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13 **SECOND JUDICIAL DISTRICT COURT**

14 **WASHOE COUNTY, NEVADA**

15 LAWRENCE GARVEY, an individual; and
16 ROBERT PAYTON, an individual;

17 Plaintiffs,

18 v.

19 CLUB TAHOE RESORT OWNERS
20 ASSOCIATION, INC., a Nevada nonprofit
21 corporation; KEITH WILSON, an individual;
22 GLORIA DEALBA, an individual; DONALD
23 WALL, an individual; ROBERT
24 VERMELTOORT, an individual; CHRISTINA
25 BECKER, an individual; KEITH OGDEN, an
26 individual; MARC PEARL, an individual; DOES 1
27 through 10 inclusive; and ROE CORPORATIONS
28 I through X inclusive,

Defendants.

Case No.: CV25-02319
Dept.: 9

**PLAINTIFFS' OPPOSITION TO
DEFENDANTS' MOTION FOR
PRELIMINARY INJUNCTION**

COMES NOW Plaintiffs, LAWRENCE GARVEY and ROBERT PAYTON (hereinafter
"Plaintiffs"), by and through their counsel, the law office of Gibbs Giden Locher Turner Senet &
Wittbrodt LLP, and hereby files their Opposition to Defendants' Motion for Preliminary Injunction
(the "Opposition") that was filed by Defendants CLUB TAHOE RESORT OWNERS
ASSOCIATION, INC. (the "Association"), KEITH WILSON ("Mr. Wilson"), GLORIA DEALBA
("Ms. DeAlba"), DONALD WALL ("Mr. Wall"), ROBERT VERMELTFOORT ("Mr.
Vermeltfoort"), CHRISTINA BECKER ("Ms. Becker"), KEITH OGDEN ("Mr. Ogden"), MARC
PEARL ("Mr. Pearl") (collectively, "Defendants").

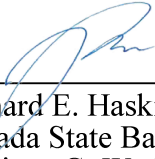
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1 This Opposition is made and based upon the pleadings and papers on file in this matter, the
2 following Memorandum of Points and Authorities, the entire records in this case, the attached exhibits,
3 and upon such argument as the Court may entertain at any hearing on the underlying Motion for
4 Preliminary Injunction.

5
6 DATED: February 17, 2026

GIBBS GIDEN LOCHER TURNER
SENET & WITTBRODT LLP

7
8 By: _____


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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Defendants' Motion for a Preliminary Injunction (the "Motion") seeks to silence Plaintiffs and prevent them from exercising their lawful First Amendment rights to communicate with Association members, vendors, and the management company, Grand Pacific Resorts ("GPR"), effectively silencing Plaintiffs and imposing an unconstitutional prior restraint on their speech. The Motion also seeks to prevent Plaintiffs and the Board of Directors voted in at the October 25, 2025 Special Meeting (the "October 2025 Board") from exercising their rightful authority as the duly elected Board of Directors of the Association following a valid recall election, which Defendants continue to improperly deny even though all requirements in the Association's Covenants, Conditions, and Restrictions ("CC&Rs"), Bylaws (together, the "Governing Documents") (Exhibit "5" to Plaintiffs' Motion for Preliminary Injunction ("PMPI")), and Nevada law were followed, and despite Defendants blatant ignorance of the receipt of 768 recall petitions and a unanimous vote of the Membership to recall the entire Board of Directors seated in the April 26, 2025 Annual Meeting (the "April 2025 Board").

A more detailed factual description of the violations of the April 26, 2025 Annual Election that seated the April 2025 Board in their positions, the continuous issues and violations during their tenure, and the October 25, 2025 Special Meeting (the "Special Meeting") and subsequent actions of the April 2025 Board and its counsel are stated in the concurrently filed Plaintiffs' Motion for Preliminary Injunction, with relevant allegations stated below in the Statement of Facts.

Moreso, contrary to Defendants' assertions, Plaintiffs and the October 2025 Board are not interfering with the Association's business operations and Defendants fail to provide any evidence of actual harm that would justify the issuance of a preliminary injunction. Instead, Defendants seek to retain control over the Association in spite of the clear will of the membership to the exact opposite. Therefore, the Court should deny Defendants' Motion because (1) Defendants cannot demonstrate a likelihood of success on the merits as the recall election was conducted in full compliance with the Governing Documents and Nevada law; (2) Defendants will not suffer irreparable harm absent an injunction; (3) the balance of hardships favors Plaintiffs; and (4) the requested injunction would

1 constitute an impermissible prior restraint on speech in violation of the First Amendment.

