

1 **WOLF, RIFKIN, SHAPIRO, SCHULMAN & RABKIN, LLP**
2 **GREGORY P. KERR, ESQ.**
3 Nevada Bar No. 10383
4 3556 E. Russell Road, Second Floor
5 Las Vegas, Nevada 89120
6 (702) 341-5200/Fax: (702) 341-5300
7 gkerr@wrslawyers.com

8 *Attorneys for Respondent James Lauth*

FILED

SEP 07 2016

NEVADA COMMISSION OF
COMMON INTEREST COMMUNITIES
AND CONDOMINIUM HOTELS

9 **COMMISSION FOR COMMON-INTEREST COMMUNITIES AND**
10 **CONDOMINIUM HOTELS**
11 **STATE OF NEVADA**

12 **JOSEPH (J.D.) DECKER, Administrator,**
13 **REAL ESTATE DIVISION, DEPARTMENT**
14 **OF BUSINESS & INDUSTRY, STATE OF**
15 **NEVADA,**

16 **Petitioner,**

17 **vs.**

18 **ANTHEM HIGHLANDS COMMUNITY**
19 **ASSOCIATION, PENNIE PUHEK, JAMES**
20 **LAUTH, and CHARLES HERNANDEZ,**

21 **Respondents.**

Case No. 2015-291

RESPONDENT JAMES LAUTH'S REPLY
TO THE DIVISION'S OPPOSITION TO
LAUTH'S MOTION TO DISMISS; AND

OPPOSITION TO THE DIVISION'S
COUNTERMOTION FOR SUMMARY
JUDGMENT

22 Respondent James Lauth ("Mr. Lauth"), by and through its attorney Gregory P. Kerr, Esq.,
23 of WOLF, RIFKIN, SHAPIRO, SCHULMAN & RABKIN, LLP, hereby files this Reply to the
24 Division's Opposition to James Lauth's Motion to Dismiss and Opposition to the Division's
25 Counter-motion for Summary Judgment based on the Memorandum of Points and Authorities set
26 forth below and any oral argument regarding the same:

27 **MEMORANDUM OF POINTS AND AUTHORITIES**

28 As evidenced through the Division's complaint against Mr. Lauth and its prosecution
thereof, along with the Division's recent Opposition and Counter-motion to Mr. Lauth's Motion to
Dismiss or Summary Judgment, the Division's singular claim against Mr. Lauth is trivial, petty
and baseless. The Division's attempts to bolster its claim through its motion pleadings are based
on gross mischaracterizations and flat out lies regarding Mr. Lauth's positions. The Division's
Opposition and Counter-motion is a rambling, incoherent, unstructured and undisciplined attempt

1 to drum up some conspiratorial friendship among all of the board members to take down Mr.
2 Robert Stern—apparently at the expense of any prospect that the board members might actually be
3 acting in what they see as the best interest of the Association in response to a plethora of
4 complaints from Mr. Stern. In fact, the Division’s counsel even went so far as to call Mr. Lauth
5 “cowardly” simply because he submitted an affidavit wherein, after consultation with the other
6 board members and the Association’s legal counsel, he did not believe that he should take part in
7 disavowing Ms. Pennie Puhek’s personal comments. Further unnecessary are the Division’s
8 counsel’s statements accusing, by implication, that Mr. Lauth and other board members display
9 “juvenile behavior” and convene as a “high school clique.” In desperation to save an otherwise
10 baseless claim against Mr. Lauth, the Division’s counsel uses its Opposition and Counter-motion to
11 inappropriately interject new and additional claims of wrongdoing that, even if they were true,
12 would have absolutely nothing to do with establishing the violations as set forth in the Division’s
13 complaint. The Division inappropriately substitutes its own judgment for that of the Board’s
14 judgment, and the Division repeatedly disregards the undisputed fact that Mr. Lauth had
15 absolutely nothing to do with, or responsibility for, comments made by Ms. Puhek, whether the
16 comments constituted a violation of anything or not. The Division’s counsel has displayed an
17 advocacy of its client that is totally unacceptable, and Mr. Lauth has no business being targeted by
18 the Division based on what is alleged in the complaint. Mr. Lauth’s affidavit was the product of
19 deliberation with other board members and the Association’s attorney and, as such, his positions
20 therein are protected under the business judgment rule. The Division’s claim that his affidavit
21 constitutes a willful and knowing act of self-interest, personal gain or prejudice is entirely
22 unsupportable as a matter of law.

