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

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

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

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

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

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

- 16           a.     Use by renters (and their non-Member guests) of EPCC HOA common areas for the  
17                 profit of Unit Owners/Members who are engaged in transient commercial use of their  
18                 Unit and the association property all of which compromises the IRC Section 501(c)(7)  
19                 tax-exempt status of the Association;
- 20           b.     Use by renters (and their non-Member guests) of EPCC HOA common areas which  
21                 creates increased liability and exposure to remaining Unit Owners/Members;
- 22           c.     Renters (and their non-Member guests) failing to comply with EPCC HOA's Rules  
23                 and Regulations including: (1) excessive noise and parties after the 10:00 p.m. curfew;  
24                 speeding on the narrow common area roadway system; parking in fire lanes; parking  
25                 in designated parking to be available to Unit Owners/Members and their guests;  
26                 parking in the roadway system; and inappropriate trash storage and disposal;
- 27           d.     Parking violations by renters (and their non-Member guests) include: parking on  
28                 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.



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

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

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

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

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

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

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

27           43.     On September 16, 2019, EPCC HOA was served with Plaintiffs’ ADR Claim.  
28

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

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

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

9                               **FIRST CAUSE OF ACTION**

10                              *(Violations of NRS Chapter 116)*

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

13           48.     Based on the facts described herein, Defendant has violated the provisions of NRS  
14 Chapter 116 by committing the acts and omissions to act as described above, including, but not  
15 limited to, failing to comply with the terms and conditions set forth in the Governing Documents,  
16 permitting ongoing transient commercial use within EPCC HOA in violation of NRS 116.340,  
17 and exposing the Unit Owners/Members, including Plaintiffs, to the loss of the Association's IRC  
18 501(c)(7) tax-exempt status, exposing Plaintiffs to be subject to paying State property taxes upon  
19 the common area properties, all resulting in significant damages.

20           49.     Defendant is liable to Plaintiffs according to NRS 116.3111 for its tort and contract  
21 liability in relation to the unauthorized and impermissible transient commercial use within EPCC  
22 HOA.

23           50.     Defendant is liable to Plaintiffs according to NRS 116.31183 and NRS 116.31184  
24 for their harassment and retaliation against certain Plaintiffs and other Unit Owners/Members  
25 who do not engage in transient commercial use.

26           51.     As a sole, direct, and proximate result of the foregoing acts by Defendant, Plaintiff  
27 has sustained general damages in an amount in excess of \$15,000.00, with the detailed amount of  
28 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.

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

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

9           62.     As a sole, direct and proximate result of the foregoing acts of Defendant, Plaintiffs  
10 were required to retain the service of the law firm of Leach Kern Gruchow Anderson Song and is  
11 entitled to attorney's fees and costs in accordance with NRS 18.010(2), 18.020(1) & (3), and NRS  
12 116.4117(6).

### 13                                   THIRD CAUSE OF ACTION

#### 14                                   *(Negligence)*

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

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

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

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

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

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

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

14 **FOURTH CAUSE OF ACTION**

15 ***(Trespass)***

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

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

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

27  
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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

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

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

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

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

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

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

## 21 SEVENTH CAUSE OF ACTION

### 22 *(Declaratory Relief)*

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

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

28 ///



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

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

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

9 96. Plaintiffs are entitled, among other things, to have the Court determine questions  
10 concerning the interpretation and/or construction of the foregoing described legal documents to  
11 obtain a declaration of rights, status and other legal relations thereto pursuant to NRS Chapter  
12 30.

13 **PRAYER**

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

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

26 ///

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

3 **AFFIRMATION**

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

7 DATED this 1<sup>st</sup> day of July, 2020.

8 LEACH KERN GRUCHOW ANDERSON SONG

9  
10 By: 

**SOPHIE A. KARADANIS, ESQ.**

Nevada Bar No. 12006

5421 Kietzke Lane, Ste. 200

12 : Reno, Nevada 89511

13 Tel: (775) 324-5930

14 Fax: (775) 324-6173

15 E-Mail: skaradanis@lkglawfirm.com

16 *Attorneys for Plaintiffs*  
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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

EXHIBIT “1”

EXHIBIT “1”

STEVE SISOLAK  
Governor



TERRY REYNOLDS  
Director

SHARATH CHANDRA  
Administrator

CHARVEZ FOGER  
Ombudsman

STATE OF NEVADA  
DEPARTMENT OF BUSINESS AND INDUSTRY  
REAL ESTATE DIVISION  
COMMON-INTEREST COMMUNITIES AND  
CONDOMINIUM HOTELS PROGRAM

[CICombudsman@red.nv.gov](mailto:CICombudsman@red.nv.gov)

<http://www.red.nv.gov>

February 20, 2020

**Claimant(s):**

OYSTER FAMILY TRUST  
C/O LAW OFFICE OF NANCY A. GILBERT  
ATTN: NANCY A. GILBERT, ESQ  
832 WILLOW ST  
RENO, NV 89502

**Respondent(s):**

ELK POINT COUNTRY CLUB HOMEOWNERS,  
ASSOCIATION, IN  
C/O PRESCOTT JONES RESNICK & LOUIS  
ATTN: PRESCOTT JONES  
8925 W RUSSELL RD STE 220  
LAS VEGAS, NV 89148

Alternative Dispute Resolution (ADR) Control #: 20-32 / MEDIATION UNSUCCESSFUL

Dear Sir or Madam:

The Claimant and Respondent participated in mediation on February 4, 2020 through the Division's Alternative Dispute Resolution program described in NRS 38. Unfortunately, no agreement was reached. Thank you for your efforts to resolve the dispute between the parties. This matter is now closed.

Sincerely,

A handwritten signature in black ink, appearing to be "Shareece Bates", written over a horizontal line.

Shareece Bates  
ADR Facilitator

STEVE SISOLAK  
Governor



TERRY REYNOLDS  
Director

SHARATH CHANDRA  
Administrator

CHARVEZ FOGER  
Ombudsman

STATE OF NEVADA  
DEPARTMENT OF BUSINESS AND INDUSTRY  
REAL ESTATE DIVISION  
COMMON-INTEREST COMMUNITIES AND  
CONDOMINIUM HOTELS PROGRAM  
[CICOmbudsman@red.nv.gov](mailto:CICOmbudsman@red.nv.gov) <http://www.red.nv.gov>

February 20, 2020

**Claimant(s):**

GILBERT FAMILY TRUST  
LAW OFFICES OF NANCY A. GILBERT  
ATTN: NANCY A. GILBERT, ESQ  
832 WILLOW ST  
RENO, NV 89502

**Respondent(s):**

ELK POINT COUNTRY CLUB HOMEOWNERS,  
ASSOCIATION, IN  
C/O PRESCOTT JONES RESNICK & LOUIS  
ATTN: PRESCOTT JONES  
8925 W RUSSELL RD STE 220  
LAS VEGAS, NV 89148

Alternative Dispute Resolution (ADR) Control #: 20-31 / MEDIATION UNSUCCESSFUL

Dear Sir or Madam:

The Claimant and Respondent participated in mediation on February 4, 2020 through the Division's Alternative Dispute Resolution program described in NRS 38. Unfortunately, no agreement was reached. Thank you for your efforts to resolve the dispute between the parties. This matter is now closed.

Sincerely,

A handwritten signature in black ink, appearing to read "Shareece Bates".

Shareece Bates  
ADR Facilitator

STEVE SISOLAK  
Governor



TERRY REYNOLDS  
Director

SHARATH CHANDRA  
Administrator

CHARVEZ FOGER  
Ombudsman

STATE OF NEVADA  
DEPARTMENT OF BUSINESS AND INDUSTRY  
REAL ESTATE DIVISION  
COMMON-INTEREST COMMUNITIES AND  
CONDOMINIUM HOTELS PROGRAM  
[CICOmbudsman@red.nv.gov](mailto:CICOmbudsman@red.nv.gov) <http://www.red.nv.gov>

February 20, 2020

Claimant(s):

KJ BROWN LLC  
C/O LAW OFFICES OF NANCY A  
GILBERT  
832 WILLOW STREET  
RENO, NV. 89502

Respondent(s):

ELK POINT COUNTRY CLUB HOMEOWNERS,  
ASSOCIATION, INC.  
C/O PRESCOTT JONES RESNICK & LOUIS  
ATTN: PRESCOTT JONES  
8925 W RUSSELL RD STE 220  
LAS VEGAS, NV 89148

Alternative Dispute Resolution (ADR) Control #: 20-27 / MEDIATION UNSUCCESSFUL

Dear Sir or Madam:

The Claimant and Respondent participated in mediation on February 4, 2020 through the Division's Alternative Dispute Resolution program described in NRS 38. Unfortunately, no agreement was reached. Thank you for your efforts to resolve the dispute between the parties. This matter is now closed.

