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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 BY: /s/ Mitchell J. Langberg

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20 DANIEL OMERZA, DARREN BRESEE, and

21 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:

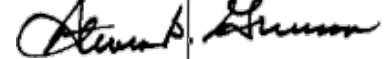
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*Attorneys for Plaintiffs*  
FORE STARS, LTD., 180 LAND CO., LLC;  
and SEVENTY ACRES, LLC

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

# EXHIBIT 1





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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

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  
denying the Land Owners' development applications. *See Id.*; *see also*  
*Comp., Ex. 1.*

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

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

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

#### 18 CONCLUSIONS OF LAW

19 8. Nevada's anti-SLAPP lawsuit against public participation (SLAPP)  
20 statutes, codified in NRS Chapter 41.635 et seq., protect a defendant from liability  
21 for engaging in "good faith communication in furtherance of the right to petition  
22 or the right to free speech in direct connection with an issue of public concern" as  
23 addressed in "any civil action for claims based upon the communication." *NRS*  
24 *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 *NRS 41.660(3)(b); NRS 41.660(4).*  
18

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. *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:

THE JIMMERSON LAW FIRM, P.C.

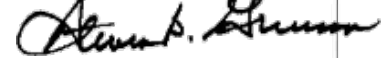
  
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Attorney for Defendants

# **EXHIBIT 2**



**NOTC**

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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:

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

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

Date of Hearing: 5/14/18

Time of Hearing: 9:00 a.m.

26 THIS MATTER having come on for hearing on this 14<sup>th</sup> day of May, 2018,  
27 on *Defendants' Special Motion To Dismiss (Anti-SLAPP Motion) Plaintiffs'*  
28 *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*

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  
6 space/natural drainage system....

7 *See Comp., Ex. 1.*

8 j. The Defendants did so despite having received prior, express  
9 written notice that the Queensridge Master Declaration does not apply  
10 to the Land, the Land Owners have the absolute right to develop it based  
11 solely on the RPD 7 zoning, and any views and/or locations advantages  
12 they enjoyed could be obstructed in the future. *See gen., Comp., Exs. 2,*  
13 *3, and 4.*

14 k. In preparing, promulgating, soliciting, circulating, and  
15 executing the declaration, the Defendants also disregarded district court  
16 orders which involved their similarly situated neighbors in Queensridge,  
17 which are public records attached to the Complaint, and which expressly  
18 found that: (1) the Land Owners have complied with all relevant  
19 provisions of NRS Chapter 278 and properly followed procedures for  
20 approval of a parcel map over their property; (2) Queensridge Common  
21 Interest Community is governed by NRS Chapter 116 and not NRS  
22 Chapter 278A because there is no evidence remotely suggesting that the  
23 Land is within a planned unit development; (3) the Land is not subject  
24 to the Queensridge Master Declaration, and the Land Owners'  
25 applications to develop the Land are not prohibited by, or violative of,  
26 that declaration; (4) Queensridge residents have no vested rights in the  
27 Land; (5) the Land Owners' development applications are legal and  
28 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 ¶¶*  
*41-42, 52, 56, 66, 74, 78-79, and 108; Ex. 3 at ¶¶ 8, 12, 15-23, 26, 61, 64-*  
*67, and 133.*

l. The Defendants further ignored another district court order  
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  
denying the Land Owners' development applications. *See Id.*; *see also*  
*Comp., Ex. 1.*

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

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

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

#### 18 CONCLUSIONS OF LAW

19 8. Nevada's anti-SLAPP lawsuit against public participation (SLAPP)  
20 statutes, codified in NRS Chapter 41.635 et seq., protect a defendant from liability  
21 for engaging in "good faith communication in furtherance of the right to petition  
22 or the right to free speech in direct connection with an issue of public concern" as  
23 addressed in "any civil action for claims based upon the communication." NRS  
24 41.650.  
25  
26  
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           10. Importantly, however, Nevada's anti-SLAPP statute only protects  
7 from civil liability those citizens who engage in good-faith communications. NRS  
8 41.637.

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

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

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

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

21           2. Communication of information or a complaint to a Legislator,  
22 officer or employee of the Federal Government, this state or a political  
23 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  
26 under consideration by a legislative, executive or judicial body, or any other  
27 official proceeding authorized by law; or

28           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,*

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

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

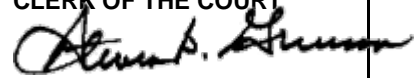
THE JIMMERSON LAW FIRM, P.C.

  
James J. Jimmerson, Esq.  
Nevada State Bar No. 000264  
415 South 6th Street, Suite 100  
Las Vegas, Nevada 89101  
Attorneys for Plaintiffs

Approved as to form and content:

BZ  
BROWNSTEIN HYATT FARBER  
SCHRECK, LLP

  
Mitchell J. Langberg, Esq.  
Nevada State Bar No. 10118  
100 North City Parkway, Suite 1600  
Las Vegas, NV 89106-4614  
Attorney for Defendants



**ASTA**  
MITCHELL J. LANGBERG, ESQ., Bar No. 10118  
[mlangberg@bhfs.com](mailto:mlangberg@bhfs.com)  
BROWNSTEIN HYATT FARBER SCHRECK, LLP  
100 North City Parkway, Suite 1600  
Las Vegas, NV 89106-4614  
Telephone: 702.382.2101  
Facsimile: 702.382.8135

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

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

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

Plaintiffs,

v.

