



1 **ACOM**

2 Robert E. Werbicky (6166)
3 Piers R. Tueller (14633)
4 HUTCHISON & STEFFEN, PLLC
5 10080 West Alta Drive, Suite 200
6 Las Vegas, NV 89145
7 Tel: (702) 385-2500
8 Fax: (702) 385-2086
9 rwerbicky@hutchlegal.com
10 ptueller@hutchlegal.com

11 *Attorneys for Plaintiff*

12 **EIGHTH JUDICIAL DISTRICT COURT**
13 **CLARK COUNTY, NEVADA**

14 MICHAEL KOSOR, JR., an individual

15 Plaintiff,

16 v.

17 SOUTHERN HIGHLANDS COMMUNITY
18 ASSOCIATION, a Nevada Non-Profit
19 Corporation; SOUTHERN HIGHLANDS
20 DEVELOPMENT CORPORATION, a
21 Nevada Corporation; CHRIS
22 ARMSTRONG, an individual; RICK
23 REXIUS, an individual; MARC
24 LIEBERMAN, an individual.

25 Defendants.

Case No.: A-23-881474-W
Dept. No.: 31

FIRST AMENDED COMPLAINT

JURY TRIAL REQUESTED

**EXEMPTIONS FROM MANDATORY
ARBITRATION:**

- 1) Seeking Declaratory Relief;
- 2) Seeking Equitable Relief;
- 3) Seeking Injunctive Relief.

26 Plaintiff MICHAEL KOSOR, JR. (“Plaintiff” or “Col. Kosor”), by and through his
27 counsel of record, HUTCHISON & STEFFEN, PLLC, hereby files this First Amended Complaint
28 and alleges against Defendants SOUTHERN HIGHLANDS COMMUNITY ASSOCIATION,
SOUTHERN HIGHLANDS DEVELOPMENT CORPORATION, CHRIS ARMSTRONG,
RICK REXIUS, and MARC LIEBERMAN as follows:

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1 **PARTIES AND JURISDICTION**

2 1. Plaintiff MICHAEL KOSOR, JR. (“**Plaintiff**” or “**Kosor**”) is an individual
3 residing in Clark County, Nevada.

4 2. Plaintiff is a retired United States Air Force Colonel and former hospital executive
5 who owns a home within the SHCA.

6 3. Defendant SOUTHERN HIGHLANDS COMMUNITY ASSOCIATION
7 (“**SHCA**”) is a Nevada non-profit Corporation with its principal place of business in Clark
8 County, Nevada.

9 4. The SHCA is the homeowners’ association for the Southern Highlands master-
10 planned community located in the southern foothills of Las Vegas, Nevada.

11 5. Defendant SOUTHERN HIGHLANDS DEVELOPMENT CORPORATION (the
12 “**Declarant**”) is a Nevada Corporation with its principal place of business in Clark County,
13 Nevada.

14 6. Defendant Chris Armstrong (“**Defendant Armstrong**”) is an individual residing
15 in Clark County, Nevada but is not a unit owner in Southern Highlands.

16 7. Defendant Rick Rexius (“**Defendant Rexius**”) is an individual residing in Clark
17 County, Nevada but is not a unit owner in Southern Highlands.

18 8. Defendant Marc Lieberman (“**Defendant Lieberman**”) is an individual residing
19 in Clark County, Nevada and is a unit owner in Southern Highlands.

20 9. This Court has jurisdiction over this matter pursuant to NRS 14.065, NRS 30.030,
21 and NRS 38.300/310.

22 10. This Court has jurisdiction over the Injunctive Relief requested as this matter is
23 exempted from the mediation/referral program because it is “an action in equity for injunctive
24 relief,” pursuant to NRS 38.300(3).

25 11. If necessary, after Plaintiff has exhausted the requirements of the CC&R
26 alternative dispute resolution process and his administrative remedies, Plaintiff will amend to
27 assert appropriate claims against defendants.
28

1 12. Venue is proper in the Eighth Judicial District Court for the State of Nevada
2 because the Plaintiff's causes of action, or some part thereof, arose in Clark County, Nevada,
3 pursuant to NRS 13.010, 13.020, and/or 13.040.

4 **GENERAL ALLEGATIONS RELEVANT TO ALL CAUSES OF ACTION**

5 **A. Background Information.**

6 13. The Master Declaration of Covenants, Conditions, and Restrictions of the SHCA
7 (“CC&Rs”) were created and adopted on December 27, 1999.

8 14. The CC&Rs were recorded by the Clark County Recorder in early 2000.

