

**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 03:02 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 VIII OF VIII**

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*Darren Bresee and Steve Caria*

## CHRONOLOGICAL INDEX

DOCUMENT	DATE	VOL.	PAGE
Complaint	03/15/2018	I, II	001-095
Affidavit of Service (on Daniel Omerza)	03/26/2018	II	096
Affidavit of Service (on Darren Bresee)	03/27/2018	II	097
Defendants' Motion to Dismiss Pursuant to NRCp 12(b)(5)	04/13/2018	II	098-112
Defendants' Request for Judicial Notice In Support of (1) Defendants' Special Motion To Dismiss (Anti-SLAPP Motion) Plaintiffs' Complaint Pursuant To NRS §41.635 et seq. and (2) Defendants' Motion to Dismiss Pursuant to NRCp 12(b)(5)	04/13/2018	II, III, IV, V, VI	113-164
Court Minutes	04/16/2018	VI	165
Notice of Department Reassignment	04/17/2018	VI	166-167
Peremptory Challenge of Judge	04/19/2018	VI	168-170
Notice of Department Reassignment	04/20/2018	VI	171
Plaintiffs' Opposition To Defendants' Motion To Dismiss Pursuant to NRCp 12(b)(5)	05/07/2018	VI	172-187
Defendants' Reply Brief In Support of Motion To Dismiss Pursuant to NRCp 12(B)(5)	05/09/2018	VI	188-198

<b>CHRONOLOGICAL INDEX (con't)</b>			
<b>DOCUMENT</b>	<b>DATE</b>	<b>VOL.</b>	<b>PAGE</b>
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)	05/09/2018	VI	199-236
Court Minutes re Defendants' Special Motion to Dismiss (Anti-SLAPP Motion) Plaintiffs' Complaint	05/29/2018	VI	237
Errata to Complaint	06/11/2018	VII, VIII	238-335
Findings of Fact, Conclusions of Law, and Order	06/20/2018	VIII	336-349
Notice of Entry of Finding of Fact, Conclusions of Law, and Order	06/21/2018	VIII	350-365
Notice of Appeal	06/27/2018	VIII	366-400

<b>ALPHABETICAL INDEX</b>			
<b>DOCUMENT</b>	<b>DATE</b>	<b>VOL.</b>	<b>PAGE</b>
Affidavit of Service (on Daniel Omerza)	03/26/2018	II	096
Affidavit of Service (on Darren Bresee)	03/27/2018	II	097
Complaint	03/15/2018	I, II	001-095
Court Minutes	04/16/2018	VI	165

<b>ALPHABETICAL INDEX (con't)</b>			
<b>DOCUMENT</b>	<b>DATE</b>	<b>VOL.</b>	<b>PAGE</b>
Court Minutes re Defendants' Special Motion to Dismiss (Anti-SLAPP Motion) Plaintiffs' Complaint	05/29/2018	VI	237
Defendants' Motion to Dismiss Pursuant to NRCP 12(b)(5)	04/13/2018	II	098-112
Defendants' Reply Brief In Support of Motion To Dismiss Pursuant to NRCP 12(B)(5)	05/09/2018	VI	188-198
Defendants' Request for Judicial Notice In Support of (1) Defendants' Special Motion To Dismiss (Anti-SLAPP Motion) Plaintiffs' Complaint Pursuant To NRS §41.635 et seq. and (2) Defendants' Motion to Dismiss Pursuant to NRCP 12(b)(5)	04/13/2018	II, III, IV, V, VI	113-164
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)	05/09/2018	VI	199-236
Errata to Complaint	06/11/2018	VII, VIII	238-335
Findings of Fact, Conclusions of Law, and Order	06/20/2018	VIII	336-349
Notice of Appeal	06/27/2018	VIII	366-400

<b>ALPHABETICAL INDEX (con't)</b>			
<b>DOCUMENT</b>	<b>DATE</b>	<b>VOL.</b>	<b>PAGE</b>
Notice of Department Reassignment	04/17/2018	VI	166-167
Notice of Department Reassignment	04/20/2018	VI	171
Notice of Entry of Finding of Fact, Conclusions of Law, and Order	06/21/2018	VIII	350-365
Peremptory Challenge of Judge	04/19/2018	VI	168-170
Plaintiffs' Opposition To Defendants' Motion To Dismiss Pursuant to NRCP 12(b)(5)	05/07/2018	VI	172-187

## **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 VIII of VIII** properly addressed to the following:

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*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 after the Amended Master Declaration (which they were, under their Deeds, subject to) was  
2 recorded and both times with notice of the development rights and zoning rights associated with  
3 the adjacent GC Land;

4 127. Plaintiffs' argument that the Amended Master Declaration is "invalid" because it  
5 "did not contain the certification and signatures of the Association President and Secretary" is  
6 irrelevant, since the frivolousness of Plaintiffs' position is based on the original Master  
7 Declaration and not the amendment. But this Court notes that the Declarations of Annexation  
8 which are recorded do not contain such signatures of the Association President and Secretary  
9 either. Hypothetically, if that renders such Declarations of Annexation "invalid," then Parcel 19,  
10 where Plaintiffs' home sits, was never properly "annexed" into the Queensridge CIC, and thus  
11 Plaintiffs would have no standing to assert the terms of the Master Declaration against anyone,  
12 even other members of the Queensridge CIC. This last minute argument is without basis in fact  
13 or law;

14 128. A Motion for reconsideration under EDCR 2.24 is only appropriate when  
15 "substantially different evidence is subsequently introduced or the decision is clearly erroneous."  
16 *Masonry & Tile Contractors Ass'n of S. Nev. v. Jolley, Urga & Wirth, Ltd.*, 113 Nev. 737, 741,  
17 941 P.2d 486, 489 (1997). And so motions for reconsideration that present no new evidence or  
18 intervening case law are "superfluous," and it is an "abuse of discretion" for a trial court to  
19 consider such motions. *Moore v. City of Las Vegas*, 92 Nev. 402, 405, 551 P.2d 244, 246 (76).

20 129. Plaintiffs' request that the Order be reconsidered because it does not consider  
21 issues subsequent to the City Council Meeting of November 16, 2016 is also without merit. The  
22 Motion to Dismiss was heard on November 1, 2016 and the Court allowed the parties until  
23 November 15, 2016 to supplement their filings. Although late filed, Plaintiffs did file  
24 "Additional Information to Brief," and their "Renewed Motion for Preliminary Injunction," on  
25

1 November 18, 2016—before issuance of the *Findings of Fact, Conclusions of Law, Order and*  
2 *Judgment* on November 30<sup>th</sup> —putting the Court on notice of what occurred at the City Council  
3 Meeting. However, as found hereinabove, the withdrawal and abeyance of City Council  
4 Applications does not matter in relation to the Motion to Dismiss. Plaintiffs did not possess  
5 “vested rights” over Defendants’ GC Land before the meeting and they do not possess “vested  
6 rights” over it now;  
7

8 130. Plaintiffs’ objection to the Findings relating NRS 116, NRS 278, NRS 278A and  
9 R-PD7 zoning is also without merit, because those Findings are supported by the Supplements  
10 timely filed by Defendants, and those statutes and the zoning issue are all relevant to this case  
11 with respect to Defendants’ right to develop their land. This was raised and discussed in the  
12 Motion to Dismiss and Opposition to the first Motion for Preliminary Injunction, and properly  
13 and timely supplemented. Defendants did specifically and timely submit multiple documents,  
14 including the Declaration of City Clerk Luann Holmes to attest to the fact that NRS 278A does  
15 not apply to this controversy, and thus it is clear that the GC Land is not part of or within a  
16 planned unit development. Plaintiffs do not even possess standing to assert a claim under NRS  
17 278A, as they are governed by NRS 116. Further, Defendants’ deeds contain no title exception or  
18 reference to NRS 278A, as would be required were NRS 278A to apply, which it does not;  
19

20 131. Recital B of the Master Declaration states that Queensridge is a “common interest  
21 community pursuant to Chapter 116 of the Nevada Revised Statutes.” Plaintiffs raised issues  
22 concerning NRS 278A. While Plaintiffs may not have specifically cited NRS 278A in their  
23 Amended Complaint, in paragraph 67, they did claim that “The City of Las Vegas with respect to  
24 the Queensridge Master Planned Development required ‘open space’ and ‘flood drainage’ upon  
25 the acreage designated as golf course (The Badlands Golf Course).” NRS 278A, entitled  
26 “Planned Unit Development,” contains a framework of law on Planned Unit Developments, as  
27  
28



1 defined therein, and their 'common open space.' NRS 116.1201(4) states that the provisions of  
2 NRS 278A do not apply to NRS 116 common-interest communities like Queensridge. Thus,  
3 while Plaintiffs may not have directly mentioned NRS 278A, they did make an allegation  
4 invoking its applicability;

5  
6 132. Zoning on the subject GC Land is appropriately referenced in the November 30,  
7 2016 *Findings of Fact, Conclusions of Law, Order and Judgment*, because Plaintiffs contended  
8 that the Badlands Golf Course was open space and drainage, but the Court rejected that  
9 argument, finding that the subject GC Land was zoned R-PD7;

10 133. Plaintiffs now allege that alter-ego claims against the individual Defendants  
11 (Lowie, DeHart and Pankratz) should not have been dismissed without giving them a chance to  
12 investigate and flush out their allegations through discovery. But no alter ego claims were made,  
13 and alter ego is a remedy, not a cause of action. The only Cause of Action in the Amended  
14 Complaint that could possibly support individual liability by piercing the corporate veil is the  
15 Fraud Cause of Action. The Court has rejected Plaintiffs' Fraud Cause of Action, not solely on  
16 the basis that it was not plead with particularity, but, more importantly, on the basis that  
17 Plaintiffs failed to state a claim for Fraud because Plaintiffs have never alleged that Lowie,  
18 DeHart or Pankratz made any false representations to them prior to their purchase of their lot.  
19 The Court further notes that in Plaintiffs' lengthy oral argument before the Court, the Plaintiffs  
20 did not even mention its claim for, or a basis for, its fraud claim. The Plaintiffs have offered  
21 insufficient basis for the allegations of fraud in the first place, and any attempt to re-plead the  
22 same, on this record, is futile;

23  
24 134. Fraud requires a false representation, or, alternatively an intentional omission  
25 when an affirmative duty to represent exists. See *Lubbe v. Barba*, 91 Nev. 596, 541 P.2d 115  
26 (1975). Plaintiffs alleged Fraud against Lowie, DeHart and Pankratz, while admitting they never  
27  
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1 spoke with any of the prior to the purchase of their lot and have never spoken to them prior to  
2 this litigation. Plaintiffs' Fraud Cause of Action was dismissed because they cannot state facts  
3 that would support the elements of Fraud. No amount of additional time will cure this  
4 fundamental defect of their Fraud claim;

5  
6 135. Plaintiffs claim that the GC Land that later became the additional nine holes was  
7 "Property" subject to the CC&Rs of the Master Declaration at the time they purchased their lot,  
8 because Plaintiffs purchased their lot between execution of the Master Declaration (which  
9 contains an exclusion that "The existing 18-hole golf course commonly known as the 'Badlands  
10 Golf Course' is not a part of the Property or the Annexable Property") and the Amended and  
11 Restated Master Declaration (which provides that "The existing 27-hole golf course commonly  
12 known as the 'Badlands Golf Course' is not a part of the Property or the Annexable Property"),  
13 is meritless, since it ignores the clear and unequivocal language of Recital A (of both documents)  
14 that "In no event shall the term "Property" include any portion of the Annexable Property for  
15 which a Declaration of Annexation has not been Recorded..."

16  
17 136. All three of Plaintiffs' claims for relief in the Amended Complaint are based on  
18 the concept of Plaintiffs' alleged vested rights, which do not exist against Defendants;

19  
20 137. There was no "misrepresentation," and there is no basis to set aside the Order of  
21 Dismissal;

22  
23 138. In order for a complaint to be dismissed for failure to state a claim, it must appear  
24 beyond a doubt that the plaintiff could prove no set of facts which, if accepted by the trier of fact,  
25 would entitle him or her to relief. *Blackjack Bonding v. City of Las Vegas Mun. Court*, 116 Nev.  
26 1213, 1217, 14 P.3d 1275, 1278 (2000) (emphasis added);

27  
28 139. It must draw every fair inference in favor of the non-moving party. *Id.* (emphasis  
added);

1 140. Generally, the Court is to accept the factual allegations of a Complaint as true on  
2 a Motion to Dismiss, but the allegations must be legally sufficient to constitute the elements of  
3 the claim asserted. *Carpenter v. Shalev*, 126 Nev. 698, 367 P.3d 755 (2010);

4 141. Plaintiffs have failed to state a claim upon which relief can be granted, even with  
5 every fair inference in favor of Plaintiffs. It appears beyond a doubt that Plaintiffs can prove no  
6 set of facts which would entitle them to relief. The Court has grave concerns about Plaintiffs'  
7 motives in suing these Defendants for fraud in the first instance;

8  
9 **Defendants' Memorandum of Costs and Disbursements**

10 142. Defendants' Memorandum of Costs and Disbursements was timely filed and  
11 served on December 7, 2016;

12 143. Pursuant to NRS 18.110, Plaintiffs were entitled to file, within three (3) days of  
13 service of the Memorandum of Costs, a Motion to Retax Costs. Such a Motion should have been  
14 filed on or before December 15, 2016

15 144. Plaintiffs failed to file any Motion to Retax Costs, or any objection to the costs  
16 whatsoever. Plaintiffs have therefore waived any objection to the Memorandum of Costs, and  
17 the same is now final;

18 145. Defendants have provided evidence to the Court along with their Verified  
19 Memorandum of Costs and Disbursements, demonstrating that the costs incurred were  
20 reasonable, necessary and actually incurred. *Cadle Co. v. Woods & Erickson LLP*, 131 Nev.  
21 Adv. Op. 15 (Mar. 26, 2015);

22  
23 **Defendants' Countermotions for Attorneys' Fees and Costs**

24 146. The Court has allowed Plaintiffs to enter thirteen (13) exhibits, only three (3) of  
25 which had been previously produced to opposing counsel, by attaching them to Plaintiffs'  
26 "Additional Information to Renewed Motion for Preliminary Injunction," filed November 28,  
27  
28

1 2016. The Exhibits should have been submitted and filed on or before November 15, 2016, in  
2 advance of the hearing, and shown to counsel before being marked. The Court has allowed  
3 Plaintiffs to make a record and to enter never before disclosed Exhibits at this post-judgment  
4 hearing, including one document dated January 6, 2017, over Defendants' objection that there  
5 has been no Affidavit or competent evidence to support the genuineness and authenticity of these  
6 documents, as well as because of their untimely disclosure. The Court notes that Plaintiffs  
7 should have been prepared for their presentation and these Exhibits should have been prepared,  
8 marked and disclosed in advance, but Plaintiffs failed to do so. *EDCR 7.60(b)(2)*;

10 147. The efforts of Plaintiffs throughout these proceedings to repeatedly, vexatiously  
11 attempt to obtain a Preliminary Injunction against Defendants has indeed resulted in prejudice  
12 and substantial harm to Defendants. That harm is not only due to being forced to incur  
13 attorneys' fees, but harm to their reputation and to their ability to obtain financing or refinancing,  
14 just by the pendency of this litigation;

16 148. Plaintiffs are so close to this matter that even with counsel's experience, he fails  
17 to follow the rules in this litigation. Plaintiffs' accusation that the Court was "sleeping" during  
18 his oral argument, when the Court was listening intently to all of Plaintiffs' arguments, is  
19 objectionable and insulting to the Court. It was extremely unprofessional conduct by Plaintiff;

21 149. Plaintiffs' claim of an alleged representation that the golf course would never be  
22 changed, if true, was alleged to have occurred sixteen (16) years prior to Defendants acquiring  
23 the membership interests in Fore Stars, Ltd. Of the nineteen (19) Defendants, twelve (12) were  
24 relatives of Plaintiffs or entities of relatives, all of whom were voluntarily dismissed by  
25 Plaintiffs. The original Complaint faulted the Peccole Defendants for not "insisting on a  
26 restrictive covenant" on the golf course limiting its use, which would not have been necessary if  
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1 the Master Declaration applied. This was a confession of the frivolousness of Plaintiffs' position.  
2 *NRS 18.010(2)(b); EDCR 7.60(b)(1);*

3 150. Between September 1, 2016 and the date of this hearing, there were  
4 approximately ninety (90) filings. This multiplication of the proceedings vexatiously is in  
5 violation of EDCR 7.60. *EDCR 7.60(b)(3);*

6 151. Three (3) Defendants, Lowie, DeHart and Pankratz, were sued individually for  
7 fraud, without one sentence alleging any fraud with particularity against these individuals. The  
8 maintenance of this action against these individuals is a violation itself of NRS 18.010, as bad  
9 faith and without reasonable ground, based on personal animus;

10 152. Additionally, EDCR 2.30 requires that any Motion to amend a complaint be  
11 accompanied by a proposed amended Complaint. Plaintiffs' failure to do so is a violation of  
12 EDCR 2.30. *EDCR 7.60(b)(4);*

13 153. Plaintiffs violated EDCR 2.20 and EDCR 2.21 by failing to submit their Motions  
14 upon sworn Affidavits or Declarations under penalty of perjury, which cannot be cured at the  
15 hearing absent a stipulation. *Id.*;

16 154. Plaintiffs did not file any post-judgment Motions under NRCP 52 or 59, and two  
17 of their Motions, namely the *Motion to Reconsider Order of Dismissal* and the *Motion for*  
18 *Evidentiary Hearing and Stay of Order for Rule 11 Fees and Costs*, were untimely filed after the  
19 10 day time limit contained within those rules, or within EDCR 2.24.