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

Defendants,

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

**CASE APPEAL STATEMENT**

Defendants DANIEL OMERZA, DARREN BRESEE, and STEVE CARIA, by and  
through their counsel of record, Brownstein Hyatt Farber Schreck, LLP, hereby submit their Case  
Appeal Statement in accordance with NRAP 3(f) as follows:

1. Name of appellant filing this case appeal statement:  
Defendants DANIEL OMERZA, DARREN BRESEE, and STEVE CARIA
2. Identify the judge issuing the decision, judgment, or order appealed from:  
The Honorable Richard F. Scotti

///

///

///



3. Identify each appellant and the name and address of counsel for each appellant:

- (a) DANIEL OMERZA,  
(b) DARREN BRESEE, and  
(c) STEVE CARIA

Mitchell J. Langberg, Esq.,  
Nevada State Bar No. 10118  
Brownstein Hyatt Farber Schreck, LLP  
100 North City Parkway, Suite 1600  
Las Vegas, NV 89106-4614  
Telephone: 702.382.2101  
Facsimile: 702.382.8135  
E-mail: [mlangberg@bhfs.com](mailto:mlangberg@bhfs.com)

4. Identify each respondent and the name and address of appellate counsel, if known, for each respondent (if the name of a respondent's appellate counsel is unknown, indicate as much and provide the name and address of that respondent's trial counsel):

- (a) FORE STARS, LTD., a Nevada limited liability company;  
(b) 180 LAND CO., LLC; a Nevada limited liability company; and  
(c) SEVENTY ACRES, LLC, a Nevada limited liability company

James J. Jimmerson, Esq.  
Nevada Bar No. 000264  
The Jimmerson Law Firm, P.C.  
415 South Sixth Street, Suite 100  
Las Vegas, Nevada 89101  
Telephone: (702) 388-7171  
Facsimile: (702) 387-1167  
Email: [ks@jimmersonlawfirm.com](mailto:ks@jimmersonlawfirm.com)

5. Indicate whether any attorney identified above in response to question 3 or 4 is not licensed to practice law in Nevada and, if so, whether the district court granted that attorney permission to appear under SCR 42 (attach a copy of any district court order granting such permission):

None.

6. Indicate whether appellant was represented by appointed or retained counsel in the district court:

Appellants were represented by retained counsel in the district court.

7. Indicate whether appellant is represented by appointed or retained counsel on appeal:

Appellants are represented by retained counsel on appeal.

8. Indicate whether appellant was granted leave to proceed in forma pauperis, and the date of entry of the district court order granting such leave:

No.

9. Indicate the date the proceedings commenced in the district court (e.g., date complaint, indictment, information, or petition was filed):

The Plaintiffs Complaint was filed on March 15, 2018 in the Eighth Judicial District Court for the State of Nevada.

10. Provide a brief description of the nature of the action and result in the district court, including the type of judgment or order being appealed and the relief granted by the district court:

In the underlying action, defendants (appellants) are residents living near a parcel of land that previously has been used as a golf course and is designated in the applicable master plan for use only for certain uses (not residential). In a prior lawsuit, Judge Crockett determined that Plaintiffs (respondents), who wish to use the land for residential development, must seek a major modification to the applicable master plan. Plaintiffs seek approval from the Las Vegas City Council for an amendment to the City of Las Vegas General Plan to allow them to develop the subject parcel into residential units. Two of the defendants oppose the development and offered fellow neighbors a draft declaration to review and indicate if they purchased their homes in reliance on the existing designation of the property at issue as an open space/natural drainage system/golf course. The declarations were expressly for submission to the City and indicated as such. One of the defendants merely signed the declaration. By their Complaint, Plaintiffs challenge Defendants exercise of their First Amendment rights of free speech and petition and have asserted claims for (1) equitable and injunctive relief, (2) intentional interference with prospective economic relations, (3) negligent interference with prospective economic relations, (4) conspiracy, (5) intentional misrepresentation, and (6) negligent misrepresentation.

On April 13, 2018, appellants filed a Special Motion to Dismiss (Anti-Slapp Motion) Plaintiffs' Complaint pursuant to N.R.S. § 41.635 *et seq.* On June 20, 2018, the Court entered its order denying appellants' Anti-Slapp Motion without prejudice. The appellants are appealing that

order.

11. Indicate whether the case has previously been the subject of an appeal to or original writ proceeding in the Supreme Court and, if so, the caption and Supreme Court docket number of the prior proceeding:

No.

12. Indicate whether this appeal involves child custody or visitation:

No.

13. If this is a civil case, indicate whether this appeal involves the possibility of settlement:  
There is no apparent possibility of settlement at this time.

