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5 SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
6 IN AND FOR THE COUNTY OF WASHOE
7

8
9 Plaintiffs, CASE NO.
10 vs. DEPT. NO.
11 a Nevada corporation, and DOES 1
12 through 5, inclusive,
13 Defendants.

14 _____ /
15 MOTION FOR TEMPORARY RESTRAINING ORDER
16 OR PRELIMINARY INJUNCTION AND FOR APPOINTMENT
17 OF A RECEIVER (NRCF 65 AND NRS 78.650); MEMORANDUM
OF SUPPORTING POINTS AND AUTHORITIES (FILED
CONCURRENTLY WITH DECLARATION OF _____)

18 Plaintiffs _____, hereinafter _____,
19 through their attorneys KENT LAW, PLLC move the Court pursuant to
20 NRCF 65 and NRS 78.650 for a temporary restraining order or preliminary injunction
21 and permanent injunction to maintain the status quo of Defendant _____,
22 hereinafter _____, by enjoining directors and officers _____ and _____
23 _____ itself from enforcing and carrying out the exchange of shares of stock for debt set
24 forth in that certain purported Resolution of _____ Board of Directors, January 25,
25 2013, (the "Purported Resolution"). Specifically, the Court should prohibit _____
26 and _____ from changing the equal ownership status currently enjoyed by
27 Plaintiffs and Defendants, such that _____ becomes the majority stockholder,
28 by means of scheme that involves the issuance of new stock at well-below market

1 value as payment of existing stockholder loans.

2 Plaintiffs request that the Court issue a finding and an order that the members
3 of _____ Board of Directors consists of _____, and not solely of
4 _____, as he presently asserts; and that the Purported _____
5 Resolution that _____ issued as the purported sole director in a board
6 meeting that was held without notice to the other board members, and without a
7 quorum present, and though self-dealing in that it benefits only _____, is
8 rescinded, withdrawn and declared void and of no effect. In addition, Plaintiffs seek
9 to have this Court enjoin _____ or its Board of Directors from firing or demoting
10 Plaintiffs, or cutting their salaries in retribution of bringing this action, and also enjoin _
11 _____ Board of Directors from meeting or taking any action while the requested
12 injunction (TRO or preliminary injunction) remains in effect.

13 Because Defendants _____ have committed acts
14 constituting fraud, collusion, misfeasance, malfeasance or nonfeasance, Plaintiffs also
15 seek to enjoin _____ from using _____ money or other assets to fund
16 their legal expenses.

17 Plaintiffs seek appointment of a receiver as allowed by NRS 78.650 on the
18 grounds that Defendants _____ have caused _____ to violate
19 its charter, and that they have been guilty of fraud, collusion, misfeasance,
20 malfeasance or nonfeasance; because Plaintiffs and Defendants have equal shares of
21 _____ shares and representation on _____ Board of Directors, but have
22 become adversarial such that neither side enjoys a majority nor can the two sides
23 reach agreement such that the Board now cannot take any action; and because an
24 independent third party is needed to inspect the corporate books, records, and audit _
25 _____ finances.

26 This motion is supported by the following Memorandum of Points and
27 Authorities in Support of this Motion, the Exhibits hereto, the Declaration of _____
28 _____ and the Declaration of Stephen S. Kent.

1 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION**

2 Plaintiffs _____ submit the following Memorandum of
3 Points and Authorities in Support of their Motion.

4 **INTRODUCTION**

5 This action and motion are necessary to prevent Defendants _____
6 _____ from seizing control of corporate Defendant _____ and causing
7 irreparable harm to Plaintiffs _____. At present,
8 Plaintiffs collectively enjoy a 50% ownership of _____ stock, whereas, _____
9 and their friend, _____, own the other 50%. The two sides also have
10 equal representation on _____ four-member Board of Directors, with _____
11 _____ holding two of the positions, and _____ holding the other two.

12 However, _____, which is a _____ contractor, has suddenly
13 become very profitable, growing very slowly throughout most of its 10-year history, but
14 experiencing significant growth in the past two years. It currently has nine
15 government contracts worth \$40 million. And then, in 2012, _____ won an
16 extremely valuable, multi-year contract from _____, sharing the
17 award with only two other companies. The total value of the contracts is _____.
18 In sum, _____ is quickly transitioning from a two to three person company with
19 no contracts not that many years ago to a multi-million dollar company with a
20 tremendous future.

