

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

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***Supreme Court Case No. 76240***

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Electronically Filed  
Jul 02 2018 03:01 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

DANIEL OMERZA, DARREN BRESEE, and STEVE CARIA,

*Petitioners*

v.

THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF  
NEVADA, IN AND FOR THE COUNTY OF CLARK, AND THE  
HONORABLE RICHARD F. SCOTTI, DISTRICT JUDGE, DEPT. II,  
DISTRICT COURT CASE NUMBER A-18-771224-C,

*Respondent,*

and

FORE STARS, LTD.; 180 LAND CO., LLC; and SEVENTY ACRES, LLC,

*Real Parties in Interest.*

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**APPELLANTS' APPENDIX TO  
PETITION FOR WRIT OF PROHIBITION OR  
ALTERNATIVELY, MANDAMUS - VOLUME VI OF VIII**

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Mitchell J. Langberg, Esq., #10118

[mlangberg@bhfs.com](mailto:mlangberg@bhfs.com)

BROWNSTEIN HYATT FARBER  
SCHRECK LLP

100 N. City Parkway, Suite 1600

Las Vegas, Nevada 89106

702.382.2101 - Telephone

*Attorneys for Petitioners Daniel Omerza,*

*Darren Bresee and Steve Caria*

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Affidavit of Service (on Darren Bresee)	03/27/2018	II	097
Defendants' Motion to Dismiss Pursuant to NRCPP 12(b)(5)	04/13/2018	II	098-112
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## **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I am an employee of Brownstein Hyatt Farber Schreck, LLP, and that on this 2nd day of July, 2018, I electronically filed and served by electronic mail a true and correct copies of the above and foregoing **APPELLANTS' APPENDIX IN SUPPORT OF PETITION FOR WRIT OF PROHIBITION OR ALTERNATIVELY, MANDAMUS - VOLUME VI of VIII** properly addressed to the following:

James J. Jimmerson, Esq.  
The Jimmerson Law Firm, P.C.  
415 South Sixth Street, Suite 100  
Las Vegas, Nevada 89101  
Email: [ks@jimmersonlawfirm.com](mailto:ks@jimmersonlawfirm.com)

Elizabeth Ham, Esq.  
EHB Companies, LLC  
9755 West Charleston Boulevard  
Las Vegas, Nevada 89117  
Email: [eham@ehbcompanies.com](mailto:eham@ehbcompanies.com)

*Attorneys for Plaintiffs*  
FORE STARS, LTD., 180 LAND CO., LLC;  
and SEVENTY ACRES, LLC

### **U.S. Mail Copy to:**

Honorable Richard Scotti  
Eighth Judicial District  
Court of Clark County, Nevada  
Regional Justice Center  
200 Lewis Avenue, Department 2  
Las Vegas, Nevada 89155

/s/ DeEtra Crudup  
An employee of Brownstein Hyatt Farber  
Schreck, LLP

1           Thank you.

2           THE COURT: Mr. Bice, anything further?

3           MR. BICE: No, Your Honor.

4           Well --

5           MR. BYRNES: May I say one thing, Your  
6 Honor?

7           THE COURT: Okay.

8           Mr. Byrnes.

9           MR. BYRNES: Mr. Bice mentioned before that  
10 the reason this 19.10.040 applies to this property,  
11 although it's not a planned development district is  
12 because we don't use the RPD zoning class anymore.

13           I read the ordinance to you, and I want to  
14 emphasize, if you go to the next ordinance in the  
15 code, 19.10.050, that is the ultimate RPD, we don't  
16 allow new development under PPD, but we have rules  
17 what we do with existing RPD developments, which this  
18 is.

19           THE COURT: Was this a new development?

20           MR. BYRNES: No, it's already RPD, been RPD  
21 since 1990 or so.

22           THE COURT: Okay.

23           MR. BYRNES: It says --

24           THE COURT: I mean, the application.

25           MR. BYRNES: They actually rezoned it for

1 out of RPD when we did this.

2 But it says when -- if you have existing  
3 RPD zoning, you want to change where it's happening,  
4 you do it through site development review, which is  
5 precisely what happened here.

6 I think the Court needs to look at  
7 19.10.040 and 19.10.050 as you will see the major  
8 modification requirement doesn't apply here, this is  
9 done under site development comparing apples and  
10 oranges.

11 THE COURT: All right.

12 Anything else?

13 MR. BICE: I would defy that, Your Honor,  
14 but I think we've taken up enough of your time.

15 THE COURT: Okay.

16 So my ruling is, that the city council  
17 abused its discretion, violated the law, the Las  
18 Vegas Municipal Code Title 19 by not first dealing  
19 with the major modification on this application.

20 And the question regarding whether or not  
21 there's substantial evidence to support it, I don't  
22 really reach because in review of the information  
23 that was provided to me there is a great deal of  
24 opposition evidence that was presented.

25 I referenced some of it by naming the



1 people by name whose remarks I read, but there was  
2 also a person named Garcia, there were many people  
3 whose remarks I read, and it was clear to me they  
4 were there, not there speaking in favor of the  
5 application, they were speaking most strikingly  
6 against this, and so the city when they reference  
7 substantial evidence that is consisting of staff  
8 recommendations for approval, they are blowing hot  
9 and cold at the same time staff recommendations were  
10 to the major modification was required, so I don't  
11 think the city can suggest or infer that there was  
12 substantial evidence to support its decision simply  
13 by saying that there were 23,000 pages of  
14 information, it just doesn't tell the story.

15 So, Mr. Bice, I'm going to ask you to  
16 prepare the order, circulate it to opposing counsel  
17 as to approval as to form and content.

18 I realize you will want the transcript.

19 MR. BICE: Yes, I will.

20 That's true.

21 THE COURT: So I'd like you to submit to  
22 council for the city and Seventy Acres a draft for  
23 their review within two weeks after you receive the  
24 transcript from the Court Reporter.

25 MR. BICE: We will do that, Your Honor.

1 THE COURT: All right.

2 MR. BICE: I'm going to get out a business

3 card to hand to the Court Reporter right now.

4 THE COURT: Anything further before we

5 adjourn on this matter?

6 MR. BICE: No.

7 Thank you, Your Honor.

8 MR. KAEMPFER: Obviously we thank you for

9 your time.

10 MR. BYRNES: Yes, Your Honor, thank you.

11 MR. HOLMES: Thank you, Your Honor.

12 THE COURT: All right.

13 (Proceedings concluded.)

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# **EXHIBIT B**

**AGENDA SUMMARY PAGE - PLANNING**  
**CITY COUNCIL MEETING OF: FEBRUARY 21, 2018**

**DEPARTMENT: PLANNING**

**DIRECTOR: ROBERT SUMMERFIELD**

☐ Consent ☒ Discussion

**SUBJECT:**

GPA-72220 - GENERAL PLAN AMENDMENT - PUBLIC HEARING - APPLICANT/OWNER: 180 LAND CO, LLC - For possible action on a request for a General Plan Amendment FROM: PR-OS (PARKS/RECREATION/OPEN SPACE) TO: ML (MEDIUM LOW DENSITY RESIDENTIAL) on 132.92 acres on the east side of Hualapai Way, approximately 830 feet north of Charleston Boulevard (APNs 138-31-601-008; and 138-31-702-003 and 004), Ward 2 (Seroka) [PRJ-72218]. The Planning Commission vote resulted in a tie, which is tantamount to a recommendation of DENIAL. Staff recommends APPROVAL.

**PROTESTS RECEIVED BEFORE:**

Planning Commission Mtg.

67

City Council Meeting

152

**APPROVALS RECEIVED BEFORE:**

Planning Commission Mtg.

44

City Council Meeting

28

**RECOMMENDATION:**

The Planning Commission vote resulted in a tie, which is tantamount to a recommendation of DENIAL. Staff recommends APPROVAL.

**BACKUP DOCUMENTATION:**

1. Location and Aerial Maps
2. Staff Report
3. Supporting Documentation
4. Photo(s)
5. Justification Letter
6. Submitted after Final Agenda - Protest/Concern Letters and Photo for GPA-72220 [PRJ-72218] and Protest/Support Postcards for WVR-72004, SDR-72005 and TMP-72006 [PRJ-71990], WVR-72007, SDR-72008 and TMP-72009 [PRJ-71991], WVR-72010, SDR-72011 and TMP-72012 [PRJ-71992]
7. Submitted at Meeting - Recusal Request Letters by Mark Hutchison for GPA-72220 [PRJ-72218], WVR-72004, SDR-72005 and TMP-72006 [PRJ-71990], WVR-72007, SDR-72008 and TMP-72009 [PRJ-71991], WVR-72010, SDR-72011 and TMP-72012 [PRJ-71992]
8. Verbatim Transcript of Items 122-131
9. Backup Submitted at the January 9, 2018 Planning Commission Meeting

Motion made by STAVROS S. ANTHONY to Hold in abeyance Items 122-131 to 5/16/2018

Passed For: 5; Against: 0; Abstain: 0; Did Not Vote: 0; Excused: 1

MICHELE FIORE, BOB COFFIN, CAROLYN G. GOODMAN, STAVROS S. ANTHONY, STEVEN G. SEROKA; (Against-None); (Abstain-None); (Did Not Vote-None); (Excused-LOIS TARKANIAN)

**CITY COUNCIL MEETING OF: FEBRUARY 21, 2018**

Minutes:

A Verbatim Transcript of Items 122-131 is made a part of the Final Minutes.

Appearance List:

CAROLYN G. GOODMAN, Mayor

STEVEN G. SEROKA, Councilman

BRADFORD JERBIC, City Attorney

PETER LOWENSTEIN, Deputy Planning Director

LUANN D. HOLMES, City Clerk

BOB COFFIN, Councilman (via teleconference)

MICHELE FIORE, Councilwoman

STAVROS S. ANTHONY, Councilman

STEPHANIE ALLEN, Legal Counsel for the Applicant

MARK HUTCHISON, Legal Counsel for 180 Land Co, LLC, Seventy Acres LLC and Fore Stars, Ltd.

FRANK SCHRECK, Queensridge Resident

TODD BICE, Legal Counsel for the Queensridge Homeowners

LISA MAYO, Concerned Citizen

A-18-771224-C

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Other Civil Matters**

**COURT MINUTES**

**April 16, 2018**

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A-18-771224-C      Fore Stars, Ltd., Plaintiff(s)  
vs.  
Daniel Omerza, Defendant(s)

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**April 16, 2018      1:00 PM      Minute Order**

**HEARD BY:** Kishner, Joanna S.

**COURTROOM:** Chambers

**COURT CLERK:** Tena Jolley

**PARTIES**

**PRESENT:** None. Minute Order Only – no hearing held.

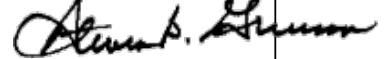
**JOURNAL ENTRIES**

- Although the Court could and would rule fairly and without bias, recusal is appropriate in the present case in accordance with Canon 2.11(A)(3) of the Nevada Code of Judicial Conduct in order to avoid the appearance of impartiality or implied bias as the Court could be viewed to have information relating to the facts and/or circumstances regarding the underlying issues. Thus, the Court recuses itself from the matter and requests that it be randomly reassigned in accordance with appropriate procedures.

PRINT DATE: 04/16/2018

Page 1 of 1

Minutes Date: April 16, 2018



DISTRICT COURT  
CLARK COUNTY, NEVADA

\*\*\*\*

Fore Stars, Ltd., Plaintiff(s)  
vs.  
Daniel Omerza, Defendant(s)

Case No.: A-18-771224-C

Department 24

**NOTICE OF DEPARTMENT REASSIGNMENT**

NOTICE IS HEREBY GIVEN that the above-entitled action has been randomly reassigned to Judge Jim Crockett.

☐ This reassignment follows the filing of a Peremptory Challenge of Judge .

☒ This reassignment is due to the recusal of Judge JOANNA KISHNER. See minutes in file.

☐ This reassignment is due to:

ANY TRIAL DATE AND ASSOCIATED TRIAL HEARINGS STAND BUT MAY BE RESET BY THE NEW DEPARTMENT.

Any motions or hearings presently scheduled in the FORMER department will be heard by the NEW department as set forth below.

**Motion to Dismiss, on 06/05/2018, at 9:00 AM.**

PLEASE INCLUDE THE NEW DEPARTMENT NUMBER ON ALL FUTURE FILINGS.

STEVEN D. GRIERSON, CEO/Clerk of the Court

/S/ Ivonne Hernandez

By:

Ivonne Hernandez  
Deputy Clerk of the Court

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**CERTIFICATE OF SERVICE**

I hereby certify that this 17th day of April, 2018

☒ The foregoing Notice of Department Reassignment was electronically served to all registered parties for case number A-18-771224-C.

☒ I placed a copy of the foregoing Notice of Department Reassignment in the appropriate attorney folder located in the Clerk of the Court's Office:

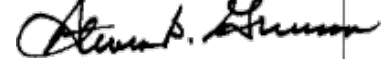
Mitchell J. Langberg

/S/ Ivonne Hernandez

---

Ivonne Hernandez  
Deputy Clerk of the Court





**CHLG**

James J. Jimmerson, Esq. #000264  
Email: [ks@jimmersonlawfirm.com](mailto:ks@jimmersonlawfirm.com)  
JIMMERSON LAW FIRM P.C.  
415 S. 6th St. #100  
Las Vegas, NV 89101  
Telephone: (702) 388-7171  
Facsimile: (702) 387-1167

Attorneys for Plaintiffs Fore Stars, Ltd.,  
180 Land Co., LLC., Seventy Acres, LLC

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

FORE STARS, LTD., a Nevada Limited  
Liability Company; 180 LAND CO., LLC, a  
Nevada Limited Liability Company;  
SEVENTY ACRES, LLC, a Nevada  
Limited Liability Company;

Plaintiffs,

vs.

DANIEL OMERZA, DARREN BRESEE,  
STEVE CARIA,, AND DOES 1-1000,

Defendants.

CASE NO. A-18-771224-C

DEPT. NO: 24

**PEREMPTORY CHALLENGE OF JUDGE**

At Plaintiffs' request, Plaintiffs, Fore Stars, Ltd. ("Fore Stars"), 180 Land Co., LLC ("180 Land Co."), and Seventy Acres, LLC ("Seventy Acres"), (collectively referred to as "Plaintiffs") by and through their counsel, James J. Jimmerson, Esq., of The Jimmerson Law Firm, P.C., hereby respectfully submits this Peremptory Challenge of Judge Jim Crockett, Department 24 of the Eighth Judicial District Court for the State of Nevada, pursuant to Nevada Supreme Court Rule 48.1 in the above-captioned matter. This

1 challenge is accompanied by a fee of Four Hundred Fifty Dollars (\$450) as provided under  
2 the aforementioned Rule.

