

IN THE SUPREME COURT OF THE STATE OF NEVADA

Supreme Court Case No. 76273

Electronically Filed
Oct 23 2018 03:27 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

DANIEL OMERZA, DARREN BRESEE, and STEVE CARIA,

Appellants

v.

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

Respondent,

and

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

Real Parties in Interest.

**APPENDIX TO
APPELLANTS' OPENING BRIEF
VOLUME II of III**

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of Brownstein Hyatt Farber Schreck, LLP, and that on this 22nd day of October, 2018, I electronically filed and served by electronic mail a true and correct copies of the above and foregoing **APPENDIX TO APPELLANTS' OPENING BRIEF, VOLUME II of III** properly addressed to the following:

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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

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

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

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

4 DATED this 7th day of May, 2018.

5 THE JIMMERSON LAW FIRM, P.C.

6
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24 ¹ With respect to Defendants concurrently filed Request for Judicial Notice, the Land
25 Owners respectfully request that this Court take judicial notice of the district court orders attached
26 to their Complaint if it takes judicial notice of the documents request by Defendants. *See Breliant*
27 *v. Preferred Equities Corp.*, 109 Nev. 842, 846, 858 P.2d 1258, 1260 (1993) (The court may take
28 into account matters of public record, orders, items present in the record of the case, and any
exhibits attached to the complaint when ruling on a motion to dismiss for failure to state a claim
upon which relief can be granted.); *see also* Comp., Exs. 2, 3, and 4. It is noteworthy that the copy
of the January 11, 2018 hearing transcript – Exhibit A to Defendants' Request – is not an official,
file-stamped copy

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

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

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

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

1 **II. RELEVANT FACTS**

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

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

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

7 TO: City of Las Vegas

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

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

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

19 Comp., Ex. 1.

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

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

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

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

24 **III. ARGUMENT**

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

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

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

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

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

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

B. The Complaint States Cognizable Claims For Relief

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

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

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

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

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

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

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

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

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

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

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

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

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

12 Additionally, Land Owners should be permitted to discovery pursuant to *Rocker v.*
13 *KPMG LLP*, 122 Nev. 1185, 148 P.3d 703 (2006). Specifically, the Land Owners should
14 be allowed discovery in order to obtain facts including, but not limited to, from whom
15 the Defendants received the information stated in the declarations, who prepared
16 them, whether they read their CC&Rs, whether they read Judge Smith's orders, what
17 they understood to be the implications of their CC&Rs as well as the court orders,
18 why they believe the declarations to be accurate, what efforts they took, if any, to
19 ascertain the truth of the information in the declarations, and with whom and the
20 contents of the conversations they had with other Queensridge residents. According
21 to their affidavits, the Defendants are uniquely in possession of this information, and
22 the Land Owners are entitled to an opportunity to conduct discovery in order to elicit
23 this information.
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DECLARATION OF JAMES M. JIMMERSON ESQ.
IN SUPPORT OF PLAINTIFFS' OPPOSITION TO
DEFENDANTS' MOTION TO DISMISS PURSUANT TO NRCP 12(b)(4)

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

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

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

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

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

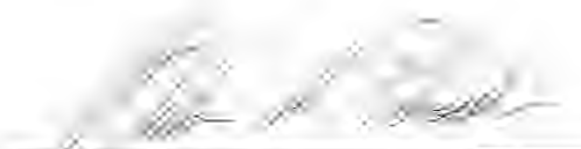
I declare under the penalty of perjury and laws of the State of Nevada that the foregoing is true and correct to the best of my knowledge.

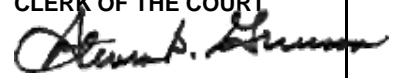

JAMES M. JIMMERSON, ESQ.

CERTIFICATE OF SERVICE

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

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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
1000,

Defendants.

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

**DEFENDANTS' REPLY IN SUPPORT OF
SPECIAL MOTION TO DISMISS (ANTI-
SLAPP MOTION) PLAINTIFFS'
COMPLAINT PURSUANT TO NRS §41.635
ET. SEQ.**

Hearing Date: May 14, 2018

Hearing Time: 9:00 am.

I. INTRODUCTION

In order to safeguard against legal actions that could impose a chilling effect on free speech and petitioning activities, Nevada's anti-SLAPP statute, NRS §41.635 *et seq.*, creates an expedited procedure for testing the merits of claims arising from activities typically protected by the First Amendment. The Act specifies a two-prong analysis: Defendants must show that the claims against them are “based upon a good faith communication in furtherance of the right to petition or the right to free speech in direct connection with an issue of public concern,” as that phrase is defined in the statute. NRS 41.660(3)(a). If they do, then the burden switches to Plaintiffs to produce evidence to “demonstrate[] with *prima facie* evidence a probability of

1 prevailing on the claim.” NRS 41.660(3)(b).

2 In their motion, Defendants met their initial burden, showing that the claims against them
3 arise from their free speech and petitioning activity ultimately directed to the Las Vegas City
4 Council on a matter of public interest: Plaintiffs' efforts to obtain changes to land use restrictions
5 so they can convert open space previously used as a golf course to new residential units. That
6 some nearby residents relied on the open space designation of the golf course when they
7 purchased their homes directly bears on this issue, as this Court (Judge Crockett) has already
8 found, in separate litigation over Plaintiffs' development plans.

9 Thus, the burden is now on Plaintiffs to produce facts sufficient to support a *prima facie*
10 claim against Defendants. Yet in their Opposition, Plaintiffs have not even attempted to meet that
11 burden. Instead, Plaintiffs argue that the first prong of the anti-SLAPP analysis could not have
12 been met because, assuming Plaintiffs' own factual allegations to be true, Defendants could
13 conceivably be liable for the conduct alleged.

14 This argument proceeds from a profound misunderstanding of the anti-SLAPP statute. An
15 anti-SLAPP motion is not a Rule 12(b)(5) motion to dismiss, and for purposes of Defendants'
16 motion, the facts alleged in Plaintiffs' Complaint are *not* assumed to be true. It is not enough for
17 Plaintiffs to argue as a legal matter that the type of facts they have alleged, *if proven*, might give
18 rise to a claim for relief. Rather, the anti-SLAPP statute challenges Plaintiffs to come forward
19 with admissible supporting evidence at the outset of the case, to justify moving forward with an
20 action that the Legislature has found disruptive of First Amendment activities. Here, Plaintiffs
21 have failed to answer the bell, offering no evidence to support their strained claims against
22 Defendants. Plaintiffs only attempt at factual support—as opposed to unsubstantiated conclusory
23 allegations—rests on an earlier judicial proceedings (to which these Defendants were not parties)
24 involving whether Queensridge covenants, conditions and restrictions ("CC&R's") prohibit
25 development of the Badlands Golf Course. But, this is an issue not even raised in the present
26 dispute.

27 Disregarding Plaintiffs' efforts to confuse the matter, dismissal under the anti-SLAPP
28 statute is plainly appropriate here. There is no question that the communications at issue are in

1 furtherance of Defendants' rights to petition and free speech in connection with an issue of public
2 concern. Plaintiffs dispute whether Defendants' communications have been in good faith, but the
3 only support Plaintiffs offer for their position (beyond the bald allegations of their own
4 Complaint) are judicial rulings on the inapplicable issue of whether Plaintiffs are bound by
5 Queensridge CC&R's. Thus, Defendants have met their initial burden under the statute by
6 showing that this case implicates First Amendment issues.

7 Plaintiffs, meanwhile, have not even attempted to meet their burden of presenting *prima*
8 *facie* evidence to support their claims for relief. They offer no evidentiary support for their
9 claims. They present no response to Defendants' argument that their claims are invalid, other
10 than to request discovery. But, they have also failed to demonstrate any need for discovery under
11 NRS 41.660(4). Finally, Plaintiffs dispute whether Defendants' conduct was privileged — an
12 independent basis for dismiss the claims asserted here — but once again Plaintiffs' position is
13 based on fundamental misunderstandings as to the controlling law.

14 **II. ARGUMENT**

15 Plaintiffs' Opposition to Defendants' Special Motion to Dismiss (Anti-SLAPP Motion)
16 Plaintiffs' Complaint Pursuant to NRS 41.635 Et Seq. ("Opposition") entirely misses the point of
17 the anti-SLAPP statute, which challenges them to produce evidence to support their claims at the
18 outset of their case. This burden cannot be satisfied merely by reliance on allegations in the
19 Complaint. Defendants have met the first prongs of the anti-SLAPP statute because Plaintiffs'
20 claims arise from Defendants' "good faith communications in furtherance of the right to petition
21 or the right to free speech in direct connection with an issue of public concern," as that phrase is
22 defined in the statute. Thus, the burden was on Plaintiffs to produce *prima facie* evidence
23 demonstrating a probability of prevailing on their claims, which they have entirely failed to do.

24 **A. PLAINTIFFS' OPPOSITION MISPERCEIVES THE OPERATION AND** 25 **IMPORT OF THE ANTI-SLAPP STATUTE.**

26 Defendants' Motion is brought under the anti-SLAPP statute, not Rule 12(b)(5). Under
27 the anti-SLAPP statute, Plaintiffs' factual allegations are not assumed true; rather, the statute calls
28 on Plaintiffs to come forward with evidence to support a *prima facie* case against Defendants.

1 Failure to do so results in an adjudication on the merits against Plaintiffs' claims. NRS 41.660(5).

2 Plaintiffs repeatedly emphasize that the anti-SLAPP statute "is not an absolute bar against
3 substantive claims" and does not render Defendants "immune" from potential claims. *E.g.*,
4 Opposition at 5. This simply misses the point. Defendants do not contend that the anti-SLAPP
5 statute is an absolute bar against all potential claims. Rather, the purpose of the statute is to
6 create a procedure for testing whether there is in fact any evidentiary basis for Plaintiffs'
7 substantive claims at the outset of the litigation. This "filters unmeritorious claims in an effort to
8 protect citizens from costly retaliatory lawsuit arising from their right to free speech under both
9 the Nevada and Federal Constitutions." *John v. Douglas City Sch. Dist.*, 125 Nev. 746, 755, 219
10 P.3d 1276, 1282 (2009), *superseded by statute on other grounds, as stated in Shapiro v. Welt*, 133
11 Nev. Adv. Op. 6, 389 P.3d 262, 266 (2017)) (cited by Plaintiffs).¹ Plaintiffs cannot satisfy that
12 test simply by asserting that the allegations of the Complaint might, in theory, state a claim for
13 relief, if they are later able to prove their factual allegations at trial. Because of their Complaint's
14 obvious impact on the exercise of Defendants' First Amendment rights, Plaintiffs must come
15 forward with supporting evidence *now*.

16 Specifically, Plaintiffs assert that the anti-SLAPP statute does not apply because they
17 allege in their Complaint that Defendants' communications were not truthful and were made with
18 knowledge of their falsehood. But Defendants have met their initial burden to show their
19 communications were made in good faith, by providing the Court with Defendants' Declarations,
20 *see* Motion, Exs. 1-3, stating that they are not aware of any falsehood in the disputed
21 communications. Thus, the burden shifts to Plaintiffs to produce *evidence* that Defendants made
22 false statements that they knew to be false. In functionally identical circumstances, the Nevada
23 Supreme Court held in *Delucchi v. Songer*, 133 Nev. ___, 396 P.3d 826 (2017) (discussed in
24 Defendants' Motion but ignored in Plaintiffs' Opposition), that a defendant's declaration that he

25 _____
26 ¹ Among other changes, the Nevada Legislature amended the anti-SLAPP statute in 2013 to
27 clarify that the statute is not limited to communications "addressed to a governmental agency,"
28 but rather covers any good faith "communication that is aimed at procuring any governmental or
electoral action, result, or outcome." *Adelson v. Harris*, 402 P.3d 665, 670 (Nev. 2017) (quoting
Delucchi v. Songer, 133 Nev. ___, 396 P.3d 826, 830-31 (2017)).

1 believed his disputed communications to be truthful was sufficient to shift the burden to the
2 plaintiffs to show a *prima facie* basis for their claims:

3 Songer also made an initial showing that the Songer Report was true or
4 made without knowledge of its falsehood. In a declaration before the
5 district court, Songer stated, "[t]he information contained in [his] reports
6 was truthful to the best of [his] knowledge, and [he] made no statements
7 [he] knew to be false." **Because Songer made the required initial
8 showing, the question becomes whether in opposing the special motion
9 to dismiss, Delucchi and Hollis set forth specific facts by affidavit or
10 otherwise to show that there was a genuine issue for trial regarding
11 whether the Songer Report fit within the definition of protected
12 communication.**

9 *Delucchi*, 396 P.3d at 833 (emphasis added). As *Delucchi* squarely holds, it is not sufficient for
10 Plaintiffs to dispute whether Defendants' communications were truthful—they must present
11 affidavits or other evidence to make a *prima facie* showing in support of their allegations.

12 Plaintiffs make no attempt to do that, instead repeatedly insisting without support that the
13 allegations of their Complaint are sufficient to prevent dismissal under the anti-SLAPP statute.
14 They even go so far as to suggest that the anti-SLAPP statute does not apply at all to intentional
15 torts, Opposition at 6-7, but again they offer no authority so holding, while *Delucchi* expressly
16 applied the statute to a claim for intentional infliction of emotional distress. Further, Plaintiffs
17 concede that California authority is persuasive as to the scope of the anti-SLAPP statute, and
18 California courts have squarely rejected Plaintiffs' position. *See, e.g., Navellier v. Sletten*, 29 Cal.
19 4th 82, 92, 124 Cal. Rptr. 2d 530, 52 P.3d 703 (2002) ("Nothing in the statute itself categorically
20 excludes any particular type of action from its operation, and no court has the 'power to rewrite
21 the statute so as to make it conform to a presumed intention which is not expressed.' ") (quoting
22 *California Teachers Assn. v. Governing Bd. of Rialto Unified School Dist.*, 14 Cal. 4th 627, 633,
23 59 Cal. Rptr. 2d 671, 927 P.2d 1175 (1997)); *Graham-Sult v. Clainos*, 756 F.3d 724, 739 (9th Cir.
24 2014) (applying anti-SLAPP statute to claims for intentional and negligent misrepresentation);
25 *Healthsmart Pacific, Inc. v. Kabateck*, 7 Cal. App. 5th 416, 426, 438, 212 Cal. Rptr. 3d 589
26 (2016) (affirming anti-SLAPP dismissal of claim for interference with prospective economic
27 advantage); *Haight Ashbury Free Clinics, Inc. v. Happening House Ventures*, 184 Cal. App. 4th
28 1539, 1548-49, 110 Cal. Rptr. 3d 129 (2010) (holding anti-SLAPP statute applies to claim for

1 conspiracy to obtain false testimony).

2 This same line of cases also dispels Plaintiffs' peculiar theory that the anti-SLAPP statute
3 cannot apply when Plaintiffs allege wrongful conduct by Defendants (as if any plaintiff would fail
4 to make such an allegation). Opposition, at 7-9. The predictable allegation of some wrongdoing
5 by Defendants does not dispel the fact that the claims arise in significant part from their
6 participation in the political arena. "Where, as here, a cause of action is based on both protected
7 activity and unprotected activity, it is subject to [the anti-SLAPP statute] 'unless the protected
8 conduct is merely incidental to the unprotected conduct.'" *Haight Ashbury Free Clinics, supra*, at
9 1551 (quoting *Peregrine Funding, Inc. v. Sheppard Mullin Richter & Hampton LLP*, 133 Cal.
10 App. 4th 658, 672, 35 Cal. Rptr. 3d 31 (2005)); *see also Baral v. Schnitt*, 1 Cal. 5th 376, 396, 205
11 Cal. Rptr. 3d 475, 376 P.3d 604, 617 (2016) ("When relief is sought based on allegations of both
12 protected and unprotected activity, the unprotected activity is disregarded at this [first prong]
13 stage. If the court determines that relief is sought based on allegations arising from activity
14 protected by the statute, the second step is reached."). This is consistent with the rule in Nevada
15 that courts need only determine whether a claim involves conduct meeting the definition of NRS
16 41.637, without need to undertake an analysis of First Amendment law. *Delucchi*, 396 P.3d at
17 833 (quoted in Motion, at 8). Plaintiffs' insistence that the statute does not apply to intentional
18 torts or alleged wrongful conduct is nonsense, underscoring their misunderstanding of the nature
19 and purpose of the anti-SLAPP statute.

20 **B. DEFENDANTS MET THEIR INITIAL BURDEN OF SHOWING THAT**
21 **PLAINTIFFS' CLAIMS ARISE FROM DEFENDANTS' EXERCISE OF**
22 **THEIR FIRST AMENDMENT RIGHTS.**

23 The first prong of the anti-SLAPP statute places the burden on Defendants to show that a
24 claim "is based upon a good faith communication in furtherance of the right to petition or the
25 right to free speech in direct connection with an issue of public concern." NRS 41.660(3)(a).
26 The meaning of that phrase is explicitly defined at NRS 41.637. Plaintiffs cannot dispute the
27 nature of the communications at issue here, which fall squarely within the type of conduct
28 contemplated by the statute. Plaintiffs attempt to avoid the scope of the anti-SLAPP statute by
asserting that Defendants' communications were not in good faith, but again they have offered no

1 evidentiary support for their view, other than the outcome of a judicial proceeding to which they
2 were not parties that addressed an issue not presented here.

3 As demonstrated in Defendants' Motion, the Legislature has defined four ways in which
4 communications may be deemed to be in furtherance of the right to petition or the right to free
5 speech in direct connection with an issue of public concern, all four of which apply here. There is
6 no dispute that the communications and conduct at issue here consist of Defendants conversing
7 with fellow residents to obtain declarations in order to provide information about the residents'
8 reliance on the Peccole Ranch Master Development Plan to the City Council, in hopes of
9 influencing the Council's decision as to whether to permit an amendment to the General Plan.
10 Plaintiffs cannot seriously contest that this constitutes (i) communications aimed at procuring a
11 desired governmental or electoral action; (ii) an effort to communicate information to government
12 personnel; (iii) written and oral statements on an issue under consideration by a legislative,
13 executive or judicial body; and (iv) communications in a public forum in direct connection with
14 an issue of public interest. *See* NRS 41.637. This is grass roots activism on a matter of
15 immediate public interest. It is difficult to imagine an effort that would fall more squarely within
16 the statutory definition.

17 Plaintiffs only response in their Opposition is to insist that the communications at issue
18 are not *good faith* communications, because Defendants know that nobody relied on the
19 designation in the Master Development Plan of the Badlands golf course as Parks Recreation –
20 Open Space. Their only support for this assertion is the Court's decision in *Peccole v. Peccole*,
21 Case A-16-739654-C, which Plaintiffs claim held just that. But this Court will search the
22 Findings of Fact in that action in vain for any such holding. To the contrary, that case analyzed
23 another resident's contention that the Queensridge CC&R's apply to Plaintiffs and somehow
24 *forbid* them from developing the Badlands property. Defendants here have not taken the position
25 that Plaintiffs are bound by the Queensridge CC&R's, nor do the declarations they secured make
26 any such assertion. Rather, the declarations state that the signing residents purchased their
27 residence or lot "in reliance upon the fact that the open space/natural drainage system could not
28 be developed pursuant to the City's Approval in 1990 of the Peccole Ranch Master Plan and

subsequent formal actions designating the open space/natural drainage system in its General Plan as Parks Recreation – Open Space which land use designation does not permit the building of residential units." Mot., Exs. 1-3, ¶ 12. These declarations do *not* rely on the terms of the Queensridge CC&R's, and thus are not in any way inconsistent with the court's holding in *Peccole v. Peccole*. They are, however, entirely consistent with Judge Crockett's determination in the Binion Litigation, Case No. A-17-752344-J, that approval of Plaintiffs' plans requires a major modification of the Peccole Ranch Master Plan, which may run afoul of the reasonable expectations of residents of the area who relied on the existing master planning. *See* Request for Judicial Notice, Ex. A, at 5-10. Since Judge Crockett himself obviously raised this concern in good faith, there can be no reasonable inference that Defendants could not believe the same thing in good faith.²

There can be no serious dispute that Defendants' communications in an attempt to be heard on issues pending before the Las Vegas City Council implicate the rights of free speech and petition the anti-SLAPP statute was designed to protect.