21 Indeed, there was and is no way under _____ bylaws to remove _____
22 _____ from the Board without their consent and knowledge. Given the
23 current stock allocation, there was and is no way under _____ bylaws to elect
24 _____ as a sole director without at least one of the Plaintiffs
25 consenting. That simply did not happen. There is no legitimate way for _____
26 to have become a sole director. It is not clear as to whether _____ is making
27 the claim with no support; making the claim having "gun decked"¹ the requisite

28 ¹ "Gun decking" is a U.S. Navy term to describe the process of creating paperwork to make it appear as though certain events occurred, when in fact they did not.

1 resolutions, minutes, and amendments to bylaws; or has been simply defrauding _____
2 _____ into thinking they were board members in order to engender their
3 cooperation in growing the business. What is clear is that he and his wife are guilty of
4 fraud, self dealing and a breach of fiduciary duty, their duty of loyalty, and their duty of
5 care.

6 However, that didn't seem to stop _____. On January 25, 2013, ____
7 _____ held a Board of Directors meeting as the purported sole director,
8 with _____ attending as _____ president. They didn't notify _____
9 _____ about the meeting, and in fact obviously did not want them there. _____
10 _____ as the purported sole director, passed a self-dealing resolution which, if
11 enforced, provided that stockholders with loans could either convert those loans to
12 new shares to be issued by _____, or have the loans paid off in cash.

13 **FACTS**

14 _____, is a Nevada corporation with its principal
15 place of business in Carson City, Nevada. _____ is in the business of the
16 acquisition of _____ contracts.

17 _____ February 13, 2003, By-Laws, Exhibit 2 hereto, in Section
18 2.2, provide that annual meetings of the stockholders shall be held on the 1st day of
19 February of each year. The By-Laws have never been amended or changed since
20 adoption. Section 1.1 provides that the registered office is in Carson City, Nevada and
21 Section 2.4 provides that notices of meetings shall be in writing delivered personally or
22 mailed postage prepaid to each stockholder requiring not less than 10 days nor more
23 than 60 days notice of meetings.

24 The By-Laws in Section 2.6, Exhibit 2, require that for a stockholder meeting to
25 occur, a majority of stockholders must be present in order for the stockholders to act.
26 The By-Laws in Section 3.1 provide that _____ shall be managed by a
27 Board of Directors. Section 3.2 provides that the Board of Directors shall be four (4)
28 individuals. This Section also provides that increases, decreases, or changes to the

1 number of directors as well as their election shall be conducted at the annual meeting
2 of shareholders and that each director shall hold office until his successor is elected
3 and qualified.

4 Section 3.3, Exhibit 2, provides that vacancies on the Board of Directors may
5 be filled by a majority of the remaining directors though less than a quorum. The
6 holders of two-thirds ($\frac{2}{3}$) of the outstanding shares of stock may terminate a director at
7 a meeting called and noticed for such purposes. Stockholders may elect a director or
8 directors at any time to fill any vacancy. No reduction of the authorized number of
9 directors shall have the effect of removing any director prior to the expiration of his
10 term. Section 4.1 provides that there shall be regular meetings of the Board of
11 Directors. Section 4.4 requires that notice of meetings of the Board of Directors be
12 provided by personal delivery or by mail or by other form of written communication to
13 the directors' address and if mailed or telegraphed notice of a meeting be provided
14 forty-eight (48) hours prior to the meeting. See By-Laws, Exhibit 2.

15 The By-Laws also provide in Section 4.7 that a quorum - a majority which is
16 three (3) of the authorized four (4) members of Board of Directors must be present for
17 the Board of Directors to act. The last meeting of the Board of Directors consisted of
18 _____ . They met and acted on December 14, 2012, as
19 memorialized by an e-mail of December 15, 2012. A copy of this e-mail is attached as
20 Exhibit 11.

21 From the time of its organization and existence through 2012, _____
22 operated with a four (4) person Board of Directors. There was a time when one seat
23 on the four (4) member Board of Directors was vacant after _____ left his
24 employment with _____. Consistent with the By-Laws during that time, the
25 remaining three (3) board members, _____ conducted the
26
27 business of the board. In September, 2011, _____ became the fourth
28 member of the HCS Board of Directors.

1 No notice of the purported January 25, 2013, Board of Directors meeting was
2 provided to _____ in violation of the _____ By-Laws, Section
3 4.4.

