

**PWJames Management & Consulting**  
6029 South Fort Apache, Suite 130  
Las Vegas, Nevada 89148  
Telephone (702)243-8650  
Facsimile (702)254-3838

**FILED**

**JAN 29 2016**

NEVADA COMMISSION OF  
COMMON INTEREST COMMUNITIES  
AND CONDOMINIUM HOTELS

January 29, 2016

Dear Mrs. Rosolen

This whole investigation that the division has open on PW James MGMT and the Laurel Canyon board Members James Schumann, Robert Valentine has been based on false information. One single board member can not take action to stop an election or bring a law suit without the vote of the community. Checks that were sent to the board member Neil Shebeck for signature were missed and went out for processing.

**(a)ALLEGED VIOLATIONS**

1. Called for a meeting of the executive Board of Directors, as one board member. The other positions are expired terms due to be elected in January 2014.
2. Appointed one person to one of the expired terms. Cannot appoint one member to expired terms of the Board of Directors.
3. Person claiming to be an employee of the respondent did not submit proof to the association that she is an employee of a corporation that owns a home in the Laurel Canyon Homeowners Association.
4. Cancelled the election and budget ratification scheduled for January 9, 2014.
5. Caused a temporary restraining order (injunction) to stop the election to be held January 9, 2014.
6. Engaged the services of a law firm without proper board meeting or three sealed proposals at the expense of the association.
7. Sent immediate termination of the management company. Immediate termination can only be given if there is alleged misconduct of the community manager. If misconduct is alleged, a letter must be sent to the community manager with the alleged misconduct, and an opportunity to respond.

8. If the termination of the management company is to happen, the management company must be provided with thirty (30) days in which to turn over records.
9. Closed the association's bank accounts, thereby rendering the association helpless to pay its financial obligations.

**PWJames Management & Consulting**  
6029 South Fort Apache, Suite 130  
Las Vegas, Nevada 89148  
Telephone (702)243-8650  
Facsimile (702)254-3838

January 13, 2014

***Dov Erlichman, Board Member***  
***Laurel Canyon Homeowners Association***  
848 N. Rainbow #2930  
Las Vegas, NV 89030

Dear Respondent,

Before the individual below submits an Ombudsman Intervention Affidavit, you are being presented this dispute letter. In this written notice are described the situation(s) including: (a) any alleged violations, (b) any damages that resulted from the alleged violation, and (c) proposed corrective action to resolve the alleged violation.

You are being allowed a reasonable amount of time, within 10 (ten) days of receipt, to respond to the allegations.

**(a)ALLEGED VIOLATIONS**

1. Called for a meeting of the executive Board of Directors, as one board member. The other positions are expired terms due to be elected in January 2014.
2. Appointed one person to one of the expired terms. Cannot appoint one member to expired terms of the Board of Directors.
3. Person claiming to be an employee of the respondent did not submit proof to the association that she is an employee of a corporation that owns a home in the Laurel Canyon Homeowners Association.
4. Cancelled the election and budget ratification scheduled for January 9, 2014.
5. Caused a temporary restraining order (injunction) to stop the election to be held January 9, 2014.
6. Engaged the services of a law firm without proper board meeting or three sealed proposals at the expense of the association.

7. Sent immediate termination of the management company. Immediate termination can only be given if there is alleged misconduct of the community manager. If misconduct is alleged, a letter must be sent to the community manager with the alleged misconduct, and an opportunity to respond.
8. If the termination of the management company is to happen, the management company must be provided with thirty (30) days in which to turn over records.
9. Closed the association's bank accounts, thereby rendering the association helpless to pay its financial obligations.

**A STATE OF NEVADA**  
**DEPARTMENT OF BUSINESS AND INDUSTRY - REAL ESTATE DIVISION**  
**OFFICE OF THE OMBUDSMAN FOR COMMON-INTEREST COMMUNITIES AND CONDOMINIUM HOTELS**  
 1179 Fairview Drive, Suite E • Carson City, NV 89701-5453 • (775) 687-4280  
 2501 East Sahara Avenue, Suite 214 • Las Vegas, NV 89104-4137  
 (702) 486-4480 • Toll free (877) 829-9907 • Fax: (702) 486-4520  
 E-mail: [CICombudsman@red.nv.gov](mailto:CICombudsman@red.nv.gov) <http://www.red.nv.gov>

**ANNUAL ASSOCIATION REGISTRATION**

*NOTE: Please read instructions on pages 3 & 4 of how to complete the form correctly.*

**Association's legal name:** LAUREL CANYON HOMEOWNERS ASSOCIATION  
*(Articles of Incorporation)*

**Subdivision name(s) for the Association:** COBBLESTONE AT LAUREL CANYON  
*(For instructions on how to locate the subdivision name, visit [http://red.state.nv.us/vic/Publications/subdivision\\_search.pdf](http://red.state.nv.us/vic/Publications/subdivision_search.pdf))*

**Nevada Secretary of State (SOS) entity number:** C6267-2004 **SOS original filing date:** 03 / 11 / 04  
*(For SOS filing information, log onto <http://nvsos.gov/sosentitysearch/CorpSearch.aspx>)*

Is the common-interest community a master association or sub-association? (If so, indicate which.)  Master  Sub  N/A

If a sub-association, to which master association does the sub-association belong too? N/A

**Association's physical address:**  
*(if no address list closest cross streets)*

WASHBURN/WALNUT/PECOS

City: N. LAS VEGAS State: NV Zip: 89108

County the association is located in: CLARK

**Current billing address:**

c/o PWJAMES MANAGEMENT & CONSULTING  
6029 S FORT APACHE SUITE 130

City: LAS VEGAS State: NV Zip: 89148

Association Telephone Number: 702-243-8650

Pursuant to NRS 116.3101 and NRS 116B.415, indicate the type of common-interest community (choose one):

For-profit corporation  Non-profit corporation  Trust  General partnership  Limited partnership  Limited liability partnership

• Is the association a (check one)?

- Condominium  Cooperative  
 Condominium Hotel  Planned Community

• If a planned community, indicate type(s) of units:

- Single Family Dwelling  Condominium  
 Duplex  Townhouse  Manufactured Housing

• As of this date, the number of units that currently have liens filed against for unpaid owner assessments: 12

• Number of foreclosures, in the prior fiscal year, based on liens for failure of unit owner to pay assessments: 3

**Units/Budget/Assessments**

Number of units conveyed/closed to date: 354 Total number of units planned to be in the community? 422

Have the declarant's developmental rights (right to annex additional units) expired?  Yes  No

Date most recent annual meeting was held: (Mo./day/yr.): 12 / 03 / 14 Accounting Fiscal Year End (Mo./day): 12 / 31

Total annual budgeted assessments (combined assessment amounts for all units within the community): \$ 186,912.00

Total annual budgeted revenue (combined assessment amounts for all units, including interest, other income, etc.): \$ 186,912.00

The most recent independent CPA financial statements, required by NRS 116.31144, were:  reviewed  audited  
*If the association's total annual budget is less than \$45,000, a review or an audit is not required to be conducted. (SB 89, Section 1)*

The fiscal or calendar year for which the reviewed or audited financial statements represent: 2015

If required, has the review or audit above been completed?  Yes  No Date completed (Mo./day/yr.): 06 / 30 / 15

If not completed, explain: \_\_\_\_\_

*For office use only*

Check No.: \_\_\_\_\_ Amount: \_\_\_\_\_ First Date Stamp: \_\_\_\_\_

Receipt No.: \_\_\_\_\_ Fiscal Year: \_\_\_\_\_ Second Date Stamp: \_\_\_\_\_

Notes: \_\_\_\_\_ Third Date Stamp: \_\_\_\_\_

DOCS - How many: \_\_\_\_\_  Reserve Study Summary  Master Roster  Correspondence: \_\_\_\_\_

**Reserve Study (NRS 116.31152 and NRS 116B.605)**

Has a reserve study ever been conducted?  Yes  No Date the most recent reserve study was performed (Mo./day/yr.): 01 / 13 / 09

If a reserve study has not been conducted, is the executive board confirming that the community has no major components in accordance to NRS 116.0605?  Yes  No **If no, attach explanation to why a reserve study has not been completed.**

Was the most recent study adopted by Board?  Yes  No Date the board adopted the study (Mo./day/yr.): 03 / 31 / 09

If a full study with a site inspection reserve study has been conducted, was Form 609 submitted to the Division?  Yes  No

Date that Form 609 was submitted to the Division (Mo./day/yr.): 04 / 05 / 09  Enclosed: (Form dated      /      /     )

Name of Reserve Specialist who conducted study: ROB FORNEY Registration #: 4

**If the reserve study was not prepared by a Reserve Specialist, indicate:**

1) Name of the executive board member responsible for conducting the reserve study: \_\_\_\_\_

2) Name of the individual conducting the reserve study: \_\_\_\_\_

Title at the time study was conducted: \_\_\_\_\_  
*A member of an executive board who is acting solely within the scope of his or her duties as a member of the executive board or an officer of the association may conduct a reserve study pursuant to NRS 116A.420(6).*

*If the common-interest community contains 20 or fewer units and is located in a county whose population is 50,000 or less, the study of the reserves required by NRS 116.31152 may be conducted by any person whom the executive board deems qualified to conduct the study. [NRS 116.31152(2)]*

Has the executive board performed its annual review of the reserve study pursuant to NRS 116.31152 (1) (b)?  Yes  No

Has the executive board made the necessary adjustments after the review pursuant to NRS 116.31152 (1) (c)?  Yes  No

Required reserve account balance as of the end of the current fiscal year, per the most recent adopted reserve study: \$ 523,389.00

Projected reserve account balance as of the end of the association's current fiscal year: \$ 250,609.49

Is there currently a Reserve Assessment in effect?  Yes  No If so, how long is the assessment? \_\_\_\_\_

**Board/Management/Declarant**

Current number of executive board members: 3 Number of executive board members per governing documents: 3

• Have all executive board members completed/signed Form 602 with-in 90 days of appointment/election per NRS 116.31034 (9) or NRS 116B.445(9)  Yes  No

• Have copies of Form 602 for each board member have been submitted to the Division?  Yes  No  
 If no, explain: \_\_\_\_\_

| Executive Board  | President   | Secretary                                    | Treasurer   |
|--|---|--|---|
| Board Member's Name                                      | JAMES SCHUMANN  | ROBERT VALENTINE                             | ROBERT VALENTINE  |
| Physical address Number & Street City / State / Zip Code | 5333 MOUNTAIN GARLAND N LAS VEGAS, NV 89108                               | 5321 MOUNTAIN GARLAND N LAS VEGAS, NV 89108  | 5321 MOUNTAIN GARLAND N LAS VEGAS, NV 89108                                 |
| Telephone Number   | (702) 509-1831  | (901) 326-6997                               | (901) 326-6997  |
| E-mail Address (Optional)                                |   |  |   |
| Indicate title:  | <input type="checkbox"/> Vice President <input type="checkbox"/> Director | <input checked="" type="checkbox"/> Director | <input type="checkbox"/> Director <input type="checkbox"/> Hotel Unit Owner |
| Board Member's Name                                      |   | DOV ERLICHMAN                                |   |
| Physical address Number & Street City / State / Zip Code |   | 848 N RAINBOW#2930 N LAS VEGAS, NV 89107     |   |
| Telephone Number   |   | (702) 487-8000                               |   |
| E-mail Address (Optional)                                |   |  |   |