23 **A. The Division Is Mistaken On How ‘The Best Interest Of The Association’ And ‘Good**
24 **Faith’ Is Viewed Under Nevada Law**

25 The Division repeatedly tries to say that Mr. Lauth (and the other board members) failed to
26 act in good faith and in the best interest of the Association by not disavowing Ms. Puhek’s
27 comments. For example, the Division states in its opposition at page 8, lines 6-8 as follows:

28 LAUTH’S affidavit supporting PUHEK is cowardly, not in good

1 faith, and not in the best interest of the Association.

2 First off, the Division's counsel's attack of Mr. Lauth or his affidavit as "cowardly" is
3 uncalled for and not helpful. It evidences only a personal motivation to prosecute Mr. Lauth rather
4 than an effort by the Division to uphold the law. Second, the Division does not get to determine
5 what the best interest of the Association is. In doing so, the Division oversteps its authority and
6 does not accurately represent how the law analyzes parliamentary-based decisions. NRS
7 116.3103(1)(a)(b) reads as follows:

8 Except as otherwise provided in the declaration, the bylaws, this
9 section or other provisions of this chapter, the executive board acts
10 on behalf of the association. In the performance of their duties, the
11 officers and members of the executive board are fiduciaries and
12 shall act on an informed basis, in good faith and in the honest
13 belief that their actions are in the best interest of the association.
14 Officers and members of the executive board:

15 (a) Are required to exercise the ordinary and reasonable care of
16 officers and directors of a nonprofit corporation, subject to the
17 business-judgment rule; and

18 (b) Are subject to conflict of interest rules governing the officers
19 and directors of a nonprofit corporation organized under the law of
20 this State.

21 (NRS 116.3103(1)(a)(b)).

22 The above statute commands that association boards of directors must exercise ordinary
23 and reasonable care in their decision-making, subject to the business judgment rule. In its
24 application, the business judgment rule invokes an analysis of the decisions of corporate directors
25 in a manner that is highly deferential to the directors making those decisions. The Nevada
26 Supreme Court has also set forth the nature and application of the business judgment rule to the
27 actions of corporate board members. In the case of *Shoen v. SAC Holding Corp.*, 122 Nev. 621;
28 137 P.3d 1171 (2006), the Court ruled on a board of directors' boards power to act as follows:

29 The board's power to act on the corporation's behalf is governed
30 by the directors' fiduciary relationship with the corporation and its
31 shareholders, which imparts upon the directors duties of care and
32 loyalty. In essence, the duty of care consists of an obligation to act
33 on an informed basis; the duty of loyalty requires the board and its
34 directors to maintain, in good faith, the corporation's and its
35 shareholders' best interests over anyone else's interests.

36 (*Id.* at 1178).

1 Furthermore, the Court goes on to say that the balancing of these two duties invokes the
2 application of the business judgment rule. The Court ruled as follows:

3 The business judgment rule is a ‘presumption that in making a
4 business decision the directors of a corporation acted on an
5 informed basis, in good faith and in the honest belief that the
6 action taken was in the best interests of the company.’

6 (Id. at 1178-79 (internal citations omitted)).

7 Also, overcoming that presumption in the context of actions of directors of non-profit
8 corporations is a difficult burden to meet. NRS 82.221(3), pertaining to the exercise of the duties
9 and responsibilities of directors of non-profit corporations such as the Association, reads in
10 pertinent part, as follows:

11 A director or officer must not be found to have failed to exercise
12 his powers in good faith and with a view to the interests of the
13 corporation **unless it is proved by clear and convincing evidence**
14 **that he has not acted in good faith and in a manner reasonably**
15 **believed by him to be with a view to the interests of the**
16 **corporation.**

15 (NRS 82.221(3)(bold added)).

16 The defining characteristic of the business judgment rule as interpreted and applied in
17 Nevada is the heavy presumption in favor of a board’s action and its individual board members.
18 As a matter of law, board decisions are considered, by default, to be informed, in good faith and in
19 the best interest of its shareholders or members until proven otherwise *by clear and convincing*
20 *evidence*. Stated another way, a board or board member’s decision is deemed reasonable, in good
21 faith and in the best interest of the corporation (or Association) entity, even if other reasonable
22 minds would differ with the decision, unless it is proven otherwise by the very high burden of
23 proof of clear and convincing evidence. This presumption prohibits a court or other tribunal—and
24 most certainly the Division—from substituting its decision, even if reasonable, for that of the board
25 or board member. With the burden of proof being that of clear and convincing evidence, overriding
26 that presumption is extremely difficult.