3 Dated this 19<sup>th</sup> day of April, 2018.

4 THE JIMMERSON LAW FIRM, P.C.

5  
6 /s/ James J. Jimmerson, Esq.  
7 James J. Jimmerson, Esq. #000264  
8 Email: ks@jimmersonlawfirm.com  
9 JIMMERSON LAW FIRM P.C.  
10 415 S. 6th St. #100  
11 Las Vegas, NV 89101  
12 Telephone: (702) 388-7171  
13 Facsimile: (702) 387-1167  
14 Attorneys for Plaintiffs Fore Stars, Ltd.,  
15 180 Land Co., LLC., Seventy Acres, LLC  
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1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I certify that I am an employee of JIMMERSON LAW FIRM,  
3 P.C., and that on this 19<sup>th</sup> day of April, 2018 I caused a document entitled **PEREMPTORY**  
4 **CHALLENGE OF JUDGE** to be served as follows:  
5

6 [ x ] pursuant to EDCR 8.05(a), EDCR 8.05(f), NRCP 5(b)(2)(D) and  
7 Administrative Order 14-2 captioned "In the Administrative Matter of  
8 Mandatory Electronic Service in the Eighth Judicial District Court," by  
9 mandatory electronic service through the Eighth Judicial District Court's  
10 electronic filing system;

11 [ x ] by placing same to be deposited for mailing in the United States Mail, in a  
12 sealed envelope upon which first class postage was prepaid in Las Vegas,  
13 Nevada;

14 To the attorney(s) listed below at the address, email address, and/or facsimile number  
15 indicated below:

16 Mitchell J. Langberg, Esq., Bar No. 10118  
17 BROWNSTEIN HYATT FARBER & SCHRECK LLP  
18 100 North City Parkway, Suite 1600  
19 Las Vegas, Nevada 89106  
20 mlangberg@bhfs.com

21   
22  
23  
24  
25  
26  
27  
28 An employee of JIMMERSON LAW FIRM, P.C.



DISTRICT COURT  
CLARK COUNTY, NEVADA

\*\*\*\*

Fore Stars, Ltd., Plaintiff(s)  
vs.  
Daniel Omerza, Defendant(s)

Case No.: A-18-771224-C

Department 2

**NOTICE OF DEPARTMENT REASSIGNMENT**

NOTICE IS HEREBY GIVEN that the above-entitled action has been randomly reassigned to Judge Richard F. Scotti.

☒ This reassignment follows the filing of a Peremptory Challenge of Judge Jim Crockett.

ANY TRIAL DATE AND ASSOCIATED TRIAL HEARINGS STAND BUT MAY BE RESET BY THE NEW DEPARTMENT.

Any motions or hearings presently scheduled in the FORMER department will be heard by the NEW department as set forth below.

**Motion, on 05/02/2018, at 9:00 AM.**

**Motion, on 06/06/2018, at 9:00 AM**

PLEASE INCLUDE THE NEW DEPARTMENT NUMBER ON ALL FUTURE FILINGS.

STEVEN D. GRIERSON, CEO/Clerk of the Court

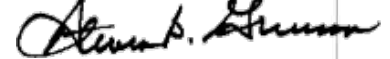
By: /s/Michelle McCarthy  
Michelle McCarthy, Deputy Clerk of the Court

**CERTIFICATE OF SERVICE**

I hereby certify that this 20th day of April, 2018

☒ The foregoing Notice of Department Reassignment was electronically served to all registered parties for case number A-18-771224-C.

/s/ Michelle McCarthy  
Michelle McCarthy, Deputy Clerk of the Court



**OPPS**

THE JIMMERSON LAW FIRM, PC.  
James J. Jimmerson, Esq.  
Nevada Bar No. 000264  
James M. Jimmerson, Esq.  
Nevada Bar No. 12599  
415 S. 6<sup>th</sup> Street, #100  
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Facsimile: (702) 387-1167  
Email: ks@jimmersonlawfirm.com  
*Attorneys for Plaintiffs*

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

FORE STARS, LTD., a Nevada Limited  
Liability Company; 180 LAND CO., LLC,  
a Nevada Limited Liability Company;  
SEVENTY ACRES, LLC, a Nevada  
Limited Liability Company,

Plaintiffs,

vs.

DANIEL OMERZA, DARREN BRESEE,  
STEVE CARIA, and DOES 1-1000,

Defendants.

Case No.: A-18-771224-C

Dept. No.: II

**PLAINTIFFS' OPPOSITION TO  
DEFENDANTS' MOTION TO  
DISMISS PURSUANT TO NRCP 12  
(b)(5)**

Plaintiffs, Fore Stars, LTD. (hereinafter "Fore Stars"), 180 Land Company LLC (hereinafter "180 Land Company"), and Seventy Acres, LLC (hereinafter "Seventy Acres") (collectively "Land Owners" or "Plaintiffs"), by and through their undersigned counsel, James J. Jimmerson, Esq. and James M. Jimmerson, Esq., of THE JIMMERSON LAW FIRM, P.C., hereby oppose the Motion to Dismiss Pursuant to Nevada Rule of Civil Procedure ("NRCP") 12(b)(5) (the "Opposition") filed by Defendants Daniel Omerza (hereinafter "Omerza"), Darren Bresee ("Bresee"), and Steve Caria ("Caria") (collectively "Homeowners" or "Defendants").

1 This Opposition is made and based on the following Memorandum of Points and  
2 Authorities, the attached Declaration of JAMES M. JIMMERSON, the pleadings and  
3 papers on file in this matter, as well as any oral argument the Court may consider.<sup>1</sup>

4 DATED this 7<sup>th</sup> day of May, 2018.

5 THE JIMMERSON LAW FIRM, P.C.

6  
7 /s/ James M. Jimmerson, Esq.  
8 JAMES J. JIMMERSON, ESQ.  
9 Nevada Bar No. 000264  
10 JAMES M. JIMMERSON, ESQ.  
11 Nevada Bar No. 12599  
12 415 S. 6<sup>th</sup> Street, #100  
13 Las Vegas, Nevada 89101  
14 *Attorneys for Plaintiffs*  
15  
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24 <sup>1</sup> With respect to Defendants concurrently filed Request for Judicial Notice, the Land  
25 Owners respectfully request that this Court take judicial notice of the district court orders attached  
26 to their Complaint if it takes judicial notice of the documents request by Defendants. *See Breliant*  
27 *v. Preferred Equities Corp.*, 109 Nev. 842, 846, 858 P.2d 1258, 1260 (1993) (The court may take  
28 into account matters of public record, orders, items present in the record of the case, and any  
exhibits attached to the complaint when ruling on a motion to dismiss for failure to state a claim  
upon which relief can be granted.); *see also* Comp., Exs. 2, 3, and 4. It is noteworthy that the copy  
of the January 11, 2018 hearing transcript – Exhibit A to Defendants’ Request – is not an official,  
file-stamped copy.

## MEMORANDUM OF POINTS AND AUTHORITIES

### I. INTRODUCTION

This case involves certain homeowners' unjust efforts to prevent the transition of land adjacent to their common interest community from an inoperable golf course to beautiful homes, walking trails, and open space. The Land Owners were forced to initiate this lawsuit because the Defendants' conduct has gone far beyond mere participation in the political process to being unlawful and causing significant harm to the Land Owners and their livelihood.

Defendants' reliance on Judge Crockett's order in the *Binion* case is wholly misplaced and, in fact, evidences their improper conduct. The *Binion* matter (in which Frank Schreck, Esq., counsel with the firm representing these Defendants, was a Plaintiff) is a completely different type of case involving judicial review, and does not involve the "Queensridge" development. The case that *does* directly involve the Queensridge development was *Peccole, et al v. Peccole, A-16-739654-C*, in which the Court, the Honorable Judge Smith, entered detailed Findings of Fact, Conclusions of Law and Orders specifically citing to the Purchase Documents, Public Offering Statements, and Master Declaration of Queensridge, and demonstrates that the claim that they (or others) purchased their lots "in reliance" of the Peccole Ranch Master Plan is false. All of this is alleged in Plaintiffs' Complaint. That Defendants rely upon a decision that post-dates all of the earlier events and decisions concerning the Queensridge development, a decision which **did not exist** at the time these individuals purchased their homes, is evidence that they were (and still are) cherry-picking the information they were communicating to their neighbors and that the claims are revisionist history. More importantly, such behavior constitutes fraud when material information is intentionally concealed.

The Court should summarily deny the Defendants' motion to dismiss because: (1) the Land Owners have stated cognizable claims for relief under Nevada's liberal pleading standard; and (2) the Defendants conduct is not protected by any absolute or qualified privilege.

1     **II.     RELEVANT FACTS**

2             The Land Owners are developing approximately 250 acres of land they own and  
3     control in Las Vegas, Nevada formerly known as the Badlands Golf Course property  
4     (hereinafter the “Land”) because golf course operations are no longer feasible. *See* Comp.  
5     at ¶ 9. They have the absolute right to develop the Land under its present RDP 7 zoning,  
6     which means that up to 7.49 dwelling units per acre may be constructed on it. *See* Comp.  
7     at ¶ 29, Ex. 2 at p. 18. The Land is adjacent to the Queensridge Common Interest  
8     Community (hereinafter “Queensridge”) which was created and organized under the  
9     provisions of NRS Chapter 116. *See* Comp. at ¶ 10. The Defendants are certain residents  
10    of Queensridge who strongly oppose any redevelopment of the Land because some have  
11    enjoyed golf course views, which views they don’t want to lose even though the golf course  
12    is no longer operational. *See* Comp. at ¶¶ 23-30. Rather than properly participate in the  
13    political process, however, the Defendants are using unjust and unlawful tactics to  
14    intimidate and harass the Land Owners and ultimately prevent any redevelopment of the  
15    Land. *See id.* They are doing so despite having received prior, express written notice that,  
16    among other things, the Land is developable and any views or location advantages they  
17    have enjoyed may be obstructed by future development. *See* Comp. at ¶¶ 12-22.

18             According to the Complaint, the Defendants executed purchase agreements when  
19    they purchased their residences within the Queensridge Common Interest Community  
20    which expressly acknowledged their receipt of, among other things, the following: (1)  
21    Master Declaration of Covenants, Conditions, Restrictions and Easements for  
22    Queensridge (Queensridge Master Declaration), which was recorded in 1996; (2) Notice  
23    of Zoning Designation of Adjoining Lot which disclosed that the Land was zoned RPD 7;  
24    (3) Additional Disclosures Section 4 – No Golf Course or Membership Privileges which  
25    stated that they acquired no rights in the Badlands Golf Course; (4) Additional Disclosure  
26    Section 7 – Views/Location Advantages which stated that future construction in the  
27    planned community may obstruct or block any view or diminish any location advantage;  
28



1 and (5) Public Offering Statement for Queensridge Towers which included these same  
2 disclaimers. *See* Comp. at ¶¶ 10-12, 15-20. The Complaint further alleges that the deeds  
3 to the Defendants' respective residences "are clear by their respective terms that they have  
4 no rights to affect or control the use of Plaintiffs' real property." Comp. at ¶ 21. The  
5 Defendants nevertheless prepared, promulgated, solicited, circulated, and executed the  
6 following declaration to their Queensridge neighbors in March 2018:

7 TO: City of Las Vegas

8 The Undersigned purchased a residence/lot in Queensridge which is located  
9 within the Peccole Ranch Master Planned Community.

10 The undersigned made such purchase in reliance upon the fact that the open  
11 space/natural drainage system could not be developed pursuant to the  
12 City's Approval in 1990 of the Peccole Ranch Master Plan and subsequent  
13 formal actions designating the open space/natural drainage system in its  
14 General Plan as Parks Recreation – Open Space which land use designation  
15 does not permit the building of residential units.

16 At the time of purchase, the undersigned paid a significant lot premium to  
17 the original developer as consideration for the open space/natural drainage  
18 system....

19 Comp., Ex. 1.

20 The Defendants did so despite having received prior, express written notice that  
21 the Queensridge Master Declaration does not apply to the Land, the Land Owners have  
22 the absolute right to develop it based solely on the RPD 7 zoning, and any views and/or  
23 locations advantages they enjoyed could be obstructed in the future. *See gen.*, Comp.,  
24 Exs. 2, 3, and 4. In preparing, promulgating, soliciting, circulating, and executing the  
25 declaration, the Defendants also disregarded district court orders which involved their  
26 similarly situated neighbors in Queensridge, which are public records attached to the  
27 Complaint, and which expressly found that: (1) the Land Owners have complied with all  
28 relevant provisions of NRS Chapter 278 and properly followed procedures for approval of  
a parcel map over their property; (2) Queensridge Common Interest Community is  
governed by NRS Chapter 116 and not NRS Chapter 278A because there is no evidence  
remotely suggesting that the Land is within a planned unit development; (3) the Land is  
not subject to the Queensridge Master Declaration, and the Land Owners' applications to

1 develop the Land are not prohibited by, or violative of, that declaration; (4) Queensridge  
2 residents have no vested rights in the Land; (5) the Land Owners' development  
3 applications are legal and proper; (6) the Land Owners have the right to close the golf  
4 course and not water it without impacting the Queensridge residents' rights; (7) the Land  
5 is not open space and drainage because it is zoned RPD 7; and (8) the Land Owners have  
6 the absolute right to develop the Land because zoning – not the Peccole Ranch Master  
7 Plan – dictates its use and the Land Owners' rights to develop it. *See id.*; *see also* Comp.,  
8 Ex. 2 at ¶¶ 41-42, 52, 56, 66, 74, 78-79, and 108; Ex. 3 at ¶¶ 8, 12, 15-23, 26, 61, 64-67, and  
9 133. The Defendants further ignored another district court order dismissing claims based  
10 on findings that similarly contradicted the statements in the Defendants' declaration. *See*  
11 Comp., Exs. 1, 4.

12 In sum, the Complaint alleges that the Defendants fraudulently procured  
13 signatures by picking and choosing the information they shared with their neighbors in  
14 order to manipulate them into signing the declaration. *See id.*; *see also* Comp., Exs. 2 and  
15 3. They simply ignored or disregarded known, material facts that directly conflicted with  
16 the statements in the declaration and undermined their plan to present a false narrative  
17 to the City of Las Vegas and mislead council members into delaying and ultimately  
18 denying the Land Owners' development applications. *See id.*; *see also* Comp., Ex. 1.

19 The Defendants have filed a motion to dismiss pursuant to NRCP 12(b)(5),  
20 claiming to "have no understanding that any of [the statements in the declaration] are  
21 false." *See* Def. Spec. Mot., Exs. 1, 2, and 3 at ¶¶ 13, respectively. Because the allegations  
22 in the Complaint – which must be accepted as true – indicate otherwise, the Motion to  
23 Dismiss should be denied.

### 24 **III. ARGUMENT**

#### 25 **A. Standard for Dismissal Under NRCP 12(b)(5)**

26 The standard for dismissal under NRCP 12(b)(5) is rigorous as the district court  
27 "must construe the pleading liberally" and draw every fair inference in favor of the non-  
28 moving party. *Breliant v. Preferred Equities Corp.*, 109 Nev. at 846, 858 P.2d at 1260

1 (1993) (*quoting Squires v. Sierra Nev. Educational Found.*, 107 Nev. 902, 905, 823 P.2d  
2 256, 257 (1991)). All factual allegations of the complaint must be accepted as true. *See*  
3 *Breliant*, 109 Nev. at 846, 858 P.2d at 1260 (*citing Capital Mort. Holding v. Hahn*, 101  
4 Nev. 314, 315, 705 P.2d 126, 126 (1985)). A complaint will not be dismissed for failure to  
5 state a claim “unless it appears beyond a doubt that the plaintiff could prove no set of facts  
6 which, if accepted by the trier of fact, would entitle him [or her] to relief.” *See Breliant*,  
7 109 Nev. at 846, 858 P.2d at 1260 (*quoting Edgar v. Wagner*, 101 Nev. 226, 228, 699  
8 P.2d 110, 112 (1985) (citation omitted)).