C. PLAINTIFFS HAVE FAILED TO DEMONSTRATE A PROBABILITY OF PREVAILING ON ANY OF THEIR CLAIMS.

The burden thus shifts to Plaintiffs to demonstrate with *prima facie* evidence a probability of prevailing on their claims. NRS 41.660(3)(b). In their Motion, Defendants demonstrated that Plaintiffs would not be able to meet that burden for two independent reasons: first, the claims they have asserted are untenable as a matter of law; second, Defendants' activities at issue are privileged. Remarkably, Plaintiffs have made no attempt to respond to the first argument. Instead, they ask the court to undertake discovery, but they have failed to show any basis for seeking such discovery under the anti-SLAPP statute. Plaintiffs do attempt to answer the second argument, but their position is at odds with the controlling authority on the privilege issue.

² Judge Crockett's concerns do not in any way exclude Queensridge, but apply to any Peccole Ranch residents and Badlands neighbors, which would include the Queensridge residents in question. Defendants are simply at a loss to understand why Plaintiffs believe that it is significant that Judge Crockett's ruling post-dates the *Peccole v. Peccole* decision, Opposition at 15 n.4, when the two cases address different issues.

1 **1. Plaintiffs Have Not Presented Any *Prima Facie* Evidence To Show a**
2 **Probability of Prevailing on Their Claims for Relief.**

3 As shown above, once Defendants have made an initial showing that the anti-SLAPP
4 statute applies, the burden shifts to Plaintiffs to present *prima facie* evidence showing a
5 probability that they will prevail on their claims. Here, Plaintiffs have presented **no such**
6 **evidence at all.** Defendants' expectation that Plaintiffs would not be able to carry their burden
7 thus wins by default. Instead of a presentation of evidence and an argument on the merits,
8 Plaintiffs ask the Court to permit them to commence discovery in hopes of proving up their
9 claims. Opposition, at 18. The Court should deny this request for two reasons.

10 First, the anti-SLAPP statute specifies precisely the circumstances in which discovery is
11 permitted, and Plaintiffs have utterly failed to meet that standard. Plaintiffs quote NRS 41.660(4)
12 as stating that the Court "shall allow limited discovery for the limited purpose of ascertaining
13 such information' necessary to 'determine with prima facie evidence a probability of prevailing on
14 their claims.'" Opposition at 18 (quoting NRS 41.660(4)). This selective quotation is remarkable
15 for what it omits — that such discovery is **only** available to the extent the information necessary
16 for Plaintiffs to meet their burden is exclusively within the possession of another party:

17 **Upon a showing by a party that information necessary to meet or**
18 **oppose the burden pursuant to paragraph (b) of subsection 3 is in the**
19 **possession of another party or a third party and is not reasonably**
 available without discovery, the court shall allow limited discovery for
 the purpose of ascertaining such information.

20 NRS 41.660(4) (emphasis added). Plaintiffs have made no such showing here. They suggest to
21 the Court topics of discovery they might like to pursue, but offer no basis for concluding that such
22 information is necessary in order for them to meet their burden of showing a probability of
23 success on their claims. *See Schroeder v. Irvine City Council*, 97 Cal. App. 4th 174, 193, 83 Cal.
24 Rptr. 2d 677 (1999) (affirming denial of plaintiff's request for discovery, where the plaintiff failed
25 to show how depositions and written discovery requests "would have produced evidence relevant
26 to his *prima facie* showing"). Plaintiffs compound the error by relying on *Pacquiao v.*
27 *Mayweather*, No. 209-CV-2448-LRH-RJJ, 2010 WL 1439100 (D. Nev. Apr. 9, 2010), which
28 permitted discovery on anti-SLAPP issues that Judge Hicks expressly observed would *not* have

1 been available in state court. *Id.* at *1 (when an anti-SLAPP motion is filed in Nevada state court,
2 courts must "stay discovery pending a ruling on the motion," but "in federal court, a plaintiff is
3 entitled to seek limited discovery to oppose an anti-SLAPP motion").

4 Second, Plaintiffs request is untimely. An anti-SLAPP motion is designed to be an
5 expedited procedure, with the statute calling for a decision within 20 days of filing. NRS
6 41.660(3)(f). Any serious need for discovery is one that should naturally be raised immediately
7 with the Court, not belatedly requested as an alternative, in the event Plaintiffs should lose on
8 their other arguments. By waiting to make a request for discovery for the first time in the
9 alternative in their responsive pleading, Plaintiffs have failed to reasonably attempt to meet their
10 burden of showing a probability of prevailing on their claims. Instead, they have invited the
11 Court to give them an additional opportunity for delay and for imposing costs and burdens on
12 Defendants, exactly what the anti-SLAPP statute is supposed to prevent. The Court should not
13 indulge Plaintiffs in such gamesmanship.

14 **2. Plaintiffs' Claims Also Fail Because Defendants Are Protected by**
15 **Absolute and Qualified Privileges.**

16 Plaintiffs could not have met their burden even if they had attempted to do so, because
17 Defendants' activities at issue is protected by absolute and qualified privileges. Plaintiffs dispute
18 this (curiously, since they have not argued the merits of their claims anyway), but each of their
19 arguments is based on mischaracterizations of the law and/or unsupported conclusory statements.

20 First, without any legal authority and ignoring Nevada Supreme Court authority directly
21 on point, Plaintiffs argue that the absolute privilege cannot apply because "this is not a
22 defamation action." *Opp.* at 16. The truth is that both absolute and qualified privileges apply
23 regardless of how the claim for relief is styled. As explained by the Nevada Supreme Court,
24 when applicable, "[a]n absolute privilege bars *any* civil litigation based on the underlying
25 communication." *Hampe v. Foote*, 118 Nev. 405, 409, 47 P.3d 438, 440 (2002) (emphasis
26 added), *overruled in part on other grounds by Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev.
27 224, 228 n. 6, 181 P.3d 670, 672 n. 6 (2008); *see also Bank of America Nevada v. Bourdeau*, 115
28 Nev. 263, 267, 982 P.2d 474, 476 (1999)(recognizing that conditional privilege can bar an

1 interference with a prospective business relation claim).

2 Plaintiffs also misrepresent the criteria for asserting the absolute litigation privilege.
3 Whether by intent or neglect, Plaintiffs argue that reliance on the absolute litigation privilege
4 requires that the statements at issue be "fair and accurate." However, that requirement relates to
5 an entirely distinct privilege—the "fair report" privilege—which has not even been asserted by
6 Defendants. Plaintiffs correctly note that "Nevada 'has long recognized a special privilege of
7 absolute immunity from defamation given to the news media and the general public to report
8 newsworthy events in judicial proceedings'" and that "only the fair, accurate, and impartial
9 reporting of judicial proceedings is privileged and nonactionable." Opposition at 16 (citations
10 omitted). Misapplying this privilege, Plaintiffs advance the red-herring argument that the
11 "communications" at issue were not "fair or accurate" and were not "uttered or published in the
12 course of judicial proceedings" Opp. at 16 (citations omitted). The fair report privilege
13 (which is designed to protect those who report *about* what is said in official proceedings) is not at
14 issue in this motion. Thus, cases discussing the requirements of the fair report privilege are
15 inapposite.

16 Defendants' efforts to gather statements for use in a public proceeding does not involve
17 news media or members of the general public attempting to report on judicial proceedings, so any
18 limitations specific to the fair report privilege do not apply here.³ The absolute privilege that is
19 applicable here is completely different. Mr. Caria and Mr. Omerza's efforts relate to their
20 opposition to development of the subject Badlands property, and their hope that others would also
21 voice their opposition to the City. They were merely gathering statements to be submitted in the
22 City Council proceedings from potential witnesses in the form of declarations by residents of
23 Queensridge who could review and sign them *if the resident agreed with the statements contained*

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

1 *therein*. Motion, Exs. 1, 3. Mr. Bresee signed the form declaration because he believed it
2 correctly summarized his *own* belief relating to the subject Master Development Plan. Motion,
3 Ex. 2.

4 Plaintiffs have not—and cannot—rebut the well-settled rule that the privilege's protections
5 go beyond communications that occur *during* the course of any judicial proceedings. It is well-
6 established that communications *preliminary* to a proposed judicial or quasi-judicial proceeding
7 are also absolutely privileged. *See, e.g., Fink v. Oshins*, 118 Nev. 428, 433, 49 P.3d 640 (2002)
8 ("the privilege applies not only to communications made during actual judicial proceedings, but
9 also to 'communications preliminary to a proposed judicial proceeding'") (footnote omitted).
10 Here, Defendants sought to gather or provide input from witnesses for use by the City to the
11 extent it considers whether to approve an amendment to the General Plan.⁴ Defendants' efforts
12 were thus directly related to anticipated quasi-judicial proceedings before the City Council.

13 Although Defendants deny they said anything that was inaccurate or unfair, *as a matter of*
14 *law*, there simply is no requirement that the communications be "fair or accurate," as Plaintiffs
15 contend. In fact, it is well-established that "*absolute privilege precludes liability even where the*
16 *defamatory statements are published with knowledge of their falsity and personal ill will*
17 *toward the plaintiff.*" *Circus Circus Hotels, Inc. v. Witherspoon*, 99 Nev. 56, 60, 657 P.2d 101,
18 104 (1983) (citations omitted).⁵ "The policy underlying the privilege is that in certain situations
19 the public interest in having people speak freely outweighs the risk that individuals will
20 occasionally abuse the privilege by making false and malicious statements." *Circus Circus*, 99
21 Nev. at 61 (citations omitted).

22 Plaintiffs also argue that "there were no good faith 'communications preliminary to a
23

24 ⁴ As stated in the Motion, Plaintiffs had already filed an application with the City to amend the
25 General Plan to allow their development. Mot. at 6-7.

26 ⁵ This is even true under the "fair report privilege" discussed by Plaintiffs. *See Sahara Gaming*
27 *Corp. v. Culinary Workers Union Local 226*, 115 Nev. 212, 219, 984 P.2d 164 (1999) (noting that
28 because a Union's statements "were a fair and accurate report of a judicial proceeding, they are
absolutely privileged ... even if the statements were made maliciously and with knowledge of
their falsity").

1 proposed judicial proceeding or quasi-judicial proceeding'" explaining that the Defendants actions
2 in gathering and/or executing witness declarations, even if relating to some "undetermined, future
3 hearing – hardly constitutes the quasi-judicial proceedings contemplated by Nevada courts."
4 Opp. at 16, 17. As noted above, Plaintiffs' unsupported and extremely narrow interpretation of
5 the law is simply wrong because Nevada does not require that any relevant communications occur
6 during any actual proceedings (*see, e.g., Fink*, 118 Nev. at 433), and an absolute privilege may be
7 extended to statements by witnesses, like the Defendants here.⁶ Notably, Plaintiffs do not even
8 attempt to rebut the factors in Defendants' analysis (Motion at 16-18) which demonstrated that the
9 anticipated City Council proceedings at issue are quasi-judicial in nature. In fact, Plaintiffs own
10 counsel has *already* admitted during a meeting before the City that the relevant City Council land
11 use proceedings are quasi-judicial in nature.⁷

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

18 Even if an absolute privilege did not apply, Defendants' are still protected under a
19 qualified or conditional privilege. Plaintiffs arguments on this issue are also wholly inadequate.
20 As an initial matter, Plaintiffs fail to dispute that the subject matter at issue here may be subject to
21 conditional or qualified privilege. Indeed, they do not dispute that any communications or
22

23 ⁶ *Cf. Knox v. Dick*, 99 Nev. 514, 517, 665 P.2d 267 (1983)(recognizing that statements by
24 witnesses can be subject to privilege); *Lebbos v. State Bar*, 165 Cal. App. 3d 656, 668, 211 Cal.
25 Rptr. 847 (Cal. Ct. App. 1985) ("[I]t is well settled that absolute privilege extends in quasi-
judicial proceedings to preliminary interviews and conversations with potential witnesses.").

26 ⁷ See Request for Judicial Notice (concurrently filed herewith), Ex. 1 (Transcript of City Council
27 Meeting of February 21, 2018, at 16:411-419 (Plaintiffs' counsel argues that "when a body like a
28 city council is sitting on a land use application or business license application.... [¶] ... you are
now in a quasi-judicial proceeding[y]ou have to act in conformity with a quasi-judicial
capacity....").

1 interactions at issue here were made between persons with interests in the subject matter at issue
2 (the development of the Badlands golf course). *See Circus Circus*, 99 Nev. at 62 (indicating that
3 qualified or conditional privilege exists where the subject matter related to one "in which the
4 person communicating has an interest ..., if made to a person with a corresponding interest ...").

5 Plaintiffs contend that "Defendants did not act in good faith" (Opposition at 17) but as
6 discussed in relation to the applicability of the anti-SLAPP statute and in Defendants' supporting
7 declarations, Defendants did act in good faith. Moreover, the Plaintiffs do not dispute that they
8 must have evidence of actual malice in order to prevail on this motion. That burden can only be
9 met by providing evidence that a "statement is published with knowledge that it was false or with
10 reckless disregard for its veracity." *Pope v. Motel 6*, 121 Nev. 307, 317, 114 P.3d 277 (2005).
11 Here, it is impossible for Plaintiffs to meet that burden because Defendants did not have any
12 belief that they were publishing any false statements, nor did they have reckless disregard for the
13 veracity of any statements. *See* Mot. at 20; Mot. Exs. 1-3. Indeed, Plaintiffs have completely
14 failed to meet their burden of proving actual malice. Instead, they completely dodge the issue by
15 contending that this privilege issue cannot be decided on *this* Motion, but (as discussed above)
16 they are incorrect, and any evidence they have to oppose this Motion must be presented now.⁸

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

20 ///

21 ///

22 ///

23 ///

24 ///

25
26 ⁸ *See also Circus Circus*, 99 Nev. at 62-63 (recognizing that whether a conditional privilege exists
27 is a question of law for the court and plaintiff's burden to show malice is a question that "goes to
28 the jury only if there is sufficient evidence for the jury to reasonably to infer that the publication
was made with malice in fact")(citations omitted).

1 **III. CONCLUSION**

2 For all of the foregoing reasons, Plaintiffs' claims should be dismissed and Defendants'
3 should be awarded their fees, costs, and damages, according to proof.

4 DATED this 9th day of May, 2018.

5
6 BROWNSTEIN HYATT FARBER SCHRECK, LLP

7
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18 and Steve Caria
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CERTIFICATE OF SERVICE

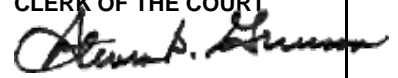
I HEREBY CERTIFY that I am an employee of Brownstein Hyatt Farber Schreck, LLP, and pursuant to NRCP 5(b), EDCR 8.05, Administrative Order 14-2, and NEFCR 9, I caused a true and correct copy of the foregoing **DEFENDANTS' REPLY IN SUPPORT OF SPECIAL MOTION TO DISMISS (ANTI-SLAPP MOTION) PLAINTIFFS' COMPLAINT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

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

DISTRICT COURT
CLARK COUNTY, NEVADA

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

Plaintiffs,

v.

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

Defendants,

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

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

Hearing Date: May 14, 2018

Hearing Time: 9:00 a.m.

I. INTRODUCTION

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 **a) Intentional or Negligent Interference**

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

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

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

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

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

28 ///

b) Conspiracy

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

c) Intentional or Negligent Misrepresentation

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

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

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

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

7 First, without any legal authority and ignoring Nevada Supreme Court authority directly
8 on point, Plaintiffs argue that the absolute privilege cannot apply because "this is not a
9 defamation action." Opposition, at 9. The truth is that both absolute privileges apply regardless
10 of how the claim for relief is styled. As explained by the Nevada Supreme Court, when it applies,
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20 an entirely distinct privilege—the "fair report" privilege—which has not even been asserted by
21 the Defendants. Plaintiffs correctly note that "Nevada 'has long recognized a special privilege of
22 absolute immunity from defamation given to the news media and the general public to report
23 newsworthy events in judicial proceedings'" and that "only the fair, accurate, and impartial
24 reporting of judicial proceedings is privileged and nonactionable." Opposition, at 9 (citations
25 omitted). Misapplying this privilege, Plaintiffs advance the red-herring argument that the
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27 course of judicial proceedings" *Id.* (citations omitted). The fair report privilege (which is
28 designed to protect those who report *about* what is said in official proceedings) is not at issue in

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

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4 limitations specific to the fair report privilege do not apply here.² The absolute privilege that is
5 applicable here is completely different. Defendants' actions relate to their opposition to
6 development of the subject Badlands property, and their hope that others would also voice their
7 opposition to the City. More specifically, the conduct at issue involves gathering statements from
8 potential witnesses in the form of declarations by residents of Queensridge who could review and
9 sign them *if the resident agreed with the statements contained therein*.

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

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

27 ⁴ *Cf. Knox v. Dick*, 99 Nev. 514, 517, 665 P.2d 267 (1983)(recognizing that statements by
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1 rebut the factors in Defendants' analysis (Motion at 11-12), which demonstrated that the
2 anticipated City Council proceedings at issue are quasi-judicial in nature. In fact, Plaintiffs own
3 counsel has *already* admitted during a meeting before the City that the relevant City Council land
4 use proceedings are quasi-judicial in nature.⁵

5 Although Defendants deny they said anything that was inaccurate or unfair, *as a matter of*
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11 the public interest in having people speak freely outweighs the risk that individuals will
12 occasionally abuse the privilege by making false and malicious statements." *Circus Circus*, 99
13 Nev. at 61 (citations omitted).

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

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

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

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

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

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

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

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

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

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

14 **III. CONCLUSION**

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

18 DATED this 9th day of May, 2018.

19 BROWNSTEIN HYATT FARBER SCHRECK, LLP

20
21 BY: /s/ Mitchell J. Langberg
MITCHELL J. LANGBERG, ESQ., Bar No. 10118
mlangberg@bhfs.com
22 100 North City Parkway, Suite 1600
23 Las Vegas, NV 89106-4614
24 Telephone: 702.382.2101
Facsimile: 702.382.8135

25 *Counsel for Defendants*
DANIEL OMERZA, DARREN BRESEE, and
26 STEVE CARIA
27
28

CERTIFICATE OF SERVICE

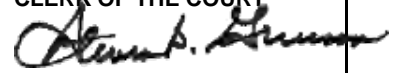
I HEREBY CERTIFY that I am an employee of Brownstein Hyatt Farber Schreck, LLP, and pursuant to NRCP 5(b), EDCR 8.05, Administrative Order 14-2, and NEFCR 9, I caused a true and correct copy of the foregoing **DEFENDANTS' REPLY BRIEF IN SUPPORT OF MOTION TO DISMISS PURSUANT TO NRCP 12(B)(5)** submitted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

James J. Jimmerson, Esq.
The Jimmerson Law Firm, P.C.
415 South Sixth Street, Suite 100
Las Vegas, Nevada 89101
Email: 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

16802994



1 **RFJN**

2 Mitchell J. Langberg, Esq., Bar No. 10118
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9 *Attorneys For Defendants*
10 *DANIEL OMERZA, DARREN BRESEE,*
11 *and STEVE CARIA*

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

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

19 Plaintiff,

20 v.

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

24 Defendants.

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

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

Hearing Date: May 14, 2018

Hearing Time: 9:00 a.m.

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

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

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

DATED this 9th day of May, 2018.