27 In this case, it is irrelevant what the Division or its counsel believes was or is in the best
28 interest of the Association. That determination is one that is made by the Association’s board of

1 directors, not the Division. In the absence of the Division proving by clear and convincing
2 evidence that a board decision was not in the best interest of the Association, the Board decision
3 must be upheld and undisturbed.

4 More importantly, however, is that the Division's complaint alleges only that Mr. Lauth
5 violated NAC 116.405(2), which reads as follows:

6 RESPONDENTS HERNANDEZ and LAUTH knowingly and
7 willfully violated NRS 116.3103 (through NAC 116.405(2)) by
8 failing to act in good faith and in the best interests of the
9 Association by acting for reasons of self-interest, gain, prejudice,
10 or revenge by failing to disavow the actions of RESPONDENT
11 PUHEK and placing the Association at risk for liability.

12 (*Complaint*, ¶ 23).

13 The sole act, according to the Division, that constitutes Mr. Lauth's act of self-interest,
14 gain, prejudice or revenge was his signing of his affidavit submitted to the Division that contained
15 the following sentence: "the board had no business or authority to censure her free speech rights as
16 a private citizen." That is it. *That is the entire case the Division has against Mr. Lauth.* After Mr.
17 Lauth consulted with the Association's legal counsel and consulted with the other board members,
18 and supported with the fact that he had no knowledge of Ms. Puhek's posts prior to her making
19 them, and knowing that Ms. Puhek's comments were made on her own behalf and were not
20 authorized by the Association Board of Directors, and further not wanting to participate in any
21 continued dispute between Ms. Puhek and the Division, Mr. Lauth asserted what he felt was the
22 appropriate response, despite knowing that he would potentially face a retaliatory complaint from
23 the Division for doing so. That retaliation is exactly what Mr. Lauth is now facing.

24 In order to find that Mr. Lauth's singular action as cited above constitutes an act not in
25 good faith or the best interest of the Association by acting in self interest, gain or prejudice, this
26 Commission has to find that such an act amounts to "clear and convincing evidence" of self
27 interest, gain or prejudice or revenge without affording any deference or regard to the reasons why
28 Mr. Lauth stated what he did in his affidavit. Even if the Commissioners (or any other party, for
that matter) would have responded differently if they were asked to respond to the same allegations
against Ms. Puhek, that does not change the fact that Mr. Lauth acted on an informed, reasoned

1 basis for submitting the affidavit that he was compelled to submit. There is no conceivable way
2 that the evidence that has been produced and deemed by the Division and its counsel herein as
3 undisputed amounts to clear and convincing evidence of self interest, gain, prejudice or revenge.

4 Moreover, where is the self interest, gain, prejudice or revenge to be had by not
5 disavowing Ms. Puhek's internet post? As stated in Mr. Lauth's Motion to Dismiss and Alternative
6 Summary Judgment and stated above, the only self interest or gain to be had was in complying
7 with J.D. Decker's demand to disavow Ms. Puhek's comments. In the Division's feeble attempt to
8 create some kind of self interest, gain or revenge, counsel for the Division tries to establish that
9 Mr. Lauth and Ms. Puhek were friends and, because they were friends, Mr. Lauth serves his own
10 interest by protecting Ms. Puhek.

11 The scenario of friendships on the board leading to collusion against Mr. Stern is nonsense
12 and it most certainly does not overcome the legal presumption in favor of Mr. Lauth's decision to
13 not disavow Ms. Puhek's comments. First, Mr. Lauth's friendships have nothing to do with any
14 inquiry into whether or not he violated NAC 116.405(2) and the fact that there is a discussion on
15 this point at all is ridiculous.

16 Second, Mr. Lauth's relationship and level of communication with Ms. Puhek was the
17 same as it was with every other board member, including Mr. Stern. Mr. Lauth worked and
18 communicated with all of them as fellow board members. Nothing more. In fact, prior to serving
19 on the Board of Directors, Mr. Lauth had no relationship with Ms. Puhek at all. Moreover, Mr.
20 Lauth has had very little communications with any of the other directors since his service on the
21 Board ceased.