9 15. The Southern Highlands Development Corporation is defined in the CC&Rs as the
10 Declarant.

11 16. The SHCA is governed by a five-member Board of Directors (“**Board**”).

12 17. The Declarant appointed three (3) of the five (5) Directors currently on the Board.

13 18. The remaining two (2) Directors on the Board are elected by popular vote of the
14 homeowners within the SHCA.

15 19. The President of the Declarant is Garry V. Goett (“Garry”).

16 20. Gary's son, Brett Goett (“Brett”) is a Director of the Declarant.

17 21. Garry and Brett Goett are also Managers of Olympia Companies, LLC (“Olympia
18 Companies”), Olympia Management Services, LLC, and Olympia Gaming, LLC (“Olympia
19 Gaming”) are companies of the Declarant.

20 22. The Goetts own a majority interest in the Declarant, Olympia Companies, Olympia
21 Management Services, LLC, and Olympia Gaming.

22 23. According to the SHCA's 2024 proposed budget, the SHCA paid almost
23 \$1,600,000 in management fees in 2023.

24 24. Defendant Armstrong, one of the Declarant-appointed Directors, is the Senior
25 Vice President of Olympia Companies which is controlled by the Goetts.

26 25. Defendant Rexius, another Declarant-appointed Director, is the Vice President
27 Construction for Olympia Gaming LLC which is also controlled by the Goetts.

28 26. Defendant Lieberman was also appointed by the Declarant.

1 27. The SHCA provided documentation and correspondence to the Nevada Real
2 Estate Division representing that, at the very least, 79.88% of the Maximum Units were conveyed
3 to people/entities other than the Declarant by January 26, 2022.

4 28. Pursuant to the CC&Rs, the Declarant Control Period ended sixty (60) days after
5 75% of the Maximum Units had been conveyed.

6 29. Pursuant to NRS 116.31034(1) the SHCA is required to hold homeowner elections
7 of all Board members not later than the termination of the Declarant Control Period.

8 30. The SHCA has not conducted or scheduled homeowner elections for all five (5)
9 Board members thereby disenfranchising the thousands of homeowners of the SHCA.

10 31. As three of the five Board members have not been elected by the homeowners, the
11 Board is illegitimate, and its actions are ultra vires.

12 **B. Election and Removal of Plaintiff as Director of SHCA Board.**

13 32. On December 17, 2021, Plaintiff was publicly elected by the SHCA homeowners
14 as a Director on the Board.

15 33. One of the principal messages of Plaintiff’s campaign was his commitment to
16 relinquish Declarant’s control over the SHCA and its Board of Directors to the thousands of
17 homeowners within the SHCA pursuant to the terms of the CC&Rs.

18 34. NRS 116.31036 and the SHCA Bylaws govern removal of Board members.

19 35. On May 16, 2023, counsel for the Declarant-controlled Board informed Plaintiff
20 of his removal from his elected position without a removal election and thereby further
21 disenfranchised SHCA homeowners.

22 36. Current Board actions and decisions are invalid as they are done without Plaintiff
23 who is one of two duly elected Directors.

24 37. The SHCA plans to conduct or is already conducting the election to the fill the
25 empty Director seat on the SHCA Board.

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1 **FIRST CLAIM FOR RELIEF**

2 **(Request for Injunctive Relief Against All Defendants)**

3 38. Plaintiff restates and incorporates all prior allegations asserted above as if set forth
4 fully herein.

5 39. Defendants' illegal actions as outlined herein have caused and will continue to
6 cause irreparable harm to Plaintiff for which immediate injunctive relief is necessary, including,
7 without limitation, (1) halting any election which does not allow homeowner elections of all
8 Directors, (2) the immediate cessation of all SHCA Board decisions except as explicitly
9 authorized by this Court in writing; and (3) halting any election to replace Plaintiff which could
10 render quo warranto induction relief ineffective.

11 40. Plaintiff has a likelihood of success on the merits and is entitled to injunctive relief
12 because, *inter alia*,

13 a. Pursuant to the CC&Rs, the SHCA was required to hold homeowner elections
14 no later than when 75% of the Units within the SHCA had been conveyed,
15 and the Declarant has failed to do so.

16 b. The Declarant-controlled SHCA Board's removal of Plaintiff from his
17 publicly elected Director position on the SHCA Board failed to comply with
18 the minimum due process requirements of NRS 116.