BROWNSTEIN HYATT FARBER SCHRECK, LLP

BY: /s/ Mitchell J. Langberg

MITCHELL J. LANGBERG, ESQ., Bar No. 10118
mlangberg@bhfs.com LAURA B. LANGBERG, ESQ.,
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Counsel for Defendants

DANIEL OMERZA, DARREN BRESEE, and
STEVE CARIA

CERTIFICATE OF SERVICE

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

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

Attorneys for Plaintiffs

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

16799254

EXHIBIT 1

CITY COUNCIL MEETING OF

FEBRUARY 21, 2018

VERBATIM TRANSCRIPT – AGENDA ITEMS 122 THROUGH 131

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

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

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

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VERBATIM TRANSCRIPT – AGENDA ITEMS 122 THROUGH 131

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

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

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

CITY COUNCIL MEETING OF

FEBRUARY 21, 2018

VERBATIM TRANSCRIPT – AGENDA ITEMS 122 THROUGH 131

55 **recommend APPROVAL.**

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

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

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

CITY COUNCIL MEETING OF

FEBRUARY 21, 2018

VERBATIM TRANSCRIPT – AGENDA ITEMS 122 THROUGH 131

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

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

Appearance List:

CAROLYN G. GOODMAN, Mayor

STEVEN G. SEROKA, Councilman

BRADFORD JERBIC, City Attorney

PETER LOWENSTEIN, Deputy Planning Director

LUANN D. HOLMES, City Clerk

BOB COFFIN, Councilman (via teleconference)

MICHELE FIORE, Councilwoman

STAVROS S. ANTHONY, Councilman

STEPHANIE ALLEN, Legal Counsel for the Applicant

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

FRANK SCHRECK, Queensridge Resident

CITY COUNCIL MEETING OF

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VERBATIM TRANSCRIPT – AGENDA ITEMS 122 THROUGH 131

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

109 TODD BICE, Legal Counsel for the Queensridge Homeowners

110 LISA MAYO, Concerned Citizen

111

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

113 Typed by: Speechpad.com

114 Proofed by: Debra A. Outland

115

116 **MAYOR GOODMAN**

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

118

119 **COUNCILMAN SEROKA**

120 Yes, Ma'am.

121

122 **MAYOR GOODMAN**

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

125

126 **CITY ATTORNEY JERBIC**

127 If you could ask the Clerk —

128

129 **MAYOR GOODMAN**

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

131

132 **CITY ATTORNEY JERBIC**

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

CITY COUNCIL MEETING OF

FEBRUARY 21, 2018

VERBATIM TRANSCRIPT – AGENDA ITEMS 122 THROUGH 131

134 **MAYOR GOODMAN**

135 Thank you.

136

137 **CITY ATTORNEY JERBIC**

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

139

140 **MAYOR GOODMAN**

141 No.

142

143 **CITY ATTORNEY JERBIC**

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

145

146 **MAYOR GOODMAN**

147 And – Right.

148

149 **CITY ATTORNEY JERBIC**

150 Okay.

151

152 **MAYOR GOODMAN**

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

156

157 **CITY ATTORNEY JERBIC**

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

CITY COUNCIL MEETING OF

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VERBATIM TRANSCRIPT – AGENDA ITEMS 122 THROUGH 131

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

162

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

171

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

177

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

183

184 **PETER LOWENSTEIN**

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

CITY COUNCIL MEETING OF

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VERBATIM TRANSCRIPT – AGENDA ITEMS 122 THROUGH 131

187 **CITY ATTORNEY JERBIC**

188 That was October 26th of 2017?

189

190 **PETER LOWENSTEIN**

191 That is correct.

192

193 **CITY ATTORNEY JERBIC**

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

201

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

207

208 **MAYOR GOODMAN**

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

210

211 **CITY ATTORNEY JERBIC**

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

CITY COUNCIL MEETING OF

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VERBATIM TRANSCRIPT – AGENDA ITEMS 122 THROUGH 131

213 **MAYOR GOODMAN**

214 And that would – Okay.

215

216 **CITY ATTORNEY JERBIC**

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

218

219 **MAYOR GOODMAN**

220 And just read those numbers?

221

222 **CITY ATTORNEY JERBIC**

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

224

225 **MAYOR GOODMAN**

226 No, I prefer you read them.

227

228 **CITY ATTORNEY JERBIC**

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

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

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

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

233

234 **MAYOR GOODMAN**

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

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

237 like you to speak to that.

CITY COUNCIL MEETING OF

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VERBATIM TRANSCRIPT – AGENDA ITEMS 122 THROUGH 131

238 **CITY ATTORNEY JERBIC**

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

249

250 **MAYOR GOODMAN**

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

253

254 **CITY ATTORNEY JERBIC**

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

256

257 **MAYOR GOODMAN**

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

261

262 **LUANN HOLMES**

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

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

267

268 **MAYOR GOODMAN**

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

271

272 **COUNCILMAN COFFIN**

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

274

275 **MAYOR GOODMAN**

276 Okay.

277

278 **COUNCILWOMAN FIORE**

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

280

281 **MAYOR GOODMAN**

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

283

284 **COUNCILMAN COFFIN**

285 (Inaudible)

286

287 **MAYOR GOODMAN**

288 Thank you.

289

290 **COUNCILMAN COFFIN**

291 (Inaudible)

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292 **MAYOR GOODMAN**

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

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

304

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

309

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

314

315 **CITY ATTORNEY JERBIC**

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

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

321

322 **MAYOR GOODMAN**

323 Okay. Councilman Anthony?

324

325 **COUNCILMAN ANTHONY**

326 What's – the date again, Luann?

327

328 **LUANN HOLMES**

329 May 16th.

330

331 **COUNCILMAN ANTHONY**

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

333

334 **MAYOR GOODMAN**

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

337

338 **COUNCILMAN COFFIN**

339 I vote aye.

340

341 **STEPHANIE ALLEN**

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

343

344 **MAYOR GOODMAN**

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

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

349

350 **CITY ATTORNEY JERBIC**

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

353

354 **MARK HUTCHISON**

355 Thank you.

356

357 **CITY ATTORNEY JERBIC**

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

361

362 **MARK HUTCHISON**

363 I am.

364

365 **CITY ATTORNEY JERBIC**

366 Okay.

367

368 **MARK HUTCHISON**

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

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371 **MAYOR GOODMAN**

372 Oh, I'm sorry.

373

374 **MARK HUTCHISON**

375 I under –

376

377 **MAYOR GOODMAN**

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

379

380 **MARK HUTCHISON**

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

386

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

390

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

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

400

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

408

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

414

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

421

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

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

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

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

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

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

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

452

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

457

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

464

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

468

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

472

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

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

479

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

483

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

490

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

496

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

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

507

508 **CITY ATTORNEY JERBIC**

509 Mr. Hutchison?

510

511 **MARK HUTCHISON**

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

513

514 **CITY ATTORNEY JERBIC**

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

519

520 **MARK HUTCHISON**

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

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526 **MAYOR GOODMAN**

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

529

530 **CITY ATTORNEY JERBIC**

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

533

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

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

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

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

542

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

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

558

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

566

567 **COUNCILMAN COFFIN**

568 Oh, yes. I'm eagerly listening.

569

570 **CITY ATTORNEY JERBIC**

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

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578 **COUNCILMAN COFFIN**

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

585

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

589

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

598

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

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

609

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

615

616 **MAYOR GOODMAN**

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

619

620 **CITY ATTORNEY JERBIC**

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

623

624 **MAYOR GOODMAN**

625 All right.

626

627 **FRANK SCHRECK**

628 Your – Honor.

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629 **MAYOR GOODMAN**

630 We will stay on the abeyance.

631

632 **FRANK SCHRECK**

633 No, we – would like to just address –

634

635 **TODD BICE**

636 We need to make –

637

638 **FRANK SCHRECK**

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

640

641 **TODD BICE**

642 We need to make –

643

644 **FRANK SCHRECK**

645 – and his is very brief.

646

647 **TODD BICE**

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

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

650

651 **FRANK SCHRECK**

652 Complete.

653

654 **TODD BICE**

655 – and complete on this –

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656 **MAYOR GOODMAN**

657 Okay.

658

659 **TODD BICE**

660 – as opposed to one-sided.

661

662 **MAYOR GOODMAN**

663 You're together –

664

665 **TODD BICE**

666 Yes.

667

668 **MAYOR GOODMAN**

669 – so can you share the time?

670

671 **FRANK SCHRECK**

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

673

674 **TODD BICE**

675 As is –

676

677 **FRANK SCHRECK**

678 He's going to be more general.

679

680 **TODD BICE**

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

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

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

687

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

692

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

701

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

707

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

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

711

712 **MAYOR GOODMAN**

713 Only –

714

715 **TODD BICE**

716 – with one final observation.

717

718 **MAYOR GOODMAN**

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

720

721 **TODD BICE**

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

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

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

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

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

727

728 **FRANK SCHRECK**

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

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

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

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

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

734 anti-Semite.

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

740

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

748

749 **MAYOR GOODMAN**

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

751

752 **STEPHANIE ALLEN**

753 Yes, Ma'am, please.

754

755 **MAYOR GOODMAN**

756 Okay. And only the abeyance?

757

758 **STEPHANIE ALLEN**

759 Only the abeyance.

CITY COUNCIL MEETING OF

FEBRUARY 21, 2018

VERBATIM TRANSCRIPT – AGENDA ITEMS 122 THROUGH 131

760 **MAYOR GOODMAN**

761 Okay.

762

763 **STEPHANIE ALLEN**

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

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

766 lot of issues –

767

768 **MAYOR GOODMAN**

769 No.

770

771 **STEPHANIE ALLEN**

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

773 the agenda –

774

775 **MAYOR GOODMAN**

776 No.

777

778 **STEPHANIE ALLEN**

779 – and the abeyance in particular

780

781 **MAYOR GOODMAN**

782 No.

783

784 **STEPHANIE ALLEN**

785 – are what I want to talk about.

CITY COUNCIL MEETING OF

FEBRUARY 21, 2018

VERBATIM TRANSCRIPT – AGENDA ITEMS 122 THROUGH 131

786 **MAYOR GOODMAN**

787 Only the abeyance –

788

789 **STEPHANIE ALLEN**

790 Only the abeyance.

791

792 **MAYOR GOODMAN**

793 Not the, not the zoning.

794

795 **STEPHANIE ALLEN**

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

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

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

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

800

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

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

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

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

805 the community.

806

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

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

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

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

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

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

CITY COUNCIL MEETING OF

FEBRUARY 21, 2018

VERBATIM TRANSCRIPT – AGENDA ITEMS 122 THROUGH 131

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

816

817 **MAYOR GOODMAN**

818 Thank you.

819

820 **STEPHANIE ALLEN**

821 I just wanted to put that on the record.

822

823 **MAYOR GOODMAN**

824 Thank you.

825

826 **STEPHANIE ALLEN**

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

832

833 **MAYOR GOODMAN**

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

835

836 **LISA MAYO**

837 Mayor –

CITY COUNCIL MEETING OF

FEBRUARY 21, 2018

VERBATIM TRANSCRIPT – AGENDA ITEMS 122 THROUGH 131

838 **MAYOR GOODMAN**

839 – is closed.

840

841 **LISA MAYO**

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

849 Can we have a report on that –

850

851 **CITY ATTORNEY JERBIC**

852 Ms. Mayo –

853

854 **LISA MAYO**

855 – please?

856

857 **CITY ATTORNEY JERBIC**

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

862

863 **LISA MAYO**

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

CITY COUNCIL MEETING OF

FEBRUARY 21, 2018

VERBATIM TRANSCRIPT – AGENDA ITEMS 122 THROUGH 131

865 do we get it into the public record?

866

867 **CITY ATTORNEY JERBIC**

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

869

870 **LISA MAYO**

871 Okay, I will. Thank you.

872

873 **CITY ATTORNEY JERBIC**

874 You got it.

875

876 **MAYOR GOODMAN**

877 Thank you. Okay.

878 **(END OF DISCUSSION)**

879 /dao



SUPP

THE JIMMERSON LAW FIRM, PC.
James J. Jimmerson, Esq.
Nevada Bar No. 000264
James M. Jimmerson, Esq.
Nevada Bar No. 12599
415 S. 6th Street, #100
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Email: ks@jimmersonlawfirm.com
Attorneys for Plaintiffs

**DISTRICT COURT
CLARK COUNTY, NEVADA**

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

Plaintiffs,

vs.

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

Defendants.

Case No.: A-18-771224-C

Dept. No.: II

**PLAINTIFFS' FIRST SUPPLEMENT TO
THEIR OPPOSITION TO DEFENDANTS'
SPECIAL MOTION TO DISMISS (ANTI-
SLAPP MOTION) PLAINTIFFS'
COMPLAINT PURSUANT TO NRS
41.635 ET SEQ.**

Plaintiffs, Fore Stars, LTD. (hereinafter "Fore Stars"), 180 Land Company LLC
(hereinafter "180 Land Company"), and Seventy Acres, LLC (hereinafter "Seventy
Acres") (collectively "Land Owners" or "Plaintiffs"), by and through their undersigned
counsel, James J. Jimmerson, Esq., of THE JIMMERSON LAW FIRM, P.C., hereby
submit this First Supplement to Plaintiffs' Opposition to Defendants' Special Motion to
Dismiss (Anti-SLAPP Motion) Plaintiffs' Complaint Pursuant to Nevada Revised Statute
("NRS") 41.635 *et seq.* filed by Defendants Daniel Omerza (hereinafter "Omerza"),

///

///

///

1 Darren Bresee ("Bresee"), and Steve Caria ("Caria") (collectively "Homeowners" or
2 "Defendants"). Attached hereto as Supplement Exhibit 1 is a thumb drive containing a
3 video file (.mov) labelled Omerza Video. Pursuant to EDCR 8.02(e), this Supplement
4 must be filed conventionally as it is not feasible for the video to be converted to an
5 electronic document suitable for e-filing.

6 DATED this 11th day of May, 2018.

7 THE JIMMERSON LAW FIRM, P.C.

8 By: /s/ James J. Jimmerson Es .
9 JAMES J. JIMMERSON, ESQ.
Nevada Bar No. 000264
10 JAMES M. JIMMERSON, ESQ.
Nevada Bar No. 12599
11 415 S. 6th Street, #100
12 Las Vegas, Nevada 89101
13 *Attorneys for Plaintiffs*
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CERTIFICATE OF SERVICE

I hereby certify that on the 11th day of May, 2018, I caused a true and correct copy of the foregoing PLAINTIFFS' FIRST SUPPLMENT TO THEIR OPPOSITION TO DEFENDANTS' SPECIAL MOTION TO DISMISS (ANTI-SLAPP MOTION) PLAINTIFFS' COMPLAINT PURSUANT TO NRS 41.635 ET SEQ. to be submitted electronically for filing and service with the Eighth Judicial District Court via the Electronic Filing System to the following:

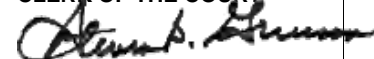
Mitchell Langberg, Esq.
BROWNSTEIN HYATT FARBER SCHRECK, LLP
100 North City Parkway
Suite 1600
Las Vegas, Nevada 89106
Attorneys for Defendants

/s/ Shahana Polselli
Employee of The Jimmerson Law Firm, P C.

EXHIBIT 1

EXHIBIT 1





SUPP

THE JIMMERSON LAW FIRM, PC.
James J. Jimmerson, Esq.
Nevada Bar No. 000264
James M. Jimmerson, Esq.
Nevada Bar No. 12599
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Las Vegas, Nevada 89101
Telephone: (702) 388-7171
Facsimile: (702) 387-1167
Email: ks@jimmersonlawfirm.com
Attorneys for Plaintiffs

**DISTRICT COURT
CLARK COUNTY, NEVADA**

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

Plaintiffs,

vs.

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

Defendants.

Case No.: A-18-771224-C

Dept. No.: II

**PLAINTIFFS' SECOND SUPPLEMENT
TO THEIR OPPOSITION TO
DEFENDANTS' SPECIAL MOTION TO
DISMISS (ANTI-SLAPP MOTION)
PLAINTIFFS' COMPLAINT PURSUANT
TO NRS 41.635 ET SEQ.**

Plaintiffs, Fore Stars, LTD. (hereinafter "Fore Stars"), 180 Land Company LLC (hereinafter "180 Land Company"), and Seventy Acres, LLC (hereinafter "Seventy Acres") (collectively "Land Owners" or "Plaintiffs"), by and through their undersigned counsel, James J. Jimmerson, Esq., of THE JIMMERSON LAW FIRM, P.C., hereby submit this Second Supplement to Plaintiffs' Opposition to Defendants' Special Motion to Dismiss (Anti-SLAPP Motion) Plaintiffs' Complaint Pursuant to Nevada Revised Statute ("NRS") 41.635 *et seq.* filed by Defendants Daniel Omerza (hereinafter "Omerza"),

///

///

///

1 Darren Bresee (“Bresee”), and Steve Caria (“Caria”) (collectively “Homeowners” or
2 “Defendants”). Attached hereto as Supplement Exhibits 2-7 are documents and evidence
3 in further support of Plaintiffs’ Opposition to Defendants’ Special Motion to Dismiss
4 (Anti-SLAPP Motion), including but not limited to, the Declaration of Yohan Lowie.

5 DATED this 11th day of May, 2018.

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

7 By: /s/ James J. Jimmerson, Esq.
8 JAMES J. JIMMERSON, ESQ.
9 Nevada Bar No. 000264
10 JAMES M. JIMMERSON, ESQ.
11 Nevada Bar No. 12599
12 415 S. 6th Street, #100
13 Las Vegas, Nevada 89101
14 *Attorneys for Plaintiffs*
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CERTIFICATE OF SERVICE

I hereby certify that on the 11th day of May, 2018, I caused a true and correct copy of the foregoing **PLAINTIFFS' SECOND SUPPLMENT TO THEIR OPPOSITION TO DEFENDANTS' SPECIAL MOTION TO DISMISS (ANTI-SLAPP MOTION) PLAINTIFFS' COMPLAINT PURSUANT TO NRS 41.635 ET SEQ.** 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
100 North City Parkway
Suite 1600
Las Vegas, Nevada 89106
Attorneys for Defendants

/s/ Shahana Polselli
Employee of The Jimmerson Law Firm, P.C.

EXHIBIT 2

EXHIBIT 2

Transcript of Yohan Lowie and Daniel Omerza Video

YL: I apologize, I can't.... I apologize – you're Dan Omerza?

DO: What's that?

YL: You're Dan Omerza?

DO: Dan Omerza, yeah.

YL: And those letters are? Are you from the HOA?

DO: No, no, no. I'm just a resident here.

YL: Ok.

DO: Ok. And what we're doing is we're putting together a letter to maintain the Master Plan here.

YL: What master plan?

DO: The Master Plan has – when they build the – the development back in 1990, they said so much land will be open space, so much land will be schools, so much land – so they've got a plan the way they put the community together.

YL: But how – how do we know that? How do we know that there's a master plan?

DO: There is a master plan.

YL: How would you know that? How do we know that?

DO: Because I went to the city council meetings. And they – they brought it up. The lawyers said there's a master plan, and this is it.

YL: What do you mean "this is it"?

DO: You're living in it, ok? So, in order for them to build on this golf course and destroy this golf course, they have to change the Master Plan.

YL: But how do we know there's a master plan?

DO: Ya know – I – there is. You can call the HOA. The HOA will tell you about it.

YL: What is that noise?

DO: That's my phone. I was talking to my wife.

YL: Oh, oh, ok. So, you're sure that – this is the sign that we know there was a master plan?

DO: There is a master plan. It's – it's – it's in the HOA. It's in the – it's in the documents they gave you when you bought your home. It points out that Peccole Ranch is part of the – this Master Plan from 1990.

YL: Where do you live?

DO: I live over here in Queensridge.

YL: In Queensridge?

DO: Yeah.

YL: Ok, so you're a resident of Queensridge?

DO: Yes, I am.

YL: And do you – do you know – did you know there was a master plan when you bought the house?