22 Third, Mr. Lauth's decision to take the position as outlined in his affidavit to the Division
23 was based on the exercise of his judgment after consultation with other board members and the
24 Association's legal counsel. His decision was not the result of "juvenile behavior" as he has been
25 accused of by the Division's counsel. The fact that he is now being prosecuted over that position is
26 a complete contradiction of the very messages that the Division itself preaches: that board
27 members are to make decisions after good faith deliberations and in reliance on professionals in
28 the common interest community industry.

1 **B. The Division's Interjection Of The Board Resolution Is A Red Herring That Adds No**
2 **Additional Support To Its Claims Against Mr. Lauth**

3 In an effort to bolster the Division's complaint against Mr. Lauth, the Division repeatedly
4 invokes in its Opposition and Countermotion the Association's resolution titled 'Directors
5 Fiduciary and Ethical Responsibility Resolution ("Resolution"). The Division tries to argue that
6 the Resolution prohibits the kinds of comments that Ms. Puhek posted about Mr. Stern and,
7 because those comments are prohibited under the Resolution, Mr. Lauth should have disavowed
8 Ms. Puhek's comments. (See, *Opposition and Countermotion*, p. 4, lines 6-16). According to the
9 Division, by Mr. Lauth not disavowing those comments, he breached the Resolution.

10 First, assuming for sake of argument that there was such a breach of the Resolution, the
11 Division's counsel knows full well that the Division has no jurisdiction to bring complaints based
12 on the enforcement of an association's governing documents, whether those documents are the
13 CC&Rs, bylaws, rules and regulations or any other operating policy or resolution. The only
14 violations that the Division has the statutory authority to investigate are the violations as defined
15 in NRS 116.745. NRS 116.745 reads as follows:

16 As used in NRS 116.745 to 116.795, inclusive, unless the context
17 otherwise requires, "violation" means a violation of:

- 18 1. Any provision of this chapter except NRS 116.31184;
2. Any regulation adopted pursuant to this chapter; or
3. Any order of the Commission or a hearing panel.

19 Accordingly, "violations" are limited to statutory, regulatory violations or violations of
20 orders issued by the Commission. The Division has no jurisdiction to even investigate, let alone
21 bring complaints, breaches or violations of the governing documents of an association.
22 Presumably, the Division's counsel knows this, which is why there is no requested disciplinary
23 action sought against Mr. Lauth for any violations of the Resolution. Yet, the Division still
24 attempts to improperly use the Resolution to distract from the substance of its complaint, which is
25 to find a violation of NAC 116.405(2) based solely on Mr. Lauth's one sentence in his affidavit
26 that he was compelled to file with the Division in response to its investigation. Any breach of any
27 association governing documents is to be enforced in a civil action by parties that have suffered
28 some demonstrable damages; such a breach is not properly the subject of a state-based

1 prosecution.

2 Second, the Resolution relates to actions and decisions by board members made in their
3 capacity as board members, not individuals. There is only one provision in the Resolution that
4 would be pertinent to the comments posted by Ms. Puhek. It appears adjacent to the last asterisk in
5 the Resolution and it reads as follows:

6 Each Director shall treat all fellow Directors, owners and residents
7 with courtesy and respect and shall not make personal attacks
8 against anyone. Each Director will approach Board decisions
9 prepared and with an objective, open mind.

9 (Resolution, p. 3)

10 The purpose of the above is to create a cooperative and productive environment for all
11 board members when they interact with other board members or individual owners. It is not
12 designed to dictate the choices a person makes in his/her own individual capacity on his/her own
13 time. In fact, conveniently not cited or referenced by the Division is the sentence in the Resolution
14 that immediately follows the directive above and reads as follows:

15 Caution: It is not the intent of these resolutions to establish a
16 Director's standard of care for a particular situation. Rather, it is
17 intended to assist Directors in acting in a manner which may well
18 be above the standard of care in order to avoid claims or
19 accusations having merit as well as those without merit.

18 (Resolution, p. 3)

19 The Resolution stands only as a document to assist the board members in how to best
20 conduct themselves as board members and carrying out the business of the Association. The
21 Resolution is not a restatement of law, even though elements of Nevada law can be found within
22 the Resolution. The Resolution is nothing more than an advisory piece designed to assist board
23 members in their duties as board members.

24 It is without debate that the comments posted by Ms. Puhek were made in her own
25 individual capacity, without approval or even the knowledge of the other board members before
26 those comments were posted and were never approved by the board before or after the fact in any
27 way and were comments posted on a website that was in no way affiliated with the Association.