Sincerely,

A handwritten signature in black ink, appearing to read "Shareece Bates", with a stylized flourish at the end.

Shareece Bates  
ADR Facilitator

Document Part “2”

Document Part “2”



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1 **JOHN E. LEACH, ESQ.**

2 Nevada Bar No. 1225

3 **GAYLE A. KERN, ESQ.**

4 Nevada Bar No. 1620

5 **SOPHIE A. KARADANIS, ESQ.**

6 Nevada Bar No. 12006

7 **LEACH KERN GRUCHOW ANDERSON SONG**

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9 Reno, Nevada 89511

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12 E-Mail: jleach@lkglawfirm.com

13 E-Mail: gkern@lkglawfirm.com

14 E-Mail: skaradanis@lkglawfirm.com

15 *Attorneys for Plaintiffs*

16 **IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**

17 **IN AND FOR COUNTY OF DOUGLAS**

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

CASE NO.: 2020 CV 00124

DEPT. NO.: I

25 Plaintiffs,

26 v.

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

Defendant.

**ORDER GRANTING PLAINTIFFS'  
MOTION FOR PRELIMINARY INJUNCTION**

On June 30, 2020, plaintiffs, K.J. BROWN, L.L.C. and TIMOTHY D. GILBERT and  
NANCY AVANZINO GILBERT, as trustees of the TIMOTHY D. GILBERT AND NANCY

1 AVANZINO GILBERT REVOCABLE FAMILY TRUST DATED DECEMBER 27, 2013  
2 (collectively referred to as "Plaintiffs"), by and through their undersigned counsel, Leach Kern  
3 Gruchow Anderson Song, filed a Motion for Preliminary Injunction ("MFPI") in the above-  
4 captioned case. The MFPI, once fully briefed, was submitted to this Court for decision on August  
5 24, 2020.  
6

7 The matter came on for a scheduled hearing on October 23, 2020, before the Honorable  
8 Nathan Todd Young. The Plaintiffs were represented by counsel, Gayle A. Kern, Esq., and Sophie  
9 A. Karadanis, Esq., of the law firm Leach Kern Gruchow Anderson Song. The Defendant was  
10 represented by counsel Prescott Jones, Esq., of Resnick & Louis, P.C. All parties appeared in  
11 person. The Court having reviewed the papers and pleadings on file herein, and having  
12 considered the documentary evidence, witness testimony, and the oral arguments offered by  
13 counsel on the legal and factual issues, this Court makes the following Findings of Fact and  
14 Conclusion of Law in support of this Order:  
15

16 **FINDINGS OF FACT**  
17

18 The Court finds the following facts:

19 1. Plaintiff, K.J. BROWN, LLC, is a Nevada limited liability company and the owner  
20 of certain real property located with the Elks Point Subdivision, in Zephyr Cove, Douglas County,  
21 Nevada.  
22

23 2. Plaintiffs, Timothy D. Gilbert and Nancy Avanzino Gilbert, as trustees of the  
24 Timothy D. Gilbert and Nancy Avanzino Gilbert Revocable Trust dated December 27, 2013, own  
25 certain real property located within the Elk Point Subdivision, in Zephyr Cove, Douglas County,  
26 Nevada.  
27

28 3. Defendant, Elk Point Country Club, Inc., ("EPCC"), is a Nevada non-profit, non-  
stock corporation and recognized as a social club by the Internal Revenue Service.

1           4.       The evidence demonstrates EPCC was established in 1925 by filing its Articles of  
2 Incorporation of Nevada Elks Tahoe Association, which articles were later amended to change  
3 the name to Elk Point Country Club, Inc.<sup>1</sup>

4           5.       The evidence demonstrates that EPCC is a private, members-only gated  
5 subdivision, which includes private property and facilities owned by EPCC, including the  
6 following: private roads, private beach, marina, boat storage, a water system and water tank,  
7 beach deck and barbeque area, water rights, water tank and water pumping system, and a  
8 designated residential home for a full-time onsite caretaker.

9           6.       The evidence demonstrates that purchasers of Units located within EPCC must  
10 apply for and be accepted as an EPCC member and must pay an initial membership fee to EPCC,  
11 which is currently \$20,000.00. In exchange for one's membership, EPCC members are permitted  
12 exclusive access and use of EPCC's private property and facilities.

13           7.       The evidence demonstrates that EPCC is subject to the certain Bylaws of Elk Point  
14 Country Club, Inc. There are several such Bylaws recorded at various times, including but not  
15 limited to those recorded on September 11, 2000, with the Douglas County Recorder as Document  
16 No. 0499187, those recorded on August 1, 2001, with the Douglas County Recorder as Document  
17 No. 0519700, and those recorded on August 26, 2005, with the Douglas County Recorder, as  
18 Document No. 0653319 (collectively "Bylaws"), including all subsequent amendments  
19 incorporate therein. The evidence shows the Bylaws Preamble states in pertinent part as follows:  
20 "[EPCC's] primary purpose is hereby affirmed to be to provide its members the pleasure of  
21 fellowship and recreation, and its corporate functioning shall be designed to achieve in highest  
22

23  
24  
25  
26  
27           <sup>1</sup> There was an amendment purportedly changing the name as Elk Point Country Club  
28 Homeowners Association, Inc., but such change is irrelevant to the issues before the Court  
because the club's property is owned by Elk Point Country Club, Inc., and the IRS exemption is  
in favor of Elk Point Country Club, Inc.

1 measure such purpose. It shall not operate its properties or facilities with the view of providing  
2 profit to its members but rather such properties and facilities shall be held, operated, and made  
3 available to the use and enjoyment of its members . . .” The evidence further shows that the  
4 Bylaws Preamble as set forth herein has been duplicated and repeated in every iteration of the  
5 bylaws. The Bylaws also provide at Article III, Section 2: “The Executive Board shall have the  
6 Power to conduct, manage and control the affairs and business of the Corporation and to make  
7 rules and regulations not inconsistent with the laws of the State of Nevada, the Articles of  
8 Incorporation and the Bylaws of the Corporation.” The evidence further shows that Article III,  
9 Section 2 of the Bylaws has been duplicated and repeated in every iteration of the Bylaws  
10 identified herein.  
11

12  
13 8. The evidence demonstrates that EPCC is subject to certain Rules and Regulations,  
14 recorded with the Bylaws on September 18, 1995, in the Douglas County Recorder as Document  
15 No. 370678 (“Rules”). The Rules provide at paragraph 10 that “[n]o person shall operate any  
16 business on the Club premises, nor on their individual property, within the Club.”  
17

18 9. The evidence shows that on September 14, 2019, the EPCC Board of Directors  
19 adopted the Rules, Regulations and Guidelines (“Amended Rules”) which permit transient  
20 commercial use of Units and long-term rentals of Units within EPCC. The Amended Rules were  
21 not recorded.  
22

23 10. The evidence shows that the Bylaws and Rules make references to both Tenants  
24 and Guests. The evidence further shows that both the Bylaws and the Rules do not permit for-  
25 profit use of EPCC property and facilities, including member Units.

26 11. The evidence shows that EPCC is an Internal Revenue Code (“IRC”) Section  
27 501(c)(7) tax-exempt social club located in Zephyr Cove, Douglas County, Nevada. By way of  
28

///

1 its tax-exempt status, EPCC has enjoyed its tax-exempt social club status and such status is an  
2 important attribute of EPCC since 1925.

