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4 **IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON**
5 **IN AND FOR THE COUNTY OF ISLAND**

7 ROBERT WILBUR and DUSTIN
8 FREDERICK,

Plaintiffs,

9 vs.

10 ADMIRAL'S COVE BEACH CLUB, a
11 Washington non-profit corporation;
12 and JEAN SALLS, MARIA
13 CHAMBERLAIN, KAREN SHAAK,
14 ROBERT PEETZ, ELSA PALMER,
15 ED DELAHANTY AND DAN JONES,
16 individuals,

17 Defendants.

NO. 13-2-00741-4

**PLAINTIFF'S MOTION
FOR ORDER TO SHOW
CAUSE RE: CONTEMPT
(VIOLATION OF TEMPORARY
RESTRAINING ORDER
OBTAINED SEPTEMBER 11,
2013)**

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19 **I. RELIEF REQUESTED**

20 The Plaintiffs seek the entry of an order directing the Defendants, and each of
21 them, to appear and show cause, if any they may have, why the court should not hold
22 the Defendants in contempt of court and impose sanctions as a result of the
23 Defendants' willful violation of this court's temporary restraining order entered
24 September 11, 2013.

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26 This motion is made pursuant to RCW 7.40.150 and the Court's general civil
27 contempt authority, Plaintiffs therefore move the Court for an order of contempt,
28 including for sanctions and Plaintiffs' attorney fees and costs.
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II. PERTINENT FACTS

On September 11, 2013, this Court entered a temporary restraining order directing as follows:

Defendants, and each of them individually and collectively as a board of directors, and any and all persons in active participation with Defendants who receive actual notice of this order, are hereby temporarily restrained and enjoined:

1. From taking any action, including the employment of third parties, contractors or subcontractors, which action furthers or allows, in any manner, the demolition, decommissioning, filling, damaging, destroying, covering, inactivating, altering or otherwise rendering unusable, temporarily or otherwise, the swimming pool complex and all related facilities owned and operated by the Admiral Cove Beach Club and located within the Plat of Admiral's Cove, Island County, Washington; and

2. From imposing or levying a special assessment of any type against each lot or any individual lot within the plat of Admiral's Cove, the purpose of which is to pay for any part of the costs of decommissioning, filling, damaging, inactivating, covering, demolishing or in any manner grading, removing, destroying or otherwise rendering unusable, the swimming pool and related facilities owned by the Admiral's Cove Beach Club.

3. From attempting to take any action that is contrary to or inconsistent with the express terms of a motion unanimously approved by the members of Admiral's Cove Beach Club at the October 27, 2012 annual meeting of the membership.

4. From taking any action at or before the regularly scheduled 2013 annual meeting of the members of Admiral's Cove Beach Club, directly or indirectly which attempts to or actually does:

4.1 deny or refuse to accept a nomination for Director of the ACBC Board of Directors, of any member of the corporation who is in good standing as defined by the Bylaws of the Admiral's Cove Beach Club;

4.2 prevent a member of the corporation in good standing from running for election to the ACBC Board of Directors at any meeting of the membership held for such purpose unless the person is expressly precluded from doing so by the terms of the corporation's bylaws.

1 As the contemporaneously filed declarations attest, Defendants have
2 intentionally and willfully violated the terms of that temporary restraining order.

3 Specifically, Defendants violated section two (2) of the temporary restraining
4 order by attempting to enforce the previously assessed special assessment levied too
5 decommission, etc., the Admiral's Cove Beach Club's ("the Club's") swimming pool
6 and related facilities. Not only have Defendants requested payment of said
7 assessment, mailed in August 2013, but Defendants have sought to prevent members
8 who have not paid said assessment from voting as members in good standing. These
9 actions are directly in violation of the letter and spirit of section two (2) of the
10 temporary restraining order.