19 c. The Board's vote to remove Plaintiff from his position was void under Nevada
20 law as Declarant's control over the SHCA Board had long since expired, and
21 three of the four Directors' votes cast were Declarant-appointed Directors
22 (i.e., Defendants Armstrong, Rexius, and Lieberman).

23 41. Based on the illegal and unauthorized action of the Declarant-controlled SHCA
24 Board, Plaintiff should be reinstated to his position, and the current Board should be halted and
25 precluded from making any decisions except those specifically and explicitly authorized by the
26 Court.

27 42. Plaintiff has retained legal counsel to litigate this dispute and is entitled to an award
28 of all such fees and costs.

1 **SECOND CLAIM FOR RELIEF**

2 **(Request for Declaratory Relief Against All Defendants)**

3 43. Plaintiff restates and incorporates all prior allegations asserted above as if set forth
4 fully herein.

5 44. A justiciable controversy exists between Plaintiff and Defendants regarding
6 Declarant's control over the SHCA Board in that:

- 7 a. The CC&Rs require the Declarant Control Period to terminate upon
8 conveyance of 75% of the Units within the SHCA;
- 9 b. Over 75% of the Units within the SHCA have been conveyed;
- 10 c. Declarant continues to appoint Directors to the SHCA Board;
- 11 d. The SHCA has failed or refused to arrange for or hold elections for the five
12 Directors on the Board.
- 13 e. The appointed Directors, Defendants Armstrong, Rexius, and Lieberman
14 continue to act and exercise authority as Directors of the SHCA Board,
15 despite having been appointed by the Declarant rather than elected by the
16 homeowners; and
- 17 f. The Board continues to act after illegally removing one of the two duly
18 elected Directors from the Board.

19 45. Plaintiff has asserted herein a claim of a legally protected right, namely, his right
20 to continue to serve as a publicly elected Director of the SHCA Board and petition for relief to
21 live within the SHCA without the Declarant and its appointed Directors usurping authority and
22 power that they do not have based on the clear terms of the CC&Rs.

23 46. The interpretation of the CC&Rs and NRS 116 is ripe for judicial determination
24 given the fact that:

- 25 a. The Declarant-controlled SHCA Board has rejected Plaintiff's repeated
26 requests for the Declarant to justify its authority to control the SHCA;
- 27 b. The Declarant-controlled SHCA and the Declarant itself have already and will
28 continue to retaliate against Plaintiff for making such inquiries; and

1 c. Declarant-controlled SHCA Board has unlawfully ousted Plaintiff from the
2 Board.

3 47. Plaintiff respectfully asks the court to determine the parties' relative rights under
4 the CC&Rs and under NRS 116 based on Nevada law, and issue an order declaring that (1) the
5 Declarant lacks authority, and has lacked that authority since 75% of the SHCA Units were
6 conveyed, to control the SHCA or its Board; (2) as a result, the Declarant-controlled Board's
7 removal of Plaintiff from the Board was improper, Plaintiff shall be reinstated as a Director of the
8 SHCA Board as he was duly and publicly elected; and (3) all current Declarant-appointed
9 Directors—i.e., Defendants Armstrong, Rexius, and Lieberman—be removed from the Board.
10 Plaintiff has retained legal counsel to litigate this dispute and is entitled to an award of all
11 reasonable fees and costs.

12 **PRAYER FOR RELIEF**

13 **WHEREFORE**, Plaintiff prays for judgment against Defendants as follows:

- 14 1. For a determination that the Control Period has ended and that the SHCA must (a)
15 remove all appointed Directors from the Board and (b) hold a valid election to fill the vacancies
16 created by the removal of the Declarant-appointed Directors;
- 17 2. For injunctive relief preventing Defendants from making any decisions affecting
18 the SHCA, except those specifically and explicitly authorized by this Court;
- 19 3. For all reasonable attorney's fees and costs; and
- 20 4. For such other and further relief as the Court deems just and proper.

21
22 **DATED** this 17th day of November 2023.

23 **HUTCHISON & STEFFEN, PLLC**

24 */s/ Robert E. Werbicky*

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26 Robert E. Werbicky (6166)
27 Piers R. Tueller (14633)
28 10080 West Alta Drive, Suite 200
Las Vegas, NV 89145

Attorneys for Plaintiff

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of Hutchison & Steffen, PLLC and that on this 17th day of November, 2023, I caused the above and foregoing document entitled **FIRST AMENDED COMPLAINT** to be served through the Court's mandatory electronic service system, per EDCR 8.02, upon the following:

ALL PARTIES ON THE E-SERVICE LIST

/s/Kaylee Conradi
An employee of Hutchison & Steffen, PLLC