9 In Nevada, pleadings are governed by NRCP 8, which requires only general factual  
10 allegations, not itemized descriptions of evidence. *See* NRCP 8 (complainant need only  
11 provide “a short and plain statement of the claim showing that the pleader is entitled to  
12 relief”); *see also Breliant v. Preferred Equities Corp.*, 109 Nev. at 846, 858 P.2d at 1260  
13 (“The test for determining whether the allegations of a complaint are sufficient to assert  
14 a claim for relief is whether [they] give fair notice of the nature and basis of a legally  
15 sufficient claim and the relief requested.”). Thus, a pleading need only broadly recite the  
16 “ultimate facts” necessary to set forth the elements of a cognizable claim that a party  
17 believes can be proven at trial. A pleading is not required to identify the particular  
18 “evidentiary facts” that will be employed to prove those allegations. *See* Jack Friedenthal,  
19 Mary Kane & Arthur Miller, *Civil Procedure* § 5.5 (4th ed.2005) (discussing distinction  
20 between “ultimate facts” upon which a party bears the burden of proof, such as whether  
21 a breach of duty occurred, and the “evidentiary facts” such as particular testimony or  
22 exhibits that may be used to meet that burden of proof).

23 Furthermore, Nevada is a “notice pleading” state, which means that the ultimate  
24 facts alleged within the pleadings need not be recited with particularity. *See Hall v. SSF,*  
25 *Inc.*, 112 Nev. 1384, 1391, 930 P.2d 94, 98 (1996) (“[A] complaint need only set forth  
26 sufficient facts to demonstrate the necessary elements of a claim for relief so that the  
27 defending party has adequate notice of the nature of the claim and the relief sought.”)  
28

(internal quotation marks omitted); *Pittman v. Lower Court Counseling*, 110 Nev. 359, 365, 871 P.2d 953, 957 (1994) (“Nevada is a notice pleading jurisdiction and we liberally construe pleadings to place matters into issue which are fairly noticed to the adverse party.”), *overruled on other grounds by Nunez v. City of N. Las Vegas*, 116 Nev. 535, 1 P.3d 959 (2000). Thus, a plaintiff is entitled under NRCP 8 to set forth only general allegations in its complaint and then rely at trial upon specific evidentiary facts never mentioned anywhere in its pleadings. *See Nutton v. Sunset Station, Inc.*, 131 Nev. \_\_\_, 357 P.3d 966, 974 (Nev. Ct. App. 2015).

**B. The Complaint States Cognizable Claims For Relief**

There is no heightened pleading requirement for the Land Owners’ interference with prospective economic relations and conspiracy claims. *See e.g., LT Intern. Ltd. v. Shuffle Master, Inc.*, 8 F.Supp.3d 1238, 1248 (D. Nev. 2014) (tortious interference with prospective economic relations claim must meet NRCP 8 pleading standard); *Flowers v. Carville*, 266 F.Supp.2d 1245, 1249 (D. Nev. 2003) (no heightened pleading requirement for a civil conspiracy under Nevada law). In the Complaint, the Land Owners’ intentional and negligent interference with prospective economic relations claims (Second and Third Claims for Relief) allege the Defendants engaged in wrongful conduct through the “preparation, promulgation, solicitation and execution” of the declarations which “contain false representations of fact, and using their intentional misrepresentations to influence and pressure homeowners to sign a statement,” causing damage to the Land Owners’ reputation, livelihood, and ability to develop the Land. Comp. at ¶¶ 42-43, 50-52; *see also LT Intern. Ltd. v. Shuffle Master, Inc.*, 8 F.Supp.3d at 1248 (allegations of tortious interference with prospective economic relations need not plead the existence of a valid contract and must only raise plausible claim for relief under NRCP 8 to avoid dismissal). Similarly, the Land Owners’ conspiracy claim (Fourth Claim for Relief) is based on the Defendants’ clandestine, behind-the-scenes “concerted action to improperly influence and/or pressure third-parties, including officials with the City of Las Vegas, and

1 others with the intended action of delaying or denying the [Land Owners'] land rights and  
2 their intent to develop their property." Comp. at ¶ 58. The Complaint further alleges that  
3 the "co-conspirators agreement was implemented by their concerted actions to object to  
4 [the Land Owners'] development and to use their political influence" to delay and  
5 sabotage any development projects to the detriment of the Land Owners and their  
6 livelihoods. Comp. at ¶¶ 58-60; *see also Flowers v. Carville*, 266 F.Supp.2d at 1249  
7 (actionable civil conspiracy is defined as a combination of two or more persons, who by  
8 some concerted action, intend to accomplish some unlawful objective for the purpose of  
9 harming another which results in damage). Based on these allegations, the Land Owners  
10 have set forth sufficient facts to demonstrate the necessary elements of their interference  
11 with prospective economic relations and conspiracy claims such that the Defendants have  
12 adequate notice of the nature of these claims and the relief sought. *See* NRCP 8.  
13 Accordingly, they should not be dismissed.

14 With respect to their intentional and negligent misrepresentation claims (Fifth and  
15 Sixth Claims for Relief), the Land Owners allege the Defendants' actions were intentional  
16 and/or negligent and were undertaken "with the intent of causing homeowners and the  
17 City of Las Vegas to detrimentally rely upon their misrepresentation of fact being falsely  
18 made...." Comp. at ¶¶ 62-68. According to the Complaint, the Defendants solicited and  
19 procured the statements and/or declarations, *i.e.*, false misrepresentations of fact, as part  
20 of a scheme to mislead council members into denying the Land Owners' applications. *See*  
21 *id.* The Defendants did so despite having received prior, express written notice that,  
22 among other things, the Land is developable and any views or location advantages they  
23 have enjoyed may be obstructed by future development. *See* Comp. at ¶¶ 12-22. They did  
24 so despite also being aware of court orders determining, among other things, that  
25 homeowners in Queensridge don't have any "vested rights" with respect to the Land and  
26 that the Land Owners have the absolute right to develop it. *See* Comp., Ex. 2 at ¶¶ 81-82,  
27 108; Ex. 3. Even if the statements and/or declarations were consistent with the "ruling in  
28

1 the Binion Litigation” as the Defendants argue, they were controverted by at least three  
2 other court orders which are public records attached to the Complaint and which the  
3 Defendants should have disclosed to their neighbors, particularly given their discussions  
4 with them about the court order in *Binion et al v. Fore Stars et al*, Dkt. No. A-17-729053.  
5 *See Comp., Exs. 2, 3, and 4; see also Brelient v. Preferred Equities Corp.*, 109 Nev. at 845,  
6 858 P.2d at 1260 (In ruling on a motion to dismiss, the court may consider matters of  
7 public record, orders, items present in the record and any exhibits attached to the  
8 complaint.). The Defendants omission of these material facts from the statements and/or  
9 declarations they prepared, executed, promulgated, solicited, and circulated to other  
10 homeowners in Queensridge is equivalent to a false representation. *See Comp., Ex. 1; see*  
11 *also Nelson v. Heer*, 123 Nev. 217, 225-26, 163 P.3d 420, 426 (2007) (“With respect to  
12 false-representation element of intentional-misrepresentation claim, the suppression or  
13 omission of a material fact which a party is bound in good faith to disclose is equivalent  
14 to a false representation, since it constitutes an indirect representation that such fact does  
15 not exist.”).

16 In sum, these allegations set forth sufficient facts to demonstrate the necessary  
17 elements of intentional and/or negligent misrepresentation claims. *See Squires v. Sierra*  
18 *Nevada Ed. Found. Inc.*, 107 Nev. at 906 and n. 1, 823 P.2d at 258 and n. 1  
19 (misrepresentation allegations sufficient to avoid dismissal under NRCP 12(b)(5)).  
20 Should the Court determine, however, that the misrepresentation claims are not plead  
21 with sufficient particularity pursuant to NRCP 9, the Land Owners respectfully request  
22 leave to amend their Complaint and/or conduct discovery pursuant to *Rocker v. KPMG*  
23 *LLP*, 122 Nev. 1185, 148 P.3d 703 (2006). *See NRCP 9(b)* (“In all averments of fraud or  
24 mistake, the circumstances constituting fraud or mistake shall be stated with  
25 particularity....”); *cf. Rocker*, 122 Nev. at 1192-95, 148 P.3d at 707-10 (A relaxed pleading  
26 standard applies in fraud actions where the facts necessary for pleading with particularity  
27 are peculiarly within the defendant’s knowledge or are readily obtainable by him. In such  
28

1 situations, district court should allow the plaintiff time to conduct the necessary  
2 discovery.).

3 **C. The Defendants' Conduct Is Not Privileged**

4 The Defendants devote the last five pages of their motion to the absurd notion that  
5 they "could not be liable to Plaintiffs for the solicitation of the declarations, or for any  
6 statements contained in" them because they are privileged. Def. Mot. at p. 10-15. This  
7 contention fails for at least three reasons. First, the absolute litigation privilege is limited  
8 to defamation claims, and this is not a defamation action. *See Fink v. Oshins*, 118 Nev.  
9 428, 433, 49 P.3d 640, 645 (2002)(absolute privilege limited to defamation cases).  
10 Second, only the fair, accurate, and impartial reporting of judicial proceedings is  
11 privileged and nonactionable. *See Adelson v. Harris*, 133 Nev. \_\_\_, \_\_\_, 402 P.3d 665,  
12 667 (2017). Nevada "has long recognized a special privilege of absolute immunity from  
13 defamation given to the news media and the general public to report newsworthy events  
14 in judicial proceedings." *Id.* (quoting *Sahara Gaming Corp. v. Culinary Workers Union*  
15 *Local 226*, 115 Nev. 212, 214, 984 P.2d 164, 166 (1999)); citing *Circus Circus Hotels, Inc.*  
16 *v. Witherspoon*, 99 Nev. 56, 60, 657 P.2d 101, 104 (1983) ("[There] is [a] long-standing  
17 common law rule that communications uttered or published in the course of judicial  
18 proceedings are absolutely privileged so long as they are in some way pertinent to the  
19 subject of controversy." (citation omitted)). "[T]he 'fair, accurate, and impartial' reporting  
20 of judicial proceedings is privileged and nonactionable ... affirming the policy that Nevada  
21 citizens have a right to know what transpires in public and official legal proceedings."  
22 *Lubin v. Kunin*, 117 Nev. 107, 114, 17 P.3d 422, 427 (2001) (quoting *Sahara Gaming*, 115  
23 Nev. at 215, 984 P.2d at 166). Not only are the Defendants' purported "communications"  
24 in this case far from "fair or accurate" as analyzed above, but they were not "uttered or  
25 published in the course of judicial proceedings" under any stretch of the allegations in the  
26 Complaint. *See Adelson v. Harris*, 133 Nev. at \_\_\_, 402 P.3d at 667; *see also* Comp. at  
27 ¶¶ 23-30. Thus, an absolute privilege is inapplicable here.  
28

1 Third, the qualified or conditional privilege alternatively sought by the Defendants  
2 only applies where “a defamatory statement is made in good faith on any subject matter  
3 in which the person communicating has an interest, or in reference to which he has a right  
4 or a duty, if it is made to a person with a corresponding interest or duty.” *Bank of America*  
5 *Nevada v. Bordeau*, 115 Nev. at 266-67, 982 P.2d at 476 (statements made to FDIC  
6 investigators during background check of employee are subject to conditional privilege).  
7 As a party claiming a qualified or conditional privilege in publishing a defamatory  
8 statement, the Defendants must have acted in good faith, without malice, spite or ill will,  
9 or some other wrongful motivation, and must believe in the statement’s probable truth.  
10 *See id.*; *see also Pope v. Motel 6*, 121 Nev. 307, 317, 114 P.3d 277, 284 (2005) (statements  
11 made to police during investigation subject to conditional privilege). Not only are the  
12 purported “communications” in this case beyond those contemplated by the Nevada  
13 Supreme Court as privileged, but the Defendants didn’t act in good faith.

14 Specifically, the Complaint alleges the Defendant prepared, promulgated,  
15 circulated, solicited, and executed false declarations “solely for the purposes of harassing  
16 and maliciously attacking” the Land Owners as part of an overall scheme to “cause  
17 economic damage and harm” to them and their livelihoods, to slander title to the Land,  
18 delay their developments applications, and to suborn and mislead the City of Las Vegas  
19 and its council members with the false declarations into rejecting those applications so  
20 the Land Owners are ultimately prevented from ever redeveloping the Land. *See Comp.*  
21 *at ¶¶ 23-30.* The Complaint further alleges that Defendants were aware of and had notice  
22 of public records and other information that directly controverted the statements in the  
23 declarations which they ignored and disregarded. *See id.* Despite this, the Defendants  
24 still sought signatures from their neighbors on the declarations with the intent to use  
25 those false declarations to sabotage the Land Owners’ redevelopment of the Land. *See id.*  
26

27 Given these allegations – which must be accepted as true for purposes of this  
28 motion – it defies credulity that the Defendants acted “without malice or ill will” or could



1 have “believed in the statement’s probable truth.” *See id.*; *see also Bank of America*  
2 *Nevada v. Bordeaux*, 115 Nev. at 266-67, 982 P.2d at 476 (party cannot claim privilege  
3 unless they acted in good faith, without malice, spite or ill will, or some other wrongful  
4 motivation, and they must have believed in the statement’s probable truth). At minimum,  
5 a factual issue exists whether any privilege applies and/or the Defendants acted in good  
6 faith, both of which are not properly decided in a NRCP 12(b)(5) motion. *See Fink v.*  
7 *Oshins*, 118 Nev. at 433, 49 P.3d at 645 (factual issue on whether privilege applied); *Bank*  
8 *of America Nevada v. Bordeaux*, 115 Nev. at 266-67, 982 P.2d at 476 (factual issue on  
9 whether publication was made with malice). The Court should reject their claim of  
10 privilege accordingly.

11 **D. Discovery Should Be Permitted Under *Rocker***

12 Additionally, Land Owners should be permitted to discovery pursuant to *Rocker v.*  
13 *KPMG LLP*, 122 Nev. 1185, 148 P.3d 703 (2006). Specifically, the Land Owners should  
14 be allowed discovery in order to obtain facts including, but not limited to, from whom  
15 the Defendants received the information stated in the declarations, who prepared  
16 them, whether they read their CC&Rs, whether they read Judge Smith’s orders, what  
17 they understood to be the implications of their CC&Rs as well as the court orders,  
18 why they believe the declarations to be accurate, what efforts they took, if any, to  
19 ascertain the truth of the information in the declarations, and with whom and the  
20 contents of the conversations they had with other Queensridge residents. According  
21 to their affidavits, the Defendants are uniquely in possession of this information, and  
22 the Land Owners are entitled to an opportunity to conduct discovery in order to elicit  
23 this information.  
24

25 ///

26 ///

27 ///

#### IV. CONCLUSION

Based on the foregoing, the Land Owners respectfully request that the Court deny the Defendants' motion in its entirety. Alternatively, the Court should grant them leave to amend their Complaint and/or conduct discovery pursuant to *Rocker v. KPMG LLP*, 122 Nev. 1185, 148 P.3d 703 (2006).

DATED this 7<sup>th</sup> day of May, 2018.

**THE JIMMERSON LAW FIRM, P.C.**

/s/ James M. Jimmerson, Esq.  
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**DECLARATION OF JAMES M. JIMMERSON ESQ.**  
**IN SUPPORT OF PLAINTIFFS' OPPOSITION TO**  
**DEFENDANTS' MOTION TO DISMISS PURSUANT TO NRCP 12(b)(5)**

JAMES M. JIMMERSON, ESQ., under penalty of perjury, does hereby declare:

1. I am counsel of record in the above-captioned matter. I am above eighteen years of age, an attorney duly-licensed to practice law in the State of Nevada, and a partner at THE JIMMERSON LAW FIRM, P.C. I make this Declaration in support of Plaintiffs' Opposition to Defendants' Motion to Dismiss.