4 No quorum, at least 3 of 4 board members, existed for the purported January
5 25, 2013, Board of Directors Meeting in violation of the _____ By-Laws, Section
6 4.7. On January 26, 2013, _____ requested additional time to consider the
7 January 25, 2013, communication as reflected on Exhibit 13, but no response has
8 been received. See, Declaration of _____, Exhibit 16.

9 _____ representation in the purported January 25, 2013,
10 minutes, Exhibit 7, that he is the "sole director" of _____ was false and no
11 proper action has been taken to bring such a change to the _____ Board of
12 Directors.

13 The purported January 25, 2013, Minutes and Resolution allowing _____
14 _____ the option to either pay off loans or receive stock in exchange has no
15 force or effect because it wasn't voted on by a majority of the Board as required by the
16 By-Laws, Section 4.7. Also presently there are only 1000 _____ shares outstanding.

17
18 The purported January 25, 2013, Board action would increase the shares
19 outstanding by 1800% and allow so many shares to be issued that the shares of
20 shareholders like _____, not having a loan and not receiving new stock,
21 would be diluted to the point where their stock would have negligible value. Plaintiff
22 _____ 50 shares representing 5% of the company, will be diluted to
23 0.3% of the total outstanding shares of _____. _____ shares would
24 be reduced from 45% to 39.1% of total outstanding shares with loss of shared control
25 of _____ which would significantly affect the value of their shares. See chart,
26 Exhibit 14.

27 _____ refused to withdraw the alleged resolution and gave no
28 explanation as to how _____ became the sole Director or could act without

1 notice of a meeting.

2 _____ as Vice President, Shareholder and Director of _____

3 and _____ as President of _____ have breached their duty of good

4 faith, duty as fiduciaries, duty of loyalty, duty of utmost confidence and trust, duty of

5 care, duty to not self-deal in the following respects:

- 6 • Failing to properly notice and have shareholders' and Board of Directors' meetings as required by the By-Laws;
- 7 • Failing to give proper notice for the purported Board meeting;
- 8 • Conducting a purported Board of Directors' meeting without a quorum of the members being present;
- 9 • Creating a Resolution that is self-serving and unfair to all the other stockholders in that _____ have given themselves preferential treatment in determining the value and in the issuance of stock;
- 10 • Failing to provide books and records and financial data to other officers, directors and shareholders when requested;
- 11 • Attempting to take actions as an officer and director of _____ that violate the requirements of the Articles and By-Laws of _____ in order to obtain a majority of shares so as to take control of _____;
- 12 • Willfully violating the Charter and By-Laws of _____;
- 13 • Making misrepresentations to other officers, directors, and shareholders of _____;
- 14 • Committing misfeasance and malfeasance;
- 15 • Setting a stock price that is below fair market value;
- 16 • Claiming an inaccurate amount for the debt to _____ in the purported Minutes/Resolution.

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21 If the acts taken in the _____, Minutes are allowed to stand, if
22 _____ is allowed to issue new stock to himself changing the shared
23 control of _____, then irreparable harm and irreparable loss will occur as the
24 shares' value will be diluted and the team that has brought _____ its success will
25 be destroyed and _____ will then be able to treat _____ as his to
26 control, to continue to exercise his self-dealing to the detriment of Plaintiffs and the
27 other shareholders, officers, and directors.

28 Plaintiffs therefore request the Court issue an injunction / order maintaining the

1 status quo of _____, by enjoining directors and officers _____,
2 and _____ itself from enforcing and carrying out the exchange of shares of stock
3 for debt set forth in the Resolution. The Order should prohibit _____ and
4 _____ from changing the equal ownership status currently enjoyed by
5 Plaintiffs and Defendants, such that _____ becomes the majority
6 stockholder, by means of scheme that involves the issuance of new stock at well-
7 below market value as payment of existing stockholder loans.

8 Plaintiffs also request that the Court issue a finding and an order that the
9 members of _____ Board of Directors consists of _____, and
10 not solely of _____, as he presently asserts; and that the Purported
11 Resolution that _____ issued as the purported sole director in board
12 meeting that was held without notice to the other board members, and without a
13 quorum present, and though self-dealing in that it benefits only _____, is
14 rescinded, withdrawn and declared void and of no effect.