3 12. The evidence demonstrates that when determining an entity's IRC 501(c)(7) tax-  
4 exempt status, the Internal Revenue Service ("IRS") looks at the following factors: (1) the social  
5 club must have an established membership of individuals, commingling, and fellowship; (2) the  
6 social club must be organized for pleasure, recreation and other non-profitable purpose, meaning  
7 it does not provide pleasure and recreation on a commercial basis; and (3) substantially all of the  
8 activities of the club are for such purposes and no part of the net earnings of which inures to the  
9 benefit of any private club member.  
10

11 13. The evidence demonstrates that the stated intent and purpose of EPCC Bylaws is  
12 in conformance with IRC 501(c)(7), in that EPCC is not to engage in behavior which encourages  
13 profit to its members, and that it was organized with the specific intent to provide its members  
14 with fellowship and recreation.  
15

16 14. The evidence shows that EPCC members are renting their Units for transient  
17 commercial uses, *i.e.* rentals for less than 30 consecutive calendar days, and are also engaged in  
18 renting their Units for long-term residential use, *i.e.* rentals for longer than 30 consecutive  
19 calendar days.  
20

21 15. The evidence demonstrates that the EPCC Board of Directors have failed, refused,  
22 and declined to prohibit transient commercial use within EPCC and have, in fact, encouraged and  
23 facilitated such use, including by way of example, adopting the Amended Rules, creating a rental  
24 calendar identifying the dates the various Units are rented, and providing information to Douglas  
25 County when an owner seeks to have a permit issued for transient commercial use of their Unit.  
26

27 16. Plaintiffs initiated this action to enjoin Defendant from encouraging, facilitating,  
28 and accommodating EPCC members from renting their Units for a profit, which use violates the

1 Bylaws and puts EPCC's IRC 501(c)(7) tax-exempt status at risk. In addition, Plaintiffs requested  
2 that the Defendant be required to enforce its recorded Bylaws and Rules in a manner that avoids  
3 jeopardizing the tax-exempt status of EPCC.

4  
5 17. The Court finds that EPCC members are engaged in transient commercial use  
6 and/or long-term leasing of their properties and are thus, operating their Units for a profit. The  
7 Court further finds that such use is directly contrary to, and in violation of, the language set forth  
8 in the Bylaws and the Rules, which specifically prohibits EPCC from operating its properties and  
9 facilities with the view of providing profit to its members.

10  
11 18. The Court finds that EPCC members engaged in renting their Units to obtain  
12 revenue constitutes a use of the Units for a profit, including both transient commercial use and  
13 long-term rentals, and that use puts EPCC's IRC 501(c)(7) tax-exempt status at risk.

14  
15 19. The Court finds that Plaintiff has demonstrated a likelihood of success on the  
16 merits that EPCC members engaged in transient commercial use and long-term rental use of their  
17 Units violates the Bylaws and Rules.

18  
19 20. The Court concludes that the unrecorded Amended Rules are in violation of and  
20 contrary to the Bylaws of EPCC, in that they permit, facilitate, and encourage renting Units to  
21 generate revenue for profit, and as a result, they are not enforceable as they relate to any rental  
22 activity for profit within EPCC.

23  
24 21. The Court finds that EPCC members engaged in renting their Units for profit  
25 constitutes an immediate threat of permanent damage to EPCC and its members through the loss  
26 of its IRC 501(c)(7) tax-exempt status, and the loss of the character of the community.

27  
28 22. The Court finds that EPCC members engaged in renting their Units for profit  
constitutes an immediate threat of permanent damage to EPCC by causing a change in the nature  
of the entity as a private social club designed to promote the social and recreational benefit to



1 those who are members. Specifically, the Court finds that allowing members to engage in renting  
2 their Units for profit changes the nature of the organization to that of a commercial organization.

3 23. The Court finds a bond in the amount of \$5,000.00 is appropriate and supported  
4 by the facts.

5 24. If any finding of fact above is, in fact, a conclusion of law, it should be regarded  
6 as such.

### 7 CONCLUSIONS OF LAW

8 This Court concludes the following as the controlling law in this matter:

9 A. A party seeking the issuance of a preliminary injunction under NRCP 65 and NRS  
10 33.010 bears the burden of establishing (1) a likelihood of success on the merits, and (2) a  
11 reasonable probability that the non-moving party's conduct, if allowed to continue, will cause  
12 irreparable harm for which compensatory damages is an inadequate remedy. *S.O.C., Inc. v.*  
13 *Mirage Casino-Hotel*, 117 Nev. 403, 408, 23 P.3d 243 (2001).

14 B. Interpretation of a contract's terms is question of law. *Shelton v. Shelton*, 119 Nev.  
15 492, 497, 78 P.3d 507, 510 (2003). Contractual provisions should be harmonized whenever  
16 possible. *Eversole v. Sunrose villas VIII Homeowners Ass'n*, 112 Nev. 1255, 1260, 925 P.2d 505,  
17 509 (1996), and no provisions should be rendered meaningless. *Musser v. Bank of Am.*, 114 Nev.  
18 945, 964 P.2d 51, 54 (1998).

19 C. This Court concludes that a consistent reading of the Bylaws that gives meaning  
20 to all provisions included therein is that members are not permitted to operate their Units or any  
21 EPCC property and facilities in order to generate revenue or for a profit.

22 D. This Court finds that any use of a Unit within EPCC to generate revenue or for a  
23 profit, including both transient commercial use and long-term rental use, is in violation of the  
24 clear and unambiguous terms of the Bylaws, and recorded Rules.

1           E.       This Court finds that any use of a Unit within EPCC to generate revenue or for a  
2 profit, including both transient commercial use and long-term rental use, jeopardizes the tax-  
3 exempt social club status under the IRC.

4           F.       This Court concludes that it would lead to inconsistent and contradictory results  
5 if, as suggested by Defendant, the references to the term “tenant” within the Bylaws and the Rules  
6 was used as a means to justify allowing EPCC members to rent their Units to generate revenue or  
7 for a profit. This Court finds that there are many different classifications of tenancies recognized  
8 by the State of Nevada, including joint tenancies, tenancies in common, life tenancies, and  
9 tenancies for years. Thus, the plain language of the Bylaws, reading it in context and construing  
10 it so as to render each word, phrase and term meaningful, unambiguous, and harmonious with the  
11 whole, requires a finding that EPCC is not entitled to operate its properties and facilities to  
12 generate revenue or for a profit, which necessarily includes any rental of a Unit or EPCC property  
13 and facilities for either long-term rental or transient commercial use.

14           G.       This Court concludes that the Amended Rules adopted by EPCC on September 14,  
15 2019, as they relate to rental activity within EPCC, are in violation of the Bylaws, and are  
16 therefore unenforceable to the extent they permit members to derive revenue or a profit through  
17 the rental of their Units for both transient commercial use and long-term rentals.

18           H.       This Court concludes that Plaintiffs have met their burden of proving they have a  
19 likelihood of success on the merits. Based on the evidence presented, the intent under the Bylaws  
20 was for EPCC to be formed as a social club, to maintain that status as a IRC 501(c)(7) tax-exempt  
21 social club, and that, under the Bylaws, any use or operation of a Unit within EPCC, or any EPCC  
22 property and facilities, by any member, to generate revenue or for a profit, is strictly prohibited.

23           I.       Irreparable harm is that harm for which compensatory damages would be  
24 inadequate. *Dixon v. Thatcher*, 103 Nev. 414, 415, 742 P.2d 1029, 1029-30 (1987).



1 J. Plaintiffs have met their burden, in demonstrating to the satisfaction of this Court,  
2 that there is a threat of permanent and irreparable harm if EPCC's IRC 501(c)(7) tax-exempt  
3 status is lost in the event EPCC is not immediately enjoined from allowing, facilitating and  
4 encouraging EPCC members in renting their Units or any other EPCC property and facilities,  
5 and deriving revenue or a profit from such use. An award of compensatory damages would be a  
6 futile act by this Court for this type of damage, because, in addition to the loss of the tax-exempt  
7 status, such irreparable harm includes a change in the overall nature and character of the  
8 community, from one originally designed to promote the social and recreational benefit to those  
9 who are members, to simply a commercial organization.  
10

11 K. Plaintiffs are entitled to injunctive relief requiring EPCC to enforce its Bylaws,  
12 and to prohibit the use of any Unit, and any other portion of EPCC's property and facilities, to  
13 generate revenue or for profit, during the pendency of this case.  
14

15 L. The purpose of posting security bond is to protect a party from damages incurred  
16 as a result of a wrongful injunction, not from damages existing, if any, before the injunction was  
17 issued. *See American Bonding Co. v. Roggen Enterprises*, 109 Nev. 588, 854 P.2d 868 (1993).  
18 A bond in the amount of \$5,000.00 is appropriate under the circumstances.  
19

20 L. If any conclusion of law above is, in fact, a finding of fact, it will be treated as  
21 such.  
22

### 23 ORDER

24 Upon the foregoing facts and controlling law, the Court enters the following Order:

25 ***IT IS HEREBY ORDERED, ADJUDGED AND DECREED*** that Plaintiffs' Motion for  
26 Preliminary Injunction is GRANTED.  
27