2. I have personal knowledge of the subject matter of this Declaration and I am competent to testify thereto.

3. In a Motion to Dismiss, all facts in Plaintiffs' Complaint must be regarded as true and in a light most favorable to the non-moving party. Based on these allegations, the Land Owners have set forth sufficient facts to demonstrate the necessary elements of their claims and the relief sought. The Motion to Dismiss should be denied.

4. Additionally, Land Owners should be permitted to discovery pursuant to *Rocker v. KPMG LLP*, 122 Nev. 1185, 148 P.3d 703 (2006). Specifically, the Land Owners should be allowed discovery in order to obtain facts including, but not limited to, from whom the Defendants received the information stated in the declarations, who prepared them, whether they read their CC&Rs, whether they read Judge Smith's orders, what they understood to be the implications of their CC&Rs as well as the court orders, why they believe the declarations to be accurate, what efforts they took, if any, to ascertain the truth of the information in the declarations, and with whom and the contents of the conversations they had with other Queensridge residents.

I declare under the penalty of perjury and laws of the State of Nevada that the foregoing is true and correct to the best of my knowledge.

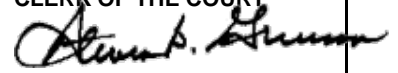
  
JAMES M. JIMMERSON, ESQ.

**CERTIFICATE OF SERVICE**

I hereby certify that on the 7<sup>th</sup> day of May, 2018, I caused a true and correct copy of the foregoing **PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION TO DISMISS PURSUANT TO NRCP 12(b)(5)** to be submitted electronically for filing and service with the Eighth Judicial District Court via the Electronic Filing System to the following:

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*Counsel for Defendants,*  
DANIEL OMERZA, DARREN BRESEE, and  
STEVE CARIA

**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

FORE STARS, LTD., a Nevada limited  
liability company; 180 LAND CO., LLC; a  
Nevada limited liability company;  
SEVENTY ACRES, LLC, a Nevada  
limited liability company,

Plaintiffs,

v.

DANIEL OMERZA, DARREN BRESEE,  
STEVE CARIA, and DOES 1 THROUGH  
100,

Defendants,

CASE NO.: A-18-771224-C  
DEPT. NO.: II

**DEFENDANTS' REPLY BRIEF IN  
SUPPORT OF MOTION TO DISMISS  
PURSUANT TO NRCP 12(B)(5)**

Hearing Date: May 14, 2018

Hearing Time: 9:00 a.m.

**I. INTRODUCTION**

Plaintiffs' Complaint fails to state a claim upon which relief may be granted for two independent reasons: first, they have not alleged facts sufficient to support a cognizable claim; second, even if Plaintiffs had adequately pled any of their claims, they still would not have a tenable claim because Defendants' conduct at issue is protected by absolute and qualified privileges.

In Plaintiffs' Opposition to Defendants' Motion to Dismiss Pursuant to NRCP 12(b)(5) ("Opposition"), Plaintiffs repeatedly argue that Defendants knew of prior litigation the outcome of which cannot be reconciled with Defendants' position regarding Plaintiffs' development plans. In fact, they are easy to reconcile. The prior litigation dealt with whether Queensridge covenants,

conditions and restrictions ("CC&R's") prohibit development of the Badlands Golf Course, but this is an issue not even raised in the present dispute. The current issue is whether Plaintiffs' efforts to make a major modification of the Peccole Ranch Master Development Plan is contrary to the expectations of neighboring residents, some of whom purchased their homes or lots in reliance upon the open space designation of the Badlands property in the Development Plan.

Stripped of this single crumbling foundation, Plaintiffs have not alleged facts sufficient to support any of their claims for relief. Even if they did, the claims should be dismissed based upon Defendants' applicable privileges. Plaintiffs' attempt to evade those privileges proceeds from fundamental misunderstandings as to the controlling law.

Finally, the Court should not condone Plaintiffs' request to issue broad discovery in the hopes that some other claim for relief may yet materialize.

**II. DEFENDANTS' MOTION TO DISMISS SHOULD BE GRANTED IN ITS ENTIRETY.**

**A. Plaintiffs Fail to Adequately Allege a Claim For Relief.**

Plaintiffs' primary argument in their Opposition is to insist that a judicial ruling in prior litigation regarding the Badlands site is enough to establish a host of misconduct by Defendants. This argument does not withstand serious scrutiny—the litigation Plaintiffs rely upon decided a question not presented here at all; meanwhile, this Court (Judge Crockett) has ruled *against* Plaintiffs on the issue that actually is pertinent. Stripped of this single substantive allegation, Plaintiffs specific claims for relief fall like a house of cards.

**1. Plaintiffs' Reliance on Prior Litigation Involving the Badlands Golf Course Does Nothing to Establish Any Misconduct by Defendants.**

The central underpinning of Plaintiffs' entire case is their assertion that Defendants know that nobody relied on the designation in the Master Development Plan of the Badlands golf course as Parks Recreation – Open Space. Their only support for this assertion is the Court's decision in *Peccole v. Peccole*, Case A-16-739654-C, which Plaintiffs claim held just that. But this Court will search the Findings of Fact in that action in vain for any such holding. To the contrary, that case analyzed a different resident's contention that the Queensridge CC&R's apply to Plaintiffs

1 and somehow *forbid* them from developing the Badlands property. Defendants here have not  
2 taken the position that Plaintiffs are bound by the Queensridge CC&R's, nor do the declarations  
3 they secured make any such assertion. Rather, the declarations state that the signing residents  
4 purchased their residence or lot "in reliance upon the fact that the open space/natural drainage  
5 system could not be developed pursuant to the City's Approval in 1990 of the Peccole Ranch  
6 Master Plan and subsequent formal actions designating the open space/natural drainage system in  
7 its General Plan as Parks Recreation – Open Space which land use designation does not permit  
8 the building of residential units." These declaration do *not* rely on the terms of the Queensridge  
9 CC&R's, and thus are not in any way inconsistent with the court's holding in *Peccole v. Peccole*.

10 Crucially, however, the declarations are entirely consistent with Judge Crockett's  
11 determination in the Binion Litigation, Case No. A-17-752344-J, that approval of Plaintiffs' plans  
12 requires a major modification of the Peccole Ranch Master Plan, which may run afoul of the  
13 reasonable expectations of residents of the area who relied on the existing master planning. *See*  
14 Request for Judicial Notice, Ex. A, at 5-10. Since Judge Crockett himself obviously raised this  
15 concern in good faith, there can be no reasonable inference that Defendants could not believe the  
16 same thing in good faith.<sup>1</sup>

17 **2. Plaintiffs' Factual Allegations Do Not Support Any of Their Asserted**  
18 **Claims for Relief.**

19 Deprived of the dubious underpinning of Plaintiffs' reliance on *Peccole v. Peccole*,  
20 Plaintiffs are left only with conclusory allegations that cannot conceivably support any of their  
21 claims for relief.

22 **a) Intentional or Negligent Interference**

23 The first flaw in Plaintiffs' claims for intentional or negligent interference is that there are  
24 no allegations to identify the prospective contractual relationships at issue. While stating a claim  
25

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26 <sup>1</sup> Judge Crockett's concerns do not in any way exclude Queensridge, but apply to any Peccole  
27 Ranch residents and Badlands neighbors, which would include the Queensridge residents in  
28 question. Defendants are simply at a loss to understand why Plaintiffs believe that it is significant  
that Judge Crockett's ruling post-dates the *Peccole v. Peccole* decision (and Defendants' purchase  
of their properties), Opposition at 1, when the two cases address different issues.

1 for interference with "prospective" relationships does not require an allegation of a specific,  
2 existing contract, *see LT Inten. Ltd. v. Shuffle Master, Inc.*, 8 F. Supp. 3d 1238, 1248 (D. Nev.  
3 2014) (relied upon by Plaintiffs, *see* Opposition, at 6), it *does* require allegations sufficient to  
4 identify the *prospective* relationships at issue. *See Valley Health Sys. LLC v. Aetna Health, Inc.*,  
5 No. 2:15-CV-1457 JCM (NJK), 2016 U.S. Dist. LEXIS 83710, at \*14 (D. Nev. Jun. 28, 2016)  
6 (dismissing a claim for intentional interference with prospective economic advantage where  
7 plaintiff "has not properly alleged a prospective contractual relationship between [it] and a third  
8 party with which [the defendant] could have interfered"); *Bustos v. Dennis*, No. 2:17-CV-00822-  
9 KLD-VCF, 2018 U.S. Dist. LEXIS 45764, at \*10-11 (D. Nev. Mar. 20, 2018) (dismissing  
10 intentional interference with prospective economic advantage claim where plaintiff did not meet  
11 "his burden in alleging interference with a specific prospective contractual relationship" and did  
12 not allege that "Defendants were aware of the prospective relationship") (emphasis added). By  
13 the same token, Plaintiffs cannot claim they have adequately alleged that Defendants knew of the  
14 prospective relationships at issue, when Plaintiffs themselves cannot identify what they were.

15 Further, Plaintiffs have failed to allege—beyond bald conclusory allegations—any  
16 specific harm from Defendants' purported conduct, or that Defendants acted with intent to harm  
17 Plaintiffs. *See Rimini St., Inc. v. Oracle Int'l Corp.*, No. 2:14-cv-1699-LRH-CWH, 2017 U.S.  
18 Dist. LEXIS 184597, at \*47-49 (D. Nev. Nov. 7, 2017) (finding plaintiff failed to sufficiently  
19 plead a claim for intentional interference with prospective economic advantage, including  
20 because plaintiff failed to identify "either a prospective client or prospective contract" and that "to  
21 allege actual harm, a plaintiff must allege that he would have been awarded the contract but for  
22 the defendant's interference") (citations omitted).

23 Finally, Plaintiffs cannot even establish that a claim for negligent interference with  
24 prospective economic advantage even exists in Nevada law. *See Valley Health Sys.*, 2016 U.S.  
25 Dist. LEXIS 83710, at \*6 (dismissing the negligent interference with prospective economic  
26 advantage claim where "parties agree that [the] claim should be dismissed because it is not a  
27 recognized cause of action under Nevada law").

28 ///



**b) Conspiracy**

Plaintiffs' Opposition only underscores the flaw in their conspiracy claim. Plaintiffs repeat their conclusory allegation that Defendants acted "improperly," but they cannot articulate what Defendants actually sought to do that was improper. Instead, Plaintiffs concede that Defendants' objection has simply been to obtain a desired outcome in the political process. Opposition, at 8-9. If this were held sufficient to state a claim for relief, then every action undertaken in the political realm, indeed most water cooler conversations across the state, would suddenly become a conspiracy in the eyes of the law. There is no reason for such a dramatic transformation of both the law and politics in the State of Nevada.

**c) Intentional or Negligent Misrepresentation**

As demonstrated in Defendants' Motion and again above, Plaintiffs cannot contend that it was an actionable misrepresentation for Defendants to attest to, or to ask other residents about, reliance that this Court has itself acknowledged in the Binion Litigation. Plaintiffs again argue incorrectly that the outcome of other past litigation is also relevant to the issue, and they suggest a new rule of law requiring private citizens discussing a political issue with other private citizens to give a complete recitation of every item of arguable support for either point of view. Opposition, at 7-8. Although this rule might have the desirable effect of destroying Facebook forever, it has not been adopted or even considered in any jurisdiction.

In the alternative, Plaintiffs request a relaxed pleading standard until they can conduct discovery in order to determine some cognizable basis for their misrepresentation claims. But their own support for this request held that a plaintiff must still "state facts supporting a strong inference of fraud" and further that "the plaintiff must aver that this relaxed standard is appropriate and show in his complaint that he cannot plead with more particularity because the required information is in defendant's possession." *Rocker v. KPMG LLP*, 122 Nev. 1185, 1195, 148 P.3d 703 (2006). Plaintiffs have failed to support a strong inference of fraud, and the Court need not tolerate their stab-in-the-dark method of pleading.

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///

1           **B.     Plaintiffs' Claims Fail Because Defendants are Protected by Absolute and**  
2           **Qualified Privileges.**

3           Even if Plaintiffs' claims for relief were tenable on their face, the court should dismiss the  
4           Complaint based upon Defendants' applicable privileges. Plaintiffs dispute that Defendants'  
5           actions are protected by privilege, but each of their arguments is based on mischaracterizations of  
6           the law and/or unsupported conclusory statements.

7           First, without any legal authority and ignoring Nevada Supreme Court authority directly  
8           on point, Plaintiffs argue that the absolute privilege cannot apply because "this is not a  
9           defamation action." Opposition, at 9. The truth is that both absolute privileges apply regardless  
10          of how the claim for relief is styled. As explained by the Nevada Supreme Court, when it applies,  
11          when applicable, "[a]n absolute privilege bars *any* civil litigation based on the underlying  
12          communication." *Hampe v. Foote*, 118 Nev. 405, 409, 47 P.3d 438, 440 (2002) (emphasis  
13          added), *overruled in part on other grounds by Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev.  
14          224, 228 n. 6, 181 P.3d 670, 672 n. 6 (2008); *see also Bank of America Nevada v. Bourdeau*, 115  
15          Nev. 263, 267, 982 P.2d 474, 476 (1999) (recognizing that conditional privilege can bar an  
16          interference with a prospective business relation claim).

17          Plaintiffs also misrepresent the criteria for asserting the absolute litigation privilege.  
18          Whether by intent or neglect, Plaintiffs argue that reliance on the absolute litigation privilege  
19          requires that the statements at issue be "fair" and "accurate." However, that requirement relates to  
20          an entirely distinct privilege—the "fair report" privilege—which has not even been asserted by  
21          the Defendants. Plaintiffs correctly note that "Nevada 'has long recognized a special privilege of  
22          absolute immunity from defamation given to the news media and the general public to report  
23          newsworthy events in judicial proceedings'" and that "only the fair, accurate, and impartial  
24          reporting of judicial proceedings is privileged and nonactionable." Opposition, at 9 (citations  
25          omitted). Misapplying this privilege, Plaintiffs advance the red-herring argument that the  
26          "communications" at issue were not "fair or accurate" and were not "uttered or published in the  
27          course of judicial proceedings ...." *Id.* (citations omitted). The fair report privilege (which is  
28          designed to protect those who report *about* what is said in official proceedings) is not at issue in

1 this motion. Thus, cases discussing the requirements of the fair report privilege are inapposite.

2 Defendants' efforts to gather statements for use in a public proceeding does not involve  
3 news media or members of the general public attempting to report on judicial proceedings, so any  
4 limitations specific to the fair report privilege do not apply here.<sup>2</sup> The absolute privilege that is  
5 applicable here is completely different. Defendants' actions relate to their opposition to  
6 development of the subject Badlands property, and their hope that others would also voice their  
7 opposition to the City. More specifically, the conduct at issue involves gathering statements from  
8 potential witnesses in the form of declarations by residents of Queensridge who could review and  
9 sign them *if the resident agreed with the statements contained therein*.