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

BROWNSTEIN HYATT FARBER SCHRECK, LLP

BY: /s/ Mitchell J. Langberg

MITCHELL J. LANGBERG, ESQ., Bar No. 10118

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

100 North City Parkway, Suite 1600

Las Vegas, NV 89106-4614

Telephone: 702.382.2101

Facsimile: 702.382.8135

*Counsel for Defendants*

DANIEL OMERZA, DARREN BRESEE, and

STEVE CARIA

**CERTIFICATE OF SERVICE**

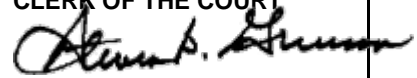
I HEREBY CERTIFY that I am an employee of Brownstein Hyatt Farber Schreck, LLP, and pursuant to NRCP 5(b), EDCR 8.05, Administrative Order 14-2, and NEFCR 9, I caused a true and correct copy of the foregoing **CASE APPEAL STATEMENT** be submitted electronically for filing and/or service with the Eighth Judicial District Court via the Court's Electronic Filing System on the 27th day of June, 2018, to the following:

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

*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

16871264



**PAB**  
MITCHELL J. LANGBERG, ESQ., Bar No. 10118  
[mlangberg@bhfs.com](mailto:mlangberg@bhfs.com)  
BROWNSTEIN HYATT FARBER SCHRECK, LLP  
100 North City Parkway, Suite 1600  
Las Vegas, NV 89106-4614  
Telephone: 702.382.2101  
Facsimile: 702.382.8135

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

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

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

Plaintiffs,

v.

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

Defendants,

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

**NOTICE OF POSTING BOND ON  
APPEAL**

///

///

///

1 PLEASE TAKE NOTICE that Defendants, DANIEL OMERZA, DARREN BRESEE, and  
2 STEVE CARIA, by and through their counsel of record, Brownstein Hyatt Farber Schreck, LLP,  
3 posted an Appeal Bond in the amount of Five Hundred Dollars (\$500.00) with this Court on June  
4 28, 2018 pursuant to NRAP 7. A true and correct copy of the receipt is attached hereto as  
5 Exhibit A.

6 DATED this 28<sup>th</sup> day of June, 2018.

7 BROWNSTEIN HYATT FARBER SCHRECK, LLP

8 BY: /s/ Mitchell J. Langberg

9 MITCHELL J. LANGBERG, ESQ., Bar No. 10118

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

11 100 North City Parkway, Suite 1600

12 Las Vegas, NV 89106-4614

13 Telephone: 702.382.2101

14 Facsimile: 702.382.8135

15 *Counsel for Defendants*

16 DANIEL OMERZA, DARREN BRESEE, and

17 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 POSTING BOND ON APPEAL** be submitted electronically for filing and/or service with the Eighth Judicial District Court via the Court's Electronic Filing System on the 28th day of June, 2018, to the following:

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

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

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

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

# EXHIBIT A



# OFFICIAL RECEIPT

District Court Clerk of the Court 200 Lewis Ave, 3rd Floor Las Vegas, NV 89101

Payor  
Nationwide Legal Nevada LLC

Receipt No.  
**2018-43170-CCCLK**

Transaction Date  
06/28/2018

Description	Amount Paid
-------------	-------------

On Behalf Of Omerza, Daniel

A-18-771224-C

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

Appeal Bond

Appeal Bond

500.00

**SUBTOTAL**

**500.00**

**PAYMENT TOTAL** **500.00**

Check (Ref #26451) Tendered 500.00

Total Tendered 500.00

Change 0.00

Appeal filed on 6/27/2018

06/28/2018  
11:52 AM

Cashier  
Station RJC1C

Audit  
36193711

**OFFICIAL RECEIPT**

DEPARTMENT 2  
**CASE SUMMARY**  
CASE NO. A-18-771224-C

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

§  
§  
§  
§  
§

Location: **Department 2**  
Judicial Officer: **Scotti, Richard F.**  
Filed on: **03/15/2018**  
Case Number History:  
Cross-Reference Case Number: **A771224**

CASE INFORMATION

Case Type: **Other Civil Matters**

Case Flags: **Appealed to Supreme Court**

DATE

CASE ASSIGNMENT

**Current Case Assignment**

Case Number A-18-771224-C  
Court Department 2  
Date Assigned 04/20/2018  
Judicial Officer Scotti, Richard F.