28 ///

1        **IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED** that EPCC is  
2 required to enforce its Bylaws, specifically as the Bylaws prohibit EPCC and its members from  
3 deriving any revenue or profit through the operation of its properties and facilities.  
4

5        **IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED** that EPCC  
6 shall within 90 days from the date of this Order prohibit, prevent, and enjoin and any rental use  
7 of any portion of EPCC's property and facilities, including member's Units, and that said use  
8 expressly includes both transient commercial use and long-term rental use of any Unit.  
9

10       **IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED** that Plaintiff  
11 shall post a bond in the amount of \$5,000.00 in accordance with NRCP 65(c) as security.  
12

13       **IT IS SO ORDERED.**

14       DATED this 15 day of December, 2020.

15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

  
DISTRICT COURT JUDGE

Respectfully Submitted  
this 3<sup>rd</sup> day of November, 2020, by:

**LEACH KERN GRUCHOW**  
**ANDERSON SONG**

**SOPHIE A. KARADANIS, ESQ.**

Nevada Bar No. 12006

**GAYLE A. KERN, ESQ.**

Nevada Bar No. 1620

5421 Kietzke Lane, Ste. 200

Reno, Nevada 89511

Tel: (775) 324-5930

E-mail: skaradanis@lkglawfirm.com

*Attorneys for Plaintiff*

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CLERK

D. GOELZ

BY \_\_\_\_\_ DEPUTY

1 **GAYLE A. KERN, ESQ.**

2 Nevada Bar No. 1620

3 **SOPHIE A. KARADANIS, ESQ.**

4 Nevada Bar No. 12006

5 **LEACH KERN GRUCHOW ANDERSON SONG**

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11 E-Mail: skaradanis@lkglawfirm.com

12 *Attorneys for Plaintiffs*

13 **IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**

14 **IN AND FOR COUNTY OF DOUGLAS**

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

22 Plaintiffs,

23 v.

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

Defendant.

CASE NO.: 2020 CV 00124

DEPT. NO.: I

**NOTICE OF ENTRY OF ORDER  
GRANTING PLAINTIFFS' MOTION  
FOR PRELIMINARY INJUNCTION**

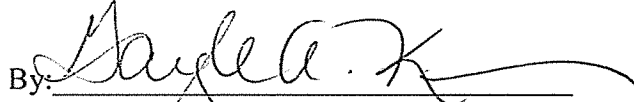
PLEASE TAKE NOTICE that on the 15<sup>th</sup> day of December 2020, an Order Granting  
Plaintiffs' Motion for Preliminary Injunction ("Order") was entered in the above-captioned  
matter. A copy of the Order is attached hereto.

///

1 Pursuant to NRS 239B.030, the undersigned does hereby affirm that the *Notice of Entry*  
2 *of Order Granting Plaintiffs' Motion for Preliminary Injunction* filed in the above-entitled case  
3 (2020 CV 00124) does not contain the social security number of any person.  
4

5 DATED this 5<sup>th</sup> day of January, 2021.

6 **LEACH KERN GRUCHOW ANDERSON SONG**

7  
8 By: 

9 **GAYLE A. KERN, ESQ.**

10 Nevada Bar No. 1620

11 **SOPHIE A. KARADANIS, ESQ.**

12 Nevada Bar No. 12006

13 5421 Kietzke Lane, Ste. 200

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16 E-Mail: gkern@lkglawfirm.com

17 E-Mail: skaradanis@lkglawfirm.com

18 *Attorneys for Plaintiffs*  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I certify that I am an employee of the law offices of Leach Kern  
3 Gruchow Anderson Song, and that on this date I served the foregoing document described as  
4 follows:  
5

6 ***NOTICE OF ENTRY OF ORDER GRANTING PLAINTIFFS'  
7 MOTION FOR PRELIMINARY INJUNCTION***

8 On the party(s) set forth below by:

9 ☒ Placing an original or true copy thereof in a sealed envelope placed for collection  
10 and mailing in the United States Mail, at Reno, Nevada, postage prepaid, following  
ordinary business practices.

11 Joshua Ang, Esq.  
12 Prescott Jones, Esq.  
13 c/o Resnick & Louis, P.C.  
14 8925 W. Russell Road, Ste. 220  
Las Vegas, NV 89148

15 ☐ Electronically filing the foregoing with the Clerk of the Court by using the  
16 electronic filing system, which will send a notice of electronic filing to the  
following:

17 ☐ Personal delivery.

18 ☐ FedEx, UPS, or other overnight delivery.  
19

20 DATED this 5<sup>th</sup> day of January 2021.

21   
22 TERESA A. GEARHART  
23  
24  
25  
26  
27  
28

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Douglas County  
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2020 DEC 15 AM 9:43

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BY: ANCA DEPUTY

1 JOHN E. LEACH, ESQ.

2 Nevada Bar No. 1225

3 GAYLE A. KERN, ESQ.

4 Nevada Bar No. 1620

5 SOPHIE A. KARADANIS, ESQ.

6 Nevada Bar No. 12006

7 LEACH KERN GRUCHOW ANDERSON SONG

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14 E-Mail: skaradanis@lkglawfirm.com

15 Attorneys for Plaintiffs

16 IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

17 IN AND FOR COUNTY OF DOUGLAS

18 K. J. BROWN, L.L.C., a Nevada limited  
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20 GILBERT and NANCY AVANZINO  
21 GILBERT, as trustees of the TIMOTHY D.  
22 GILBERT AND NANCY AVANZINO  
23 GILBERT REVOCABLE FAMILY TRUST  
24 DATED DECEMBER 27, 2013,

CASE NO.: 2020 CV 00124

DEPT. NO.: I

25 Plaintiffs,

26 v.

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

Defendant.

**ORDER GRANTING PLAINTIFFS'  
MOTION FOR PRELIMINARY INJUNCTION**

On June 30, 2020, plaintiffs, K.J. BROWN, L.L.C. and TIMOTHY D. GILBERT and  
NANCY AVANZINO GILBERT, as trustees of the TIMOTHY D. GILBERT AND NANCY

1 AVANZINO GILBERT REVOCABLE FAMILY TRUST DATED DECEMBER 27, 2013  
2 (collectively referred to as "Plaintiffs"), by and through their undersigned counsel, Leach Kern  
3 Gruchow Anderson Song, filed a Motion for Preliminary Injunction ("MFPI") in the above-  
4 captioned case. The MFPI, once fully briefed, was submitted to this Court for decision on August  
5 24, 2020.  
6

7 The matter came on for a scheduled hearing on October 23, 2020, before the Honorable  
8 Nathan Todd Young. The Plaintiffs were represented by counsel, Gayle A. Kern, Esq., and Sophie  
9 A. Karadanis, Esq., of the law firm Leach Kern Gruchow Anderson Song. The Defendant was  
10 represented by counsel Prescott Jones. Esq., of Resnick & Louis, P.C. All parties appeared in  
11 person. The Court having reviewed the papers and pleadings on file herein, and having  
12 considered the documentary evidence, witness testimony, and the oral arguments offered by  
13 counsel on the legal and factual issues, this Court makes the following Findings of Fact and  
14 Conclusion of Law in support of this Order:  
15

16 **FINDINGS OF FACT**  
17

18 The Court finds the following facts:

19 1. Plaintiff, K.J. BROWN, LLC, is a Nevada limited liability company and the owner  
20 of certain real property located with the Elks Point Subdivision, in Zephyr Cove, Douglas County,  
21 Nevada.  
22

23 2. Plaintiffs, Timothy D. Gilbert and Nancy Avanzino Gilbert, as trustees of the  
24 Timothy D. Gilbert and Nancy Avanzino Gilbert Revocable Trust dated December 27, 2013, own  
25 certain real property located within the Elk Point Subdivision, in Zephyr Cove, Douglas County,  
26 Nevada.  
27

28 3. Defendant, Elk Point Country Club, Inc., ("EPCC"), is a Nevada non-profit, non-  
stock corporation and recognized as a social club by the Internal Revenue Service.

1           4.       The evidence demonstrates EPCC was established in 1925 by filing its Articles of  
2 Incorporation of Nevada Elks Tahoe Association, which articles were later amended to change  
3 the name to Elk Point Country Club, Inc.<sup>1</sup>

4           5.       The evidence demonstrates that EPCC is a private, members-only gated  
5 subdivision, which includes private property and facilities owned by EPCC, including the  
6 following: private roads, private beach, marina, boat storage, a water system and water tank,  
7 beach deck and barbeque area, water rights, water tank and water pumping system, and a  
8 designated residential home for a full-time onsite caretaker.