28 Third, even if Ms. Puhek's comments were a violation of the Resolution, then it stands to

1 reason that it should be Ms. Puhek that should face claims for breach of the Resolution—and only
2 civil based claims, not state-based claims. The notion that Mr. Lauth or any other board member
3 should be held accountable for the private actions of another board member is a total injustice and
4 is not what the Resolution was promulgated for. The Resolution contains absolutely no provisions
5 on enforcement of the Resolution or how the board members should react when a breach of the
6 Resolution occurs. The Resolution certainly does not compel any board member to ‘disavow’ any
7 particular action simply because the Division demands that a board member ‘disavow’ some
8 particular action. Simply put, any reliance by the Division on the Resolution to establish its case
9 against Mr. Lauth is outside of its jurisdiction and not at all supported under the terms of the
10 Resolution.

11 Fourth, the Division’s counsel intentionally—and wrongfully—implicates in the
12 Opposition and Countermotion that Mr. Lauth was being deceitful or otherwise attempting to hide
13 the existence of the Resolution by not disclosing it when he filed his affidavit. The Opposition and
14 Countermotion states as follows:

15 LAUTH did not provide the Board’s resolution to the Division
16 during the investigation and did not reference it in any way in his
affidavit to the Division.

17 (*Opposition and Countermotion*, p. 4, lines 13-14.)

18 The suggestion here is that Mr. Lauth somehow intentionally withheld or otherwise failed
19 to disclose the Resolution or acknowledge its existence when Mr. Lauth responded to the
20 investigator’s letter dated February 25, 2015 (See Exhibit 5 to the Opposition and Countermotion).
21 Yet, the reason that Mr. Lauth did not disclose or acknowledge the Resolution in his response was
22 because he was not asked to! The investigator’s letter merely asked for written responses from all
23 directors to the charges set forth in that letter. The only reference in the investigator’s letter to
24 documents was a general request for any documents that the directors themselves believed would
25 be useful. Mr. Lauth responded to the investigator’s letter appropriately and in accordance with
26 what he was asked to provide. Moreover, obviously the Division was provided the Resolution, as
27 it has the Resolution in its possession. The attorney for the Association provided any and all
28 documents as requested by the Division’s counsel. The attempt to portray Mr. Lauth in a dishonest

1 light is another desperate attempt by the Division to create controversy where there is none.

2 **C. The Division's Prosecution Of Its Complaint Against Mr. Lauth Is Hypocritical,**
3 **Arbitrary And Capricious**

4 The Division purports to prosecute its complaint against Mr. Lauth in an effort to protect
5 the fiduciary duties and ethical responsibilities of the board members, as it believes those duties
6 and ethical responsibilities were breached by Mr. Lauth (and other directors) not 'disavowing' Ms.
7 Puhek's comments. Yet, the Division apparently has no issue with the immensely offensive and
8 nasty comments repeatedly made by Mr. Stern to Mr. Lauth, former managers and other fellow
9 board members. For example, Mr. Stern sent an email to Respondent Mr. Charles Hernandez
10 dated August 27, 2014, regarding discussions on filling vacancies that evidences the harassment
11 that other board members and the Association's previous manager endured on a regular basis. Mr.
12 Stern's email reads as follows:

13 You are so incompetent and you thank Linda Rich another
14 incompetent. That's how stupid you are. Not only can you not read,
15 you have an incompetent Community Manager who is supposed to
16 know and advise you and you don't even hold her accountable.
17 Anthem Highlands is dominated by incompetents and that is why it
18 has a terrible reputation. You feed that accurate description. And
19 you call me a wimp behind the computer as if you are going to beat
20 me up. You are a puppet of incompetence and an incompetent in
21 your own right. You call me a wimp because of your own
22 insecurities as your balls were cut off long ago as evidenced by
23 your need to be embraced by Linda and Pennie. What a joke you
24 are as AHCA suffers with you in the lead. No wonder you want
25 Pennie back. Expect legal bills to escalate if James supports her. It
26 is just not in the best interests of homeowners. Leadership matters
27 and without a competent Community Manager the incompetence
28 within AHCA will persist.

The Ombudsman that Linda quotes is absurd. The Ombudsman
doesn't have our Bylaws 3.9 to reference. NRS116 does not
supersede the Bylaws. Do the math. You are just stupid and
misinformed and incompetent at best. At worst you tried to hijack
the appointment.

