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3 IN THE JUSTICE COURT OF AUSTIN TOWNSHIP  
4 COUNTY OF LANDER, STATE OF NEVADA

5  
6  
7 VIRGINIA GALLEGOS,  
8 Applicant

9 v.

MOTION TO DISSOLVE TEMPORARY  
ORDER

10  
11 MICHAEL MARKING,  
12 ELIZABETH FLEMING,  
13 Adverse Parties

14  
15  
16  
17 COME NOW Michael Marking and Elizabeth Fleming, in proper person, as Adverse  
18 Parties in this matter, and petition this Court as follows:

19  
20 WHEREAS

- 21 (1) Applicant Virginia “Sissie” Gallegos (hereinafter, “Sissie”) on Monday, 10 August
- 22 2009, applied to this Court for a Protective Order as allowed by NRS 200.591), and the
- 23 requested Order was granted the same day; and
- 24 (2) Adverse Parties Michael Marking (“Marking”) and Elizabeth Fleming (“Fleming”,
- 25 a.k.a. Nancy Elizabeth Fleming) moved on 11 August for a hearing under the provisions
- 26 of NRS 200.594 to argue for dissolution of the Protective Order, and the Court on 13

27 August scheduled the hearing; and

28 (3) A protective order such as the one issued in this case is an equitable remedy, and the  
29 discretion of the court in issuing such an order is limited by the rules of equity in  
30 addition to those of statutory law (*Points & Authorities*, pages 7-9); and

31 (4) The allegations contained in the Application are false, deceptive, incomplete, vague,  
32 and misleading (*P&A*, pages 10-13); and

33 (5) There has been no violation of the law by Adverse Parties; and

34 (6) The Application itself is an abuse of process, part of a pattern of activity by Applicant  
35 and her husband which includes slander, harassment, malicious mischief, assault, fraud,  
36 larceny, abuse of office, and threatened felonious destruction of property (*P&A*, pages  
37 13-20); and

38 (7) The Protective Order, as a matter of equity, law and of fact, ought to be dissolved for the  
39 following reasons:

40 (a) The application fails to state a claim upon which relief can be granted (*P&A*,  
41 page 10ff)

42 (b) The allegations, to the extent that the alleged actions can be construed as  
43 improper, are false, misleading, incomplete, and inaccurate (*P&A*, page 12ff);

44 (c) Except for e-mails related to Roping Club business, which are manifestly not  
45 improper, no communication has been directed specifically to any of the  
46 protected parties by either Adverse Party since April (*P&A*, page 12ff); and

47 (d) Applicant has unclean hands, and is not entitled to relief (*P&A*, pages 13-20);  
48 and

49 (e) Applicant has adequate remedies at law (*P&A*, pages 20-21); and

50 (f) Applicant has not shown a “certain and immediate” threat of irreparable harm  
51 will come from failure to grant the injunction (*P&A*, page 20ff); and

52 (g) The Order itself is overly broad, in violation of the Constitution, and is in

53 violation of the provisions of NRS 200.575.6(e) and NRS 200.591 (*P&A*, pages  
54 21-24); and

55 (h) The balance of equities favours Marking and Fleming (*P&A*, pages 24-26).  
56

57 THEREFORE, the Adverse Parties petition this Court to dissolve the Protective Order for the  
58 foregoing reasons.

59  
60 IN SUPPORT of their request, Adverse Parties attach their MEMORANDUM OF POINTS AND  
61 AUTHORITIES and their EXHIBITS, as follow.

62  
63 DATED Monday, 25 August 2009.  
64

65 \_\_\_\_\_  
66 Michael Marking

67  
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69 \_\_\_\_\_  
70 Nancy Elizabeth Fleming

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72 both at: General Delivery, Austin,  
73 Nevada 89310  
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MEMORANDUM OF POINTS AND AUTHORITIES

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**A. Preliminaries**

1. This Motion is submitted in written form. Although not required in this Court, this written motion may facilitate more expeditious disposition of this matter and, as well, will ensure completeness of the record in any appeal or derivative action.

2. In a proper brief, a declaration attesting to the facts would be attached as a separate exhibit. Given the informality of this Court, and that Adverse Parties are appearing in proper person, we have incorporated the facts into the Points and Authorities. The Court may regard assertions of fact as if they were submitted in separate declarations, subject to penalties of perjury.

3. This Motion is intended to supplement, not to replace, the proceedings of the hearing. Adverse Parties may seek to add to the arguments and exhibits herein at the time of the hearing.

4. Exhibit A.1 to this *Motion* is a compact disc (CD) which should be readable on almost any personal computer, and which contains this Motion and some of the exhibits. Some of the exhibits are audio recordings which cannot be included in paper form, and photographs, which do not reproduce well on copiers. The A exhibits are on the disc, the B exhibits are in paper form. File names on the disc should be self-explanatory.

**B. Factual History**

5. Marking and Fleming have known Ruben and Sissie since around 2005. When

131 Marking and Fleming came to Austin in late 2004, they knew no one here. Ruben and Sissie  
132 were one of the first people Marking and Fleming met, and it appeared they wanted to be  
133 friends.

134 **6.** Ruben and Sissie “warned” Marking and Fleming about all of the bad people in  
135 town. They told Marking and Fleming that Ray Williams, Jr., was an embezzler; that Jerry  
136 and Gail Utter were dishonest thieves; that Joe Ramos pocketed donations to the Roping  
137 Club; that Elizabeth Williams stole money from the Roping Club; that Mel (last name  
138 unknown) defrauded them in a restaurant deal; that Ray Williams, III, was a thief; that the  
139 Youngs sold bad hay and slandered us behind our backs; that Chuck Austin disliked us; and  
140 so on. They told of us various people who were child molesters and sex offenders. We  
141 emphasize that we have never seen proof that any of this was true, but it made us concerned  
142 for quite a while.