9           6.       The evidence demonstrates that purchasers of Units located within EPCC must  
10 apply for and be accepted as an EPCC member and must pay an initial membership fee to EPCC,  
11 which is currently \$20,000.00. In exchange for one's membership, EPCC members are permitted  
12 exclusive access and use of EPCC's private property and facilities.

13           7.       The evidence demonstrates that EPCC is subject to the certain Bylaws of Elk Point  
14 Country Club, Inc. There are several such Bylaws recorded at various times, including but not  
15 limited to those recorded on September 11, 2000, with the Douglas County Recorder as Document  
16 No. 0499187, those recorded on August 1, 2001, with the Douglas County Recorder as Document  
17 No. 0519700, and those recorded on August 26, 2005, with the Douglas County Recorder, as  
18 Document No. 0653319 (collectively "Bylaws"), including all subsequent amendments  
19 incorporate therein. The evidence shows the Bylaws Preamble states in pertinent part as follows:  
20 "[EPCC's] primary purpose is hereby affirmed to be to provide its members the pleasure of  
21 fellowship and recreation, and its corporate functioning shall be designed to achieve in highest  
22

23  
24  
25  
26  
27           <sup>1</sup> There was an amendment purportedly changing the name as Elk Point Country Club  
28 Homeowners Association, Inc., but such change is irrelevant to the issues before the Court  
because the club's property is owned by Elk Point Country Club, Inc., and the IRS exemption is  
in favor of Elk Point Country Club, Inc.



1 measure such purpose. It shall not operate its properties or facilities with the view of providing  
2 profit to its members but rather such properties and facilities shall be held, operated, and made  
3 available to the use and enjoyment of its members . . .” The evidence further shows that the  
4 Bylaws Preamble as set forth herein has been duplicated and repeated in every iteration of the  
5 bylaws. The Bylaws also provide at Article III, Section 2: “The Executive Board shall have the  
6 Power to conduct, manage and control the affairs and business of the Corporation and to make  
7 rules and regulations not inconsistent with the laws of the State of Nevada, the Articles of  
8 Incorporation and the Bylaws of the Corporation.” The evidence further shows that Article III,  
9 Section 2 of the Bylaws has been duplicated and repeated in every iteration of the Bylaws  
10 identified herein.  
11

12  
13 8. The evidence demonstrates that EPCC is subject to certain Rules and Regulations,  
14 recorded with the Bylaws on September 18, 1995, in the Douglas County Recorder as Document  
15 No. 370678 (“Rules”). The Rules provide at paragraph 10 that “[n]o person shall operate any  
16 business on the Club premises, nor on their individual property, within the Club.”  
17

18 9. The evidence shows that on September 14, 2019, the EPCC Board of Directors  
19 adopted the Rules, Regulations and Guidelines (“Amended Rules”) which permit transient  
20 commercial use of Units and long-term rentals of Units within EPCC. The Amended Rules were  
21 not recorded.  
22

23 10. The evidence shows that the Bylaws and Rules make references to both Tenants  
24 and Guests. The evidence further shows that both the Bylaws and the Rules do not permit for-  
25 profit use of EPCC property and facilities, including member Units.

26 11. The evidence shows that EPCC is an Internal Revenue Code (“IRC”) Section  
27 501(c)(7) tax-exempt social club located in Zephyr Cove, Douglas County, Nevada. By way of  
28

///

1 its tax-exempt status, EPCC has enjoyed its tax-exempt social club status and such status is an  
2 important attribute of EPCC since 1925.

3 12. The evidence demonstrates that when determining an entity's IRC 501(c)(7) tax-  
4 exempt status, the Internal Revenue Service ("IRS") looks at the following factors: (1) the social  
5 club must have an established membership of individuals, commingling, and fellowship; (2) the  
6 social club must be organized for pleasure, recreation and other non-profitable purpose, meaning  
7 it does not provide pleasure and recreation on a commercial basis; and (3) substantially all of the  
8 activities of the club are for such purposes and no part of the net earnings of which inures to the  
9 benefit of any private club member.  
10

11 13. The evidence demonstrates that the stated intent and purpose of EPCC Bylaws is  
12 in conformance with IRC 501(c)(7), in that EPCC is not to engage in behavior which encourages  
13 profit to its members, and that it was organized with the specific intent to provide its members  
14 with fellowship and recreation.  
15

16 14. The evidence shows that EPCC members are renting their Units for transient  
17 commercial uses, *i.e.* rentals for less than 30 consecutive calendar days, and are also engaged in  
18 renting their Units for long-term residential use, *i.e.* rentals for longer than 30 consecutive  
19 calendar days.  
20

21 15. The evidence demonstrates that the EPCC Board of Directors have failed, refused,  
22 and declined to prohibit transient commercial use within EPCC and have, in fact, encouraged and  
23 facilitated such use, including by way of example, adopting the Amended Rules, creating a rental  
24 calendar identifying the dates the various Units are rented, and providing information to Douglas  
25 County when an owner seeks to have a permit issued for transient commercial use of their Unit.  
26

27 16. Plaintiffs initiated this action to enjoin Defendant from encouraging, facilitating,  
28 and accommodating EPCC members from renting their Units for a profit, which use violates the

1 Bylaws and puts EPCC's IRC 501(c)(7) tax-exempt status at risk. In addition, Plaintiffs requested  
2 that the Defendant be required to enforce its recorded Bylaws and Rules in a manner that avoids  
3 jeopardizing the tax-exempt status of EPCC.

4  
5 17. The Court finds that EPCC members are engaged in transient commercial use  
6 and/or long-term leasing of their properties and are thus, operating their Units for a profit. The  
7 Court further finds that such use is directly contrary to, and in violation of, the language set forth  
8 in the Bylaws and the Rules, which specifically prohibits EPCC from operating its properties and  
9 facilities with the view of providing profit to its members.

10  
11 18. The Court finds that EPCC members engaged in renting their Units to obtain  
12 revenue constitutes a use of the Units for a profit, including both transient commercial use and  
13 long-term rentals, and that use puts EPCC's IRC 501(c)(7) tax-exempt status at risk.

14 19. The Court finds that Plaintiff has demonstrated a likelihood of success on the  
15 merits that EPCC members engaged in transient commercial use and long-term rental use of their  
16 Units violates the Bylaws and Rules.

17  
18 20. The Court concludes that the unrecorded Amended Rules are in violation of and  
19 contrary to the Bylaws of EPCC, in that they permit, facilitate, and encourage renting Units to  
20 generate revenue for profit, and as a result, they are not enforceable as they relate to any rental  
21 activity for profit within EPCC.

22 21. The Court finds that EPCC members engaged in renting their Units for profit  
23 constitutes an immediate threat of permanent damage to EPCC and its members through the loss  
24 of its IRC 501(c)(7) tax-exempt status, and the loss of the character of the community.

25  
26 22. The Court finds that EPCC members engaged in renting their Units for profit  
27 constitutes an immediate threat of permanent damage to EPCC by causing a change in the nature  
28 of the entity as a private social club designed to promote the social and recreational benefit to

1 those who are members. Specifically, the Court finds that allowing members to engage in renting  
2 their Units for profit changes the nature of the organization to that of a commercial organization.

3 23. The Court finds a bond in the amount of \$5,000.00 is appropriate and supported  
4 by the facts.  
5

6 24. If any finding of fact above is, in fact, a conclusion of law, it should be regarded  
7 as such.

### 8 CONCLUSIONS OF LAW

9 This Court concludes the following as the controlling law in this matter:

10 A. A party seeking the issuance of a preliminary injunction under NRCP 65 and NRS  
11 33.010 bears the burden of establishing (1) a likelihood of success on the merits, and (2) a  
12 reasonable probability that the non-moving party's conduct, if allowed to continue, will cause  
13 irreparable harm for which compensatory damages is an inadequate remedy. *S.O.C., Inc. v.*  
14 *Mirage Casino-Hotel*, 117 Nev. 403, 408, 23 P.3d 243 (2001).  
15

16 B. Interpretation of a contract's terms is question of law. *Shelton v. Shelton*, 119 Nev.  
17 492, 497, 78 P.3d 507, 510 (2003). Contractual provisions should be harmonized whenever  
18 possible. *Eversole v. Sunrose villas VIII Homeowners Ass'n*, 112 Nev. 1255, 1260, 925 P.2d 505,  
19 509 (1996), and no provisions should be rendered meaningless. *Musser v. Bank of Am.*, 114 Nev.  
20 945, 964 P.2d 51, 54 (1998).  
21

22 C. This Court concludes that a consistent reading of the Bylaws that gives meaning  
23 to all provisions included therein is that members are not permitted to operate their Units or any  
24 EPCC property and facilities in order to generate revenue or for a profit.  
25

26 D. This Court finds that any use of a Unit within EPCC to generate revenue or for a  
27 profit, including both transient commercial use and long-term rental use, is in violation of the  
28 clear and unambiguous terms of the Bylaws, and recorded Rules.