*Please use a separate sheet of paper for additional board members and attach to this form.*

|   | Management Company and Manager's name (if applicable) | Custodian of Records                    | Attorney (if applicable)            | Declarant                          |
|---|---|---|-------------------------------------|------------------------------------|
| Business Name                                   | PWJAMES MANAGEMENT                                    | PWJAMES MANAGEMENT                      | FLAMMEY LAW                         | RICHMOND AMERICA                   |
| Contact Name                                    | JEFFREY FREDERICK                                     | JEFFREY FREDERICK                       | BRUCE FLAMMEY                       |                                    |
| Address Number & Street City / State / Zip Code | 6029 S FORT APACHE SUITE 130 LAS VEGAS 89148          | 6029 S FORT APACHE STE 130 LAS VEGAS NV | 3475 W FORD AVE LAS VEGAS, NV 89139 | 5613 BALSAM ST LAS VEGAS, NV 89139 |
| Telephone Number                                | (702) 243-8650  | (702) 243-8650                          | (702) 580-5370                      | (702) 638-4435                     |
| Fax Number (optional)                           |   |   |                                     |                                    |

Name of person completing this form (print): JEFFREY FREDERICK Title: COMMUNITY MANAGER

Person authorized to sign form:  Board Member (title: \_\_\_\_\_)  Community Manager (License # \_\_\_\_\_)  Declarant

Signature:  Print name: \_\_\_\_\_ Date signed: 10 / 26 / 15

*Authorized person signing is attesting to the accuracy of the information provided.*

May 1, 2014

To whom it may concern,

I was the treasurer and then president of the Laurel Canyon HOA for several years. While being one of the signers of checks there were a handful of times that a check may have gone out without all of the necessary signatures. We all try to be fastidious about this but occasionally it happens. I recall one time I had to sign a second check to our landscaper because the first got to him with only the one signature. That's the only time I recall but it can happen occasionally.

Thanks,

Neal Shebeck

**Penny Frederick**

---

**From:** Neal E. Shebeck <neshebeck@interact.ccsd.net>  
**Sent:** Wednesday, April 30, 2014 6:04 PM  
**To:** Penny Frederick  
**Subject:** Re: Laurel Canyon HOA  
**Attachments:** shebeckstatement.docx

Crazy. Let me know if this works.

Neal



A-14-696167-C

DISTRICT COURT  
CLARK COUNTY, NEVADA

Other Civil Filing

COURT MINUTES

March 05, 2014

---

A-14-696167-C      Laurel Canyon Homeowners Association, Plaintiff(s)  
vs.  
PW James Management and Consulting LLC, Defendant(s)

---

March 05, 2014      10:30 AM      Motion for Preliminary  
Injunction

HEARD BY: Sturman, Gloria

COURTROOM: RJC Courtroom 03H

COURT CLERK: Lorna Shell

RECORDER: Rosalyn Navara

**PARTIES**

PRESENT:      Fairbanks, James B.      Attorney for Plaintiff  
                 Kung, Annie J.              Attorney for Defendants

**JOURNAL ENTRIES**

- At PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION, counsel argued about the temporary restraining order granted on an emergency basis last Friday, February 28, 2014, to stop a secret board meeting from taking place. Argument by counsel as to which board configuration represented the 2014 Board of Directors for the HOA. Plaintiff contends the board is comprised of Erlichman and Young and Thoroughbred is the management company; defendants contend the board is Erlichman, Schumann and Valentine and that PW James was improperly terminated. Court stated that the evidentiary hearing set for March 14 needs to be held for sworn testimony to be given to verify the facts each side believes to be true. To that end, Court offered to the parties to leave the status quo in place for the three-man board of Erlichman, Schumann and Valentine who are empanelled to take care of emergency business only and Thoroughbred management. Defendants asked for a larger bond to cover both attorneys' expenses to be posted by Mr. Erlichman. Court advised he was not a named party to this action; Ms. Kung advised she will file an action this afternoon bringing Mr. Erlichman into the case. Court asked both parties to try and resolve this matter and cautioned that Mr. Erlichman may be paying attorneys fees and costs personally if he is found to be personally liable. Colloquy on records from PW James and Ms. Kung advised that all requested records have been delivered and asked if they may be excused from attending the evidentiary hearing. Ms. Kung also requested the Board be allowed to send out a ballot asking residents if they knew about this lawsuit and if they want to pursue.

PRINT DATE: 03/05/2014

Page 1 of 2

Minutes Date:

March 05, 2014

**A-14-696167-C**

Following further discussion, COURT STATED ITS FINDINGS that the evidentiary hearing will remain on calendar; the Board of Directors of Erlichman, Schumann, and Valentine are empanelled during the interim to conduct emergency business only; Thoroughbred is the management company; PW James will not have to appear at the evidentiary hearing as a defendant with counsel as all issues raised in the TRO have been mooted or satisfied but they may be called as witnesses; and that a ballot may be sent to homeowners to provide the Court with evidence as to their preference in pursuing this lawsuit. COURT ORDERED Temporary Restraining Order REMAINS with the exceptions noted in the findings given above; Bond STANDS.

Mr. Fairbanks to prepare proposed Order; Ms. Kung to review as to form and content.

DISTRICT COURT  
CLARK COUNTY, NEVADA

Other Civil Filing

COURT MINUTES

February 28, 2014

A-14-696167-C

Laurel Canyon Homeowners Association, Plaintiff(s)

vs.

PW James Management and Consulting LLC, Defendant(s)

February 28, 2014

1:45 PM

Minute Order

HEARD BY: Sturman, Gloria

COURTROOM: RJC Courtroom 03H

COURT CLERK: Linda Denman

PARTIES James B. Fairbanks, Esq., on behalf of Plaintiff  
PRESENT:

JOURNAL ENTRIES

- **AI EX PARTE SECOND EMERGENCY APPLICATION FOR TEMPORARY RESTRAINING ORDER**, Mr. Fairbanks requested the Court signed an emergency order restraining the defendants from holding a scheduled board meeting until this matter can be heard at a preliminary injunction hearing. As further explanation, he stated the President of the Board was informed last night at 6:00PM that a board meeting was scheduled for tonight, February 28, 2014 at 5:00PM, with board members who were elected in a disputed election that was improperly conducted. Plaintiffs were concerned that new officers may be appointed; do association business; hire and fire associated companies all of which could potentially open the HOA to liability. Upon inquiry of the Court as to service, Mr. Fairbanks stated Legal Wings was serving all defendants with the complaint and the application and that several phone calls and e-mails had been made to defendants' former attorney without any return calls.

Following the disclosures, COURT ORDERED temporary restraining order GRANTED, effective today at 2:00PM and would end on March 14, 2014 at 9:00AM when the preliminary injunction hearing is scheduled and previously set hearing on 3/5/2014 VACATED. COURT FURTHER ORDERED Bond posted in the amount of TWO HUNDRED AND FIFTY DOLLARS (\$250.00).

Temporary Restraining Order SIGNED IN OPEN COURT.

February 18, 2014

Mr. Erlichman,

This is to advise you that at the court hearing held on February 13, 2014 regarding the temporary restraining order, Judge Denton ruled that the TRO was vacated and deemed to be void ab initio. This means the TRO never existed. As you did not attend, the signed order is attached for your review.

Because of the judge's ruling at the court hearing, the ballots were opened on Monday, February 18, 2014. The results of the election were that homeowners James Schumann and Robert Valentine were duly elected to the Laurel Canyon HOA Board of Directors. As a legal quorum of the Board, we will be scheduling an emergency Board of Directors meeting to handle the business of the association.

From the date of this letter, you are hereby directed to not conduct any business on behalf of the Laurel Canyon Homeowners Association. Do not sign or issue any checks, do not prepare or cause to be prepared any mailings to the homeowners, do not engage in any legal actions on behalf of the association.

You will be advised when the meeting will be held so that you can participate as a Laurel Canyon Homeowners Association Board member.

Thank you, in advance for your cooperation.

Sincerely,



James Schumann, Laurel Canyon HOA Board Member



Robert Valentine, Laurel Canyon HOA Board Member

**LAUREL CANYON THOROUGHBRED ASSOCIATION**

PW James Management Company  
6029 Fort Apache #130  
Las Vegas, NV 89148

Attn: Allan and Penny Fredrick

January 4, 2014

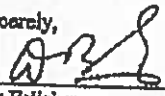
This certified letter is to inform you of the termination of PW James Management services effective January 4, 2014.

Thank you for attending the Laurel Canyon HOA Board of Directors Meeting today.

Sorry you were unable to stay to the conclusion of the meeting. In addition to the appointment of Breana Holmes as a director, an election of officers occurred where Dov Erlichman was elected president, and Breana Holmes was elected secretary and treasurer. In addition, you should be aware of the following board decisions that occurred.

- 1) Immediate termination of PW James Management and immediate engagement of Thoroughbred Management. You are to immediately advise any home owners who contact your office to contact Thoroughbred Management as the new company who is now managing this community effective today.
- 2) You are directed to immediately transfer all records to Thoroughbred when they contact you.
- 3) You are directed to not issue any checks or electronic payments effective immediately, and provide all invoices to Thoroughbred. You are directed to have hands off all association bank accounts.
- 4) You are directed to have no mailings with home owners.
- 5) The election has been cancelled per the legal opinion and therefore the January 9th ballot counting meeting has also been cancelled. Please provide any and all ballots that have been received to Thoroughbred.
- 6) In the interest of a positive transition for the community, the HOA will agree to pay for January provided you transfer all records to Thoroughbred no later than January 15, 2014.

Sincerely,

  
Dov Erlichman,  
Laurel Canyon HOA President.

  
Breana Holmes  
Laurel Canyon HOA Secretary and Treasurer.

**Laurel Canyon Homeowners Association  
Meeting Notice**

**The 2013 Annual Meeting of Members, Election and Ratification of  
2014 Budget has been scheduled for:**

**January 9, 2014, 6:00 p.m.  
Alexander Library  
1755 W. Alexander Road**

The following items are enclosed: meeting notice, agenda, ballot, candidate statement, approved 2014 budget, secret ballot envelope and a return envelope.

**Instructions for Voting of Board Members:** There are two vacant seats on the Board of Directors available for election. Per the Laurel Canyon HOA By-Laws, each home is entitled to cast one vote for one candidate. NRS 116 requires that a secret written ballot be utilized to elect all directors, therefore, neither the Board nor any other owner may vote your ballot, and proxies are not permitted for Board member elections.

Once you have voted your ballot, please put it in the enclosed small envelope marked "Secret Ballot" and place that envelope in the larger envelope marked "Election Materials Enclosed" and mail it to PWJames Management & Consulting. Your name and address are on the return label, which will allow management to mark off the ballots that are received prior to the meeting. Mailed ballots must be received in the management office by 3:00 p.m. the day of the meeting; or by 6:00 p.m., at the meeting, in order to be counted. If you have returned your ballot by mail, you will not receive another ballot at the meeting.

**Please do not enclose any other association information, such as assessment payments, correspondence, etc., in the return ballot envelope. Doing so may delay the correct and timely processing of these items.**

**2014 Budget** - Enclosed is a copy of the 2014 budget for the Laurel Canyon Homeowners Association. Please be advised that there will be no increase at this time; the monthly assessment will remain at \$38.00. If you have any questions or objections to the budget as presented, please attend the meeting to address the Board of Directors. Please note: The budget is considered ratified unless 51% of the membership attends the meeting to object.