2 **II. STATEMENT OF FACTS¹**

3 Club Tahoe Resort is a timeshare condominium property located at 914 Northwood Blvd.,
4 Incline Village, Washoe County, Nevada 89451 (the “Property”) which consists of 93 Units with 51
5 interval weeks per Unit. (First Amended Complaint [“FAC”] at ¶16). The Property is operated,
6 maintained, and subject to the Association. (FAC at ¶17). The Association is governed pursuant to
7 the CC&Rs for the community, which are set forth in the Association’s governing documents and
8 include the Bylaws of the Association and all subsequent amendments (together, the “Governing
9 Documents”). (FAC at ¶18). The Governing Documents establish the procedures for elections,
10 meetings and Member rights.

11 The Association is governed by a Board of Directors, which until October 25, 2025,
12 consisted of seven directors: Keith Wilson, President; Gloria DeAlba, Vice President; Donald Wall,
13 Treasurer; Robert Vermeltfoort², Secretary; Christina Becker, Director; Keith Ogden, Director; and
14 Marc Pearl, Director (collectively, the “April 2025 Board”). (FAC at ¶20). The April 2025 Board
15 was elected to their respective positions in the procedurally invalid and therefore void Annual
16 Election held on April 26, 2025. (See FAC ¶¶21-61). In addition to conducting an improper April
17 2025 Annual Election, the April 2025 Board’s tenure has been marked by numerous violations of the
18 Governing Documents, including entering into multi-year management contracts that have been
19 harmful to the Association, failing to maintain the Property adequately, allowing improper transfers
20 of interval weeks to a Board Member, improperly transferring reserve funds without authorization,
21 and failing to provide required financial statements. (See FAC ¶¶62-124). Detailed specifics of the
22 April 2025 Board’s improper and harmful actions can be found in the attached Declarations to
23 Plaintiffs’ Motion for Preliminary Injunction, Exhibits 1 through 4.

24 After ongoing concern from many Members of the Association regarding the issues and
25 improprieties carried out by the April 2025 Board, a petition was circulated amongst Members to
26

27 ¹ The complete set of factual assertions can be found in Plaintiffs concurrently filed Motion for a
28 Preliminary Injunction and in the attached Declarations to that Motion.

² Mr. Vermeltfoort resigned as Secretary of the April 2025 Board on October 23, 2025.

1 initiate a recall of the members of the April 2025 Board. (FAC at ¶126) (PMPI at ¶¶19, 23-27;
 2 Exhibit “4” at ¶3). However, the April 2025 Board gained wind of these recall efforts, and within
 3 August 15 and 22, 2025 letters, the April 2025 Board expressly acknowledged their awareness of the
 4 ongoing recall efforts but sought to actively suppress the recall effort by misleading Members,
 5 issuing false statements, and seeking proxy solicitations for no valid or lawful purpose other than to
 6 obtain blanket voting authority in favor of the April 2025 Board. (FAC at ¶ 127). The misleading
 7 proxy solicitations and statements to Owners demonstrate the April 2025 Board’s early efforts to
 8 consolidate control over voting power and obstruct the membership’s recall initiative. (FAC at
 9 ¶128).

10 Thereafter, on September 18, 2025, Plaintiffs served the April 2025 Board with a formal
 11 written demand for a special meeting to recall the directors of the April 2025 Board (the “Formal
 12 Demand re Recall”). (FAC at ¶¶129-130). This Formal Demand re Recall was supported by
 13 petitions from Members of the Associations representing more than fifteen (15%) percent of the total
 14 voting power, as required by Article IV, Section 4 of the Bylaws. (FAC at ¶131) (PMPI Exhibit “4”
 15 at ¶¶3-4). Specifically, 770 signed Owner petitions were provided to Owner Dusk Bennett, which
 16 represented 18.6% of the Association’s membership according to Association records. (PMPI
 17 Exhibit “1” at 29; PMPI Exhibit “4” at ¶¶3-5). On September 18, 2025, Mr. Bennett packaged
 18 copies of the 768 Owner petitions he had received through that date, and mailed the petitions via
 19 FedEx overnight delivery to the Association and April 2025 Board. (PMPI Exhibit “4” at ¶5). The
 20 petitions were delivered by FedEx, addressed to the Association’s President, Keith Wilson on
 21 September 20, 2025, and were signed for by “Kevin K”. (PMPI Exhibit “4” at ¶¶5-6) (FAC at
 22 ¶¶133-134). Despite this demand, the April 2025 Board failed to call the special meeting as required
 23 by the Bylaws. (PMPI Exhibit “4” at ¶15) (FAC at ¶¶135-139).