10 Moreover, Plaintiffs have not—and cannot—rebut the well-settled rule that the privilege's  
11 protections go beyond communications that occur *during* the course of any judicial proceedings.  
12 It is well-established that communications *preliminary* to a proposed judicial or quasi-judicial  
13 proceeding are also absolutely privileged. *See, e.g., Fink v. Oshins*, 118 Nev. 428, 433, 49 P.3d  
14 640 (2002) ("the privilege applies not only to communications made during actual judicial  
15 proceedings, but also to 'communications preliminary to a proposed judicial  
16 proceeding'")(footnote citation omitted). Here, Defendants sought out to gather and/or provide  
17 input from witnesses for consideration by the City to the extent it considers whether to approve an  
18 amendment to the General Plan.<sup>3</sup> Thus the Defendants' efforts were directly related to anticipated  
19 quasi-judicial proceedings before the City Council, and an absolute privilege may be extended to  
20 statements by witnesses, like the Defendants here.<sup>4</sup> Notably, Plaintiffs do not even attempt to

21 \_\_\_\_\_  
22 <sup>2</sup> In *Adelson v. Harris*, 402 P.3d 665 (Nev. 2017), the Court explained that "the fair report  
23 privilege is most commonly asserted by media defendants" and "extends to any person who  
24 makes a republication of a judicial proceeding from material that is available to the general  
public." *Adelson*, 402 P.3d at 667 (citation omitted). The fair report privilege relates to  
"Nevada's policy that citizens have a right to a fair account of what occurs during official  
proceedings." *Id.* at 668 (citation omitted).

25 <sup>3</sup> As noted in the Motion, Plaintiffs had already filed an application to change the General Plan to  
26 allow for their development plans. Mot. at 5.

27 <sup>4</sup> *Cf. Knox v. Dick*, 99 Nev. 514, 517, 665 P.2d 267 (1983)(recognizing that statements by  
28 witnesses can be subject to privilege); *Lebbos v. State Bar*, 165 Cal. App. 3d 656, 668, 211 Cal.  
Rptr. 847 (Cal. Ct. App. 1985) ("[I]t is well settled that absolute privilege extends in quasi-  
judicial proceedings to preliminary interviews and conversations with potential witnesses.").

1 rebut the factors in Defendants' analysis (Motion at 11-12), which demonstrated that the  
2 anticipated City Council proceedings at issue are quasi-judicial in nature. In fact, Plaintiffs own  
3 counsel has *already* admitted during a meeting before the City that the relevant City Council land  
4 use proceedings are quasi-judicial in nature.<sup>5</sup>

5 Although Defendants deny they said anything that was inaccurate or unfair, *as a matter of*  
6 *law*, there simply is no requirement that the communications be "fair or accurate," as Plaintiffs  
7 contend. In fact, it is well-established that "*absolute privilege precludes liability even where the*  
8 *defamatory statements are published with knowledge of their falsity and personal ill will*  
9 *toward the plaintiff.*" *Circus Circus Hotels, Inc. v. Witherspoon*, 99 Nev. 56, 60, 657 P.2d 101,  
10 104 (1983)(citations omitted).<sup>6</sup> "The policy underlying the privilege is that in certain situations  
11 the public interest in having people speak freely outweighs the risk that individuals will  
12 occasionally abuse the privilege by making false and malicious statements." *Circus Circus*, 99  
13 Nev. at 61 (citations omitted).

14 The Nevada Supreme Court has instructed that "because the scope of the absolute  
15 privilege is broad, a court determining whether the privilege applies should resolve any doubt in  
16 favor of a broad application." *Clark County Sch. Dist. v. Virtual Educ. Software, Inc.*, 125 Nev.  
17 374, 382, 213 P.3d 496, 502 (2009)(citation omitted). Thus, even if there were some doubt that  
18 the privilege applies here—and there should be none—such doubt must be resolved in favor of  
19 protecting Defendants' petitioning activities.

20 Even if an absolute privilege did not apply, Defendants' are still protected under a  
21

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22  
23 <sup>5</sup> See Request for Judicial Notice (concurrently filed herewith), Ex. 1 (Transcript of City Council  
24 Meeting of February 21, 2018, at 16:411-419 (Plaintiffs' counsel argues that "when a body like a  
25 city council is sitting on a land use application or business license application.... [¶] ... you are  
now in a quasi-judicial proceeding ....[y]ou have to act in conformity with a quasi-judicial  
capacity....").

26 <sup>6</sup> This is even true under the "fair report privilege" discussed by Plaintiffs. See *Sahara Gaming*  
27 *Corp. v. Culinary Workers Union Local 226*, 115 Nev. 212, 219, 984 P.2d 164 (1999)(noting that  
28 because a Union's statements "were a fair and accurate report of a judicial proceeding, they are  
absolutely privileged ... even if the statements were made maliciously and with knowledge of  
their falsity.").

1 qualified or conditional privilege. Plaintiffs' arguments on this issue are also wholly inadequate.  
2 As an initial matter, Plaintiffs fail to dispute that the subject matter at issue here may be subject to  
3 conditional or qualified privilege. Indeed, they do not dispute that any communications or  
4 interactions at issue here were made between persons with interests in the subject matter at issue  
5 (the development of the Badlands golf course). *See Circus Circus*, 99 Nev. at 62 (indicating that  
6 qualified or conditional privilege exists where the subject matter related to one "in which the  
7 person communicating has an interest ..., if made to a person with a corresponding interest ...").

8 Plaintiffs contend that "Defendants didn't act in good faith" (Opposition, at 10) but as  
9 shown by the form declaration attached to Plaintiffs' complaint, the form requested signatures  
10 only if the resident believed the statements to be accurate. Plaintiffs' conclusory allegations that  
11 Defendants knew the statements contained therein were false or that they only solicited or  
12 executed declarations "solely for the purposes of harassing and maliciously attacking" the Land  
13 Owners" is nothing more than an empty, conclusory allegation, which is wholly inadequate.  
14 *Strack v. Morris*, No. 3:15-CV-00123-LRH-VPC, 2015 U.S. Dist. LEXIS 157965, at \* (D. Nev.  
15 Nov. 20, 2015) (noting that "to survive a motion to dismiss, the non-conclusory 'factual content,'  
16 and reasonable inferences from that content, must be plausibly suggestive of a claim entitling the  
17 plaintiff to relief")(citation omitted). Moreover, Plaintiffs do not dispute that they must prove  
18 actual malice in order to successfully rebut any application of a conditional or qualified privilege.  
19 That burden can only be met by providing evidence that a "statement is published with  
20 knowledge that it was false or with reckless disregard for its veracity." *Pope v. Motel 6*, 121 Nev.  
21 307, 317, 114 P.3d 277 (2005). Again, Plaintiffs cannot possibly meet that burden because the  
22 form declarations were only requesting signatures if the resident believed that the statements were  
23 accurate, and the declarations are consistent with the conclusions of Judge Crockett, in which he  
24 determined that residents purchased property in the community in reliance on the Master  
25 Development Plan.<sup>7</sup>

26  
27 <sup>7</sup> See also *Circus Circus*, 99 Nev. at 62-63 (recognizing that whether a conditional privilege exists  
28 is a question of law for the court and plaintiff's burden to show malice is a question that "goes to  
the jury only if there is sufficient evidence for the jury to reasonably to infer that the publication  
was made with malice in fact")(citations omitted).

1 In sum, Defendants cannot be liable for the claims asserted by Plaintiffs relating to their  
2 actions in gathering, soliciting and/or executing the form declarations, because they are subject to  
3 absolute and qualified privilege protection.

4 C. **The Motion To Dismiss Should Be Granted Now, And Discovery Should Not**  
5 **Be Permitted Prior to Making That Determination.**

6 Finally, in the alternative, Plaintiffs request discovery to find a basis for a claim for relief  
7 that they have not yet been able to identify. But simply stated, that is not how this process works.  
8 Under NRCP 11, Plaintiffs and their counsel must know of an actionable claim *before* they bring  
9 suit, not start a lawsuit in hopes that something will turn up during discovery. There is no basis  
10 for Plaintiffs' suggestion that *Rocker v. KPMG, LLP*, 122 Nev. 1185, 148 P.3d 703 (2006),  
11 approves their backward approach. Rather, as discussed above, that decision becomes applicable  
12 only after Plaintiffs have "state[d] facts supporting a strong inference of fraud," 122 Nev. at 1195,  
13 which they have yet to manage here.

14 **III. CONCLUSION**

15 Because Plaintiffs do not adequately state a claim and because Defendants acts were  
16 privileged, as a matter of law, Defendants respectfully request that the Court dismiss Plaintiffs'  
17 claims, with prejudice.

18 DATED this 9<sup>th</sup> day of May, 2018.

19 BROWNSTEIN HYATT FARBER SCHRECK, LLP

20  
21 BY: /s/ Mitchell J. Langberg  
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DANIEL OMERZA, DARREN BRESEE, and  
26 STEVE CARIA  
27  
28

**CERTIFICATE OF SERVICE**

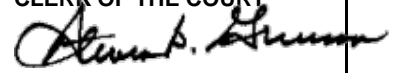
I HEREBY CERTIFY that I am an employee of Brownstein Hyatt Farber Schreck, LLP, and pursuant to NRCP 5(b), EDCR 8.05, Administrative Order 14-2, and NEFCR 9, I caused a true and correct copy of the foregoing **DEFENDANTS' REPLY BRIEF IN SUPPORT OF MOTION TO DISMISS PURSUANT TO NRCP 12(B)(5)** submitted electronically for filing and/or service with the Eighth Judicial District Court via the Court's Electronic Filing System on the 9th day of May, 2018, to the following:

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9 *Attorneys For Defendants*  
10 *DANIEL OMERZA, DARREN BRESEE,*  
11 *and STEVE CARIA*

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

14 FORE STARS, LTD., a Nevada Limited  
15 Liability Company; 180 LAND CO., LLC,  
16 a Nevada Limited Liability Company;  
17 SEVENTY ACRES, LLC, a Nevada  
18 Limited Liability Company,

19 Plaintiff,

20 v.

21 DANIEL OMERZA, DARREN BRESEE,  
22 STEVE CARIA, and DOES 1 THROUGH  
23 1000,

24 Defendants.

CASE NO.: A-18-771224-C  
DEPT. NO.: II

**DEFENDANTS' REQUEST FOR  
JUDICIAL NOTICE IN SUPPORT OF (1)  
DEFENDANTS' REPLY IN SUPPORT OF  
SPECIAL MOTION TO DISMISS (ANTI-  
SLAPP MOTION) PLAINTIFFS'  
COMPLAINT PURSUANT TO NRS §41.635  
ET. SEQ. AND (2) DEFENDANTS' REPLY  
IN SUPPORT OF MOTION TO DISMISS  
PURSUANT TO NRCP 12(B)(5)**

Hearing Date: May 14, 2018

Hearing Time: 9:00 a.m.

25 Pursuant to Nevada Revised Statutes Section 47.130 and 47.150, Defendants Daniel  
26 Omerza, Darren Bresee, and Steve Caria, hereby request that this Court take judicial notice of the  
27 following document in support of their reply briefs in support of their Special Motion to Dismiss  
28 (Anti-SLAPP Motion) Plaintiffs' Complaint Pursuant to NRS § 41.635, *et seq.* and Motion to  
Dismiss Pursuant to NRCP 12(b)(5).

(1) City Council Meeting of February 21, 2018, Verbatim Transcript – Agenda Items 122  
through 131, publicly available at:  
[http://www5.lasvegasnevada.gov/sirepub/view.aspx?cabinet=published\\_meetings&fileid=151114](http://www5.lasvegasnevada.gov/sirepub/view.aspx?cabinet=published_meetings&fileid=151114)  
21, attached hereto as **Exhibit 1**.



Judicial notice of the foregoing is warranted. *See* NRS 47.130(2)(b)(providing that a fact that is "[c]apable of accurate and ready determination by resort to resources whose accuracy cannot reasonably be questioned" is judicially noticeable); *see also Breliant v. Preferred Equities Corp.*, 109 Nev. 842, 847, 858 P.2d 1258, 1261 (1993)(court may consider matters of public record in ruling on a motion to dismiss)(citations omitted).

DATED this 9th day of May, 2018.

BROWNSTEIN HYATT FARBER SCHRECK, LLP

BY: /s/ Mitchell J. Langberg

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*Counsel for Defendants*

DANIEL OMERZA, DARREN BRESEE, and  
STEVE CARIA

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I am an employee of Brownstein Hyatt Farber Schreck, LLP, and pursuant to NRCP 5(b), EDCR 8.05, Administrative Order 14-2, and NEFCR 9, I caused a true and correct copy of the foregoing **DEFENDANTS' REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF (1) DEFENDANTS' REPLY IN SUPPORT OF SPECIAL MOTION TO DISMISS (ANTI-SLAPP MOTION) PLAINTIFFS' COMPLAINT PURSUANT TO NRS §41.635 ET. SEQ. AND (2) DEFENDANTS' REPLY IN SUPPORT OF MOTION TO DISMISS PURSUANT TO NRCP 12(b)(5)** be submitted electronically for filing and/or service with the Eighth Judicial District Court via the Court's Electronic Filing System on the 9th day of May, 2018, to the following:

James J. Jimmerson, Esq.  
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Email: [ks@jimmersonlawfirm.com](mailto:ks@jimmersonlawfirm.com)

*Attorneys for Plaintiffs*

/s/ DeEtra Crudup  
an employee of Brownstein Hyatt Farber Schreck, LLP

16799254

# **EXHIBIT 1**

**CITY COUNCIL MEETING OF**

**FEBRUARY 21, 2018**

**VERBATIM TRANSCRIPT – AGENDA ITEMS 122 THROUGH 131**

1 **ITEM 122 - GPA-72220 - GENERAL PLAN AMENDMENT - PUBLIC HEARING -**  
2 **APPLICANT/OWNER: 180 LAND CO, LLC - For possible action on a request for a**  
3 **General Plan Amendment FROM: PR-OS (PARKS/RECREATION/OPEN SPACE) TO:**  
4 **ML (MEDIUM LOW DENSITY RESIDENTIAL) on 132.92 acres on the east side of**  
5 **Hualapai Way, approximately 830 feet north of Charleston Boulevard (APNs 138-31-601-**  
6 **008; and 138-31-702-003 and 004), Ward 2 (Seroka) [PRJ-72218]. The Planning**  
7 **Commission vote resulted in a tie, which is tantamount to a recommendation of DENIAL.**  
8 **Staff recommends APPROVAL.**

9  
10 **ITEM 123 - WVR-72004 - WAIVER - PUBLIC HEARING - APPLICANT/OWNER: 180**  
11 **LAND CO, LLC, ET AL - For possible action on a request for a Waiver TO ALLOW 40-**  
12 **FOOT PRIVATE STREETS WITH NO SIDEWALKS WHERE 47-FOOT PRIVATE**  
13 **STREETS WITH FIVE-FOOT SIDEWALKS ON BOTH SIDES ARE REQUIRED**  
14 **WITHIN A PROPOSED GATED RESIDENTIAL DEVELOPMENT on a portion of 71.91**  
15 **acres on the north side of Verlaine Court, east of Regents Park Road (APN 138-31-601-008;**  
16 **138-32-202-001; 138-32-210-008; and 138-32-301-007), R-PD7 (Residential Planned**  
17 **Development - 7 Units per Acre) and PD (Planned Development) Zones, Ward 2 (Seroka)**  
18 **[PRJ-71990]. The Planning Commission (4-2-1 vote) and Staff recommend APPROVAL.**

19  
20 **ITEM 124 - SDR-72005 - SITE DEVELOPMENT PLAN REVIEW RELATED TO WVR-**  
21 **72004 - PUBLIC HEARING - APPLICANT/OWNER: 180 LAND CO, LLC, ET AL - For**  
22 **possible action on a request for a Site Development Plan Review FOR A PROPOSED 75-**  
23 **LOT SINGLE FAMILY RESIDENTIAL DEVELOPMENT on a portion of 71.91 acres on**  
24 **the north side of Verlaine Court, east of Regents Park Road (APNs 138-31-601-008; 138-32-**  
25 **202-001; 138-32-210-008; and 138-32-301-007), R-PD7 (Residential Planned Development -**  
26 **7 Units per Acre) and PD (Planned Development) Zones, Ward 2 (Seroka) [PRJ-71990].**  
27 **The Planning Commission (4-2-1 vote) and Staff recommend APPROVAL.**