143 **7.** In retrospect, it was the beginning of a classic confidence game. “Don’t trust them,  
144 but we will be your friends.”

145 **8.** Ruben and Sissie helped Marking and Fleming by lending money and hay at times.  
146 Half of the money has been paid back, but hay is still owed. R&S let M&F use their phones  
147 for a while for the internet beginning mid-2008 and ending January 2009. During the same  
148 time, they let M&F use their washing machine to wash clothes.

149 **9.** At the same time, M&F helped R&S by lending a trailer, helping with their corrals  
150 and horses, building their web sites, giving advice on business and taxes, and other matters.

151 **10.** For some reason M&F do not understand, R&S started becoming hostile in late  
152 2008 and early 2009. Perhaps it was Sissie’s switch from narcotics to other psychotropic  
153 drugs. Perhaps it was the money that was owed. Maybe R&S had personal problems M&F  
154 were not aware of. At any rate, at that time, the relationship began to deteriorate.

155 **11.** R&S began to harass M&F. (See E. Unclean Hands, pages 13-20)

156 **12.** A large part of the problem seemed to center on the Roping Club. R&S felt that,

157 because M&F owed them money, M&F should support them in whatever they wanted with  
158 regard to the Roping Club. M&F could not in clear conscience agree to that.

159 **13.** M&F circulated open letters to the membership during the August meeting. The  
160 next week, Sissie applied for the Order. It was apparently the Roping Club dispute which  
161 triggered her Application, and M&F presume the goal is to prevent M&F from coming to  
162 the next (September) meeting so that R&S can push through by-laws changes to insulate  
163 them from M&F and allow them to continue their abuse of office.

### 164 **C. Equitable Remedy.**

165 **14.** Law and Equity are Distinguished. Law and equity are distinguished.

166  
167 **Equity.** Justice as administered according to fairness as contrasted with the strictly  
168 formulated rules of common law. [...] A system of jurisprudence collateral to, and in  
169 some respects independent of “law” [...] (*Black’s Law Dictionary*, Fifth Edition)

170 **15.** (The distinction between “law” and “equity” is historical. Early on, there were  
171 courts to administer the “king’s law”. Although the history of equity dates back to the 13th  
172 century, it was around the 15th century that separate courts, the chancery courts, were  
173 established in part to deal with matters not covered by the law courts. The chancery courts  
174 were the courts of equity, sometimes called the “king’s conscience”, and had their own  
175 rules. However, the chancery court would not act if the law court had a remedy, hence the  
176 principle that equity could not be used where an adequate remedy at law was available.  
177 There is a complex history to equity and its relationship with law. In the United States, in all  
178 states such as Nevada which have adopted rules of civil procedure, separate law and equity  
179 courts have been eliminated, and the same courts administer both law and equity using a  
180 common procedure. However, the distinctions remain. For example, actions in equity  
181 typically do not employ juries; the Seventh Amendment to the constitution only guarantees  
182 juries at “common law”, not at equity. As another contrast, where an injunction or

183 restraining order would issue in equity, a law court probably would issue an analogous but  
184 not identical thing, and would call it a “writ of prohibition”. Law tends to be more formal  
185 than equity, although it is common to see both law and equity in a single case.)

186  
187 **16. Protective Order an Equitable Remedy.** The Protective Order is, on its face, an  
188 injunction, albeit temporary, pending a hearing.

189 **Injunction.** A prohibitive, equitable remedy issued or granted by a court at the suit of a  
190 party complainant directed to a party defendant [...] forbidding the latter to do some act  
191 [...] which he is threatening or attempting to commit, or restraining him in the  
192 continuance thereof, such act being unjust and inequitable, injurious to the plaintiff, and  
not such as can be adequately redressed by an action at law. [...] (*Black’s Law Dictionary*,  
Fifth Edition.)

193 **17.** Equitable remedies are available only when the alleged wrong cannot be  
194 “adequately redressed by an action at law.” (*Id.*)

195 When a complete and adequate remedy can be had at law, it is settled that a court of  
196 equity will not interfere; but on the other hand, if the injury is likely to be irreparable, or  
197 if the defendant be insolvent, equity will always interpose its power to protect a person  
198 from a threatened injury. Further, it has been noted by the Supreme Court of Nevada that  
if the plaintiff has an adequate remedy at law, the harm is not “irreparable.” (*Champton*  
*v. Sessions*, 1 Nev. 478 (1865))

199 **18.** This has been the law in Nevada since statehood (as the above case shows), and  
200 remains the law to this day. See *1 Rent-A-Car v. Ramada Inns, Inc.*, 94 Nev. 779, 587 P.2d  
201 1329 (1978).

202 **19.** It is also the law of the United States. In *Weinberger v Romero-Barcelo*, 456 U.S.  
203 305 (1982), the US Supreme Court held that the basis for injunctive relief in the federal  
204 courts is irreparable injury and the inadequacy of legal remedies. In considering whether to  
205 grant an injunction, the court “balances the conveniences of the parties and possible injuries  
206 to them according as they may be affected by the granting or withholding of the injunction.”  
207 (*Id.*)

208 **20.** When a court balances the hardships, it “must be concerned not only with possible



209 injury to a plaintiff but also with possible injury to the defendant.” *Everett J. Prescott, Inc.*  
210 *v. Ross*, 383 F. Supp. 2d 180, 191 (D. Me. 2005)

211  
212 **21. Standards for Injunctions.** In addition to the above stated standards requiring that  
213 there be no adequate remedy at law, and requiring that the interests of the parties be  
214 balanced against one another, Nevada (and other jurisdictions) also require that:

215 (a) the plaintiff (here, the applicant) will suffer irreparable harm if the request is  
216 not granted; and

217 (b) the plaintiff has a reasonable likelihood of prevailing on the merits (were a full  
218 trial to be held)

219 *See Dept. of Conservation and Natural Res., Div. of Water v. Foley*, 121 Nev. 77, 80 (2005);  
220 *Memory Gardens of Las Vegas, Inc. v. Pet Ponderosa Memorial Gardens, Inc.*, 88 Nev 1  
221 (1972); *Ottenheimer v. Real Estate Division*, 91 Nev. 338 (1975).