24 After two weeks without a response from the April 2025 Board, Mr. Bennett sent an email to
 25 the entire April 2025 Board advising them that petitions were delivered and demanding a Special
 26 Meeting. (PMPI Exhibit “1” at ¶30; PMPI Exhibit “3” at ¶¶ 7-10; PMPI Exhibit “4” at ¶¶7-10).
 27 Five of the seven April 2025 Board members did not respond. (PMPI Exhibit “4” at ¶¶11-12).
 28 Thereafter, on October 8, 2025, Directors Ogden and Becker issued a formal demand, demanding

1 that the April 2025 Board call a special meeting for October 25, 2025. (PMPI Exhibit “1” at ¶31;
 2 PMPI Exhibit “3” at ¶¶12-28). The April 2025 Board did not respond. (PMPI Exhibit “3” at ¶25).
 3 After three formal requests were made to the April 2025 Board to hold the special meeting without
 4 any response, Directors Ogden and Becker issued a notice to the membership on October 11, 2025,
 5 in compliance with the fourteen-day notice requirement of Article IV, Section 2 of the Bylaws.
 6 (FAC at ¶¶140-144) (PMPI Exhibit “3” at ¶¶26, 28-33). The April 2025 Board failed and refused to
 7 acknowledge their fiduciary and legal requirements under the Bylaws to notice a special meeting
 8 pursuant to the petitions of more than 15% of the membership for the purpose of recalling the April
 9 2025 Board. (FAC at ¶145).

10 On October 25, 2025, a Special Meeting of the membership, as properly noticed by Directors
 11 Ogden and Becker, was duly convened for the purpose of holding a recall election. (FAC at ¶148)
 12 (PMPI Exhibit “2” at ¶¶81; PMPI Exhibit “3” at ¶¶32-33, 39-47). Less than 24 hours before the
 13 Special Meeting, access to the Association’s clubhouse was denied through representatives of the
 14 April 2025 Board, forcing Members to relocate to an alternative facility within Washoe County to
 15 conduct the special meeting. (FAC at ¶¶149-150) (PMPI Exhibit “1” at ¶¶32-34; PMPI Exhibit “2”
 16 at ¶82; PMPI Exhibit “3” at ¶36). Despite this obstacle, the Special Meeting proceeded on October
 17 25, 2025, with a quorum established. (PMPI Exhibit “1” at ¶34-36; PMPI Exhibit “2” at ¶84-85;
 18 PMPI Exhibit “3” at ¶42-44) (FAC at ¶151). At the Special Meeting, Members voted to recall all
 19 April 2025 Board members, with a unanimous recall of 641 votes cast in favor of the recall, and
 20 none that opposed. (PMPI Exhibit “1” at ¶¶35-37; PMPI Exhibit “2” at ¶¶83-85; PMPI Exhibit “3”
 21 at ¶¶45-46) (FAC at ¶151). Pursuant to Article V, Section 3 of the Bylaws, the motion to recall all
 22 members of the April 2025 Board was approved by the required two-thirds vote of present voting
 23 Members, and all April 2025 Board members were recalled from their positions effective
 24 immediately. (FAC at ¶¶152-153) (PMPI Exhibit “3” at ¶47). Following the recall, seven successor
 25 directors were immediately elected at the special meeting to fill the vacancies created by the recall
 26 (the “October 2025 Board”). (FAC at ¶¶155) (PMPI Exhibit “1” at ¶38, PMPI Exhibit “3” at ¶50).

27 Notwithstanding this vote, the April 2025 Board continues to act as the governing body of
 28 the Association. (FAC at ¶¶157-162) (PMPI Exhibit “1” at ¶39; PMPI Exhibit “3” at ¶¶48-62). The

1 April 2025 Board has refused to acknowledge the recall results, has failed to cooperate with the
 2 transition to the October 2025 Board, and has withheld Association records, keys, contracts, vendor
 3 information, and the membership roster from the October 2025 Board. (FAC at ¶¶157-158).
 4 Moreso, the April 2025 Board’s counsel, the law firm of Leach Kern Gruchow Song (“LKG”), has
 5 purported to represent only a fraction of the April 2025 Board, as LKG noticed Directors Ogden and
 6 Becker that they were excluded from a April 2025 Board meeting on October 29, 2025, even though
 7 LKG and the April 2025 Board have taken the position that the special meeting recall and successor
 8 director election were invalid and that the April 2025 Board remains the rightful board. (FAC at
 9 ¶¶159-161) (PMPI Exhibit “3” at ¶¶51-62).

10 The April 2025 Board continues to refuse to acknowledge the outcome of the October 25,
 11 2025 Special Meeting wherein the entire April 2025 Board was unanimously recalled and successor
 12 directors were duly elected as the current Board of the Association. This continuing refusal is an
 13 attempt by the April 2025 Board to retain control of the Association despite the clear will of the
 14 membership, and is a blatant disregard of the provisions and duties in the Governing Documents and
 15 their fiduciary duties under Nevada nonprofit corporate law.