PARTY INFORMATION

Plaintiff	180 Land Co., LLC	<i>Lead Attorneys</i> <b>Jimmerson, James Joseph, ESQ</b> <i>Retained</i> 702-388-7171(W)
	Fore Stars, Ltd.	<b>Jimmerson, James Joseph, ESQ</b> <i>Retained</i> 702-388-7171(W)
	Seventy Acres, LLC	<b>Jimmerson, James Joseph, ESQ</b> <i>Retained</i> 702-388-7171(W)
Defendant	Bresec, Darren	<b>Langberg, Mitchell J.</b> <i>Retained</i> 702-382-2101(W)
	Caria, Steve	<b>Langberg, Mitchell J.</b> <i>Retained</i> 702-382-2101(W)
	Omerza, Daniel	<b>Langberg, Mitchell J.</b> <i>Retained</i> 702-382-2101(W)

DATE

EVENTS & ORDERS OF THE COURT













INDEX

03/15/2018	 Initial Appearance Fee Disclosure Filed By: Plaintiff Fore Stars, Ltd.; Plaintiff Seventy Acres, LLC; Plaintiff 180 Land Co., LLC <i>Initial Appearance Fee Disclosure</i>	
03/15/2018	 Complaint Filed By: Plaintiff Fore Stars, Ltd.; Plaintiff Seventy Acres, LLC; Plaintiff 180 Land Co., LLC <i>Complaint</i>	

DEPARTMENT 2  
**CASE SUMMARY**  
**CASE NO. A-18-771224-C**












03/16/2018	 Summons Electronically Issued - Service Pending Party: Plaintiff Fore Stars, Ltd.; Plaintiff Seventy Acres, LLC; Plaintiff 180 Land Co., LLC <i>Summons</i>
03/16/2018	 Summons Electronically Issued - Service Pending Party: Plaintiff Fore Stars, Ltd.; Plaintiff Seventy Acres, LLC; Plaintiff 180 Land Co., LLC <i>Summons</i>
03/16/2018	 Summons Electronically Issued - Service Pending Party: Plaintiff Fore Stars, Ltd.; Plaintiff Seventy Acres, LLC; Plaintiff 180 Land Co., LLC <i>Summons</i>
03/26/2018	 Affidavit of Service Filed By: Plaintiff Fore Stars, Ltd.; Plaintiff Seventy Acres, LLC; Plaintiff 180 Land Co., LLC <i>Affidavit of Service</i>
03/26/2018	 Summons Filed by: Plaintiff Fore Stars, Ltd.; Plaintiff Seventy Acres, LLC; Plaintiff 180 Land Co., LLC <i>Summons</i>
03/26/2018	 Summons Filed by: Plaintiff Fore Stars, Ltd.; Plaintiff Seventy Acres, LLC; Plaintiff 180 Land Co., LLC <i>Summons</i>
03/26/2018	 Summons Filed by: Plaintiff Fore Stars, Ltd.; Plaintiff Seventy Acres, LLC; Plaintiff 180 Land Co., LLC <i>Summons</i>
03/27/2018	 Affidavit of Service Filed By: Plaintiff Fore Stars, Ltd.; Plaintiff Seventy Acres, LLC; Plaintiff 180 Land Co., LLC <i>Affidavit of Service</i>
03/27/2018	 Affidavit of Service Filed By: Plaintiff Fore Stars, Ltd.; Plaintiff Seventy Acres, LLC; Plaintiff 180 Land Co., LLC <i>Affidavit of Service</i>
04/06/2018	 Notice of Appearance Party: Defendant Omerza, Daniel; Defendant Caria, Steve; Defendant Bresee, Darren <i>Notice of Appearance</i>
04/06/2018	 Initial Appearance Fee Disclosure Filed By: Defendant Caria, Steve; Defendant Bresee, Darren <i>Initial Appearance Fee Disclosure</i>
04/13/2018	 Request for Judicial Notice <i>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)</i>

DEPARTMENT 2  
**CASE SUMMARY**  
**CASE NO. A-18-771224-C**











04/13/2018	 Motion to Dismiss Filed By: Defendant Omerza, Daniel; Defendant Caria, Steve; Defendant Bresee, Darren <i>Defendants' Motion to Dismiss Pursuant to NRCP 12(b)(5)</i>
04/13/2018	 Motion Filed By: Defendant Omerza, Daniel; Defendant Caria, Steve; Defendant Bresee, Darren <i>Defendants' Special Motion to Dismiss (Anti-SLAPP Motion) Plaintiffs' Complaint Pursuant to NRS 41.635 et. seq.</i>
04/16/2018	 <b>Minute Order</b> (1:00 PM) (Judicial Officer: Kishner, Joanna S.)
04/17/2018	 Notice of Department Reassignment <i>Notice of Department Reassignment</i>
04/19/2018	 Peremptory Challenge Filed by: Plaintiff Fore Stars, Ltd. <i>Peremptory Challenge of Judge</i>
04/20/2018	 Notice of Department Reassignment <i>Notice of Department Reassignment</i>
05/01/2018	 Stipulation and Order Filed by: Defendant Omerza, Daniel; Defendant Caria, Steve; Defendant Bresee, Darren <i>Stipulation and Order Continuing Hearing Dates for Defendants' Motion to Dismiss and Special Motion to Dismiss (Anti-SLAPP Motion) and Related Briefing Deadlines</i>
05/02/2018	 Notice of Entry of Stipulation and Order Filed By: Defendant Omerza, Daniel; Defendant Caria, Steve; Defendant Bresee, Darren <i>Notice of Entry of Stipulation and Order Continuing Hearing Dates for Defendants' Motion to Dismiss and Special Motion to Dismiss (Anti-SLAPP Motion) and Related Briefing Deadlines</i>
05/04/2018	 Opposition Filed By: Plaintiff Fore Stars, Ltd. <i>Plaintiffs' Opposition to Defendants' Special Motion to Dismiss (Anti-SLAPP Motion) Plaintiffs' Complaint Pursuant to NRS 41.635 Et Seq.</i>
05/07/2018	 Opposition Filed By: Plaintiff Fore Stars, Ltd. <i>Plaintiffs' Opposition to Defendants' Motion to Dismiss Pursuant to NRCP 12(b)(5)</i>
05/09/2018	 Reply in Support Filed By: Defendant Omerza, Daniel; Defendant Caria, Steve; Defendant Bresee, Darren <i>Defendants' Reply In Support of Special Motion To Dismiss (Anti-SLAPP Motion) Plaintiffs' Complaint Pursuant to NRS 41.635 Et. Seq.</i>
05/09/2018	 Reply in Support Filed By: Defendant Omerza, Daniel; Defendant Caria, Steve; Defendant Bresee, Darren <i>Defendants' Reply Brief In Support of Motion to Dismiss Pursuant to NRCP 12(B)(5)</i>
05/09/2018	 Request for Judicial Notice Filed By: Defendant Omerza, Daniel; Defendant Caria, Steve; Defendant Bresee, Darren <i>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</i>