15 In addition, Plaintiffs seek to have this Court enjoin _____ or its Board of
16 Directors from firing or demoting Plaintiffs, or cutting their salaries in retribution of
17 bringing this action, and _____ Board of Directors from meeting or taking any
18 action while the requested injunction (TRO or Preliminary Injunction, if granted)
19 remains in effect.

20 **AUTHORITY FOR TRO's, PRELIMINARY INJUNCTIONS AND RECEIVERS**

21 **A. AN INJUNCTION AND RECEIVER ARE ALLOWED UNDER THESE**
22 **CIRCUMSTANCES**

23 Illegal improper acts by officers or directors of a corporation are addressed by
24 NRS 78.650 which allows a Court to issue an injunction and appoint a receiver under
25 circumstances like those presented here. This statute provides:

26 **NRS 78.650**
27 78.650. Stockholders' application for injunction and
28 appointment of receiver when corporation
mismanaged

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1. Any holder or holders of one-tenth of the issued and outstanding stock may apply to the district court in the county in which the corporation has its principal place of business or, if the principal place of business is not located in this State, to the district court in the county in which the corporation's registered office is located, for an order dissolving the corporation and appointing a receiver to wind up its affairs, and by injunction restrain the corporation from exercising any of its powers or doing business whatsoever, except by and through a receiver appointed by the court, whenever:
 - (a) The corporation has willfully violated its charter;
 - (b) Its trustees or directors have been guilty of fraud or collusion or gross mismanagement in the conduct or control of its affairs;
 - (c) Its trustees or directors have been guilty of misfeasance, malfeasance or nonfeasance;
 - (d) The corporation is unable to conduct the business or conserve its assets by reason of the act, neglect or refusal to function of any of the directors or trustees.
2. The application may be for the appointment of a receiver, without at the same time applying for the dissolution of the corporation, and notwithstanding the absence, if any there be, of any action or other proceeding in the premises pending in such court.
3. In any such application for a receivership, it is sufficient for a temporary appointment if notice of the same is given to the corporation alone, by process as in the case of an application for a temporary restraining order or injunction, and the hearing thereon may be had after 5 days' notice unless the court directs a longer or different notice and different parties.
4. The court may, if good cause exists therefor, appoint one or more receivers for such purpose, but in all cases directors or trustees who have been guilty of no negligence nor active breach of duty must be preferred in making the appointment. The court may at any time for sufficient cause make a decree terminating the receivership, or dissolving the corporation and terminating its existence, or both, as may be proper.
5. Receivers so appointed have, among the usual powers, all the functions, powers, tenure and duties to be exercised under the direction of the court as are conferred on receivers and as provided in NRS 78.635, 78.640 and 78.645, whether the corporation is insolvent or not.

The acts of _____ fit within the requirements of this statute. They

1 have violated the _____ Charter, engaged in self-dealing, fraud, misfeasance and
2 malfeasance.

3 **B. COURTS ARE ALLOWED TO ISSUE TEMPORARY RESTRAINING ORDERS**
4 **OR PRELIMINARY INJUNCTIONS TO PRESERVE THE STATUS QUO**

5 A temporary restraining order and preliminary injunction are also authorized by
6 NRCP 65 and NRS 78.650. The purpose of an injunction is to prevent irreparable harm
7 and preserve the status quo. Injunctions can be granted with or without notice. If
8 without notice, then it is a Temporary Restraining Order. NRCP 65(b) Where notice is
9 provided, however, the injunction is designated a preliminary injunction. NRCP 65(a)

10 The Nevada Supreme Court in *State ex rel. Friedman v. Eighth Judicial District*
11 *Court*, 81 Nev. 131, 399 P.2d 632 (1965) and *Farnow v. Dept. 1 of Eighth Judicial*
12 *District Court*, 64 Nev 109, 178 P.2d 371 (1947) held that a preliminary injunction may
13 be granted where “(1) it clearly appears from specific facts shown by affidavit or by the
14 verified complaint that immediate and irreparable injury, loss or damage will result to the
15 applicant before the adverse party or his attorney can be heard in opposition and (2) the
16 applicant’s attorney certifies to the court in writing the efforts, if any, which have been
17 made to give the notice and the reasons supporting his claim that notice should not be
18 required.”

19 Security for an injunction must be filed with the clerk as ordered by the court. The
20 injunction must only have a duration of fifteen days, whereupon a hearing will be held.