Mr. Stern's email continues as follows:

So be mad at me and my style for calling you and the other
dummies out. That doesn't change the law nor facts.
And it doesn't give you and a rogue board the right to take
unlawful actions against me because your feelings are hurt.
Ultimately AHCA will pay for your arrogance and stupidity as it
has in the past.

1 You are part of a losing team harming the community.

2 (See Exhibit A attached hereto).

3 It would seem that if the Division is so concerned about the sanctity of the Resolution and
4 ensuring that the board members exercise their fiduciary duties and ethical responsibilities, then
5 the Division would surely endeavor in prosecuting similar claims against Mr. Stern. As noted in
6 Mr. Lauth's Motion to Dismiss and Alternative Summary Judgment, the Division has been utterly
7 non-responsive to claims of mistreatment by Mr. Stern against the Association's former manager
8 and the Division has had even less of an appetite to prosecute Mr. Stern's actions. While the
9 Division's counsel easily dismisses and marginalizes the Division's arbitrariness and non-
10 responsiveness in the Division's Opposition and Countermotion, the relevance of the Division's
11 inaction against Mr. Stern and overzealousness in its prosecution of Mr. Lauth is in exposing the
12 Division's complaint against Mr. Lauth as nothing more than an illegitimate witch hunt.

13 Even more audacious is the Division's attack on Mr. Lauth simply because his legal
14 defense to the Division's complaint is being paid for by the Association pursuant to the
15 Association's duty under its Bylaws to defend and indemnify its directors and former directors
16 against claims brought against them in the course of their duties as directors. Sarcastically, the
17 Division's counsel states as follows:

18 LAUTH blames the Division and actually states that this is his
19 "last stand against the Division," as if having the Association
20 defend him is justifiable. Taking a stand is much easier when its on
 someone else's dime.

21 (See *Opposition and Countermotion*, p. 6, lines 12-14).

22 While the concept of defense and indemnification of a corporation's directors and officers
23 may seem foreign to the Division and its counsel, it in fact is a standard practice. The absence of
24 such defense and indemnification protections for directors would severely deter any individual
25 from ever serving on the board of a non-profit corporation, as no reasonable person would ever
26 volunteer and assume the risk of personal liability for their actions on a voluntary, non-profit
27 board of directors. The irony here is that what is in fact costing the Association—and thus, its
28 membership—substantial legal fees and costs is the Association having to pay for the defense of

1 Mr. Lauth against the Division's complaint, all because he signed an affidavit wherein he did not
2 'disavow' statements of another director that he had absolutely no responsibility for.

3 Lastly, the Division claims in its Opposition and Countermotion that Mr. Lauth claims that
4 Ms. Puhek's comments were "okay." (See Opposition and Countermotion, p. 6, line 17). In its
5 Supplemental Opposition to Lauth's Motion to Dismiss or Alternative Summary Judgment, the
6 Division states, "HERNANDEZ, like LAUTH, takes the position that attacking Mr. Stern to make
7 him look bad somehow relieves them of their fiduciary duty to the Association." (See
8 Supplemental Opposition, p. 4, lines 10-12). Both of these statements are flat out lies. At no time
9 has Mr. Lauth ever made any representations or judgments to the Division or anyone else as to
10 whether or not he believed that Ms. Puhek's comments were "okay," appropriate, accurate or
11 otherwise. And the accusation that Mr. Lauth believes that attacking Mr. Stern somehow relieves
12 Mr. Lauth of his fiduciary duty to the Association does not even make any sense. Regardless of
13 whether Ms. Puhek's comments were "okay" or not, is not relevant anyway. Mr. Lauth's position
14 and statement as to Ms. Puhek's comments are stated in his affidavit. Nothing else reflects
15 anything different and for the Division to accuse him of any other position is a deliberate
16 misrepresentation of Mr. Lauth's position.

17 **D. Conclusion**

18 Again, the entire case the Division presents against Mr. Lauth is based on this one sentence
19 in his affidavit: "The board had no business or authority to censure her free speech rights as a
20 private citizen." From that, the Division seeks an order from this Commission that Mr. Lauth, by
21 that statement, acted knowingly and willfully for reasons of self interest, gain, or prejudice,
22 keeping in mind that Mr. Lauth's decision as to Ms. Puhek's comments were based on
23 deliberations with other board members and the Association's legal counsel. As to the self-interest
24 or gain, the Division would have the Commission believe that, because Mr. Lauth and Ms. Puhek
25 were purportedly 'friends,' Mr. Lauth's self-interest was served, apparently, by serving Ms.
26 Puhek's self-interest and protecting her. It is inconceivable that such an argument can even be
27 presented in good faith, let alone have any merit.