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**ITEM 125 - ABEYANCE - TMP-72006 - TENTATIVE MAP RELATED TO WVR-72004 AND SDR-72005 - PARCEL 2 @ THE 180 - PUBLIC HEARING - APPLICANT/OWNER: 180 LAND CO, LLC - For possible action on a request for a Tentative Map FOR A 75-LOT SINGLE FAMILY RESIDENTIAL SUBDIVISION on 22.19 acres on the north side of Verlaine Court, east of Regents Park Road (APN 138-31-601-008), R-PD7 (Residential Planned Development - 7 Units per Acre) Zone, Ward 2 (Seroka) [PRJ-71990]. The Planning Commission (4-2-1 vote) and Staff recommend APPROVAL.**

**ITEM 126 - WVR-72007 - WAIVER - PUBLIC HEARING - APPLICANT/OWNER: 180 LAND CO, LLC, ET AL - For possible action on a request for a Waiver TO ALLOW 40-FOOT PRIVATE STREETS WITH NO SIDEWALKS WHERE 47-FOOT PRIVATE STREETS WITH FIVE-FOOT SIDEWALKS ON BOTH SIDES ARE REQUIRED on a portion of 126.65 acres on the east side of Hualapai Way, approximately 830 feet north of Charleston Boulevard (APN 138-31-702-003; 138-32-202-001; 138-32-210-008; and 138-32-301-007), R-PD7 (Residential Planned Development - 7 Units per Acre) and PD (Planned Development) Zones, Ward 2 (Seroka) [PRJ-71991]. The Planning Commission (4-2-1 vote) and Staff recommend APPROVAL.**

**ITEM 127 - SDR-72008 - SITE DEVELOPMENT PLAN REVIEW RELATED TO WVR-72007 - PUBLIC HEARING - APPLICANT/OWNER: 180 LAND CO, LLC, ET AL - For possible action on a request for a Site Development Plan Review FOR A PROPOSED 106-LOT SINGLE FAMILY RESIDENTIAL DEVELOPMENT on a portion of 126.65 acres on the east side of Hualapai Way, approximately 830 feet north of Charleston Boulevard (APNs 138-31-702-003; 138-32-202-001; 138-32-210-008; and 138-32-301-007), R-PD7 (Residential Planned Development - 7 Units per Acre) and PD (Planned Development) Zones, Ward 2 (Seroka) [PRJ-71991]. The Planning Commission (4-2-1 vote) and Staff**

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55 **recommend APPROVAL.**

56  
57 **ITEM 128 - ABEYANCE - TMP-72009 - TENTATIVE MAP RELATED TO WVR-72007**  
58 **AND SDR-72008 - PARCEL 3 @ THE 180 - PUBLIC HEARING -**  
59 **APPLICANT/OWNER: 180 LAND CO, LLC - For possible action on a request for a**  
60 **Tentative Map FOR A 106-LOT SINGLE FAMILY RESIDENTIAL SUBDIVISION on**  
61 **76.93 acres on the east side of Hualapai Way, approximately 830 feet north of Charleston**  
62 **Boulevard (APN 138-31-702-003), R-PD7 (Residential Planned Development - 7 Units per**  
63 **Acre) Zone, Ward 2 (Seroka) [PRJ-71991]. Staff recommends APPROVAL.**

64  
65 **ITEM 129 - WVR-72010 - WAIVER - PUBLIC HEARING - APPLICANT/OWNER: 180**  
66 **LAND CO, LLC, ET AL - For possible action on a request for a Waiver TO ALLOW 40-**  
67 **FOOT PRIVATE STREETS WITH NO SIDEWALKS WHERE 47-FOOT PRIVATE**  
68 **STREETS WITH FIVE-FOOT SIDEWALKS ON BOTH SIDES ARE REQUIRED**  
69 **WITHIN A PROPOSED GATED RESIDENTIAL DEVELOPMENT on a portion of 83.52**  
70 **acres on the east side of Palace Court, approximately 330 feet north of Charleston**  
71 **Boulevard (APN 138-31-702-004; 138-32-202-001; 138-32-210-008; and 138-32-301-007), R-**  
72 **PD7 (Residential Planned Development - 7 Units per Acre) and PD (Planned Development)**  
73 **Zones, Ward 2 (Seroka) [PRJ-71992]. The Planning Commission (4-2-1 vote) and Staff**  
74 **recommend APPROVAL.**

75  
76 **ITEM 130 - SDR-72011 - SITE DEVELOPMENT PLAN REVIEW RELATED TO WVR-**  
77 **72010 - PUBLIC HEARING - APPLICANT/OWNER: 180 LAND CO, LLC, ET AL - For**  
78 **possible action on a request for a Site Development Plan Review FOR A PROPOSED 53-**  
79 **LOT SINGLE FAMILY RESIDENTIAL DEVELOPMENT on a portion of 83.52 acres on**  
80 **the east side of Palace Court, approximately 330 feet north of Charleston Boulevard (APNs**  
81 **138-31-702-004; 138-32-202-001; 138-32-210-008; and 138-32-301-007), R-PD7 (Residential**

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**Planned Development - 7 Units per Acre) and PD (Planned Development) Zones, Ward 2 (Seroka) [PRJ-71992]. The Planning Commission (4-2-1 vote) and Staff recommend APPROVAL.**

**ITEM 131 - TMP-72012 - TENTATIVE MAP RELATED TO WVR-72010 AND SDR-72011 - PARCEL 4 @ THE 180 - PUBLIC HEARING - APPLICANT/OWNER: 180 LAND CO, LLC - For possible action on a request for a Tentative Map FOR A 53-LOT SINGLE FAMILY RESIDENTIAL SUBDIVISION on 33.80 acres on the east side of Palace Court, approximately 330 feet north of Charleston Boulevard (APN 138-31-702-004), R-PD7 (Residential Planned Development - 7 Units per Acre) and PD (Planned Development) Zones, Ward 2 (Seroka) [PRJ-71992]. The Planning Commission (4-2-1 vote) and Staff recommend APPROVAL.**

**Appearance List:**

CAROLYN G. GOODMAN, Mayor

STEVEN G. SEROKA, Councilman

BRADFORD JERBIC, City Attorney

PETER LOWENSTEIN, Deputy Planning Director

LUANN D. HOLMES, City Clerk

BOB COFFIN, Councilman (via teleconference)

MICHELE FIORE, Councilwoman

STAVROS S. ANTHONY, Councilman

STEPHANIE ALLEN, Legal Counsel for the Applicant

MARK HUTCHISON, Legal Counsel for 180 Land Co, LLC, Seventy Acres LLC and Fore Stars, Ltd.

FRANK SCHRECK, Queensridge Resident

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108 **Appearance List (cont'd):**

109 TODD BICE, Legal Counsel for the Queensridge Homeowners

110 LISA MAYO, Concerned Citizen

111

112 (38 minutes, 17 seconds) [02:59:21 - 03:37:38]

113 Typed by: Speechpad.com

114 Proofed by: Debra A. Outland

115

116 **MAYOR GOODMAN**

117 Now, goodness, we are gonna pull forward at your request?

118

119 **COUNCILMAN SEROKA**

120 Yes, Ma'am.

121

122 **MAYOR GOODMAN**

123 Okay. We are pulling forward Agenda Items 122 through 131. And so, shall I start, or shall you  
124 start, Mr. Jerbic?

125

126 **CITY ATTORNEY JERBIC**

127 If you could ask the Clerk —

128

129 **MAYOR GOODMAN**

130 Can you turn on your mic? Or it's not hearing you.

131

132 **CITY ATTORNEY JERBIC**

133 I'm sorry. It's on, but it's just away from my mouth.



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134 **MAYOR GOODMAN**

135 Thank you.

136

137 **CITY ATTORNEY JERBIC**

138 It was my understanding that the motion to abey included Items 122 through 131. Is that correct?

139

140 **MAYOR GOODMAN**

141 No.

142

143 **CITY ATTORNEY JERBIC**

144 No. They were on the call-off sheet, but they were not part of your motion.

145

146 **MAYOR GOODMAN**

147 And – Right.

148

149 **CITY ATTORNEY JERBIC**

150 Okay.

151

152 **MAYOR GOODMAN**

153 They were not – I did not speak to those. So, at the request of Councilman Seroka, we've asked  
154 to pull those forward. And so I – think before I even begin to discuss those, you on legal have  
155 some issues to address before I even speak.

156

157 **CITY ATTORNEY JERBIC**

158 Just very quickly, Your Honor. Prior to today's hearing, there have been two letters sent to  
159 Councilman Coffin and to Councilman Seroka by the law firm of Hutchison & Steffen. Both

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160 letters claim, for different reasons, that they each have conflicts that should prevent them from  
161 voting.

162

163 With respect to Councilman Coffin, who is on the line, this is the same argument that, to my  
164 knowledge, was made earlier when Coffin, Councilman Coffin voted on similar items in the past,  
165 and we advised that he did not have a conflict of interest. There's an objective and a subjective  
166 portion to the test. One is, is he objectively disqualified under Nevada law? We don't believe so.  
167 Of course, if somebody has a feeling of prejudice that would cause them to feel that they couldn't  
168 make an impartial judgment, they should always abstain. Councilman Coffin made a record  
169 before that he does not feel that he is prejudiced by anything that would cause him to not be  
170 objective, and so he was advised that he could vote then. And I'm giving that same advice today.

171

172 With respect to Councilman Seroka, it has been argued that, during the campaign, he made  
173 comments and at other meetings he made comments regarding an application, which is not  
174 before this body today, a development agreement, that have indicated some mindset that causes  
175 him to not be impartial today and therefore denies the Applicant due process of law as he sits in a  
176 quasi-judicial capacity.

177

178 Before I begin, I had asked Mr. Lowenstein, prior to today's meeting, Items 121 [sic] through  
179 131 involve applications for three separate projects, but they are in 10 items on today's agenda.  
180 Can you tell me, Mr. Lowenstein, when those items first came to the City's attention? Not the  
181 City Council's attention, but the City of Las Vegas, when those applications were submitted for  
182 processing?

183

184 **PETER LOWENSTEIN**

185 Through you, Madame Mayor, the first time the projects were created in our database system  
186 was October 26th and then the subsequent child applications later that month, on October 30th.

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187 **CITY ATTORNEY JERBIC**

188 That was October 26th of 2017?

189

190 **PETER LOWENSTEIN**

191 That is correct.

192

193 **CITY ATTORNEY JERBIC**

194 Okay. The, I have opined to Councilman Seroka that these applications came long after the  
195 election. Any comments made during the campaign about a development agreement are  
196 completely unrelated to the three applications here today. Furthermore, these arguments were not  
197 made at the time Councilman Seroka voted on the development agreement, and if they had any  
198 relevance at all, which I don't believe they do, they should have been made at that point in time  
199 regarding the development agreement. He could not possibly have made comments during the  
200 campaign about applications that didn't even exist until months later.

201

202 Therefore, I have opined for that and other reasons that Councilman Seroka does not have a  
203 conflict of interest and he can vote on both the abeyance item and any, if it comes back in the  
204 future, on the merits of these items. So having made that record, I understand there's going to be  
205 a suggestion by Councilman Seroka or you, Your Honor, that these items be continued at this  
206 point in time.

207

208 **MAYOR GOODMAN**

209 I should read these all into the record, correct, first?

210

211 **CITY ATTORNEY JERBIC**

212 I think – you can state generally what was stated on the callout sheet, which is –

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213 **MAYOR GOODMAN**

214 And that would – Okay.

215

216 **CITY ATTORNEY JERBIC**

217 I think you can state that this involves Items 122 through 131, and then –

218

219 **MAYOR GOODMAN**

220 And just read those numbers?

221

222 **CITY ATTORNEY JERBIC**

223 If you want, I'll read them, or you can read them, if you want.

224

225 **MAYOR GOODMAN**

226 No, I prefer you read them.

227

228 **CITY ATTORNEY JERBIC**

229 Sure. It's Item 122 through 131, which is GPA-72220 –, WVR-72004, SDR-72005, TMP-72006,

230 WVR-72007, SDR-72008, TMP-72009, WVR-72010, SDR-72011, and TMP-72012,

231 Applicant/Owner 180 Land Company, LLC and 180 Land Company, LLC, et al. regarding these

232 multiple parcels. The request is to abey these items until May 16th, 2018 made by the –

233

234 **MAYOR GOODMAN**

235 And could you make a statement as to the fact that we are a body sitting here of four with

236 another Councilperson on the line and that in order for that abeyance to pass, it will need – I'd

237 like you to speak to that.

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238 **CITY ATTORNEY JERBIC**

239 It will need four votes. Under Nevada law, anything that comes before this Council requires a  
240 majority of the governing body. The governing body in this case is seven members. A majority is  
241 four. No matter how many people are absent or sick, it's going to require four votes on anything.  
242 The only exception to that is if an individual receives a written opinion from the Chief Legal  
243 Counsel of the City indicating they have an ethical conflict under Nevada law 281A. Then you  
244 reduce the governing body by whatever number of written opinions are given.  
245 No written opinions have been given in this case. So the governing body remains seven, and  
246 anything today requires four votes. So a motion to hold this in abeyance is going to require four  
247 votes, and a motion on any one of these applications, 122 through 131, if they were heard today,  
248 would also require four votes.

249

250 **MAYOR GOODMAN**

251 And that does include the fact that we have a vacancy with no one serving as Councilperson in  
252 Ward 5?

253

254 **CITY ATTORNEY JERBIC**

255 That's correct. Nevada law does not grant you a – pass because somebody is not in office.

256

257 **MAYOR GOODMAN**

258 Okay. Well, with that under consideration and knowing that we will have someone, and I'd like  
259 to hear from the City Clerk again what is the timeline for the vote on Ward 5, and then what  
260 would be the opportunity for seating that individual once that individual is voted in.

261

262 **LUANN HOLMES**

263 So, election day for Ward 5 will be March 27th. We will canvas the votes the first meeting in  
264 April, which is April 4th. We will seat them on April 18th. That's when they'll actually be seated.

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265 And the May 16th date that you're speaking of is approximately 30 days after that new  
266 Councilperson seats.

267

268 **MAYOR GOODMAN**

269 Okay. Well, having spoken to legal staff and knowing Councilwoman is not here – Are you still  
270 there, Councilman? Are you still there?

271

272 **COUNCILMAN COFFIN**

273 I'm still here. (Inaudible) phone ringing.

274

275 **MAYOR GOODMAN**

276 Okay.

277

278 **COUNCILWOMAN FIORE**

279 I don't think he's got his phone on mute. Tell him to put his phone on mute.

280

281 **MAYOR GOODMAN**

282 Oh yes, you can put your phone on mute. Anyway because of —

283

284 **COUNCILMAN COFFIN**

285 (Inaudible)

286

287 **MAYOR GOODMAN**

288 Thank you.

289

290 **COUNCILMAN COFFIN**

291 (Inaudible)

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292 **MAYOR GOODMAN**

293 Okay, thank you. Because of the vacancy and because Councilwoman isn't here today to  
294 participate in this discussion and because of the fact, obviously, Councilman Coffin is abroad  
295 and unable to be here as well, to me, it is, it's a really, it's a disservice to this two-and-a-half-year  
296 process to go ahead and hold hearings on this and make some decisions.