21 NRS 33.010 explains the basic considerations that are involved in deciding
22 whether to grant injunctive relief:

23 An injunction may be granted in the following cases:

- 24 1. When it shall appear by the complaint that the plaintiff is
25 entitled to the relief demanded, and such relief or any part
26 thereof consists in restraining the commission or
27 continuance of the act complained of, either for a limited
28 period or perpetually.
2. When it shall appear by the complaint or affidavit that the
commission or continuance of some act, during the litigation,
would produce great or irreparable injury to the plaintiff.

1 3. When it shall appear, during the litigation, that the
2 defendant is doing or threatens, or is about to do, or is
3 procuring or suffering to be done, some act in violation of the
4 plaintiff's rights respecting the subject of the action, and
5 tending to render the judgment ineffectual. (Emphasis
6 added)

7 Here, as Justice Lewis of the Nevada Supreme Court explained in *Champion v.*
8 *Sessions*, 1 Nev. 478 (1865), injunction is warranted to avoid irreparable harm:

9 . . . when a complete and adequate remedy can be had at law, it is settled
10 that a court of equity will not interfere; but on the other hand, if the injury
11 is likely to be irreparable, or if the defendant be insolvent, equity will
12 always interpose its power to protect a person from a threatened injury.

13 Here with _____ violation of _____ corporate charter, setting a
14 deadline of February 5, 2013, the issuance of stock would cause irreparable harm and
15 immediate emergency action is necessary, and the status quo should be preserved and
16 an injunction is appropriate.

17 **C. APPOINTMENT OF A RECEIVER IS ALLOWED.**

18 Not only does NRS 78.650 and 78A.140 allow appointment of a receiver under
19 these circumstances, so does NRS 32.010, which authorizes a Court to appoint a
20 receiver in a broad variety of situations:

21 NRS 32.010

22 32.010. Cases in which receiver may be appointed

23 A receiver may be appointed by the court in which an action is
24 pending, or by the judge thereof:

- 25 1. In an action by a vendor to vacate a fraudulent purchase of
26 property, or by a creditor to subject any property or fund to
27 the creditor's claim, or between partners or others jointly
28 owning or interested in any property or fund, on application
of the plaintiff, or of any party whose right to or interest in the
property or fund, or the proceeds thereof, is probable, and
where it is shown that the property or fund is in danger of
being lost, removed or materially injured.
2. In an action by a mortgagee for the foreclosure of the
mortgage and sale of the mortgaged property, where
it appears that the mortgaged property is in danger of
being lost, removed or materially injured, or that the
condition of the mortgage has not been performed,
and that the property is probably insufficient to

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discharge the mortgage debt.

- 3. After judgment, to carry the judgment into effect.
- 4. After judgment, to dispose of the property according to the judgment, or to preserve it during the pendency of an appeal, or in proceedings in aid of execution, when an execution has been returned unsatisfied, or when the judgment debtor refuses to apply the judgment debtor's property in satisfaction of the judgment.
- 5. In the cases when a corporation has been dissolved, or is insolvent, or in imminent danger of insolvency, or has forfeited its corporate rights.
- 6. In all other cases where receivers have heretofore been appointed by the usages of the courts of equity.

Courts have used NRS 32.010 in conjunction with NRS 78.650 to appoint receivers where officers or directors have violated a corporate charter or statutes governing corporations. *Medical Device Alliance, Inc. v. Ahr*, 116 Nev. 851 8 P.3d 135 (2000); *Bowler v. Leonard*, 70 Nev. 370 269, P.2d 833 (1954); *Underwriters v. Second Judicial Dist. Court in and for Washoe County*, 61 Nev. 42 115 P.2d 932, (1941); *Maynard v. Railey*, 2 Nev. 313, (1866).

A receiver as specified by NRS 78.650, 78A.140 and 32.010 is warranted by _____ violating the corporate charter, self-dealing, fraud, misfeasance, and malfeasance.

ARGUMENT

I.