222 **22.** Furthermore, the interests of third parties and the public interest must be  
223 considered. (*Planned Parenthood Ass’n v. Cincinnati*, 822 F. 2d 1390, 1400 (6th Cir., 1987))

224 **23.** The irreparable harm alleged by the Applicant must be both certain and immediate;  
225 it must not be merely speculative or theoretical. (*Michigan Coalition of Radioactive*  
226 *Material Users, Inc. v. Griepentrog*, 945 F.2d 150 (6th Cir., 1991)) The Applicant must  
227 show that a “credible threat” of irreparable harm exists, and that the future injury is not  
228 merely “conjectural”. *Kolender v. Lawson*, 461 U.S. 352, 355 n.3 (1983)

229 **24.** An injunction may not issue absent the threat of future harm. It is not to be used as  
230 a remedy for past acts, nor is it to be used when the alleged acts have already ceased. (See  
231 *Russell v. Douvan*, A096261, Calif. Ct. App., 1st App. Dist., Div. 3 (2003), citing *Scripps*  
232 *Health v. Marin* (1999) 72 Cal.App.4th 324)

234 **D. Analysis of Application**

235

236 **25. Failure to State a Claim.** It is unclear from the Application whether the Application  
237 is based on Harassment (NRS 200.571) or on Stalking (NRS 200.575). Applicant alleges  
238 neither specifically; she only says “The people go after me to provoke my husband &  
239 nephew into confrontation so they look bad.” Neither the elements of NRS 200.571, nor the  
240 elements of NRS 200.575, are alleged. She used the word, “harass”, however she failed to  
241 describe any act which constituted a violation of NRS 200.571. Accordingly, the application  
242 should be denied, and the Protective Order dissolved for failure to state a cognizable claim  
243 under which relief can be granted. (NRCPC 12(b)(5))

244 **26.** Under NRS 200.571, harassment requires at least a threat without lawful authority.  
245 Nowhere in the Application does Applicant describe a threat of any kind, lawful or not;  
246 indeed, no such threat took place. This Court has no evidence of harassment before it.

247 **27.** Presumably, then, Applicant may have been complaining about stalking as defined  
248 under NRS 200.575. Under that hypothesis, too, the Application is lacking. Stalking requires  
249 that the accused “willfully or maliciously engages in a course of conduct”. A “course of  
250 conduct” must evidence “a continuity of purpose directed at a specific person”.

251 **28.** The Applicant’s rambling and desultory statement describes a series of events, some  
252 true, some not, but nowhere do those events show any continuity of purpose. In fact,  
253 nowhere does she specify what the alleged purpose might be except “to provoke” her  
254 husband and nephew. She also says “They wanted me to attack them so they could put  
255 charges on us.” Apparently, she feels that all of these alleged acts were only to provoke  
256 them.

257 **29.** Further, NRS 200.575 requires that the course of conduct “would cause a reasonable  
258 person to feel terrorized, frightened, intimidated, or harassed.” The salient word here is  
259 “reasonable”. Applicant is not reasonable.

260           **30.** A reasonable person does not feel terrorized when buying a trailer. A reasonable  
261 person does not feel frightened when lending hay to someone. A reasonable person does not  
262 feel intimidated when someone says he or she cares about that person. A reasonable person  
263 does not feel harassed when someone accepts an invitation to come to their home.

264           **31.** We invite the court to ask how each of the alleged acts furthers the supposed goal of  
265 “provoking” the protected parties. There is no reasonable answer.

266           **32.** Even if the goal were to provoke the Ruben and Sissie into some act which would  
267 allow Marking and Fleming to “put charges” on them, no action on Marking’s or Fleming’s  
268 part would be necessary for that to happen. As is shown elsewhere (see E. Unclean Hands,  
269 herein at pages 13-20), Ruben and Sissie have committed acts already which allow Marking  
270 and Fleming to charge them with crimes or file tort actions against them, but neither  
271 Marking nor Fleming ever filed any charges or made any complaints to any court about  
272 them except for a violation of the Protective Order. Therefore, the accusation that Adverse  
273 Parties wanted to file any kind of charges against Ruben and Sissie rings hollow. If that were  
274 the goal, it could have been done months ago.

275           **33.** Simply because Sissie says she “cannot take their mental abuse anymore”, does not  
276 show irreparable harm. What a world that would be if we could all cop out of this or that  
277 situation by claiming “we can’t take it any more” and get an injunction against something  
278 we don’t like! The most she has shown is discomfort.

279           **34.** There are several acts described which omit a critical point: Marking and Fleming  
280 were invited to perform them, or at least not asked to refrain. “Hugging in public” is not  
281 normally an illegal activity, and no one asked Marking or Fleming to refrain, in public or  
282 otherwise. Doing laundry is not inappropriate which the launderer has been given  
283 permission. Coming into a home is not trespassing when the visitor is invited.

284           **35.** Finally, there are no laws against “verbal abuse” or “mental abuse”. There are laws  
285 against child abuse, sexual abuse, and elder abuse. There is no “verbal abuse”, and there is

286 no “mental abuse” described in the law.

287 **36. False, Inaccurate, and Misleading Statements.** Although most of the Applicant’s  
288 incoherent statement consists of disjoint but irrelevant facts which are incomplete though  
289 mostly true, some of her assertions are false, inaccurate, or simply misleading.