11
12 Similarly, Defendants have violated section four (4) of the temporary restraining
13 order by failing to hold the annual meeting, regularly scheduled in October of each
14 year and by failing to facilitate the election of members of the board of directors.
15 Section four (4) of the temporary restraining order prohibits Defendants from denying
16 or refusing to accept a nomination for director of the Board of Directors of any member
17 who is in good standing, or preventing a member in good standing from running for
18 election to the Board of Directors at any meeting of the membership held for such
19 purpose. Defendants' actions to prevent the regular, annual meeting, from occurring,
20 at which such elections would be held, has the same affect of denying members the
21 right to run for such office and violates the purpose and intention of section four (4).
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24 III. EVIDENCE RELIED UPON

25 In support of this motion, Plaintiffs rely upon the complaint and the declarations
26 and exhibits filed in this case, including the declarations of Robert Wilbur and Gwyn
27 Statton, and exhibits thereto, filed contemporaneously herewith.
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29 IV. AUTHORITY AND ARGUMENT

30 RCW 7.40.150 provides for contempt against any party who willfully disobeys a
31 temporary restraining order after receiving notice thereof. But even absent the
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1 statutory provision, this Court has inherent civil contempt authority to enforce its
2 orders. The trial court has the discretion to find a party in contempt when an individual
3 has failed to follow an order or judgment of the Court. See RCW 7.21.010; *Mead*
4 *Sch. Dist. 354 v. Mead Educ. Ass'n*, 85 Wn.2d 278, 282, 534 P.2d 561 (1975); *Keller*
5 *v. Keller*, 52 Wash.2d 84, 86, 323 P.2d 231 (1958). As part of the contempt remedy,
6 Plaintiffs are entitled to reimbursement of their attorney's fees and costs to establish
7 the contempt. *Clausing v. Kassner*, 60 W.2d 12, 19-20, 371 P.2d 633 (1962).

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9 Defendants have violated section two (2) of the temporary restraining order by
10 attempting to enforce the previously assessed special assessment levied too
11 decommission, etc., the Admiral's Cove Beach Club's ("the Club's") swimming pool
12 and related facilities. Not only have Defendants requested payment of said
13 assessment, mailed in August 2013, but Defendants have sought to prevent members
14 who have not paid said assessment from voting as members in good standing. These
15 actions are directly in violation of the letter and spirit of section two (2) of the
16 temporary restraining order.
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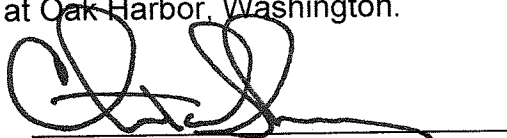
18 Similarly, Defendants have violated section four (4) of the temporary restraining
19 order by failing to hold the annual meeting, regularly scheduled in October of each
20 year. Section four (4) of the temporary restraining order prohibits Defendants from
21 denying or refusing to accept a nomination for director of the Board of Directors of any
22 member who is in good standing, or preventing a member in good standing from
23 running for election to the Board of Directors at any meeting of the membership held
24 for such purpose. Defendants' actions to prevent the regular, annual meeting, from
25 occurring, at which such elections would be held, has the same affect of denying
26 members the right to run for such office and violates the purpose and intention of
27 section four (4).
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V. CONCLUSION

For the reasons set forth above, Plaintiffs seek an order of the Court finding Defendants in contempt, ordering Defendants to hold the annual meeting of Admiral's Cove Beach Club by initiating the required notice process for such meeting within five (5) days of entry of the order of contempt, and ordering Defendants to pay Plaintiff's attorney fees in the amount of \$2,500 within five (5) days of entry of the order of contempt.

The court should issue an order directing the Defendants to appear in this court on November 27, 2013, at the hour of 9:30 a.m., and then and there show cause why they should not be held in contempt and subject to the above described sanctions and such other relief as the court deems appropriate.

DATED this 19th day of November, 2013 at Oak Harbor, Washington.


CHRISTON C. SKINNER/#9515
Attorney for Plaintiffs

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