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Case No.: CV1408108
Dept. No.: 2

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CLERK OF DISTRICT COURT
WHITE PINE COUNTY, NEVADA
[Signature]

**IN THE SEVENTH JUDICIAL DISTRICT COURT
COUNTY OF WHITE PINE, STATE OF NEVADA**

Management Board of the White Pine Historical Railroad Foundation, Inc.; Roger Bowers, in his official capacity as a member of the Management Board; Randy Larson, in his official capacity as a member of the Management Board; Carl Marsh, in his official capacity as a member of the Management Board; John C. Gianoli, in his individual capacity, and Stephen D. Leith, in his individual capacity;

Plaintiffs,

vs.

Board of Trustees for the White Pine Historical Railroad Foundation, Inc.; the City of Ely; the Ely City Council; Dale Derbidge, in his official capacity as a member of the Ely City Council and Chairman of the Board of Trustees and in his personal capacity; Marion (Sam) Hanson, in his official capacity as a member of the Ely City Council and Board of Trustees and in his personal capacity; Randy Lee, in his official capacity as a member of the Ely City Council and Board of Trustees and in his personal capacity; Bruce Setterstrom, in his official capacity as a member of the Ely City Council and Board of Trustees and in his personal capacity; Martin Westland, in his official capacity as a member of the Ely City Council and Board of Trustees and in his personal capacity; Mayor Melody VanCamp, in her capacity as the executive of the City of Ely; Does I through X, inclusive; and, Roe Corporations I through X, inclusive;

Defendants.

**VERIFIED COMPLAINT FOR
INJUNCTIVE RELIEF AND DAMAGES**

ORIGINAL

1 Foundation’s bylaws) and President of the Foundation (pursuant to the Foundation’s annual
2 filings with the Nevada Secretary of State). Member Gianoli first joined the Management
3 Board in 2002 and in 2003 became the Foundation’s Treasurer. Member Gianoli occupied
4 that position until 2007 when he ascended into the role of the Foundation’s President.
5 Member Gianoli occupied that position until August 7, 2014 when he was improperly
6 removed by the Foundation’s Board of Trustees.
7

8 3. Stephen D. Leith is a resident of the City of Ely and White Pine County and
9 until August 7, 2014, served on the Management Board and held the office of Secretary of
10 the Foundation. Member Leith first joined the Management Board in 1999 and in 2002 was
11 identified as the Foundation’s Secretary and Treasurer. In 2004, Member Leith became the
12 Foundation’s President and occupied that position until 2007 when Member Gianoli assumed
13 the role of President. Member Leith returned to the position of the Foundation’s Secretary
14 in 2008 and remained in that position until he was improperly removed by the Foundation’s
15 Board of Trustees on August 7, 2014.
16
17

18 4. The Board of Trustees for the White Pine Historical Railroad Foundation
19 (“Board of Trustees) is a public body comprised of all five members of the Ely City Council
20 and was created by the governing documents of the Foundation.
21

22 5. The City of Ely (“City”) is a municipal corporation with its principal
23 residence and domicile being in the City of Ely, White Pine County.
24

25 6. The Ely City Council (“City Council”) is the governing body of the City per
applicable Nevada law and as such acts as the City’s fiduciary. The City Council is

1 comprised of five elected members – Councilman Dale Derbidge, Councilman Marion (Sam)
2 Hanson, Councilman Randy Lee, Councilman Bruce Setterstrom, and Councilman Martin
3 Westland.

4
5 7. Councilman Dale Derbidge, in addition to his duties as a City Councilman,
6 is also the Chairman of the Board of Trustees. Mr. Derbidge is a resident of the City of Ely
7 and White Pine County.

8 8. Councilman Bruce Setterstrom is a resident of the City of Ely and White
9 Pine County.

10 9. Councilman Randy Lee is a resident of the City of Ely and White Pine
11 County.

12 10. Councilman Martin Westland is a resident of the City of Ely and White Pine
13 County and is a former employee of the Foundation.

14 11. Councilman Marion (Sam) Hanson is a resident of the City of Ely and White
15 Pine County.

16 12. Mayor Melody VanCamp is the Mayor of the City of Ely and as such acts
17 as the executive for the City. Mayor VanCamp was appointed by the City Council to fill out
18 the term of the late Mayor Jon Hickman.

19 13. DOES I THROUGH X and ROE CORPORATIONS I THROUGH X are
20 fictitious names. Plaintiffs are unaware of the true names of the individuals or entities so
21 designated by such fictitious names. Upon discovery of the true names, Plaintiffs will seek
22 leave to amend this Complaint and proceedings herein to substitute the true names of said
23
24
25

1 Defendants. Upon information and belief, each of the Defendants designated herein as a
2 DOE or ROE CORPORATION are associated with the named Defendants and are therefore
3 liable to Plaintiffs for the causes of action specified herein.
4

5 **JURISDICTION**

6 14. Subject matter jurisdiction in The Seventh Judicial District Court, County
7 of White Pine, State of Nevada, is proper sine Plaintiffs' total claimed damages, exclusive of
8 attorney's fees and costs, exceed \$10,000. Additionally, Plaintiffs seek injunctive relief
9 under principles of equity and various chapters of the Nevada Revised Statutes. Such relief
10 is under the exclusive jurisdiction of Nevada's District Courts.
11

12 15. This Court has personal jurisdiction over the Board of Trustees as the Board
13 of Trustees is a political body sitting in the City of Ely, White Pine County and all actions
14 alleged herein occurred in the City of Ely, White Pine County or White Pine County.
15

16 16. This Court has personal jurisdiction over the City of Ely as it is a municipal
17 corporation domiciled in the City of Ely, White Pine County and all actions alleged herein
18 occurred in the City of Ely, White Pine County or White Pine County.
19

20 17. This Court has personal jurisdiction over the Ely City Council as the Ely
21 City Council is a political body sitting in the City of Ely, White Pine County and all actions
22 alleged herein occurred in the City of Ely, White Pine County or White Pine County.
23

24 18. This Court has personal jurisdiction over Councilman Bruce Setterstrom, in
25 both his official capacity as a member of the Ely City Council and in his personal capacity
as alleged more fully herein, because he is a resident of the City of Ely, White Pine County

1 and all actions alleged herein occurred in the City of Ely, White Pine County or White Pine
2 County.