DO: Yes.

YL: You knew there was a master plan when you bought the house?

DO: Yeah, in fact, that's what that's – that's what that's about is I knew that there was a Master Plan and that's why I bought my house here.

YL: How did you know, though? How do you know?

DO: Because I did the – I did a background check on the Q&R's; ok? The Queensridge – the Queensridge Rules and Regulations and it – it talks all about that Master Plan.

YL: So, in the CC&R's it talks about a master plan?

DO: Yes.

YL: K. Are you sure about that?

DO: I am. Yes.

YL: Ok. Do you know who I am?

DO: No.

YL: I'm Yohan Lowie.

DO: Oh.

YL: And I got you on video.

DO: Very good.

YL: And I'm going to sue you today.

DO: Ok, well, that's ok.

YL: I'm taking you on, buddy

EXHIBIT 3

EXHIBIT 3

URGENT NOTICE

Dear Neighbor:

Please consider signing one of the two enclosed affidavits and return it to Frank Schreck before February 19 in the enclosed addressed envelope.

In the event the developer is granted approval to build housing on the golf course, our community will be deprived of the open space requirement of the building code in effect when Queensridge was conceived.

Many of the people who were original buyers of property, paid lot premiums in consideration for the open space/natural drainage system that we have enjoyed for twenty years.

Those of us who bought homes in the later years relied on the fact that the open space/natural drainage system could not be developed, subsequent to City approval of the original 1990 Peccole Ranch Master Plan.

We will use these signed statements in our legal efforts to preserve all our rights going forward.

Thank you.

**Roger Wagner
9720 Winter Palace Drive
Las Vegas, NV 89145**

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

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

Resident

Address

Date

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

Resident Name (Print)

Resident Signature

Address

Date



Frank Schreck
9824 Wintert Palace Drive
Las Vegas, NV 89145

EXHIBIT 4

EXHIBIT 4

To: Bob Coffin[lvcouncilman@hotmail.com]
From: Felipe Ortiz
Date: Tue 7/12/2016 3:03:52 PM
Subject: RE: Queensridge redevelopment of the golf course

Ok

From: Bob Coffin [mailto:lvcouncilman@hotmail.com]
Sent: Monday, July 11, 2016 10:49 PM
To: Felipe Ortiz
Subject: Fwd: Queensridge redevelopment of the golf course

Print for badlands stuff

Sent on a Samsung phablet for speed so please forgive accidental typos.

----- Original message -----

From: Bob Coffin
Date: 07/11/2016 8:53 PM (GMT-08:00)
To: lvcouncilman@hotmail.com
Subject: FW: Queensridge redevelopment of the golf course

From: Darren Bresee
Sent: Monday, July 11, 2016 8:53:22 PM (UTC-08:00) Pacific Time (US & Canada)
To: Carolyn G. Goodman; Steven Ross; Stavros Anthony; Ricki Y. Barlow; Bob Beers; Bob Coffin; Lois Tarkanian
Subject: Queensridge redevelopment of the golf course

Hello Mayor and councilmen and councilwomen. I am a homeowner in Queensridge located at [REDACTED] and have been since 1999. I will be unable to attend the 6:00 meeting tomorrow, tuesday, but hope this email will be respectfully considered along with everyone else's voice.

I will keep this brief. I SUPPORT the redevelopment of the golf course even though I live on the golf course. HOWEVER, EHB should be held to their initial 5 million proposal of improvements such as "IMPROVED ENTRY GATES, EXTENSIVE TRAIL NETWORK, 5 ACRES OF ENHANCED ENTRYWAYS AND PARK AREAS, UPGRADED CLUBHOUSE, and 10-FOOT PERIMETER WALL".

This proposal was made at a homeowners meeting but was later withdrawn once a dispute arose with the homeowners. As a governing body with the power to approve this project, you now step into the shoes of the concerned homeowners and Queensridge board. It only makes sense that if this project is approved by the City Council, that the City Council would hold EHB to their initial proposal of the above listed improvements.

Respectfully,

Darren Bresee
[REDACTED]

CLV002228

EXHIBIT 5

EXHIBIT 5

From: George West [mailto:gowesq@cox.net]
Sent: Wednesday, November 2, 2016 1:30 PM
To: Schreck, Frank A.
Cc: Julietta Bauman-Freres; Elise Connico; Elaine Wenger-Roesener; Lawrence Weisman; Diane Shremmel
Subject: Re: Great job

From the immortal words of the Honorable Admiral yashiro Yamamoto after he successfully bombed Pearl Harbor : "I feel all we have done is awaken a sleeping giant and filled him with great resolve." Frank, that is all you have done, and you are going to lose and lead this community down the Primrose Path a disaster. Too bad we really don't have an independent board who is not self interested. If you think you have benefited the community through your bombastic and scorched earth tactics you are simply wrong. We will see how it goes. Remember Johan has very talented and experienced land-use attorneys on his side as well and you will never get over the RPD 7 designation. You are stuck with that and you are never going to get away from that and that is your major problem here because you know as well as I do, zoning trumps master planning. So now the commission who has said too much High density so now the high density is gone and now he'll just build single-family homes within the RPD designation. The commission will approve it and there will be a substantial increase in the amount of single family homes built on the 250 acres. Or he may very well just sell it off in parcels to other developers. My money is on Johan and that's the reason why we should have sat down and try to work this out because all you have done is awoken a sleeping giant and essentially gained nothing by it. By the way, looks like the board is in full crisis mode. Not only do they meet yesterday but they met this afternoon doesn't look good. Remember Frank we all know what you and certain members on the board are up to. Don't even think about trying to foot the bill on the back of the community for any litigation against Johan because you will have the fight of your life in your hands as well as a nice big fat lawsuit. Have a nice day.

Sent from my iPhone 6 Plus

Please forgive any typos or bad voice recognition

George O. West III
Consumer Attorneys Against Auto Fraud
10161 Park Run Drive
Suite 150
Las Vegas, NV 89145
www.americasautofraudattorney.com
www.caaaf.net
(702) 318-6570
(702) 664-0459 (Fax)

On Nov 2, 2016, at 12:13 PM, Schreck, Frank A. <FSchreck@BHFS.com> wrote:

However, I am smart enough to have 3 excellent land use attorneys and a land use specialist to work with and spend hundreds of thousands of dollars having quality research and legal analysis done to reach a

position that we are all very comfortable with regarding the litigation as well as the general argument that QR Master Planned Community has been completed for more than 10 years, there is no existing Declarant and the approvals from the City since 1990 all required conformance with the original Plan approved in 1990 which was done. If you had any interest in the wellbeing of our community, you would be cheering us on not continuing to argue on behalf of the developer against the interests of your neighbors.

We knew from the beginning that the Mayor, Beers and Perrigo had the deck stacked against us. That is why we have always said we would win this in court. However, we have done a pretty good job of prolonging the developer's agony from Sept 2015 to now. We now look forward to the depositions of Perrigo and Lowenstein which have been noticed for this month.

Frank A. Schreck
Brownstein Hyatt Farber Schreck, LLP
FSchreck@bhfs.com
T:702.382.2101

STATEMENT OF CONFIDENTIALITY & DISCLAIMER: The information contained in this email message is attorney privileged and confidential, intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copy of this email is strictly prohibited. If you have received this email in error, please notify us immediately by replying and delete the message. Thank you.

From: George West III [<mailto:gowesq@cox.net>]
Sent: Wednesday, November 02, 2016 11:38 AM
To: Schreck, Frank A.
Cc: Julietta Bauman-Freres; Elise Connico; Elaine Wenger-Roesener; Lawrence Weisman
Subject: Re: Great job

Frank, you are truly a three year old, but not surprising, because all you do when you can't argue the facts is go back to your ad hominem attacks, just like you wife has a propensity to do as well. Birds of a feather.

That said, perhaps Frank you may be right, not my wheelhouse, *but it isn't yours either*, but even a blind squirrel can find an acorn every so often, and I know you have been storing A LOT of them for the upcoming winter, *which is going to very very harsh on your North "A" section buddies and Elise's TP*. Great job Frank.

On Nov 2, 2016, at 10:49 AM, Schreck, Frank A. <FSchreck@BHFS.com> wrote:

It's over the head of an "Auto Fraud Atty".

Frank A. Schreck
Brownstein Hyatt Farber Schreck, LLP
FSchreck@bhfs.com
T:702.382.2101

STATEMENT OF CONFIDENTIALITY & DISCLAIMER: The information contained in this email message is attorney privileged and confidential, intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copy of this email is strictly prohibited. If you

EXHIBIT 6

EXHIBIT 6

TO: City of Las Vegas

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

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

Resident Name (Print)

Resident Signature

Address

Date

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

Resident Name (Print)

Resident Signature

Address

Date



Daniel Omerza
800 Petit Chalet Ct
Las Vegas, Nevada 89145

EXHIBIT 7

EXHIBIT 7

DECLARATION OF YOHAN LOWIE IN SUPPORT OF PLAINTIFFS' OPPOSITION
TO DEFENDANTS' SPECIAL MOTION TO DISMISS (ANTI-SLAPP MOTION)
PLAINTIFFS' COMPLAINT PURSUANT TO NRS 41.635 ET SEQ.

YOHAN LOWIE, under penalty of perjury, does hereby declare:

1. I have personal knowledge of the subject matter of this Declaration and I am competent to testify thereto, except for those matters stated upon information and belief, and as to those matters, there exists a reasonable basis to believe they are true.

2. I am personally aware of certain events giving rise to Plaintiffs' Fore Stars, LTD., 180 Land Company LLC, and Seventy Acres, LLC (collectively "Plaintiffs") action against Defendants Daniel Omerza, Darren Bresee, and Steve Caria (collectively, "Defendants"), Case No. A-18-771224-C (the "Action").

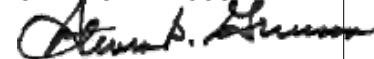
3. Attached to the First Supplement to the Opposition as Exhibit 1 is a true and accurate copy of a video (Omerza Video) that I took on March 15, 2018 and identified myself in.

4. Attached to the Second Supplement to the Opposition as Exhibit 2 is a true and accurate copy of the transcript of the events contained in the video from Exhibit 1.

5. Attached to the Second Supplement to the Opposition as Exhibit 3 is a true and accurate copy of written materials, upon information and belief, provided by one or more of the Defendants (or by one or more of the Defendants' co-conspirators) to Queensridge homeowners, with a return envelope to Frank Schreck. Note that this envelope is not addressed to the City of Las Vegas, the City Counsel, or the City Attorney.

6. Attached to the Second Supplement to the Opposition as Exhibit 4 is a true and accurate copy of the public records, upon information and belief, provided by the City of Las Vegas in response to a public records request made by Plaintiffs.

7. Attached to the Second Supplement to the Opposition as Exhibit 5 is a true and accurate copy of email exchange between Frank Schreck and George West dated November 2, 2018 wherein Schreck states, "[W]e have done a pretty good job of prolonging the developer's agony."



NOTC

JAMES J. JIMMERSON, ESQ.
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ks@jimmersonlawfirm.com
JAMES M. JIMMERSON, ESQ.
Nevada State Bar No. 12599
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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 ASSOCIATION OF COUNSEL

COME NOW, James J. Jimmerson, Esq. and James M. Jimmerson Esq. of The
Jimmerson Law Firm, P.C., and hereby file this Notice of Association of Counsel for
the Plaintiffs, FORE STARS, LTD., 180 LAND CO., LLC, SEVENTY ACRES, LLC,
to associate Elizabeth Ham, Esq. of EHB Companies, LLC in as co-counsel of record
in the above-referenced matter, and request that copies of notices, pleadings, and
papers in this action, be served through Odyssey and copied and mailed, to: Elizabeth
Ham, Esq. at 9755 W Charleston Blvd, Las Vegas, NV 89117, (email

1 eham@ehbcompanies.com), in addition to serving the same to Messrs. Jimmerson at
2 The Jimmerson Law Firm, P.C., located at 415 South Sixth St., Suite 100, Las Vegas,
3 NV 89101.

4
5 Dated this 11th day of May, 2018.

6 THE JIMMERSON LAW FIRM, P.C.

7
8 /s/ James M. Jimmerson, Esq.
9 JAMES J. JIMMERSON, ESQ.
10 Nevada Bar No. 264
11 JAMES M. JIMMERSON, ESQ.
12 Nevada Bar No. 12599
13 THE JIMMERSON LAW FIRM, P.C.
14 415 South 6th Street, Suite 100
15 Las Vegas, Nevada 89101
16 *Attorneys for Plaintiffs*
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of The Jimmerson Law Firm, P.C. and that on this 11th day of May, 2018, I served a true and correct copy of the foregoing **NOTICE OF ASSOCIATION OF COUNSEL** as indicated below:

 X by electronic means by operation of the Court's electronic filing system, upon each party in this case who is registered as an electronic case filing user with the Clerk;

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

Mitchell Langberg, Esq.
BROWNSTEIN HYATT FARBER SCHRECK, LLP
100 North City Parkway
Suite 1600
Las Vegas, Nevada 89106
Attorneys for Defendants

 /s/ Shahana Polselli
An employee of The Jimmerson Law Firm, P.C.

THE JIMMERSON LAW FIRM, P.C.
415 South Sixth Street, Suite 100, Las Vegas, Nevada 89101
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NOTC

THE JIMMERSON LAW FIRM, PC.
James J. Jimmerson, Esq.
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Attorneys for Plaintiffs

**DISTRIC COURT
CLARK COUNTY, NEVADA**

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

Plaintiffs,

vs.

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

Defendants.

Case No.: A-18-771224-C

Dept. No.: II

**PLAINTIFFS' 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**

FILED

MAY 14 2018

Alvin L. Johnson
CLERK OF COURT

THE JIMMERSON LAW FIRM, P.C.
415 South Sixth Street, Suite 100, Las Vegas, Nevada 89101
(702) 388-7171 - fax (702) 387-1167

SUPP

THE JIMMERSON LAW FIRM, PC.

James J. Jimmerson, Esq.

Nevada Bar No. 000264

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415 S. 6th Street, #100

Las Vegas, Nevada 89101

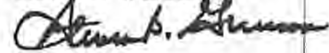
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Attorneys for Plaintiffs

Electronically Filed
5/11/2018 4:41 PM
Steven D. Grierson
CLERK OF THE COURT



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 CARLA, and DOES 1-1000,

Defendants.

Case No.: A-18-771224-C

Dept. No.: II

PLAINTIFFS' FIRST SUPPLEMENT TO
THEIR OPPOSITION TO DEFENDANTS'
SPECIAL MOTION TO DISMISS (ANTI-
SLAPP MOTION) PLAINTIFFS'
COMPLAINT PURSUANT TO NRS
41.635 ET SEQ.

Plaintiffs, Fore Stars, LTD. (hereinafter "Fore Stars"), 180 Land Company LLC
(hereinafter "180 Land Company"), and Seventy Acres, LLC (hereinafter "Seventy
Acres") (collectively "Land Owners" or "Plaintiffs"), by and through their undersigned
counsel, James J. Jimmerson, Esq., of THE JIMMERSON LAW FIRM, P.C., hereby
submit this First Supplement to Plaintiffs' Opposition to Defendants' Special Motion to
Dismiss (Anti-SLAPP Motion) Plaintiffs' Complaint Pursuant to Nevada Revised Statute
("NRS") 41.635 *et seq.* filed by Defendants Daniel Omerza (hereinafter "Omerza"),

///

///

///

1 Darren Bresee ("Bresee"), and Steve Caria ("Caria") (collectively "Homeowners" or
2 "Defendants"). Attached hereto as Supplement Exhibit 1 is a thumb drive containing a
3 video file (.mov) labelled Omerza Video. Pursuant to EDCR 8.02(e), this Supplement
4 must be filed conventionally as it is not feasible for the video to be converted to an
5 electronic document suitable for e-filing.

6 DATED this 11th day of May, 2018.

7 THE JIMMERSON LAW FIRM, P.C.

8
9 By: /s/ James J. Jimmerson, Esq.

JAMES J. JIMMERSON, ESQ.

Nevada Bar No. 000264

JAMES M. JIMMERSON, ESQ.

Nevada Bar No. 12599

415 S. 6th Street, #100

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Attorneys for Plaintiffs

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(702) 388-7171 - fax (702) 387-1167

CERTIFICATE OF SERVICE

I hereby certify that on the 11th day of May, 2018, I caused a true and correct copy of the foregoing PLAINTIFFS' FIRST SUPPLMENT TO THEIR OPPOSITION TO DEFENDANTS' SPECIAL MOTION TO DISMISS (ANTI-SLAPP MOTION) PLAINTIFFS' COMPLAINT PURSUANT TO NRS 41.635 ET SEQ. 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
100 North City Parkway
Suite 1600
Las Vegas, Nevada 89106
Attorneys for Defendants

/s/ Shahana Polselli
Employee of The Jimmerson Law Firm, P.C.

EXHIBIT 1

EXHIBIT 1



ROC

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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,

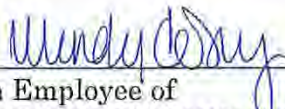
Defendants.

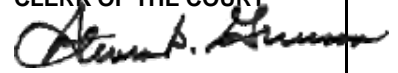
Case No.: A-18-771224-C

Dept. No.: II

RECIEPT OF COPY

RECEIPT OF COPY of (1) Plaintiffs' Notice Of Submitting A Physical Thumb
Drive Containing The Video File (.Mov) Labelled "Omerza Video" Attached To
"Plainfiffs' 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, and (2) Thumb Drive containing said video, is hereby
acknowledged this 16 day of May, 2018 at 11:36 a.m.


An Employee of
BROWNSTEIN HYATT FARBER & SCHRECK LLP
For Mitchell J. Langberg, Esq.
100 North City Parkway, Suite 1600
Las Vegas, Nevada 89106



SB
Mitchell J. Langberg, Esq., Bar No. 10118
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Attorneys 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
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Plaintiffs,

v.

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

Defendants.

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

**DEFENDANTS' SUPPLEMENTAL BRIEF
IN SUPPORT OF SPECIAL MOTION TO
DISMISS (ANTI-SLAPP MOTION)
PLAINTIFFS' COMPLAINT PURSUANT
TO NRS §41.635 ET. SEQ.**

Hearing Date: May 14, 2018

Hearing Time: 9:00 am.

1 **1. Plaintiffs' wrongly suggest nobody knew about the master plan.** Plaintiffs'
2 fundamentally argued that nobody could have known there was a master plan because the Peccole
3 Ranch Master Plan was not recorded. Plaintiffs ignore important content from the Queensridge
4 CCRs. As set forth in Exhibit 2 (excerpts from the CCRs), ¶12.1 specifically provides "[t]he
5 Property and the Annexable Property *are part of a master-planned community*... ." ¹ (emphasis
6 added).

7 **2. Plaintiffs' falsely say there is no Peccole Ranch Master Plan.** Plaintiffs' incorrectly
8 argued that the Peccole Master Plan was "*abandoned*." (Video Transcript ("VT") 22:26).
9 Defendants hereby submit the judicially noticeable Order Granting Plaintiffs' Petition for Judicial
10 Review from Eighth Judicial District Court case number A-17-752344-J (the "Order," attached as
11 Exhibit 3). That Order conclusively refutes nearly all of Plaintiffs' assertions.

12 Plaintiffs are bound by the findings of fact and conclusions of law in the Order. Issue
13 preclusion bars a plaintiff from relitigating an issue that was decided in a prior litigation once the
14 ruling has become final. *Five Star Capital Corp. v. Ruby*, 124 Nev. 1048, 1055 (2015).
15 *Judgment is final and preclusion applies even while the prior matter is on appeal. Edwards v.*
16 *Ghandour*, 123 Nev. 105, 116 (2007); *City of Las Vegas v. Bluewaters Family Ltd. P'ship*, 55878,
17 2013 WL 431045, at *1 (Nev. Jan. 31, 2013). Notably, issue preclusion does not require the case
18 to involve the same defendant. *Id.*

19 Paragraphs 6-12 of the findings make clear that the Peccole Ranch Master Plan was
20 approved by the City and the subject property was designated as open space. Paragraph 13 makes
21 clear that the General Plan for the City also designates the property as open space.