20 155. Plaintiffs also failed to seek leave of the Court prior to filing its Renewed Motion  
21 for Preliminary Injunction or its Motion to Reconsider Order of Dismissal. *Id.*;

22 156. Plaintiffs' Opposition to Countermotion for Attorneys' Fees and Costs, filed  
23 January 5, 2017, was an extremely untimely Opposition to the October 21, 2016 Motion for

1 Attorneys' Fees and Costs, which was due on or before November 10, 2016. All of these are  
2 failures or refusals to comply with the Rules. *EDCR 7.60(b)(4)*;

3 157. While it does not believe Plaintiffs are intentionally doing anything nefarious,  
4 they are too close to this matter and they have refused to heed the Court's Orders, Findings and  
5 rules and their actions have severely harmed the Defendants;  
6

7 158. While Plaintiffs claim to have researched the *Eagle Thrifty* case prior to filing the  
8 initial Complaint, admitting they were familiar with the requirement to exhaust the  
9 administrative remedies, they filed the first Motion for Preliminary Injunction anyway, in which  
10 they failed to even cite to the *Eagle Thrifty* case, let alone attempt to exhaust their administrative  
11 remedies;  
12

13 159. Plaintiffs' motivation in filing these baseless "preliminary injunction" motions  
14 was to interfere with, and delay, Defendants' development of their land, particularly the land  
15 adjoining Plaintiffs' lot. But while the facts, law and evidence are overwhelming that Plaintiffs  
16 ultimately could not deny Defendants' development of their land, Plaintiffs have continued to  
17 maintain this action and forced Defendants to incur substantial attorneys' fees to respond to the  
18 unsupported positions taken by Plaintiffs, and their frivolous attempt to bypass City Ordinances  
19 and circumvent the legislative process. These actions continue with the current four (4) Motions  
20 and the Opposition;  
21

22 160. Plaintiffs' Renewed Motion for Preliminary Injunction (a sixth attempt),  
23 Plaintiffs' untimely Motion to Amend Amended Complaint (with no proposed amendment  
24 attached), Plaintiffs' untimely Motion to Reconsider Order of Dismissal, Plaintiffs' Motion for  
25 Evidentiary Hearing and Stay of Rule 11 Fees and Costs (which had been denied) and Plaintiffs'  
26 untimely Opposition were patently frivolous, unnecessary, and unsupported, and so multiplied  
27 the proceedings in this case so as to increase costs unreasonably and vexatiously;  
28

1           161. Plaintiffs proceed in making “scurrilous allegations” which have no merit, and to  
2           asset “vested rights” which they do not possess against Defendants;

3           162. Considering the length of time that the Plaintiffs have maintained their action, and  
4           the fact that they filed four (4) new Motions after dismissal of this action, and ignored the prior  
5           rulings of the Court in doing so, and ignored the rules, and continued to name individual  
6           Defendants personally with no basis whatsoever, the Court finds that Plaintiffs are seeking to  
7           harm the Defendants, their project and their land, improperly and without justification.  
8           Plaintiffs’ emotional approach and lack of clear analysis or care in the drafting and submission of  
9           their pleadings and Motions warrant the award of reasonable attorney’s fees and costs in favor of  
10          the Defendants and against the Plaintiffs. *See EDCR 7.60 and NRS 18.010(b)(2)*;

11          163. Pursuant to *Brunzell v. Golden Gate National Bank*, 85 Nev. 345, 455 P.2d 31  
12          (1969), Defendants have submitted affidavits regarding attorney’s fees and costs they requested,  
13          in the sum of \$7,500 per Motion. Considering the number of Motions filed by Plaintiffs on an  
14          Order Shortening Time, including two not filed or served until December 22, 2016, and an  
15          Opposition and Replies to two Motions filed by Plaintiffs on January 5, 2017, which required  
16          response in two (2) business days, the requested sum of \$7,500 in attorneys’ fees per each of the  
17          four (4) motions is most reasonable and necessarily incurred. Given the detail within the filings  
18          and the timeframe in which they were prepared, the Court finds these sums , totaling \$30,000  
19          (\$7,500 x 4) to have been reasonably and necessarily incurred;

20                   **Plaintiffs’ Oral Motion for Stay Pending Appeal.**

21          164. Plaintiffs failed to satisfy the requirements of NRAP 8 and NRCP 62(c). Plaintiffs  
22          failed to show that the object of their potential appeal will be defeated if their stay is denied, they  
23          failed to show that they would suffer irreparable harm or serious injury if the stay is not issued,  
24          and they failed to show a likelihood of success on the merits.

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**ORDER AND JUDGMENT**

**NOW, THEREFORE:**

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that *Plaintiffs' Renewed Motion for Preliminary Injunction* is hereby denied, with prejudice;

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that *Plaintiffs' Motion For Leave To Amend Amended Complaint*, is hereby denied, with prejudice;

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that *Plaintiffs' Motion For Evidentiary Hearing And Stay Of Order For Rule 11 Fees And Costs*, is hereby denied, with prejudice;

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that *Plaintiffs' Motion For Court To Reconsider Order Of Dismissal*, is hereby denied, with prejudice;

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that *Defendants' Countermotion to Strike Plaintiffs' Rogue and Untimely Opposition Filed 1/5/17 (titled Opposition to "Countermotion" but substantively an Opposition to the 10/21/16 Motion for Attorney's Fees And Costs, granted November 21, 2016)*, is hereby granted, and such Opposition is hereby stricken;

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that *Defendants' request for \$20,818.72 in costs, including the \$5,406 already awarded on November 21, 2016, and the balance of \$15,412.72 in costs through October 20, 2016, pursuant to their timely Memorandum of Costs and Disbursements*, is hereby granted and confirmed to Defendants, no Motion to Retax having been filed by Plaintiffs. Said costs are hereby reduced to Judgment, collectible by any lawful means;

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Judgment entered in favor of Defendants and against Plaintiffs in the sum of \$82,718.50, comprised of \$77,312.50



1 in attorneys' fees and \$5,406 in costs relating only to the preliminary injunction issues after the  
2 September 2, 2016 filing of Defendants' first Opposition through the end of the October, 2016  
3 billing cycle, is hereby confirmed and collectible by any lawful means;

4 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendants  
5 Counter-motion for Attorneys' Fees relating to their responses to Plaintiffs four (4) motions and  
6 one (1) opposition, and the time for appearance at this hearing, is hereby GRANTED.  
7 Defendants are hereby awarded additional attorneys' fees in the sum of \$30,000 relating to those  
8 matters pending for this hearing;

9 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, therefore,  
10 Defendants are awarded a total sum of \$128,131.22 (\$20,818.72 in attorneys' fees and costs,  
11 including the \$5,406 in the November 21, 2016 Minute Order and confirmed by the Fee Order  
12 filed January 20, 2017, \$77,312.50 in attorneys' fees pursuant to the November 21, 2016 Minute  
13 Order, as incorporated within and confirmed by Fee Order filed January 20, 2017, and \$30,000  
14 in additional attorneys' fees relating to the instant Motions, Oppositions and Counter-motions  
15 addressed in this Order), which is reduced to judgment in favor of Defendants and against  
16 Plaintiffs, collectible by any lawful means, plus legal interest;

17 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Plaintiffs' oral Motion  
18 for Stay pending appeal is hereby denied;

19 DATED this 31 day of January, 2017.

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23  
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26  
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28  
DISTRICT COURT JUDGE  
A-16-719654-C  
BA

# Exhibit “4”



1 **ORDR**

2 **DISTRICT COURT**  
3 **CLARK COUNTY, NEVADA**

4 JACK B. BINION, an individual; DUNCAN  
5 R. and IRENE LEE, individuals and Trustees  
6 of the LEE FAMILY TRUST; FRANK A.  
7 SCHRECK, an individual; TURNER  
8 INVESTMENTS, LTD., a Nevada Limited  
9 Liability Company; ROGER P. and CAROL  
10 YN G. WAGNER, individuals and Trustees  
11 of the WAGNER FAMILY TRUST; BETTY  
12 ENGLESTAD AS TRUSTEE OF THE  
13 BETTY ENGLESTAD TRUST; PYRAMID  
14 LAKE HOLDINGS, LLC.; JASON AND  
15 SHEREEN AWAD AS TRUSTEES OF  
16 THE AWAD ASSET PROTECTION  
17 TRUST; THOMAS LOVE AS TRUSTEE  
18 OF THE ZENA TRUST; STEVE AND  
19 KAREN THOMAS AS TRUSTEES OF  
20 THE STEVE AND KAREN THOMAS  
21 TRUST; SUSAN SULLIVAN AS  
22 TRUSTEE OF THE KENNETH  
23 J.SULLIVAN FAMILY TRUST, AND DR.  
24 GREGORY BIGLER AND SALLY  
25 BIGLER

26 **Plaintiffs,**

27 **vs.**

28 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; and THE CITY OF LAS  
VEGAS,

**Defendants.**

**CASE NO. A-15-729053-B**

**DEPT. NO. XXVII**

**Courtroom #3A**

**FINDINGS OF FACT, CONCLUSIONS  
OF LAW AND ORDER GRANTING IN  
PART AND DENYING IN PART,  
DEFENDANT CITY OF LAS VEGAS'  
MOTION TO DISMISS PLAINTIFF'S  
FIRST AMENDED COMPLAINT, AND  
DEFENDANTS' FORE STARS, LTD;  
180 LAND CO., LLC, SEVENTY  
ACRES, LLC'S MOTION TO DISMISS  
PLAINTIFF'S FIRST AMENDED  
COMPLAINT, AND DENYING  
PLAINTIFF'S COUNTERMOTION  
UNDER NRCP 56(f)**

**Date of Hearing: February 2, 2017**

**Time of Hearing: 1:30 pm**

22 **THIS MATTER** coming on for hearing on the 2<sup>nd</sup> day of February, 2017 on Defendants CITY  
23 **OF LAS VEGAS' Motion to Dismiss Plaintiffs' First Amended Complaint**, and Defendants FORE  
24 **STARS, LTD; 180 LAND CO., LLC, SEVENTY ACRES, LLC'S Motion to Dismiss Plaintiffs' First**  
25 **Amended Complaint**, and Plaintiffs' Oppositions thereto, and Counter motions under NRCP 56(f), and  
26 **the Court having reviewed the papers and pleadings on file and heard the arguments of counsel at the**  
27 **hearing, and good cause appearing hereby**  
28 **FINDS and ORDERS as follows:**

1           1.       Plaintiffs First Amended Complaint alleges two causes of action. Plaintiffs' first cause  
2 of action alleges Defendants violated NRS 278.4925 and LVMC § 19.16.070 in the recordation of a  
3 parcel map. Plaintiffs' second cause of action alleges a claim for declaratory relief based upon, as  
4 Plaintiffs allege, "Plaintiffs' rights to notice and an opportunity to be heard prior to the recordation of  
5 any parcel map," and "Plaintiffs' rights under NRS Chapter 278A and the City's attempt to cooperate  
6 with the other Defendants in circumventing those rights." (First Amended Complaint, p. 16).

7           2.       Defendants' Motions to Dismiss Plaintiffs' First Amended Complaint are made  
8 pursuant to NRCP 12(b)(5). Accordingly, the Court must "regard all factual allegations in the  
9 complaint as true and draw all inferences in favor of the nonmoving party." *Stockmeier v. Nevada*  
10 *Dep't of Corr. Psychological Review Panel*, 124 Nev. 313, 316, 183 P.3d 133, 135 (2008). The court  
11 may not consider matters outside the allegations of Plaintiffs' complaint. *Breltiant v. Preferred Equities*  
12 *Corp.*, 109 Nev. 842, 847, 858 P.2d 1258, 1261 (1993).

13           3.       The Court finds that Plaintiffs have stated claims upon which relief may be granted as  
14 it relates to the parcel map recording alleged in Plaintiffs' First Amended Complaint.

15           4.       Moreover, the Court finds that Plaintiffs have standing and rejects Defendants'  
16 argument that Plaintiffs have failed to exhaust their administrative remedies as no notice was provided  
17 to Plaintiffs.

18           5.       The Court took under submission Defendant's Motion to Dismiss the Second Cause of  
19 Action in Plaintiffs' First Amended Complaint (Declaratory Relief) as to whether Plaintiffs have any  
20 rights under NRS 278A over Defendants' property. Plaintiffs seek an order "declaring that NRS  
21 Chapter 278A applies to the Queenridge/Badlands development and that no modifications may be  
22 made to the Peccole Ranch Master Plan without the consent of property owners" and "enjoining  
23 Defendants from taking any action (iii) without complying with the provisions of NRS Chapter 278A."  
24 (First Amended Complaint, p. 16).

25           6.       The Court finds that Plaintiffs' second claim for relief for declaratory judgment based  
26 upon NRS Chapter 278A fails to state a claim upon which relief may be granted.

27 ...  
28

1           7.     The Court finds that pursuant to NRS 116.1201(4) as a matter of law NRS Chapter  
2 278A does not apply to common interest communities. NRS 116.1201(4) provides, "The provisions  
3 of chapters 117 and 278A of NRS do not apply to common interest communities." Plaintiffs have  
4 alleged ownership interest in the common interest communities as defined in NRS Chapter 116 known  
5 as Queensridge or One Queensridge Place. For this reason, NRS Chapter 278A is not applicable to  
6 Plaintiffs' claim.

7           8.     The Court further finds that a "planned unit development" as used and defined in NRS  
8 278A only applies to the City of Las Vegas upon enactment of an ordinance in conformance with NRS  
9 278A. Plaintiffs allege that Queensridge or One Queensridge Place is part of the Peccole Ranch Master  
10 Plan Phase II that is located within the City of Las Vegas. The City of Las Vegas has not adopted an  
11 ordinance in conformance with NRS 278A and for this additional reason NRS Chapter 278A is not  
12 applicable and Plaintiffs' request for declaratory judgment based upon NRS Chapter 278A fails to state  
13 a claim upon which relief can be granted.

14           9.     Because the Court finds that Plaintiffs' claim for declaratory judgment based upon NRS  
15 278A fails under Rule 12(b)(5) of the Nevada Rules of Civil Procedure, Plaintiffs' counter-motion  
16 under NRCP 56(f) is denied.

17                               **ORDER**

18           NOW, THEREFORE:

19           IT IS HEREBY ORDERED that Defendants' Motion to Dismiss the First Cause of Action  
20 (Breach of NRS 278 and LVMC 19.16.070) and Second Cause of Action based upon the recordation  
21 of the parcel map in Plaintiffs' First Amended Complaint is hereby DENIED;

22           IT IS FURTHER ORDERED that Defendants' Motion to Dismiss the Second Cause of Action  
23 (Declaratory Relief) based upon NRS 278A in Plaintiffs' First Amended Complaint is hereby  
24 GRANTED, and is hereby dismissed, with prejudice.

25           ...

26           ...

1 IT IS FURTHER ORDERED that Plaintiffs' Countermotion under NRCP 56(f) is hereby  
2 DENIED.

3 Dated this 1 day of May, 2017.

4  
5  
6 Nancy L. Allf  
HONORABLE NANCY ALLF

7 Respectfully Submitted:

Approved as to Form:

8 JIMMERSON LAW FIRM

PISANELLI BICE PLLC

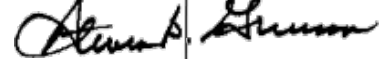
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10  
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10 **DISTRICT COURT**

11 **CLARK COUNTY, NEVADA**

12 FORE STARS, LTD., a Nevada limited  
13 liability company; 180 LAND CO., LLC; a  
14 Nevada limited liability company;  
15 SEVENTY ACRES, LLC, a Nevada limited  
16 liability company,

17 Plaintiffs,

18 v.