A TRO OR PRELIMINARY INJUNCTION SHOULD ISSUE TO DECLARE THE HCS JANUARY 25, 2013, PURPORTED MINUTES/RESOLUTION TO BE VOID AND OF NO EFFECT; TO PRECLUDE _____ FROM ISSUING STOCK AT \$ _____ PER SHARE TO PAY SHAREHOLDER LOANS; TO PRECLUDE _____ FROM TAKING FURTHER BOARD ACTION; TO PRECLUDE _____ FROM FIRING OR DEMOTING _____ OR CUTTING _____ SALARIES; TO PRECLUDE _____ FROM USING _____ FUNDS TO DEFEND THEMSELVES

Plaintiffs have demonstrated that Defendants _____ have, by illegally attempting to seize control of corporate defendant _____, caused irreparable harm to plaintiffs _____, by illegally conducting a

1 purported Board meeting, without notice and without a quorum, and by attempting to
2 increase the outstanding stock 1800% at a price that is not even close to fair value.

3 Plaintiffs have shown that _____ have violated their duties as officers and
4 directors, and shareholders of _____ as well as violated _____

5 Charter/By-Laws in the following respects:

- 6 • Failing to properly notice and have shareholders' and Board of
7 Directors' meetings as required by the By-Laws;
- 8 • Failing to give proper notice for the purported January 25, 2013, Board
9 meeting;
- 10 • Conducting a purported Board of Directors' meeting without a quorum
11 of the members being present;
- 12 • Creating a Resolution that is self-serving and unfair to all the other
13 stockholders in that _____ have given themselves
14 preferential treatment in determining the value and in the issuance of
15 stock;
- 16 • Failing to provide books and records and financial data to other officers,
17 directors and shareholders when requested;
- 18 • Attempting to take actions as an officer and director of _____ that
19 violate the requirements of the Articles and By-Laws of _____ in
20 order to obtain a majority of shares so as to take control of _____;
- 21 • Willfully violating the Charter and By-Laws of _____;
- 22 • Making false misrepresentations to other officers, directors, and
23 shareholders of _____;
- 24 • Committing misfeasance and malfeasance;
- 25 • Setting a stock price that is below fair market value;
- 26 • Claiming an inaccurate amount for the debt to _____ in the
27 purported Minutes/Resolution.

28 Not only were _____ acts improper such that they should be
declared void and they should be ordered to withdraw the Minutes, allow access to
corporate records, they should also be enjoined from proceeding with the issuance of
stock for the ridiculous price of \$_____ per share. In the attached e-mail,
_____ referred to the stock as being worth \$_____ per share! See
Exhibit 16. Also, _____ should not be allowed to use _____ moneys to

1 defend their illegal acts. Allowing _____ to proceed with their plan
2 would cause irreparable harm as they would then take total control of _____
3 including terminating plaintiffs, and changing plaintiffs' salaries and distributions.
4 This would cause irreparable harm. NRCP 65 and NRS 78.650 allow a TRO or
5 Preliminary Injunction to be issued under such circumstances.

6 The Nevada Supreme Court has upheld injunctions ordered in analogous
7 circumstances saying where a city was restrained from demolishing an unsafe
8 building while lessees sought to prove that the landlord could repair the premises, the
9 court said if the adequacy of the remedy at law is unclear, injunctive relief should be
10 granted. *Ripps v. City of Las Vegas*, 72 Nev. 135, 297 P.2d 258 (1956).

11 Further, the court upheld a TRO enjoining foreclosures of trust deeds until the
12 issue of payment was resolved because the existence of a remedy at law does not
13 preclude an injunction where the equitable remedy is "far superior" to the legal
14 remedy. *Nevada Escrow Services, Inc. v. Crockett*, 91 Nev. 201, 533 P.2d 471
15 (1975).

16 Finally, as is the case here, the legislature has authorized the granting of
17 injunctive relief pursuant to NRS 78.650 and 78A.140 to preserve the status quo of a
18 corporation. Plaintiffs, because of the blatantly illegal, brazen, self-dealing conduct of
19 the Williams', have a great likelihood of success. *Christensen v. Chromalloy*
20 *American Corp.*, 99 Nev. 34 (1983).

21 Another important consideration is balancing the harm from granting the
22 injunction as opposed to denying it. Here, no harm will come to defendant since the
23 injunction will merely return the parties to the status quo. There is no urgency or
24 pressing need for the stock issuance to occur. As the Court explained in
25 *Ottenheimer v. Real Estate Division*, 91 Nev. 338, 535 P.2d 1284 (1975), where,
26 without deciding the constitutionality of a statute which required subdivision salesmen
27 to be licensed real estate brokers or salesmen, the Supreme Court stated:

28 "we note that denying a preliminary injunction would force appellants to

1 leave established intrinsically lawful employment, thereby sustaining
2 substantial irreparable injury if the legislation is indeed unconstitutional.
3 By comparison, maintaining the status quo pending final judgment will
4 impose small burden on the state.”