290 **37.** At no time did either Marking or Fleming come into her room and wake her up, let  
291 alone “verbally abuse” her afterward. Sissie by her own admission previously took large  
292 quantities of various narcotics before switching around the time of her rehab to a course of  
293 selective serotonin re-uptake inhibitors (SSRIs), tranquilizers, and other psychotropic drugs.  
294 One does not always wake up quickly from a drug-induced stupor. Either Sissie is  
295 prevaricating in her statement, or she was hallucinating when she was waking up, or the  
296 incident did in fact occur with some other person at a time when she was insufficiently  
297 conscious to distinguish that person from Marking or Fleming.

298 **38.** Sissie and Ruben both invited Fleming and Marking into their home, even telling  
299 them to come on in when they were not present. (Exhibit B.1). Sissie had standing  
300 instructions to come in when she was there, even when she was asleep. At no time did either  
301 Marking or Fleming come uninvited.

302  
303 **39. Cessation of Activity.** Sissie’s dates are inaccurate. See Factual History, page 5ff for  
304 an accurate timeline.

305 **40.** The dates are significant because a large portion of what is alleged, however  
306 fanciful, imagined, or misinterpreted, happened months ago, and has not happened since  
307 that time. For example, Sissie says in her statement that the events at the Roping Grounds  
308 and at the Gallegos’ house occurred February to May.

309 **41.** In fact, Fleming’s last visit to the Gallegos house was in January, and Marking  
310 stopped coming on a regular basis in January, but made three visits by explicit invitation  
311 from Ruben during February, March, and April. Marking’s last visit to the Gallegos house

312 was on Saturday, 11 April, at Ruben's invitation, to have Ruben make a debit card payment  
313 for the Gallegos' web sites.

314 **42.** The last time either Marking or Fleming ever went to the Gallegos corral was  
315 Friday, 1 May, to borrow hay. No hay was borrowed after 1 May. The only time after 1 May  
316 that Marking or Fleming spoke to Sissie or to Ruben at the Roping Grounds was at times  
317 when Sissie or Ruben came to the corral where Marking's horse is staying. In other words,  
318 all contact at the Roping Grounds after 1 May was initiated by Ruben or by Sissie.

319 **43.** In fact, except for e-mails related to Roping Club business, neither Marking nor  
320 Fleming have initiated any contact with Ruben, Sissie, or Marty since May. The Roping  
321 Club e-mails are manifestly not improper. Other Roping Club correspondence, also not  
322 improper, was not directed specifically toward Ruben, Sissie, or Marty, and thus is not  
323 probative of any allegation made under NRS 200.575.

324 **44.** In other words, except for the Roping Club correspondence, all of which is in  
325 evidence and which is manifestly not improper, all contact with Ruben, Sissie, or Marty,  
326 since May, was initiated by Ruben or Sissie. If Ruben or Sissie do not wish to hear from  
327 Marking or Fleming, they have a simple remedy: they need only stop coming to the Marking  
328 home and stop coming to the corral where Marking's horse is staying.

329 **45.** Even if the allegations were true, they would be in the past for almost four months.  
330 As explained above (see page 9ff), an injunction may not issue for activity in the past, and  
331 for which there is no indication of a likely recurrence in the future.

### 332 **E. Unclean Hands**

334  
335 **46. Relief Is Denied Because of Unclean Hands.** "One who comes into equity must  
336 come with clean hands." Under the doctrine of unclean hands, a person who comes into a  
337 court of equity to obtain relief cannot do so if he or she has acted inequitably, unfairly, or

338 dishonestly as to the controversy in issue. (*Olsen v. Olsen*, 657 N.W.2d 1, 265 Neb. 299,  
339 (2003)). A plaintiff must “act fairly in the matter for which he seeks a remedy. He must  
340 come into court with clean hands, and keep them clean, or he will be denied relief,  
341 regardless of the merits of his claim.” (*Kendall-Jackson Winery, Ltd. v. Superior Court of*  
342 *Stanislaus County*, 76 Cal. App. 4th 970, 978 (1999)). The equitable doctrine of unclean  
343 hands “closes the doors of a court of equity to one tainted with inequity or bad faith  
344 relative to the matter in which he seeks relief, however improper may have been the  
345 behavior of the [other party.]” (*Ellenburg v. Brockway, Inc.*, 763 F.2d 1091, 1097 (9th Cir.  
346 1985) (quoting *Precision Inst. Mfg. Co. v. Automotive Maintenance Mach. Co.*, 324 U.S.  
347 806, 814 (1945))

348 **47.** Sissie and Ruben have, during the previous several months, committed crimes and  
349 torts against Marking and Fleming. These include slander, harassment, malicious mischief,  
350 assault, fraud, larceny, abuse of office, and threatened felonious destruction of property.  
351 They have a nexus to the present allegation, as the points below show. Thus, regardless of  
352 the validity of any accusations made against the adverse parties, the equitable relief of an  
353 injunction is unavailable to them.

354  
355 **48. Threatening To Shoot Or To Kill Marking’s Horse.** On several occasions, Ruben  
356 and Sissie have threatened to kill Marking’s horse.

357 **49.** In late May, Ruben told Marking he would shoot Marking’s horse with a .357  
358 Magnum if it were to get loose. Ruben and Sissie own a carbine which is chambered for .357  
359 Magnum. Later, Ruben claimed it was only a joke. (Exhibit A.7) However, the law does not  
360 recognize a joke as an excuse when a threat is made: there is no element of sincerity  
361 required in the statutes.

362 **50.** Sissie has said she would kill the horse. (Exhibits A.8, B.2)

363 **51.** These are threats to destroy Marking’s property, threats to commit a felony, and

364 constitute harassment under NRS 200.571.