22 Defendants could submit voluminous city records showing that the Peccole Ranch Master
23 Plan is effective and not "abandoned." But, Judge Crockett summarized many city documents
24

25 ¹ Plaintiffs' would argue that the "master-planned community" referenced *is* Queensridge. This is
26 belied by the fact that ¶12.1 says the *Annexable Property* is part of the master-planned
27 community. As Plaintiffs' have argued (and included in their complaint), while the open space
28 used as the golf course was annexable, it was never annexed. Thus, it is not part of Queensridge
and the referenced master-planned community is something different than, and more than,
Queensridge – it is the Peccole Ranch Master Development Plan approved by the City in 1990.

referencing the master plan in his Order. See, ¶¶ 17-18 (staff report referencing that the site is part of the Peccole Ranch Master Plan), 20 (the "site is part of the Peccole Ranch Master Plan"), 23-28, 29 (the "Peccole Ranch Master Plan must be modified to change the land use designations from Golf Course/Drainage..."), 30, 35, 39, 40. Judge Crockett also made binding conclusions of law that recognized the existence of the Peccole Ranch Master Plan. See, ¶¶ 4, 7 ("***There is no dispute that the Peccole Ranch Master Plan in a Master Development Plan recognized by the City and listed in the City's 2020 Master Plan accordingly.***"), 8.

3. **Anti-SLAPP applies to all claims.** Plaintiffs' incorrectly assert that the anti-SLAPP statute does not apply to intentional torts (VT, 26:05) and that it has "***never been applied***" to intentional interference claims (VT, 36:27). As set forth in the anti-SLAPP reply (pp. 5-6), anti-SLAPP has been applied to claims for intentional infliction of emotional distress, intentional and negligent misrepresentation, intentional interference, and even conspiracy to obtain false testimony. The Nevada Supreme Court applied anti-SLAPP to an intentional interference claim in *Bullivant Houser Bailey PC v. Eighth Judicial Dist. Court of State ex rel. County of Clark*, 128 Nev. 885 (2012).

4. **The Litigation Privilege Bars Plaintiffs' Claims, So No Discovery Is Permitted on Prong 2.** Prong 2 of the anti-SLAPP statute requires Plaintiffs to offer admissible evidence on each element of their claims. NRS 41.660(3)(b). As the Court noted at hearing, discovery is ***only*** permissible ***in relation to Prong 2*** and only if it is "***necessary.***" NRS 41.660(4). Here, the litigation privilege bars all of Plaintiffs claims, so they can neither show the need for discovery or that there is evidence to support each element of their claims.

The litigation privilege "affords ***parties*** the same protection from liability as those protections afforded to an attorney..." *Clark County Sch. Dist. v. Virtual Educ. Software, Inc.*, 125 Nev. 374, 382-83 (2009)(emphasis added). Contrary to Plaintiffs' assertions, the privilege applies to communications "***even if known to be false or made with malicious intent.***" *Bullivant*, 128 Nev. 885 (emphasis added). The litigation privilege applies to more than just defamation claims. It bars "***any*** civil litigation based on the underlying communication." *Id.* The artificial distinction between communications and conduct is also irrelevant, as the Court intuited during

1 the hearing. *Id.* ("there is no reason to distinguish between *communications* made during the
2 litigation process and *conduct* occurring during the litigation process."). As set forth in
3 Defendants' moving papers, the litigation privilege applies to quasi-judicial proceedings (*Knox v.*
4 *Dick*, 99 Nev. 514, 581 (1983) and it applies to communications preliminary to proceedings (*Fink*
5 *v. Oshins*, 118 Nev. 428, 433 (2002). The privilege even applies to fraudulent communications or
6 perjured testimony. *Silberg v. Anderson*, 50 Cal. 3d 205, 218 (1990) (listing numerous cases).
7 As to the request for discovery, the privilege "renders any such [discovery] irrelevant to the
8 court's determination." *Blanchard v. DIRECTV, Inc.*, 20 Cal. App. 4th 903, 922 (2004).

9 **5. Plaintiffs' cannot prevail on the anti-SLAPP.** Because the anti-SLAPP statute applies
10 to any claims, including intentional torts, it is Plaintiffs' burden to show that they have evidence
11 to support all the elements of their claims. Those claims are legally insufficient for the reasons
12 discussed in the prior briefing. But, the Court need not get that far. Defendants' conduct is
13 protected by the absolute litigation privilege. As such, none of the claims can be supported.
14 Because Defendants' intent is irrelevant, no discovery is necessary. The claims must be
15 dismissed.

16 DATED this 23rd day of May, 2018.

17
18 BROWNSTEIN HYATT FARBER SCHRECK, LLP

19
20 By: /s/ Mitchell J. Langberg
21 MITCHELL J. LANGBERG, ESQ. Bar No. 10118
22 mlangberg@bhfs.com
23 BROWNSTEIN HYATT FARBER SCHRECK, LLP
24 100 North City Parkway, Suite 1600
25 Las Vegas, NV 89106
26 Telephone: 702.382.2101
27 Facsimile: 702.382.8135

28 Attorneys For Defendants Daniel Omerza, Darren Bresee,
and Steve Caria

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of Brownstein Hyatt Farber Schreck, LLP, and pursuant to NRCP 5(b), EDCR 8.05, Administrative Order 14-2, and NEFCR 9, I caused a true and correct copy of the foregoing **DEFENDANTS' SUPPLEMENTAL BRIEF IN SUPPORT OF SPECIAL MOTION TO DISMISS (ANTI-SLAPP MOTION) PLAINTIFFS' COMPLAINT PURSUANT TO NRS §41.635 ET. SEQ.** be submitted electronically for filing and/or service with the Eighth Judicial District Court via the Court's Electronic Filing System on the 23rd day of May, 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

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

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

CASE NO. A-18-771224-C

DECLARATION OF DALE ROESENER

Plaintiffs,

v.

DANIEL OMER/A, DARREN BRESEF,
STEVE CARIA, and DOES 1 THROUGH
1000,

Defendants.

DECLARATION OF DALE ROESENER

I, Dale Roesener, hereby declare as follows:

1. I MAKE THIS DECLARATION OF MY OWN PERSONAL KNOWLEDGE AND, IF
CALLED UPON TO DO SO AS A WITNESS, COULD AND WOULD TESTIFY
COMPETENTLY HERETO.

2. I RESIDE WITHIN THE QUEENSRIDGE COMMON INTEREST COMMUNITY
("QUEENSRIDGE").

3. MY WIFE AND I PURCHASED OUR LOT IN QUEENSRIDGE IN 2001.

4. SUBMITTED WITH THIS DECLARATION AS EXHIBIT 2 ARE TRUE AND
CORRECT COPIES OF PORTIONS OF THE VERSION OF THE AMENDED AND
RESTATEO MASTER DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS
AND EASEMENTS FOR QUEENSRIDGE ("CCRS") THAT I RECEIVED AT OR NEAR THE
TIME OF CLOSING FOR THE LOT MY WIFE AND I PURCHASED.

5. PARAGRAPH 12.1 OF THE CCRS STATES THAT THE "PROPERTY AND THE
ANNEXABLE PROPERTY **ARE PART OF** A MASTER-PLANNED COMMUNITY..."
(EMPHASIS ADDED).

I declare under penalty of perjury under the laws of the State of Nevada that the foregoing
is true and correct. Executed on this 23rd day of May, 2018, at LAS VEGAS, Nevada


DALE ROESENER

A-18-771224-C

DECLARATION OF DALE ROESENER

EXHIBIT 2

WHEN RECORDED, MAIL TO:

Larry Miller
Peccole Nevada Corporation
851 South Rampart, Suite 220
Las Vegas, Nevada 89145

AMENDED AND RESTATED
MASTER DECLARATION OF
COVENANTS, CONDITIONS,
RESTRICTIONS AND EASEMENTS
FOR
QUEENSRIDGE

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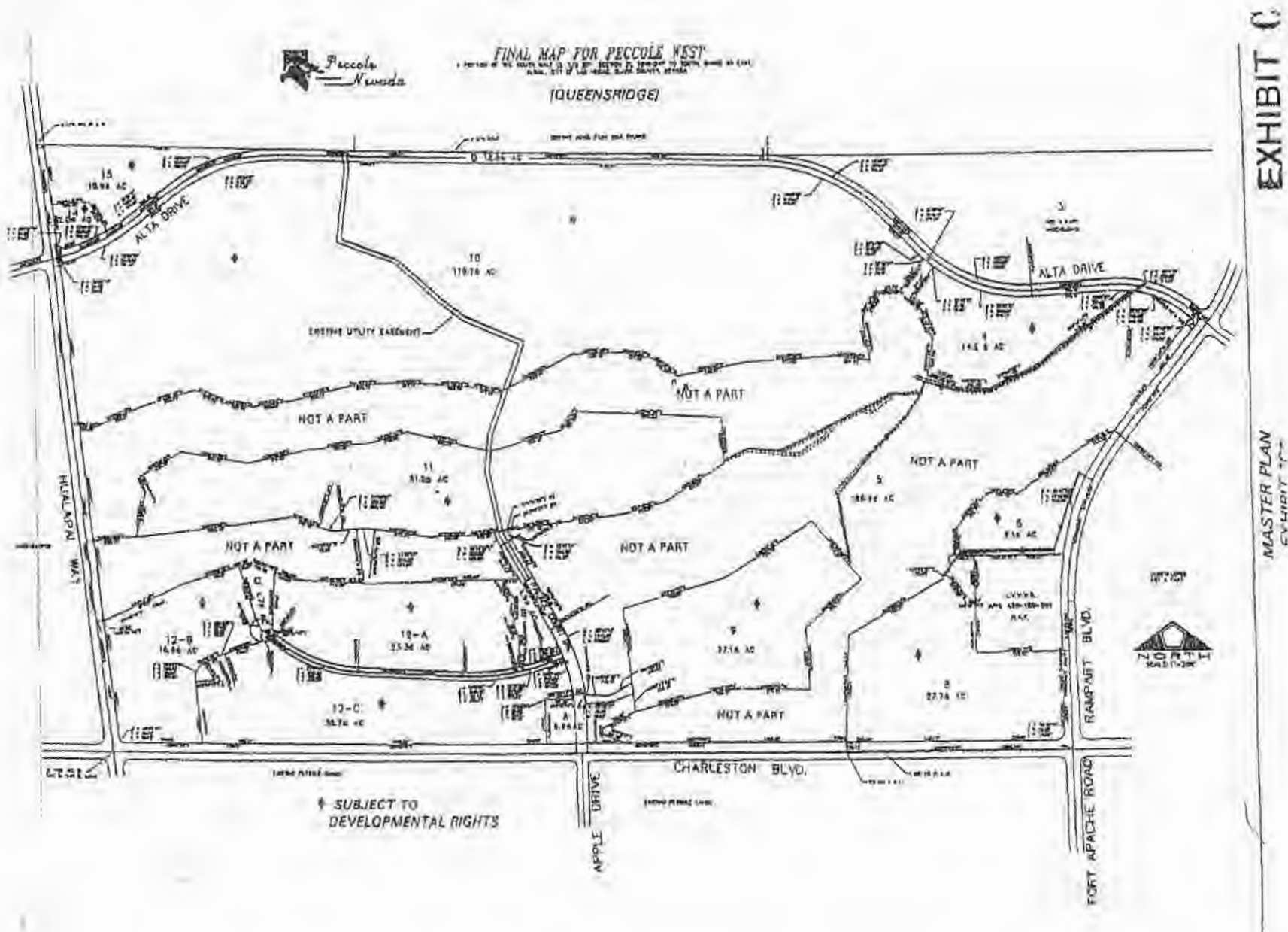


EXHIBIT C

MASTER PLAN
 EXHIBIT 10

In the event the Association or the Owners are considering any action to terminate the legal status of the Property as a common interest community under this Master Declaration for reasons other than substantial destruction or condemnation, then at least sixty-seven percent (67%) of the Eligible Mortgage Holders and Eligible Insurers shall give their prior written approval.

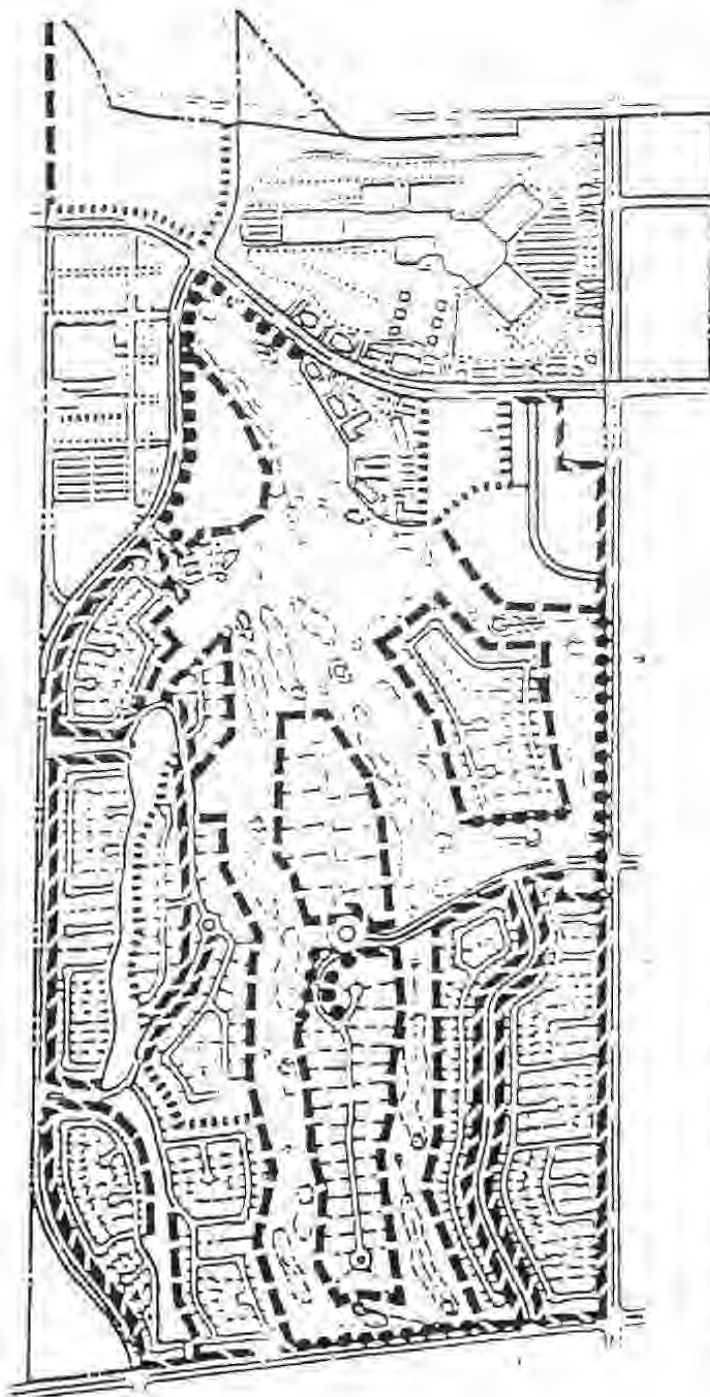
11.10 Non-Action As Approval. In the event any Eligible Mortgage Holder or Eligible Insurer is notified in the manner provided in Section 13.5, below, and at the address designated by such Eligible Mortgage Holder or Eligible Insurer to the Association in the manner provided in such Section 13.5 of any proposed decision or action described in Section 11.9 hereof and fails to submit a written response within thirty (30) days after notice of such proposed decision or action, then such Eligible Mortgage Holder or Eligible Insurer shall be deemed to have given its approval of such decision or action and such implied approval shall be conclusive as to all persons relying thereon in good faith. A certificate signed by the Secretary of the Association as to any Eligible Mortgage Holder's or Eligible Insurer's failure to so respond shall be deemed to be sufficient evidence of such implied approval.

ARTICLE XII

SPECIAL DECLARANT'S RIGHTS

12.1 Purpose and Duration. Declarant hereby reserves, for the benefit of Declarant, all rights, easements and exemptions set forth in this Article XII ("Special Declarant's Rights"). The Property and the Annexable Property are part of a master-planned community designed to enhance the quality of life for the residents of the Queensridge community and the enhancement of property values within Queensridge. It is essential to the establishment of Queensridge that Declarant possess special rights and exemptions in addition to the other rights of Declarant set forth herein. The Special Declarant's Rights contained in this Article XII are personal to Declarant and any Successor Declarant, and may only be transferred by a written assignment duly Recorded from a Declarant to a Successor Declarant, or from a Successor Declarant to another Successor Declarant, provided, however that Declarant hereby reserves the right to delegate certain Special Declarant's Rights to any number of Builders pursuant to Recorded Development Covenants. Each Owner of a Unit acknowledges by acceptance of a deed or other conveyance therefor, whether or not it shall be so expressed in any such deed or other instrument of conveyance, that Declarant has a substantial interest to be protected in the Property and the Annexable Property, and that the Special Declarant's Rights are necessary to protect Declarant's interests therein. The Special Declarant's Rights set forth herein shall terminate upon the Declarant's Rights Termination Date (defined in Section 1.30 hereof).

12.2 Right to Construct Development. Nothing in this Master Declaration nor any action by the Association shall limit, and none of (i) the Owners (including Builders), (ii) the Association, or (iii) any Project Association shall do anything to interfere with, the right of Declarant to master-plan, improve, develop, zone, re-zone, subdivide, re-subdivide, sell, resell, rent or re-rent any portion of the Property, to annex the Annexable Property (subject only to the limitations set forth in Section 2.3.2, hereof) to deannex any portion of the



Site Plan is for conceptual purposes only, and is subject to change at the discretion of the Master Developer. Please refer to Engineering Base Maps for exact site layouts.

LEGEND





-  MASTER DEVELOPER VIEW WALL
-  MASTER DEVELOPER SOLID WALL
-  BUILDER VIEW WALL
-  BUILDER SOLID WALL

EXHIBIT 3

EXHIBIT 3

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**DISTRICT COURT
CLARK COUNTY, NEVADA**

JACK B. BINION, an individual; DUNCAN R. and IRENE LEE, individuals and Trustees of the LEE FAMILY TRUST; FRANK A. SCHRECK, an individual; TURNER INVESTMENTS, LTD., a Nevada Limited Liability Company; ROGER P. and CAROLYN G. WAGNER, individuals and Trustees of the WAGNER FAMILY TRUST; BETTY ENGLESTAD AS TRUSTEE OF THE BETTY ENGLESTAD TRUST; PYRAMID LAKE HOLDINGS, LLC; JASON AND SHIREEN AWAD AS TRUSTEES OF THE AWAD ASSET PROTECTION TRUST; THOMAS LOVE AS TRUSTEE OF THE ZENA TRUST; STEVE AND KAREN THOMAS AS TRUSTEES OF THE STEVE AND KAREN THOMAS TRUST; SUSAN SULLIVAN AS TRUSTEE OF THE KENNETH J. SULLIVAN FAMILY TRUST, AND DR. GREGORY BIGLOR AND SALLY BIGLER,

Plaintiffs,

v.

THE CITY OF LAS VEGAS; and SEVENTY ACRPS, LLC, a Nevada Limited Liability Company,

Defendants.