297 So the recommendation to abey it, giving enough time to the new Councilperson in Ward 5 to be  
298 brought up to speed and have opportunity to consult with Staff and Councilmembers as they  
299 choose, additionally to have Councilwoman here and Councilman Coffin back in – place with us,  
300 I really believe the best thing for us to be doing is to go ahead and abeying this until we can get  
301 that together. I have from day one, when we first heard this back, I think it was in October of '16,  
302 said that there's going to be no winner in this unless this is mediated and a, an agreement  
303 somehow is reached among the parties.

304

305 And as you all well know, there are several lawsuits out there, and my feeling is, even though  
306 there's been a district judge determination, that will be appealed and it will end up at the Nevada  
307 Supreme Court. There is not a one of us that sits on this Council that's an attorney that can make  
308 a determination as to what in the language prevails and takes precedent.

309

310 And therefore, being in that and with the vacancy in 5 and with Councilwoman not here and  
311 Councilman Coffin here on the phone, my motion is going to be to abey it for these reasons. And  
312 asking too for this, I'm gonna to turn to guidance from our staff as to hearing on this. The vote, is  
313 it best to hear from everyone first, or am I at liberty to ask for a motion and –

314

315 **CITY ATTORNEY JERBIC**

316 I believe since you would not be hearing it on the merits if the motion passes, you are not under  
317 obligation to have a hearing today on anything since the hearing will be – we'll see how the  
318 motion goes. If the motion doesn't pass and you're gonna hear it today, then you'll have a

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319 hearing. And if you, the motion does pass, then there will be a hearing on whatever given date  
320 you set the – items to.

321

322 **MAYOR GOODMAN**

323 Okay. Councilman Anthony?

324

325 **COUNCILMAN ANTHONY**

326 What's – the date again, Luann?

327

328 **LUANN HOLMES**

329 May 16th.

330

331 **COUNCILMAN ANTHONY**

332 May 16th. So, I will make a motion to abey Agenda Items 122 through 131 until May 16th.

333

334 **MAYOR GOODMAN**

335 So there is a motion. I'm holding off on you, Councilman Coffin, until all of us have voted. And  
336 then once I see everybody there, now I'll ask for your vote?

337

338 **COUNCILMAN COFFIN**

339 I vote aye.

340

341 **STEPHANIE ALLEN**

342 Your Honor, before the vote, do we have an opportunity on – Oh, I guess not.

343

344 **MAYOR GOODMAN**

345 And so, if you would post this. Did I miss – It – was, It's all ayes on the abeyance. **(Motion**



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346 **carried with Tarkanian excused)** So, at this point, it will be heard on the 16th of May, and can  
347 we make it the first item on the agenda, the first item on the afternoon agenda, if that would  
348 work? And Mr. Jerbic, do – Is there appropriate to hear from anybody or no?

349

350 **CITY ATTORNEY JERBIC**

351 Since you've already voted the – If anybody wants to make a record, I know that Mr. Hutchinson  
352 is here; I'm sure he wants to make a record.

353

354 **MARK HUTCHISON**

355 Thank you.

356

357 **CITY ATTORNEY JERBIC**

358 I – would give him a certain amount of time. I wouldn't give an indefinite amount of time since  
359 we're not hearing this on the merits. I assume you just want to make a record on the two letters  
360 that you sent regarding disqualification?

361

362 **MARK HUTCHISON**

363 I am.

364

365 **CITY ATTORNEY JERBIC**

366 Okay.

367

368 **MARK HUTCHISON**

369 Yes, Mr. Jerbic and – Madame Mayor, if I may make a record on – that matter, and just for the  
370 record, we – vehemently oppose any kind of abeyance and continued delay of this matter.

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371 **MAYOR GOODMAN**

372 Oh, I'm sorry.

373

374 **MARK HUTCHISON**

375 I under –

376

377 **MAYOR GOODMAN**

378 Could you repeat your name for the record? Thank you.

379

380 **MARK HUTCHISON**

381 Sure. This is Mark Hutchison. And Your Honor and members of the – City Council, I am  
382 appearing on behalf of my clients in my private capacity as legal counsel for 180 Land, Seventy  
383 Acres, and Fore Stars, which are applications that you have just abated and a question was, has  
384 surfaced that we raised before this vote occurred in terms of the impartiality, the prejudice, the  
385 bias of two members of this body.

386

387 And as a result, we sent out last week two letters, one dated February 15th and one dated  
388 February 16th, as you noted, Madame Mayor, and I'd like to have those presented to the Clerk  
389 and a matter of record for the purposes of this proceeding.

390

391 And I appreciate the opportunity to make a record. Appreciate the opportunity to be here to  
392 respectfully request this action by Councilman Coffin and by Councilman Seroka that they  
393 recuse themselves. We had asked before this vote that they recuse themselves. We heard nothing  
394 back, and so I'm just simply gonna make a record, and I will not belabor the points, Your Honor,  
395 that we have made previously in our letters, but I do think it's important for the City Council to  
396 hear this and for this to be a matter of record as we proceed.

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397 Mr. Coffin is a member of this Council who has served admirably. Mr. Seroka is a member of  
398 this Council who's served admirably. But on these applications, they should not be permitted to  
399 participate.

400

401 Mr. Coffin has repeatedly and publicly demonstrated a personal animus towards the Applicant's  
402 principal, Mr. Yohan Lowie, for reasons that are completely unconnected with the merits of the  
403 application. Mr. Lowie is of Israeli nationality. He's of the Jewish faith. Mr. Coffin, perhaps, the  
404 most egregious examples of why he should not be allowed to participate and continue to be  
405 involved in either the deliberations or the votings on the applicants, applications of my clients is  
406 that he has publicly stated on multiple occasions that my client, Mr. Lowie, is treating the  
407 residents of Queensridge like the Jewish state of Israel allegedly treats "unruly Palestinians."

408

409 That's not the end of the factual bases for the request for recusal, however. And again, I want to  
410 be clear on the record, Mr. Jerbic. I'm not seeking recusal based on the ethics in government laws  
411 or 28, 281A. That may be part of the analysis. What I'm basing the recusal on is the U.S. and the  
412 Nevada Constitution that guarantees a fair tribunal when a body like a city council is sitting on a  
413 land use application or a business license application.

414

415 Once this body assumes that position, you are now in a quasi-judicial proceeding. You are no  
416 longer strictly in some sort of a policy-making proceeding or a legislative-making decision,  
417 proceeding. This body is unlike the Nevada legislature. You sit on, adjudge people's property  
418 rights. And when you adjudge people's property rights, the due process clause of the Constitution  
419 applies. You have to act in conformity with a quasi-judicial capacity, and that quasi-judicial  
420 capacity requires you to be fair and impartial. Fair and impartial.

421

422 And that's the basis of our request for recusal. We don't believe that my client can receive a fair  
423 hearing when Councilman Coffin has expressed the sentiments he has towards my client's

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nationality and religion. In a early meeting in 2015, in a meeting with my client, he simply told him that he would not, as well, take an interest adversed to a friend of his who lived in Queensridge and would not be going against an interest, his interest.

In April of 2016, in another meeting with representatives of the property owners and with his friend present at that meeting, he instructed my clients to hand over the 183 acres with certain water rights in perpetuity and that was a fair deal and they should accept it.

In a January 2017 meeting, when meeting with Mr. Lowie, he once again compared Mr. Lowie's personal actions in pursuing the development of the properties to Netanyahu's settlement of the West Bank. He then doubled down on this in a letter to Todd Polikoff, who's the President of Jewish Nevada, when he protested in a letter to Councilman Coffin and Mr. Lowie accused Mr. Lowie of pursuing the acquisition of the properties in an opportunistic manner. He classified his actions as inconsiderate and again compared Mr. Lowie's business decisions to the highly political and divisive issue of the Jewish settlements in the West Bank.

In an April 17th, 2000 meeting with Mr. Spiegel, he told him that the only issue that mattered to Councilman Coffin was a statement that was made to Mr. Lowie regarding the unruly Palestinians, and he stated that the issue, until that issue was remedied, he could not be impartial in any application that the property owners would bring forward. He made then good on his comments and denied every application that came before him submitted by my – clients, the property owners.

Mr. Seroka has, and – in contrary again, Mr. Jerbic, to your – points, it's just not about what happened during the campaign. It's that and more. But once you – move from being in a judicial role to being in an advocate role, you cease to be a fair and impartial arbiter of facts. And

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450 Councilman Seroka has become an advocate in opposition to the applications that are before this  
451 City Council.

452

453 Beginning with his campaign handouts, he says that the property owners would be required to  
454 participate in a property swap – regardless of the property rights currently held by the property  
455 owners. He also – His plan highlighted that he was unwilling to even consider the property  
456 owner's rights and development plans.

457

458 In a February 14th, 2017 Las Vegas Planning Commission meeting, while wearing the Steve  
459 Seroka for Las Vegas City Council pin, he strongly advocated against my client's property rights  
460 and development plans, stating “Over my dead body will I allow a project that will drive  
461 property values down 30 percent. Over my dead body will I allow a project that will set a  
462 precedent that will ripple across the community, that those property values not affected in  
463 Queensridge, but throughout the entire community.”

464

465 He then asked the County – Mr. Seroka then asked the Commissioners to reject the Staff's  
466 approval and recommendation to deny the applications. The following day at the City Council  
467 meeting, he stated “I'm against this project.”

468

469 After Mr. Seroka's election, at a town hall meeting in November 29th, 2017, the Queensridge  
470 Clubhouse, he stated that having the City Staff follow the letter of the law when reviewing  
471 development applications is “The stupidest thing in the world in this case.”

472

473 He continued then by encouraging Queensridge homeowners to send in opposition to the  
474 Planning Commissions and to the City Council.

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**VERBATIM TRANSCRIPT – AGENDA ITEMS 122 THROUGH 131**

475 At the August 2nd, 2017 City Council hearing for the proposed development agreement for the  
476 entire properties, negotiated by City Staff, including the City Attorney, and after delivering what  
477 appeared to be pre-scripted remarks, he made a motion to deny the development agreement  
478 shortly thereafter.

479

480 At another City Council meeting, September 6th, 2017, he then proposed a six-month  
481 moratorium, specifically targeting development of my client's property, further delaying what  
482 has already been a long and tortured and delayful process.

483

484 In short, Councilman Seroka has become an outspoken advocate against my client's property  
485 rights and have actively squelched timely consideration of my client's application. As I say, why  
486 does – all this matter? Because you're a government body. The Constitution applies to you. My  
487 client has Constitutional rights and property interests that must be protected. And if you are  
488 unfair or if you're biased, the due process clause of the Nevada Constitution and the U.S.  
489 Constitution is violated.

490

491 You are – You sit in judicial roles in a quasi-judicial fashion, and the law adjudges you by the  
492 principles that we would judge a judge in terms of impartiality. We would never allow a judge to  
493 be both an advocate and then sit and be the judge of that case. That's exactly what Councilman  
494 Seroka is doing. We would never allow a judge to express anti-religious and anti-nationality  
495 comments and then to sit as a judge.

496

497 So the basis of all of these points, Madame Mayor, is that my client cannot receive a fair hearing  
498 or have a fair and impartial tribunal as is required under the Constitution, and I respectfully ask,  
499 again, that Councilman Seroka and Councilman Coffin no longer participate in these proceedings  
500 and no longer vote.

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501 I do have, I do have one – suggestion for you, Your Honor, and that's this. If – it really is so  
502 important to this Council that this property not be developed, then just simply concede to inverse  
503 condemnation, and then we'll just be arguing about value. You can get rid of all of these  
504 applications. You can get rid of all the neighbors. You can get rid of all of the headaches that you  
505 have. If it really is your intention not to allow the property owner to develop, just concede to the  
506 inverse condemnation –

507

508 **CITY ATTORNEY JERBIC**

509 Mr. Hutchison?

510

511 **MARK HUTCHISON**

512 – because you've got one of two choices.

513

514 **CITY ATTORNEY JERBIC**

515 Mr. Hutchison? You were given time to make your record on disqualification. You are going  
516 way afar from the two letters that you filed talking about inverse condemnation. Do you have  
517 anything else to say with respect to your attempt to recuse both Councilman Coffin and  
518 Councilman Seroka, specifically?

519

520 **MARK HUTCHISON**

521 My – Mr. Jerbic, my follow-up remarks were addressed to that point that you can avoid all of  
522 this by simply ceding the inverse condemnation. Those are my remarks. Madame Mayor, thank  
523 you for the time. Members of the City Council, thank you for your time, and I ask that you take  
524 these matters very seriously. They involve Constitutional rights and my client's property interest.  
525 Thank you.

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526 **MAYOR GOODMAN**

527 Mr. Jerbic, the only other item would be anybody who wishes to comment on the abeyance  
528 alone?

529

530 **CITY ATTORNEY JERBIC**

531 I – don't know that any comment is necessary, but I have a couple of comments that I would like  
532 to put on the record. And, you can make a decision if you want to comment at the end of that.

533

534 This is really between right now Mr. Hutchison's letters and the City Council. I will say that we  
535 looked at these matters and take them very seriously. I can say there was a court ruling just  
536 recently where the judge took the bench and read the decision before he took any oral argument.

537 This Council reads background information all the time before hearing testimony of the public.

538 Everybody comes to this Council with some feeling one way or the other on just about every  
539 item. And, if it were true that you have to be Caesar's wife to sit on a City Council and not have  
540 any opinion about anything before you sit down, then nobody's ever voting on any issue ever. So

541 I – don't agree with the characterization of the frame of mind that individuals have to have.

542

543 If an individual were to say I'm against alcohol and therefore I will never vote for any application  
544 that approves a liquor store, or I'm against a strip club and because it's against my religious  
545 belief, I can never vote for one, or because I'm against any golf course conversion and can never  
546 vote for one, I would understand the point. But for an individual during a campaign to talk about  
547 a development agreement and these issues weren't even raised when he voted on the  
548 development agreement, and today he's got three issues before him that are completely different  
549 from the development agreement, which involved over 2,000 multi-family homes, this doesn't.  
550 This involves 235 single-family homes, and he hasn't made a single comment, to my knowledge,  
551 other than I want to work with the Applicant and the neighbors.



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552 Further, let me state that advocating for neighbors is not the same as advocating against an  
553 applicant. I think every good elected official, in my opinion, advocates for their constituents.  
554 And if the standard is that by advocating for your constituents, you have somehow placed  
555 yourself in an adversary position to any applicant and can never vote, then nobody on this  
556 Council is ever voting on any application ever in the planning session of the Council meeting. So  
557 I – wanted to put that on record.

558

559 The other thing I will state is that I have been directed by Councilman Seroka many times to  
560 reach out to the Applicant and the neighborhood to see if a deal can still be reached. So, with that  
561 in mind, we have given the advice that Councilman Seroka does not need to disqualify himself,  
562 unless he feels for some subjective reason that he can't be fair, and he's indicated that he can.  
563 Second, let me state, and this is probably controversial, but let me state that the comments stated  
564 by Councilman Coffin, and he made this record earlier, and I don't know – Councilman Coffin,  
565 are you still on the phone?

566

567 **COUNCILMAN COFFIN**

568 Oh, yes. I'm eagerly listening.

569

570 **CITY ATTORNEY JERBIC**

571 Okay. Councilman Coffin has stated earlier, and I'm – paraphrasing here that you can read  
572 comments sometimes made by people two separate ways. To – compare somebody to a tough  
573 national leader, who negotiates very effectively on behalf of his people and says you don't have  
574 to behave that way, can be read one way as admiring somebody and saying you don't need to be  
575 that way in this negotiation, or it can be read the way you're choosing to read it, which is there is  
576 some anti-Jewish or anti-Israeli prejudice here. I think Councilman Coffin needs to address that  
577 directly and has in the past. Councilman, do you care to make a comment on that issue?