365  
366 **52. Attempting To Set Loose Marking's Horse.** Ruben and Sissie habitually and  
367 repeatedly let their horses, including mares in heat, run loose on the Roping Grounds. This  
368 is in violation of the by-laws. Ruben asserts this violation is acceptable to some others, but it  
369 is not acceptable to everyone, and there is nothing in the by-laws which grants him an  
370 exception from the rules. Because of this, horses in corrals, including Marking's horse, a  
371 stallion, and William's horses, play and sometimes fight with the loose horses. This causes  
372 damage to the corrals and endangers the animals.

373 **53.** On Tuesday, 20 May, Fleming and Rhonda Williams made repairs and  
374 reinforcements to the corral where Marking's horse is kept, such repairs being necessary  
375 because of the loose horses.

376 **54.** The next day, Wednesday, 21 May, Marking came to the corral and found Sissie  
377 taking down the wire used to repair the fence. Sissie said she would take it down each time  
378 it was repaired. Sissie was committing malicious mischief under the statutes. The same day,  
379 Marking filed a report (Exhibit A). He told Dennis Lowe he did not want to make a  
380 complaint, only to have the problem explained to Sissie and to put the matter on the record.

381 **55.** On Monday, 25 May, Ruben told Marking that Sissie had admitted to taking down  
382 the fence.

383  
384 **56. Stealing Marking's and Fleming's Watering Tank.** When Fly quit working and the  
385 bar in the International and moved to Oregon in the spring of 2007, he gave Marking and  
386 Fleming the horse which is now Marking's. He also gave them the watering tank, shown in  
387 Exhibit A.11. The tank is distinctive: it is a fiberglass tub, probably originally intended for  
388 use in a hot tub or jacuzzi. When Ruben told Marking in May 2008 to move the horse from  
389 its original corral to corral #2 (formerly the Utter corral), Marking moved the watering tank

390 as well.

391 **57.** Later that month, Ruben and Sissie let mares in heat loose again, and Marking's  
392 stallion jumped a five foot fence to get to them. Marking, Fleming, and a friend cornered the  
393 horse into the location where it now is staying. The horse is not broke.

394 **58.** When the horse was out of corral #2, Ruben took the watering tank and moved it to  
395 his own corral, where it remains today. (Exhibit A.14) Corral #2 was locked at the time, but  
396 Ruben had a key. Ruben never sought, nor was he granted, permission to take the watering  
397 tank. He simply stole it.

398  
399 **59. Falsely and Publicly Accusing Marking and Fleming of Stealing a Gate.** In the  
400 August Roping Club meeting, Sissie falsely and publicly accused Marking and Fleming of  
401 stealing a gate. During the meeting, Marking said he did not know what had happened to the  
402 gate previously on corral #4, that someone had taken it. Sissie accused him and Fleming of  
403 taking the gate, and putting it on corral #2. (Exhibit A.9)

404 **60.** This is false. They are different gates. Exhibit A.12 is a photograph of corral #4,  
405 including the gate previously on it. Exhibit A.13 is a photograph of corral #2, including its  
406 gate. Obviously, the gates are of different construction.

407 **61.** Making a false accusation of an illegal act constitutes the actionable tort of slander  
408 per se.

409  
410 **62. Assaulting Marking at the Roping Grounds.** Ruben has at least twice assaulted  
411 Marking on the Roping Grounds. Both times were near where Marking's horse is kept, and  
412 both times Ruben approached Marking when Marking was already taking care of his horse.

413 **63.** The first occasion was in August. Ruben came up and started shouting at Marking.  
414 Marking decided to drive away without replying to Ruben. After Marking got into his car,  
415 Ruben took the door handle and opened the door from the outside to prevent Marking from



416 leaving. Eventually, Ruben let go and Marking was able to drive away.

417 **64.** The second occasion was several weeks later. Again, Ruben was shouting at  
418 Marking. Ruben positioned himself so his face was within three inches of Marking's face,  
419 drew his fist back so he was ready to punch Marking in the face. He continued shouting  
420 belligerently, then suggested that Marking "take a poke" at him, and told Marking that he  
421 (Ruben) could "take you down".

422 **65.** Provoking assault is punishable under NRS 200.490.

423  
424 **66. Fraud.** Sissie, as acting secretary of the Roping Club, has created false meeting  
425 minutes to avoid any references to matters she deems unpleasant to her. Typically, these  
426 things include any non-disparaging or non-negative references to Fleming or Marking, and  
427 any mention or details of rules which Sissie and Ruben want to ignore.

428 **67.** Furthermore, Sissie has published meeting agendas which avoid similar topics. She  
429 has repeatedly lied about the times the agendas were published. For example, the last  
430 meeting (August) was on Thursday, so the agenda should have been posted by Monday  
431 morning. Sissie claimed she posted it on Sunday. However, it was not posted until Tuesday  
432 sometime after 11am. Exhibits A.4, A.5, and A.6 are photographs taken between 9:05 and  
433 9:20am Tuesday at the courthouse, the post office, and the Chevron: the agenda notices for  
434 August were not there.

435 **68.** The Nevada Open Meeting Law, and the By-Laws, require and permit Roping Club  
436 meetings to be recorded. Beginning with the June meeting, in response to Sissie's  
437 falsification of the meeting minutes, Marking and Fleming began recording the meetings.  
438 Exhibits A.7, A.8, and A.9 are audio recordings of the June, July, and August meetings.

439 **69.** In the January meeting, Fleming was elected treasurer. However, neither the records  
440 nor the checkbook have ever been turned over to Fleming by Sissie or by Ray Williams, Jr.  
441 Ruben admitted to this in the June meeting (Exh. A.7). Subsequently, Sissie put electing a

442 new treasurer onto the agenda, even though it had not been discussed or approved in any  
443 meeting. Sissie merely wished away Fleming's election. Sissie's account in her minutes of  
444 the March discussion omitting Fleming from the new signature card was mere  
445 fanatasy, as were other matters.