1           E.       This Court finds that any use of a Unit within EPCC to generate revenue or for a  
2 profit, including both transient commercial use and long-term rental use, jeopardizes the tax-  
3 exempt social club status under the IRC.

4           F.       This Court concludes that it would lead to inconsistent and contradictory results  
5 if, as suggested by Defendant, the references to the term "tenant" within the Bylaws and the Rules  
6 was used as a means to justify allowing EPCC members to rent their Units to generate revenue or  
7 for a profit. This Court finds that there are many different classifications of tenancies recognized  
8 by the State of Nevada, including joint tenancies, tenancies in common, life tenancies, and  
9 tenancies for years. Thus, the plain language of the Bylaws, reading it in context and construing  
10 it so as to render each word, phrase and term meaningful, unambiguous, and harmonious with the  
11 whole, requires a finding that EPCC is not entitled to operate its properties and facilities to  
12 generate revenue or for a profit, which necessarily includes any rental of a Unit or EPCC property  
13 and facilities for either long-term rental or transient commercial use.

14           G.       This Court concludes that the Amended Rules adopted by EPCC on September 14,  
15 2019, as they relate to rental activity within EPCC, are in violation of the Bylaws, and are  
16 therefore unenforceable to the extent they permit members to derive revenue or a profit through  
17 the rental of their Units for both transient commercial use and long-term rentals.

18           H.       This Court concludes that Plaintiffs have met their burden of proving they have a  
19 likelihood of success on the merits. Based on the evidence presented, the intent under the Bylaws  
20 was for EPCC to be formed as a social club, to maintain that status as a IRC 501(c)(7) tax-exempt  
21 social club, and that, under the Bylaws, any use or operation of a Unit within EPCC, or any EPCC  
22 property and facilities, by any member, to generate revenue or for a profit, is strictly prohibited.

23           I.       Irreparable harm is that harm for which compensatory damages would be  
24 inadequate. *Dixon v. Thatcher*, 103 Nev. 414, 415, 742 P.2d 1029, 1029-30 (1987).

1 J. Plaintiffs have met their burden, in demonstrating to the satisfaction of this Court,  
2 that there is a threat of permanent and irreparable harm if EPCC's IRC 501(c)(7) tax-exempt  
3 status is lost in the event EPCC is not immediately enjoined from allowing, facilitating and  
4 encouraging EPCC members in renting their Units or any other EPCC property and facilities,  
5 and deriving revenue or a profit from such use. An award of compensatory damages would be a  
6 futile act by this Court for this type of damage, because, in addition to the loss of the tax-exempt  
7 status, such irreparable harm includes a change in the overall nature and character of the  
8 community, from one originally designed to promote the social and recreational benefit to those  
9 who are members, to simply a commercial organization.  
10

11 K. Plaintiffs are entitled to injunctive relief requiring EPCC to enforce its Bylaws,  
12 and to prohibit the use of any Unit, and any other portion of EPCC's property and facilities, to  
13 generate revenue or for profit, during the pendency of this case.  
14

15 L. The purpose of posting security bond is to protect a party from damages incurred  
16 as a result of a wrongful injunction, not from damages existing, if any, before the injunction was  
17 issued. *See American Bonding Co. v. Roggen Enterprises*, 109 Nev. 588, 854 P.2d 868 (1993).  
18 A bond in the amount of \$5,000.00 is appropriate under the circumstances.  
19

20 L. If any conclusion of law above is, in fact, a finding of fact, it will be treated as  
21 such.  
22

### 23 ORDER

24 Upon the foregoing facts and controlling law, the Court enters the following Order:

25 ***IT IS HEREBY ORDERED, ADJUDGED AND DECREED*** that Plaintiffs' Motion for  
26 Preliminary Injunction is GRANTED.

27 ///

1        ***IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED*** that EPCC is  
2 required to enforce its Bylaws, specifically as the Bylaws prohibit EPCC and its members from  
3 deriving any revenue or profit through the operation of its properties and facilities.

4        ***IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED*** that EPCC  
5 shall within 90 days from the date of this Order prohibit, prevent, and enjoin and any rental use  
6 of any portion of EPCC's property and facilities, including member's Units, and that said use  
7 expressly incudes both transient commercial use and long-term rental use of any Unit.  
8

9        ***IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED*** that Plaintiff  
10 shall post a bond in the amount of \$5,000.00 in accordance with NRCP 65(c) as security.  
11

12        ***IT IS SO ORDERED.***

13        DATED this 15 day of December, 2020.

14   
15 DISTRICT COURT JUDGE  
16

17 Respectfully Submitted  
18 this 3<sup>rd</sup> day of November, 2020, by:

19 ***LEACH KERN GRUCHOW***  
20 ***ANDERSON SONG***

21 ***SOPHIE A. KARADANIS, ESQ.***

22 Nevada Bar No. 12006

23 ***GAYLE A. KERN, ESQ.***

24 Nevada Bar No. 1620

25 5421 Kietzke Lane, Ste. 200

26 Reno, Nevada 89511

27 Tel: (775) 324-5930

28 E-mail: skaradanis@lkglawfirm.com

*Attorneys for Plaintiff*

Document Part “3”

Document Part “3”



1 Case No. 2020-CV-00124

2 Dept. No. I

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21 MAR 15 P1:20

BOBBIE R. WILLIAMS

CLERK

BY *Kabat* DEPUTY

6 IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

7 IN AND FOR THE COUNTY OF DOUGLAS

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

16 Plaintiffs,

17 v.

**ORDER**

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

24 Defendants.

25 THIS MATTER comes before the court upon Defendant Elk Point Country Club  
26 Homeowners Association, Inc.'s Motion to Stay Matter Pending Interlocutory Appeal. The  
27 motion is opposed. Having examined all relevant pleadings and papers on file herein, the  
28 court now enters the following order, good cause appearing:

THAT the motion to stay the court's preliminary injunction pending an interlocutory  
appeal is GRANTED.

1 Pursuant to NRAP 8(a)(1), defendant requests the court stay the preliminary  
2 injunction due to become effective on Saturday, March 20, 2021. Defendants appealed the  
3 preliminary injunction on February 4, 2021. Defendants also request a stay of the discovery  
4 process.

5 The Supreme Court of the State of Nevada considers the following factors in  
6 deciding whether to issue a stay:  
7

8 (1) whether the object of the appeal will be defeated if the stay is denied;

9 (2) whether appellant will suffer irreparable or serious injury if the stay is denied;

10 (3) whether respondent will suffer irreparable or serious injury if the stay is granted; and

11 (4) whether appellant is likely to prevail on the merits in the appeal.

12 *Mikohn Gaming Corp. v. McCrea*, 120 Nev. 248, 251, 89 P.3d 36, 38 (2004) (citing *NRAP*  
13 *8(c)*); see also *Fritz Hansen A/S, Petitioner v. Eighth Jud. Dist. Ct.*, 116 Nev. 650, 657,  
14 6 P.3d 982, 986 (2000). “We have not indicated that any one factor carries more weight  
15 than the others, although *Fritz Hansen A/S v District Court* recognizes that if one or two  
16 factors are especially strong, they may counterbalance other weak factors.” *Mikohn Gaming*  
17 *Corp.*, 120 Nev. at 251, 89 P.3d at 38.

19 Absent a stay of the preliminary injunction, defendant is to begin preventing long  
20 and short term rentals of members’ real property as of March 20, 2021. Such action will  
21 require that some tenants of long term rentals be displaced from their primary residences.  
22 The object of the appeal is to overturn the preliminary injunction, thereby preventing it from  
23 remaining in effect during the pendency of this matter. The court finds the object of the  
24 appeal is defeated if no stay is granted and the preliminary injunction is allowed to become  
25 effective on March 20, 2021.