19 DANIEL OMERZA, DARREN BRESEE,  
20 STEVE CARIA, and DOES 1 THROUGH  
21 100,

22 Defendants,

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

23 **FINDINGS OF FACT,  
24 CONCLUSIONS OF LAW, AND  
25 ORDER**

26 Date of Hearing: 5/14/18  
27 Time of Hearing: 9:00 a.m.

28 THIS MATTER having come on for hearing on this 14<sup>th</sup> day of May, 2018,  
on *Defendants' Special Motion To Dismiss (Anti-SLAPP Motion) Plaintiffs'*  
*Complaint Pursuant To NRS 41.635 Et Seq.*, and *Defendants' Motion To Dismiss*  
*Pursuant To NRCP 12(b)(5)*, and Plaintiffs' Oppositions thereto, James J.  
Jimmerson, Esq., of THE JIMMERSON LAW FIRM, P.C., and Elizabeth Ham,  
Esq., appearing on behalf of the Plaintiffs, and Plaintiffs' representative, Yohan  
Lowie, being present, Mitchell J. Langberg, Esq., of BROWNSTEIN HYATT  
FARBER SCHRECK, LLP, appearing on behalf of the Defendants, and Defendants  
being present, and the Court having reviewed the pleadings and papers on file, and  
the Court having authorized Supplements to be filed by both parties through May

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1 23, 2018 close of business, and the Court having reviewed the same, and the  
2 exhibits attached to the briefs, and the Court having allowed the parties extended  
3 oral argument, and good cause appearing, hereby FINDS, CONCLUDES and  
4 ORDERS:

5  
6 **FINDINGS OF FACT**

7 1. Plaintiffs filed their Complaint on March 15, 2018 with six (6) claims  
8 for relief: (1) Equitable and Injunctive Relief; (2) Intentional Interference with  
9 Prospective Economic Relations; (3) Negligent Interference with Prospective  
10 Economic Relations; (4) Conspiracy; (5) Intentional Misrepresentation (fraud);  
11 and (6) Negligent Misrepresentation.

12 2. On April 13, 2018, Defendants filed their Special Motion to Dismiss  
13 (Anti-SLAPP Motion) Plaintiffs' Complaint Pursuant to NRS 41.635 Et Seq. On  
14 the same date, Defendants filed a Motion to Dismiss Pursuant to NRCP 12(b)(5).  
15

16 3. By stipulation between the parties, the issues were briefed and came  
17 before the Court on May 14, 2018 for oral argument. The Court permitted  
18 extensive oral argument and, at the request of Defendants, further briefing.

19 4. Plaintiffs' Complaint alleged the following facts:  
20

21 a. Plaintiffs are developing approximately 250 acres of land  
22 they own and control in Las Vegas, Nevada formerly known as the  
23 Badlands Golf Course property (hereinafter the "Land"). *See Comp. at*  
*¶ 9.*

24 b. Plaintiffs have the absolute right to develop the Land under  
25 its present RDP 7 zoning, which means that up to 7.49 dwelling units per  
acre may be constructed on it. *See Comp. at ¶ 29, Ex. 2 at p. 18.*

26 c. The Land is adjacent to the Queensridge Common Interest  
27 Community (hereinafter "Queensridge") which was created and  
28 organized under the provisions of NRS Chapter 116. *See Comp. at ¶ 10.*



1 d. The Defendants are certain residents of Queensridge who  
2 strongly oppose any redevelopment of the Land because some have  
3 enjoyed golf course views, which views they don't want to lose even  
4 though the golf course is no longer operational. *See Comp. at ¶¶ 23-30.*

4 e. Rather than properly participate in the political process,  
5 however, the Defendants are using unjust and unlawful tactics to  
6 intimidate and harass the Land Owners and ultimately prevent any  
7 redevelopment of the Land. *See Id.*

7 f. Defendants are doing so despite having received prior,  
8 express written notice that, among other things, the Land is developable  
9 and any views or location advantages they have enjoyed may be  
10 obstructed by future development. *See Comp. at ¶¶ 12-22.*

10 g. Defendants executed purchase agreements when they  
11 purchased their residences within the Queensridge Common Interest  
12 Community which expressly acknowledged their receipt of, among other  
13 things, the following: (1) Master Declaration of Covenants, Conditions,  
14 Restrictions and Easements for Queensridge (Queensridge Master  
15 Declaration), which was recorded in 1996; (2) Notice of Zoning  
16 Designation of Adjoining Lot which disclosed that the Land was zoned  
17 RPD 7; (3) Additional Disclosures Section 4 – No Golf Course or  
18 Membership Privileges which stated that they acquired no rights in the  
19 Badlands Golf Course; (4) Additional Disclosure Section 7 –  
20 Views/Location Advantages which stated that future construction in the  
21 planned community may obstruct or block any view or diminish any  
22 location advantage; and (5) Public Offering Statement for Queensridge  
23 Towers which included these same disclaimers. *See Comp. at ¶¶ 10-12,*  
24 *15-20.*

19 h. The deeds to the Defendants' respective residences "are clear  
20 by their respective terms that they have no rights to affect or control the  
21 use of Plaintiffs' real property." *See Comp. at ¶ 21.*

21 i. The Defendants nevertheless prepared, promulgated,  
22 solicited, circulated, and executed the following declaration to their  
23 Queensridge neighbors in March 2018:

24 TO: City of Las Vegas

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

27 The undersigned made such purchase in reliance upon the fact that  
28 the open space/natural drainage system could not be developed  
pursuant to the City's Approval in 1990 of the Peccole Ranch Master

1 Plan and subsequent formal actions designating the open  
2 space/natural drainage system in its General Plan as Parks  
3 Recreation – Open Space which land use designation does not permit  
the building of residential units.

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

6 *See Comp., Ex. 1.*

7 j. The Defendants did so despite having received prior, express  
8 written notice that the Queensridge Master Declaration does not apply  
9 to the Land, the Land Owners have the absolute right to develop it based  
10 solely on the RPD 7 zoning, and any views and/or locations advantages  
they enjoyed could be obstructed in the future. *See gen., Comp., Exs. 2,*  
11 *3, and 4.*

12 k. In preparing, promulgating, soliciting, circulating, and  
13 executing the declaration, the Defendants also disregarded district court  
14 orders which involved their similarly situated neighbors in Queensridge,  
15 which are public records attached to the Complaint, and which expressly  
16 found that: (1) the Land Owners have complied with all relevant  
17 provisions of NRS Chapter 278 and properly followed procedures for  
18 approval of a parcel map over their property; (2) Queensridge Common  
19 Interest Community is governed by NRS Chapter 116 and not NRS  
20 Chapter 278A because there is no evidence remotely suggesting that the  
21 Land is within a planned unit development; (3) the Land is not subject  
22 to the Queensridge Master Declaration, and the Land Owners'  
23 applications to develop the Land are not prohibited by, or violative of,  
24 that declaration; (4) Queensridge residents have no vested rights in the  
Land; (5) the Land Owners' development applications are legal and  
proper; (6) the Land Owners have the right to close the golf course and  
not water it without impacting the Queensridge residents' rights; (7) the  
Land is not open space and drainage because it is zoned RPD 7; and (8)  
the Land Owners have the absolute right to develop the Land because  
zoning – not the Peccole Ranch Master Plan – dictates its use and the  
Land Owners' rights to develop it. *See Id.; see also Comp., Ex. 2 at ¶¶*  
25 *41-42, 52, 56, 66, 74, 78-79, and 108; Ex. 3 at ¶¶ 8, 12, 15-23, 26, 61, 64-*  
26 *67, and 133.*

27 l. The Defendants further ignored another district court order  
28 dismissing claims based on findings that similarly contradicted the  
statements in the Defendants' declaration. *See Comp., Exs. 1, 4.*

m. Defendants fraudulently procured signatures by picking and  
choosing the information they shared with their neighbors in order to

1 manipulate them into signing the declaration. *See Id.*; *see also Comp.,*  
2 *Exs. 2 and 3.*

3 *n.* Defendants simply ignored or disregarded known, material  
4 facts that directly conflicted with the statements in the declaration and  
5 undermined their plan to present a false narrative to the City of Las  
6 Vegas and mislead council members into delaying and ultimately  
7 denying the Land Owners' development applications. *See Id.*; *see also*  
8 *Comp., Ex. 1.*

9 5. The Court FINDS that even though it has concluded that Nevada's  
10 anti-SLAPP statute does not apply to fraudulent conduct, even if it did so apply,  
11 at this early stage in the litigation and given the numerous allegations of fraud,  
12 the Court is not convinced by a preponderance of the evidence that Defendants'  
13 conduct constituted "good faith communications in furtherance of the right to  
14 petition or the right to free speech in direct connection with an issue of public  
15 concern," as described in NRS 41.637.

16 6. The Court further FINDS that Plaintiffs have stated valid claims  
17 upon which relief can be granted.

18 7. If any of these Findings of Fact is more appropriately deemed a  
19 Conclusion of Law, so shall it be deemed.

## 20 CONCLUSIONS OF LAW

21 8. Nevada's anti-SLAPP lawsuit against public participation (SLAPP)  
22 statutes, codified in NRS Chapter 41.635 et seq., protect a defendant from liability  
23 for engaging in "good faith communication in furtherance of the right to petition  
24 or the right to free speech in direct connection with an issue of public concern" as  
25 addressed in "any civil action for claims based upon the communication." *NRS*  
26 *41.650.*

1           9. Nevada’s anti-SLAPP statute is predicated on protecting ‘well-  
2 meaning citizens who petition the government and then find themselves hit with  
3 retaliatory suits known as SLAPP[] [suits].” *John v. Douglas Cnty. Sch. Dist.*, 125  
4 Nev. at 753, 219 P.3d at 1281. (citing comments by State Senator on S.B. 405 Before  
5 the Senate, 67th Leg. (Nev., June 17, 1993)).

6  
7           10. Importantly, however, Nevada’s anti-SLAPP statute only protects  
8 from civil liability those citizens who engage in good-faith communications. *NRS*  
9 *41.637*.

10           11. Nevada’s anti-SLAPP statute is not an absolute bar against  
11 substantive claims. *Id.*

12           12. Instead, it only bars claims from persons who seek to abuse other  
13 citizens’ rights to participate in the political process, and it allows meritorious  
14 claims against citizens who do not act in good faith. *Id.*

15           13. Nevada’s Anti-SLAPP statutes protect “good faith  
16 communication(s) in furtherance of the right to petition or the right to free speech  
17 in direct connection with an issue of public concern” under all four categories in  
18 *NRS 41.637*, namely:  
19

20  
21           1. Communication that is aimed at procuring any governmental or  
electoral action, result or outcome;

22           2. Communication of information or a complaint to a Legislator,  
23 officer or employee of the Federal Government, this state or a political  
subdivision of this state, regarding a matter reasonably of concern to the  
24 respective governmental entity;

25           3. Written or oral statement made in direct connection with an issue  
under consideration by a legislative, executive or judicial body, or any other  
26 official proceeding authorized by law; or

27           4. Communication made in direct connection with an issue of public  
interest in a place open to the public or in a public forum, which is truthful  
28 or is made without knowledge of its falsehood.

1           *NRS 41.637*

2           14.    *NRS 41.660(3)* provides that the Court must first “[d]etermine  
3 whether the moving party has established, by a preponderance of the evidence,  
4 that the claim is based upon a good faith communication in furtherance of the  
5 right to petition or the right to free speech in direct connection with an issue of  
6 public concern.” *NRS 41.660(3)(a)*.

7  
8           15.    Only after determining that the moving party has met this burden,  
9 the Court may then “determine whether the plaintiff has demonstrated with prima  
10 facie evidence a probability of prevailing on the claim.” *NRS 41.660(3)(b)*.

11           16.    Most anti-SLAPP cases involve defamation claims. *See, e.g.,*  
12 *Bongiovi v. Sullivan*, 122 Nev. 556, 138 P.3d 433 (2006). This case is not a  
13 defamation action.

14  
15           17.    The First Amendment does not overcome intentional torts. *See*  
16 *Bongiovi v. Sullivan*, 122 Nev. at 472, 138 P.3d at 445 (No special protection is  
17 warranted when “the speech is wholly false and clearly damaging to the victim’s  
18 business reputation.”) (quoting *Dun & Bradstreet, Inc. v. Greenmoss Builders*,  
19 472 U.S. 749, 762, (1985)); *see also Holloway v. Am. Media, Inc.*, 947 F.Supp.2d  
20 1252, 1266-67 (N.D. Ala. 2013)(First Amendment does not overcome intentional  
21 infliction of emotional distress claim); *Gibson v. Brewer*, 952 S.W.2d 239, 248-  
22 49 (Mo. 1997) (First Amendment does not protect against adjudication of  
23 intentional torts).

24  
25           18.    Although Nevada’s anti-SLAPP protections include speech that  
26 seeks to influence a governmental action but is not directly addressed to the  
27 government agency, that immunity is limited to a “civil action for claims based  
28

1 upon the communication.” *NRS 41.650*. It does not overcome intentional torts or  
2 claims based on wrongful conduct. *Id.*

3 19. As California courts have repeatedly held, an anti-SLAPP movant  
4 bears the threshold burden of establishing that “the challenged claims arise from  
5 acts in furtherance of the defendants’ right of free speech or right of petition under  
6 one of the categories set forth in [California’s anti-SLAPP statute].” *Finton*  
7 *Constr., Inc. v. Bidna & Keys, APLC*, 190 Cal. Rptr. 3d 1, 9 (Cal. Ct. App. 2015)  
8 (citation omitted).  
9

10 20. When analyzing whether the movants have met their burden, the  
11 Court is to “examine the principal thrust or gravamen of a plaintiff’s cause of  
12 action to determine whether the anti-SLAPP statute applies.” *Id.* (quoting  
13 *Ramona Unified School Dist. v. Tsiknas*, 37 Cal. Rptr. 3d 381, 388 (Cal. Ct. App.  
14 2005) (emphasis in original)).  
15

16 21. In doing so, the Court must determine whether the “allegedly  
17 wrongful and injury-producing conduct ... provides the foundation for the claim.”  
18 *Hylton v. Frank E. Rogozienski, Inc.*, 99 Cal. Rptr. 3d 805, 810 (Cal. Ct. App.  
19 2009) (quotation and citation omitted).  
20

21 22. *NRS 41.637(4)* provides that good faith communication is “truthful  
22 or is made without knowledge of its falsehood”); see also *Adelson v. Harris*, 133  
23 Nev. \_\_\_, \_\_\_ n. 5, 402 P.3d 665, 670-71 n. 5 (2017) (Even if the communication  
24 in this case was “aimed at procuring a[ ] governmental or electoral action, result  
25 or outcome,” that communication is not protected unless it is “truthful or is made  
26 without knowledge of its falsehood.”) (citing *Delucchi v. Songer*, 133 Nev. \_\_\_,  
27 396 P.3d 826, 829–30 (2017)).  
28

1           23.     Here, in order for the Defendants' purported "communications" to  
2     be in good faith, they must demonstrate them to be "truthful or made without  
3     knowledge of [their] falsehood." *NRS 41.637(4)*. In particular, the phrase "made  
4     without knowledge of its falsehood" has a well-settled and ordinarily understood  
5     meaning. *Shapiro v. Welt*, 133 Nev. at \_\_\_, 389 P.3d at 267. The declarant must  
6     be unaware that the communication is false at the time it was made. *See Id.*

7  
8           24.     The absolute litigation privilege is limited to defamation claims,  
9     and this is not a defamation action. *Fink v. Oshins*, 118 Nev. 428, 433, 49 P.3d  
10    640, 645 (2002) (absolute privilege limited to defamation cases). Only the fair,  
11    accurate, and impartial reporting of judicial proceedings is privileged and  
12    nonactionable. *Adelson v. Harris*, 133 Nev. at \_\_\_, 402 P.3d at 667.

13  
14          25.     The qualified or conditional privilege alternatively sought by the  
15    Defendants only applies where "a defamatory statement is made in good faith on  
16    any subject matter in which the person communicating has an interest, or in  
17    reference to which he has a right or a duty, if it is made to a person with a  
18    corresponding interest or duty." *Bank of America Nevada v. Bordeau*, 115 Nev. at  
19    266-67, 982 P.2d at 476 (statements made to FDIC investigators during  
20    background check of employee are subject to conditional privilege). As a party  
21    claiming a qualified or conditional privilege in publishing a defamatory statement,  
22    the Defendants must have acted in good faith, without malice, spite or ill will, or  
23    some other wrongful motivation, and must believe in the statement's probable  
24    truth. *See id.*; see also *Pope v. Motel 6*, 121 Nev. 307, 317, 114 P.3d 277, 284 (2005)  
25    (statements made to police during investigation subject to conditional privilege).  
26  
27  
28

*As to Defendants assertion of absolute,  
qualified, or conditional privilege,*

1 26. ~~At minimum~~, a factual issue exists whether any privilege applies  
2 and/or the Defendants acted in good faith, both of which are not properly decided  
3 in this special motion. *Fink v. Oshins*, 118 Nev. at 433, 49 P.3d at 645 (factual  
4 issue on whether privilege applied); *Bank of America Nevada v. Bordeau*, 115  
5 Nev. at 266-67, 982 P.2d at 476 (factual issue on whether publication was made  
6 with malice).  
7

8 27. While this Court has found that Defendants have failed to meet their  
9 initial burden by demonstrating, by a preponderance of the evidence, that their  
10 actions constituted "good faith communications in furtherance of the right to  
11 petition or the right to free speech in direct connection with an issue of public  
12 concern," as described in NRS 41.637, NRS 41.660 provides that if Plaintiffs  
13 require information to demonstrate their prima facie case which is in the  
14 possession of another party or third party, the Court "shall allow limited discovery  
15 for the limited purpose of ascertaining such information" necessary to  
16 "demonstrate with prima facie evidence a probability of prevailing on the claim."  
17  
18 *NRS 41.660(3)(b); NRS 41.660(4).*  
19

20 28. The Court finds that Nevada's anti-SLAPP statute does not apply to  
21 fraudulent conduct, which Plaintiffs have alleged.