446 **70.** The By-Laws require an inventory of Club assets every April. None has been  
447 conducted since Ruben was president in 2008. Some new panels and railroad ties were  
448 purchased for the arena in 2007: what happened to old panels and old railroad ties? An  
449 honest, open club leadership would welcome sunshine. The need for secrecy in the records,  
450 the bank account, and the assets looks suspicious.

451 **71.** At the beginning of the August meeting, Marking and Fleming passed out open  
452 letters to the members expressing some of their concerns. (Exhibits A.2 and A.3)  
453 Presumably, this is what set Sissie off, since she attached one of the letters to her  
454 Application.

455 **72.** We emphasize that we are not so concerned with the rules per se. We are concerned  
456 with playing fairly. When Ruben and Sissie haven't played fairly, we have invoked the rules.  
457 That is what they are for: to encourage fair play. Sissie mentions "quoting the law" in her  
458 application. When people play fairly, there is little discussion of rules. The only reason we  
459 are quoting the law is because Ruben and Sissie haven't played fairly in the first place. The  
460 only reason we are recording the meetings is that Sissie has been dishonest. We suspect that  
461 the main reason for this Order is to keep us out of the next meeting.

462  
463 **73. Abuse of Office.** One of the purposes of the fraudulent minutes and agendas has  
464 been to avoid even application of the Club rules where they are inconvenient to Ruben and  
465 Sissie. For example, Ruben and Sissie do not pay their fair share of corral rents; they keep  
466 too many horses in each corral; they let their horses, including mares in heat, run loose and  
467 unattended on the grounds; they use their corral area for general storage unrelated to horses;

468 and so on.

469 **74.** At the same time, Ruben and Sissie have vigorously sought to collect previously  
470 past-due corral rents from Marking and Fleming. (The rents are now paid.) Marking and  
471 Fleming were unable to pay annually in advance until recently, and were paying a few  
472 months at a time. The Club has sufficient money that the difference did not cause the Club  
473 to fail to pay any bills.

474 **75.** Ruben and Sissie did not similarly go after Ray Williams III and Rhonda for past  
475 rents (which are now also paid). They wanted to take the lock off the Marking/Fleming  
476 corral, but never wanted to take the lock of the Williams corral.

477 **76.** This is selective application of the rules used to harass Marking and Fleming, to  
478 draw attention away from Ruben's and Sissie's own infractions. It constitutes abuse of  
479 office. It is sufficient to deny relief to Applicant on the basis of unclean hands.

480 **77.** *Wedgewood Community Ass'n, Inc. v. Nash* (Ind. Ct. App. No. 02A03-0204-CV-112  
481 (2004)) provides an example. In *Wedgewood*, the homeowners' association selectively  
482 enforced a rule about outbuildings against Nash but not against other members including  
483 one of the directors of the association. When the association tried to get an injunction, it was  
484 denied on the basis of unclean hands, because the rule was not evenly enforced.

485 **78.** (On appeal, *Wedgewood* was reversed on the technical grounds that the association,  
486 not the directors, had brought the action. That situation does not apply here, and would be  
487 defeated anyway since (1) Ruben's and Sissie's abuse of office was *ultra vires*, and not a  
488 legal activity by the Club, and (2) it is anyway Sissie personally who brings this action, not  
489 the Club. We note that since the Club has not had legal meetings, it cannot, under operation  
490 of Nevada law, take any action. Furthermore, some jurisdictions would ignore the corporate  
491 entity in a complaint for equitable relief, and not have reversed on appeal; see, for example,  
492 *Oklahoma Retail Grocers Association v. Wal-Mart Stores Inc.*, 605 F.2d 1155, CA 79-3158,  
493 Ct App 10th Circuit (1979). We do not have any Nevada cases, one way or the other, on that

494 question.)

495  
496 **F. Adequate Remedies at Law**

497  
498 **79. No Immediacy or Urgency.** Injunctions are available for immediate, imminent, and  
499 certain danger or threat of harm; the harm must be irreparable. (See Standards for  
500 Injunctions, herein, page 9ff) Applicant seeks an injunction for activities which, by her own  
501 allegation, have been occurring for at least eight months. Further, many of them stopped  
502 months ago. Now she would have the Court believe that she is in immediate danger of  
503 irreparable harm. Why has she not acted before?

504 **80.** Applicant has never previously filed any kind of complaint. She has never charged  
505 Marking or Fleming with trespassing, harassment, stalking, or any other crime. She has  
506 never filed a tort action for slander or libel against Marking or Fleming.

507 **81.** The actions alleged admittedly took place over time. Whence comes now the  
508 urgency or immediacy?

509 **82.** Furthermore, she admits to health problems. Presumably, the concern is mental  
510 health, because physical health is not threatened by “verbal abuse”, “bad mouthing”, or  
511 buying a trailer. In fact, she describes, in her application, the actions as “mental abuse”.

512 **83.** Sissie has not *suddenly* developed mental health problems. She has had them for  
513 years. Her chronic paranoid personality disorder did not arise overnight. She has told  
514 Marking and Fleming that she has never undergone any kind of counselling or psychological  
515 therapy for her disorders. If there were an immediate problem, she would have sought  
516 psychological counselling long ago.

517 **84.** If there were immediacy, and if the other elements of the charge were met, an  
518 injunction might be appropriate. No physical harm or threat of physical harm is alleged,  
519 however. There has been no description of any mental injury. Where is the injury?