27 Counsel for defendant declares upon information that serious injury will occur,  
28

1 without remedy, if the stay is denied. While plaintiff avers that only three of the one  
2 hundred members are currently conducting long term rentals of their property, causing those  
3 renters to relocate is a burdensome measure, especially during a period of pandemic.


4         Plaintiffs emphasize the return of the threat to defendant's tax exempt status and the  
5 ongoing violation of defendant's bylaws if the stay is granted, thereby defeating the very  
6 purpose of the preliminary injunction. This is a potentially serious and lasting adverse  
7 impact to the Elk Point Country Club. The court finds the competing allegations of serious  
8 or irreparable injury to both sides to be of serious consequence, causing the two separate  
9 factors set forth within NRAP 8(c) to be of equal import.

10         While defendant clearly disagrees with the court's preliminary ruling, nothing new or  
11 significant is proffered within the motion to convince the court the decision was in error and  
12 will be overturned. Other than asserting at page 6 of the motion, at lines 11 - 14, that the  
13 possibility of being overturned on *de novo* review "cannot be said to be insubstantial,"  
14 defendant has proffered no reason for the court not to rely upon the existing judgment  
15 reflected within the injunction.

16         Weighing the four factors, the court finds the result equally balanced and is therefore  
17 persuaded that issuing a stay to preserve the status quo is warranted in this instance. The  
18 order of preliminary injunction is stayed pending resolution of the interlocutory appeal, and  
19 all discovery processes are stayed until such resolution.

20  
21  
22  
23         IT IS SO ORDERED.


24         Dated this 15 day of March, 2021.

25  
26  
27  
28  
  
\_\_\_\_\_  
NATHAN TOD YOUNG  
District Judge

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Copies served by mail this 15 day of March, 2021, to:

- Gayle A. Kern, Esq.
- Sophie A. Karadanis, Esq.
- Leach Kern Gruchow Anderson Song
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- Richard H. Bryan, Esq.
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- 300 S. Fourth St., Ste. 1400
- Las Vegas, NV 89101
  
- Prescott Jones, Esq.
- Joshua Ang, Esq.
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- 8925 W. Russell Road, Ste. 220
- Las Vegas, NV 89148
  
- William E. Peterson, Esq.
- Janine C. Prupas, Esq.
- Kelly H. Dove, Esq.
- Snell & Wilmbur, L.L.P.
- 50 West Liberty Street, Ste. 510
- Reno, NV 89501

  
Judicial Executive Assistant

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2021 MAR 23 AM 8:55

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BY  DEPUTY

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12 *Attorneys for Defendant*

13 IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

14 IN AND FOR THE COUNTY OF DOUGLAS

15 K. J. BROWN, L.L.C., a Nevada limited  
16 liability company; and TIMOTHY D.  
17 GILBERT and NANCY AVANZINO  
18 GILBERT, as trustees of the TIMOTHY D.  
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21 DATED DECEMBER 27, 2013,

22 Plaintiffs,

23 v.

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

Defendants.

CASE NO.: 2020-CV-0124

DEPT: I

NOTICE OF ENTRY OF ORDER

///

///

///

///

1 PLEASE TAKE NOTICE that the ORDER GRANTING DEFENDANTS' MOTION  
2 TO STAY MATTER PENDING INTERLOCUTORY APPEAL was entered on the 15<sup>th</sup> day of  
3 March, 2021, a copy of which is annexed hereto.

4 DATED this 22<sup>ND</sup> day of March, 2021.

5 RESNICK & LOUIS, P.C.

6 

7  
8 PRESCOTT JONES  
9 Nevada Bar No. 11617  
10 JOSHUA ANG, ESQ.  
11 Nevada Bar No. 14026  
12 *Attorneys for Defendant*  
13  
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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that service of the foregoing **NOTICE OF ENTRY OF ORDER** was served this 22<sup>nd</sup> day of March, 2021 by:

☐ **BY U.S. MAIL:** by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Las Vegas, Nevada, addressed as set forth below.

☐ **BY FACSIMILE:** by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m. pursuant to EDCR Rule 7.26(a). A printed transmission record is attached to the file copy of this document.

☐ **BY PERSONAL SERVICE:** by causing personal delivery by an employee of Resnick & Louis, P.C. of the document(s) listed above to the person(s) at the address(es) set forth below.

☒ **BY ELECTRONIC SERVICE:** by transmitting via the Court's electronic filing services the document(s) listed above to the Counsel set forth on the service list on this date pursuant to EDCR Rule 7.26(c)(4).

John E. Leach, Esq.  
Gayle A. Kern, Esq.  
Sophie A. Karadanis, Esq.  
LEACH KERN GROCHOW ANDERSON SONG  
5421 Kietzke Lane, Ste. 200  
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*Attorneys for Plaintiffs*

Richard H. Bryan, Esq.  
c/o Fennemore Craig, P.C.  
300 S. Fourth St., Ste. 1400  
Las Vegas, NV 89101



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An employee of Resnick & Louis, P.C.

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Case No. 2020-CV-00124

MAR 15 2021

Dept. No. I

Douglas County  
District Court Clerk

21 MAR 15 P1:20

BOBBIE L. WILLIAMS

L. KABAT

IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE 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.

**ORDER**

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

Defendants.

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5 The Supreme Court of the State of Nevada considers the following factors in  
6 deciding whether to issue a stay:  
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- 8 (1) whether the object of the appeal will be defeated if the stay is denied;
- 9 (2) whether appellant will suffer irreparable or serious injury if the stay is denied;
- 10 (3) whether respondent will suffer irreparable or serious injury if the stay is granted; and
- 11 (4) whether appellant is likely to prevail on the merits in the appeal.

12 *Mikohn Gaming Corp. v. McCrea*, 120 Nev. 248, 251, 89 P.3d 36, 38 (2004) (citing *NRAP*  
13 *8(c)*); *see also Fritz Hansen A/S, Petitioner v. Eighth Jud. Dist. Ct.*, 116 Nev. 650, 657,  
14 6 P.3d 982, 986 (2000). "We have not indicated that any one factor carries more weight  
15 than the others, although *Fritz Hansen A/S v District Court* recognizes that if one or two  
16 factors are especially strong, they may counterbalance other weak factors." *Mikohn Gaming*  
17 *Corp.*, 120 Nev. at 251, 89 P.3d at 38.

18 Absent a stay of the preliminary injunction, defendant is to begin preventing long  
19 and short term rentals of members' real property as of March 20, 2021. Such action will  
20 require that some tenants of long term rentals be displaced from their primary residences.  
21 The object of the appeal is to overturn the preliminary injunction, thereby preventing it from  
22 remaining in effect during the pendency of this matter. The court finds the object of the  
23 appeal is defeated if no stay is granted and the preliminary injunction is allowed to become  
24 effective on March 20, 2021.

25 Counsel for defendant declares upon information that serious injury will occur,  
26  
27  
28

1 without remedy, if the stay is denied. While plaintiff avers that only three of the one  
2 hundred members are currently conducting long term rentals of their property, causing those  
3 renters to relocate is a burdensome measure, especially during a period of pandemic.

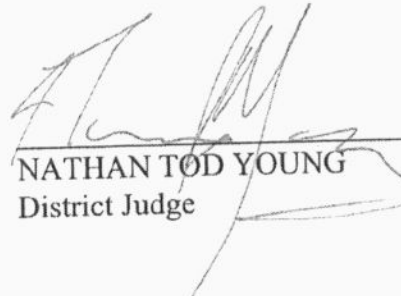
4 Plaintiffs emphasize the return of the threat to defendant's tax exempt status and the  
5 ongoing violation of defendant's bylaws if the stay is granted, thereby defeating the very  
6 purpose of the preliminary injunction. This is a potentially serious and lasting adverse  
7 impact to the Elk Point Country Club. The court finds the competing allegations of serious  
8 or irreparable injury to both sides to be of serious consequence, causing the two separate  
9 factors set forth within NRAP 8(c) to be of equal import.

10 While defendant clearly disagrees with the court's preliminary ruling, nothing new or  
11 significant is proffered within the motion to convince the court the decision was in error and  
12 will be overturned. Other than asserting at page 6 of the motion, at lines 11 - 14, that the  
13 possibility of being overturned on *de novo* review "cannot be said to be insubstantial,"  
14 defendant has proffered no reason for the court not to rely upon the existing judgment  
15 reflected within the injunction.

16 Weighing the four factors, the court finds the result equally balanced and is therefore  
17 persuaded that issuing a stay to preserve the status quo is warranted in this instance. The  
18 order of preliminary injunction is stayed pending resolution of the interlocutory appeal, and  
19 all discovery processes are stayed until such resolution.