DEPARTMENT 2  
**CASE SUMMARY**  
**CASE NO. A-18-771224-C**

12(B)(5)

05/11/2018	 Supplement Filed by: Plaintiff Fore Stars, Ltd. <i>Plaintiffs' First Supplement to their Opposition to Defendants' Special Motion to Dismiss</i>
05/11/2018	 Supplement Filed by: Plaintiff Fore Stars, Ltd. <i>Plaintiffs' Second Supplement to their Opposition to Defendants' Special Motion to Dismiss</i>
05/11/2018	 Notice of Association of Counsel Filed By: Plaintiff Fore Stars, Ltd.; Plaintiff Seventy Acres, LLC; Plaintiff 180 Land Co., LLC <i>Notice of Association of Counsel</i>
05/14/2018	 <b>Motion to Dismiss</b> (9:00 AM) (Judicial Officer: Scotti, Richard F.) <b>05/14/2018, 05/23/2018</b> <i>Defendants' Motion to Dismiss Pursuant to NRCP 12(b)(5)</i>
05/14/2018	<b>Motion</b> (9:00 AM) (Judicial Officer: Scotti, Richard F.) <b>05/14/2018, 05/23/2018</b> <i>Defendants' Special Motion to Dismiss (Anti-Slapp Motion) Plaintiffs' Complaint Pursuant to NRS 41.635 Et. Seq</i>
05/14/2018	 <b>All Pending Motions</b> (9:00 AM) (Judicial Officer: Scotti, Richard F.)
05/14/2018	 Notice Filed By: Plaintiff Fore Stars, Ltd.; Plaintiff Seventy Acres, LLC; Plaintiff 180 Land Co., LLC <i>Plaintiffs' Notice of Submitting A Physical Thumb Drive Containing the Video File (.MOV) Labelled "Omerza Video" Attached to "Plaintiffs' First Supplement to Their Opposition to Defendants' Special Motion to Dismiss (Anti-Slapp Motion) Plaintiffs' Complaint Pursuant to NRS 41.635 ET SEQ." to the Court's Exhibit Vault</i>
05/17/2018	 Recorders Transcript of Hearing <i>All Pending Motions 5-14-18</i>
05/23/2018	 Supplemental Brief Filed By: Defendant Omerza, Daniel; Defendant Caria, Steve; Defendant Bresee, Darren <i>Defendants' Supplemental Brief In Support of Special Motion To Dismiss (Anti-SLAPP Motion) Plaintiffs' Complaint Pursuant to NRS 41.635 Et. Seq.</i>
05/23/2018	 Supplement Filed by: Plaintiff Fore Stars, Ltd. <i>Plaintiffs' Supplement in Support of Opposition to Defendants' Special Motion to Dismiss (Anti-SLAPP)</i>
05/25/2018	 Motion to Strike Filed By: Defendant Omerza, Daniel; Defendant Caria, Steve; Defendant Bresee, Darren <i>Defendants' Motion to Strike Portions of Plaintiffs' Supplement in Support of Opposition to Defendants' Special Motion to Dismiss or in the Alternative, for Further Supplemental Briefing</i>
05/29/2018	 <b>Minute Order</b> (10:41 AM) (Judicial Officer: Scotti, Richard F.) <i>Defendants Special Motion to Dismiss (Anti-SLAPP Motion) Plaintiffs Complaint</i>
05/30/2018	