520           **85.** The delay in acting bars Applicant from relief. “Injunctive relief is an equitable  
521 remedy, and the complaining party must come into court with clean hands and must have  
522 acted promptly to enforce its right. *Landry's Seafood Inn & Oyster Bar-Kemah, Inc. v.*  
523 *Wiggins* , 919 S.W.2d 924, 927 (Tex. App.--Houston [14th Dist.] 1996, no writ); *Foxwood*  
524 *Homeowners Ass'n v. Ricles* , 673 S.W.2d 376, 379 (Tex. App.--Houston [1st Dist.] 1984,  
525 writ ref’d n.r.e.)” (*Twyman v. Twyman*, Ct. App. 1st Dist. Tex. (2009)) In this case,  
526 Applicant did not act promptly. In fact she dallied for months, which belies any assertion of  
527 immediacy.

528  
529           **86. Remedies at Law.** Sissie has always been free to file complaints or actions for  
530 assault, trespass, libel, slander, harassment, stalking, or any other of the alleged activities.  
531 These things are already illegal, so no injunction is necessary. (In fact, no injunction can be  
532 used simply to enforce the law. See *Nasif v. U.S.*, 165 F.2d 119, 121 (5th Cir. 1947))

533           **87.** Suppose that Marking or Fleming were to enter the Gallegos house when they were  
534 knowingly unwanted. Then Sissie could dial 911. Would it make any difference if there were  
535 an injunction? No, the result would be the same: the deputy would come and ask or force the  
536 trespasser to leave. The law is adequate. Sissie has not described any irreparable harm which  
537 might come from such a violation. Even if there were, she has not explained how an  
538 injunction would provide any protection not already provided by the law.

539           **88.** Suppose that Marking or Fleming were to say untrue things about Sissie, and she  
540 were able to show she were damaged. She could file a tort action for slander, and collect  
541 money damages. When money damages are available, then there is, by definition, an  
542 adequate remedy at law. Therefore, no injunction should issue.

543  
544           **G. Excessive Scope of Order**

546 **89. Order Unnecessarily Covers Ruben and Marty.** Sissie asserts that her health is not  
547 good; we take this to mean her mental health, since no physical threat is alleged. Then she  
548 goes on ask that Ruben and Marty be included as protected parties. Is she thereby alleging  
549 that Ruben and Marty suffer the same mental disorders as Sissie? If so, then she is saying  
550 her entire family has some mental illness. If not, then why are they included in the Order?  
551 There is no evidence that Ruben or Marty are in any immediate danger of irreparable harm  
552 from being close to Marking or Fleming, so the Order is overbroad.

553 **90.** Furthermore, Ruben apparently feels no threat. See Exhibit A.10.  
554

555 **91. Order Not Crafted to Enjoin Allegedly Threatening Activity.** The Application  
556 speaks of so-called “verbal abuse”, “bad mouthing”, and other things. How does keeping  
557 100 yards from Applicant prevent “bad mouthing”? If the real danger is verbal, or if there is  
558 a serious and imminent danger of irreparable harm from public hugging, then the Order  
559 should enjoin those activities, not merely being in Applicant’s sight.  
560

561 **92. Order Covers Activity Beyond What Is Unlawful.** NRS 200.575 forbids activities  
562 “without lawful authority”. It goes on to say

563 (e) “Without lawful authority” includes acts which are initiated or continued without the  
564 victim’s consent. The term does not include acts which are otherwise protected or  
565 authorized by constitutional or statutory law, regulation or order of a court of competent  
jurisdiction, including, but not limited to:

566 (1) Picketing which occurs during a strike, work stoppage or any other labor  
dispute.

567 (2) The activities of a reporter, photographer, cameraman or other person while  
gathering information for communication to the public if that person is employed  
568 or engaged by or has contracted with a newspaper, periodical, press association or  
radio or television station and is acting solely within that professional capacity.

569 (3) The activities of a person that are carried out in the normal course of his  
lawful employment.

570 (4) Any activities carried out in the exercise of the constitutionally protected rights  
of freedom of speech and assembly.

571 (NRS 200.575)

572           **93.** These excluded activities, including others not specifically listed, do not constitute a  
573 violation of the statute, and cannot properly be viewed as activities to enjoin. However, the  
574 order effectively prohibits them anyway. Thus the Order is overly broad.

575           **94.** For example, when Marking was in Jay’s hardware and Ruben entered, Marking  
576 was buying parts for a job he was doing in the normal course of his lawful employment. Had  
577 Ruben been there first, then Marking would have been hindered in earning his living, and  
578 third parties who needed the work done would have been seriously inconvenienced if not  
579 injured.

580           **95.** Indeed, if the place is public, then Sissie should feel reassured that someone is more  
581 likely to come to her aid, or to be a witness in case of an alleged violation.

582           **96.** The Order, if necessary at all, should have been crafted to exclude lawful behaviour  
583 in public places.

584  
585           **97. Order Violates First Amendment Rights.** The Order violates the protections  
586 afforded to Marking and Fleming by the First Amendment to the U.S. Constitution. It does  
587 this because it deprives Marking and Fleming of their right to free speech and assembly  
588 when one of the protected parties is at a public meeting.

589           **98.** A violation of First Amendment rights, even for a short time, causes irreparable  
590 harm. (*Baker v. Adams Courty/Ohio Valley Sch. Bd.*, 310 F.3d 927, (6th Cir., 2002). See also  
591 *Planned Parenthood Ass’n v. Cincinnati*, 822 F. 2d 1390, 1400 (6th Cir., 1987) “We agree  
592 with the district court, however, that there is potential irreparable injury in the form of a  
593 violation of constitutional rights.”)

594           **99.** “The loss of first amendment freedoms, for even minimal periods of time,  
595 unquestionably constitutes irreparable injury.” (*Elrod v. Burns*, 427 U.S. 347, 373 (1976)  
596 (plurality opinion of Brennan, J.))

597           **100.** This is why, when, for example, a merchant complains about picketers or protesters

598 harassing his or her customers, that courts cannot simply make the picketers or protesters go  
599 away. An injunction can include reasonable conditions, such as requiring picketers or  
600 protesters to stay five feet from customers, or to stay on a public sidewalk. However, an  
601 injunction may not prohibit free speech and assembly.