16 **III. LEGAL STANDARD**

17 Nevada Revised Statute (“NRS”) 33.010 provides that an injunction may be granted when it
 18 shall appear by the complaint that the plaintiff is entitled to the relief demanded, and such relief or
 19 any part thereof consists in restraining the commission or continuance of the act complained of,
 20 either for a limited period or perpetuity. A preliminary injunction is an extraordinary remedy that
 21 should be granted only in limited circumstances. *Dep’t of Conservation & Nat. Res., Div. of Water*
 22 *Res. v. Foley*, 121 Nev. 77, 80, 109 P.3d 760, 762 (2005). Such remedy “may only be awarded
 23 upon a clear showing that the plaintiff is entitled to such relief.” *Winter v. Natural Res. Def.*
 24 *Council, Inc.*, 555 U.S. 7, 22 (2008). A preliminary injunction is only available if an applicant can
 25 show, with substantial evidence, a likelihood of success on the merits and a reasonable probability
 26 that the non-moving party's conduct, if allowed to continue, will cause irreparable harm for which
 27 compensatory damage is an inadequate remedy. *Shores v. Global Experience Specialists, Inc.*, 134
 28 Nev. 503, 507, 422 P.3d 1238, 1242 (2018); *Pickett v. Comanche Construction, Inc.*, 108 Nev. 422,

426, 836 P.2d 42, 44 (1992). A central factor to be considered by the court in connection with a motion for injunctive relief is whether the party seeking the injunction has shown a reasonable probability of success on the merits. *E.G. Sobol v. Capital Management Consultants, Inc.*, 102 Nev. 444, 446, 726 P.2d 335, 337 (1986). Indeed, the party seeking the injunction must make a “persuasive showing of irreparable harm . . .,” and must further show a “substantial likelihood that it will prevail on the merits of the underlying action.” *Clark Pacific v. Krump Constr., Inc.*, 942 F. Supp 1324, 1346-47 (D. Nev. 1996). The decision whether to grant a preliminary injunction is within the sound discretion of the district court, whose decision will not be disturbed on appeal absent an abuse of discretion. *Number One Rent-A-Car v. Ramada Inns*, 94 Nev. 779, 781, 587 P.2d 1329, 1330 (1978).

In deciding the propriety of a request for equitable relief, the Court should also consider the balance of the parties’ harm. *Univ. and Cmty. Coll. Sys. of Nev. v. Nevadans for Sound Gov’t*, 120 Nev. 712, 721, 100 P.3d 179, 187 (2004) (“In considering preliminary injunctions, courts also weigh the potential hardships to the relative parties. . .”). “The courts favor relief which prevents the wrong in preference to that which may afford redress.” *Czipott v. Fleigh*, 87 Nev. 496, 499, 489 P.2d 681, 683 (1971).

IV. LEGAL ARGUMENT

A. Defendants Cannot Demonstrate A Likelihood of Success On The Merits

1. *The October 25, 2025 Recall Election was Valid and Properly Conducted*

Contrary to Defendants’ assertions, the October 25, 2025 Special Meeting recall election was conducted in full compliance with the Association’s Governing Documents and Nevada law. Despite the April 2025 Board’s efforts to obstruct and prevent the recall election, the Members of the Association properly conducted a recall election and exercised their right to remove directors and elect successor directors through a valid special meeting process. As set forth in Plaintiffs’ First Amended Complaint and the concurrently filed Motion for Preliminary Injunction, and detailed below, the recall election was properly initiated, a quorum was established, the Plaintiffs satisfied Nevada law and the Governing Documents requirements to hold a properly noticed recall election,

1 and this election resulted in the entire April 2025 Board being recalled. Thereafter, new leadership
2 was installed following a vote of the present Members at the Special Meeting.

3 The Association's Bylaws explicitly require a special meeting to be called when requested by
4 15% of the voting members of the Association. (PMPI Exhibit "5" – Bylaws at Article IV, Section
5 4). Nevada law also recognizes the right of members to call special meetings of the members of
6 nonprofit corporations when the required percentage of voting power makes such a request. *See*
7 NRS 82.336(1). On September 20, 2025, petitions from Members representing more than 15% of
8 the voting power of the Association were delivered to the April 2025 Board, therefore triggering the
9 mandatory requirement from the Bylaws and NRS 82.336 to call a special meeting. The April 2025
10 Board had a mandatory duty to call the special meeting but failed to do so. This failure constituted a
11 breach of the Governing Documents, NRS 82.336, and their fiduciary duties as directors of the
12 Association.