3 19. This Court has personal jurisdiction over Councilman Dale Derbidge, in his
4 official capacity as a member of the Ely City Council and Chairman of the Board of Trustees,
5 and in his personal capacity, because he is a resident of the City of Ely, White Pine County
6 and all actions alleged herein occurred in the City of Ely, White Pine County or White Pine
7 County.

8 20. This Court has personal jurisdiction over Councilman Randy Lee, in both
9 his official capacity as a member of the Ely City Council and in his personal capacity as
10 alleged more fully herein, because he is a resident of the City of Ely, White Pine County and
11 all actions alleged herein occurred in the City of Ely, White Pine County or White Pine
12 County.

13 21. This Court has personal jurisdiction over Councilman Marion (Sam)
14 Hanson, in both his official capacity as a member of the Ely City Council and in his personal
15 capacity as alleged more fully herein, because he is a resident of the City of Ely, White Pine
16 County and all actions alleged herein occurred in the City of Ely, White Pine County or
17 White Pine County.

18 22. This Court has personal jurisdiction over Councilman Martin Westland, in
19 both his official capacity as a member of the Ely City Council and in his personal capacity
20 as alleged more fully herein, because he is a resident of the City of Ely, White Pine County
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1 Council of the City of Ely as elected by qualified voters of the City of Ely at each regularly
2 scheduled election.”

3 27. In 1985, the Foundation amended its Articles to include specific language
4 required for its tax exempt status under Section 501(c)(3) of the Internal Revenue Code. The
5 Foundation obtained its tax exempt status under Section 501(c)(3) in October 1985 and has
6 maintained that status ever since. Since the 1985 amendment, the Foundation’s articles have
7 remained unchanged.
8

9 28. In 1985, the Foundation adopted its initial set of bylaws. The initial set of
10 bylaws separated the governance of the Foundation into two separate bodies – the Board of
11 Trustees and the Management Board. This action created the Management Board and was
12 done in response to concerns about the Foundation being, in essence, solely governed by the
13 Ely City Council. On information and belief, the feeling at that time was that by creating a
14 separate Management Board that was not made up of elected Ely City Council members, the
15 Foundation would be insulated from political tides and control. Since 1999, the Foundation’s
16 annual filings with the Secretary of State have identified combinations of the Management
17 Board and the Foundation’s Executive Director as the Foundation’s officers and directors.
18

19 29. Under Section 1.01 of the initial 1985 bylaws, “[t]he exercise of the powers
20 of the [Foundation], with the right to delegate to officers and agents to [sic] performance of
21 duties in the exercise of powers, shall be vested in the Board of Trustees.”
22

23 30. Section 2.01 of the initial 1985 bylaws provides that the “[a]ffairs of the
24 [Foundation] shall be managed by its Management Board.” Thus, the Management Board is
25

1 tasked with managing the day to day affairs of the Foundation. Historically, the Management
2 Board has provided leadership in the areas of corporate finance, accounting, strategic
3 planning, railroad operations, fundraising, and a wide array of other subjects. Since 1999,
4 the Foundation’s annual filings with the Secretary of State have identified combinations of
5 the Management Board and the Foundation’s Executive Director as the Foundation’s officers
6 and directors.
7

8 31. The members of the Management Board, under Section 2.02 of the initial
9 1985 bylaws, are nominated by the Mayor of the City of Ely and confirmed by the Board of
10 Trustees. Despite the fact that the Management Board is responsible for the day to day affairs
11 of the Foundation, no member of the Management Board sits on, or has the ability to cast a
12 vote with, the Board of Trustees.
13

14 32. In 2000, the Foundation amended its bylaws. Among other changes, the
15 amendment added Section 3.11 which governs removal of Management Board members.
16 “Members of the Management Board may resign in writing delivered to the Trustees. Any
17 resignation will be effective on acceptance by the Board of Trustees. Any member of the
18 Management Board may be removed by the Board of Trustees for reasonable cause.
19 Reasonable cause is defined as misfeasance, malfeasance, or commission of any felony.”
20 The 2000 amended bylaws and subsequent amendments do not define misfeasance,
21 malfeasance, or commission of any felony. This removal section has remained unchanged
22 in subsequent amendments to the Foundation’s bylaws.
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1 33. In 2007, the Foundation again amended its bylaws to allow for a
2 Management Board chairman and a five member Management Board making the chairman
3 separate from the Management Board. In 2011-2012, the Foundation amended its bylaws to
4 include the Management Board chairman as one of its five members.
5

6 34. In 2014, the Management Board prepared and approved a revised set of
7 organizational documents including amended and restated articles of incorporation and
8 revised bylaws. The aim of those revisions was to reorganize the governing structure and
9 equalize the degree of control over the Foundation that could be exercised by the Board of
10 Trustees and Management Board. At a joint meeting of the Management Board and Board
11 of Trustees on February 25, 2014, the Management Board unanimously adopted the revised
12 set of organizational documents. The Board of Trustees voted to table the item and refer it
13 to the Ad Hoc Committee (discussed below) comprised of three Management Board
14 members, three Trustees from the Board of Trustees, and three members of the public at
15 large. As detailed herein, the Mayor unilaterally closed the Ad Hoc Committee before any
16 substantial progress could be made towards its goals.
17

18 35. Since 2002, Executive Director Mark Bassett (“Executive Director
19 Bassett”), who was hired by the Management Board, has played an integral role in managing
20 the Foundation’s daily operations and affairs and is an essential element of the Foundation’s
21 success.
22