22 29. The standard for dismissal under NRCP 12(b)(5) is rigorous as the  
23 district court "must construe the pleading liberally" and draw every fair inference  
24 in favor of the non-moving party. *Breliant v. Preferred Equities Corp.*, 109 Nev. at  
25 846, 858 P.2d at 1260 (1993) (quoting *Squires v. Sierra Nev. Educational Found.*,  
26 107 Nev. 902, 905, 823 P.2d 256, 257 (1991)). *See, also, NRCP 12(b)(5).*  
27  
28



1           30. All factual allegations of the complaint must be accepted as true. *See*  
2 *Breliant*, 109 Nev. at 846, 858 P.2d at 1260 (*citing Capital Mort. Holding v. Hahn*,  
3 101 Nev. 314, 315, 705 P.2d 126, 126 (1985)).

4           31. A complaint will not be dismissed for failure to state a claim “unless  
5 it appears beyond a doubt that the plaintiff could prove no set of facts which, if  
6 accepted by the trier of fact, would entitle him [or her] to relief.” *See Breliant*, 109  
7 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           32. *LT Intern. Ltd. v. Shuffle Master, Inc.*, 8 F.Supp.3d 1238, 1248 (D.  
10 Nev. 2014) provides that allegations of tortious interference with prospective  
11 economic relations need not plead the existence of a valid contract and must only  
12 raise plausible claim for relief under NRCP 8 to avoid dismissal.

13           33. *Flowers v. Carville*, 266 F.Supp.2d 1245, 1249 (D. Nev. 2003)  
14 provides that actionable civil conspiracy is defined as a combination of two or more  
15 persons, who by some concerted action, intend to accomplish some unlawful  
16 objective for the purpose of harming another which results in damage.

17           34. Courts may take judicial notice of facts that are “not subject to  
18 reasonable dispute.” *NRS 47.130(2)*.

19           35. Generally, the court will not take judicial notice of facts in a different  
20 case, even if connected in some way, unless the party seeking such notice  
21 demonstrates a valid reason for doing so. *Mack v. Estate of Mack*, 125 Nev. 80,  
22 91, 206 P.3d 98, 106 (Nev. 2009) (holding that the court will generally not take  
23 judicial notice of records in other matters); *Carson Ready Mix v. First Nat’l Bk.*,  
24  
25  
26  
27  
28

1 97 Nev. 474, 476, 635 P.2d 276, 277 (Nev. 1981) (providing that the court will not  
2 consider evidence not appearing in the record on appeal).

3 36. *Breliant v. Preferred Equities Corp.*, 109 Nev. at 845, 858 P.2d at  
4 1260, however, provides that in ruling on a motion to dismiss, the court may  
5 consider matters of public record, orders, items present in the record and any  
6 exhibits attached to the complaint.  
7

8 37. *Nelson v. Heer*, 123 Nev. 217, 225-26, 163 P.3d 420, 426 (2007)  
9 provides that with respect to false-representation element of intentional-  
10 misrepresentation claim, the suppression or omission of a material fact which a  
11 party is bound in good faith to disclose is equivalent to a false representation, since  
12 it constitutes an indirect representation that such fact does not exist.  
13

14 38. NRCP 8 requires only general factual allegations, not itemized  
15 descriptions of evidence. NRCP 8 (complainant need only provide “a short and  
16 plain statement of the claim showing that the pleader is entitled to relief”); *see also*  
17 *Breliant v. Preferred Equities Corp.*, 109 Nev. at 846, 858 P.2d at 1260 (“The test  
18 for determining whether the allegations of a complaint are sufficient to assert a  
19 claim for relief is whether [they] give fair notice of the nature and basis of a legally  
20 sufficient claim and the relief requested.”).  
21

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

1 *Counseling*, 110 Nev. 359, 365, 871 P.2d 953, 957 (1994) (“Nevada is a notice  
2 pleading jurisdiction and we liberally construe pleadings to place matters into  
3 issue which are fairly noticed to the adverse party.”), overruled on other grounds  
4 by *Nunez v. City of N. Las Vegas*, 116 Nev. 535, 1 P.3d 959 (2000).

5  
6 40. As such, Plaintiffs are entitled under NRCP 8 to set forth only  
7 general allegations in their Complaint and then rely at trial upon specific  
8 evidentiary facts never mentioned anywhere in the pleadings. *Nutton v. Sunset*  
9 *Station, Inc.*, 131 Nev. \_\_\_, 357 P.3d 966, 974 (Nev. Ct. App. 2015).

10 41. *Rocker v. KPMG LLP*, 122 Nev. 1185, 148 P.3d 703 (2006) provides  
11 that if the Court determines that ~~it~~ misrepresentation claims are not plead with  
12 sufficient particularity pursuant to NRCP 9, discovery should be permitted. See  
13 NRCP 9(b) (“In all averments of fraud or mistake, the circumstances constituting  
14 fraud or mistake shall be stated with particularity...”); cf. *Rocker*, 122 Nev. at 1192-  
15 95, 148 P.3d at 707-10 (A relaxed pleading standard applies in fraud actions where  
16 the facts necessary for pleading with particularity are peculiarly within the  
17 defendant’s knowledge or are readily obtainable by him. In such situations, district  
18 court should allow the plaintiff time to conduct the necessary discovery.); see also  
19 *Squires v. Sierra Nevada Ed. Found. Inc.*, 107 Nev. 902, 906 and n. 1, 823 P.2d  
20 256, 258 and n. 1 (1991) (misrepresentation allegations sufficient to avoid  
21 dismissal under NRCP 12(b)(5)).

22  
23  
24 42. The Court finds that Plaintiffs have stated valid claims upon which  
25 relief can be granted, requiring the denial of Defendants’ Motion to Dismiss.

26  
27 43. If any of these Conclusions of Law are more appropriately deemed  
28 a Finding of Fact, so shall they be deemed.

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**ORDER**

IT IS HEREBY ORDERED that *Defendants' Special Motion To Dismiss (Anti-SLAPP Motion) Plaintiffs' Complaint Pursuant To NRS 41.635 Et Seq.* is hereby DENIED, without prejudice.

IT IS FURTHER ORDERED that *Defendants' Motion to Dismiss Pursuant to NRCP 12(b)(5)* is hereby DENIED.

IT IS FURTHER ORDERED that the Chambers Hearing scheduled for May 30, 2018 is hereby VACATED.


IT IS FURTHER ORDERED that Plaintiffs shall prepare the proposed Order adding appropriate context and authorities.

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

  
DISTRICT COURT JUDGE


Respectfully Submitted:

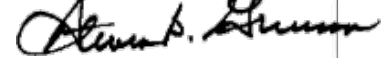
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**DISTRICT COURT  
CLARK COUNTY, NEVADA**

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

**NOTICE OF ENTRY OF FINDINGS  
OF FACT, CONCLUSIONS OF LAW,  
AND ORDER**

PLEASE TAKE NOTICE that the Findings of Fact, Conclusions of Law, and  
Order was entered in the above-entitled matter on the 20th day of June, 2018, a  
copy of which is attached hereto.

DATED this 21<sup>st</sup> day of June, 2018.

THE JIMMERSON LAW FIRM, P.C.



JAMES J. JIMMERSON, ESQ.,  
Nevada Bar No. 000264  
415 South Sixth Street, Suite 100  
Las Vegas, Nevada 89101

**CERTIFICATE OF SERVICE**

I hereby certify that on the 21<sup>st</sup> day of June, 2018, I caused a true and correct copy of the foregoing **NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER** 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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7 **DISTRICT COURT**

8 **CLARK COUNTY, NEVADA**

9 FORE STARS, LTD., a Nevada limited  
10 liability company; 180 LAND CO., LLC; a  
11 Nevada limited liability company;  
12 SEVENTY ACRES, LLC, a Nevada limited  
13 liability company,

12 Plaintiffs,

13 v.

14 DANIEL OMERZA, DARREN BRESEE,  
15 STEVE CARIA, and DOES 1 THROUGH  
16 100,

17 Defendants,

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

**FINDINGS OF FACT,  
CONCLUSIONS OF LAW, AND  
ORDER**

Date of Hearing: 5/14/18  
Time of Hearing: 9:00 a.m.

18 THIS MATTER having come on for hearing on this 14<sup>th</sup> day of May, 2018,  
19 on *Defendants' Special Motion To Dismiss (Anti-SLAPP Motion) Plaintiffs'*  
20 *Complaint Pursuant To NRS 41.635 Et Seq.*, and *Defendants' Motion To Dismiss*  
21 *Pursuant To NRCP 12(b)(5)*, and Plaintiffs' Oppositions thereto, James J.  
22 Jimmerson, Esq., of THE JIMMERSON LAW FIRM, P.C., and Elizabeth Ham,  
23 Esq., appearing on behalf of the Plaintiffs, and Plaintiffs representative, Yohan  
24 Lowie, being present, Mitchell J. Langberg, Esq., of BROWNSTEIN HYATT  
25 FARBER SCHRECK, LLP, appearing on behalf of the Defendants, and Defendants  
26 being present, and the Court having reviewed the pleadings and papers on file, and  
27 the Court having authorized Supplements to be filed by both parties through May  
28

JUN 12 2018

23, 2018 close of business, and the Court having reviewed the same, and the exhibits attached to the briefs, and the Court having allowed the parties extended oral argument, and good cause appearing, hereby FINDS, CONCLUDES and ORDERS:

**FINDINGS OF FACT**

1. Plaintiffs filed their Complaint on March 15, 2018 with six (6) claims for relief: (1) Equitable and Injunctive Relief; (2) Intentional Interference with Prospective Economic Relations; (3) Negligent Interference with Prospective Economic Relations; (4) Conspiracy; (5) Intentional Misrepresentation (fraud); and (6) Negligent Misrepresentation.

2. On April 13, 2018, Defendants filed their Special Motion to Dismiss (Anti-SLAPP Motion) Plaintiffs' Complaint Pursuant to NRS 41.635 Et Seq. On the same date, Defendants filed a Motion to Dismiss Pursuant to NRCP 12(b)(5).

3. By stipulation between the parties, the issues were briefed and came before the Court on May 14, 2018 for oral argument. The Court permitted extensive oral argument and, at the request of Defendants, further briefing.

4. Plaintiffs' Complaint alleged the following facts:

a. Plaintiffs are developing approximately 250 acres of land they own and control in Las Vegas, Nevada formerly known as the Badlands Golf Course property (hereinafter the "Land"). *See Comp. at ¶ 9.*

b. Plaintiffs have the absolute right to develop the Land under its present RDP 7 zoning, which means that up to 7.49 dwelling units per acre may be constructed on it. *See Comp. at ¶ 29, Ex. 2 at p. 18.*

c. The Land is adjacent to the Queensridge Common Interest Community (hereinafter "Queensridge") which was created and organized under the provisions of NRS Chapter 116. *See Comp. at ¶ 10.*



1 d. The Defendants are certain residents of Queensridge who  
2 strongly oppose any redevelopment of the Land because some have  
3 enjoyed golf course views, which views they don't want to lose even  
4 though the golf course is no longer operational. *See Comp. at ¶¶ 23-30.*

5 e. Rather than properly participate in the political process,  
6 however, the Defendants are using unjust and unlawful tactics to  
7 intimidate and harass the Land Owners and ultimately prevent any  
8 redevelopment of the Land. *See Id.*

9 f. Defendants are doing so despite having received prior,  
10 express written notice that, among other things, the Land is developable  
11 and any views or location advantages they have enjoyed may be  
12 obstructed by future development. *See Comp. at ¶¶ 12-22.*

13 g. Defendants executed purchase agreements when they  
14 purchased their residences within the Queensridge Common Interest  
15 Community which expressly acknowledged their receipt of, among other  
16 things, the following: (1) Master Declaration of Covenants, Conditions,  
17 Restrictions and Easements for Queensridge (Queensridge Master  
18 Declaration), which was recorded in 1996; (2) Notice of Zoning  
19 Designation of Adjoining Lot which disclosed that the Land was zoned  
20 RPD 7; (3) Additional Disclosures Section 4 - No Golf Course or  
21 Membership Privileges which stated that they acquired no rights in the  
22 Badlands Golf Course; (4) Additional Disclosure Section 7 -  
23 Views/Location Advantages which stated that future construction in the  
24 planned community may obstruct or block any view or diminish any  
25 location advantage; and (5) Public Offering Statement for Queensridge  
26 Towers which included these same disclaimers. *See Comp. at ¶¶ 10-12,*  
27 *15-20.*

28 h. The deeds to the Defendants' respective residences "are clear  
by their respective terms that they have no rights to affect or control the  
use of Plaintiffs' real property." *See Comp. at ¶ 21.*

i. The Defendants nevertheless prepared, promulgated,  
solicited, circulated, and executed the following declaration to their  
Queensridge neighbors in March 2018:

TO: City of Las Vegas

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

The undersigned made such purchase in reliance upon the fact that  
the open space/natural drainage system could not be developed  
pursuant to the City's Approval in 1990 of the Peccole Ranch Master

1 Plan and subsequent formal actions designating the open  
2 space/natural drainage system in its General Plan as Parks  
3 Recreation – Open Space which land use designation does not permit  
the building of residential units.

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

6 *See Comp., Ex. 1.*

7 j. The Defendants did so despite having received prior, express  
8 written notice that the Queensridge Master Declaration does not apply  
9 to the Land, the Land Owners have the absolute right to develop it based  
10 solely on the RPD 7 zoning, and any views and/or locations advantages  
they enjoyed could be obstructed in the future. *See gen., Comp., Exs. 2,*  
11 *3, and 4.*

12 k. In preparing, promulgating, soliciting, circulating, and  
13 executing the declaration, the Defendants also disregarded district court  
14 orders which involved their similarly situated neighbors in Queensridge,  
15 which are public records attached to the Complaint, and which expressly  
16 found that: (1) the Land Owners have complied with all relevant  
17 provisions of NRS Chapter 278 and properly followed procedures for  
18 approval of a parcel map over their property; (2) Queensridge Common  
19 Interest Community is governed by NRS Chapter 116 and not NRS  
20 Chapter 278A because there is no evidence remotely suggesting that the  
21 Land is within a planned unit development; (3) the Land is not subject  
22 to the Queensridge Master Declaration, and the Land Owners'  
23 applications to develop the Land are not prohibited by, or violative of,  
24 that declaration; (4) Queensridge residents have no vested rights in the  
Land; (5) the Land Owners' development applications are legal and  
proper; (6) the Land Owners have the right to close the golf course and  
not water it without impacting the Queensridge residents' rights; (7) the  
Land is not open space and drainage because it is zoned RPD 7; and (8)  
the Land Owners have the absolute right to develop the Land because  
zoning – not the Peccole Ranch Master Plan – dictates its use and the  
Land Owners' rights to develop it. *See Id.; see also Comp., Ex. 2 at ¶¶*  
25 *41-42, 52, 56, 66, 74, 78-79, and 108; Ex. 3 at ¶¶ 8, 12, 15-23, 26, 61, 64-*  
26 *67, and 133.*

27 l. The Defendants further ignored another district court order  
28 dismissing claims based on findings that similarly contradicted the  
statements in the Defendants' declaration. *See Comp., Exs. 1, 4.*

m. Defendants fraudulently procured signatures by picking and  
choosing the information they shared with their neighbors in order to

1 manipulate them into signing the declaration. *See Id.*; *see also Comp.,*  
2 *Exs. 2 and 3.*

3 n. Defendants simply ignored or disregarded known, material  
4 facts that directly conflicted with the statements in the declaration and  
5 undermined their plan to present a false narrative to the City of Las  
6 Vegas and mislead council members into delaying and ultimately  
7 denying the Land Owners' development applications. *See Id.*; *see also*  
8 *Comp., Ex. 1.*

9 5. The Court FINDS that even though it has concluded that Nevada's  
10 anti-SLAPP statute does not apply to fraudulent conduct, even if it did so apply,  
11 at this early stage in the litigation and given the numerous allegations of fraud,  
12 the Court is not convinced by a preponderance of the evidence that Defendants'  
13 conduct constituted "good faith communications in furtherance of the right to  
14 petition or the right to free speech in direct connection with an issue of public  
15 concern," as described in NRS 41.637.