DEPARTMENT 2  
**CASE SUMMARY**  
**CASE NO. A-18-771224-C**

	 Notice of Early Case Conference Filed By: Plaintiff Fore Stars, Ltd. <i>Notice of Early Case Conference</i>
06/11/2018	 Errata Filed By: Plaintiff Fore Stars, Ltd.; Plaintiff Seventy Acres, LLC; Plaintiff 180 Land Co., LLC <i>Errata to Complaint</i>
06/12/2018	 Notice Filed By: Plaintiff Fore Stars, Ltd. <i>Notice of Vacating Early Case Conference</i>
06/12/2018	 Amended Notice Filed By: Plaintiff Fore Stars, Ltd. <i>Amended Notice of Early Case Conference</i>
06/14/2018	 Opposition Filed By: Plaintiff Fore Stars, Ltd.; Plaintiff Seventy Acres, LLC; Plaintiff 180 Land Co., LLC <i>Plaintiffs' Opposition to Defendants' Motion to Strike Portions of Plaintiff's Supplement in Support of Opposition to Defendants' Special Motion to Dismiss or in the Alternative for Further Supplemental Briefing</i>
06/20/2018	 Findings of Fact, Conclusions of Law and Order Filed By: Plaintiff Fore Stars, Ltd. <i>Findings of Fact, Conclusions of Law, and Order</i>
06/21/2018	 Notice of Entry of Findings of Fact, Conclusions of Law Filed By: Plaintiff Fore Stars, Ltd. <i>Notice of Entry of Findings of Fact, Conclusions of Law, and Order</i>
06/27/2018	<b>CANCELED Motion to Strike</b> (3:00 AM) (Judicial Officer: Scotti, Richard F.) <i>Vacated - per Clerk</i> <i>Defendant's Motion to Strike Portions of Plaintiff's Supplement in Support of Opposition to Defendant's Special Motion to Dismiss or in the Alternative for Further Supplemental Briefing</i>
06/27/2018	 Case Appeal Statement Filed By: Defendant Omerza, Daniel; Defendant Caria, Steve; Defendant Bresee, Darren <i>Case Appeal Statement</i>
06/27/2018	 Notice of Appeal Filed By: Defendant Omerza, Daniel; Defendant Caria, Steve; Defendant Bresee, Darren <i>Notice of Appeal</i>
06/28/2018	 Posting of Appeal Bond Filed by: Defendant Omerza, Daniel; Defendant Caria, Steve; Defendant Bresee, Darren <i>Notice of Posting Bond on Appeal</i>

**DATE**

**FINANCIAL INFORMATION**

<b>Defendant</b> Caria, Steve	
Total Charges	24.00
Total Payments and Credits	24.00
<b>Balance Due as of 6/29/2018</b>	<b>0.00</b>
<b>Defendant</b> Omerza, Daniel	

DEPARTMENT 2  
**CASE SUMMARY**  
**CASE NO. A-18-771224-C**

Total Charges	283.00
Total Payments and Credits	283.00
<b>Balance Due as of 6/29/2018</b>	<b>0.00</b>
<b>Plaintiff</b> Fore Stars, Ltd.	
Total Charges	780.00
Total Payments and Credits	780.00
<b>Balance Due as of 6/29/2018</b>	<b>0.00</b>
<b>Defendant</b> Omerza, Daniel	
Appeal Bond Balance as of 6/29/2018	<b>500.00</b>

# DISTRICT COURT CIVIL COVER SHEET

County, Nevada

A-18-771224-C

Case No. \_\_\_\_\_

(Assigned by Clerk's Office)

Department 31

## I. Party Information *(provide both home and mailing addresses if different)*

Plaintiff(s) (name/address/phone): Fore Stars, Ltd., a Nevada Limited Liability Company 1215 S. Fort Apache Rd., Suite 120 Las Vegas, NV 89117 (702) 940-6930	Defendant(s) (name/address/phone): Daniel Omerza and Steve Caria 800 Petit Chalet Court Las Vegas, NV 89145
Attorney (name/address/phone): James J. Jimmerson, Esq. (702) 388-7171 Jimmerson Law Firm, P.C. 415 S. 6th Street, Suite 100 Las Vegas, NV 89101	Attorney (name/address/phone): _____ _____ _____