13 In similar fashion, the April 2025 Board refused to acknowledge a demand for a response and
14 action by an Owner, multiple demands from two directors on the April 2025 Board, actively
15 attempted to obstruct the special meeting noticed for October 25, 2025, and falsely claimed the
16 petitions for the recall and the special meeting were invalid and improper. (FAC at ¶¶138-147).
17 Due to the April 2025 Board's refusal to call the special meeting as required by Article IV, Section 4
18 of the Bylaws, April 2025 Board Directors Ogden and Becker provided notice of a special meeting
19 for October 25, 2025, in compliance with the 14-day notice requiring of Article IV, Section 2 of the
20 Bylaws (the "Special Meeting"). Nevada law also requires proper notice for meetings of nonprofit
21 corporations. Pursuant to NRS 82.336, notice of a special meeting must be sent to each Member of
22 the Association not less than 10 and no more than 60 days before such meeting. *See* NRS 82.336(4).
23 Therefore, the notice provided by Directors Ogden and Becker on October 11, 2025, was compliant
24 with the Bylaws 14-day notice requirement, and within NRS 82.336(4)'s notice requirement. As
25 such, this notice was proper and effective despite the April 2025 Board's refusal to act.

26 Thereafter, at the Special Meeting on October 25, 2025, the recall vote conducted was valid
27 and binding under both the Association's Bylaws and Nevada law. A quorum was established at the
28 Special Meeting, satisfying the fundamental requirement for conducting Association business.

1 Pursuant to Article III, Section 2 of the Bylaws, a quorum is established when there is the presence
2 in person or by proxy of a majority of the Owners of the Association. Here, the presence in person
3 of nearly 200 Members and the additional proxies assigned to designated Members attending the
4 Special Meeting established quorum for the purpose of conducting the Special Meeting. (PMPI
5 Exhibit “1” at ¶¶35-37; PMPI Exhibit “2” at ¶¶83-85).

6 At the Special Meeting, 641 Members unanimously voted to recall the April 2025 Board,
7 with 0 votes against, thereby far exceeding the two-thirds requirement under Article V, Section 3 of
8 the Bylaws and NRS 119A.528, and the requirements of NRS 82.296. (PMPI Exhibit “1” at ¶37;
9 PMPI Exhibit “2” at ¶85; PMPI Exhibit “3” at ¶46). Nevada law specifically provides that “any
10 directors may be removed from office by the vote of members . . . representing not less than a
11 majority of the voting power of the members entitled to vote for the election of the director being
12 removed.” NRS 82.296(1). The law further specifies that the articles or bylaws may require a larger
13 percentage for removal. NRS 82.296(1)(b). NRS 119A.528 aligns with Article V, Section 3 of the
14 Bylaws wherein the statute provides that “a two-thirds vote of all persons present, in person or by
15 proxy, who are entitled to vote at any meeting of the owners at which a quorum is present, may
16 remove any member of the board, with or without cause.” NRS 119A.528(1). In this case, the vote
17 to recall the April 2025 Board was unanimous, satisfying even the most stringent voting
18 requirements, and certainly the requirements of NRS 82.296, NRS 119A.528, and Article V, Section
19 3 of the Bylaws.

20 Following the valid recall of the April 2025 Board, successor directors were immediately
21 elected in compliance with the Association’s Governing Documents. This prompt election ensured
22 continuity of governance of the Association. Pursuant to Article IV, Section 4 of the Bylaws, the
23 special meeting was for the purpose of conducting a recall and successor director election, and
24 because all members of the April 2025 Board were unanimously recalled, successor directors could
25 “then and there be elected to fill the vacancies” created by the removal of the April 2025 Board
26 pursuant to Article V, Section 3. Further, the successor director election was valid under NRS
27 82.286 wherein directors “may be elected at any special meeting of the members which is called and
28 held for that purpose.” NRS 82.286(1). The successor director election was conducted with the

1 same quorum present that had just voted for the recall, ensuring that the election was properly
2 constituted. The immediate election of successor directors was necessary to prevent any governance
3 gap that may have resulted from the recall, and was in compliance with the Bylaws and Nevada law.

4 ***2. Defendants' Procedural Objections are Without Merit***

5 Defendants' procedural objections to the recall election are without merit and appear
6 designed to obstruct the will of the Association's membership. 770 Owner petitions were provided
7 to the April 2025 Board via FedEx confirmed delivery, which represented 18.6% of the Association
8 and was more than the 15% requirement in the Bylaws. The Special Meeting was properly noticed
9 on October 11, 2025, providing the required 14-day notice under the Bylaws. The meeting was held
10 in Washoe County as required, and a quorum was established with nearly 200 Members present in
11 person plus additional proxies. Defendants' claim that they never received the recall petitions is
12 contradicted by FedEx delivery confirmation showing delivery on September 20, 2025, signed for by
13 "Kevin K." who is a maintenance supervisor and front desk attendant for the Association.