16 6. The Court further FINDS that Plaintiffs have stated valid claims  
17 upon which relief can be granted.

18 7. If any of these Findings of Fact is more appropriately deemed a  
19 Conclusion of Law, so shall it be deemed.

#### 20 CONCLUSIONS OF LAW

21 8. Nevada's anti-SLAPP lawsuit against public participation (SLAPP)  
22 statutes, codified in NRS Chapter 41.635 et seq., protect a defendant from liability  
23 for engaging in "good faith communication in furtherance of the right to petition  
24 or the right to free speech in direct connection with an issue of public concern" as  
25 addressed in "any civil action for claims based upon the communication." NRS  
26 41.650.  
27  
28

1           9. Nevada's anti-SLAPP statute is predicated on protecting 'well-  
2 meaning citizens who petition the government and then find themselves hit with  
3 retaliatory suits known as SLAPP[] [suits]." *John v. Douglas Cnty. Sch. Dist.*, 125  
4 Nev. at 753, 219 P.3d at 1281. (citing comments by State Senator on S.B. 405 Before  
5 the Senate, 67th Leg. (Nev., June 17, 1993)).

6  
7           10. Importantly, however, Nevada's anti-SLAPP statute only protects  
8 from civil liability those citizens who engage in good-faith communications. *NRS*  
9 *41.637*.

10           11. Nevada's anti-SLAPP statute is not an absolute bar against  
11 substantive claims. *Id.*

12           12. Instead, it only bars claims from persons who seek to abuse other  
13 citizens' rights to participate in the political process, and it allows meritorious  
14 claims against citizens who do not act in good faith. *Id.*

15           13. Nevada's Anti-SLAPP statutes protect "good faith  
16 communication(s) in furtherance of the right to petition or the right to free speech  
17 in direct connection with an issue of public concern" under all four categories in  
18 *NRS 41.637*, namely:  
19

20  
21           1. Communication that is aimed at procuring any governmental or  
22 electoral action, result or outcome;

23           2. Communication of information or a complaint to a Legislator,  
24 officer or employee of the Federal Government, this state or a political  
25 subdivision of this state, regarding a matter reasonably of concern to the  
26 respective governmental entity;

27           3. Written or oral statement made in direct connection with an issue  
28 under consideration by a legislative, executive or judicial body, or any other  
official proceeding authorized by law; or

          4. Communication made in direct connection with an issue of public  
interest in a place open to the public or in a public forum, which is truthful  
or is made without knowledge of its falsehood.

1           *NRS 41.637*

2           14.    *NRS 41.660(3)* provides that the Court must first “[d]etermine  
3 whether the moving party has established, by a preponderance of the evidence,  
4 that the claim is based upon a good faith communication in furtherance of the  
5 right to petition or the right to free speech in direct connection with an issue of  
6 public concern.” *NRS 41.660(3)(a)*.  
7

8           15.    Only after determining that the moving party has met this burden,  
9 the Court may then “determine whether the plaintiff has demonstrated with prima  
10 facie evidence a probability of prevailing on the claim.” *NRS 41.660(3)(b)*.  
11

12           16.    Most anti-SLAPP cases involve defamation claims. *See, e.g.,*  
13 *Bongiovi v. Sullivan*, 122 Nev. 556, 138 P.3d 433 (2006). This case is not a  
14 defamation action.

15           17.    The First Amendment does not overcome intentional torts. *See*  
16 *Bongiovi v. Sullivan*, 122 Nev. at 472, 138 P.3d at 445 (No special protection is  
17 warranted when “the speech is wholly false and clearly damaging to the victim’s  
18 business reputation.”) (quoting *Dun & Bradstreet, Inc. v. Greenmoss Builders*,  
19 472 U.S. 749, 762, (1985)); *see also Holloway v. Am. Media, Inc.*, 947 F.Supp.2d  
20 1252, 1266-67 (N.D. Ala. 2013)(First Amendment does not overcome intentional  
21 infliction of emotional distress claim); *Gibson v. Brewer*, 952 S.W.2d 239, 248-  
22 49 (Mo. 1997) (First Amendment does not protect against adjudication of  
23 intentional torts).  
24

25           18.    Although Nevada’s anti-SLAPP protections include speech that  
26 seeks to influence a governmental action but is not directly addressed to the  
27 government agency, that immunity is limited to a “civil action for claims based  
28

1 upon the communication.” *NRS 41.650*. It does not overcome intentional torts or  
2 claims based on wrongful conduct. *Id.*

3 19. As California courts have repeatedly held, an anti-SLAPP movant  
4 bears the threshold burden of establishing that “the challenged claims arise from  
5 acts in furtherance of the defendants’ right of free speech or right of petition under  
6 one of the categories set forth in [California’s anti-SLAPP statute].” *Finton*  
7 *Constr., Inc. v. Bidna & Keys, APLC*, 190 Cal. Rptr. 3d 1, 9 (Cal. Ct. App. 2015)  
8 (citation omitted).

9  
10 20. When analyzing whether the movants have met their burden, the  
11 Court is to “examine the principal thrust or gravamen of a plaintiff’s cause of  
12 action to determine whether the anti-SLAPP statute applies.” *Id.* (quoting  
13 *Ramona Unified School Dist. v. Tsiknas*, 37 Cal. Rptr. 3d 381, 388 (Cal. Ct. App.  
14 2005) (emphasis in original)).

15  
16 21. In doing so, the Court must determine whether the “allegedly  
17 wrongful and injury-producing conduct ... provides the foundation for the claim.”  
18 *Hylton v. Frank E. Rogozienski, Inc.*, 99 Cal. Rptr. 3d 805, 810 (Cal. Ct. App.  
19 2009) (quotation and citation omitted).

20  
21 22. NRS 41.637(4) provides that good faith communication is “truthful  
22 or is made without knowledge of its falsehood”); see also *Adelson v. Harris*, 133  
23 Nev. \_\_\_, \_\_\_ n. 5, 402 P.3d 665, 670-71 n. 5 (2017) (Even if the communication  
24 in this case was “aimed at procuring a [ ] governmental or electoral action, result  
25 or outcome,” that communication is not protected unless it is “truthful or is made  
26 without knowledge of its falsehood.”) (citing *Delucchi v. Songer*, 133 Nev. \_\_\_,  
27 396 P.3d 826, 829-30 (2017)).  
28

1           23. Here, in order for the Defendants' purported "communications" to  
2 be in good faith, they must demonstrate them to be "truthful or made without  
3 knowledge of [their] falsehood." *NRS 41.637(4)*. In particular, the phrase "made  
4 without knowledge of its falsehood" has a well-settled and ordinarily understood  
5 meaning. *Shapiro v. Welt*, 133 Nev. at \_\_\_, 389 P.3d at 267. The declarant must  
6 be unaware that the communication is false at the time it was made. *See Id.*  
7

8           24. The absolute litigation privilege is limited to defamation claims,  
9 and this is not a defamation action. *Fink v. Oshins*, 118 Nev. 428, 433, 49 P.3d  
10 640, 645 (2002) (absolute privilege limited to defamation cases). Only the fair,  
11 accurate, and impartial reporting of judicial proceedings is privileged and  
12 nonactionable. *Adelson v. Harris*, 133 Nev. at \_\_\_, 402 P.3d at 667.  
13

14           25. The qualified or conditional privilege alternatively sought by the  
15 Defendants only applies where "a defamatory statement is made in good faith on  
16 any subject matter in which the person communicating has an interest, or in  
17 reference to which he has a right or a duty, if it is made to a person with a  
18 corresponding interest or duty." *Bank of America Nevada v. Bordeau*, 115 Nev. at  
19 266-67, 982 P.2d at 476 (statements made to FDIC investigators during  
20 background check of employee are subject to conditional privilege). As a party  
21 claiming a qualified or conditional privilege in publishing a defamatory statement,  
22 the Defendants must have acted in good faith, without malice, spite or ill will, or  
23 some other wrongful motivation, and must believe in the statement's probable  
24 truth. *See id.*; see also *Pope v. Motel 6*, 121 Nev. 307, 317, 114 P.3d 277, 284 (2005)  
25 (statements made to police during investigation subject to conditional privilege).  
26  
27  
28

*As to Defendants assertion of absolute,  
qualified, or conditional privilege,*

1 26. At minimum, a factual issue exists whether any privilege applies  
2 and/or the Defendants acted in good faith, both of which are not properly decided  
3 in this special motion. *Fink v. Oshins*, 118 Nev. at 433, 49 P.3d at 645 (factual  
4 issue on whether privilege applied); *Bank of America Nevada v. Bordeau*, 115  
5 Nev. at 266-67, 982 P.2d at 476 (factual issue on whether publication was made  
6 with malice).  
7

8 27. While this Court has found that Defendants have failed to meet their  
9 initial burden by demonstrating, by a preponderance of the evidence, that their  
10 actions constituted "good faith communications in furtherance of the right to  
11 petition or the right to free speech in direct connection with an issue of public  
12 concern," as described in NRS 41.637, NRS 41.660 provides that if Plaintiffs  
13 require information to demonstrate their prima facie case which is in the  
14 possession of another party or third party, the Court "shall allow limited discovery  
15 for the limited purpose of ascertaining such information" necessary to  
16 "demonstrate with prima facie evidence a probability of prevailing on the claim."  
17  
18 NRS 41.660(3)(b); NRS 41.660(4).  
19

20 28. The Court finds that Nevada's anti-SLAPP statute does not apply to  
21 fraudulent conduct, which Plaintiffs have alleged.

22 29. The standard for dismissal under NRCP 12(b)(5) is rigorous as the  
23 district court "must construe the pleading liberally" and draw every fair inference  
24 in favor of the non-moving party. *Breliant v. Preferred Equities Corp.*, 109 Nev. at  
25 846, 858 P.2d at 1260 (1993) (quoting *Squires v. Sierra Nev. Educational Found.*,  
26 107 Nev. 902, 905, 823 P.2d 256, 257 (1991)). See, also, NRCP 12(b)(5).  
27  
28



1           30. All factual allegations of the complaint must be accepted as true. *See*  
2 *Breliant*, 109 Nev. at 846, 858 P.2d at 1260 (citing *Capital Mort. Holding v. Hahn*,  
3 101 Nev. 314, 315, 705 P.2d 126, 126 (1985)).

4           31. A complaint will not be dismissed for failure to state a claim “unless  
5 it appears beyond a doubt that the plaintiff could prove no set of facts which, if  
6 accepted by the trier of fact, would entitle him [or her] to relief.” *See Breliant*, 109  
7 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           32. *LT Intern. Ltd. v. Shuffle Master, Inc.*, 8 F.Supp.3d 1238, 1248 (D.  
10 Nev. 2014) provides that allegations of tortious interference with prospective  
11 economic relations need not plead the existence of a valid contract and must only  
12 raise plausible claim for relief under NRCP 8 to avoid dismissal.

13           33. *Flowers v. Carville*, 266 F.Supp.2d 1245, 1249 (D. Nev. 2003)  
14 provides that actionable civil conspiracy is defined as a combination of two or more  
15 persons, who by some concerted action, intend to accomplish some unlawful  
16 objective for the purpose of harming another which results in damage.

17           34. Courts may take judicial notice of facts that are “not subject to  
18 reasonable dispute.” *NRS 47.130(2)*.

19           35. Generally, the court will not take judicial notice of facts in a different  
20 case, even if connected in some way, unless the party seeking such notice  
21 demonstrates a valid reason for doing so. *Mack v. Estate of Mack*, 125 Nev. 80,  
22 91, 206 P.3d 98, 106 (Nev. 2009) (holding that the court will generally not take  
23 judicial notice of records in other matters); *Carson Ready Mix v. First Nat’l Bk.*,  
24  
25  
26  
27  
28

1 97 Nev. 474, 476, 635 P.2d 276, 277 (Nev. 1981) (providing that the court will not  
2 consider evidence not appearing in the record on appeal).

3 36. *Breliant v. Preferred Equities Corp.*, 109 Nev. at 845, 858 P.2d at  
4 1260, however, provides that in ruling on a motion to dismiss, the court may  
5 consider matters of public record, orders, items present in the record and any  
6 exhibits attached to the complaint.  
7

8 37. *Nelson v. Heer*, 123 Nev. 217, 225-26, 163 P.3d 420, 426 (2007)  
9 provides that with respect to false-representation element of intentional-  
10 misrepresentation claim, the suppression or omission of a material fact which a  
11 party is bound in good faith to disclose is equivalent to a false representation, since  
12 it constitutes an indirect representation that such fact does not exist.  
13

14 38. NRCP 8 requires only general factual allegations, not itemized  
15 descriptions of evidence. NRCP 8 (complainant need only provide “a short and  
16 plain statement of the claim showing that the pleader is entitled to relief”); *see also*  
17 *Breliant v. Preferred Equities Corp.*, 109 Nev. at 846, 858 P.2d at 1260 (“The test  
18 for determining whether the allegations of a complaint are sufficient to assert a  
19 claim for relief is whether [they] give fair notice of the nature and basis of a legally  
20 sufficient claim and the relief requested.”).  
21

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

1 *Counseling*, 110 Nev. 359, 365, 871 P.2d 953, 957 (1994) (“Nevada is a notice  
2 pleading jurisdiction and we liberally construe pleadings to place matters into  
3 issue which are fairly noticed to the adverse party.”), overruled on other grounds  
4 by *Nunez v. City of N. Las Vegas*, 116 Nev. 535, 1 P.3d 959 (2000).

5  
6 40. As such, Plaintiffs are entitled under NRCP 8 to set forth only  
7 general allegations in their Complaint and then rely at trial upon specific  
8 evidentiary facts never mentioned anywhere in the pleadings. *Nutton v. Sunset*  
9 *Station, Inc.*, 131 Nev. \_\_\_, 357 P.3d 966, 974 (Nev. Ct. App. 2015).

10 41. *Rocker v. KPMG LLP*, 122 Nev. 1185, 148 P.3d 703 (2006) provides  
11 that if the Court determines that ~~X~~ misrepresentation claims are not plead with  
12 sufficient particularity pursuant to NRCP 9, discovery should be permitted. See  
13 NRCP 9(b) (“In all averments of fraud or mistake, the circumstances constituting  
14 fraud or mistake shall be stated with particularity...”); *cf. Rocker*, 122 Nev. at 1192-  
15 95, 148 P.3d at 707-10 (A relaxed pleading standard applies in fraud actions where  
16 the facts necessary for pleading with particularity are peculiarly within the  
17 defendant’s knowledge or are readily obtainable by him. In such situations, district  
18 court should allow the plaintiff time to conduct the necessary discovery.); *see also*  
19 *Squires v. Sierra Nevada Ed. Found. Inc.*, 107 Nev. 902, 906 and n. 1, 823 P.2d  
20 256, 258 and n. 1 (1991) (misrepresentation allegations sufficient to avoid  
21 dismissal under NRCP 12(b)(5)).

22  
23  
24 42. The Court finds that Plaintiffs have stated valid claims upon which  
25 relief can be granted, requiring the denial of Defendants’ Motion to Dismiss.

26  
27 43. If any of these Conclusions of Law are more appropriately deemed  
28 a Finding of Fact, so shall they be deemed.

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

IT IS HEREBY ORDERED that *Defendants' Special Motion To Dismiss (Anti-SLAPP Motion) Plaintiffs' Complaint Pursuant To NRS 41.635 Et Seq.* is hereby DENIED, without prejudice.

IT IS FURTHER ORDERED that *Defendants' Motion to Dismiss Pursuant to NRCP 12(b)(5)* is hereby DENIED.

IT IS FURTHER ORDERED that the Chambers Hearing scheduled for May 30, 2018 is hereby VACATED.


IT IS FURTHER ORDERED that Plaintiffs shall prepare the proposed Order adding appropriate context and authorities.

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

  
DISTRICT COURT JUDGE


Respectfully Submitted:

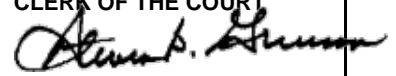
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9 *Counsel for Defendants,*  
10 DANIEL OMERZA, DARREN BRESEE, and  
11 STEVE CARIA

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

14 FORE STARS, LTD., a Nevada limited  
15 liability company; 180 LAND CO., LLC; a  
16 Nevada limited liability company;  
17 SEVENTY ACRES, LLC, a Nevada  
18 limited liability company,

19 Plaintiffs,

20 v.