23
24 **History and Progress of the Nevada Northern Railway**
25

1 36. The Nevada Northern Railway was built in 1905 to service the copper mines,
2 mill and smelter in White Pine County. This copper company was the principle and major
3 employer in the City of Ely and White Pine County until 1983. With the closure of the mill
4 and smelter, the population and economy of the City of Ely and White Pine County took a
5 serious downturn. Community leaders approached the copper company requesting that the
6 railroad be donated to the community to be used for economic development in starting a
7 tourist railroad operation.
8

9 37. All of the assets, including real property, personal property and related
10 fixtures, that comprise the Nevada Northern Railway today, were gifted in equal 50% shares
11 to the Foundation and the City by the Kennecott Corporation in the 1980s. Kennecott
12 structured this gift so that the Foundation and the City of Ely own the assets as tenants in
13 common.
14

15 38. As a condition to the gift, Kennecott included reversionary clauses in the
16 deeds that stated the assets would revert back to Kennecott should the assets no longer be
17 used to operate a historical railroad.
18

19 39. The Nevada Northern Railway partly consists of a short line railroad that
20 operates a collection of steam and diesel locomotives. The Foundation is responsible for the
21 maintenance, upkeep and preservation of 83 buildings and structures, 35 miles of railroad
22 track, four original steam locomotives, 100 pieces of historical railroad cars and the historic
23 paper record collection. In addition, the Foundation showcases the Nevada Northern
24 Railway to a local, regional, national and international visitors. Since 1987, the Nevada
25

1 Northern Railway has carried almost a quarter million passengers. In 2006, the Nevada
2 Northern Railway was recognized by Congress as a National Historic Landmark.

3
4 40. In the aggregate, the Nevada Northern Railway consists of assets with a
5 total value of \$8,367,455. Of these assets, \$5,843,566 are restricted assets subject to co-
6 tenancy provisions and the reversion clause in the deeds below and \$2,520,889 are
7 unrestricted assets.

8
9 41. Since the time that Members Gianoli and Leith joined the Management
10 Board and ascended into the Management Board’s leadership, the Foundation and Nevada
11 Northern Railway have undergone what can best be termed a renaissance. This renaissance
12 is also largely attributable to Executive Director Bassett’s leadership as well as the guidance
13 of the remaining Management Board members. Ridership has increased by 145%.
14 Operational income has increased nearly seven-fold from \$256,099 to \$1,517,052. Since
15 2003, and over the course of the worst economic downturn since The Great Depression, the
16 Management Board has grown the Foundation’s asset value by almost 10%. Historically,
17 from 2000-2002, the Foundation suffered substantial financial losses. Under Member
18 Gianoli and Leith’s leadership, and the Management Board generally, those losses have
19 largely ended. In the past ten years, the Foundation has only suffered four years of loss.
20 Despite these losses, the Foundation’s overall change in net assets has been an increase of
21 \$2,256,919. Similarly, the Foundation has experienced explosive growth in grants. Since
22 2002, the Foundation has received \$4,441,880 in grants.
23
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1 42. During a public meeting of the Management Board on August 15, 2014,
2 Executive Director Bassett recapped and summarized the Foundation’s growth and progress
3 including the Foundation’s current financial status:

- 4
- 5 a. 2013 income totaled \$915,151 representing a 6% increase from the
6 previous year.
- 7 b. Volunteer time for the year 2013 increased by almost 30%.
- 8 c. The overall financial picture, adjusted to account for certain
9 depreciations, showed the Foundation being in the black by almost
10 \$300,000.
- 11 d. Income for December 2013, as compared to December 2012,
12 represented an increase of 91%.
- 13 e. Cash on hand for July 31, 2014, as compared to July 31, 2013,
14 increased by 803%.
- 15 f. Revenue for July 31, 2014, as compared to July 31, 2013, increased
16 37%; expenses for same period comparison decreased by 11.5%.
- 17 g. Editorially, Executive Director Bassett commented that the financial
18 numbers reported were the best financial results since 2006.

19
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21 **Foundation’s Hiring and Termination of Councilman Martin Westland**

22 43. In May of 2006, the Foundation hired now Councilman Martin Westland as
23 the Foundation’s Chief Mechanical Officer. Mr. Westland relocated from Belgrade,
24 Montana and began working at the Foundation in May of 2006.
25

1 44. Almost immediately, issues with Mr. Westland’s job performance and his
2 impact on workplace morale began to develop.

3 45. Upon his application for employment with the Foundation, Mr. Westland
4 represented to Executive Director Bassett that he was a Professional Engineer with a
5 background in metallurgy. As the Chief Mechanical Officer, Mr. Westland was responsible
6 for supervising the rebuild of Locomotive 93. In connection with the rebuild, Mr. Westland
7 ordered new crown brasses. Despite his professed expertise as a Professional Engineer with
8 a background in metallurgy, Mr. Westland ordered the crown brasses made up of the wrong
9 material. As a result, the crown brasses failed in less than 50 miles of service requiring
10 Locomotive 93 to be taken back out of service. The Foundation had to order new crown
11 brasses and had to borrow \$190,000 from The First National Bank of Ely to cover the expense.
12 If the Foundation had not borrowed these sums from The First National Bank of Ely, the
13 other sums invested in Locomotive 93’s rebuild would have been completely wasted.

14 46. In 2008, with Locomotive 93 already down for its rebuild, Mr. Westland
15 used his professional judgment to determine that Locomotive 40 had cracks in its axles. Mr.
16 Westland condemned Locomotive 40 which resulted in the Foundation being “without steam”
17 for 2008. During 2008, because it had no steam locomotives in service, the Foundation
18 experienced a 27% drop in ridership. This translated to a 40% decrease in revenue for the
19 year and loss of \$138,408. Following Mr. Westland’s termination, the Foundation
20 discovered that there were no cracks in Locomotive 40’s axles.