4 Here, the injunction ordering the resolution withdrawn, enjoining stock
5 issuance, enjoining any other board action, enjoining Plaintiffs' termination or salary
6 change and enjoining defendants from using _____ monies to defend
7 themselves, would be a small burden to return the parties to the status quo.

8 NRS 78.650 allows an injunction where as here the officers, directors, or
9 shareholders have violated the corporation's charter as has been done repeatedly by
10 the Williams.

11 NRS 78.650
12 78.650. Stockholders' application for injunction and appointment of
13 receiver when corporation mismanaged
Effective: October 1, 2009

- 14 1. Any holder or holders of one-tenth of the issued and outstanding stock
15 may apply to the district court in the county in which the corporation has
16 its principal place of business or, if the principal place of business is not
17 located in this State, to the district court in the county in which the
18 corporation's registered office is located, for an order dissolving the
19 corporation and appointing a receiver to wind up its affairs, and by
20 injunction restrain the corporation from exercising any of its powers or
21 doing business whatsoever, except by and through a receiver appointed
22 by the court, whenever:
- 23 (a) The corporation has willfully violated its charter;
 - 24 (b) Its trustees or directors have been guilty of fraud or collusion or
25 gross mismanagement in the conduct or control of its affairs;
 - 26 (c) Its trustees or directors have been guilty of misfeasance,
27 malfeasance or nonfeasance;
 - 28 (d) The corporation is unable to conduct the business or conserve its
assets by reason of the act, neglect or refusal to function of any
of the directors or trustees.

25 Nevada courts have used injunctions to preserve the status quo while they
26 consider appointment of a receiver under NRS 78.650 and NRS 32.010. *Pinche*
27 *Mines Consol. Inc. v. Dolman*, 333 F.2d 257; 8 Fed. R. Serv. 2d 37d 331 (1964);
28 *Medical Device Alliance Inc. v. Ahr*, 116 Nev. 851, 8 P.3d 135 (2000); *Nishon's Inc. v.*

1 *Kendigian*, 91 Nev. 504, 538 P.2d 580 (1975); *Peri-Gil Corp. v. Sutton*, 84 Nev. 406,
2 442 P.2d 35 (1968).

3 Therefore, there are good grounds since irreparable harm has been
4 established with little risk of a burden on defendant. The Court should therefore
5 issue a preliminary injunction to preserve the status quo, order the minutes resolution
6 withdrawn, order no stock to issue, order no further Board action be taken, order that _
7 _____ employment or salaries not be changed, and order no _____
8 funds be used for _____ defense.

9 Plaintiffs have shown irreparable harm and irreparable loss unless Defendants
10 are enjoined. Preserving the status quo has been shown to be warranted. Enjoining
11 Defendants has no real adverse effect on the operation of _____. A TRO or
12 Preliminary Injunction should therefore issue.

13 II.

14 **THE COURT SHOULD APPOINT A RECEIVER TO TAKE CONTROL OF _____**

15 The Nevada Supreme Court has recognized that appointment of a receiver is
16 warranted where one officer, director, or shareholder breaches his duties and violates
17 the corporate charter in trying to take control of a corporation. In *Peri-Gil Corp. v.*
18 *Sutton*, 84 Nev. 406, 442 P.2d 35 (1968) the court explained:

19 Although most of the facts alleged, and relied upon, by the respondent
20 would not support the appointing of a receiver, it is inescapable that
21 Peri-Gil wilfully violated its charter and the provisions of NRS 78.265,
22 when its board of directors amended the articles of incorporation to
23 issue 100 additional shares of stock which were sold to Epperson giving
him control of the corporation, without offering an opportunity to Sutton
to purchase a pro rata share of new stock. Peri-Gil attempts to justify
the action to its board of directors by contending that article XII of its
articles of incorporation negates the requirements of NRS 78.265.

24 Peri-Gil's interpretation is erroneous. While article XII of Peri-Gil's
25 articles of incorporation negates the provisions of NRS 78.265, in
26 regards to non-stockholders, it does not alter the requirement that every
27 stockholder has the right to purchase his pro rata share of new stock at
28 the price for which it is offered to other stockholders. The fact that
Sutton was a non-voting stockholder at the time the board of directors
approved Peri-Gil's amended articles of incorporation does not in any
way diminish his rights under NRS 78.265, and the original charter of
the corporation.