14 Despite the valid recall election, the April 2025 Board refuses to acknowledge the recall,
15 continues to act as the Board of Directors for the Association, and has engaged in a pattern of
16 improper obstruction designed to prevent the Members from exercising their rights to recall board
17 directors and elect successor directors. This obstruction began with their failure to acknowledge
18 receipt of the recall petitions on multiple occasions; refusal to call the special meeting as required by
19 the Bylaws after receiving over petitions from over 15% of the membership; scheduling a competing
20 board meeting at the same time as the Special Meeting; denying access to the Association's
21 clubhouse for the Special Meeting; and issuing misleading communications to Members questioning
22 the validity of the Special Meeting.

23 Despite these obstructive tactics, the Special Meeting proceeded in an orderly and transparent
24 manner, and the recall vote was properly certified. Defendants cannot now claim procedural defects
25 when they themselves actively worked to undermine the process.

26 **B. Defendants Will Not Suffer Irreparable Harm Absent An Injunction**

27 Defendants have failed to demonstrate that they will suffer irreparable harm absent an
28 injunction. Their claimed harms—alleged "disruption of governance" and "vendor confusion"—are

1 speculative, self-created, and unsupported by evidence. Any confusion stems from the April 2025
2 Board's refusal to acknowledge the valid recall election results, not from Plaintiffs' actions.
3 Nevertheless, the management company GPR has stated it will continue essential operations under
4 the 2025 budget; therefore, the Association functions still and presently. Both boards are holding
5 meetings and interacting with the membership. Thus, little to no disruption has actually or is
6 currently occurring.

7 Defendants have failed to identify specific, immediate harms that cannot be remedied
8 through monetary damages or other relief. In contrast, granting the requested injunction would
9 cause actual irreparable harm to Plaintiffs and the Association's membership by nullifying their
10 valid exercise of voting rights and perpetuating the April 2025 Board's mismanagement of the
11 Association, while restricting Plaintiffs' First Amendment rights to communicate with Association
12 members and vendors. Such restrictions on protected speech cannot be remedied through monetary
13 damages and constitute per se irreparable harm

14 **C. The Balance of Hardships Favors Plaintiffs**

15 The balance of hardships strongly favors denying the injunction. First, the April 2025
16 Board's pattern of obstruction, including their refusal to call the required Special Meeting, denial of
17 clubhouse access for the Special Meeting, and continued refusal to acknowledge the recall results
18 despite receipt of the 770 recall petitions and unanimous will of 641 Association Members,
19 demonstrates unclean hands that defeat equitable relief. This conduct should not be rewarded with
20 injunctive relief.

21 Second, the public interest favors respecting democratic governance and First Amendment
22 protections. If the injunction is granted, the will of the Association's membership, as expressed
23 through their unanimous vote to recall the April 2025 Board, would be thwarted. The Association
24 would continue to be governed by a board that has demonstrated mismanagement and disregard for
25 the Governing Documents. In contrast, denying the injunction would merely require the April 2025
26 Board to respect the results of a valid recall election conducted in accordance with Nevada law and
27 the Governing Documents. Any hardship to the April 2025 Board is minimal compared to the harm
28 that would be inflicted on Plaintiffs and the Association's membership if their valid vote is nullified.

Further, public interest is served by protecting First Amendment rights and avoiding prior restraints on speech seeking to silence parties in governance disputes.

Third, Defendants requested relief would effectively adjudicate the ultimate question in this litigation through preliminary injunctive relief: which board has legitimate authority? Such merits determinations are inappropriate at the preliminary injunction stage and should await full briefing and adjudication.

D. The Requested Injunction Would Constitute An Impermissible Prior Restraint on Speech

Most troublesome, Defendants requested injunction seeks to prohibit Plaintiffs from “conducting any Association business, issuing directives to third parties, accessing Association records, or holding themselves out as the duly appointed Board of Directors of the Association.” (Motion at 12:17-19). This broad prohibition would effectively silence Plaintiffs through an imposed “gag order” and prevent them from communicating with Association members, vendors, and other third parties about matters of public, mainly Association, concerns. Such a prohibition constitutes a prior restraint on speech, which bears a heavy presumption against constitutional validity under both the United States Constitution and Nevada Constitution.

1. Nevada’s Strict Prior Restraint Standard

The Nevada Supreme Court has established that prior restraints on speech face presumptive unconstitutionality and require the proponent to carry a heavy burden of justification. The Court has held that “a gag order preventing participants from making extrajudicial statements about their own case amounts to a prior restraint on speech and undermines First Amendment rights.” *Johanson v. Eighth Jud. Dist. Court*, 124 Nev. 245, 251, 182 P.3d 94, 98 (2008); *Las Vegas Review-Journal v. Eighth Jud. Dist. Court*, 134 Nev. 40, 43–44, 412 P.3d 23, 26 (2018). The Court has stated that the proponent of an order for prior restraint of speech “carries a heavy burden of showing justification for the imposition of such a restraint.” *Las Vegas Review-Journal*, 134 Nev. at 43, 412 P.3d at 26 (quoting *N.Y. Times Co. v. United States*, 403 U.S. 713, 714, 91 S. Ct. 2140 (1971)).