1 47. In his capacity as Chief Mechanical Officer, Mr. Westland was directed by
2 Executive Director Bassett to make certain repairs on the track of the Hiline Branch; these
3 repairs were requested to be made by Nevada’s state inspector for the Public Utilities
4 Commission. Mr. Westland assured Executive Director Bassett that he would make the
5 requested repairs. Rather than make the requested repairs, Mr. Westland simply closed the
6 track despite the fact that he lacked the proper credentials or authority to do so. This
7 unauthorized closure of the Hiline Branch resulted in approximately \$750,000 in unnecessary
8 expenses to the Foundation.
9

10 48. Due to these issues and other issues relating to Mr. Westland, the
11 Foundation terminated Mr. Westland’s employment on May 17, 2008. Executive Director
12 Bassett, Member Gianoli and Member Leith were involved in the decision to terminate Mr.
13 Westland’s employment. Executive Director Bassett and Member Leith communicated the
14 decision to Mr. Westland.
15

16 49. On November 14, 2008, five months after being terminated by the
17 Foundation, Mr. Westland formed a company with the Nevada Secretary of State called the
18 Nevada Northern Railway Company. This entity’s stated purpose in its organizational
19 documents was “[t]o acquire and operate the Nevada Northern Railroad Company complex
20 previously owned by Kennecott Copper Corporation and currently owned by the City of Ely.”
21 In 2009, Mr. Westland was listed as the secretary of this entity. In February of 2011, Mr.
22 Westland resigned from the Nevada Northern Railway Company. However, Mr. Westland’s
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1 Nevada Northern Railway Company had already significantly damaged the Foundation as
2 alleged herein.

3
4 50. In September 2009, almost a year and a half after Mr. Westland's
5 termination, the Foundation placed Locomotive 40 back into service, notified the Federal
6 Railway Authority, and announced that Locomotive 40 would be featured in the popular
7 winter photo shoots. The winter photo shoots are a significant source of revenue for the
8 Foundation but are only successful if the steam locomotives are featured. One week before
9 the scheduled photo shoot, Executive Director Bassett received a complaint that the
10 Foundation was operating Locomotive 40 after it had been condemned for cracked axles.
11 Upon information and belief, Mr. Westland either made the complaint himself or caused
12 someone else to make the complaint. The complaint was timed to disrupt the scheduled
13 photo shoot. Thankfully, the photo shoot went forward as planned with Locomotive 40.
14 However, following the photo shoot, the FRA conducted another investigation into
15 Locomotive 40 resulting in significant expense to the Foundation and determined that the
16 axles were not cracked.
17

18
19 51. During Mr. Westland's first campaign for the Ely City Council, he used the
20 Foundation's Safety First logo. Despite the Foundation advising Mr. Westland that he had
21 no right to use the logo, and would place the Foundation in danger of losing its tax exempt
22 status, Mr. Westland continued to use the logo. Additionally, Mr. Westland trademarked
23 the logo with the Nevada Secretary of State. In addition to continuing the use the logo, Mr.
24 Westland went so far as to admonish the City Council from using the name Nevada Northern
25

1 Railway Company claiming that he owned the name. Mr. Westland’s fraudulent filing left
2 the Foundation with no choice but to retain legal counsel to defend the Foundation’s logo
3 and to file federal registrations with the United States Patent and Trademark Office. This
4 resulted in an expense of \$5,693.87 to the Foundation and took the focus away from critical
5 Foundation operations.
6

7 52. In 2012, the Foundation was actively engaged in efforts to obtain critical
8 funding for its operations. Upon information and belief, Mr. Westland created a website
9 purporting to be the Nevada Northern Railway Company which advertised that its purpose
10 was to create “a new, much –needed north-south rail link.” The website further stated that
11 “[t]his rail link would provide a route to Yucca Mountain that has the ability to accept
12 [nuclear] waste.” Shortly after the website was launched, the Foundation’s efforts to obtain
13 funding collapsed and were ultimately unsuccessful. Upon information and belief, Mr.
14 Westland created the fraudulent website with this purpose in mind.
15

16 53. Mr. Westland’s long history of problems with the Foundation has resulted
17 in significant cost and expense to the Foundation in excess of \$10,000.
18

19 **Development of Conflict Between the Board of Trustees and Management**

20 **Board**

21 54. For nearly 29 years, the Board of Trustees and Management Board worked
22 cooperatively with a focus on the best interests of the Foundation.
23

24 55. In November of 2013, that cooperative focus began to erode based on the
25 actions of the Board of Trustees.

1 56. First, the Board of Trustees took issue with a letter the Foundation received
2 during its regular audit highlighting one material weakness and three significant weaknesses.
3 Councilman and Trustee Westland advanced an agenda item to review the audit findings.
4 Since November of 2013, those deficiencies have been addressed or are in the process of
5 being addressed.
6

7 57. At the regular Board of Trustees and City Council meeting on January 9,
8 2014, the Trustees and Council threatened a takeover of the Foundation’s books and
9 accounting. During this time, action items regarding a loan repayment to Executive Director
10 Basset were needlessly tabled by the Board of Trustees and City Council. This needless
11 tabling delayed a resolution of issues that the Board of Trustees claimed were of the utmost
12 importance.
13

14 58. At a public meeting on February 13, 2014, the Board of Trustees accepted
15 solutions to two of the four audit findings. Additionally, the Board of Trustees formed an
16 Ad Hoc Committee to address the growing difficulties between the Ely City Council/Board
17 of Trustee and Management Board. The main charge of the Ad Hoc Committee was to get
18 to the root of the issues between the two boards and entertain solutions to those problems.
19

20 59. On March 13, 2014, the Ely City Council and Board of Trustees created the
21 framework for the Ad Hoc Committee. Items that should have been discussed and resolved
22 were tabled and referred to the Ad Hoc Committee thereby further delaying a resolution of
23 issues raised by the Board of Trustees and City Council. As this was occurring, the
24 Management Board developed a revised set of organizational documents that provided a
25