Minutes of the Annual Meeting will be made available 10 days after the meeting. To request a copy of the minutes, please contact PWJames Management & Consulting.

We look forward to seeing you at the Annual Meeting. Please feel free to contact PWJames Management & Consulting, by phone at (702) 243-8650, or by e-mail at [info@pwjmgmt.com](mailto:info@pwjmgmt.com) with any questions you may have regarding the voting process. It is important that you vote!

***Laurel Canyon Homeowners Association***  
**Annual Meeting of Members, Election and Ratification of 2014 Budget**

**Thursday, January 9, 2014 – 6:00 p.m.**  
**Alexander Library**  
**1755 N. Alexander Road**

**Agenda**

- I. Call to Order**
- II. Verification of Notice and Quorum**
- III. Call for Volunteers to Open and Tally Ballots**
- IV. Election of Two Members to the Board of Directors**
- V. General Discussion While Ballots are Opened and Talled**
- VI. Ratification of 2014 Budget**
- VII. Announcement of Voting Results of the Election of Board Members**
- VIII. Adjournment**

**Laurel Canyon Homeowners Association**  
**Annual Meeting of Members, Election and Ratification of 2014 Budget**  
**January 9, 2014, 6:00 p.m.**  
**Alexander Library**  
**Candidate Statements**

**Below are statements submitted by the candidates. Candidates are listed in alphabetical order. The statements are typed verbatim.**

**Kevin Bechtold** – I believe I would be effective as a Director because I live in the HOA. I believe all HOA members whether you have renters or live here have the right to live in a clean, peaceful and quiet neighborhood. I would make myself accessible to all members.

**Stephen Bock** – I believe I would be effective as a Director because I live in this community and care about its future. As a former Realtor, I understand how HOAs work. I have the time to devote to attending meetings.

**James Schumann** – I believe I would be effective as a Director because I LIVE in the Laurel Canyon Community! Unlike the incumbent board members who reside outside the community, I drive and walk our streets daily. It has become apparent that even though there are more than enough funds to properly maintain and improve our common areas there appears to be only blatant neglect of lighting, irrigation, landscape maintenance, street sweeping and the little things that bring our community to maturity and its potential property value. This is an uncompensated position, I am voluntarily asking for your vote so that I can represent you and move toward the betterment of Laurel Canyon Community!

I personally have a history of property ownership, golf course construction and maintenance, hotel property engineering and security, fitness club maintenance, assistant superintendent of a painting contracting company, and cellular store manager.

Thank you for your vote, James Schuman.

**Robert Valentine** – I believe I would be effective as a Director because I live in the Laurel Canyon community and see the current deficiencies and areas of opportunity for OUR neighborhood. As a Director of the Board, I will ensure that OUR HOA dues are spent on what they are intended: landscaping, maintenance, street sweeping, etc. I will offer transparency, accountability, and a platform for all residents to voice OUR concerns and ideas.

I am a retired United States Navy Chief, owned a general contracting company, and have been in the contracting/property management field for over 30 years.

My priority is to maintain a safe, clean, well-kept neighborhood for our families where in which our property values, children and community can prosper.

Thank you for your vote, Robert Valentine.



**Laurel Canyon Homeowners Association  
Annual Meeting of Members and Election  
January 9, 2014 - 6:00 p.m.**

**BALLOT**

There are two vacant seats on the Board of Directors available for election. Each home is entitled to cast one vote, for one candidate. If more than one vote is shown below, or if more than one vote is shown for any one candidate, the ballot will not be counted.

The names of the candidates who submitted information are listed below and are shown in alphabetical order. Information submitted by the candidates has been included for your review.

| <u>Candidates</u> | <u>Number of Votes</u> |
|-------------------|------------------------|
| Kevin Bechtold    | _____                  |
| Stephen Bock      | _____                  |
| James Schumann    | _____                  |
| Robert Valentine  | _____                  |

**Total Number of Votes - 1**

**EXHIBIT 2**

LAUREL CANYON HOMEOWNERS ASSOCIATION  
C/O PWJAMES MANAGEMENT & CONSULTING  
6029 S. FORT APACHE, SUITE 130  
LAS VEGAS, NV 89148  
PHONE: 702-243-8650 FAX: 702-254-3838  
E-mail: info@pwjmgmt.com

**NOMINATION FORM FOR BOARD OF DIRECTORS**

**THIS IS YOUR OFFICIAL NOTICE THAT YOU ARE ELIGIBLE TO SERVE ON THE BOARD OF DIRECTORS IF YOU ARE A MEMBER IN GOOD STANDING (DUES ARE CURRENT). THERE ARE TWO POSITIONS OPEN. THE ANNUAL ELECTION OF THE ASSOCIATION WILL BE HELD IN THE NEAR FUTURE. THE OFFICIAL DATE, TIME, AND LOCATION WILL BE INCLUDED WITH YOUR BALLOT INFORMATION IN A SEPARATE MAILING**

IF YOU ARE INTERESTED IN SERVING ON THE BOARD OF DIRECTORS,  
PLEASE NOMINATE YOURSELF BELOW.  
NOTE: DO NOT NOMINATE ANYONE OTHER THAN YOURSELF.

I am interested in being nominated for a position on the Board of Directors:

Name DR. Leigh Tail  
Address 5308 Spicebush  
Phone 702-425-2200

The following statement will be used as an attachment to the ballot.

I believe I would be effective as a Director because I have experiance  
Working on HOA board, understand<sup>ing</sup> NRS 116 HOA law,  
Sick of state of Laurel Canyon, resident of NLV,  
I care about my community. It is time for  
change!! Within 3 months there will be a major  
improvement if I am elected.

Nomination forms must be received no later than November 18, 2013 in order for your name to be placed on the Ballot, which will be mailed to all homeowners prior to the upcoming Election Meeting.

Please mail, fax or e-mail this form to the address, fax number or e-mail address above.

\*NRS116.31034 - Each person whose name is placed on the ballot as a candidate for a member of the executive board must make a good faith effort to disclose any financial, business, professional or personal relationship or interest that would result or would appear to a reasonable person to result in a potential conflict of interest for the candidate if the candidate were to be elected to serve as a member of the executive board. The candidate must make the disclosure, in writing, to each member of the association in the manner established in the bylaws of the association.

I do/ do not have any conflicts of interest to disclose

L Tail  
(Signature)

(Please list any potential conflicts of interest. You may use the reverse of this form if needed.)

LAUREL CANYON HOMEOWNERS ASSOCIATION  
C/O PWJAMES MANAGEMENT & CONSULTING  
6029 S. FORT APACHE, SUITE 130  
LAS VEGAS, NV 89148  
PHONE: 702-243-8650 FAX: 702-254-3838  
E-mail: Info@pwjmgmt.com

**NOMINATION FORM FOR BOARD OF DIRECTORS**

**THIS IS YOUR OFFICIAL NOTICE THAT YOU ARE ELIGIBLE TO SERVE ON THE BOARD OF DIRECTORS IF YOU ARE A MEMBER IN GOOD STANDING (DUES ARE CURRENT). THERE ARE TWO POSITIONS OPEN. THE ANNUAL ELECTION OF THE ASSOCIATION WILL BE HELD IN THE NEAR FUTURE. THE OFFICIAL DATE, TIME, AND LOCATION WILL BE INCLUDED WITH YOUR BALLOT INFORMATION IN A SEPARATE MAILING**

**IF YOU ARE INTERESTED IN SERVING ON THE BOARD OF DIRECTORS,  
PLEASE NOMINATE YOURSELF BELOW.  
NOTE: DO NOT NOMINATE ANYONE OTHER THAN YOURSELF.**

I am interested in being nominated for a position on the Board of Directors:

Name KENYA YOUNG  
Address 5224 ENGLISH ASTER  
Phone 702.481.3154

The following statement will be used as an attachment to the ballot.

I believe I would be effective as a Director because I HATE MY COMMUNITY AND WANT IMMEDIATE CHANGE. I HAVE LIVED HERE FOR 2 YEARS AND THIS HOA SUCKS. I WILL DO MY BEST TO GET STREETS CLEAN, MORE POLICE TO MAKE SAFE, LANDSCAPE!!

Nomination forms must be received no later than November 18, 2013 in order for your name to be placed on the Ballot, which will be mailed to all homeowners prior to the upcoming Election Meeting.

Please mail, fax or e-mail this form to the address, fax number or e-mail address above.

\*NRS116.31034 - Each person whose name is placed on the ballot as a candidate for a member of the executive board must make a good faith effort to disclose any financial, business, professional or personal relationship or interest that would result or would appear to a reasonable person to result in a potential conflict of interest for the candidate if the candidate were to be elected to serve as a member of the executive board. The candidate must make the disclosure, in writing, to each member of the association in the manner established in the bylaws of the association.

I do/ do not have any conflicts of interest to disclose KENYA YOUNG  
(Signature)

(Please list any potential conflicts of interest. You may use the reverse of this form if needed.)

RECEIVED 11/12/2015

Nevada Department of Business and Industry  
Real Estate Division

Payment Receipt

Transaction Date : 11/12/2015  
Receipt # : 378968

Cashier : MAIL-Margaret Sharp

Receipt Identification : LAUREL CANYON HOA

Money Tendered

| Type                   | Amount   | Reference | Payer Name                           | Payment Comment         |
|------------------------|----------|-----------|--------------------------------------|-------------------------|
| Check                  | \$143.40 | 000430    | LAUREL CANYON HOMEOWNERS ASSOCIATION | 8287-2004,FY16(3/31/15) |
| <b>Total: \$143.40</b> |          |           |                                      |                         |

Distribution

| License          | Use Amount | Fee Desc                                 | Business Name                        | Paid From  | Paid To    | BY                  |
|------------------|------------|--|--------------------------------------|------------|------------|---------------------|
| ASSN.0700466-REG | 106.20     | HOA ADMINISTRATIVE PENALTY (10 %) (FY15) | LAUREL CANYON HOMEOWNERS ASSOCIATION | 04/01/2014 | 03/31/2015 | MAIL-Margaret Sharp |
| ASSN.0700466-REG | 4.85       | HOA INTEREST ON UNIT FEES (5.25%)        | LAUREL CANYON HOMEOWNERS ASSOCIATION | 04/01/2014 | 03/31/2015 | MAIL-Margaret Sharp |
| ASSN.0700466-REG | 4.85       | HOA INTEREST ON UNIT FEES (5.25%)        | LAUREL CANYON HOMEOWNERS ASSOCIATION | 04/01/2014 | 03/31/2015 | MAIL-Margaret Sharp |
| ASSN.0700466-REG | 4.65       | HOA INTEREST ON UNIT FEES (5.25%)        | LAUREL CANYON HOMEOWNERS ASSOCIATION | 04/01/2014 | 03/31/2015 | MAIL-Margaret Sharp |
| ASSN.0700466-REG | 4.65       | HOA INTEREST ON UNIT FEES (5.25%)        | LAUREL CANYON HOMEOWNERS ASSOCIATION | 04/01/2014 | 03/31/2015 | MAIL-Margaret Sharp |
| ASSN.0700466-REG | 4.85       | HOA INTEREST ON UNIT FEES (5.25%)        | LAUREL CANYON HOMEOWNERS ASSOCIATION | 04/01/2014 | 03/31/2015 | MAIL-Margaret Sharp |
| ASSN.0700466-REG | 4.85       | HOA INTEREST ON UNIT FEES (5.25%)        | LAUREL CANYON HOMEOWNERS ASSOCIATION | 04/01/2014 | 03/31/2015 | MAIL-Margaret Sharp |
| ASSN.0700466-REG | 4.65       | HOA INTEREST ON UNIT FEES (5.25%)        | LAUREL CANYON HOMEOWNERS ASSOCIATION | 04/01/2014 | 03/31/2015 | MAIL-Margaret Sharp |
| ASSN.0700466-REG | 4.65       | HOA INTEREST ON UNIT FEES (5.25%)        | LAUREL CANYON HOMEOWNERS ASSOCIATION | 04/01/2014 | 03/31/2015 | MAIL-Margaret Sharp |