To justify a prior restraint, the interest the prohibition protects must be of the “highest order.” *Id.* (quoting *The Fla. Star v. B.J.F.*, 491 U.S. 524, 541, (1989)). Also, “[t]he restraint must be the

1 narrowest available to protect that interest; and the restraint must be necessary to protect against an
 2 evil that is great and certain, would result from the reportage, and cannot be mitigated by less
 3 intrusive measures.” *Id.* (quoting *People v. Bryant*, 94 P.3d 624, 628 (Colo. 2004)). The Court
 4 adopted a three-part test requiring that: “(1) the activity restrained poses either a clear and present
 5 danger or a serious and imminent threat to a protected competing interest, (2) the order is narrowly
 6 drawn, and (3) less restrictive alternatives are not available.” *Johanson*, 124 Nev. at 251, 182 P.3d
 7 at 98 (quoting *Levine v. U.S. Dist. Court for Cent. Dist. of Cal.*, 764 F.2d 590, 595 (9th Cir. 1985)).
 8 Nevada courts recognize that “prior restraints are subject to strict scrutiny because of the peculiar
 9 dangers presented by such restraints.” *Johanson*, 124 Nev. at 251, 182 P.3d at 98.

10 ***2. Defendants’ Requested Relief Directly Targets Protected Speech And Cannot***
 11 ***Satisfy Nevada’s Prior Restraint Test***

12 Defendants seek to enjoin Plaintiffs from “holding themselves out as the duly appointed
 13 Board of Directors” and “issuing directives to third parties.” These restrictions directly target
 14 Plaintiffs’ communications regarding their status as the duly elected board and their ability to engage
 15 with the Association’s members, vendors, and the management company. Such communications are
 16 core protected speech under the First Amendment, as they pertain to matters of public concern and
 17 democratic governance within the Association.

18 Nevada courts have consistently recognized that speech addressing governance, elections,
 19 and public decision-making is entitled to the highest level of constitutional protection. *See Andersen*
 20 *v. Hazell*, 2016 Nev. Dist. LEXIS 2313, at *57-58 (2016); *Carrigan v. Comm’n on Ethics*, 126 Nev.
 21 277, 236 P.3d 616 (2010) (political expression such as council member’s positions and votes on
 22 public matters are protected speech). “Whether . . . speech addresses a matter of public concern
 23 must be determined by [the expression’s] content form, and context . . . as revealed by the whole
 24 record.” *Connick v. Myers*, 461 U.S. 138, 147-148 (1983); *Dun & Bradstreet, Inc. v. Greenmoss*
 25 *Builders, Inc.*, 472 U.S. 749, 761 (1985). “[S]peech on public issues occupies the highest rung of the
 26 hierarchy of First Amendment values, and is entitled to special protection,” while protections
 27 afforded to speech on “matters of purely private concern . . . are less stringent.” *Dun & Bradstreet,*
 28 *Inc.*, 472 U.S. at 760. “There is no public issue when the speech is ‘solely in the individual interest

1 of the speaker and [the speaker’s] specific . . . audience.” *Bongiovi v. Sullivan*, 122 Nev. 556, 572,
 2 138 P.3d 433, 445 (2006).

3 The relevant factors in determining whether speech involves matters of public concern are:
 4 (1) the content of the speech; (2) the form of the speech; (3) the context in which the speech was
 5 made; (4) the number of people concerned by the speech; (5) the actual dissemination of the speech;
 6 (6) the nexus between the speech and the supposed public interest; and (7) the speaker’s motivations.
 7 *See Andersen*, 2016 Nev. Dist. LEXIS 2313, at *58. Further, “speech involving a Home Owners
 8 Association may involve a public concern, where the speech addressed: (1) the manner in which a
 9 large residential community would be governed; (2) the HOA directors/managers competency to
 10 manage the association; (3) statements concerning elections and recall campaigns; and (4) statements
 11 concerning how the community would be governed in the future.” *Id.* at *58–59 (citing *Damon v.*
 12 *Ocean Hills Journalism Club*, 102 Cal. Rptr. 2d 205 (Cal. Ct. App. 2000) (involving an HOA of
 13 3000 individuals in 1633 homes)). A statement regarding the governance of a homeowner’s
 14 association may be a statement of public concern, even though the statement is not published
 15 through traditional media or in a newspaper of community-wide circulation. *See e.g., Damon*, 102
 16 Cal. Rptr. 2d 205; *Ruiz v. Harbor View Community*, 37 Cal. Rptr. 3d 133 (Cal. Ct. App. 2005).