Case No.: A-17-752344-J

Dept. No.: XXIV

ORDER GRANTING PLAINTIFFS' PETITION FOR JUDICIAL REVIEW

<input type="checkbox"/> Voluntary Dismissal	<input checked="" type="checkbox"/> Summary Judgment
<input type="checkbox"/> Involuntary Dismissal	<input type="checkbox"/> Stipulated Judgment
<input type="checkbox"/> Stipulated Dismissal	<input type="checkbox"/> Default Judgment
<input type="checkbox"/> Motion (or Dismissal by Defect)	<input type="checkbox"/> Judgment of Arbitration

On January 11, 2018, Plaintiffs¹ Petition for Judicial Review came before the Court for a hearing. Todd L. Bice, Esq. and Dustin H. Holmes, Esq. of the law firm PISANELLI BICE PLLC appeared on behalf of Plaintiffs, Christopher Kaempfer, Esq., James Smyth, Esq., Stephanie Allen, Esq. appeared on behalf of Defendant Seventy Acres, LLC ("Seventy Acres"), and Philip T. Byrnes, Esq., with the LAS VEGAS CITY ATTORNEY'S OFFICE appeared on behalf of the Defendant City of Las Vegas ("City"). The Court, having reviewed Plaintiffs' Memorandum in Support of the Petition for Judicial Review, the City's Answering Brief, Seventy Acres' Opposition Brief, Plaintiffs' Reply Brief, the Record for Review, and considered the matter and being fully advised, and good cause appearing makes the following findings of fact and conclusions of law:

FINDINGS OF FACT AND CONCLUSIONS OF LAW²

A. FINDINGS OF FACT

1. Plaintiffs challenge the City's actions and the final decision entered on February 16, 2017 regarding the approval of Seventy Acres' applications GPA-62387 for a General Plan Amendment from parks/recreation/open space (PR-OS) to medium density (M), ZON-62392 for rezoning from residential planned development - 7 units per acre (R-PD7) to medium density residential (R-3), and SDR-62393 site development plan related to GPA-62387 and ZON-62392 (collectively the "Applications") on 17.49 acres at the southwest corner of Alta Drive and

¹ Jack B. Binion, Duncan R. and Irene Lee, individuals and trustees of the Lee Family Trust, Frank A. Schreck, Turner Investments, LTD, Rover P. and Carolyn G. Wagner, individuals and trustees of the Wagner Family Trust, Betty Englestad as trustee of the Betty Englestad Trust, Pyramid Lake Holdings, LLC, Jason and Shereen Awad as trustees of the Awad Asset Protection Trust, Thomas Love as trustee of the Zena Trust, Steve and Karen Thomas as trustees of the Steve and Karen Thomas Trust, Susan Sullivan as trustee of the Kenneth J. Sullivan Family Trust, and Dr. Gregory Bigler and Sally Bigler

² Any findings of fact which are more properly considered conclusions of law shall be treated as such, and any conclusions of law which are more properly considered findings of fact shall be treated as such.

1 Rampart Boulevard, more particularly described as Assessor's Parcel Number 138-32-301-005
2 (the "Property").³

3 2. The Property at issue in the Applications is a portion of land which was previously
4 known as Badlands Golf Course and is part of the Peccole Ranch Master Plan.

5 3. In 1986, the William Peccole Family presented their initial Master Planned
6 Development under the name Venetian Pothills to the City ("Peccole Ranch"), ROR002620-
7 2639.

8 4. The original Master Plan contemplated two 18-hole golf courses, which would
9 become known as Canyon Gate in Phase I of Peccole Ranch and Badlands in Phase II of Peccole
10 Ranch. Both golf courses were designed to be in a major flood zone and were designated as flood
11 drainage and open space. ROR002634. The City mandated these designations so as to address the
12 natural flood problem and the open space necessary for master plan development. ROR002595—
13 2604.

14 5. The William Peccole Family developed the area from W. Sahara north to W.
15 Charleston Blvd. within the boundaries of Hualapai Way on the west and Durango Dr. on the east
16 ("Phase I"). In 1989, the Peccole family submitted what was known as the Peccole Ranch Master
17 Plan, which was principally focused on what was then commonly known as Phase I.

18 6. In 1990 the William Peccole Family presented their Phase II Master Plan under the
19 name Peccole Ranch Master Plan Phase II (the "Phase II Master Plan") and it encompassed the
20 land located from W Charleston Blvd. north to Alta Dr. west to Hualapai Way and east to
21 Durango Dr. ("Phase II"). Queenridge was included as part of this plan and covered W.
22
23

24 ³ The Applications as originally submitted were for a General Plan Amendment from
25 parks/recreation/open space (PR-OS) to high density residential (H), for rezoning from residential
26 planned development - 7 units per acre (R-PD7) to high density residential (R-4). At the February
27 15, 2017 City Council meeting, Seventy Acres indicated that it was amending its Applications
28 from 720 units on the Property to 435 units. The corresponding effect was an amendment to its
General Plan Amendment from PR-OS to medium density (M) and rezoning from R-PD7 to
medium density residential (R-3).

1 Charleston Blvd. north to Alta Dr., west to Hualapai Way and east to Rampart Blvd. ROR002641-
2 2670.

3 7. Phase II of the Peccole Ranch Master Plan was approved by the City Council of
4 the City of Las Vegas on April 4, 1990 in Case No. Z-17-90. ROR007612, ROR007702-7704.
5 The Phase II Master Plan specifically defined the Badlands 18 hole Golf Course as flood
6 drainage/golf course in addition to satisfying the required open space necessitated by the City for
7 Master Planned Development. ROR002658-2660.

8 8. The Phase II golf course open space designation was for 211.6 acres and
9 specifically was presented as zero net density and zero net units. (ROR002666). The William
10 Peccole Family knew that residential development would not be feasible in the flood zone, but as
11 a golf course could be used to enhance the value of the surrounding residential lots. As the Master
12 Plan for Phase II submitted to the City outlines:

13 A focal point of Peccole Ranch Phase Two is the 199.8 acre golf
14 course and open space drainage way system which traverses the site
15 along the natural wash system. All residential parcels within Phase
16 Two, except one, have exposure to the golf course and open space
17 areas . . . The close proximity to Angel Park along with the
18 extensive golf course and open space network were determining
19 factors in the decision not to integrate a public park in the proposed
20 Plan."

21 ROR002658-2660.

22 9. The Phase II Master Plan amplifies that it is a planned development, incorporating
23 a multitude of permitted land uses as well as special emphasis the open space and:

24 Incorporates office, neighborhood commercial, a nursing home, and
25 a mixed-use village center around a strong residential base in a
26 cohesive manner. A destination resort-casino, commercial/office
27 and commercial center have been proposed in the most northern
28 portion of the project area. Special attention has been given to the
29 compatibility of neighboring uses for smooth transitioning,
30 circulation patterns, convenience and aesthetics. An extensive 253
31 acre golf course and linear open space system winding throughout
32 the community provides a positive focal point while creating a
33 mechanism to handle drainage flows.

34 ROR00264-2669.

35 10. As the Plan for Phase II outlined, there would be up to 2,807 single-family
36 residential units on 401 acres, 1,440 multi-family units on 60 acres and open space/golf

1 course/drainage on approximately 211 acres. ROR002666-2667. For the single-family units
2 which would border the proposed golf course/open space, the zoning sought was for R-PD/
3 which equates to a maximum of seven (7) single-family units per acre on average. ROR002666-
4 2667. Such a zoning approval for a planned development like Peccole Ranch Phase II and its
5 proposed golf course/open space/drainage is common as confirmed by the City's own code at the
6 time because R-PD zoning category was specifically designed to encourage and facilitate the
7 extensive use of open space within a planned development, such as that being proposed by the
8 Peccole Family. ROR02716-2717.

9 11. Both the Planning Commission and the City Council approved this 1990
10 Amendment for the Phase II Plan (the "Plan"). ROR007612, ROR007702-7704.

11 12. The City confirmed the Phase II Plan in subsequent amendments and re-adoption
12 of its own General Plan, both in 1992 and again in 1999. ROR002735-2736.

13 13. On the maps of the City's General Plan, the land for the golf course/open
14 space/drainage is expressly designated as PR-OS, meaning Parks/Recreation/Open Space.
15 ROR002735-2736. There are no residential units permitted in an area designated as PR-OS.

16 14. The City's 2020 Master Plan specifically lists Peccole Ranch as a Master
17 Development Plan in the Southwest Sector.

18 15. In early 2015, the land was acquired by a developer and as a representative of the
19 developer, Yohan Lowie, would testify at the November 16, 2016 City Council meeting that
20 before purchasing the property he had conversations with the City Council members from which
21 he inferred that he would be able to secure approvals to redevelop the golf course/open space of
22 this master planned community with housing units. ROR001327-1328; ROR007364-7365. The
23 purchaser elected to take on the risk of acquiring the property and did not provide for typical
24 contingencies, such as a condition of land use approvals prior to closing.

25 16. Instead, it was after acquiring the land that one of the developer's entities, Seventy
26 Acres, filed the Applications with the City in November 2015.

27 17. When the Applications were initially submitted they were set to be heard in front
28 of the City's Planning Commission on January 12, 2016. ROR017362-17377. The Staff Report

1 prepared in advance of this meeting states that the City's Planning Department had no
2 recommendation at the time because the City's code required an application for a major
3 modification of the Peccole Ranch Master Plan prior to the approval of the Applications.
4 ROR017365. Specifically, the Staff Report states:

5 The site is part of the Peccole Ranch Master Plan. The appropriate
6 avenue for considering any amendment to the Peccole Ranch
7 Master Plan is through the Major Modification process as outline in
8 Title 19.10.040. As this request has not been submitted, staff
9 recommends that the [Applications] be held in abeyance has no
10 recommendation on these items at the time.
11 (*Id.*)

12 18. Indeed, a critical issue noted by the City, pertaining to the Applications was that
13 "[t]he proposed development requires a Major Modification of the Peccole Ranch Master Plan,
14 specifically the Phase Two area as established by Z-0017-90. As such, staff is recommending that
15 these items be held in abeyance." (*Id.*)

16 19. Following staff's recommendation, the Applications were held over to the March 8,
17 2016 Planning Commission meeting.

18 20. Again, the Staff Report prepared in advance of the meeting states, "[t]he site is part
19 of the Peccole Ranch Master Plan. The appropriate avenue for considering any amendment to the
20 Peccole Ranch Master Plan is through the Major Modification process as outline in Title
21 19.10.040." ROR017445-17538. As no Major Modification had been submitted the City's staff
22 had no recommendation on the Applications at the time. *Id.*

23 21. As a result, the Applications were held over to the April 12, 2016 Planning
24 Commission meeting.

25 22. Consistent with the City's requirements, the developer subsequently filed an
26 application MOD-63600 for a Major Modification of the Peccole Ranch Master Plan to amend the
27 number of allowable units, to change the land use designation of parcel, and to provide standards
28 for redevelopment.

29 23. As the Staff Report prepared in advance of an April 12, 2016 Planning
30 Commission meeting states, "[p]ursuant to 19.10.040, a request has been submitted for a
31 modification to the Peccole Ranch Master Plan to authorize removal of the golf course, change

1 the designated land uses on those parcels to single family and multi-family residential and allow
2 for additional residential units." ROR017550-17566.

3 24. The Staff Report goes on to state that "[i]t is the determination of the Department
4 of Planning that any proposed development not in conformance with the approved Peccole Ranch
5 Master Plan would be required to pursue a Major Modification of the Plan prior to or concurrently
6 with any new entitlements. *Id.* Such an application (MOD-63600) was filed with the City of Las
7 Vegas on 02/25/16 along with a Development Agreement (DIR-63602) for redevelopment of the
8 golf course parcels." *Id.*

9 25. As the Staff Report indicates, "[a]n additional set of applications were submitted
10 concurrently with the Major Modification that apply to the whole of the 250.92-acre golf course
11 property." These applications were submitted by entities – 180 Land Co LLC and Fore Stars, Ltd-
12 controlled and related to the developer submitting the Applications at issue here. *Id.*

13 26. As with the previous Staff Reports, the Staff emphasized that "[t]he proposed
14 development requires a Major Modification of the Peccole Ranch Master Plan, specifically the
15 Phase Two area as established by Z-0017-90." *Id.* However, the City's Staff was now
16 recommending the Applications be held in abeyance as additional time was needed for "review of
17 the Major Modification and related development agreement." *Id.*

18 27. Over the next several months the Applications were held in abeyance at the request
19 of Seventy Acres and/or the City. Specifically, the Staff Reports prepared in advance of every
20 meeting continuously noted that approval of the Applications was dependent upon an approval of
21 a Major Modification of the Peccole Ranch Master Plan.

22 28. For example, the May 10, 2016 Staff Report provides "[t]he proposed development
23 requires a Major Modification (MOD-6300) of the Peccole Ranch Master Plan, specifically the
24 Phase Two area as established by Z-0017-90," ROR018033-18150. The Staff findings likewise
25 provide the Applications "would result in the modification of the Peccole Ranch Master Plan.
26 Without the approval of a Major Modification to said plan, no finding can be reached at this
27 time." *Id.*

28

1 29. In the July 12, 2016 Staff Report, staff states "[t]he Peccole Ranch Master Plan
2 must be modified to change the land use designations from Golf Course/Drainage to Multi-Family
3 Residential and Single Family Residential prior to approval of the proposed" Applications.
4 ROR018732-18749, ROR0198882-

5 30. Less than two months later, in an August 9, 2016 Staff Report, the City's Staff
6 reiterated that "[t]he proposed development requires a Major Modification (MOD-6300) of the
7 Peccole Ranch Master Plan, specifically the Phase Two area as established by Z-0017-90."
8 ROR0198882-19895.

9 31. Ultimately, the Applications came before a special Planning Commission meeting
10 on October 18, 2016. ROR000725-870. The Applications were heard along with other
11 applications from the developer, including application for a Major Modification of the Peccole
12 Ranch Master Plan. (MOD-63600).

13 32. The City's Planning Commission denied all other applications, including MOD-
14 63600, except for the Applications at issue in this case by a five-to-two margin. ROR00865-870.
15 In other words, the Planning Commission approved certain applications notwithstanding that it
16 had expressly denied the Major Modification (MOD-63600) that the City's Staff recognized as a
17 required prerequisite to any applications moving forward.

18 33. The Applications, along with all other applications from the developer, were then
19 scheduled to be heard in front of the City Council on November 16, 2016.

20 34. Prior to the City Council Meeting the developer requested that the City permit it to
21 withdraw without prejudice all other applications, including the Major Modification (MOD-
22 63600), leaving the Applications at issue relating to the 720 multifamily residential buildings on
23 17.49 acres located on Alta/Rampart southwest corner. ROR001081-1135.

24 35. But again, the City's Staff Report prepared in advance of the City Council meeting
25 confirmed that one of the conditions for approving these Applications was that there be a Major
26 Modification of the Peccole Ranch Master Plan. ROR002421-2441. As the City's staff explains,
27 the Applications "are dependent on action taken on the Major Modification and the related
28 Development Agreement between the application and the City for the development of the golf

1 course property." ROR002425. This point is reiterated in the report that "[t]he proposed
2 development requires a Major Modification (MOD-63600) of the Peccole Ranch Master Plan."
3 (*Id.*)

4 36. Yet, as the City's Staff Report confirms, the developer had submitted no request
5 for a Major Modification to the 1990 Peccole Ranch Master Development Plan Phase II to
6 authorize modification for the 17.49 acres of golf course/drainage/open space land use to change
7 the designated land uses, and increase in net units, density, and maximum units per acre. Rather,
8 the application for a Major Modification was submitted on February 25, 2016, relating to the
9 entirety of the Badlands Golf Course, along with an application for a development agreement, and
10 the developer had now withdrawn any request for a major modification.

11 37. The City Council voted to hold the matter in abeyance. ROR001342.

12 38. Subsequently, the Applications came back before the City Council on February 15,
13 2017.

14 39. The Staff Report again provided that "[p]ursuant to Title 19.10.040, a request has
15 been submitted for a Modification to the 1990 Peccole Ranch Master Plan to authorize removal of
16 the golf course, change the designated land uses on those parcels to single-family and multi-
17 family residential and allow for additional residential units." The City's Staff maintained that
18 Applications "are dependent on action taken on the Major Modification," and that the "the
19 proposed development requires a Major Modification (MOD-63600) of the Peccole Ranch Master
20 Plan." ROR011240.

21 40. There is no question that the City's own Staff had long recognized that these
22 Applications were dependent upon a Major Modification of the Peccole Ranch Master Plan.

23 41. At the February 15, 2017 City Council meeting, Seventy Acres announced that it
24 was amending its Applications by reducing the units from 720 to 435 units on 17.49 acres located
25 on Alta/Rampart southwest corner. ROR017237-17358. The corresponding effect was an
26 amendment to its application for a general plan amendment PR-OS to medium density,
27 application for rezoning from R-PD7 to medium density residential, and application for SDR-
28 62393 site development plan subject to certain conditions. *Id.*

42. Despite no Major Modification as the City had long recognized as required, the City Council by a four-to-three vote proceeded anyway and approved the Applications.

43. On or about February 16, 2017, a Notice of Final Action was issued.

44. On March 10, 2017, Plaintiffs timely filed this Petition seeking judicial review of the City's decision.

B. CONCLUSIONS OF LAW

1. The City's decision to approve the Applications is reviewed by the district court for abuse of discretion. *Stratosphere Gaming Corp. v. City of Las Vegas*, 120 Nev. 523, 528, 96 P.3d 756, 760 (2004). "A decision that lacks support in the form of substantial evidence is arbitrary or capricious, and thus an abuse of discretion that warrants reversal." *Tighe v. Las Vegas Metro. Police Dep't*, 110 Nev. 632, 634, 877 P.2d 1032, 1034 (1994). Substantial evidence is evidence that "a reasonable mind might accept as adequate to support a conclusion." *Id.* Yet, on issue of law, the district court conducts an independent review with no deference to the agency's determination. *Maxwell v. State Indus. Ins. Sys.*, 109 Nev. 327, 329, 849 P.2d 267, 269 (1993).

2. Although the City's interpretation of its land use laws is cloaked with a presumption of validity absent manifest abuse of discretion, questions of law, including Municipal Codes, are ultimately for the Court's determination. *See Boulder City v. Cinnamon Hills Assoc.*, 110 Nev. 238, 247, 871 P.2d 320, 326 (1994); *City of N. Las Vegas v. Eighth Judicial Dist. Court ex rel. City of Clark*, 122 Nev. 1197, 1208, 147 P.3d 1109, 1116 (2006).

3. Here, while the City says that this Court should defer to its interpretation, the Court must note that what the City is now claiming as its interpretation of its own Code appears to have been developed purely as a litigation strategy. Before the homeowners filed this suit, the City and its Planning Director had consistently interpreted the Code as requiring a major modification as a precondition for any application to change the terms of the Peccole Ranch Master Plan. Indeed, it was not until oral argument on this Petition for Judicial Review that the City Attorneys' office suggested that the terms of LVMC 19.10.040(G) only applied to property that is technically zoned for "Planned Development" as opposed to property that is zoned R-PD which is "Residential-Planned Development." This position is completely at odds with the City's

own longstanding interpretation of its own Code and that its own Director of Development had long determined that a major modification was required and that the terms of LVMC 19.10.040(G) applied here. Respectfully, interpretations that are developed by legal counsel, as part of a litigation strategy, are not entitled to any form of deference by the judiciary. See *Christopher v. SmithKline Beecham Corp.*, 567 U.S. 142, 155, 132 S. Ct. 2156, 2166, 183 L. Ed. 2d 153 (2012) (no deference is provided when the agency's interpretation is nothing more than a "convenient litigating position."). What is most revealing is the City's interpretation of its own Code before it felt compelled to adopt a different interpretation as a defense strategy to this litigation.

4. The Court finds the City's pre-litigation interpretation and enforcement of its own Code – that a major modification to the Peccole Ranch Master Plan is required to proceed with these Applications – to be highly revealing and consistent with the Code's actual terms.