## II. Nature of Controversy *(please select the one most applicable filing type below)*

### Civil Case Filing Types

<b>Real Property</b> <b>Landlord/Tenant</b> <input type="checkbox"/> Unlawful Detainer <input type="checkbox"/> Other Landlord/Tenant <b>Title to Property</b> <input type="checkbox"/> Judicial Foreclosure <input type="checkbox"/> Other Title to Property <b>Other Real Property</b> <input type="checkbox"/> Condemnation/Eminent Domain <input type="checkbox"/> Other Real Property	<b>Negligence</b> <input type="checkbox"/> Auto <input type="checkbox"/> Premises Liability <input type="checkbox"/> Other Negligence <b>Malpractice</b> <input type="checkbox"/> Medical/Dental <input type="checkbox"/> Legal <input type="checkbox"/> Accounting <input type="checkbox"/> Other Malpractice	<b>Torts</b> <b>Other Torts</b> <input type="checkbox"/> Product Liability <input type="checkbox"/> Intentional Misconduct <input type="checkbox"/> Employment Tort <input type="checkbox"/> Insurance Tort <input type="checkbox"/> Other Tort
<b>Probate</b> <b>Probate</b> <i>(select case type and estate value)</i> <input type="checkbox"/> Summary Administration <input type="checkbox"/> General Administration <input type="checkbox"/> Special Administration <input type="checkbox"/> Set Aside <input type="checkbox"/> Trust/Conservatorship <input type="checkbox"/> Other Probate <b>Estate Value</b> <input type="checkbox"/> Over \$200,000 <input type="checkbox"/> Between \$100,000 and \$200,000 <input type="checkbox"/> Under \$100,000 or Unknown <input type="checkbox"/> Under \$2,500	<b>Construction Defect &amp; Contract</b> <b>Construction Defect</b> <input type="checkbox"/> Chapter 40 <input type="checkbox"/> Other Construction Defect <b>Contract Case</b> <input type="checkbox"/> Uniform Commercial Code <input type="checkbox"/> Building and Construction <input type="checkbox"/> Insurance Carrier <input type="checkbox"/> Commercial Instrument <input type="checkbox"/> Collection of Accounts <input type="checkbox"/> Employment Contract <input type="checkbox"/> Other Contract	<b>Judicial Review/Appeal</b> <b>Judicial Review</b> <input type="checkbox"/> Foreclosure Mediation Case <input type="checkbox"/> Petition to Seal Records <input type="checkbox"/> Mental Competency <b>Nevada State Agency Appeal</b> <input type="checkbox"/> Department of Motor Vehicle <input type="checkbox"/> Worker's Compensation <input type="checkbox"/> Other Nevada State Agency <b>Appeal Other</b> <input type="checkbox"/> Appeal from Lower Court <input type="checkbox"/> Other Judicial Review/Appeal
<b>Civil Writ</b> <b>Civil Writ</b> <input type="checkbox"/> Writ of Habeas Corpus <input type="checkbox"/> Writ of Mandamus <input type="checkbox"/> Writ of Quo Warrant <input type="checkbox"/> Writ of Prohibition <input type="checkbox"/> Other Civil Writ		<b>Other Civil Filing</b> <b>Other Civil Filing</b> <input type="checkbox"/> Compromise of Minor's Claim <input type="checkbox"/> Foreign Judgment <input checked="" type="checkbox"/> Other Civil Matters

*Business Court filings should be filed using the Business Court civil coversheet.*

3/15/18

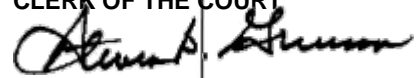
Date

/s/James J. Jimmerson

Signature of initiating party or representative

*See other side for family-related case filings.*





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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

THE JIMMERSON LAW FIRM, P.C.  
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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  
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  
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  
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  
Badlands Golf Course; (4) Additional Disclosure Section 7 –  
Views/Location Advantages which stated that future construction in the  
planned community may obstruct or block any view or diminish any  
location advantage; and (5) Public Offering Statement for Queensridge  
Towers which included these same disclaimers. *See Comp. at ¶¶ 10-12,*  
*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  
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  
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

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

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

## CONCLUSIONS OF LAW

5

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.*

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,

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 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.*,

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

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

**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:

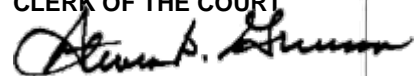
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**NOTC**

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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:

Mitchell Langberg, Esq.  
BROWNSTEIN HYATT FARBER SCHRECK, LLP  
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*Attorneys for Defendants*



\_\_\_\_\_  
Employee of The Jimmerson Law Firm, P.C.





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9 Attorneys for Plaintiffs

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,

16 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.

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

JUN 12 2018

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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.*

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  
4 the building of residential units.

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

8 *See Comp., Ex. 1.*

9 j. The Defendants did so despite having received prior, express  
10 written notice that the Queensridge Master Declaration does not apply  
11 to the Land, the Land Owners have the absolute right to develop it based  
12 solely on the RPD 7 zoning, and any views and/or locations advantages  
13 they enjoyed could be obstructed in the future. *See gen., Comp., Exs. 2,*  
14 *3, and 4.*

15 k. In preparing, promulgating, soliciting, circulating, and  
16 executing the declaration, the Defendants also disregarded district court  
17 orders which involved their similarly situated neighbors in Queensridge,  
18 which are public records attached to the Complaint, and which expressly  
19 found that: (1) the Land Owners have complied with all relevant  
20 provisions of NRS Chapter 278 and properly followed procedures for  
21 approval of a parcel map over their property; (2) Queensridge Common  
22 Interest Community is governed by NRS Chapter 116 and not NRS  
23 Chapter 278A because there is no evidence remotely suggesting that the  
24 Land is within a planned unit development; (3) the Land is not subject  
25 to the Queensridge Master Declaration, and the Land Owners'  
26 applications to develop the Land are not prohibited by, or violative of,  
27 that declaration; (4) Queensridge residents have no vested rights in the  
28 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 ¶¶*  
*41-42, 52, 56, 66, 74, 78-79, and 108; Ex. 3 at ¶¶ 8, 12, 15-23, 26, 61, 64-*  
*67, and 133.*