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578 **COUNCILMAN COFFIN**

579 Yes, I'm delighted to talk to all of this. First of all, I am following the advice of legal counsel on  
580 this – vote, so I will be voting. Perhaps (inaudible) has to take place soon, because there are  
581 many false statements in this letter, which I finally received a copy of it yesterday. It was  
582 delivered to our offices after the close of business, before a long weekend, and so Tuesday was  
583 the first day that I saw an email description of the letters which seems to repeat the same  
584 misstatements and falsehoods that were said earlier during the campaign against (inaudible).

585

586 So my point is that first of all, Mayor, I'd like – I'm sorry I can't be there to see the Lieutenant  
587 Governor's face, but I (inaudible) – Is he looking at you while he's making these statements or if  
588 he is righteously indignant. No answer. Therefore, he must be righteously indignant.

589

590 I have many times been on the campaign trail and seen a person make a statement, for example,  
591 Candidate A might say in advance during the campaign they are pro-life. Well, they know what  
592 that means, and I know what that means. However, (inaudible) but they make that position clear  
593 in order that people might rely on their vote to ensure their policy is continued. So the pro-life  
594 people vote for the candidate who is pro-life, perhaps Lieutenant Governor Hutchinson is of that  
595 mind, in which case if I like him, I'd vote for him because he's pro-life. Well, he hasn't even  
596 heard a case or a bill on pro-life or voted on one. So it could be that these kinds of circumstances  
597 can occur in the heat of a campaign.

598

599 Now, regarding my position, my position was that Bibi Netanyahu, the Prime Minister of Israel,  
600 who is a buffoon and who is leading his country into an eternal state of war. I am here in Korea  
601 with several hundred religious, political leaders who are trying to help get peace in the North  
602 Korean Peninsula and the South Korean. They are comprised of members of many faiths.

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603 I discussed this last night with a rabbi from Israel, as well as a couple of friends from Israel, all  
604 (inaudible) who said and they almost rolled off their chairs when they heard this argument that  
605 somehow those settlements would have anything to do with politics or anti-Semitism, because  
606 half of Israel is opposed to the settlements. So that is their statement. They could be wrong. They  
607 (inaudible) a few percentage points off, but I just wanted to say that this is an arguable  
608 proposition.

609

610 In any event, I grew up with members of many faiths and 66 years I have lived in Las Vegas, and  
611 the first time I have been accused of being bigoted would have been last year. He seems to  
612 continue to rely upon this, on this half-truth in order to secure my abstention, which would rob  
613 me of my vote and rob one-seventh of the citizens of Southern Nevada in the City of Las Vegas  
614 of a vote on this issue. I will not do that. I will vote for abeyance.

615

616 **MAYOR GOODMAN**

617 Well, and I believe just in response, the abeyance did carry. So it's on for the 16th of May. Now,  
618 Mr. Jerbic, we have some gentlemen in front of us. May they speak to the abeyance and that's it?

619

620 **CITY ATTORNEY JERBIC**

621 It is your call, Your Honor. There's no, nothing that legally prohibits them. It's your – It's only  
622 with your permission.

623

624 **MAYOR GOODMAN**

625 All right.

626

627 **FRANK SCHRECK**

628 Your – Honor.

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629 **MAYOR GOODMAN**

630 We will stay on the abeyance.

631

632 **FRANK SCHRECK**

633 No, we – would like to just address –

634

635 **TODD BICE**

636 We need to make –

637

638 **FRANK SCHRECK**

639 – the Lieutenant Governor's statements. Mine's very brief –

640

641 **TODD BICE**

642 We need to make –

643

644 **FRANK SCHRECK**

645 – and his is very brief.

646

647 **TODD BICE**

648 Yeash. We need to make our record on this as well. You allowed them to make a record on this.

649 We believe that it's appropriate that the record be accurate –

650

651 **FRANK SCHRECK**

652 Complete.

653

654 **TODD BICE**

655 – and complete on this –

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656 **MAYOR GOODMAN**

657 Okay.

658

659 **TODD BICE**

660 – as opposed to one-sided.

661

662 **MAYOR GOODMAN**

663 You're together –

664

665 **TODD BICE**

666 Yes.

667

668 **MAYOR GOODMAN**

669 – so can you share the time?

670

671 **FRANK SCHRECK**

672 No. I – Mine is going to be very short on one specific item that's personal.

673

674 **TODD BICE**

675 As is –

676

677 **FRANK SCHRECK**

678 He's going to be more general.

679

680 **TODD BICE**

681 As is mine. With all due respect to my friend, Mr. Hutchison, the legal, the – standard is not as

682 he articulates it. In fact, I almost wish it were, because if it were, the votes of this City Council in

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683 the past on behalf of this developer were blatantly unlawful if Mr. Hutchison were right. With all  
684 due respect to Councilman Beers, who's no longer here, he was this Applicant's biggest advocate  
685 and everybody knew it. And there have been other advocates for him on this, on the Council. So  
686 that is not the legal standard, number one.

687

688 Number two, I do not think it is an accident that this slander against the two Councilmen has  
689 escalated now after the district court has ruled that the developer bullied the City into violating  
690 the rights of the homeowners, and that is exactly what Judge Crockett has found is that this  
691 Applicant bullied the City into changing the rules to accommodate him.

692

693 And, this is exactly – I'm taking this right out of the judge's transcript, out of his statements. Is  
694 that one of the problems developed here is that this Applicant represented that he had secured  
695 pre-approval from every member on the City Council at the time he bought this property, outside  
696 of a public meeting in blatant violation of the open meeting law, if it's true. But Mr. – Lowie, I'll  
697 leave it to the others to assess his credibility, but Mr. Lowie's version of what happened is that he  
698 secured an unlawful agreement by the City Council to pre-approve his project outside of a public  
699 meeting. And that's what Judge Crockett called him on that, because that is exactly what he is –  
700 contending.

701

702 So, with all due respect to Mr. Hutchison, the party here who was trying to, by his own, by his  
703 words, rig the outcome of a vote was this Applicant. And the judge has set it aside. And he  
704 doesn't like that fact, and so now he's resorted to slandering Councilmembers. I think that just  
705 speaks volumes about this Applicant and why this problem, why this has escalated in the fashion  
706 that it has.

707

708 So, with that in mind, under the actual law, there is no violation of anybody's rights here. The  
709 only rights that have been violated were the rights of the homeowners, and the court has so found

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710 that. And, I'll turn it over to Mr. Schreck –

711

712 **MAYOR GOODMAN**

713 Only –

714

715 **TODD BICE**

716 – with one final observation.

717

718 **MAYOR GOODMAN**

719 Only after you state your name, which you forgot.

720

721 **TODD BICE**

722 Madame Mayor, my apologies. Todd Bice, Pisanelli Bice, 700 or 400 South 7th Street. My

723 apologies. So, in paragraph number 12 of his counterclaim, where this Applicant has sued the

724 City, he specifically claims, again, that he had this pre-approval at the time that he purchased the

725 property, which again, if he's telling the truth, he's the one who's admitting to the violations of

726 the law and the violations of my client's rights. I thank you for your time.

727

728 **FRANK SCHRECK**

729 Is this on? Okay. Frank Schreck, 9824 Winter Palace Drive. I just want to briefly touch on the –

730 anti-Semitic statements about Mr. Coffin. All of us know Mr. Coffin, and all of us know he's not

731 an anti-Semite. But it seems that this Applicant, Mr. Lowie, has a propensity, when he loses or

732 gets angry at someone, to call them anti-Semite. He did in a letter in the primary election. He

733 called Councilman Seroka and Christina Roush anti-Semites. He's called Councilman Coffin an

734 anti-Semite.

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735 And one week before I was to be honored by the – Anti-Defamation League, which you know is  
736 a Jewish organization, to get their annual Jurisprudence of the Year Award, which goes to an  
737 attorney who's exhibited work in terms of civil rights, equal rights for everyone, a week before  
738 that, he told the Director of the ADL that he was gonna tell people not to go to the luncheon  
739 honoring me because I was an anti-Semite.

740

741 So this is a, this is a – pattern that this Applicant has that if you don't agree with him, he will call  
742 you a name. I was called an extortionist. Jack Binion was called an extortionist. There's no limit  
743 to what he will call you if he doesn't get his way. And I don't have to tell you when he said that  
744 he had gone to each one of your Council, each Councilperson and – got a commitment, that was  
745 one of his rants in front of you about a year and a half ago, and that's just how he acts. But he  
746 chooses to call people names that don't fit, and it certainly doesn't fit with Councilman Coffin.  
747 Thank you.

748

749 **MAYOR GOODMAN**

750 Okay. I think this is closed at this point. And, is this on the abeyance?

751

752 **STEPHANIE ALLEN**

753 Yes, Ma'am, please.

754

755 **MAYOR GOODMAN**

756 Okay. And only the abeyance?

757

758 **STEPHANIE ALLEN**

759 Only the abeyance.



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760 **MAYOR GOODMAN**

761 Okay.

762

763 **STEPHANIE ALLEN**

764 Thank you, Your Honor, Council. Stephanie Allen, 1980 Festival Plaza, here on behalf of the

765 Applicant. I'd like to just speak to the zoning item. I know there's a lot of personalities here and a

766 lot of issues –

767

768 **MAYOR GOODMAN**

769 No.

770

771 **STEPHANIE ALLEN**

772 – that are being discussed that are outside of the zoning, but the zoning applications that are on

773 the agenda –

774

775 **MAYOR GOODMAN**

776 No.

777

778 **STEPHANIE ALLEN**

779 – and the abeyance in particular

780

781 **MAYOR GOODMAN**

782 No.

783

784 **STEPHANIE ALLEN**

785 – are what I want to talk about.

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786 **MAYOR GOODMAN**

787 Only the abeyance –

788

789 **STEPHANIE ALLEN**

790 Only the abeyance.

791

792 **MAYOR GOODMAN**

793 Not the, not the zoning.

794

795 **STEPHANIE ALLEN**

796 Correct. So the – What I'd like to put onto the record is that we're three years into this, and I

797 know you didn't ask and the Council has already voted, but three years into this, where we've

798 been trying to get something approved so we can develop this property, do something with this

799 property. We've had a number of different applications before you.

800

801 We believe this is the final application, probably, where it's a conforming application, no request

802 for a zone change, just an application to develop the property under its existing R-PD7 zoning.

803 Three more months is tantamount to a denial. Every time this gets abeyed, whether it's these

804 applications or the prior applications, it directly harms the property owner, and it directly harms

805 the community.

806

807 So I – know the vote has already taken place, but for purposes of this Council, we would

808 appreciate a vote on these applications and due process and the ability for you all to hear the

809 zoning facts, not the personality discrepancies, just the facts of the zoning case and make a

810 determination as to whether or what he can do with this property so that we can move on for the

811 betterment of him and the overall community, because that's really what your job is as a Council

812 and the leadership of this Council is, is to decide what's best for the community and the

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813 constituents, not the few folks that come up here every single time, but the overall community,  
814 and we'd like to do something with this property and we'd like to have a hearing on the  
815 application. So –

816

817 **MAYOR GOODMAN**

818 Thank you.

819

820 **STEPHANIE ALLEN**

821 I just wanted to put that on the record.

822

823 **MAYOR GOODMAN**

824 Thank you.

825

826 **STEPHANIE ALLEN**

827 Also, I would like to defend my client's character. I don't think it's fair to say that he comes up  
828 here and calls everyone names. He has been called a lot of names that are unfair as well. He's a  
829 man of integrity. He does beautiful work. And all that this Council should be doing is looking at  
830 this application on its face from a zoning standpoint. So we'd appreciate that opportunity in a  
831 couple months. Thanks.

832

833 **MAYOR GOODMAN**

834 Thank you very much. Okay. We are gonna move on now to Agenda Item 88. This issue –

835

836 **LISA MAYO**

837 Mayor –

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**VERBATIM TRANSCRIPT – AGENDA ITEMS 122 THROUGH 131**

838 **MAYOR GOODMAN**

839 – is closed.

840

841 **LISA MAYO**

842 I'm sorry. Lisa Mayo. I was told that only on this Item, 122, could I ask the question regarding  
843 the report that was given, per Councilwoman Fiore's request, to find out how much taxpayer  
844 money has been spent on this project. And I called yesterday to find out if we could get a report  
845 on that, and they said I had to just come up during Item 122 in order to talk to that. So I'd like to  
846 see if we could get a report on this item as to how much taxpayer money has been spent by Staff  
847 to this. And now we're adding another three months to it. So I think whatever that number is, add  
848 another \$300,000 to it and the taxpayers of this community are seeing the number go way up.

849 Can we have a report on that –

850

851 **CITY ATTORNEY JERBIC**

852 Ms. Mayo –

853

854 **LISA MAYO**

855 – please?

856

857 **CITY ATTORNEY JERBIC**

858 Ms. Mayo, I gotta – I've got to cut you off because we are, first of all, not even agendaed for that,  
859 and that would be more appropriate under public comment. But I can tell you, Staff will get back  
860 to you with whatever information you requested and give you a reason, either give you the  
861 answer or reason why they can't give you the answer.

862

863 **LISA MAYO**

864 Okay. But – it really needs to be in public comment. The public needs to know about this. How

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865 do we get it into the public record?

866

867 **CITY ATTORNEY JERBIC**

868 You can wait until public comment at the end of the meeting.

869

870 **LISA MAYO**

871 Okay, I will. Thank you.

872

873 **CITY ATTORNEY JERBIC**

874 You got it.

875

876 **MAYOR GOODMAN**

877 Thank you. Okay.

878 **(END OF DISCUSSION)**

879 /dao

A-18-771224-C

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Other Civil Matters**

**COURT MINUTES**

**May 29, 2018**

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A-18-771224-C      Fore Stars, Ltd., Plaintiff(s) vs. Daniel Omerza, Defendant(s)

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**May 29, 2018      10:41 AM      Minute Order      Defendants' Special Motion to Dismiss (Anti-SLAPP Motion) Plaintiffs' Complaint**

**HEARD BY:** Scotti, Richard F.

**COURT CLERK:** Jennifer Lott

**JOURNAL ENTRIES**

- The Court DENIES without prejudice Defendants' Special Motion to Dismiss (Anti-SLAPP Motion) Plaintiffs' Complaint pursuant to NRS 41.635 et. Seq. Nevada's anti-SLAPP statute does not apply to fraudulent conduct, which Plaintiffs have alleged. Even if it did so apply, at this early stage in the litigation and given the numerous allegations of fraud, the Court is not convinced by a preponderance of the evidence that Defendants' conduct constituted good faith communications in furtherance of the right to petition or the right to free speech in direct connection with an issue of public concern, as described in NRS 41.637. The Court also DENIES Defendants' Motion to Dismiss Pursuant to NRCP 12(b)(5). Plaintiffs have stated valid claims for relief. Plaintiffs shall prepare the proposed Order, adding appropriate context and authorities.

The 5/30/2018 Chambers Hearing on this matter hereby VACATED.

CLERK'S NOTE: This Minute Order was electronically served by Courtroom Clerk, Jennifer Lott, to all registered parties for Odyssey File & Serve. jl

PRINT DATE: 05/29/2018

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Minutes Date: May 29, 2018