5. LVMC 19.10.040(G) is entitled "Modification of Master Development Plan and Development Standards." It provides, in relevant part, that:

The development of property within the Planned Development District may proceed only in strict accordance with the approved Master Development Plan and Development Standards. Any request by or on behalf of the property owner, or any proposal by the City, to modify the approved Master Development Plan or Development Standards shall be filed with the Department. In accordance with Paragraphs (1) and (2) of this Subsection, the Director shall determine if the proposed modification is "minor" or "major," and the request or proposal shall be processed accordingly.

See LVMC 19.10.040(G).

6. Accordingly, under the Code, "[a]ny request by or on behalf of the property owner, or any proposal by the City, to modify the approved Master Development Plan or Development Standards shall be filed with the Department." LVMC 19.10.040(G). It is the City's Planning Department who "shall determine if the proposed modification is minor or major, and the request or proposal shall be processed accordingly." *Id.*

7. There is no dispute that the Peccole Ranch Master Plan is a Master Development Plan recognized by the City and listed in the City's 2020 Master Plan accordingly.

1 8. Likewise, there is no dispute that throughout the application process, the City's
2 Planning Department continually emphasized that approval of the Applications was dependent
3 upon approval of a major modification of the Peccole Ranch Master Plan. For example, the record
4 contains the following representations from the City:

- 5 • "The site is part of the 1,569-acre Peccole Ranch Master Plan. Pursuant to Title
6 19.10.040, a request has been submitted for a Modification to the 1990 Peccole
7 Ranch Master Plan to authorize removal of the golf course, change the designated
8 land uses on those parcels to single family and multi-family residential and allow
9 for additional residential units."
- 10 • "The site is part of the Peccole Ranch Master Plan. The appropriate avenue for
11 considering any amendment to the Peccole Ranch Master Plan is through the
12 Major Modification process as outline in Title 19.10.040..."
- 13 • "The current General Plan Amendment, Rezoning and Site Development Plan
14 Review requests are dependent upon on action taken on the Major Modification..."
- 15 • "The proposed Development requires a Major Modification (MOD-63600) of the
16 Peccole Ranch Master Plan...."
- 17 • "The Department of Planning has determined that any proposed development not
18 in conformance with the approved (1990) Peccole Ranch Master Plan would be
19 required to pursue a Major Modification..."
- 20 • "The Peccole Ranch Master Plan must be modified to change the land use
21 designations from Golf Course/Drainage to Multi-Family prior to approval of the
22 proposed General Plan Amendment..."
- 23 • "In order to redevelop the Property as anything other than a golf course or open
24 space, the applicant has proposed a Major Modification of the 1990 Peccole
25 Master Plan."
- 26 • "In order to address all previous entitlements on this property, to clarify intended
27 future development relative to existing development, and because of the acreage of
28

1 the proposed for development, staff has required a modification to the conceptual
2 plan adopted in 1989 and revised in 1990."

3 ROR000001-27; ROR002425-2428; ROR006480-6490; ROR017362-17377.

4 9. The City's failure to require or approve of a major modification, without getting
5 into the question of substantial evidence, is legally fatal to the City's approval of the Applications
6 because under the City's Code, as confirmed by the City's Planning Department, the City was
7 required to first approve of a major modification of the Peccole Ranch Master Plan, which was
8 never done. That, by itself, shows the City abused its discretion in approving the Applications.

9 10. Instead of following the law and the recommendations from the City's Planning
10 Department, over the course of many months there was a gradual retreat from talking about a
11 major modification and all of a sudden that discussion and the need for following Staff's
12 recommendation just went out the window.

13 11. The City is not permitted to change the rules and follow something other than the
14 law in place. The Staff made it clear that a major modification was mandatory. The record
15 indicates that the City Council chose to just ignore and move past this requirement and did what
16 the developer wanted, without justification for it, other than the developer's will that it be done.

17 12. In light of the foregoing, the Court finds that the City abused its discretion in
18 approving the Applications. The Court interprets the City's Code, just as the City itself had long
19 interpreted it, as requiring a major modification of the Peccole Ranch Master Plan. Since the City
20 failed to approve of a major modification prior to the approval of these Applications the City
21 abused its discretion and acted in contravention of the law.

22 Based upon the Findings and Facts and Conclusions of Law above:

23 **IT IS HEREBY ORDERED** that Plaintiffs' Petition for Judicial Review is **GRANTED**.

IT IS FURTHER ORDERED that the approval of the applications GPA-62387, ZON-62392, and SDR-62393 are hereby vacated, set aside, and shall be void, and judgment shall be entered against Defendant City of Las Vegas and Seventy Acres, LLC in favor of Plaintiffs accordingly.

DATED: March 1, 2015


THE HONORABLE JIM CROCKETT
EIGHTH JUDICIAL DISTRICT COURT

Submitted by:

PISANELLI BICE PLLC

By: 

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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

**PLAINTIFFS' SUPPLEMENT IN
SUPPORT OF OPPOSITION TO
DEFENDANTS' SPECIAL MOTION TO
DISMISS (ANTI-SLAPP)**

Plaintiffs, Fore Stars, LTD., 180 Land Company LLC, and Seventy Acres, LLC,
(collectively "Land Owners" or "Plaintiffs"), by and through their undersigned counsel, James
J. Jimmerson, Esq., of THE JIMMERSON LAW FIRM, P.C., hereby supplement the
Opposition to the Special Motion to Dismiss as allowed by this Court at the time of hearing to
respond to "blatant misrepresentation of the fact(s) or the law."

DATED this 23rd day of May, 2018.

THE JIMMERSON LAW FIRM, P.C.

/s/ James J. Jimmerson, Esq.

JAMES J. JIMMERSON, ESQ.

Nevada Bar No. 000264

415 S. 6th Street, #100

Las Vegas, Nevada 89101

1 **1. Statements To This Court By Defendants’ Counsel During the Hearing and**
2 **in the Defendants’ Declarations Are False.** *See Exhibit 1, 2, and 4 to Plaintiffs’*
3 *Supplement 1 & 2.*

4 Defendant’s counsel repeatedly states that “**they’re not making an assertion of**
5 **fact**” mirroring the statement in Defendant Omerza’s unsworn declaration. This argument,
6 the primary basis of the motion, is false as Omerza made an affirmative assertion of fact about
7 a “Master Plan” to Lowie. (*See Omerza Video and transcript Ex 1 and 2*).¹

8 **2. The Document Circulated To Homeowners Was Not An Act Of Petitioning.**

9 The document disseminated to the Queensridge neighbors is not a ‘petition’ as it makes
10 no request to a court or other official body.² It is an intentional misrepresentation by the
11 conspirators to their neighbors to deceive them into blindly signing a false statement for the
12 purpose of harming the Land Owners and their business interests.

13 **3. Defendants Were Not “Finding Witnesses,” They Were Manufacturing**
14 **False Testimony and/or Suborning Perjury.** *Tr. Page 9:24-25.*

15 Defendants’ counsel’s statement to the Court that “They’re looking for witnesses, they’re
16 looking for witness statements” is false. By distributing a document that makes representations
17 of personal reliance with the assertion by the distributor that its contents are true (as opposed
18 to seeking signatures ‘if this is true in your case’), the conduct is not witness seeking, but rather,
19 it is the manufacturing of false testimony. Exhibit “3” calls the statement an “Affidavit” and
20 Omerza affirmatively “told” Mr. Lowie the statement was true. In so doing, Defendants may
21 also have committed mail fraud. *See* 18 USC § 1341.

22 **4. Truth And Falsity To A Court Is Not “Irrelevant.”** *Tr. Page 47:6-8.*

23 At the hearing, Defendant’s counsel stated to this Court “truth and falsity is irrelevant.”
24 That statement is false. NRS 41.637 says “good faith communication” protections only apply
25 on issues “of public interest” not “private concern” (another factual issue) and **requires** the
26 statements be “truthful or made without knowledge of falsehood.” Defendants are required to

27 ¹ **Lowie:** “How did you know, though? How do you know?” **Omerza:** “Because I did the – I did a
28 background check on the Q&R’s; ok? The Queensridge – the Queensridge Rules and Regulations and it – it
29 talks all about that Master Plan.” **Lowie:** “So, in the CC&R’s it talks about a master plan?” **Omerza:** “Yes.”
30 **Lowie:** “K. Are you sure about that?” **Omerza:** “I am. Yes.” **The “Queensridge Master Plan” is not**
31 **the same as the “Peccole Ranch Master Plan.”**

32 ² A petition is “a formal written request presented to a court or other official body.” Black’s Law
33 Dictionary (10th ed. 2014).

1 establish by a preponderance of the evidence, that the claim is based upon a good faith (i.e.
2 “truthful”) communication. NRS 41.660. Self-serving declarations that contain false
3 statements do not constitute a showing by a preponderance of the evidence that the statements
4 were made in good faith. If an Anti-SLAPP Motion is akin to a motion for summary judgment,
5 there would need to be no genuine issues of material fact. There are multiple genuine issues of
6 material fact here regarding whether these were [1] “good faith communications,” [2] made
7 “truthfully or without knowledge of their falsehood,” or [3] “in furtherance of the right to
8 petition or the right to free speech in direct connection with an issue of public concern.” If that
9 “first prong” burden has not been met by Defendants “by a preponderance of the evidence,” the
10 Motion must be denied outright and the case must be allowed to proceed. NRS 41.660(3)(a).

11 **5. Defendants’ Motion Must Be Denied or Discovery Must Be Permitted.**

12 Plaintiffs are entitled to investigate the Defendants’ actions, including why they chose not
13 to address the return envelopes to the City of Las Vegas, but instead to either Omerza or
14 Schreck. Those are actions, not “communications.” Only if Defendants have met their burden
15 “by a preponderance of the evidence,” which they have not done, then the burden shifts to
16 Plaintiffs to demonstrate only with prima facie evidence a probability of prevailing on the
17 claim. NRS 41.660(3)(b). And only then the (prima facie) burden shifts to Plaintiffs, and if
18 information is with “another party” the Court “**shall** allow limited discovery for the purpose of
19 ascertaining such information.” NRS 41.660(4). Here, the information necessary is with
20 Defendants or third parties, regarding their actions, knowledge, motives, reliance, and
21 understanding. *Id.* When NRS 41.660(4) was enacted, there was extensive debate, a matter of
22 public record upon which this Court can rely, regarding balancing the first amendment right to
23 free speech with another first amendment right, the right to petition, which is infringed if a
24 plaintiff is prevented by this statute from filing suit to address harm to their business interests.
25 Arguing to the Nevada Legislature in favor of this discovery provision was none other than
26 Defendants’ counsel, Mitch Langberg! The Court is requested to take judicial notice of the
27 *Minutes of the Meeting of the Assembly Committee on Judiciary, Seventy-Eighth Session,*
28 *April 24, 2015 regarding SB 444*, attached hereto as Exhibit 8.

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DATED this 23rd day of May, 2018.

THE JIMMERSON LAW FIRM, P.C.

/s/ James J. Jimmerson, Esq.
JAMES J. JIMMERSON, ESQ.
Nevada Bar No. 000264
415 S. 6th Street, #100
Las Vegas, Nevada 89101
Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on the 23rd day of May, 2018, I caused a true and correct copy of the foregoing **PLAINTIFFS' SUPPLEMENT IN SUPPORT OF OPPOSITION TO DEFENDANTS' SPECIAL MOTION TO DISMISS (ANTI-SLAPP)** 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
100 North City Parkway
Suite 1600
Las Vegas, Nevada 89106
Attorneys for Defendants

/s/ Shahana Polselli
Employee of The Jimmerson Law Firm, P.C

Exhibit "8"

**EXCERPT OF LANGBERG TESTIMONY FROM MINUTES OF THE MEETING
OF THE ASSEMBLY COMMITTEE ON JUDICIARY, SEVENTY-EIGHTH
SESSION, APRIL 24, 2015 REGARDING SB 444, WHICH AMENDED NRS 41 IN
2015 (*Highlighted in the attached*)**

“I support people exercising their First Amendment rights to review and to make truthfully factual statements in criticism of others. I also support the First Amendment for people to exercise their right to petition and to come to the courts to address grievances.” (p. 13)

“...courts across the country have said that the right to discovery is fundamental to access to the courts and therefore fundamental to the First Amendment right to petition.” (p. 14)

“The constitutional implications a constitutional balance. We cannot focus on only one constitutional right. The First Amendment not only protects the right of free speech, but it protects the right to petition. The Seventh Amendment gives the right to a jury trial in issues of law. The Nevada Constitution, Article 1, Section 9, recognizes the constitutional right of free speech for Nevada citizens and also says that those citizens must be responsible for the abuse of that right. To deprive a plaintiff with a legitimate defamation claim access to the courts is also to deprive him of his right to protect his reputation under the Nevada Constitution.” (p. 14-15)

“Let us assume that somebody knowingly makes a false statement of fact. He will be able to implicate the anti-SLAPP statute. A plaintiff who is seeking to defend his reputation is going to have to prove, in less than seven days, by clear and convincing evidence, every single element of his claim including that the statement is defamatory, false, and in some cases, the defendant knew or had serious doubt about truth at the time the statement was made. While I am familiar with this and I swim in this water all the time, this concept is incredible to me. How can any plaintiff prove the subjective knowledge and intent of a defendant by clear and convincing evidence with no discovery within seven days, unless a defendant has somehow admitted it? The real question here is, as a matter of policy, do we allow people whose reputations have been maligned by significant false and defamatory statements to have a remedy to repair their reputation?” (p. 15)

“To prove a negative by clear and convincing evidence without any discovery and to prove what was in the defendant's mind is an onerous burden.” “We have changed it in S.B. 444 (R1) to prima facie evidence, which is consistent with the California statute.” (p. 21)

“We took the pendulum from the place where free speech rights were not protected at all, and it has moved to the place where it is too broad and the procedural mechanisms deprive plaintiffs of the right to petition.” (p. 24)

“The current statute goes too far by not only protecting against such intimidation, but deprives people of the ability to defend their reputations.” (p. 25)

**MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON JUDICIARY**

**Seventy-Eighth Session
April 24, 2015**

The Committee on Judiciary was called to order by Chairman Ira Hansen at 8 a.m. on Friday, April 24, 2015, in Room 3138 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4406 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda ([Exhibit A](#)), the Attendance Roster ([Exhibit B](#)), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/App/NELIS/REL/78th2015. In addition, copies of the audio or video of the meeting may be purchased, for personal use only, through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

Assemblyman Ira Hansen, Chairman
Assemblyman Erven T. Nelson, Vice Chairman
Assemblyman Elliot T. Anderson
Assemblyman Nelson Araujo
Assemblywoman Olivia Diaz
Assemblywoman Michele Fiore
Assemblyman Brent A. Jones
Assemblyman James Ohrenschall
Assemblyman P.K. O'Neill
Assemblywoman Victoria Seaman
Assemblyman Tyrone Thompson
Assemblyman Glenn E. Trowbridge

COMMITTEE MEMBERS ABSENT:

Assemblyman David M. Gardner (excused)

GUEST LEGISLATORS PRESENT:

Senator Pete Goicoechea, Senate District No. 19
Senator Greg Brower, Senate District No. 15



STAFF MEMBERS PRESENT:

Diane Thornton, Committee Policy Analyst
Brad Wilkinson, Committee Counsel
Janet Jones, Committee Secretary
Jamie Tierney, Committee Assistant

OTHERS PRESENT:

Henry Krenka, President, Nevada Outfitters and Guides Association
Mitch Buzzetti, Private Citizen, Lamoille, Nevada
Walt Gardner, Private Citizen, Ruby Valley, Nevada
Danny Riddle, Private Citizen, Ruby Valley, Nevada
Alex Tanchek, representing Nevada Cattlemen's Association
Regan Comis, representing Nevada Judges of Limited Jurisdiction
Steve Yeager, representing Clark County Public Defender's Office
Sean B. Sullivan, representing Washoe County Public Defender's Office
Kristin Erickson, representing Nevada District Attorneys Association
Brett Kandt, Special Deputy Attorney General, Office of the Attorney General
Mitchell Langberg, Private Citizen, Los Angeles, California
Allen Lichtenstein, Private Citizen, Las Vegas, Nevada
John L. Smith, representing *Las Vegas Review-Journal*
Trevor Hayes, representing Nevada Press Association
Joseph Guild, representing Motion Picture Association of America
Melissa Patack, Vice President and Senior Counsel, Motion Picture Association of America
Marc Randazza, Private Citizen, Las Vegas, Nevada
Ron Green, Private Citizen, Las Vegas, Nevada
Theresa Haar, Private Citizen, Las Vegas, Nevada
Joe Johnson, representing Toiyabe Chapter, Sierra Club
Anne Macquarie, Private Citizen, Carson City, Nevada
John Mehaffey, Private Citizen, Las Vegas, Nevada
Heather Snedeker, Private Citizen, Las Vegas, Nevada
Homa Woodrum, Private Citizen, Las Vegas, Nevada
Ed Uehling, Private Citizen, Las Vegas, Nevada

Chairman Hansen:

[The roll was called and Committee protocol explained.] We have three bills on the docket for today. We are going to start with Senate Bill 129 (1st Reprint)

Senate Bill 129 (1st Reprint): Limits civil liability of certain persons for injuries or death resulting from certain equine activities. (BDR 3-611)

Senator Pete Goicoechea, Senate District No. 19:

Good morning, Chairman Hansen and members of the Committee. It is good to be back on the Assembly side where I served with several of you. I am here to bring you Senate Bill 129 (1st Reprint) this morning. This bill was very well vetted and amended on the Senate side. Senate Bill 129 (1st Reprint) is what is known as the equine liabilities bill. It provides some protection for those people who are engaged in equine activities. If this bill is passed, Nevada will become the forty-seventh state with an equine liabilities law. It is hard to believe that Maryland, New Hampshire, and Nevada are the states without an equine liabilities law. We are in the West, and horses are second nature to us. I do not know if the Chairman would like for me to walk through the bill. It is fairly basic and was very well vetted with the trial attorneys. We did reach a consensus in the Senate, and it was amended to the bill it is today.

We think there are protections in the bill for the equine owner. There were a couple of pieces we were concerned about. If you have a horse in your backyard and you have a secure fence, this helps with liability. In case the neighbor's child happened to crawl in that fence getting by your horse, it removes some of the liability. You have to know it is a nuisance in order for you to not be covered under this law.

The other piece of the bill clearly states that if you are at an equine event, have indulged in alcoholic beverages, and you are riding intoxicated at the event, this does not grant you immunity. If you are negligent, you are not immune under this bill. I think we have touched on all of the pieces of it to ensure that it is a good bill. However, if you are negligent, this will not provide you with immunity. Under normal conditions, it will grant you a level of immunity for owning, maintaining, or using an equine at an event.

Assemblyman Nelson:

I like your bill, Senator. As defined, equine does not include burros. At least I do not see it in the bill. I see horse, pony, mule, hinny, or donkey. By the way, I looked up hinny and now I know what that is.

Senator Goicoechea:

A hinny is a cross-bred animal. Technically a donkey is a burro.

Assemblyman Trowbridge:

At one time, I was responsible for a couple of arenas. One thing that always came up was the condition of the arena itself, such as the flooring. Does this eliminate the liability for a public agency that may be utilizing fairgrounds or a horse arena? One weekend it might be used for one type of activity whereas the next weekend it may be used for another. I am not a horseman, but people argue the preparation of the arena floor is a big deal.

Senator Goicoechea:

Yes, and you will see it in section 1, subsection 5(d) where it says, "'Inherent risk of an equine activity' means a danger or condition that is an essential part of an equine activity, including, without limitation:... (3) A hazardous surface or subsurface or other hazardous condition'." That is part of it; it is something you have in these conditions. There is sometimes an unpredictable reaction of equines to loud noises. These are all things that are part of the bill, and it does not automatically make you liable. This is probably the third time that we have brought this bill forward.

Chairman Hansen:

Is this similar to the bill that Assemblyman Munford has brought over the years?

Senator Goicoechea:

Assemblyman Munford and I carried the same bill last session.