21 DANIEL OMERZA, DARREN BRESEE,  
22 STEVE CARIA, and DOES 1 THROUGH  
23 100,

24 Defendants,

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

**NOTICE OF APPEAL**

25 ///

26 ///

27 ///

1 NOTICE IS HEREBY GIVEN that Defendants, DANIEL OMERZA, DARREN  
2 BRESEE, and STEVE CARIA, by and through their counsel of record, Brownstein Hyatt Farber  
3 Schreck, LLP, hereby appeal to the Supreme Court of Nevada from the Findings of Fact,  
4 Conclusions of Law, and Order which denied Defendants' Special Motion to Dismiss (Anti-  
5 SLAPP Motion) Plaintiffs' Complaint Pursuant to NRS §41.635 Et. Seq. (hereinafter the "Order")  
6 entered in this action on June 20, 2018. A true and correct copy of the Order is attached hereto  
7 as Exhibit 1.

8 A true and correct copy of the Notice of Entry of Findings of Fact, Conclusions of Law,  
9 and Order filed on June 21, 2018, is attached hereto as Exhibit 2.

10 DATED this 27<sup>th</sup> day of June, 2018.

11 BROWNSTEIN HYATT FARBER SCHRECK, LLP

12  
13 BY: /s/ Mitchell J. Langberg  
MITCHELL J. LANGBERG, ESQ., Bar No. 10118  
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17 *Counsel for Defendants*  
DANIEL OMERZA, DARREN BRESEE, and  
18 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 **NOTICE OF APPEAL** be submitted electronically for filing and/or service with the Eighth Judicial District Court via the Court's Electronic Filing System on the 27th day of June, 2018, to the following:

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

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

# EXHIBIT 1





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9 *Attorneys for Plaintiffs*

10 **DISTRICT COURT**

11 **CLARK COUNTY, NEVADA**

12 FORE STARS, LTD., a Nevada limited  
13 liability company; 180 LAND CO., LLC; a  
14 Nevada limited liability company;  
15 SEVENTY ACRES, LLC, a Nevada limited  
16 liability company,

17 Plaintiffs,

18 v.

19 DANIEL OMERZA, DARREN BRESEE,  
20 STEVE CARIA, and DOES 1 THROUGH  
21 100,

22 Defendants,

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

**FINDINGS OF FACT,  
CONCLUSIONS OF LAW, AND  
ORDER**

Date of Hearing: 5/14/18  
Time of Hearing: 9:00 a.m.

23 THIS MATTER having come on for hearing on this 14<sup>th</sup> day of May, 2018,  
24 on *Defendants' Special Motion To Dismiss (Anti-SLAPP Motion) Plaintiffs'*  
25 *Complaint Pursuant To NRS 41.635 Et Seq.*, and *Defendants' Motion To Dismiss*  
26 *Pursuant To NRCP 12(b)(5)*, and Plaintiffs' Oppositions thereto, James J.  
27 Jimmerson, Esq., of THE JIMMERSON LAW FIRM, P.C., and Elizabeth Ham,  
28 Esq., appearing on behalf of the Plaintiffs, and Plaintiffs' representative, Yohan  
Lowie, being present, Mitchell J. Langberg, Esq., of BROWNSTEIN HYATT  
FARBER SCHRECK, LLP, appearing on behalf of the Defendants, and Defendants  
being present, and the Court having reviewed the pleadings and papers on file, and  
the Court having authorized Supplements to be filed by both parties through May

JUN 12 2018

23, 2018 close of business, and the Court having reviewed the same, and the exhibits attached to the briefs, and the Court having allowed the parties extended oral argument, and good cause appearing, hereby FINDS, CONCLUDES and ORDERS:

### FINDINGS OF FACT

1. Plaintiffs filed their Complaint on March 15, 2018 with six (6) claims for relief: (1) Equitable and Injunctive Relief; (2) Intentional Interference with Prospective Economic Relations; (3) Negligent Interference with Prospective Economic Relations; (4) Conspiracy; (5) Intentional Misrepresentation (fraud); and (6) Negligent Misrepresentation.

2. On April 13, 2018, Defendants filed their Special Motion to Dismiss (Anti-SLAPP Motion) Plaintiffs' Complaint Pursuant to NRS 41.635 Et Seq. On the same date, Defendants filed a Motion to Dismiss Pursuant to NRCP 12(b)(5).

3. By stipulation between the parties, the issues were briefed and came before the Court on May 14, 2018 for oral argument. The Court permitted extensive oral argument and, at the request of Defendants, further briefing.

4. Plaintiffs' Complaint alleged the following facts:

a. Plaintiffs are developing approximately 250 acres of land they own and control in Las Vegas, Nevada formerly known as the Badlands Golf Course property (hereinafter the "Land"). *See Comp. at ¶ 9.*

b. Plaintiffs have the absolute right to develop the Land under its present RDP 7 zoning, which means that up to 7.49 dwelling units per acre may be constructed on it. *See Comp. at ¶ 29, Ex. 2 at p. 18.*

c. The Land is adjacent to the Queensridge Common Interest Community (hereinafter "Queensridge") which was created and organized under the provisions of NRS Chapter 116. *See Comp. at ¶ 10.*

1 d. The Defendants are certain residents of Queensridge who  
2 strongly oppose any redevelopment of the Land because some have  
3 enjoyed golf course views, which views they don't want to lose even  
4 though the golf course is no longer operational. *See Comp. at ¶¶ 23-30.*

5 e. Rather than properly participate in the political process,  
6 however, the Defendants are using unjust and unlawful tactics to  
7 intimidate and harass the Land Owners and ultimately prevent any  
8 redevelopment of the Land. *See Id.*

9 f. Defendants are doing so despite having received prior,  
10 express written notice that, among other things, the Land is developable  
11 and any views or location advantages they have enjoyed may be  
12 obstructed by future development. *See Comp. at ¶¶ 12-22.*

13 g. Defendants executed purchase agreements when they  
14 purchased their residences within the Queensridge Common Interest  
15 Community which expressly acknowledged their receipt of, among other  
16 things, the following: (1) Master Declaration of Covenants, Conditions,  
17 Restrictions and Easements for Queensridge (Queensridge Master  
18 Declaration), which was recorded in 1996; (2) Notice of Zoning  
19 Designation of Adjoining Lot which disclosed that the Land was zoned  
20 RPD 7; (3) Additional Disclosures Section 4 – No Golf Course or  
21 Membership Privileges which stated that they acquired no rights in the  
22 Badlands Golf Course; (4) Additional Disclosure Section 7 –  
23 Views/Location Advantages which stated that future construction in the  
24 planned community may obstruct or block any view or diminish any  
25 location advantage; and (5) Public Offering Statement for Queensridge  
26 Towers which included these same disclaimers. *See Comp. at ¶¶ 10-12,*  
27 *15-20.*

28 h. The deeds to the Defendants' respective residences "are clear  
by their respective terms that they have no rights to affect or control the  
use of Plaintiffs' real property." *See Comp. at ¶ 21.*

i. The Defendants nevertheless prepared, promulgated,  
solicited, circulated, and executed the following declaration to their  
Queensridge neighbors in March 2018:

TO: City of Las Vegas

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

The undersigned made such purchase in reliance upon the fact that  
the open space/natural drainage system could not be developed  
pursuant to the City's Approval in 1990 of the Peccole Ranch Master

1 Plan and subsequent formal actions designating the open  
2 space/natural drainage system in its General Plan as Parks  
3 Recreation – Open Space which land use designation does not permit  
the building of residential units.

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

6 *See Comp., Ex. 1.*

7 j. The Defendants did so despite having received prior, express  
8 written notice that the Queensridge Master Declaration does not apply  
9 to the Land, the Land Owners have the absolute right to develop it based  
10 solely on the RPD 7 zoning, and any views and/or locations advantages  
they enjoyed could be obstructed in the future. *See gen., Comp., Exs. 2,*  
11 *3, and 4.*

12 k. In preparing, promulgating, soliciting, circulating, and  
13 executing the declaration, the Defendants also disregarded district court  
orders which involved their similarly situated neighbors in Queensridge,  
14 which are public records attached to the Complaint, and which expressly  
found that: (1) the Land Owners have complied with all relevant  
15 provisions of NRS Chapter 278 and properly followed procedures for  
approval of a parcel map over their property; (2) Queensridge Common  
16 Interest Community is governed by NRS Chapter 116 and not NRS  
Chapter 278A because there is no evidence remotely suggesting that the  
17 Land is within a planned unit development; (3) the Land is not subject  
to the Queensridge Master Declaration, and the Land Owners'  
18 applications to develop the Land are not prohibited by, or violative of,  
that declaration; (4) Queensridge residents have no vested rights in the  
19 Land; (5) the Land Owners' development applications are legal and  
proper; (6) the Land Owners have the right to close the golf course and  
20 not water it without impacting the Queensridge residents' rights; (7) the  
Land is not open space and drainage because it is zoned RPD 7; and (8)  
21 the Land Owners have the absolute right to develop the Land because  
zoning – not the Peccole Ranch Master Plan – dictates its use and the  
22 Land Owners' rights to develop it. *See Id.; see also Comp., Ex. 2 at ¶¶*  
23 *41-42, 52, 56, 66, 74, 78-79, and 108; Ex. 3 at ¶¶ 8, 12, 15-23, 26, 61, 64-*  
24 *67, and 133.*

25 l. The Defendants further ignored another district court order  
26 dismissing claims based on findings that similarly contradicted the  
statements in the Defendants' declaration. *See Comp., Exs. 1, 4.*

27 m. Defendants fraudulently procured signatures by picking and  
28 choosing the information they shared with their neighbors in order to



1           9. Nevada's anti-SLAPP statute is predicated on protecting 'well-  
2 meaning citizens who petition the government and then find themselves hit with  
3 retaliatory suits known as SLAPP[] [suits]." *John v. Douglas Cnty. Sch. Dist.*, 125  
4 Nev. at 753, 219 P.3d at 1281. (citing comments by State Senator on S.B. 405 Before  
5 the Senate, 67th Leg. (Nev., June 17, 1993)).

6  
7           10. Importantly, however, Nevada's anti-SLAPP statute only protects  
8 from civil liability those citizens who engage in good-faith communications. *NRS*  
9 *41.637*.

10           11. Nevada's anti-SLAPP statute is not an absolute bar against  
11 substantive claims. *Id.*

12           12. Instead, it only bars claims from persons who seek to abuse other  
13 citizens' rights to participate in the political process, and it allows meritorious  
14 claims against citizens who do not act in good faith. *Id.*

15           13. Nevada's Anti-SLAPP statutes protect "good faith  
16 communication(s) in furtherance of the right to petition or the right to free speech  
17 in direct connection with an issue of public concern" under all four categories in  
18 *NRS 41.637*, namely:  
19

20  
21           1. Communication that is aimed at procuring any governmental or  
22 electoral action, result or outcome;

23           2. Communication of information or a complaint to a Legislator,  
24 officer or employee of the Federal Government, this state or a political  
25 subdivision of this state, regarding a matter reasonably of concern to the  
26 respective governmental entity;

27           3. Written or oral statement made in direct connection with an issue  
28 under consideration by a legislative, executive or judicial body, or any other  
official proceeding authorized by law; or

          4. Communication made in direct connection with an issue of public  
interest in a place open to the public or in a public forum, which is truthful  
or is made without knowledge of its falsehood.

1           NRS 41.637

2           14.    NRS 41.660(3) provides that the Court must first “[d]etermine  
3 whether the moving party has established, by a preponderance of the evidence,  
4 that the claim is based upon a good faith communication in furtherance of the  
5 right to petition or the right to free speech in direct connection with an issue of  
6 public concern.” NRS 41.660(3)(a).

7  
8           15.    Only after determining that the moving party has met this burden,  
9 the Court may then “determine whether the plaintiff has demonstrated with prima  
10 facie evidence a probability of prevailing on the claim.” NRS 41.660(3)(b).

11           16.    Most anti-SLAPP cases involve defamation claims. *See, e.g.,*  
12 *Bongiovi v. Sullivan*, 122 Nev. 556, 138 P.3d 433 (2006). This case is not a  
13 defamation action.

14  
15           17.    The First Amendment does not overcome intentional torts. *See*  
16 *Bongiovi v. Sullivan*, 122 Nev. at 472, 138 P.3d at 445 (No special protection is  
17 warranted when “the speech is wholly false and clearly damaging to the victim’s  
18 business reputation.”) (quoting *Dun & Bradstreet, Inc. v. Greenmoss Builders*,  
19 472 U.S. 749, 762, (1985)); *see also Holloway v. Am. Media, Inc.*, 947 F.Supp.2d  
20 1252, 1266-67 (N.D. Ala. 2013)(First Amendment does not overcome intentional  
21 infliction of emotional distress claim); *Gibson v. Brewer*, 952 S.W.2d 239, 248-  
22 49 (Mo. 1997) (First Amendment does not protect against adjudication of  
23 intentional torts).

24  
25           18.    Although Nevada’s anti-SLAPP protections include speech that  
26 seeks to influence a governmental action but is not directly addressed to the  
27 government agency, that immunity is limited to a “civil action for claims based  
28

1 upon the communication.” *NRS 41.650*. It does not overcome intentional torts or  
2 claims based on wrongful conduct. *Id.*

3 19. As California courts have repeatedly held, an anti-SLAPP movant  
4 bears the threshold burden of establishing that “the challenged claims arise from  
5 acts in furtherance of the defendants’ right of free speech or right of petition under  
6 one of the categories set forth in [California’s anti-SLAPP statute].” *Finton*  
7 *Constr., Inc. v. Bidna & Keys, APLC*, 190 Cal. Rptr. 3d 1, 9 (Cal. Ct. App. 2015)  
8 (citation omitted).  
9

10 20. When analyzing whether the movants have met their burden, the  
11 Court is to “examine the principal thrust or gravamen of a plaintiff’s cause of  
12 action to determine whether the anti-SLAPP statute applies.” *Id.* (quoting  
13 *Ramona Unified School Dist. v. Tsiknas*, 37 Cal. Rptr. 3d 381, 388 (Cal. Ct. App.  
14 2005) (emphasis in original)).  
15

16 21. In doing so, the Court must determine whether the “allegedly  
17 wrongful and injury-producing conduct ... provides the foundation for the claim.”  
18 *Hylton v. Frank E. Rogozienski, Inc.*, 99 Cal. Rptr. 3d 805, 810 (Cal. Ct. App.  
19 2009) (quotation and citation omitted).  
20

21 22. *NRS 41.637(4)* provides that good faith communication is “truthful  
22 or is made without knowledge of its falsehood”); see also *Adelson v. Harris*, 133  
23 Nev. \_\_\_, \_\_\_ n. 5, 402 P.3d 665, 670-71 n. 5 (2017) (Even if the communication  
24 in this case was “aimed at procuring a[ ] governmental or electoral action, result  
25 or outcome,” that communication is not protected unless it is “truthful or is made  
26 without knowledge of its falsehood.”) (citing *Delucchi v. Songer*, 133 Nev. \_\_\_,  
27 396 P.3d 826, 829-30 (2017)).  
28



1           23. Here, in order for the Defendants' purported "communications" to  
2 be in good faith, they must demonstrate them to be "truthful or made without  
3 knowledge of [their] falsehood." *NRS 41.637(4)*. In particular, the phrase "made  
4 without knowledge of its falsehood" has a well-settled and ordinarily understood  
5 meaning. *Shapiro v. Welt*, 133 Nev. at \_\_\_, 389 P.3d at 267. The declarant must  
6 be unaware that the communication is false at the time it was made. *See Id.*

8           24. The absolute litigation privilege is limited to defamation claims,  
9 and this is not a defamation action. *Fink v. Oshins*, 118 Nev. 428, 433, 49 P.3d  
10 640, 645 (2002) (absolute privilege limited to defamation cases). Only the fair,  
11 accurate, and impartial reporting of judicial proceedings is privileged and  
12 nonactionable. *Adelson v. Harris*, 133 Nev. at \_\_\_, 402 P.3d at 667.

14           25. The qualified or conditional privilege alternatively sought by the  
15 Defendants only applies where "a defamatory statement is made in good faith on  
16 any subject matter in which the person communicating has an interest, or in  
17 reference to which he has a right or a duty, if it is made to a person with a  
18 corresponding interest or duty." *Bank of America Nevada v. Bordeau*, 115 Nev. at  
19 266-67, 982 P.2d at 476 (statements made to FDIC investigators during  
20 background check of employee are subject to conditional privilege). As a party  
21 claiming a qualified or conditional privilege in publishing a defamatory statement,  
22 the Defendants must have acted in good faith, without malice, spite or ill will, or  
23 some other wrongful motivation, and must believe in the statement's probable  
24 truth. *See id.*; see also *Pope v. Motel 6*, 121 Nev. 307, 317, 114 P.3d 277, 284 (2005)  
25 (statements made to police during investigation subject to conditional privilege).  
26  
27  
28

*As to Defendants assertion of absolute,  
qualified, or conditional privilege,*

26. ~~At minimum~~, a factual issue exists whether any privilege applies and/or the Defendants acted in good faith, both of which are not properly decided in this special motion. *Fink v. Oshins*, 118 Nev. at 433, 49 P.3d at 645 (factual issue on whether privilege applied); *Bank of America Nevada v. Bordeau*, 115 Nev. at 266-67, 982 P.2d at 476 (factual issue on whether publication was made with malice).