1. The Defendants further ignored another district court order  
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

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

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

## CONCLUSIONS OF LAW

5

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,*

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

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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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Attorneys for Plaintiffs

<sup>BG</sup>  
Approved as to form and content:

BROWNSTEIN HYATT FARBER  
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Las Vegas, NV 89106-4614  
Attorney for Defendants

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Other Civil Matters**

**COURT MINUTES**

**April 16, 2018**

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

---

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

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

**COURTROOM:** Chambers

**COURT CLERK:** Tena Jolley

**RECORDER:**

**REPORTER:**

**PARTIES**

**PRESENT:**

**JOURNAL ENTRIES**

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

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Other Civil Matters**

**COURT MINUTES**

**May 14, 2018**

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

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**May 14, 2018**

**9:00 AM**

**All Pending Motions**

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

**COURTROOM:** RJC Courtroom 11D

**COURT CLERK:** Vanessa Medina

**RECORDER:** Dalayne Easley

**REPORTER:**

**PARTIES**

**PRESENT:**      Ghanem, Elizabeth M.      Attorney  
                 Jimmerson, James Joseph, ESQ      Attorney  
                 Langberg, Mitchell J.      Attorney

**JOURNAL ENTRIES**

- Arguments by Mr. Langberg and Mr. Jimmerson. Court DIRECTED, counsel to submit a 2 page Supplemental Briefing by close of business day Wednesday 05/23/18, if counsel believes there is additional information. COURT ORDERED, matter CONTINUED to 05/23/18 Chamber Calendar.

CONTINUED TO: 05/23/18 (CHAMBER CALENDAR)



**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Other Civil Matters**

**COURT MINUTES**

**May 23, 2018**

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

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**May 23, 2018      3:00 AM      Motion to Dismiss**

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

**COURT CLERK:** Natalie Ortega

**RECORDER:**

**REPORTER:**

**PARTIES  
PRESENT:**

**JOURNAL ENTRIES**

- These matters are continued to the May 30, 2018 Chambers Calendar.

CLERK'S NOTE: This minute order was electronically served by Courtroom Clerk, Natalie Ortega, to all registered parties for Odyssey File & Serve. ndo/5/23/18

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

Other Civil Matters

COURT MINUTES

May 29, 2018

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

May 29, 2018	10:41 AM	Minute Order	<b>Defendants' Special Motion to Dismiss (Anti-SLAPP Motion) Plaintiffs Complaint</b>
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**HEARD BY:** Scotti, Richard F.**COURTROOM:****COURT CLERK:** Jennifer Lott**RECORDER:****REPORTER:****PARTIES****PRESENT:**

**JOURNAL ENTRIES**

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

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

CLERK'S NOTE: This Minute Order was electronically served by Courtroom Clerk, Jennifer Lott, to

all registered parties for Odyssey File & Serve. jl

# Certification of Copy

State of Nevada }  
County of Clark } SS:

I, Steven D. Grierson, the Clerk of the Court of the Eighth Judicial District Court, Clark County, State of Nevada, does hereby certify that the foregoing is a true, full and correct copy of the hereinafter stated original document(s):

NOTICE OF APPEAL; CASE APPEAL STATEMENT; NOTICE OF POSTING  
BOND ON APPEAL; DISTRICT COURT DOCKET ENTRIES; CIVIL COVER SHEET; FINDINGS  
OF FACT, CONCLUSIONS OF LAW, AND ORDER; NOTICE OF ENTRY FO FINDINGS OF FACT,  
CONCLUSIONS OF LAW, AND ORDER; DISTRICT COURT MINUTES

FORE STARS, LTD; 180 LAND CO., LLC;  
SEVENTRY ACRES, LLC,

Plaintiff(s),

vs.

DANIEL OMERZA; DARREN BRESEE;  
STEVE CARIA,

Defendant(s),

Case No: A-18-771224-C

Dept No: II

now on file and of record in this office.

IN WITNESS THEREOF, I have hereunto  
Set my hand and Affixed the seal of the  
Court at my office, Las Vegas, Nevada  
This 29 day of June 2018.

Steven D. Grierson, Clerk of the Court



Amanda Hampton, Deputy Clerk

## NATIONWIDE LEGAL NEVADA LLC

1609 JAMES M. WOOD BLVD  
LOS ANGELES, CA 90015  
(213) 249-9999CONFIRM ENCASHMENT  
OF OVER \$200.00 W/  
THE MAKER @ (213) 249-9999BANK OF AMERICA  
OLYMPIC-UNION BRANCH 309 (323) 730-9140  
1625 W. OLYMPIC BLVD  
LOS ANGELES, CA 90015  
16-68/1220

26450

DATE 6/28/18PAY TO THE  
ORDER OFSupreme Court\$ 250 —two hundred fifty and 00/100

DOLLARS

DR# 8524CLIENT Brownstein HyattNOT TO EXCEED \$1,500.00  
VOID AFTER 90 DAYSCONTROL # A-18-771224-C

⑈026450⑈ ⑆122000661⑆ 03094⑈47193⑈