28 As stated in Mr. Lauth's Motion to Dismiss or Alternative Summary Judgment and as

1 CERTIFICATE OF SERVICE

2 I hereby certify that on this 6th day of September, 2016, a true and correct copy
3 of RESPONDENT JAMES LAUTH'S REPLY TO THE DIVISION'S OPPOSITION TO
4 LAUTH'S MOTION TO DISMISS; AND OPPOSITION TO THE DIVISION'S
5 COUNTERMOTION FOR SUMMARY JUDGMENT was placed in an envelope, postage
6 prepaid, addressed as stated below, in the basket for outgoing mail before 4:00 p.m. at WOLF,
7 RIFKIN, SHAPIRO, SCHULMAN & RABKIN, LLP and by electronic mail. The firm has
8 established procedures so that all mail placed in the basket before 4:00 p.m. is taken that same day
9 by an employee and deposited in a U.S. Mail box.

10 Common-Interest Communities and
11 Condominium Hotels
12 2501 E. Sahara Avenue
13 Las Vegas, NV 89104
14 crosolen@red.nv.gov

Michelle D. Briggs, Esq.
Senior Deputy Attorney General
555 E. Washington Avenue, Suite 3900
Las Vegas, NV 89101
mbriggs@ag.nv.gov
mcaro@ag.nv.gov

14 Edward D. Boyack, Esq.
15 Boyack, Orme & Taylor
16 401 N. Buffalo Drive, #202
17 Las Vegas, NV 89145
18 ted@edblaw.net

John B. Marcin, Esq.
Marcin Lambirth, LLP
3960 Howard Hughes Parkway, 5th Fl.
Las Vegas, NV 89169
jbm@marcin.com

19
20 By /s/ Nina Miller

21 Nina Miller, an Employee of
22 WOLF, RIFKIN, SHAPIRO, SCHULMAN &
23 RABKIN, LLP
24
25
26
27
28

EXHIBIT A

EXHIBIT A

From: robert stern <sternobobblo@yahoo.com>;
To: Charlie Hernandez <choochoocharlieh@yahoo.com>;
Subject: Fw: RE: Pending Statement of Fact RE: August 27 and September
10 corrected version
Sent: Sun, Sep 7, 2014 3:18:27 PM

You are so incompetent and you thank Linda Rich another incompetent. That's how stupid you are. Not only can you not read, you have an incompetent Community Manager who is supposed to know and advise you and you don't even hold her accountable. Anthem Highlands is dominated by incompetents and that is why it has a terrible reputation. You feed that accurate description. And you call me a wimp behind the computer as if you are going to beat me up. You are a puppet of incompetence and an incompetent in your own right. You call me a wimp because of your own insecurities as your balls were cut off long ago as evidenced by your need to be embraced by Linda and Pennie. What a joke you are as AHCA suffers with you in the lead. No wonder you want Pennie back. Expect legal bills to escalate if James supports her. It is just not in the best interests of homeowners. Leadership matters and without a competent Community Manager the incompetence within AHCA will persist.

The Ombudsman that Linda quotes is absurd. The Ombudsman doesn't have our Bylaws 3.9 to reference. NRS116 does not supersede the Bylaws. Do the math. You are just stupid and misinformed and incompetent at best. At worst you tried to hijack the appointment.

It says a "majority of the remaining." The remaining is 4. A majority of 4 is 3. You Mr. Hernandez you do Anthem Highlands a great disservice.

Why didn't the Community Manager get this right the first time? I came to the meeting and laid it out for her. She and you were either so dumb or so determined it didn't matter. If you were right August 27 then why do it over? It's because Mr. President you were wrong. You were not protected as you should have been. A competent Community Manager would not have screwed it up. That's the issue that is important. She is just a political appointee serving Pennie and your political interests certainly not the Community. That evidence is everywhere.

So be mad at me and my style for calling you and the other dummies out. That doesn't change the law nor facts.

And it doesn't give you and a rogue board the right to take unlawful actions against me because your feelings are hurt. Ultimately AHCA will pay for your arrogance and stupidity as it has in the past.

You are part of a losing team harming the community.