27. While this Court has found that Defendants have failed to meet their initial burden by demonstrating, by a preponderance of the evidence, that their actions 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, NRS 41.660 provides that if Plaintiffs require information to demonstrate their prima facie case which is in the possession of another party or third party, the Court "shall allow limited discovery for the limited purpose of ascertaining such information" necessary to "demonstrate with prima facie evidence a probability of prevailing on the claim." *NRS 41.660(3)(b); NRS 41.660(4)*.

28. The Court finds that Nevada's anti-SLAPP statute does not apply to fraudulent conduct, which Plaintiffs have alleged.

29. The standard for dismissal under NRCP 12(b)(5) is rigorous as the district court "must construe the pleading liberally" and draw every fair inference in favor of the non-moving party. *Brelant v. Preferred Equities Corp.*, 109 Nev. at 846, 858 P.2d at 1260 (1993) (quoting *Squires v. Sierra Nev. Educational Found.*, 107 Nev. 902, 905, 823 P.2d 256, 257 (1991)). *See, also, NRCP 12(b)(5)*.

1           30. All factual allegations of the complaint must be accepted as true. *See*  
2 *Breliant*, 109 Nev. at 846, 858 P.2d at 1260 (*citing Capital Mort. Holding v. Hahn*,  
3 101 Nev. 314, 315, 705 P.2d 126, 126 (1985)).

4           31. A complaint will not be dismissed for failure to state a claim “unless  
5 it appears beyond a doubt that the plaintiff could prove no set of facts which, if  
6 accepted by the trier of fact, would entitle him [or her] to relief.” *See Breliant*, 109  
7 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           32. *LT Intern. Ltd. v. Shuffle Master, Inc.*, 8 F.Supp.3d 1238, 1248 (D.  
10 Nev. 2014) provides that allegations of tortious interference with prospective  
11 economic relations need not plead the existence of a valid contract and must only  
12 raise plausible claim for relief under NRCP 8 to avoid dismissal.

13           33. *Flowers v. Carville*, 266 F.Supp.2d 1245, 1249 (D. Nev. 2003)  
14 provides that actionable civil conspiracy is defined as a combination of two or more  
15 persons, who by some concerted action, intend to accomplish some unlawful  
16 objective for the purpose of harming another which results in damage.

17           34. Courts may take judicial notice of facts that are “not subject to  
18 reasonable dispute.” *NRS 47.130(2)*.

19           35. Generally, the court will not take judicial notice of facts in a different  
20 case, even if connected in some way, unless the party seeking such notice  
21 demonstrates a valid reason for doing so. *Mack v. Estate of Mack*, 125 Nev. 80,  
22 91, 206 P.3d 98, 106 (Nev. 2009) (holding that the court will generally not take  
23 judicial notice of records in other matters); *Carson Ready Mix v. First Nat’l Bk.*,  
24  
25  
26  
27  
28

1 97 Nev. 474, 476, 635 P.2d 276, 277 (Nev. 1981) (providing that the court will not  
2 consider evidence not appearing in the record on appeal).

3 36. *Breliant v. Preferred Equities Corp.*, 109 Nev. at 845, 858 P.2d at  
4 1260, however, provides that in ruling on a motion to dismiss, the court may  
5 consider matters of public record, orders, items present in the record and any  
6 exhibits attached to the complaint.  
7

8 37. *Nelson v. Heer*, 123 Nev. 217, 225-26, 163 P.3d 420, 426 (2007)  
9 provides that with respect to false-representation element of intentional-  
10 misrepresentation claim, the suppression or omission of a material fact which a  
11 party is bound in good faith to disclose is equivalent to a false representation, since  
12 it constitutes an indirect representation that such fact does not exist.  
13

14 38. NRCP 8 requires only general factual allegations, not itemized  
15 descriptions of evidence. NRCP 8 (complainant need only provide “a short and  
16 plain statement of the claim showing that the pleader is entitled to relief”); *see also*  
17 *Breliant v. Preferred Equities Corp.*, 109 Nev. at 846, 858 P.2d at 1260 (“The test  
18 for determining whether the allegations of a complaint are sufficient to assert a  
19 claim for relief is whether [they] give fair notice of the nature and basis of a legally  
20 sufficient claim and the relief requested.”).  
21

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

1 *Counseling*, 110 Nev. 359, 365, 871 P.2d 953, 957 (1994) (“Nevada is a notice  
2 pleading jurisdiction and we liberally construe pleadings to place matters into  
3 issue which are fairly noticed to the adverse party.”), overruled on other grounds  
4 by *Nunez v. City of N. Las Vegas*, 116 Nev. 535, 1 P.3d 959 (2000).

5  
6 40. As such, Plaintiffs are entitled under NRCP 8 to set forth only  
7 general allegations in their Complaint and then rely at trial upon specific  
8 evidentiary facts never mentioned anywhere in the pleadings. *Nutton v. Sunset*  
9 *Station, Inc.*, 131 Nev. \_\_\_, 357 P.3d 966, 974 (Nev. Ct. App. 2015).

10 41. *Rocker v. KPMG LLP*, 122 Nev. 1185, 148 P.3d 703 (2006) provides  
11 that if the Court determines that ~~X~~ misrepresentation claims are not plead with  
12 sufficient particularity pursuant to NRCP 9, discovery should be permitted. See  
13 NRCP 9(b) (“In all averments of fraud or mistake, the circumstances constituting  
14 fraud or mistake shall be stated with particularity...”); *cf. Rocker*, 122 Nev. at 1192-  
15 95, 148 P.3d at 707-10 (A relaxed pleading standard applies in fraud actions where  
16 the facts necessary for pleading with particularity are peculiarly within the  
17 defendant’s knowledge or are readily obtainable by him. In such situations, district  
18 court should allow the plaintiff time to conduct the necessary discovery.); *see also*  
19 *Squires v. Sierra Nevada Ed. Found. Inc.*, 107 Nev. 902, 906 and n. 1, 823 P.2d  
20 256, 258 and n. 1 (1991) (misrepresentation allegations sufficient to avoid  
21 dismissal under NRCP 12(b)(5)).

22  
23  
24 42. The Court finds that Plaintiffs have stated valid claims upon which  
25 relief can be granted, requiring the denial of Defendants’ Motion to Dismiss.

26  
27 43. If any of these Conclusions of Law are more appropriately deemed  
28 a Finding of Fact, so shall they be deemed.

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**ORDER**

IT IS HEREBY ORDERED that *Defendants' Special Motion To Dismiss (Anti-SLAPP Motion) Plaintiffs' Complaint Pursuant To NRS 41.635 Et Seq.* is hereby DENIED, without prejudice.

IT IS FURTHER ORDERED that *Defendants' Motion to Dismiss Pursuant to NRCp 12(b)(5)* is hereby DENIED.

IT IS FURTHER ORDERED that the Chambers Hearing scheduled for May 30, 2018 is hereby VACATED.


IT IS FURTHER ORDERED that Plaintiffs shall prepare the proposed Order adding appropriate context and authorities.


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

  
DISTRICT COURT JUDGE


Respectfully Submitted:

THE JIMMERSON LAW FIRM, P.C.

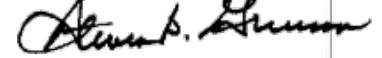
  
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# EXHIBIT 2



1 **NOTC**

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

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

20 Plaintiffs,  
21 vs.

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

24 Defendants.

Case No.: A-18-771224-C

Dept. No.: II

**NOTICE OF ENTRY OF FINDINGS  
OF FACT, CONCLUSIONS OF LAW,  
AND ORDER**

25 PLEASE TAKE NOTICE that the Findings of Fact, Conclusions of Law, and  
26 Order was entered in the above-entitled matter on the 20th day of June, 2018, a  
27 copy of which is attached hereto.

28 DATED this 21<sup>st</sup> day of June, 2018.

THE JIMMERSON LAW FIRM, P.C.

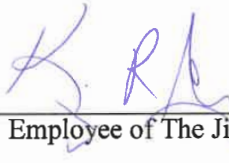
  
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**CERTIFICATE OF SERVICE**

I hereby certify that on the 21<sup>st</sup> day of June, 2018, I caused a true and correct copy of the foregoing **NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER** to be submitted electronically for filing and service with the Eighth Judicial District Court via the Electronic Filing System to the following:

Mitchell Langberg, Esq.  
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10 **DISTRICT COURT**

11 **CLARK COUNTY, NEVADA**

12 FORE STARS, LTD., a Nevada limited  
13 liability company; 180 LAND CO., LLC; a  
14 Nevada limited liability company;  
15 SEVENTY ACRES, LLC, a Nevada limited  
16 liability company,

17 Plaintiffs,

18 v.

19 DANIEL OMERZA, DARREN BRESEE,  
20 STEVE CARIA, and DOES 1 THROUGH  
21 100,

22 Defendants,

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

**FINDINGS OF FACT,  
CONCLUSIONS OF LAW, AND  
ORDER**

Date of Hearing: 5/14/18  
Time of Hearing: 9:00 a.m.

23 THIS MATTER having come on for hearing on this 14<sup>th</sup> day of May, 2018,  
24 on *Defendants' Special Motion To Dismiss (Anti-SLAPP Motion) Plaintiffs'*  
25 *Complaint Pursuant To NRS 41.635 Et Seq., and Defendants' Motion To Dismiss*  
26 *Pursuant To NRCP 12(b)(5), and Plaintiffs' Oppositions thereto, James J.*  
27 *Jimmerson, Esq., of THE JIMMERSON LAW FIRM, P.C., and Elizabeth Ham,*  
28 *Esq., appearing on behalf of the Plaintiffs, and Plaintiffs representative, Yohan*  
*Lowie, being present, Mitchell J. Langberg, Esq., of BROWNSTEIN HYATT*  
*FARBER SCHRECK, LLP, appearing on behalf of the Defendants, and Defendants*  
*being present, and the Court having reviewed the pleadings and papers on file, and*  
*the Court having authorized Supplements to be filed by both parties through May*

JUN 12 2018

23, 2018 close of business, and the Court having reviewed the same, and the exhibits attached to the briefs, and the Court having allowed the parties extended oral argument, and good cause appearing, hereby FINDS, CONCLUDES and ORDERS:

#### FINDINGS OF FACT

1. Plaintiffs filed their Complaint on March 15, 2018 with six (6) claims for relief: (1) Equitable and Injunctive Relief; (2) Intentional Interference with Prospective Economic Relations; (3) Negligent Interference with Prospective Economic Relations; (4) Conspiracy; (5) Intentional Misrepresentation (fraud); and (6) Negligent Misrepresentation.

2. On April 13, 2018, Defendants filed their Special Motion to Dismiss (Anti-SLAPP Motion) Plaintiffs' Complaint Pursuant to NRS 41.635 Et Seq. On the same date, Defendants filed a Motion to Dismiss Pursuant to NRCP 12(b)(5).

3. By stipulation between the parties, the issues were briefed and came before the Court on May 14, 2018 for oral argument. The Court permitted extensive oral argument and, at the request of Defendants, further briefing.

4. Plaintiffs' Complaint alleged the following facts:

a. Plaintiffs are developing approximately 250 acres of land they own and control in Las Vegas, Nevada formerly known as the Badlands Golf Course property (hereinafter the "Land"). *See Comp. at ¶ 9.*

b. Plaintiffs have the absolute right to develop the Land under its present RDP 7 zoning, which means that up to 7.49 dwelling units per acre may be constructed on it. *See Comp. at ¶ 29, Ex. 2 at p. 18.*

c. The Land is adjacent to the Queensridge Common Interest Community (hereinafter "Queensridge") which was created and organized under the provisions of NRS Chapter 116. *See Comp. at ¶ 10.*

1 d. The Defendants are certain residents of Queensridge who  
2 strongly oppose any redevelopment of the Land because some have  
3 enjoyed golf course views, which views they don't want to lose even  
4 though the golf course is no longer operational. *See Comp. at ¶¶ 23-30.*

5 e. Rather than properly participate in the political process,  
6 however, the Defendants are using unjust and unlawful tactics to  
7 intimidate and harass the Land Owners and ultimately prevent any  
8 redevelopment of the Land. *See Id.*

9 f. Defendants are doing so despite having received prior,  
10 express written notice that, among other things, the Land is developable  
11 and any views or location advantages they have enjoyed may be  
12 obstructed by future development. *See Comp. at ¶¶ 12-22.*

13 g. Defendants executed purchase agreements when they  
14 purchased their residences within the Queensridge Common Interest  
15 Community which expressly acknowledged their receipt of, among other  
16 things, the following: (1) Master Declaration of Covenants, Conditions,  
17 Restrictions and Easements for Queensridge (Queensridge Master  
18 Declaration), which was recorded in 1996; (2) Notice of Zoning  
19 Designation of Adjoining Lot which disclosed that the Land was zoned  
20 RPD 7; (3) Additional Disclosures Section 4 - No Golf Course or  
21 Membership Privileges which stated that they acquired no rights in the  
22 Badlands Golf Course; (4) Additional Disclosure Section 7 -  
23 Views/Location Advantages which stated that future construction in the  
24 planned community may obstruct or block any view or diminish any  
25 location advantage; and (5) Public Offering Statement for Queensridge  
26 Towers which included these same disclaimers. *See Comp. at ¶¶ 10-12,*  
27 *15-20.*

28 h. The deeds to the Defendants' respective residences "are clear  
by their respective terms that they have no rights to affect or control the  
use of Plaintiffs' real property." *See Comp. at ¶ 21.*

i. The Defendants nevertheless prepared, promulgated,  
solicited, circulated, and executed the following declaration to their  
Queensridge neighbors in March 2018:

TO: City of Las Vegas

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

The undersigned made such purchase in reliance upon the fact that  
the open space/natural drainage system could not be developed  
pursuant to the City's Approval in 1990 of the Peccole Ranch Master

1 Plan and subsequent formal actions designating the open  
2 space/natural drainage system in its General Plan as Parks  
3 Recreation – Open Space which land use designation does not permit  
the building of residential units.

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

6 *See Comp., Ex. 1.*

7 j. The Defendants did so despite having received prior, express  
8 written notice that the Queensridge Master Declaration does not apply  
9 to the Land, the Land Owners have the absolute right to develop it based  
10 solely on the RPD 7 zoning, and any views and/or locations advantages  
they enjoyed could be obstructed in the future. *See gen., Comp., Exs. 2,*  
11 *3, and 4.*

12 k. In preparing, promulgating, soliciting, circulating, and  
13 executing the declaration, the Defendants also disregarded district court  
14 orders which involved their similarly situated neighbors in Queensridge,  
15 which are public records attached to the Complaint, and which expressly  
16 found that: (1) the Land Owners have complied with all relevant  
17 provisions of NRS Chapter 278 and properly followed procedures for  
18 approval of a parcel map over their property; (2) Queensridge Common  
19 Interest Community is governed by NRS Chapter 116 and not NRS  
20 Chapter 278A because there is no evidence remotely suggesting that the  
21 Land is within a planned unit development; (3) the Land is not subject  
22 to the Queensridge Master Declaration, and the Land Owners'  
23 applications to develop the Land are not prohibited by, or violative of,  
24 that declaration; (4) Queensridge residents have no vested rights in the  
Land; (5) the Land Owners' development applications are legal and  
proper; (6) the Land Owners have the right to close the golf course and  
not water it without impacting the Queensridge residents' rights; (7) the  
Land is not open space and drainage because it is zoned RPD 7; and (8)  
the Land Owners have the absolute right to develop the Land because  
zoning – not the Peccole Ranch Master Plan – dictates its use and the  
Land Owners' rights to develop it. *See Id.; see also Comp., Ex. 2 at ¶¶*  
25 *41-42, 52, 56, 66, 74, 78-79, and 108; Ex. 3 at ¶¶ 8, 12, 15-23, 26, 61, 64-*  
26 *67, and 133.*

27 l. The Defendants further ignored another district court order  
28 dismissing claims based on findings that similarly contradicted the  
statements in the Defendants' declaration. *See Comp., Exs. 1, 4.*

m. Defendants fraudulently procured signatures by picking and  
choosing the information they shared with their neighbors in order to

1 manipulate them into signing the declaration. *See Id.*; *see also Comp.,*  
2 *Exs. 2 and 3.*

3 *n.* Defendants simply ignored or disregarded known, material  
4 facts that directly conflicted with the statements in the declaration and  
5 undermined their plan to present a false narrative to the City of Las  
6 Vegas and mislead council members into delaying and ultimately  
7 denying the Land Owners' development applications. *See Id.*; *see also*  
8 *Comp., Ex. 1.*

9 5. The Court FINDS that even though it has concluded that Nevada's  
10 anti-SLAPP statute does not apply to fraudulent conduct, even if it did so apply,  
11 at this early stage in the litigation and given the numerous allegations of fraud,  
12 the Court is not convinced by a preponderance of the evidence that Defendants'  
13 conduct constituted "good faith communications in furtherance of the right to  
14 petition or the right to free speech in direct connection with an issue of public  
15 concern," as described in NRS 41.637.