1 potential solution to the structural issues between the two boards. During the March 13, 2014
2 meeting, the Board of Trustees voted to quash an action item to review this new set of draft
3 organizational documents for the Foundation stating that those items should be reviewed by
4 the Ad Hoc Committee.
5

6 60. At this point in time, the Foundation was in the process of applying for a
7 significant federal grant. After the decision had been made to pursue the grant and prepare
8 the application, Trustee Westland offered up agenda items and discussion to question and
9 criticize the need for the grant. This effort nearly prevented the application from going
10 forward.
11

12 61. At a meeting on May 8, 2014, the Board of Trustees and City Council again
13 raise issues of concern – this time about exempting a crossing on the rail line.
14

15 62. At the next public meeting on May 22, 2014, the Board of Trustees and City
16 Council, through Trustee and Councilman Westland, began efforts to renegotiate or
17 terminate certain agreements involving car storage and trackage rights. These issues are
18 again raised at the regular meeting on June 12, 2014 and June 26, 2014.

19 63. Importantly, on June 26, 2014, the Board of Trustees and City Council
20 authorized a forensic audit into the Foundation’s finances with no discussion of the overall
21 potential cost, issues to be considered or any allegations of wrongdoing or fraud that would
22 support the need for a forensic audit.
23

24 64. Since the regular meetings in June of 2014, the named Defendants have
25 taken the following actions either as part of a regular meeting or outside of a regular meeting:

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- a. Termination of the Ad Hoc Committee before the Ad Hoc Committee could meet its charge. This was done after the Trustees sitting on the Ad Hoc Committee failed to show up for a regularly scheduled committee meeting.
- b. Removal of the two longest standing members of the Management Board (explained in detail below).
- c. Proposed action items regarding removal of the remaining three members of the Management Board.
- d. Proposed action items on how the Plaintiffs intend to fund the cost of any lawsuit filed against the named Defendants.

August 7, 2014 Board of Trustees and City Council Meeting and Removal of Members Gianoli and Leith

65. The Board of Trustees and City Council met during an open agendized meeting in the City of Ely on August 7, 2014.

66. Procedurally, the Board of Trustees meetings and City Council meetings are conducted at the same time and place and are listed on the same agenda. The Mayor presides over the City Council meetings. When the agenda items for the Board of Trustees come up, the Mayor closes the meeting of the City Council and hands the gavel to the Chairman of the Board of Trustees, Councilman Dale Derbidge. Historically, public comment is allowed at the beginning and end of the City Council meeting. There is no separate public comment period at the opening of the Board of Trustees meeting nor is there a separate public comment

1 period at the closing of the Board of Trustees meeting. The published agenda also prohibits
2 public comment during discussion items. At the August 7, 2014 Board of Trustees meeting,
3 Chairman Dale Derbidge closed the meeting without allowing for public comment despite a
4 request from a member of the audience for such public comment.
5

6 67. Councilman and Trustee Bruce Setterstrom placed an agenda item on both
7 the Board of Trustees agenda and the City Council agenda that read as follows: “Trustee
8 Setterstrom – Discussion/For Possible Action – Removal from office of up to two (2) White
9 Pine Historical Railroad Foundation Management Board Members for reasonable cause.”
10 During the August 7, 2014, Councilman and Trustee Setterstrom admitted that he had wanted
11 to remove all five management board members but had been dissuaded from doing so by the
12 City Attorney. Councilman and Trustee Setterstrom reported to The Ely Times that he
13 modified the text of his agenda item to ask for the removal of two Management Board
14 members because he felt that was all that might be necessary to spur on cooperation between
15 the two entities. Councilman and Trustee Setterstrom, in that same article, referenced
16 Members Gianoli and Leith and said, “I think the job they have been doing has been
17 fantastic”
18

19
20 68. Councilman and Trustee Setterstrom’s agenda item did not name the two
21 board members to be removed and did not specify the reasoning behind the removal.
22 Additionally, the agenda item did not specify that there would be discussion of the board
23 members’ character, alleged misconduct, professional competence, or physical or mental
24
25

1 health. The Board of Trustees without providing personal service to Member Gianoli or
2 Leith, and without providing receipt of such service, proceeded with the action item.

3
4 69. Trustee Setterstrom spent nearly twenty minutes summarizing what he
5 believed were questions he and other Trustees had that were not satisfactorily answered by
6 the Management Board. The Board of Trustees allowed little to no opportunity for
7 Management Board Counsel Scott Husbands to respond to the series of questions. Many of
8 the questions raised by Trustee Setterstrom, and the Board of Trustees in general, have
9 already been responded to or addressed by the Management Board. However, as alleged
10 herein, Mr. Husbands was not provided an adequate opportunity to make this point.
11

12 70. Various Trustees interrupted Mr. Husbands as Mr. Husbands attempted to
13 respond to Trustee Setterstrom's concerns. At no point in time were Member Gianoli or
14 Member Leith asked to address the Board of Trustees.
15

16 71. Trustee Setterstrom moved to remove Member Gianoli and Member Leith.
17 Trustee Setterstrom's motion was seconded by Trustee Westland. As Mr. Husbands again
18 attempted to respond to Trustee Setterstrom's concerns and understand the extent of those
19 concerns, Board of Trustees Chairman Derbidge interrupted Mr. Husbands and called the
20 question. The Board of Trustees voted unanimously, three to zero, to remove Member
21 Gianoli and Member Leith. Trustee Hanson, who was not present, submitted a proxy that
22 voted in favor of removing up to two members of the Management Board, but did not indicate
23 in his proxy which two members he wanted to remove. Chairman Dale Derbidge abstained
24 from the vote claiming that he could not vote because he is a good friend of, and has a
25