1 This infraction alone brings Peri-Gil within NRS 78.650(1), and the lower court
2 did not abuse its discretion when it entered the order appointing a receiver.

3 Under NRS 78.650(1), a receiver for a corporation may be appointed
4 upon application of a stockholder, ' * * * whenever (a) The corporation
5 has willfully violated its charter; or (b) Its trustees or directors have been
6 guilty of fraud or collusion or gross mismanagement in the conduct or
7 control of its affairs; or (c) Its trustees or directors have been guilty of
8 misfeasance, malfeasance or nonfeasance; or (d) The corporation shall
9 be unable to conduct the business or conserve its assets by reason of
10 the act, neglect or refusal to function of any of the directors or trustees
11 or (e) The assets of the corporation are in danger of waste, sacrifice or
12 loss through attachment, foreclosure, litigation or otherwise * * * .'

13 In the case of Bowler v. Leonard, 70 Nev. 370, 269 P.2d 833 (1954),
14 this court quoting from High on Receivers held: ' * * * since the
15 appointment of a receiver is thus a discretionary measure, the action of
16 the lower court * * * will not be disturbed upon appeal unless there has
17 been a clear abuse.' Accord, Johnston v. De Lay, 63 Nev. 1, 158 P.2d
18 547, 161 P.2d 350 (1945); 16 Fletcher Cyclopedia Corporations, s
19 7697, pg. 103. [Footnotes omitted] (Emphasis added)

20 The Nevada Supreme Court has repeatedly ordered appointment of a receiver
21 where a party violates the corporation's bylaws, breaches fiduciary and duties of care
22 to the detriment of other officers, directors and shareholders. See *Medical Device*
23 *Alliance Inc. v. Ahr*, 116 Nev. 851, 8 P.3d 135 (2000); *Searchlight Dev. Inc. v.*
24 *Martello*, 84 Nev. 102, 437 P.2d 86 (1968); *Transcontinental Oil Co. v. Free*, 80 Nev.
25 207, 391 P.2d 317 (1964); *Bower v. Leonard*, 70 Nev. 370, 269 P.2d 833 (1954);
26 *Sagorman Iron & Metal Co. v. Morse Bros. Machinery & Supply Co.*, 50 Nev. 191,
27 255 P.1010 (1927); *State v. Second Judicial Dist. Court*, 49 Nev. 145; 241 P.317m,
28 43 A.L.R. 1331 (1925); *Maynard v. Railey*, 2 Nev. 313, (1866).

Here, _____ acts of violating the corporate charter, self-dealing,
breach of duties, fraud, misfeasance, and malfeasance have been shown to justify
appointment of a receiver to take control of the corporation, and to perform an
accounting and investigation of the corporate books and records and financial affairs.

CERTIFICATE OF NOTICE

As reflected on the attached Declaration of Stephen S. Kent, Exhibit 17, he
has given notice to Defendant, caused _____ Resident Agent to be personally

1 served as allowed by NRS 78.650, and also forwarded the Complaint and this Motion
2 to _____ as well as _____ by e-mail and fax advising them that
3 he would be approaching the Court seeking a TRO or Preliminary Injunction.

4 **CONCLUSION**

5 Because of _____ acts of violating the corporate charter of _____,
6 breaching their duties including fiduciary duties and duties of due care, a TRO or
7 preliminary injunction should issue to preserve the status quo so as to avoid the
8 irreparable harm looming from the February 5, 2013 deadline, and a receiver
9 appointed to take control of the corporation immediately.

10 The injunction should order the January 25, 2013 resolution withdrawn,
11 preclude issuance of stock, preclude further Board of Director meetings or actions,
12 preclude _____ termination, demotion or anything affecting their
13 compensation, and preclude _____ from using the monies of _____
14 to pay for their defense of this action. Finally, a receiver should be appointed.

15 **AFFIRMATION**

16 The undersigned hereby declares that the within document does not contain
17 the Social Security Number of any person.

18 DATED this _____ day of February, 2013.

19 KENT LAW

20
21 BY: _____
22 STEPHEN S. KENT
23 201 W. Liberty Street, Suite 320
24 Reno, Nevada 89501
25 775-324-9800
26 Attorneys for Plaintiffs
27
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