Close

Clark County Court System - Register of Actions - Search Results

Clark County Court System - Register of Actions - Search Results

**REGISTER OF ACTIONS**  
**CASE NO. A-14-694156-C**

Laurel Canyon Homeowners Association, Plaintiff(s) vs. P W James Management & Co, Defendant(s)

UNRECORDED

Case Type: Other Civil Filing  
 Subtype: Other Civil Matters  
 Date Filed: 01/08/2014  
 Location: Department 13  
 Cross-Reference Case Number: A694156

**PARTY INFORMATION**

**Defendant** P W James Management & Co

**Lead Attorneys**

**Plaintiff** Laurel Canyon Homeowners Association

Adam H. Clarkson  
 Retained  
 702-450-8710(W)

**EVENTS & ORDERS OF THE COURT**

02/13/2014 Hearing (9:00 AM) (Judicial Officer Denton, Mark R )  
 Non-Evidentiary Hearing Re Plaintiff's Motion for Preliminary Injunction

Minutes

02/13/2014 9:00 AM

- Also present in the courtroom were Homeowners Robert Valentine and James Schumann in proper person  
 COURT ADVISED the sequence of events relating to the initial Temporary Restraining Order and the placement of this hearing on calendar. COURT ADVISED that during preparation for this hearing it became aware that a Complaint was never filed. only the Application for Restraining Order and Preliminary Injunction was filed. Arguments presented by Ms. Kung and Mr. Dominguez. COURT STATED that a Complaint was not filed, therefore, no action was commenced. COURT DETERMINED that there is no Motion for Preliminary Injunction pending before the Court and there is no basis for the Motion for Preliminary Injunction. COURT ORDERED, NO ACTION IS PENDING BEFORE THE COURT; the TEMPORARY RESTRAINING ORDER ISSUED JANUARY 9, 2014 IS A NULLITY.

Parties Present

Return to Register of Actions

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

MEMORANDUM OF POINTS & AUTHORITIES

I.

SUMMARY OF ARGUMENT

Plaintiff, Laurel Canyon Homeowners Association ("Laurel Canyon HOA") is not properly before this Court, and has deceitfully obtained an improper Ex Parte Temporary Restraining Order which must be immediately dissolved. Moreover, Laurel Canyon HOA is not being properly represented, as the Board of Directors for the HOA has been "hijacked" by the sole remaining self-serving director; who is evidently manipulating the Board and the HOA for his own personal gain.

Though the exact details of Director Dov Erlichman's ("Erlichman") ulterior motive is not yet known, his covert campaign is evidenced by the fact that Erlichman has engaged in a premeditated plan of taking control of HOA Boards throughout Clark County, as is evidenced by the fact that Erlichman currently sits as a director on at least eight other homeowner association boards, including Sunrise Ride HOA, Azure Manor/Ranch de Paz HOA, Berkshire Estates HOA, Sundance at the Shadows HOA, Estates at Stallion Mountain HOA, Saddleridge HOA, Estrella II HOA<sup>1</sup>. Additionally, it is further believed that Erlichman is represented through his corporate agents/designees on several other HOA boards.

Thus far, it is believed that Erlichman's agenda is to "take over" HOA boards, so as to allow Erlichman to then terminate that board's existing property management, and retain the services of Thoroughbred Property Management Company ("Thoroughbred"); a property management company with which Erlichman has an established "favorable relationship." Upon information and belief, Erlichman then utilizes his relationship with Thoroughbred to obtain

---

<sup>1</sup> See, Secretary of State print out attached hereto as Exhibit "A."

1 advance notice of forthcoming foreclosures within the association community. Thoroughbred  
2 currently serves as the property management company for five associations (including Laurel  
3 Canyon HOA), on which Erlichman is a board member.

4  
5 Thoroughbred is privy to advanced notice of forthcoming foreclosures by virtue of the  
6 fact that it is customary in the industry for lenders to contact the property management company  
7 of the development in which the proposed foreclosure property is located, to request a copy of  
8 that association's CC&Rs, prior to initiating formal foreclosure proceedings. This information is  
9 instrumental in assisting Erlichman in obtaining an advantage towards the potential purchase of  
10 distressed homes from lenders.

11  
12 In furtherance of Erlichman's scheme, when the two other directors of the Laurel Canyon  
13 HOA resigned in late 2013, Erlichman seized the opportunity to utilize his position as the sole  
14 remaining Board member to commandeer control of the Board, and promptly terminated  
15 PWJames Management & Consulting LLC's ("PWJ") and hire Thoroughbred. However, prior to  
16 PWJ's unlawful termination, PWJ had already commenced the process for the annual member  
17 election to fill the two vacant and expired positions. Erlichman sought to prevent the election (so  
18 he could retain his unlawful control of the Board and HOA) by filing the instant Ex Parte  
19 Application for Temporary Restraining Order ("TRO").

20  
21 Due to Erlichman's cunning tactics, this Court was deceived by Erlichman into issuing an  
22 improper Ex Parte TRO which enjoined PWJ from opening the cast Election Ballots so as to  
23 allow the Laurel Canyon HOA from regaining control of its Board. For the reasons set forth in  
24 detail below, the instant TRO was not properly issued because: (1) it was improperly issued Ex  
25 Parte; (2) this Court lacks subject matter jurisdiction over this dispute pursuant to NRS 31.310;  
26 (3) Plaintiff failed to allege a viable, valid or plausible "irreparable harm"; and (4) Plaintiff failed  
27  
28



1 to demonstrate a substantial likelihood of success on the merits. Moreover, Plaintiff never  
2 posted the requisite bond, thus, the TRO, as issued, was never effective.

3  
4 For these reasons, as set forth in further detail herein below, the improperly issued TRO  
5 must be declared void *ab initio*, and this action must be dismissed for lack of subject matter  
6 jurisdiction.

7  
8 II.

9  
10 STATEMENT OF RELEVANT FACTS

11  
12 A. Background.

13 The Laurel Canyon HOA is run by its Board; which consists of three directors, including  
14 Erlichman. Erlichman's term, and the term of one other director (Neal Shebeck) expired in  
15 December of 2013. In November, just prior to the expiration of Shebeck's term, Shebeck  
16 resigned - citing as his reason for resignation, his discontent with the way Erlichman was  
17 misusing his powers as a director. At that same time, the other director, Vicky Burnett also  
18 resigned for personal reasons. Burnett resigned her position with one year remaining on the term  
19 of that position. At the time of these resignations, the mandated annual election (to elect  
20 directors to fill the two expired terms) was already scheduled to proceed; nominations had  
21 already been mailed out, and the vote was slated to be conducted in December (as was  
22 customary).

23  
24 However, before the election could take place, and immediately after Shebeck and  
25 Burnett tendered their resignations, Erlichman (as the sole remaining director) "appointed"  
26 himself to Burnett's prior position, thereby "transforming" his expired term position, to a "new"  
27 position, with one year left on its term. Erlichman's unilateral appointment of himself to the  
28

1 unexpired term was not authorized by the Bylaws of the HOA. Moreover, once Shebeck and  
2 Burnett resigned, the Board was no longer empowered to act, as the Bylaws expressly provide  
3 that the Board is only authorized to act via a quorum of directors<sup>2</sup>. Thus, the Board should have  
4 taken no further action until after the December election was held, and the two new directors  
5 were empanelled.  
6

7 Rather than await the results of the pending election, *a mere 5 days before ballots were*  
8 *to be opened*, on or about January 4, 2014, Erlichman (acting alone, and without authority)  
9 called a "special executive board meeting" and at that unauthorized meeting, appointed Brenda  
10 Holmes to fill one of the expired positions. Erlichman was not empowered with the authority to  
11 appoint Holmes to the expired position<sup>3</sup>. That notwithstanding, Erlichman and Holmes first  
12 order of business was to immediately terminate PWJ as the property management company, and  
13 to replace PWJ with Thoroughbred<sup>4</sup>. Erlichman and Holmes' second order of business was to  
14 retain Fuller Jenkins Clarkson (Plaintiff's counsel herein) as general counsel to the HOA<sup>5</sup>.  
15

16 Erlichman could not risk losing control of the Board, which he had so cleverly, and  
17 cunningly hijacked. Thus, his third order of business was to unlawfully cancel the election – the  
18 election which is mandated by the Bylaws, and for which ballots had already been cast, and were  
19 merely awaiting tabulation, which was to take place at the scheduled January 9, 2014 Annual  
20 Meeting of Members and Election.  
21

22  
23 <sup>2</sup> NRS 116.3109

24 <sup>3</sup> Unless the governing documents specify a larger number, a quorum of the executive board is present for  
25 purposes of determining the validity of any action taken at a meeting of the executive board only if individuals  
26 entitled to cast a majority of the votes on that board are present at the time a vote regarding that action is taken. If a  
27 quorum is present when a vote is taken, the affirmative vote of a majority of the members present is the act of the  
28 executive board unless a greater vote is required by the declaration or bylaws.

<sup>4</sup> See, Exhibit "B." Section 4.8 of the HOA Bylaws only allows the Board to appoint directors to the unexpired  
portion of any term. Expired terms may only be filled via election by the voting membership.

<sup>5</sup> See, Plaintiff's Application for TRO, page 4, lines 18-26.

<sup>6</sup> *Id.*

1           When advised by PWJ that his actions were *ultra vires* and unauthorized, Erlichman  
2 immediately instructed his newly retained counsel to file the instant Application for TRO, to  
3 enjoin PWJ from opening the ballots, which had already been cast, so that the new directors  
4 could be empanelled.

5  
6       **B.    The Issuance of the TRO that was Void *Ab Initio*.**

7           Plaintiff electronically filed its Ex Parte Application for TRO at 4:33pm on January 8,  
8 2014. Plaintiff did not notify PWJ of the filing. Plaintiff's Application did not comply with  
9 NRCP 65(b) which expressly requires that any ex parte application must be supported by  
10 "specific facts shown by affidavit or by the verified complaint that immediate and irreparable  
11 injury, loss, or damage will result to the applicant before the adverse party or that party's  
12 attorney can be heard in opposition." NRCP 65(b) further requires that "the applicant's attorney  
13 certifies to the court in writing the efforts, if any, which have been made to give the notice and  
14 the reasons supporting the claim that notice should not be required." Because Plaintiff failed to  
15 satisfy these express requirements, Plaintiff should not have been permitted to precede Ex Parte,  
16 and the Ex Parte TRO should not have been issued, and, thus, is void *ab initio*.

17  
18           Despite its fatally deficient Application, Plaintiff was granted an expedited Ex Parte  
19 hearing before this Court at 2pm on January 9, 2014. Plaintiff did not notify PWJ of the  
20 hearing. At the Ex Parte hearing, the Court *acknowledged the deficiencies in Plaintiff's*  
21 *Application*, yet, for reasons unknown, allowed Plaintiff to proceed; and ultimately issued a TRO  
22 in favor of Plaintiff.