1 business relationship with, someone on the Management Board. Chairman Derbidge then
2 closed the meeting of the Board of Trustees and returned the gavel to the Mayor. The City
3 Council perfunctorily approved the exact same agenda item by Councilman Setterstrom
4 making the motion and Councilman Westland seconding the motion. The City Council
5 approved the item by a vote of three to zero with Councilman Derbidge abstaining.
6

7 72. After this action, Member Leith stood to address the City Council and Board
8 of Trustees and advised those bodies that he had no notice that he was one of the Management
9 Board members the Board of Trustees sought to remove. He pleaded with the Board of
10 Trustees to allow him an opportunity to consult with his personal attorney. The City Council
11 and Board of Trustees ignored Member Leith and offered no response to his request and
12 moved directly into reports from the City Council members.
13

14 73. Since the August 7, 2014 meeting, neither the City Council nor the Board
15 of Trustees has taken any corrective or remedial action.
16

17 CAUSES OF ACTION

18 Number One – Injunctive Relief for Violations of Nevada Open Meeting Law

19 74. Plaintiffs incorporate herein the allegations contained in Paragraphs 1
20 through 73.

21 75. This Cause of Action is brought by (i) the Management Board, (ii) the
22 Management Board members in their official capacity, (iii) Member Gianoli in his individual
23 capacity, and (iv) Member Leith in his individual capacity. This Cause of Action is brought
24 against (i) the Board of Trustees, (ii) City of Ely, (iii) City Council, (iv) all Board of Trustees
25

1 and City Council members in their official capacity, and (v) Mayor VanCamp, in her official
2 capacity.

3 76. Nevada’s Open Meeting Law, Nevada Revised Statute Chapter 241,
4 requires strict adherence to its commands.
5

6 77. NRS 241.020(2)(d)(1) requires that an agenda contain a “clear and complete
7 statement of the topics scheduled to be considered during the meeting.” Nevada law
8 establishes that all topics must be clearly described in the agenda to provide the public with
9 adequate notice because incomplete and poorly written agendas deprive citizens of their right
10 to take part in government.
11

12 78. Here, Trustee Setterstrom’s action item read as follows: “Trustee
13 Setterstrom – Discussion/For Possible Action – Removal from office of up to two (2) White
14 Pine Historical Railroad Foundation Management Board Members for reasonable cause.”
15

16 79. This language fails to mention any board member by name and likewise
17 fails to reference the reasoning for the removal thereby providing an incomplete statement
18 of the topic. Additionally, the language fails to point out that the character, alleged
19 misconduct, professional competence or physical or mental health of the board members
20 would be questioned. This incomplete statement deprived these individuals and the public
21 of their right to participate in government by not providing any advance notice of who the
22 Board of Trustees sought to remove. The named Defendants failure to provide a clear and
23 complete statement is a violation of Nevada’s Open Meeting Law.
24
25

1 80. NRS 241.020(2)(c) requires that the notice or agenda for a meeting must
2 contain “the name and contact information for the person designated by the public body from
3 whom a member of the public may request the supporting material for the meeting . . . and a
4 list of the locations where the supporting material is available to the public.” The August 7,
5 2014 contained no such statement and is therefore in violation of Nevada’s Open Meeting
6 Law.
7

8 81. NRS 241.033 requires that personal notice be given, by personal service or
9 certified mail, to any individual whose character, alleged misconduct, professional
10 competence, or physical or mental health are to be considered. In addition to providing this
11 notice, the public body must receive proof of service prior to the meeting or action item going
12 forward. Additionally, NRS 241.033(2)(c) requires that the written notice include a list of
13 the general topics concerning the person that will be considered by the public body during
14 the personnel session.
15

16 82. Here, the named Defendants provided no notice at all to the Management
17 Board, Member Gianoli or Member Leith as to which board member the named Defendants
18 sought to remove. Likewise, there was no notice provided of the general topics to be
19 discussed. The named Defendants failure to provide the required notice is a violation of
20 Nevada’s Open Meeting Law. This failure to provide notice was referenced by Management
21 Board Counsel Scott Husbands during the meeting and Member Leith. The named
22 Defendants ignored this point and proceeded with the removal which constitutes a willful
23 violation of Nevada’s Open Meeting Law.
24
25

1 83. NRS 241.020(2)(d)(3) requires public comment periods during open
2 meetings at the beginning of a meeting and end or after each specific agenda item. Here, the
3 Board of Trustees has never provided an opportunity for public comment when the Ely City
4 Council closes its meeting and opens the meeting of the Board of Trustees. Likewise, no
5 provision is made for public comment during the meeting and no public comment is taken at
6 the closing of the meeting.
7

8 84. NRS 241.036 and 241.037 allow for a party to seek relief from a District
9 Court for violations of Nevada’s Open Meeting Law. Nevada’s Open Meeting Law and
10 well-settled case law dispenses with the normal requirement that a party seeking an
11 injunction demonstrate immediate and irreparable injury.¹ Aggrieved parties may seek to
12 have any action taken in violation of Nevada’s Open Meeting Law declared void. Aggrieved
13 parties may also seek injunctions prohibiting actions taken in violation of Nevada’s Open
14 Meeting Law. Lastly, Nevada’s Open Meeting Law provides for attorney’s fees and costs to
15 a prevailing party for violations of Nevada’s Open Meeting Law.
16
17

18 85. Plaintiffs seek an injunction from this Court declaring the removal of
19 Members Gianoli and Leith void for violating Nevada’s Open Meeting Law. Additionally,
20 Plaintiffs seek an injunction from this Court prohibiting the named Defendants from
21 removing Members Gianoli and Leith and requiring named Defendants reinstate Members
22

23 _____

24
25 ¹ The Plaintiffs in this matter submit, as in their other Causes of Action, that the alleged facts demonstrate the existence of immediate and irreparable injury.