602 **101.** The First Amendment is given high priority by the courts. The court, especially,  
603 cannot enjoin any speech in advance. (Such an injunction is called a “prior restraint”.)  
604 Indeed, the Supreme Court has never upheld a prior restraint, even faced with the competing  
605 interest of national security or the Sixth Amendment right to a fair trial.” (*Proctor &*  
606 *Gamble Co. v. Bankers Trust Co.*, 78 F.3d 219, 226-227 (6th Cir. 1996); cf. *Nebraska Press*  
607 *Assn. v. Stuart*, 427 U.S. 539, 563 (1976) (the Sixth Amendment right of a criminal  
608 defendant to a fair trial does not outrank the First Amendment right of the press to publish  
609 information); *New York Times Co. v. United States* (1971) 403 U.S. 713, 718-726 (“national  
610 security” interest in suppressing classified information in the Pentagon Papers did not  
611 outrank First Amendment right of press to publish classified information). “[I]t is clear that  
612 few things, save grave national security concerns, are sufficient to override First  
613 Amendment interests.” *United States v. Progressive, Inc.* 467 F. Supp. 990, 992 (DC Wisc.  
614 1979)

615 **102.** Accordingly, since a threat to Sissie’s mental condition is not a grave national  
616 security risk, the Order is unconstitutional to the extent that it prohibits Marking and  
617 Fleming from attendance at public meetings, such as the Roping Club meetings, when one  
618 of the protected parties is there.

## 619 **H. Balance of Equities**

620  
621  
622 **103.** As explained above (Protective Order an Equitable Remedy, page 8ff), in  
623 considering whether to grant an injunction, the court must balance “the conveniences of the



624 parties and possible injuries to them according as they may be affected by the granting or  
625 withholding of the injunction.”

626 **104.** The balance of equities in this matter tilts decisively in favour of Marking and  
627 Fleming.

628 **105.** It has been shown that a deprivation of Marking’s or Fleming’s First Amendment  
629 rights is manifestly irreparable harm. In addition, the Order interferes with Marking’s and  
630 Fleming’s ability to earn a living, which sometimes requires them be in public or publicly  
631 accessible places as needed and when needed. It is certainly an inconvenience and an  
632 expense for Marking and Fleming, as well.

633 **106.** Sissie, by contrast, has not shown irreparable harm. The most she has shown is  
634 discomfort.

635 **107.** Sissie, in failing to seek treatment for longstanding mental disorders, is culpably  
636 negligent and self-abusive. While her moves to shake narcotics addiction are admirable, she  
637 has not undergone counselling or psychological therapy for her mental conditions. Her  
638 condition and mental health is not an excuse. The word “negligence” is defined with  
639 reference to what a “reasonable” person would do or not do. Sissie has not been reasonable.  
640 Her inability or unwillingness to be reasonable should not impose a burden on others.

641 **108.** Moreover, the balance of equities must include the injuries and inconveniences of  
642 third parties. This Order has cost the taxpayers hundreds of dollars in deputy time providing  
643 civil standby, and may well be a serious hazard in the event that such a civil standby causes  
644 a deputy to respond less quickly to a more serious matter.

645 **109.** In addition, the public itself is injured when anyone is deprived of First  
646 Amendment rights. “The public interest carries considerable weight in these matters. ... The  
647 court must weigh any hindrance or furtherance of the public interest likely to result from  
648 interim injunctive relief.” *Sheck v. Baileyville School Committee*, 530 F. Supp. 679, 693 (D.  
649 Me. 1982) (citing *Yakus v. United States*, 321 U.S. 414, 440-41 (1944)). “Protecting rights to

650 free speech is ipso facto in the interest of the general public.” *Westfield High School L.I.F.E.*  
651 *Club v. City of Westfield*, 249 F. Supp. 2d 98, 128 (D. Mass. 2003) (citing *Machesky v.*  
652 *Bizzell*, 414 F.2d 283, 289 (5th Cir. 1969) (“First Amendment rights are not private rights ...  
653 so much as they are rights of the general public.”)).

654 **110.** Accordingly, the balance of equities tips sharply in favour of Marking and  
655 Fleming, and the Order should be dissolved.

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CERTIFICATE OF SERVICE

I hereby certify under penalties of perjury that on this date I served a true and correct copy of the foregoing document by handing a copy to the clerk of the Court, on her word that she would serve it on Applicant by some appropriate means.

Dated Tuesday, 25 August 2009

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Michael Marking

AFFIRMATION  
(Pursuant to NRS 239B.030)

The undersigned does hereby affirm that the preceding document filed in the above-described manner does not contain the social security number of any person.

Dated Tuesday, 25 August 2009

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Michael Marking

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LIST OF EXHIBITS

- A.1 CD-ROM
- A.2 Letter to Roping Club Members (Marking), 2009.08.06
- A.3 Letter to Roping Club Members (Fleming), 2009.08.06
- A.4 photo of courthouse bulletin board, 2009.08.04
- A.5 photo of post office bulletin board, 2009.08.04
- A.6 photo of Chevron bulletin board, 2009.08.04
- A.7 audio recording of June Roping Club meeting, 2009.06.04
- A.8 audio recording of July Roping Club meeting, 2009.07.02
- A.9 audio recording of August Roping Club meeting, 2009.08.06
- A.10 complaint for violation of order, 2009.08.14
- A.11 photo of horse and watering tank in corral #4, spring 2008
- A.12 photo of horse and gate on corral #4, spring 2008
- A.13 photo of corral #2 gate, 2009
- A.14 photo of watering tank in Ruben's corral, august 2009
  
- B.1 invitation from Sissie, late 2008
- B.2 statement by Kelsey Williams, 2009.08