23  
24           Because Plaintiff's Application did not comply with NRCP 65(b), Plaintiff should *not*  
25 have been allowed to precede Ex Parte. Additionally, for the reasons set forth in detail below,  
26 this Court lacked subject matter jurisdiction to hear this action; and additionally, Plaintiff's  
27  
28

1 Application did not even meet its burden in establishing that injunctive relief was appropriate.  
2 Thus the issuance of the instant TRO was wholly inappropriate and erroneous.

3 Had PWJ been notified of the filing, or advised of the hearing, PWJ would have advised  
4 this Court of Plaintiff's deficiencies and fallacies. However, because PWJ was not afforded any  
5 notice or opportunity to respond, *the Court was deceived into issuing the improper TRO*, which  
6 should now be declared and deemed void *ab initio*.  
7

8  
9  
10 III.

11 LEGAL ARGUMENT

12  
13 Plaintiff's Application for an Ex Parte TRO should have been denied for the following  
14 reasons: (1) this Court did not have subject matter jurisdiction over this dispute - which was  
15 required to be submitted to mediation before the Nevada Real Estate Division prior to the  
16 commencement of any court action (NRS 38.310); (2) Plaintiff's Application was Ex Parte, yet  
17 blatantly failed to comply with the mandates of NRCIP 65(b); (3) Plaintiff failed to demonstrate  
18 "irreparable harm"; and (4) Plaintiff failed to demonstrate a substantial likelihood of success on  
19 the merits.  
20

21  
22 A. **THIS COURT DID NOT HAVE SUBJECT MATTER JURISDICTION OVER**  
23 **THIS ACTION.**

24  
25 Claims relating to residential property within common-interest communities, such as the  
26 Laurel Canyon development, are governed by Nevada Revised Statute ("NRS") 38.300 et seq.  
27 NRS 38.310 expressly limits the commencement of certain civil actions (such as the instant  
28 action) as follows:

1 NRS 38.310 Limitations on commencement of certain civil actions.

2 1. No civil action based upon a claim relating to:

3 (a) The interpretation, application or enforcement of any covenants,  
4 conditions or restrictions applicable to residential property or any bylaws,  
5 rules or regulations adopted by an association; or

6 (b) The procedures used for increasing, decreasing or imposing additional  
7 assessments upon residential property,

8 may be commenced in any court in this State unless the action has been submitted to  
9 mediation or, if the parties agree, has been referred to a program pursuant to the  
10 provisions of NRS 38.300 to 38.360, inclusive, and, if the civil action concerns real  
11 estate within a planned community subject to the provisions of chapter 116 of NRS  
12 or real estate within a condominium hotel subject to the provisions of chapter 116B of  
13 NRS, all administrative procedures specified in any covenants, conditions or  
14 restrictions applicable to the property or in any bylaws, rules and regulations of an  
15 association have been exhausted.

16 2. A court shall dismiss any civil action which is commenced in violation of the provisions  
17 of subsection 1.

18 [Emphasis added.]

19 Under the express provisions of NRS 38.310, the District Court lacks subject matter  
20 jurisdiction to adjudicate claims in common-interest communities, such as the Laurel Canyon  
21 development, if those claims arise out of the interpretation, application, or enforcement of any  
22 covenants, conditions or restrictions applicable to said property; or to any bylaws, rules or  
23 regulations adopted by the association, as is the dispute here, until after the dispute has been  
24 submitted to mediation under NRS 38.321, and after all designated administrative procedures  
25 have been exhausted. Moreover, NRS 38.321(2) mandates dismissal of unauthorized actions  
26 commenced in violation of NRS 38.321(1).

27 Here, Plaintiff disputes the validity of the nomination and election process pertaining to  
28 the HOA's annual election of board members. The procedure and protocol for the election

1 process is provided for by the Bylaws of the Laurel Canyon HOA<sup>6</sup>, and thus, falls squarely  
2 within the purview of NRS 38.310(1)(a). Despite this fact, Plaintiff failed to submit the dispute  
3 to mediation as required by NRS 38.310, and has not exhausted all applicable administrative  
4 procedures. Therefore, this action is not properly before this Court, and must<sup>7</sup> be dismissed for  
5 lack of subject matter jurisdiction.  
6

7  
8 **B. THE VERY LIMITED EXCEPTIONS PROVIDED BY NRS 38.300 DO NOT**  
9 **APPLY HERE.**

10 In certain, very limited, situations, where there is "an immediate threat of irreparable  
11 harm, or an action relating to the title to residential property"<sup>8</sup> a civil action *may* be commenced  
12 without first complying with NRS 38.310. However, these very limited exceptions do not apply  
13 here, because, as discussed in detail *infra*, there was never any "threat of irreparable harm" to  
14 Plaintiff; and title to real property is not in question. Plaintiff's specious and speculative  
15 allegations of "irreparable harm" were self-serving, fabricated, speculative, thread-bare recitals  
16 that were wholly without merit, and should have received no consideration by this Court.  
17  
18

19 ...

20 ...

21  
22  
23 <sup>6</sup> A true and correct copy of the Bylaws of the Laurel Canyon HOA is attached hereto as Exhibit "B."

24 <sup>7</sup> NRS 38.310(2) provides that "a court shall dismiss any civil action which is commenced in violation of the  
25 provisions of subsection 1." Because the legislature expressly provided that the Court "shall" dismiss (and did *not*  
26 provide that the Court "may" dismiss), dismissal must be granted and is not discretionary. *See also, McKnight*  
27 *Family LLP v. Adept Management Services, Inc. et al.*, 129 Nev. Adv. Op. 64, 310 P.3d 555 (2013) holding that  
28 "[NRS 38.310(2)] mandates the court to dismiss any civil action initiated in violation of NRS 38.310(1) [emphasis

<sup>8</sup> *See*, NRS 38.300(3), which defines "civil action" as follows: "... the term does not include an action in equity for  
injunctive relief in which there is an immediate threat of irreparable harm, or an action relating to the title of  
residential property."

1 C. **THE COURT SHOULD NOT HAVE ISSUED THE TRO, THUS IT MUST BE**  
2 **DECLARED VOID *AB INITIO*.**

3 1. **Plaintiff Failed to Comply with NRCPC 65(b).**

4 In the instant action, Plaintiff unequivocally failed to comply with NRCPC 65(b),  
5 therefore, Plaintiff should not have been permitted to proceed Ex Parte. NRCPC 65(b) provides in  
6 pertinent part:

7 A temporary restraining order may be granted without written or oral  
8 notice to the adverse party or that party's attorney only if (1) it clearly  
9 appears from specific facts shown by affidavit or by the verified  
10 complaint that immediate and irreparable injury, loss, or damage will  
11 result to the applicant before the adverse party or that party's attorney  
12 can be heard in opposition, and (2) the applicant's attorney certifies to  
13 the court in writing the efforts, if any, which have been made to give  
14 the notice and the reasons supporting the claim that notice should  
15 not be required. [Emphasis added].

16 Here, the Declaration of Mario F. Dominguez, Esq. clearly fails to satisfy the two  
17 requirements set forth in NRCPC 65(b)(2).<sup>9</sup> First, Mr. Dominguez neglected to certify to this  
18 Court "in writing" the "efforts" he made to provide Defendants with notice of the TRO. Second,  
19 Mr. Dominguez did not provide the Court with a reason as to why the notice requirement should  
20 be waived. Moreover, the Court expressly acknowledged the deficiencies in Mr. Dominguez's  
21 application<sup>10</sup>, yet for reasons unknown, the Court granted the relief requested.

22 However, because Plaintiff's Application failed to comply with NRCPC 65(b), no Ex Parte  
23 hearing should have been convened, and the TRO that was issued Ex Parte, should have never  
24 been issued; and thus must be deemed void *ab initio*.

25  
26  
27 <sup>9</sup> See, Plaintiff's Application for TRO, "Declaration of Mario E. Dominguez, Esq. in Support of Application For For  
[sic] Preliminary Injunction."

28 <sup>10</sup> See, January 9, 2014 Minutes wherein this Court recognized Plaintiff's failure to comply with NRCPC 65(b),  
attached hereto as Exhibit "C."

1           2.     **Plaintiff Failed to Establish that It Was Entitled to Injunctive Relief.**

2           NRS 33.010(1) authorizes an injunction when it appears from the complaint that the  
3 plaintiff is entitled to the relief requested and at least part of the relief consists of restraining the  
4 challenged act<sup>11</sup>. Before a preliminary injunction will issue, the applications must show: (1)  
5 likelihood of success on the merits; and (2) a reasonable probability that the non-moving party's  
6 conduct, if allowed to continue, will cause irreparable harm for which compensatory damage is  
7 an inadequate remedy at law<sup>12</sup>. When it is shown that there is a complete and adequate remedy  
8 at law, equity will afford no assistance<sup>13</sup>.

9  
10           Here, equitable injunctive relief was not warranted, and should not have been issued for  
11 the following reasons: (1) Plaintiff did not even file a complaint, and thus, was entitled to no  
12 relief under NRS 33.010(1); (2) Plaintiff failed to demonstrate a likelihood of success on the  
13 merits for the multiple reasons set forth infra; (3) Plaintiff failed to demonstrate the imminent  
14 threat of "irreparable harm," as Plaintiff's allegations were nothing more than thread-bare  
15 recitals of speculative and fabricated "injuries"; and (4) there is an adequate remedy of law.

16  
17  
18           a.     **Plaintiff Failed to File a Complaint.**

19           The instant TRO was not properly issued because injunctive relief was not appropriate,  
20 due to the fact that Plaintiff failed to file a complaint in this action. This Court is empowered to  
21 grant injunctive relief in certain limited situations during the *pendency* of a court action under  
22 NRS 33.010. NRS 33.010 provides:

23  
24     ...

25  
26 <sup>11</sup> University and Community College System of Nevada v. Nevadans for Sound Government, 120 Nev. 712, 721,  
27 100 P.3d 179, 187 (2004) [Emphasis added].

28 <sup>12</sup> Id.

<sup>13</sup> Sherran v. Clark, 4 Nev 138, 1868 WL 1963 (Nev.), 97 Am.Dec. 516 (1868) [Emphasis added].



1 An injunction may be granted in the following cases:

2 1. When it shall appear by the complaint that the plaintiff is  
3 entitled to the relief demanded, and such relief or any part thereof  
4 consists in restraining the commission or continuance of the act  
5 complained of, either for a limited period or perpetually.

6 2. When it shall appear by the complaint or affidavit that the  
7 commission or continuance of some act, during the litigation,  
8 would produce great or irreparable injury to the plaintiff.

9 3. When it shall appear, during the litigation, that the  
10 defendant is doing or threatens, or is about to do, or is procuring or  
11 suffering to be done, some act in violation of the plaintiff's rights  
12 respecting the subject of the action, and tending to render the  
13 judgment ineffectual.

14 [Emphasis added.]

15 NRS 33.010 only authorizes injunctive relief during the *pendency* of a court action.  
16 Here, Plaintiffs have not commenced a civil action because to date, Plaintiff has not even filed a  
17 complaint in this action. Accordingly, because Plaintiff *never* commenced the civil action, this  
18 Court was not authorized to grant injunctive relief under NRS 33.010; and therefore, the instant  
19 TRO was not properly granted and must be deemed void *ab initio*.