17 Content-based restrictions on speech, such as those proposed by Defendants, are subject to
 18 strict scrutiny. Under this standard, the proponent of the restriction must demonstrate that the
 19 regulation serves a compelling state interest and is narrowly tailored to achieve that interest. *Heller*
 20 *v. Give Nev. a Raise, Inc.*, 120 Nev. 481, 487, 96 P.3d 732, 735 (2004). Here, Defendants have
 21 failed to articulate any compelling interest that justifies silencing Plaintiffs’ communications about
 22 their governance role. The alleged harms, such as “vendor confusion” and “governance disruption,”
 23 are speculative and self-inflicted, as they arise from Defendants’ refusal to acknowledge the results
 24 of the recall election. The management company GPR has stated it would continue essential
 25 operations under the 2025 budget as an emergency measure, demonstrating that the Association’s
 26 functions can continue despite the ongoing governance dispute. Moreso, the requested injunction
 27 would prevent Plaintiffs from communicating about the recall election results, the involvement of
 28 hundreds of Association members in the recall efforts, and their status as the duly elected board

1 following the October 25, 2025 recall election to Association members, vendors, and the
2 management company.

3 **3. Defendants Requested Injunction Is Overboard**

4 Nevada courts require that content-based restrictions on speech “must address a compelling
5 state interest and be narrowly tailored to achieve that interest.” *Seres v. Lerner*, 120 Nev. 928, 931,
6 102 P.3d 91, 93 (2004). The requested injunction is not narrowly tailored, as it broadly prohibits all
7 communications regarding Plaintiffs’ status as the duly elected board, matters regarding the Special
8 Meeting and the concerns surrounding the April 2025 Board’s tenure. Defendants’ proposed order
9 seeks to restrict all speech about governance matters rather than targeting specific harmful conduct.
10 Such a sweeping restriction fails to account for less restrictive alternatives. Even if Defendants
11 could demonstrate compelling justification, they have failed to show that less restrictive alternatives
12 are unavailable. For example, the Court could require neutral disclosures acknowledging the
13 governance dispute, establish protocols for vendor communications, or order preservation of
14 Association records without restricting speech. Defendants’ failure to explore such alternatives
15 defeats their request for a speech-restrictive injunction.

16 Should the Court believe interim relief is necessary, Plaintiffs propose a narrow order
17 requiring both factions to include neutral disclaimers in communications stating that the
18 Association’s Board of Directors composition and authority is disputed and pending court
19 determination, prohibiting only misuse of Association funds, accounts, and letterhead, and requiring
20 record preservation-without restricting speech. This approach would address Defendants’
21 operational concerns while preserving First Amendment protections.

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1 **V. CONCLUSION**

2 For the foregoing reasons, Plaintiffs respectively request that this Court deny Defendants'
3 Motion for a Preliminary Injunction in its entirety. Defendants' Motion seeks an impermissible prior
4 restraint on protected speech, especially as the October 2025 Board was validly elected following the
5 recall of the entire April 2025 Board. Granting Plaintiffs' Motion would only serve to reward
6 Defendants' obstructionist conduct.

7
8 DATED: February 17, 2026

GIBBS GIDEN LOCHER TURNER
SENET & WITTBRODT LLP

9
10 By: _____


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CERTIFICATE OF MAILING

The undersigned, an employee of the law firm of GIBBS GIDEN LOCHER TURNER SENET & WITTBRODT LLP, hereby certifies that on February 17, 2026, they served a copy of the foregoing **PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION FOR PRELIMINARY INJUNCTION** by electronic service through the Regional Justice Center for Washoe County, Nevada's ECF System:



An employee of
Gibbs Giden Locher Turner
Senet & Wittbrodt LLP

GIBBS, GIDEN, LOCHER, TURNER & SENET LLP

1
2 SECOND JUDICIAL DISTRICT COURT
3 COUNTY OF WASHOE, STATE OF NEVADA

4 AFFIRMATION
5 Pursuant to NRS 239B.030 and 603A.040

6 The undersigned does hereby affirm that the preceding document, *(title of document)*

7 OPPOSITION TO MOTION FOR PRELIMINARY INJUNCTION

8 file in case number: CV25-02319

9
10 (☒ *mark one*)

11 ☒ Document does not contain the personal information of any person.

12
13 ☐ Document contains the personal information of a person as required by: (☒ *mark one*)

14 ☐ A specific state or federal law, to wit: *(write the specific state or federal law)*

15 _____
16 ☐ For the administration of a public program

17 ☐ For the administration for a federal or state grant

18 ☐ Confidential Family Court Information Sheet (NRS 125.130, NRS 125.230, and
19 NRS 125B.055)

20
21
22 DATED this *(day)* 17th day of *(month)* February, 2026.

23
24 Submitted By: *(Your signature)* _____

25 *(Print your name)* Richard E. Haskin, Esq.

26 *(Attorney for)* Plaintiffs
27
28