20 IT IS SO ORDERED.

21 Dated this 15 day of March, 2021.

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NATHAN TOD YOUNG  
District Judge

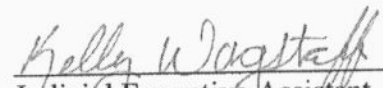
1 Copies served by mail this 15 day of March, 2021, to:

2  
3 Gayle A. Kern, Esq.  
4 Sophie A. Karadanis, Esq.  
5 Leach Kern Gruchow Anderson Song  
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7 Reno, NV 89511

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20 Snell & Wilmbert, L.L.P.  
21 50 West Liberty Street, Ste. 510  
22 Reno, NV 89501

  
Judicial Executive Assistant

Case No. 2020-CV-00124

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FILED

Dept. No. I

APR 22 2021

2021 APR 22 AM 11:05

Douglas County  
District Court Clerk

BOBBIE R. WILLIAMS  
CLERK

G. WALKER  
DEPUTY

IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE 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.

**ORDER**

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,

Defendants.

THIS MATTER comes before the court upon plaintiffs' Motion for Clarification.

The motion is opposed by the sole defendant.<sup>1</sup> Having examined all relevant pleadings and  
papers on file herein, the court now enters the following order, good cause appearing:

THAT the motion seeking clarification based upon an alleged ambiguity is DENIED.

Proposed Defendant-Intervenor Property Owners have filed multiple motions relatively  
recently, none of which will be addressed by the court until its jurisdiction returns upon  
remittitur from the Supreme Court of the State of Nevada.

1 Plaintiff proffers that an ambiguity exists within the court's order dated March 15,  
2 2021, which granted defendant's motion to stay the court's preliminary injunction pending  
3 an interlocutory appeal. Plaintiffs inquire whether the court intended to stay the entire  
4 preliminary injunction or only the portion of the injunction preventing long term rentals  
5 within the Elk Point Country Club.  
6

7 The court's order reviewed the four factors the state supreme court considers in  
8 deciding whether to issue a stay: (1) whether the object of the appeal will be defeated if the  
9 stay is denied; (2) whether appellant will suffer irreparable or serious injury if the stay is  
10 denied; (3) whether respondent will suffer irreparable or serious injury if the stay is granted;  
11 and (4) whether appellant is likely to prevail on the merits in the appeal.  
12

13 Within the written stay order, the court found the object of the appeal was defeated if  
14 no stay was granted. This finding favors defendant. The court found the competing  
15 allegations of serious or irreparable injury to both sides to be of serious consequence,  
16 causing two of the four separate factors to be of equal import. The fourth factor, whether  
17 appellant was likely to prevail on the merits in the appeal was a matter of opinion and  
18 therefore inconclusive.  
19

20 The order then concluded that "[w]eighing the four factors, the court finds the result  
21 equally balanced and is therefore persuaded that issuing a stay to preserve the status quo is  
22 warranted in this instance. The order of preliminary injunction is stayed pending resolution  
23 of the interlocutory appeal, and all discovery processes are stayed until such resolution."  
24 Order dated March 15, 2021, page 3, lines 19 - 22. No ambiguity exists within the order  
25

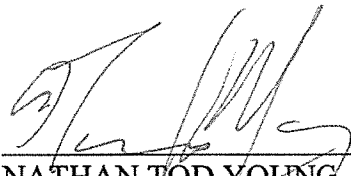
26 / / /

27 / / /

1 staying the preliminary injunction.

2 IT IS SO ORDERED.

3 Dated this 22 day of April, 2021.

  
NATHAN TOD YOUNG  
District Judge

6  
7 Copies served by mail this 22 day of April, 2021, to:

8 Gayle A. Kern, Esq.  
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Judicial Executive Assistant

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MAY 18 2021

FILED

Douglas County  
District Court Clerk

2021 MAY 18 AM 11:00

BOBBIE R. WILLIAMS  
CLERK

BY W. W. W. DEPUTY

1 **GAYLE A. KERN, ESQ.**

Nevada Bar No. 1620

2 **SOPHIE A. KARADANIS, ESQ.**

3 Nevada Bar No. 12006

**LEACH KERN GRUCHOW ANDERSON SONG**

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5 Reno, Nevada 89511

Tel: (775) 324-5930

6 E-Mail: gkern@lkglawfirm.com

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7 **RICHARD H. BRYAN, ESQ.**

8 Nevada Bar No. 2029

9 **FENNEMORE CRAIG, P.C.**

300 S. Fourth St., Ste. 1400

10 Las Vegas, NV 89101

11 Tel: (702) 692-8000

E-mail: rbryan@fennemorelaw.com

12 *Attorneys for Plaintiffs*

13 **IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF**

14 **NEVADA IN AND FOR COUNTY OF DOUGLAS**

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

CASE NO.: 2020 CV 00124

DEPT. NO.: I

21 Plaintiffs,

22 v.

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

28 Defendant.

**NOTICE OF ENTRY OF ORDER DENYING  
PLAINTIFFS' MOTION FOR CLARIFICATION**

1 PLEASE TAKE NOTICE that this Court entered an Order Denying Plaintiffs' Motion for  
2 Clarification ("Order") on the 22<sup>nd</sup> day of April 2021, in the above-captioned matter. A copy of  
3 the Order is attached hereto.

4 Pursuant to NRS 239B.030, the undersigned does hereby affirm that this *Notice of Entry*  
5 *of Order Denying Plaintiffs' Motion for Clarification* filed in the above-entitled case (2020 CV  
6 00124) does not contain the social security number of any person.  
7

8 DATED this 18<sup>th</sup> day of May, 2021.

9 ***LEACH KERN GRUCHOW ANDERSON SONG***

10 By: /s/ Sophie A. Karadanis  
11 **SOPHIE A. KARADANIS, ESQ.**  
12 Nevada Bar No. 12006  
13 5421 Kietzke Lane, Ste. 200  
14 Reno, Nevada 89511  
15 Tel: (775) 324-5930  
16 E-Mail: skaradanis@lkglawfirm.com  
17 *Attorneys for Plaintiffs*  
18  
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**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b), I certify that I am an employee of the law offices of Leach Kern  
Gruchow Anderson Song, and that on this date I served the foregoing document described as  
follows:

***NOTICE OF ENTRY OF ORDER DENYING  
PLAINTIFFS' MOTION FOR CLARIFICATION***

On the party(s) set forth below by:

- ☒ Placing an original or true copy thereof in a sealed envelope placed for collection  
and mailing in the United States Mail, at Reno, Nevada, postage prepaid, following  
ordinary business practices.

William E. Peterson, Esq.  
Janine C. Prupas, Esq.  
Kelly H. Dove, Esq.  
SNELL & WILMER, L.L.P.  
50 West Liberty St., Ste. 510  
Reno, NV 89501

Prescott Jones, Esq.  
Joshua Ang, Esq.  
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8925 W. Russell Road, Ste. 220  
Las Vegas, NV 89148

Richard H. Bryan, Esq.  
FENNEMORE CRAIG, P.C.  
300 S. Fourth St., Ste. 1400  
Las Vegas, NV 89101

- ☐ Electronically filing the foregoing with the Clerk of the Court by using the  
electronic filing system, which will send a notice of electronic filing to the  
following:

- ☐ Courtesy copies sent via email to the following:

DATED this 18<sup>th</sup> day of May 2021.

/s/ Arielle Navarro  
An Employee of Leach Kern  
Gruchow Anderson Song

1 Case No. 2020-CV-00124

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2 Dept. No. 1

APR 22 2021

2021 APR 22 AM 11:05

3 Douglas County  
4 District Court Clerk

BOBBIE R. WILLIAMS  
CLERK

5 **C. WALKER** DEPUTY

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7 IN AND FOR THE COUNTY OF DOUGLAS

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GILBERT, as trustees of the TIMOTHY D.  
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1 staying the preliminary injunction.

2 IT IS SO ORDERED.

3 Dated this 22 day of April, 2021.

4

5

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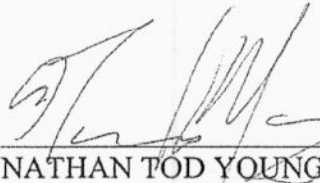
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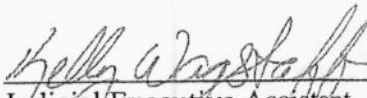
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NATHAN TOD YOUNG  
District Judge

  
Judicial Executive Assistant