20 b. Plaintiff Does Not Have a Likelihood of Success on the Merits.

21 The instant TRO should never have issued because Plaintiff failed to demonstrate that it  
22 had a likelihood of success on the merits. In fact, Plaintiff had no likelihood of success on the  
23 merits, because: (1) Plaintiff's claims are not properly before this Court (thus, this Court does not  
24 have subject matter jurisdiction over this action); (2) Plaintiff did not have the legal capacity to  
25 bring the instant action; (3) Plaintiff is not the real party in interest; and (4) the Nomination Form  
26 and Ballots *were* properly prepared and disseminated, thus the Election Ballots should be  
27 opened.  
28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**i. This Court Lacks Subject Matter Jurisdiction.**

As set forth above in detail in Section A. *supra*, this Court does not have subject matter jurisdiction over this dispute, because Plaintiff failed to comply with NRS 38.310, which requires that disputes of this nature be submitted to mediation under NRS 38.320 before any court proceeding may be initiated. Because Plaintiff failed to comply with NRS 38.310, dismissal of Plaintiff's claims is mandated by NRS 38.310(2); and Plaintiff has no likelihood of succeeding (before this Court) on the merits of its claims.

**ii. Plaintiff Lacks the Capacity to Bring the Instant Action.**

Laurel Canyon HOA is the named and purported plaintiff in this action. However, the Laurel Canyon HOA cannot properly be the plaintiff herein, because the HOA can only conduct business (i.e.: initiating a litigation) via action by its Board; the Laurel Canyon Board can only conduct business via a quorum of its Board of Directors; and there is presently no quorum possible on the Laurel Canyon Board, because the Board currently has only one valid member<sup>14</sup>. Thus, the instant action was not lawfully instituted, and the Plaintiff herein lacks the legal capacity to act on behalf of the HOA. Therefore, Plaintiff's claim must fail, and Plaintiff does not have a likelihood of success on the merits.

...  
...  
...

---

<sup>14</sup> On or about January 4, 2014, Erlichman (acting alone, and without authority) called a "special executive board meeting" and at that unauthorized meeting, appointed Brenda Holmes to fill one of the expired positions. Erlichman was not empowered with the authority to appoint Holmes to the expired position (See Section 4.8 of the Bylaws).

1   iii.     Erllichman Is the Real Party In Interest.

2             Plaintiff's claims did not have a substantial likelihood of success on the merits because  
3 the claims were not brought by the real party in interest. NRCP 17(a) requires that "[e]very  
4 action shall be prosecuted in the name of the real party in interest." A real party in interest is  
5 "one who possesses the right to enforce the claim and has a significant interest in the  
6 litigation."<sup>15</sup> Requiring the real party in interest to prosecute a claim "enable[s] a defendant to  
7 avail himself of discoverable evidence and relevant defenses and assure him finality of  
8 judgment."<sup>16</sup>  
9

10  
11             Here, it is quite clear from the allegations proffered in the Application for TRO that  
12 Erllichman is the real party in interest, and not the Laurel Canyon HOA. Erllichman has a  
13 "significant interest in the litigation" because Erllichman fears losing his unfettered control of the  
14 Board. As set forth in detail above, Erllichman's motives are ulterior, and the instant action  
15 serves only Erllichman's self-serving purpose of maintaining unfettered control of the Board, so  
16 he can continue to utilize Thoroughbred to obtain advance private information to be utilized by  
17 Erllichman for his own personal gain. It is clearly Erllichman and not the Laurel Canyon HOA  
18 that claims "irreparable harm" if the ballots are permitted to be opened, and the new Board  
19 empanelled – because Erllichman will lose control. The facts demonstrate that Erllichman has,  
20 and continues to misuse his powers as a Board member to further advance his own personal  
21 financial interests. Unequivocally, Erllichman is the real party in interest here, and the litigation  
22 brought in the name of Laurel Canyon HOA does not have a likelihood of success on the merits.  
23  
24  
25  
26

27             <sup>15</sup> Beazer Homes Holding v. Eighth Judicial District Court, 291 P.3d 128, 133 (2012) citing to Szilagyi v. Testa, 99  
28 Nov. 834, 838, 673 P.2d 495, 498 (1983).

<sup>16</sup> NAD, Inc. v. Eighth Judicial District Court, 115 Nev. 71, 76, 976 P.2d 994, 997 (1999).

1 because Laurel Canyon HOA is not the real party in interest, and must be dismissed as a plaintiff  
2 herein.

3  
4 iv. **Contrary to Plaintiff's Allegations, the Nomination Forms  
5 Were Proper under NRS 116.31034.**

6 Plaintiff has no likelihood of success on the merits because Plaintiff's alleged violation of  
7 NRS 116.31034 is wholly without merit. Plaintiff alleges that PWJ violated NRS 116.31034(4)  
8 by allegedly preparing election ballots less than thirty days before Nomination Forms were sent  
9 to the homeowners. Plaintiff's allegation was either erroneous, or purposefully misleading.  
10

11 NRS 116.31034(4) provides:

12 Not less than 30 days before the preparation of a ballot for the  
13 election of members of the executive board, the secretary or other  
14 officer specified in the bylaws of the association shall cause notice  
15 to be given to each unit's owner of the unit's owner's eligibility to  
16 serve as a member of the executive board. Each unit's owner who  
17 is qualified to serve as a member of the executive board may have  
18 his or her name placed on the ballot along with the names of the  
19 nominees selected by the members of the executive board or a  
20 nominating committee established by the association.

21 [Emphasis added.]

22 The plain reading of NRS 116.31034(4) demonstrates that NRS 116.31034(4) merely  
23 requires that at least 30 days pass between the mailing of the Nomination Forms, and the  
24 preparation of the Election Ballot. Here, the Nomination Forms were duly mailed to all  
25  
26  
27  
28

1 homeowners on October 31, 2013<sup>17</sup>. Thereafter, 50 days later, on December 20, 2013<sup>18</sup>, Election  
2 Ballots were prepared and mailed to all homeowners<sup>19</sup>.

3  
4 Based on the foregoing, it is evident that Plaintiff's allegation pertaining to the violation  
5 of NRS 116.31034(4) is wholly without merit; and thus, Plaintiff had no likelihood of success on  
6 the merits of this specious claim at the time of trial. Thus, injunctive relief was not proper, and  
7 should not have issued.

8  
9  
10 **v. The Nominees Proposed by Erlichman Were Not Eligible  
Because They Did Not Comply with NRS 116.31034(10).**

11 Plaintiff also had no likelihood of success on its claim that nominees were improperly  
12 omitted from the Election Ballot. Plaintiff alleges that Erlichman's corporate nominees (on  
13 behalf of two properties owned by Erlichman's corporations) were improperly omitted from the  
14 Election Ballot<sup>20</sup>. Plaintiff's claim fails because Erlichman's corporate nominees were not  
15 eligible to be placed on the Election Ballot because they had not complied with NRS  
16 116.31034(10), which required any proposed nominee to file: (i) "proof of the association"  
17 between the corporate nominee and the corporate entity, with the records of the association; and  
18 (ii) evidence identifying the units owned by the corporate owner.

19  
20 NRS 116.31034(10) provides that:  
21  
22

23  
24 <sup>17</sup> See, Declarations of Penny Frederick, Mia Pratt and Ronald Wood attached hereto as Exhibits "D", "E", and "F"  
respectively.

25 <sup>18</sup> Plaintiff alleges that Election Ballots were mailed on December 18, 2013, which is not the correct date (See  
26 Exhibit "D."). However, even if Election Ballots were mailed on December 18, 2013, still, more than 30 days  
passed between the mailing of Nomination Forms (on October 31, 2013) and the preparation of the Election Ballots.

27 <sup>19</sup> See, Declarations of Penny Frederick, Mia Pratt and Ronald Wood attached hereto as Exhibits "D", "E", and "F"  
28 respectively.

<sup>20</sup> See, Plaintiff's Application for IRO, page 4, lines 5-6; and page 6, lines 17-18.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

An officer, employee, agent or director of a corporate owner of a unit, a trustee or designated beneficiary of a trust that owns a unit, a partner of a partnership that owns a unit, a member or manager of a limited-liability company that owns a unit, and a fiduciary of an estate that owns a unit may be an officer of the association or a member of the executive board. In all events where the person serving or offering to serve as an officer of the association or a member of the executive board is not the record owner, the person shall file proof in the records of the association that:

(a) The person is associated with the corporate owner, trust, partnership, limited-liability company or estate as required by this subsection; and

(b) Identifies the unit or units owned by the corporate owner, trust, partnership, limited-liability company or estate.

Here, Erlichman's corporate nominees failed to comply with subsections (a) and (b) because Erlichman's proposed corporate nominees did not file their proof of association with the Laurel Canyon HOA, or provide Laurel Canyon HOA with information identifying the unit(s) owned by Erlichman<sup>21</sup>. As such, Erlichman's corporate nominees were not "eligible" to be placed on the Election Ballot; and PWJ was not negligent in failing to add them to the Election Ballot. Consequently, Plaintiff did not have a substantial likelihood of success on this baseless claim, and injunctive relief should not have been issued.

**c. Plaintiff Failed to Demonstrate That It Will Suffer Irreparable Harm.**

**i. Plaintiff's Allegations of "Irreparable Harm" are "Bare Possibilities" of Pure Speculation.**

Plaintiff must demonstrate a valid threat of imminent and irreparable harm. Moreover, it must appear that there is *at least a reasonable probability, not merely a bare possibility of an*

---

<sup>21</sup> See, Declaration of Penny Frederick, attached hereto as Exhibit "D."

1 injury; or any unsubstantial or unreasonable apprehension of it<sup>22</sup>. Here, it is evident that  
2 Plaintiff has failed to allege anything more than a "bare possibility of injury or any unsubstantial  
3 or unreasonable apprehension of it." Plaintiff's allegations are clearly only fabricated  
4 speculations.

5  
6 In its Application for TRO, Plaintiff specious allegations of "irreparable harm" are as  
7 follows:

- 8
- individuals 'elected' to the Board would not only be illegitimate members, but would  
9 have favorable relationships to PWJ;
  - These illegitimate members would have access in their entirety to all confidential  
10 Association information, including but not limited to financial accounts; and
  - The 'elected' individuals would have apparent authority to conduct business and financial  
11 transactions on behalf of the Association which may not be in the best interest of the  
12 Association, and potentially directly adverse to the Association<sup>23</sup>.
- 13  
14  
15  
16

17  
18 Plaintiff's specious allegations of "irreparable harm" are solely based upon *conjecture,*  
19 *speculation, and perhaps paranoia and projection* for the following reasons:

- 20
- Individuals elected to the Board would not be "illegitimate members," as they would  
21 have been duly elected by a vote of the members of the association. The mere fact that  
22 Erlichman's two proposed "agents" were not on the ballot does not negate the legitimacy  
23 of the vote; but merely gives rise to a potential claim by Erlichman's two proposed  
24 agents, to request a new election – a claim that is required to be litigated before the  
25 Nevada Real Estate Division per NRS 38 320.
- 26  
27

28 <sup>22</sup> *Sherman v. Clark*, 4 Nev. 138, 1868 WL 1963, 97 Am. Dec. 516 (1868) [Emphasis added].

<sup>23</sup> See, Plaintiff's Application for TRO, page 7, lines 19-28, and page 8, lines 1-2.