1 Gianoli and Leith to their positions on the Management Board because the action taken at
2 the August 7, 2014 meeting is in clear violation of Nevada’s Open Meeting Law. Plaintiffs
3 request that this injunctive relief also bar the named Defendants from appointing board
4 members to replace Members Gianoli and Leith. Lastly, Plaintiffs seek an award of their
5 reasonable attorney’s fees and costs incurred in bringing this action.
6

7 86. Additionally, at the June 26, 2014 meeting of the Board of Trustees, Trustee
8 Hanson placed an item on the agenda that read, “Trustee Hanson – Discussion/For Possible
9 Action – Consideration to Authorize a Forensic Audit of the White Pine Historical Railroad
10 Foundation.” The agenda item did not explain why the Board of Trustees was contemplating
11 a forensic audit, which firms might be used to do such work or how much such an audit might
12 cost the citizens of Ely. Trustee Hanson moved to commission the audit up to \$10,000 and
13 to appoint himself and Trustee Westland to identify the specific areas of concern. Trustee
14 Lee seconded the motion and the motion carried unanimously. During the discussion, the
15 Trustees were reviewing an e-mail that had never been provided to the public.
16
17

18 87. The June 26, 2014 action violates Nevada’s Open Meeting Law because the
19 agenda item’s description is not clear and concise. There is no reference at all as to the
20 potential cost or the subject areas to inquire into which is of great concern and consequence
21 to the citizens of Ely. At a bare minimum, the agenda item should have indicated that the
22 citizens would be paying \$10,000 to conduct the audit so that interested and concerned
23 citizens could attend the meeting and speak their voice. Additionally, the June 26, 2014
24
25

1 action violates Nevada’s Open Meeting Law to the extent that the Trustees relied on
2 information that was not provided to the public.

3 88. Plaintiffs seek an injunction from this Court declaring the authorization of
4 the forensic audit void for violating Nevada’s Open Meeting Law. Additionally, Plaintiffs
5 seek an injunction from this Court prohibiting the forensic audit from going forward because
6 the action taken to authorize the forensic audit is in violation of Nevada’s Open Meeting Law.
7 Lastly, Plaintiffs seek an award of their reasonable attorney’s fees and costs incurred in
8 bringing this action.
9

10 Number Two – Injunction Against Named Defendants Due to Violation of
11 Foundation’s Bylaws

12 89. Plaintiffs incorporate herein the allegations contained in Paragraphs 1
13 through 88.
14

15 90. This Cause of Action is brought by (i) the Management Board, (ii) the
16 Management Board members in their official capacity, (iii) Member Gianoli in his individual
17 capacity, and (iv) Member Leith in his individual capacity. This Cause of Action is brought
18 against (i) the Board of Trustees, (ii) City of Ely, (iii) City Council, (iv) all Board of Trustees
19 and City Council members in their official capacity, and (v) Mayor VanCamp, in her official
20 capacity.
21

22 91. The Foundation’s bylaws provide for a limited right of removal of
23 Management Board members by the Board of Trustees. This language has been in place
24 since the Foundation amended its bylaws in 2000. Specifically, Section 3.11 of the current
25

1 bylaws provides that “[a]ny member of the Management Board may be removed by the
2 Board of Trustees for reasonable cause.” Section 3.11 defines reasonable cause as
3 “misfeasance, malfeasance, or commission of any felony.”
4

5 92. The Foundation’s bylaws do not specifically define misfeasance or
6 malfeasance thereby attributing the common definition to those terms. Black’s Law
7 Dictionary defines misfeasance as “a lawful act performed in a wrongful manner, or, more
8 broadly, a transgression or trespass.” The same source defines malfeasance as “a wrongful
9 or unlawful act or wrongdoing or misconduct by a public official.” Misfeasance in public
10 office is defined by that same source as “the tort of excessive, malicious or negligent exercise
11 of statutory powers by a public official.”
12

13 93. Although Trustee Setterstrom’s action item uses the word reasonable cause,
14 the words misfeasance or malfeasance were not used once during the August 7, 2014 meeting.
15 Likewise, there was no evidence whatsoever that Members Gianoli or Leith committed a
16 felony. Thus, the named Defendants acted improperly in removing Members Gianoli and
17 Leith because the named Defendants did not demonstrate the existence of reasonable cause
18 for the removal.
19

20 94. NRS 33.010 allows for an injunction against a party where the plaintiff is
21 entitled to the relief requested and where the act complained of, if left unrestrained, will
22 produce great or irreparable injury.
23

24 95. Here, the named Defendants removed the two longest serving members of
25 the Management Board. Members Gianoli and Leith were the Chairman and Vice-Chairman

1 of the Management Board, respectively. The named Defendants improper removal of
2 Members Gianoli and Leith will expose the Foundation to immediate and irreparable injury
3 thereby entitling the Plaintiffs to an injunction prohibiting the removal. The Foundation is
4 in one of its busiest seasons and is in the middle of applying for a federal TIGER Grant. If
5 left unrestrained, the named Defendants will replace Members Gianoli and Leith thereby
6 making it impossible to restore them to their positions.

8 96. Plaintiffs seek a declaration from the Court that the actions taken by the
9 Board of Trustees were in violation of the Foundation’s bylaws. Accordingly, Plaintiffs seek
10 an injunction prohibiting the removal of Members Gianoli and Leith as the named
11 Defendants had no cause under the Foundation’s bylaws to remove them. Additionally,
12 Plaintiffs seek an injunction prohibiting the named Defendants from replacing Members
13 Gianoli and Leith. Lastly, Plaintiffs seek an award of their reasonable attorney’s fees and
14 costs incurred in bringing this action.

16
17 Number Three – Injunction Against Council Martin Westland Due to Conflict of
18 Interest

19 97. Plaintiff incorporates herein the allegations contained in Paragraphs 1
20 through 96.

21 98. This Cause of Action is brought by (i) the Management Board, (ii) the
22 Management Board members in their official capacity, (iii) Member Gianoli in his individual
23 capacity, and (iv) Member Leith in his individual capacity. This Cause of Action is brought
24 against (i) the Board of Trustees, (ii) City of Ely, (iii) City Council, (iv) all Board of Trustees
25

1 and City Council members in their official capacity, (v) Councilman Martin Westland in his
2 personal capacity, and (vi) Mayor VanCamp, in her official capacity.