16 6. The Court further FINDS that Plaintiffs have stated valid claims  
17 upon which relief can be granted.

18 7. If any of these Findings of Fact is more appropriately deemed a  
19 Conclusion of Law, so shall it be deemed.

#### 20 CONCLUSIONS OF LAW

21 8. Nevada's anti-SLAPP lawsuit against public participation (SLAPP)  
22 statutes, codified in NRS Chapter 41.635 et seq., protect a defendant from liability  
23 for engaging in "good faith communication in furtherance of the right to petition  
24 or the right to free speech in direct connection with an issue of public concern" as  
25 addressed in "any civil action for claims based upon the communication." *NRS*  
26 *41.650.*

1           9. Nevada's anti-SLAPP statute is predicated on protecting 'well-  
2 meaning citizens who petition the government and then find themselves hit with  
3 retaliatory suits known as SLAPP[] [suits]." *John v. Douglas Cnty. Sch. Dist.*, 125  
4 Nev. at 753, 219 P.3d at 1281. (citing comments by State Senator on S.B. 405 Before  
5 the Senate, 67th Leg. (Nev., June 17, 1993)).

6  
7           10. Importantly, however, Nevada's anti-SLAPP statute only protects  
8 from civil liability those citizens who engage in good-faith communications. *NRS*  
9 *41.637*.

10           11. Nevada's anti-SLAPP statute is not an absolute bar against  
11 substantive claims. *Id.*

12           12. Instead, it only bars claims from persons who seek to abuse other  
13 citizens' rights to participate in the political process, and it allows meritorious  
14 claims against citizens who do not act in good faith. *Id.*

15           13. Nevada's Anti-SLAPP statutes protect "good faith  
16 communication(s) in furtherance of the right to petition or the right to free speech  
17 in direct connection with an issue of public concern" under all four categories in  
18 *NRS 41.637*, namely:  
19

20  
21           1. Communication that is aimed at procuring any governmental or  
22 electoral action, result or outcome;

23           2. Communication of information or a complaint to a Legislator,  
24 officer or employee of the Federal Government, this state or a political  
25 subdivision of this state, regarding a matter reasonably of concern to the  
26 respective governmental entity;

27           3. Written or oral statement made in direct connection with an issue  
28 under consideration by a legislative, executive or judicial body, or any other  
official proceeding authorized by law; or

          4. Communication made in direct connection with an issue of public  
interest in a place open to the public or in a public forum, which is truthful  
or is made without knowledge of its falsehood.

1           *NRS 41.637*

2           14.    *NRS 41.660(3)* provides that the Court must first “[d]etermine  
3 whether the moving party has established, by a preponderance of the evidence,  
4 that the claim is based upon a good faith communication in furtherance of the  
5 right to petition or the right to free speech in direct connection with an issue of  
6 public concern.” *NRS 41.660(3)(a)*.

7  
8           15.    Only after determining that the moving party has met this burden,  
9 the Court may then “determine whether the plaintiff has demonstrated with prima  
10 facie evidence a probability of prevailing on the claim.” *NRS 41.660(3)(b)*.

11           16.    Most anti-SLAPP cases involve defamation claims. *See, e.g.,*  
12 *Bongiovi v. Sullivan*, 122 Nev. 556, 138 P.3d 433 (2006). This case is not a  
13 defamation action.

14  
15           17.    The First Amendment does not overcome intentional torts. *See*  
16 *Bongiovi v. Sullivan*, 122 Nev. at 472, 138 P.3d at 445 (No special protection is  
17 warranted when “the speech is wholly false and clearly damaging to the victim’s  
18 business reputation.”) (quoting *Dun & Bradstreet, Inc. v. Greenmoss Builders*,  
19 472 U.S. 749, 762, (1985)); *see also Holloway v. Am. Media, Inc.*, 947 F.Supp.2d  
20 1252, 1266-67 (N.D. Ala. 2013)(First Amendment does not overcome intentional  
21 infliction of emotional distress claim); *Gibson v. Brewer*, 952 S.W.2d 239, 248-  
22 49 (Mo. 1997) (First Amendment does not protect against adjudication of  
23 intentional torts).

24  
25           18.    Although Nevada’s anti-SLAPP protections include speech that  
26 seeks to influence a governmental action but is not directly addressed to the  
27 government agency, that immunity is limited to a “civil action for claims based  
28



1 upon the communication.” *NRS 41.650*. It does not overcome intentional torts or  
2 claims based on wrongful conduct. *Id.*

3 19. As California courts have repeatedly held, an anti-SLAPP movant  
4 bears the threshold burden of establishing that “the challenged claims arise from  
5 acts in furtherance of the defendants’ right of free speech or right of petition under  
6 one of the categories set forth in [California’s anti-SLAPP statute].” *Finton*  
7 *Constr., Inc. v. Bidna & Keys, APLC*, 190 Cal. Rptr. 3d 1, 9 (Cal. Ct. App. 2015)  
8 (citation omitted).  
9

10 20. When analyzing whether the movants have met their burden, the  
11 Court is to “examine the principal thrust or gravamen of a plaintiff’s cause of  
12 action to determine whether the anti-SLAPP statute applies.” *Id.* (quoting  
13 *Ramona Unified School Dist. v. Tsiknas*, 37 Cal. Rptr. 3d 381, 388 (Cal. Ct. App.  
14 2005) (emphasis in original)).  
15

16 21. In doing so, the Court must determine whether the “allegedly  
17 wrongful and injury-producing conduct ... provides the foundation for the claim.”  
18 *Hylton v. Frank E. Rogozienski, Inc.*, 99 Cal. Rptr. 3d 805, 810 (Cal. Ct. App.  
19 2009) (quotation and citation omitted).  
20

21 22. *NRS 41.637(4)* provides that good faith communication is “truthful  
22 or is made without knowledge of its falsehood”); see also *Adelson v. Harris*, 133  
23 Nev. \_\_\_, \_\_\_ n. 5, 402 P.3d 665, 670-71 n. 5 (2017) (Even if the communication  
24 in this case was “aimed at procuring a[ ] governmental or electoral action, result  
25 or outcome,” that communication is not protected unless it is “truthful or is made  
26 without knowledge of its falsehood.”) (citing *Delucchi v. Songer*, 133 Nev. \_\_\_,  
27 396 P.3d 826, 829-30 (2017)).  
28

1           23. Here, in order for the Defendants' purported "communications" to  
2 be in good faith, they must demonstrate them to be "truthful or made without  
3 knowledge of [their] falsehood." *NRS 41.637(4)*. In particular, the phrase "made  
4 without knowledge of its falsehood" has a well-settled and ordinarily understood  
5 meaning. *Shapiro v. Welt*, 133 Nev. at \_\_\_, 389 P.3d at 267. The declarant must  
6 be unaware that the communication is false at the time it was made. *See Id.*

7  
8           24. The absolute litigation privilege is limited to defamation claims,  
9 and this is not a defamation action. *Fink v. Oshins*, 118 Nev. 428, 433, 49 P.3d  
10 640, 645 (2002) (absolute privilege limited to defamation cases). Only the fair,  
11 accurate, and impartial reporting of judicial proceedings is privileged and  
12 nonactionable. *Adelson v. Harris*, 133 Nev. at \_\_\_, 402 P.3d at 667.

13  
14           25. The qualified or conditional privilege alternatively sought by the  
15 Defendants only applies where "a defamatory statement is made in good faith on  
16 any subject matter in which the person communicating has an interest, or in  
17 reference to which he has a right or a duty, if it is made to a person with a  
18 corresponding interest or duty." *Bank of America Nevada v. Bordeau*, 115 Nev. at  
19 266-67, 982 P.2d at 476 (statements made to FDIC investigators during  
20 background check of employee are subject to conditional privilege). As a party  
21 claiming a qualified or conditional privilege in publishing a defamatory statement,  
22 the Defendants must have acted in good faith, without malice, spite or ill will, or  
23 some other wrongful motivation, and must believe in the statement's probable  
24 truth. *See id.*; see also *Pope v. Motel 6*, 121 Nev. 307, 317, 114 P.3d 277, 284 (2005)  
25 (statements made to police during investigation subject to conditional privilege).  
26  
27  
28

*As to Defendants assertion of absolute,  
qualified, or conditional privilege,*

1 26. ~~A~~ At minimum, a factual issue exists whether any privilege applies  
2 and/or the Defendants acted in good faith, both of which are not properly decided  
3 in this special motion. *Fink v. Oshins*, 118 Nev. at 433, 49 P.3d at 645 (factual  
4 issue on whether privilege applied); *Bank of America Nevada v. Bordeau*, 115  
5 Nev. at 266-67, 982 P.2d at 476 (factual issue on whether publication was made  
6 with malice).  
7

8 27. While this Court has found that Defendants have failed to meet their  
9 initial burden by demonstrating, by a preponderance of the evidence, that their  
10 actions constituted "good faith communications in furtherance of the right to  
11 petition or the right to free speech in direct connection with an issue of public  
12 concern," as described in NRS 41.637, NRS 41.660 provides that if Plaintiffs  
13 require information to demonstrate their prima facie case which is in the  
14 possession of another party or third party, the Court "shall allow limited discovery  
15 for the limited purpose of ascertaining such information" necessary to  
16 "demonstrate with prima facie evidence a probability of prevailing on the claim."  
17  
18 *NRS 41.660(3)(b); NRS 41.660(4).*

19 28. The Court finds that Nevada's anti-SLAPP statute does not apply to  
20 fraudulent conduct, which Plaintiffs have alleged.  
21

22 29. The standard for dismissal under NRCP 12(b)(5) is rigorous as the  
23 district court "must construe the pleading liberally" and draw every fair inference  
24 in favor of the non-moving party. *Breliant v. Preferred Equities Corp.*, 109 Nev. at  
25 846, 858 P.2d at 1260 (1993) (quoting *Squires v. Sierra Nev. Educational Found.*,  
26 107 Nev. 902, 905, 823 P.2d 256, 257 (1991)). *See, also, NRCP 12(b)(5).*  
27  
28

1           30. All factual allegations of the complaint must be accepted as true. *See*  
2 *Breliant*, 109 Nev. at 846, 858 P.2d at 1260 (citing *Capital Mort. Holding v. Hahn*,  
3 101 Nev. 314, 315, 705 P.2d 126, 126 (1985)).

4           31. A complaint will not be dismissed for failure to state a claim “unless  
5 it appears beyond a doubt that the plaintiff could prove no set of facts which, if  
6 accepted by the trier of fact, would entitle him [or her] to relief.” *See Breliant*, 109  
7 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           32. *LT Intern. Ltd. v. Shuffle Master, Inc.*, 8 F.Supp.3d 1238, 1248 (D.  
10 Nev. 2014) provides that allegations of tortious interference with prospective  
11 economic relations need not plead the existence of a valid contract and must only  
12 raise plausible claim for relief under NRCP 8 to avoid dismissal.

13           33. *Flowers v. Carville*, 266 F.Supp.2d 1245, 1249 (D. Nev. 2003)  
14 provides that actionable civil conspiracy is defined as a combination of two or more  
15 persons, who by some concerted action, intend to accomplish some unlawful  
16 objective for the purpose of harming another which results in damage.

17           34. Courts may take judicial notice of facts that are “not subject to  
18 reasonable dispute.” *NRS 47.130(2)*.

19           35. Generally, the court will not take judicial notice of facts in a different  
20 case, even if connected in some way, unless the party seeking such notice  
21 demonstrates a valid reason for doing so. *Mack v. Estate of Mack*, 125 Nev. 80,  
22 91, 206 P.3d 98, 106 (Nev. 2009) (holding that the court will generally not take  
23 judicial notice of records in other matters); *Carson Ready Mix v. First Nat’l Bk.*,  
24  
25  
26  
27  
28

1 97 Nev. 474, 476, 635 P.2d 276, 277 (Nev. 1981) (providing that the court will not  
2 consider evidence not appearing in the record on appeal).

3 36. *Brelient v. Preferred Equities Corp.*, 109 Nev. at 845, 858 P.2d at  
4 1260, however, provides that in ruling on a motion to dismiss, the court may  
5 consider matters of public record, orders, items present in the record and any  
6 exhibits attached to the complaint.  
7

8 37. *Nelson v. Heer*, 123 Nev. 217, 225-26, 163 P.3d 420, 426 (2007)  
9 provides that with respect to false-representation element of intentional-  
10 misrepresentation claim, the suppression or omission of a material fact which a  
11 party is bound in good faith to disclose is equivalent to a false representation, since  
12 it constitutes an indirect representation that such fact does not exist.  
13

14 38. NRCP 8 requires only general factual allegations, not itemized  
15 descriptions of evidence. NRCP 8 (complainant need only provide “a short and  
16 plain statement of the claim showing that the pleader is entitled to relief”); *see also*  
17 *Breliant v. Preferred Equities Corp.*, 109 Nev. at 846, 858 P.2d at 1260 (“The test  
18 for determining whether the allegations of a complaint are sufficient to assert a  
19 claim for relief is whether [they] give fair notice of the nature and basis of a legally  
20 sufficient claim and the relief requested.”).  
21

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

1 *Counseling*, 110 Nev. 359, 365, 871 P.2d 953, 957 (1994) ("Nevada is a notice  
2 pleading jurisdiction and we liberally construe pleadings to place matters into  
3 issue which are fairly noticed to the adverse party."), overruled on other grounds  
4 by *Nunez v. City of N. Las Vegas*, 116 Nev. 535, 1 P.3d 959 (2000).

5  
6 40. As such, Plaintiffs are entitled under NRCP 8 to set forth only  
7 general allegations in their Complaint and then rely at trial upon specific  
8 evidentiary facts never mentioned anywhere in the pleadings. *Nutton v. Sunset*  
9 *Station, Inc.*, 131 Nev. \_\_\_, 357 P.3d 966, 974 (Nev. Ct. App. 2015).

10  
11 41. *Rocker v. KPMG LLP*, 122 Nev. 1185, 148 P.3d 703 (2006) provides  
12 that if the Court determines that ~~X~~ misrepresentation claims are not plead with  
13 sufficient particularity pursuant to NRCP 9, discovery should be permitted. See  
14 NRCP 9(b) ("In all averments of fraud or mistake, the circumstances constituting  
15 fraud or mistake shall be stated with particularity..."); cf. *Rocker*, 122 Nev. at 1192-  
16 95, 148 P.3d at 707-10 (A relaxed pleading standard applies in fraud actions where  
17 the facts necessary for pleading with particularity are peculiarly within the  
18 defendant's knowledge or are readily obtainable by him. In such situations, district  
19 court should allow the plaintiff time to conduct the necessary discovery.); see also  
20 *Squires v. Sierra Nevada Ed. Found. Inc.*, 107 Nev. 902, 906 and n. 1, 823 P.2d  
21 256, 258 and n. 1 (1991) (misrepresentation allegations sufficient to avoid  
22 dismissal under NRCP 12(b)(5)).

23  
24 42. The Court finds that Plaintiffs have stated valid claims upon which  
25 relief can be granted, requiring the denial of Defendants' Motion to Dismiss.

26  
27 43. If any of these Conclusions of Law are more appropriately deemed  
28 a Finding of Fact, so shall they be deemed.

**ORDER**

IT IS HEREBY ORDERED that *Defendants' Special Motion To Dismiss (Anti-SLAPP Motion) Plaintiffs' Complaint Pursuant To NRS 41.635 Et Seq.* is hereby DENIED, without prejudice.

IT IS FURTHER ORDERED that *Defendants' Motion to Dismiss Pursuant to NRCF 12(b)(5)* is hereby DENIED.

IT IS FURTHER ORDERED that the Chambers Hearing scheduled for May 30, 2018 is hereby VACATED.

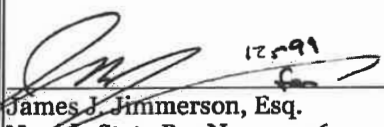
IT IS FURTHER ORDERED that Plaintiffs shall prepare the proposed Order adding appropriate context and authorities.

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

  
DISTRICT COURT JUDGE

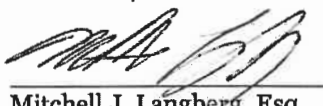
Respectfully Submitted:

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