1 • Plaintiff's allegation that newly elected board member would have "favorable  
2 relationships to PWJ" is not only without factual basis, but is furthermore untrue and  
3 wholly irrelevant. PWJ is nothing more than a property management company that  
4 serves at the pleasure of the Board. PWJ has been the duly appointed management  
5 company for the HOA since 2010, during which time, Erlichman has been a Board  
6 member since December of 2011, and thus has not developed any "favorable  
7 relationships" to any individual homeowner during that time, but has spent a majority of  
8 its time working under Erlichman.

9  
10 • Plaintiff's allegations that "these illegitimate members would have access in their entirety  
11 to all confidential Association information, including but not limited to financial  
12 accounts" is absurd, in that the Association does not have any "confidential Association  
13 information" because every member of the Association is entitled to review the  
14 Association's documents NRS 116.31175<sup>24</sup>.

15  
16  
17  
18 <sup>24</sup> NRS 116.31175 Maintenance and availability of books, records and other papers of association: General  
19 requirements; exceptions; general records concerning certain violations; enforcement by Ombudsman; limitations on  
amount that may be charged to conduct review.

20 1. Except as otherwise provided in subsection 4, the executive board of an association shall, upon the written  
21 request of a unit's owner, make available the books, records and other papers of the association for review at the  
business office of the association or a designated business location not to exceed 60 miles from the physical location  
of the common-interest community and during the regular working hours of the association, including, without  
22 limitation:

- 23 (a) The financial statement of the association;  
24 (b) The budgets of the association required to be prepared pursuant to NRS 116.31151;  
(c) The study of the reserves of the association required to be conducted pursuant to NRS 116.31152; and  
(d) All contracts to which the association is a party and all records filed with a court relating to a civil or  
criminal action to which the association is a party.

25 2. The executive board shall provide a copy of any of the records described in paragraphs (a), (b) and (c) of  
subsection 1 to a unit's owner or the Ombudsman within 21 days after receiving a written request therefor. Such  
26 records must be provided in electronic format at no charge to the unit's owner or, if the association is unable to  
provide the records in electronic format, the executive board may charge a fee to cover the actual costs of preparing  
a copy, but the fee may not exceed 25 cents per page for the first 10 pages, and 10 cents per page thereafter.

27 3. If the executive board fails to provide a copy of any of the records pursuant to subsection 2 within 21 days,  
the executive board must pay a penalty of \$25 for each day the executive board fails to provide the records

28 4. The provisions of subsection 1 do not apply to:

- (a) The personnel records of the employees of the association, except for those records relating to the number of  
hours worked and the salaries and benefits of those employees;



1 • Plaintiff's allegation that "the 'elected' individuals would have apparent authority to  
2 conduct business and financial transactions on behalf of the Association which may not  
3 be in the best interest of the Association, and potentially directly adverse to the  
4 Association" is similarly without any factual support, and is nothing more than fabricated  
5 speculation. There has been no evidence that the newly appointed Board members would  
6 act adversely to the Association, as no ulterior motives or hidden agendas have been  
7 alleged - in fact, the only member with ulterior motives to act adversely to the  
8 Association is Erlichman - the driving force behind the instant action.  
9  
10  
11

12 (b) The records of the association relating to another unit's owner, including, without limitation, any  
13 architectural plan or specification submitted by a unit's owner to the association during an approval process required  
14 by the governing documents, except for those records described in subsection 5; and

15 (c) Any document, including, without limitation, minutes of an executive board meeting, a reserve study and a  
16 budget, if the document:

- 17 (1) Is in the process of being developed for final consideration by the executive board; and  
18 (2) Has not been placed on an agenda for final approval by the executive board.

19 5. The executive board of an association shall maintain a general record concerning each violation of the  
20 governing documents, other than a violation involving a failure to pay an assessment, for which the executive board  
21 has imposed a fine, a construction penalty or any other sanction. The general record:

22 (a) Must contain a general description of the nature of the violation and the type of the sanction imposed. If the  
23 sanction imposed was a fine or construction penalty, the general record must specify the amount of the fine or  
24 construction penalty.

25 (b) Must not contain the name or address of the person against whom the sanction was imposed or any other  
26 personal information which may be used to identify the person or the location of the unit, if any, that is associated  
27 with the violation.

28 (c) Must be maintained in an organized and convenient filing system or data system that allows a unit's owner  
to search and review the general records concerning violations of the governing documents.

6. If the executive board refuses to allow a unit's owner to review the books, records or other papers of the  
association, the Ombudsman may:

(a) On behalf of the unit's owner and upon written request, review the books, records or other papers of the  
association during the regular working hours of the association; and

(b) If the Ombudsman is denied access to the books, records or other papers, request the Commission, or any  
member thereof acting on behalf of the Commission, to issue a subpoena for their production.

7. The books, records and other papers of an association must be maintained for at least 10 years. The  
provisions of this subsection do not apply to:

(a) The minutes of a meeting of the units' owners which must be maintained in accordance with NRS 116.3108;  
or

(b) The minutes of a meeting of the executive board which must be maintained in accordance with NRS  
116.31083.

8. The executive board shall not require a unit's owner to pay an amount in excess of \$10 per hour to review  
any books, records, contracts or other papers of the association pursuant to the provisions of subsection 1.  
[Emphasis added]

1 An analytical reading of Plaintiff's allegations unequivocally demonstrates that Plaintiff  
2 has failed to articulate a single fact that supports Plaintiff's outlandish and baseless allegations.  
3 Plaintiff has demonstrated no "favorable relationships" between any of the nominated candidates  
4 and PWJ, as no such relationships exist<sup>25</sup>. Moreover, Plaintiff has failed to articulate how or  
5 what the actions of the alleged "illegitimate members" (who were duly elected by the popular  
6 vote of the homeowners) would cause irreparable harm to the HOA -- which is comprised of the  
7 very members who voted for the "illegitimate members."

8 Thus, it is evident that Plaintiff has failed to demonstrate "irreparable harm"; and the  
9 TRO should never have issued.  
10  
11

12  
13 **ii. Injunctions Cannot Enjoin Acts Already Committed.**

14 Here, Plaintiff sought to enjoin the opening of already cast Election Ballots in an effort to  
15 prevent the election from concluding, and to prevent the newly elected Board members from  
16 being empanelled. However, not opening the Election Ballots does not negate the fact that the  
17 election has already taken place. Moreover, merely delaying the opening of the Election Ballots  
18 does will not nullify or "un-do" the election, it only delays the empanelling of the new members.  
19

20 It has long since been established under Nevada law that injunctions are only issued to  
21 prevent apprehended injury or mischief, and affords no redress to wrongs already committed<sup>26</sup>  
22 Here, because the election has already taken place, injunctive relief is not appropriate or  
23 warranted. The Election Ballots must be opened and tabulated, and the new Board members  
24 must be allowed to take their positions on the Board.  
25

26  
27  
28 <sup>25</sup> See, Declaration of Penny Frederick, attached hereto as Exhibit "D."

<sup>26</sup> Sherran v. Clark, 4 Nev. 138, 1868 WL 1963, 97 Am.Dec. 516 (1868) [Emphasis added].

1           That being said, Erlichman is not without remedy. To challenge the election that has  
2 already taken place, Erlichman may bring an appropriate action before the Nevada Real Estate  
3 Division to require a new election; or he may make a motion with the properly empanelled Board  
4 to call for a new election. What Erlichman cannot do, however, is unilaterally declare the  
5 election void, and negate the Election Ballots already duly cast.  
6

7           Thus, because Plaintiff sought to enjoin the tabulation of ballots cast for an election that  
8 has already taken place, injunctive relief was not an appropriate or authorized remedy; and  
9 Plaintiff did not have a substantial likelihood of success on the merits if its claim.  
10

11  
12                           iii.     The Opening of the Ballots Will Cause No Harm to Plaintiff.

13           Plaintiff sought and obtained a TRO enjoining PWJ from opening the ballots already cast.  
14 For the reasons set forth *supra*, the injury feared by Plaintiff arises from the *election*, not from  
15 the opening of the ballots. The mere act of opening a ballot cannot and does not cause any harm  
16 to Plaintiff. Perhaps, the empanelling of the new members *may*, arguably, cause *some allegedly*  
17 *perceived harm*, however, that issues is not before the Court, *since Plaintiff did not timely seek to*  
18 *enjoin the election*. Therefore, it is evident that the act enjoined (the opening of ballots already  
19 cast) was improperly enjoined, as there was no imminent threat of irreparable harm and Plaintiff  
20 did not have a reasonable likelihood of success on the merits.  
21  
22

23  
24                           d.     Plaintiff Has an Adequate Remedy at Law.

25           Where it can be shown that there is a complete and adequate remedy at law, equity will  
26 afford no assistance<sup>27</sup>. Here, Plaintiff (or Erlichman) has a complete and adequate remedy at  
27 law. If Plaintiff believes that the election was not properly conducted, it may seek full redress  
28

---

<sup>27</sup> *Shannon v. Clark*, 4 Nev. 138, 1868 WL 1963, 97 Am.Dec. 516 (1868) [Emphasis added].

1 with the Nevada Real Estate Division ("NRED"). The NRED can order that a new election be  
2 held, and once done, the new Board members would have the ability and authority to unwind any  
3 action taken by the Board empaneled herein. Moreover, if the homeowners are displeased with  
4 the new Board members (whom they recently voted for), then the homeowners also have an  
5 adequate remedy, in that they are empowered by the CC&Rs to remove the members via a  
6 special vote<sup>28</sup>.

8 Consequently, since Plaintiff does have full and adequate remedies at law, injunctive  
9 relief was not appropriate and should not have been issued.

11 **D. THE TRO IS VOID BECAUSE PLAINTIFFS FAILED TO POST THE  
12 REQUIRED SECURITY BOND.**

14 Pursuant to NRCPC 65(c), "[n]o restraining order or preliminary injunction shall issue  
15 except upon the giving of security by the applicant, in such sum as the court deems proper  
16 for the payment of such costs and damages as may be incurred or suffered by any party who is  
17 found to have been wrongfully enjoined or restrained."

19 The purpose of the security bond is "to safeguard Defendants from costs and damages  
20 incurred as a result of a temporary restraining order improvidently issued."<sup>29</sup> The filing of the  
21 bond "is essential to the validity of an injunction."<sup>30</sup> Further, "[w]here a bond is required by  
22 statute before the issuance of an injunction, it must be exacted or the order will be absolutely  
23 void."<sup>31</sup>

25 <sup>28</sup> See, CC&Rs, section 4.2(b), attached hereto as Exhibit "G."

26 <sup>29</sup> *V'Guarn, Inc. v. Dec*, 925 F.Supp.2d 1120, 1127 (2013).

27 <sup>30</sup> *Ranzell Construction v. Harrah's Club*, 81 Nev. 414, 420 404, P.2d 902, 905, (1965).

28 <sup>31</sup> *Shelton v. Second Judicial Dist. Court*, 64 Nev. 487, 494, 185 P.2d 320, 323 (1947). [Emphasis added].

1 On January 9, 2014, this Court ordered that Plaintiff post a \$250.00 security bond.<sup>22</sup>  
2 However, Plaintiff never posted the security bond; thereby effectively rendering the TRO void.  
3 As such, the TRO is not in valid, and Defendants have not been actually enjoined from opening  
4 the Election Ballots.  
5

6  
7 IV.