3 99. NRS 281A.420 prohibits any public officer or official from taking part or
4 voting on any matter in which, among other things, the officer or official has a significant
5 pecuniary interest. NRS 281A.139 defines a pecuniary interest as “any beneficial or
6 detrimental interest that consists of or is measured in money including, without limitation,
7 anything of economic value.
8

9 100. As demonstrated and alleged herein, Trustee and Councilman Westland was
10 fired from his position as Chief Mechanical Officer of the Foundation. Upon information
11 and belief, since his termination, Trustee and Councilman Westland has engaged in an active
12 campaign to interfere with the Foundation’s operations resulting in significant damage and
13 expense to the Foundation. If left unrestrained, this campaign will continue and will result
14 in continued immediate and irreparable damage to the Foundation.
15

16 101. Plaintiffs seek an order enjoining Trustee and Councilman Westland from
17 participating in any manner in any decision or matter affecting or impacting the Foundation
18 or Nevada Northern Railway. Additionally, Plaintiffs seek an award of their reasonable
19 attorney’s fees and costs incurred in bringing this action.
20

21 Number Four – Injunction and, in the Alternative, Award of Damages for
22 Violation of Constitutional Due Process
23

24 102. Plaintiffs incorporate herein the allegations contained in Paragraphs 1
25 through 101.

1 103. This Cause of Action is brought by (i) Member Gianoli in his individual
2 capacity, and (ii) Member Leith in his individual capacity. This Cause of Action is brought
3 against (i) the Board of Trustees, (ii) City of Ely, (iii) City Council, (iv) all Board of Trustees
4 and City Council members in their official capacity and personal capacity, and (v) Mayor
5 VanCamp, in her official capacity.
6

7 104. The United States Constitution and Nevada Constitution provide procedural
8 due process protections any time an actor attempts to deny or remove an economic interest
9 or liberty. Before attempting such action, the actor must provide the subject party notice and
10 an opportunity to be heard.
11

12 105. Here, as already alleged, Members Gianoli and Leith were provided no
13 notice that they were the board members who would be subject to removal nor were they
14 provided any notice of the reasoning for the removal. Management Board counsel Mr.
15 Husbands pointed this out to the named Defendants who proceeded to remove Members
16 Gianoli and Leith regardless of the lack of notice. More egregiously, Member Leith advised
17 that he had no notice whatsoever and wished to have an opportunity to consult with his
18 personal attorney who is in California. The named Defendants did not invite comment from
19 Members Gianoli and Leith nor were they, or the Management Board's counsel, provided an
20 adequate opportunity to respond to the information presented by the named Defendants. As
21 a result of this due process violation, Members Gianoli and Leith were removed from their
22 positions as Chair and Vice-Chair of the Management Board and have therefore been denied
23 a benefit.
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106. Plaintiffs hereby seek an injunction prohibiting the named Defendants from removing Members Gianoli and Leith as the process used to remove them was constitutionally deficient. As demonstrated and alleged herein, the removal of Members Gianoli and Leith constitutes an immediate and irreparable injury since without injunctive relief, Members Gianoli and Leith will be replaced.

107. As an alternative to injunctive relief, should the Court not find such relief warranted, Plaintiffs seek an award of damages in an amount that exceeds \$10,000 including actual damages, punitive damages based on the named Defendant’s willful failure to provide procedural due process, and an award of Plaintiff’s reasonable attorney’s fees and costs incurred in bringing this action.

Number Five – Breach of Fiduciary Duty

108. Plaintiff incorporates herein the allegations contained in Paragraphs 1 through 107.

109. This Cause of Action is brought by (i) the Management Board, (ii) the Management Board members in their official capacity, (iii) Member Gianoli in his individual capacity, and (iv) Member Leith in his individual capacity. This Cause of Action is brought against (i) the Board of Trustees, (ii) City of Ely, (iii) City Council, (iv) all Board of Trustees and City Council members in their official capacity, and (v) Mayor VanCamp, in her official capacity.

110. The Foundation’s governance is the responsibility of two separate fiduciary bodies – the Board of Trustees and the Management Board. The Management Board has the

1 duty to manage the day to day affairs of the Foundation. The Board of Trustees possesses
2 the powers of the corporation.

3
4 111. Each body, as a fiduciary of the Foundation, has the obligation to act in the
5 best interests of the Foundation and place the Foundation’s interest ahead of its own interests
6 and those of its members. This fiduciary obligation extends to not only the Board itself but
7 to all of its members. Those with fiduciary obligations that act outside the scope of their
8 fiduciary capacity or allow personal interests or the interests of others to control their
9 decision making are exposed to personal liability for such actions.

10
11 112. Here, as alleged, the named Defendants have breached their fiduciary
12 obligation to the Foundation by allowing personal vendettas and issues, or the personal
13 vendettas and issues of others, to influence their fiduciary decision making. By way of
14 example, the Board of Trustees voted on June 26, 2014 to authorize a forensic audit yet has
15 done nothing to follow up on this action. More importantly, there is no evidence of
16 wrongdoing that would necessitate such an audit. This is just one example of baseless and
17 improper action taken in violation of the Trustees’ fiduciary duties, as a result of, among
18 other things, unlawful influences on the Trustees’ decision making. These unlawful
19 influences on the named Defendants decision making have resulted in additional baseless
20 accusations, improper action items on published agendas and a concerted effort to interfere
21 with the business operations of the Foundation. Each of the named Defendants identified
22 and named in his or her personal capacity has acted outside the scope of his or her official
23 capacity by allowing undue and unlawful influences on their fiduciary decision making.
24
25

1 DATED this 26th day of August, 2014.

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DATED this th 26 day of August, 2014.

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