8 CONCLUSION

9 For the reasons set forth in detail *supra*, PWJ submits that Erlichman (not the HOA) is  
10 the real party in interest -- who is seeking to misuse the Board for Erlichman's own personal  
11 gain. Plaintiff's allegations reveal that Plaintiff has no viable claims for relief and that injunctive  
12 relief is, and was not ever proper or warranted.  
13

14 Additionally, the instant TRO was not properly issued because: (1) it was improperly  
15 issued *Ex Parte*; (2) this Court lacks subject matter jurisdiction over this dispute pursuant to NRS  
16 31.310; (3) Plaintiff failed to allege a viable, valid or plausible "irreparable harm"; and (4)  
17 Plaintiff failed to demonstrate a substantial likelihood of success on the merits. Moreover,  
18 Plaintiff never posted the requisite bond, thus, the TRO, as issued, was never effective.  
19

20 Therefore, PWJ respectfully requests that this Court declare the previously erroneously  
21 issued TRO void *ab initio*, and dismiss Plaintiff's specious Application for TRO forthwith. PWJ  
22 further requests that PWJ be awarded its attorney's fees and costs incurred herein pursuant to  
23 NRS 18.010(2)(b), as Plaintiff's claims are frivolous, vexatious and brought and maintained  
24 without reasonable grounds to harass and oppress PWJ. As such, Plaintiff's frivolous claims  
25 overburden the limited judicial resources, hinder the timely resolution of meritorious claims and  
26 increase the costs of engaging in business and providing professional services to the public. If  
27  
28

---

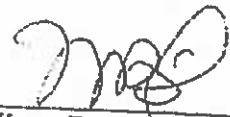
<sup>22</sup> See, Exhibit "C."

1 awarded, PWJ will submit an appropriate application to establish the total sum of the attorney's  
2 fees and costs incurred herein.

3 Dated this 31<sup>st</sup> day of January, 2014.  
4

5  
6 Respectfully Submitted By:

7 KUNG & BROWN

8 

9  
10 \_\_\_\_\_  
11 A.J. Kung, Esq.  
12 Nevada Bar No. 7052  
13 Melissa Barishman, Esq.  
14 Nevada Bar No. 12935  
15 214 S. Maryland Parkway  
16 Las Vegas, Nevada 89101  
17 Counsel for Defendants  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

CERTIFICATE OF SERVICE

I hereby certify that on 31<sup>st</sup> day of January, 2014, I served a copy of the foregoing  
Opposition to Application for Temporary Restraining Order, via First Class Mail to the  
following:

Adam H. Clarkson, Esq.  
Mario Dominguez, Esq.  
Fuller Jenkins Clarkson  
2300 W. Sahara Ave.  
Suite 950  
Las Vegas, NV 89102  
Attorneys for Plaintiff

  
An employee of King & Brown

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

# **NOTICE TO LAUREL CANYON HOA HOMEOWNERS**

**THE LAUREL CANYON HOMEOWNERS ASSOCIATION ELECTION MEETING WAS SCHEDULED TO BE HELD ON JANUARY 9, 2014. DUE TO THE ACTIONS OF ONE BOARD MEMBER, A TEMPORARY RESTRAINING ORDER WAS ISSUED TO PREVENT THE LEGAL BALLOTS FROM BEING OPENED.**

**IN A COURT HEARING HELD ON FEBRUARY 13, 2014, JUDGE DENTON DETERMINED THAT THE TEMPORARY RESTRAINING ORDER WAS FILED INCORRECTLY AND ERRONEOUSLY AND DETERMINED THAT THE ORDER WAS NULL AND VOID.**

**THIS IS TO ADVISE YOU THAT ON THE ADVICE OF LEGAL COUNSEL AND THE REAL ESTATE DIVISION, THE BALLOTS WILL BE OPENED ON MONDAY FEBRUARY 17, 2014 AT 12:30 P.M. AT THE WILD SUNFLOWER STREET AND CICADA FLOWER AVENUE CORNER PARK SHELTER.**

**HOMEOWNERS AND ALL INTERESTED PARTIES ARE ENCOURAGED TO ATTEND.**

**SINCERELY,**

**LAUREL CANYON HOMEOWNERS**



**Laurel Canyon Homeowners Association  
Board of Directors Meeting  
Tuesday, November 26, 2013, at 5:00 p.m.  
Delucias Pizzeria, 2345 E. Centennial Parkway  
North Las Vegas, NV 89081  
Minutes**

The Board of Directors of the Laurel Canyon Homeowners Association met Tuesday, November 26, 2013 at 5:00 p.m., at Delucias Pizzeria, located at 2345 E. Centennial Parkway North Las Vegas, NV 89081.

**Board Members Present:** Neal Shebeck, Dov Erlichman, and Vicky Burnett

**Board Members Absent:** None

**Others Present:** Homeowners; Allan Frederick, Penny Frederick and Paul Cluver from PWJames Management & Consulting

**Call to Order/Quorum Determination** – The meeting was called to order at 5:00p.m. by President Neal Shebeck. It was determined that quorum was established.

**Open Homeowner Forum** - There was an open forum held for owners to discuss issues and concerns. Homeowners present discussed the following: Request from multiple homeowners for the resignation of Vicky Burnett, reasons to not lower assessments, problems with investors controlling the Board, and ongoing landscaping issues.

**Review and Approval of Minutes** –A letter was read out loud into the minutes per the request of the homeowner of 3764 Candytuft, who was not in attendance (letter attached). A motion was made by Neal Shebeck to cancel the meeting, as he did not feel that the agenda and notice mailed by Dov Erlichman was proper, and re-schedule the board meeting for December. Motion did not carry. Neil Shebeck submitted a signed resignation form and resigned from the Board effective immediately. A motion was made by Mr. Erlichman and seconded by Ms. Burnett to approve the minutes of the October 25, 2013 Board of Directors meeting. Motion carried unanimously.

**Review Financial Reports**-The Board reviewed the financial reports for the month ending September 30, 2013. A motion was made by Mr. Erlichman and seconded by Ms. Burnett to approve the financial reports for the month ending September 30, 2013. Motion carried unanimously.

**Review and Approve New Collection Policy** – Management provided the Board with a written guideline for changes to the Collection Policy, per NRS 116. A motion was made by Mr. Erlichman and seconded by Ms. Burnett to accept the changes to the Collection Policy. Motion carried unanimously.

**Open Management Company Bids and Potential Engagement** – The Board and Management took a short recess from 5:29 p.m. to 5:36 p.m. The Board meeting reconvened at 5:36 p.m.

**Potential Termination of Current Management Company** – A motion was made by Mr. Erlichman and seconded by Ms. Burnett to renew the management agreement with PWJames Mangement. Motion carried unanimously.

**Ratify Decision to Terminate Gothic Landscape** – A motion was made by Mr. Erlichman and seconded Ms. Burnett to ratify the decision to terminate Gothic Landscape. Motion carried unanimously.

**Select New Landscape Company** – A motion was made and seconded to accept the proposal provided by All Natural Landscape. Motion carried unanimously.

**Approval of 2014 Budget** – A motion was made and seconded to approve the 2014 Budget as presented. Motion carried unanimously.

**Schedule Annual, Election and Budget Ratification Meeting** – A motion was made and seconded to have Vicky Burnett resign from the Board of Directors of Laurel Canyon HOA. Motion carried unanimously. The last remaining Board Member, Dov Erlichman, appointed himself to Vicky Burnett's remaining term. The Annual Meeting date was not established. One Board member remains on Board after resignation of Neil Shebeck and Vicky Burnette.

**Open Homeowner Forum** – There was an open forum held for owners to discuss issues and concerns. There were no additional comments.

**Adjournment** – There being no further business, a motion was made and seconded to adjourn the meeting. Motion carried unanimously. The meeting was adjourned at 7:00 p.m.

\_\_\_\_\_  
**LAUREL CANYON HOA BOARD MEMBER**

\_\_\_\_\_  
**DATE**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

II.

STATEMENT OF RELEVANT FACTS

A. Background.

The Laurel Canyon HOA is run by its Board; which consists of three directors, including Erlichman. Erlichman's term, and the term of one other director (Neal Shebeck) expired in December of 2013. In November, just prior to the expiration of Shebeck's term, Shebeck resigned - citing as his reason for resignation, his discontent with the way Erlichman was misusing his powers as a director. At that same time, the other director, Vicky Burnett also resigned for personal reasons. Burnett resigned her position with one year remaining on the term of that position. At the time of these resignations, the mandated annual election (to elect directors to fill the two expired terms) was already scheduled to proceed; nominations had already been mailed out, and the vote was slated to be conducted in December (as was customary).

However, before the election could take place, and immediately after Shebeck and Burnett tendered their resignations, Erlichman (as the sole remaining director) unilaterally "appointed" himself to Burnett's prior position, thereby "transforming" his expired term position, to an "unexpired" position, with one year left on its term. Erlichman's unilateral appointment of himself to the unexpired term was not authorized by the Bylaws of the HOA. Moreover, once Shebeck and Burnett resigned, the Board was no longer empowered to act, as the Bylaws expressly provide that the Board is only authorized to act via a quorum of directors<sup>3</sup>.

---

<sup>3</sup> NRS 116.3109

3. Unless the governing documents specify a larger number, a quorum of the executive board is present for purposes of determining the validity of any action taken at a meeting of the executive board only if individuals entitled to cast a majority of the votes on that board are present at the time a vote regarding that action is taken. If a quorum is present when a vote is taken, the affirmative vote of a majority of the members present is the act of the executive board unless a greater vote is required by the declaration or bylaws.

1 Thus, the Board should have taken no further action until after the December election was held,  
2 and the two new directors were empanelled.

3 Rather than await the results of the pending election, *a mere 5 days before ballots were*  
4 *to be opened*, on or about January 4, 2014, Erlichman (acting alone, and without authority)  
5 called a "special executive board meeting" and at that unauthorized meeting, appointed Brenda  
6 Holmes to fill one of the expired positions. Erlichman was not empowered with the authority to  
7 appoint Holmes to the expired position<sup>4</sup>. That notwithstanding, Erlichman and Holmes first  
8 order of business was to immediately terminate PWJ as the property management company, and  
9 to replace PWJ with Thoroughbred<sup>5</sup>. Erlichman and Holmes' second order of business was to  
10 retain Fuller Jenkins Clarkson (Plaintiff's counsel herein) as general counsel to the HOA<sup>6</sup>.

11 Erlichman could not risk losing control of the Board, which he had so cleverly and  
12 cunningly hijacked. Thus, his third order of business was to unlawfully cancel the election – the  
13 election which is mandated by the Bylaws, and for which ballots had already been cast, and were  
14 merely awaiting tabulation, which was to take place at the scheduled January 9, 2014 Annual  
15 Meeting of Members and Election.

16 When advised by PWJ that his actions were *ultra vires* and unauthorized, Erlichman  
17 immediately instructed his newly retained counsel to file an Application for TRO, to enjoin PWJ  
18 from opening the ballots, which had already been cast, so that the new directors could be  
19 empanelled.  
20  
21  
22  
23  
24  
25

26 <sup>1</sup> See, Exhibit "B." Section 4.8 of the HOA Bylaws only allows the Board to appoint directors to the unexpired  
27 portion of any term. Expired terms may only be filled via election by the voting membership.

28 <sup>5</sup> See, Plaintiff's Application for TRO, page 4, lines 18-26.

<sup>6</sup> *Id.*