Assemblyman Ohrenschall:

I have seen this bill before, and I am glad you have reached a consensus on it. I am a big believer in equal justice under the law. I do not want to be a "neigh-sayer," but under this bill, will quarter horses and Appaloosas receive the same level of immunity? I would not want inequality under the law.

Senator Goicoechea:

Yes, everyone is treated the same. Anytime you are putting a hinny, a donkey, and a horse on the same level, it is equal.

Henry Krenka, President, Nevada Outfitters and Guides Association:

I have been in business for over 30 years, and I am a fourth generation resident of Ruby Valley. I will provide you with a little bit of history on this bill. The Nevada Outfitters and Guides Association is asking the Legislature to enact an equine activity liability statute for Nevada. We first became aware of such laws through our insurance companies when we applied for liability insurance.

One of the questions we were always asked was if Nevada had an equine activity liability law. Through research, we learned what an equine activity liability law was and that Nevada is one of five states that does not have such a law.

The goal of this law is to further define the duties of the equine owner, sponsor, or professional to the public. The laws also provide the equine owner, sponsor, or professional some protection from possible civil liabilities arising from the inherent danger of an equine activity. The laws are not only useful in defending a lawsuit, but they may deter the filing of one as well.

The key feature of these laws is that an owner, sponsor, or professional is not liable for an injury that is the result of an inherent risk of equine activities. The potential risks are amended in S.B. 129 (R1) as are the areas where an equine owner, sponsor, or professional would be immune from civil liability under the statute. The Legislative Counsel Bureau (LCB) has taken the Montana law and has done an excellent job in drafting a bill catered to Nevada. Two-thirds of the states where such law exists require notice included in the contract or signs posted to the public. The master guides are required to have contracts with their clients, and we will advise our members to include notice of this law in those contracts even without the specific requirements, if the law is enacted.

Mitch Buzzetti, Private Citizen, Lamoille, Nevada:

I would like to thank the Committee for your time today. I think this is a really good bill. I am a horse owner and a guide who takes people into the mountains on horseback. This bill gives me some protection as a responsible horse owner. I would like to see this bill passed.

Walt Gardner, Private Citizen, Ruby Valley, Nevada:

I would like to thank you for hearing this bill. I am in support of the bill. As a rancher, I am nervous when people are around our property. Kids are unpredictable, just as horses are. I do not want to be liable for some kid who may run up behind my horse when I have no control over him. At the same time, it would become my responsibility if the horse were to injure him. I think this bill covers that.

Danny Riddle, Private Citizen, Ruby Valley, Nevada:

I lived in Las Vegas for 40 years. As a retired certified public accountant, I am spending my golden years subguiding and working as a backcountry horseman. I would hate to lose everything I own just because I have mules. I would like for you to pass this bill.

Chairman Hansen:

In front of us are four people who literally spend their lives in the backcountry of Nevada. They have more real-life, on-the-ground experience with wildlife than probably anybody you will meet in Nevada. When I have an opportunity to have four top-notch guides who spend all of these years in the backcountry, it is a unique thing. Being the Chairman of this Committee, I am going to take some liberties to ask you an off-topic question. What is going on with the deer herd?

Walt Gardner:

The deer herd in Area 10 has been decimated. It is the lowest that I have ever seen it, and success is the lowest it has ever been. We are killing fawns and bucks that are not mature. If it was any other kind of animal such as sheep, lions, or bears, and 30 percent of the animals being killed were not mature, we would close the season. What the Department of Wildlife's (NDOW) Fisheries and Game Divisions have has done is disgraceful.

Chairman Hansen:

What about the predator situation?

Walt Gardner:

The predators are rampant. They are running us over, and they are out of control.

Danny Riddle:

Ditto.

Henry Krenka:

I also would like to mention that I have taken a poll of the members in the state. There are 40 members of the association, and not one of them in the last five years has seen an increase in any deer herd in Nevada.

Mitch Buzzetti:

We have struggled with our mule deer herds, especially in northeastern Nevada. I sit on the local advisory board for NDOW in Elko County. It is tough when people come to our local meetings and ask to cut the tag issuance. However, on the state level, we have to deal with the Board of Wildlife Commissioners. Many times we do not get the same recommendation from the state that we got from the locals. It is sometimes hard to go back to those individuals to explain why. When we see the decrease in deer numbers or the increase in

predators, it can be kind of difficult. The hard part of it is that it goes from extremes. It goes from one extreme where we give an overabundance of tags to the other extreme where we have a tough time maintaining a low number of tags. It is frustrating sometimes.

Assemblyman Jones:

You mentioned what the NDOW Fisheries and Game Divisions are doing is not very good. You also mentioned deer tag and predators. Can you quickly frame what the issue is?

Walt Gardner:

In my mind, we have way too many predators, and we are not handling them. They are out of control. At the same time, we are issuing way too many tags for the number of deer we have. Between the two, it is decimating the herd.

Chairman Hansen:

Walt Gardner actually lives in Ruby Valley. The Ruby Range traditionally has had the highest number of big game species of any mountain range in Nevada. Typically, it is one-third of the herd for the entire state. When these guys who live there speak, it carries some weight with me.

Assemblyman Ohrenschall:

I served with my late colleague, Assemblyman Jerry Claborn. He was Chairman of the Assembly Committee on Natural Resources, Agriculture, and Mining. The mule deer herd issue was very important to him. When I served with him on that committee, the big predation issue was the mountain lions. I understand there is now an issue with wolves. I wonder if any of the witnesses could testify about how bad the wolf problem is getting, or is it primarily just the cougars?

Walt Gardner:

The lions are an issue. The wolves have been spotted, but they are not an issue yet. They will be a huge issue in the future. Coyotes are the biggest issue currently. In sheer numbers, they are taking more deer than the lions are.

Assemblyman Trowbridge:

I know where you stand on the issue. I would like to get back to the topic of the bill and my prior question about the preparation of the surface. Does this bill provide any protection for the owner or operator of the facility? This provides protection against people that get hurt. We used to have shows where people would bring in their \$5 million show animal. They would always

threaten that if their horse came up lame because the surface was not prepared correctly, they would sue. Does this provide any protection from lawsuits by the owner of the animal?

Henry Krenka:

Yes, it does. In section 1, subsection 5(b)(1) it says "Shows, fairs, competitions, performances, parades, rodeos, cutting events, polo matches, steeplechases, endurance rides, trail rides or packing or hunting trips."

Assemblyman Trowbridge:

That seems to address the activities that they are involved in. What if someone's horse comes up lame because there were rocks in the area?

Henry Krenka:

Section 1, subsection 3(c) says, "Owns, leases, rents or is otherwise in lawful possession and control of the property or facility where the injury or death occurred if the injury or death was the result of a dangerous latent condition that was known or should have been known to the person."

Assemblyman Trowbridge:

It is a great bill that needs to be in place. Maybe next year we will have to include the animals. I am not going to make an issue of it.

Chairman Hansen:

Thank you for your testimony this morning, gentlemen. I apologize if I took you off topic a little bit. Is there anyone else who would like to testify in favor of S.B. 129 (R1)?

Alex Tanchek, representing Nevada Cattlemen's Association:

I am here on behalf of Neena Laxalt representing the Nevada Cattlemen's Association. The Nevada Cattlemen's Association wants to be on record as being in support of S.B. 129 (R1).

Chairman Hansen:

Is there anyone else who would like to testify in support? [There was no one.] Is there anyone in opposition or in the neutral position? Seeing no one, we will close the hearing on Senate Bill 129 (1st Reprint), and we will open up the hearing on Senate Bill 449.

Senate Bill 449: Revises provisions governing the Advisory Commission on the Administration of Justice. (BDR 14-1140)

Senator Greg Brower, Senate District No. 15:

It is a privilege to be back before the Assembly Committee on Judiciary. Senate Bill 449 is a very simple bill which addresses an advisory commission that I am sure many of you are familiar with. The Advisory Commission on the Administration of Justice deals with the administration of justice. This Commission meets every interim and studies a wide range of criminal justice issues. This bill would simply change the governing statute in two ways. First, it would add an additional member, specifically a municipal judge or justice of the peace appointed by the governing body of the Nevada Judges of Limited Jurisdiction. In my view as a veteran of the Commission, this has been a missing piece. I have spoken with a couple of justices of the peace who have expressed an interest in participating in the Commission, and the consensus seems that it would be a welcome addition. That is the first change.

The second change is found in section 2 of the bill. That change would simply require that during the next interim the Commission study the issue of the parole system of our state. This is an issue that has been kicking around for a while and is something that I have been involved with. I think it is time to take a very serious look at our parole system and whether it works, whether it should exist, et cetera. As many of the Committee members may know, many states and the federal system have done away with parole. They have gone to a determinant type of sentencing whereby defendants are sentenced to a number of months of probation, depending on the nature of the offense, and actually serve that number of months. In the federal system, they may get up to 10 percent good-time credit on the back end.

This bill would require the Commission to study the issue and look into whether or not such a change in Nevada might make sense and, ultimately, whether a bill should be introduced during the next legislative session.

Assemblyman Ohrenschaal:

How do you see the role of the Advisory Commission on the Administration of Justice changing with the new appellate court and possibly using two Supreme Court justices? Do you think they will be able to take on all of the issues they have taken on in the past? Do you think they may have more time and more energy to look at other issues in terms of trying to improve our criminal justice system?

Senator Brower:

My answer would be yes. I am not sure if anyone on this Committee has served on the Commission. Wesley Duncan and Jason Frierson, former members of this Committee, served on the Commission. It is a very busy commission with a wide range of issues. It is incumbent upon the chair of the Commission to do his or her best to rein in the scope and focus on the issues that are most pressing in a given interim period. Your question is a great one. There is always the possibility that the Commission looks at too much. As a result, they may not have enough time to focus appropriately on anything. That is a challenge. The parole system, in light of some recent events and trends around the country, really deserves a careful study. That is what this bill proposes.

Chairman Hansen:

There are 17 members on the Commission. When you get commissions that are that large trying to get a consensus, it is often very difficult to give everyone an opportunity for discussion. Is 17 members too many? You have served on the Commission. Do you think that is an appropriate number, or should it be decreased?

Senator Brower:

That is another great question. I would say that the number works. It sounds like a large number, but in practice, it has not been a problem. We did look at considering the possibility of adding a judge from a court of unlimited jurisdiction. We looked the rest of the list with an eye toward eliminating one or more of the other positions. Quite frankly, they all make sense. We do not have two of anything except legislators, in which case, we have four. We have two members of the Senate and two members of the Assembly. I think we would all agree that is important because we want one member of each party from each body. When you go through the rest of the list, there is really no surplus there. We have considered this factor, and we think that 18 members can work.

Chairman Hansen:

Is there anyone else who would like to testify in favor of S.B. 449?

Regan Comis, representing Nevada Judges of Limited Jurisdiction:

We would just like to say on the record that we would appreciate the opportunity to serve on the Commission.

Steve Yeager, representing Clark County Public Defender's Office:

We are in support of S.B. 449. I look forward to offering my services and input in any way that would help the Commission in the interim.

Sean B. Sullivan, representing Washoe County Public Defender's Office:

I want to be on the record showing the Washoe County Public Defender's Office also supports S.B. 449.

Kristin Erickson, representing Nevada District Attorneys Association:

We are in support of any efforts to improve the criminal justice system. We support this bill.

Brett Kandt, Special Deputy Attorney General, Office of the Attorney General:

On behalf of Attorney General Adam Laxalt who also sits on the Commission, I want to express support for this bill.

Chairman Hansen:

Seeing no further testimony in support, is there anyone who would like to testify in opposition or in the neutral position? Seeing none, we will close the hearing on S.B. 449 and open up the hearing on Senate Bill 444 (1st Reprint).

Senate Bill 444 (1st Reprint): Revises provisions governing civil actions. (BDR 3-1137)

Senator Greg Brower, Senate District No. 15:

It is a pleasure to be here once again to present Senate Bill 444 (1st Reprint). While this is not my own personal bill per se, it was introduced by the Senate Committee on Judiciary, which I chair, and was unanimously approved by that committee. Therefore, I felt compelled to provide introductory remarks.

In addition, I am also here to try to bring some sanity to the debate about this bill. I certainly respect everyone's right to have and to express an opinion about the important matters we take up here in the Legislature, especially bills like this one which implicates the First Amendment. I have been a little surprised by the exaggerated rhetoric that I have seen about this bill. Please know that I, and each member of the Senate Judiciary Committee, care as much about the First Amendment as anyone else in this room. However, there must be a balance.

This is a reasonable bill that would bring Nevada back into the mainstream with respect to important legislation against strategic lawsuits against public participation (SLAPP). These are the facts. First, let us understand that only about half the states even have an anti-SLAPP statute on the books. Nevada has had an anti-SLAPP statute since 1997. I think it is important that we do. Until 2013, when our current statute was changed, it seemed to work pretty well. Our statute was in what we might call the mainstream of anti-SLAPP statutes from around the country. It was not as narrow as most

state's statutes in that it did not require the speech in question to be related to a citizen's right to petition only the government. Also, it was not as broad as a small minority of states whose statutes allow virtually any type of speech to be subject to special protections of the anti-SLAPP statute.

I would submit that ours was sort of in-between and was a very balanced approach. That balance was upset with the change to our statute in 2013. I have to admit to the Committee, what the change brought about in 2013 sort of snuck in under the radar. I think we all know that this happens from time to time. Although I, and a few others on the Senate side, had some discomfort with the 2013 bill, Senate Bill No. 286 of the 77th Session, the opposition was not very strong. None of us are experts in the area, and so the bill was passed without much discussion. Since that time, real experts in this area of the law have had a chance to review the 2013 law and have convinced me and all of the members of the Senate. Although some may now have some reservations, this bill passed 21 to 0 in the Senate.

We were all convinced that the 2013 legislation went a little too far for those who seek justice in the courts when someone has maligned their personal or business reputation by making false and defamatory statements. Nevada's current anti-SLAPP statute substantially infringes on their First Amendment rights. Senate Bill 444 (1st Reprint) is intended to ensure that citizens who speak out on important matters of public concern will have a swift and powerful mechanism to dispose of meritless lawsuits that seek to do nothing more than intimidate and quash such speech. At the same time, S.B. 444 (R1) is also intended that persons in businesses, large and small, who have suffered from false and defamatory accusations and who have evidence to support their defamation claim, will be afforded their constitutional right to a day in court where a jury of their peers can decide the facts. Let me be clear. Under S.B. 444 (R1), defendants accused of defamation will still have all of the constitutional rights and protections afforded by landmark U.S. Supreme Court precedent, like in the case of *New York Times Co. v. Sullivan*, 376 U.S. 254 (1964). Mr. Chairman, before I turn it over to a real expert in this area of the law to talk more about the bill and walk the Committee through the bill and answer the Committee's questions, let me share just one example of what I would submit has been the kind of overreaction that I mentioned earlier.

Yesterday, one of Nevada's newspapers of record published an editorial with a particularly egregious misrepresentation regarding this bill. It read, "SB444 would amend Nevada's anti-SLAPP law by erasing the provision that provides defendants with penalty compensation; by shifting the burden of proof to defendants and requiring them to show a plaintiff's claims are false...." This is simply not true. I would submit to you and the Committee to do your best to

keep your collective eye on the ball. Look at the bill, understand the bill, and know what the bill does and what the bill does not do. In cases where the anti-SLAPP statute would apply, under this bill, the plaintiff alleging defamation would be required to present admissible evidence that the challenged speech is false in order to proceed to trial with the case.

As I have acknowledged, I am not an expert in this very specialized area of the law. Therefore, I want to introduce Mr. Mitch Langberg, a real expert in this area. He has litigated dozens of defamation cases, maybe hundreds, on behalf of plaintiffs, defendants, individuals, small businesses, and large corporations. His clients have included a wide range of business clients including the *Las Vegas Sun*. He was one of the first to notice the flaws in the 2013 statute, and he played a central role in drafting this bill. He is here today to explain the bill in detail and answer questions. With that, I will rest for now. Mr. Chairman, I appreciate the Committee hearing the bill.

Mitchell Langberg, Private Citizen, Los Angeles, California:

I appreciate the time that you have spent trying to learn these issues. Although I know time is limited, I would like to digress. I am a full supporter of every single aspect of the First Amendment. Even my eight- and ten-year-old daughters search my name on the Internet every week to see what they find. They will see that the chief opponent of this bill has called me names that would get me thrown out of here, if repeated. Then I have to explain to my daughters why somebody would do such a thing. I support his right to do that. I support people exercising their First Amendment rights to review and to make truthfully factual statements in criticism of others. I also support the First Amendment for people to exercise their right to petition and to come to the courts to address grievances.

Before talking about the specifics of S.B. 444 (R1), I think the most important thing to do is to address some aspects of the opposition because they are simply not true. First and foremost, the opposition will tell you that to pass S.B. 444 (R1) will be to deprive Nevada citizens of their First Amendment rights; it will eviscerate the First Amendment in Nevada. I find this to be a curious allegation for several reasons. First, the opposition in 2013 said that the new statute that exists today was based substantially on the anti-SLAPP statutes in Washington and California. Many, if not most, of the changes we propose are also borrowed from Washington and California. If this statute is one that eviscerates the First Amendment, the statutes that the current statute was based on also does. As Senator Brower said, about half of the states provide no First Amendment rights because there is no SLAPP statute or at least one that does not protect speech.

When I say we borrow from Washington's and California's statutes, in the anti-SLAPP context, Washington only protects speeches or matters of public concern, and not public interest. This is something that was added by the now-opposition last term. Washington's statute allows a court to grant limited specified discovery in an appropriate case during the SLAPP process. Our current statute does not, and it was intentionally eliminated, even though courts across the country have said that the right to discovery is fundamental to access to the courts and therefore fundamental to the First Amendment right to petition. The California statute only requires a plaintiff to demonstrate prima facie evidence of their claim. That is what we do to ensure there is not a frivolous lawsuit that goes forward. However, the opposition last session demanded clear and convincing evidence. The California statute, which we borrowed from, says if a defendant successfully files an anti-SLAPP motion that is granted, he is entitled to attorney fees. There are no additional penalties. However, according to the opposition, our making that change today also deprives people of their First Amendment rights.

The opposition says that if S.B. 444 (R1) is passed, businesses, particularly those in the electronic media industry, will flee Nevada or not come to Nevada. They say clearly that the standards from Washington and California that have been adopted into S.B. 444 (R1) would be insufficient. However, in Washington, where the standard is public concern and not public interest, and where there is limited discovery, Amazon, which is one of the largest review websites on the Internet, has not left to come to Nevada. Avvo, which is a review website for lawyers, and Expedia remain in Washington. In California, where the standard is prima facie evidence and not clear and convincing evidence, Yelp, Google, Facebook, LinkedIn, Twitter, and Epinions all remain in California, subject to that onerous statute that violates the First Amendment. By the way, Ripoff Report is in Arizona, TripAdvisor in Maryland, and Consumer Reports in New York, and are all review sites themselves. Some consumer review sites are in states where the anti-SLAPP statute does not protect speech on public concern at all, but only petitioning activity. The sky is not falling; and by the way, New York, where they do not have a SLAPP statute that applies to speech at all, is the media, news, and publishing capitol of the world. When the media representatives say that this statute is somehow onerous, we should remember that this bill is one that protects and gives an early remedy for people who exercise their First Amendment right of free speech on matters of public concern to get rid of frivolous lawsuits.

The constitutional implications are important, but there has to be a constitutional balance. We cannot focus on only one constitutional right. The First Amendment not only protects the right of free speech, but it protects the right to petition. The Seventh Amendment gives the right to

a jury trial in issues of law. The *Nevada Constitution*, Article 1, Section 9, recognizes the constitutional right of free speech for Nevada citizens and also says that those citizens must be responsible for the abuse of that right. To deprive a plaintiff with a legitimate defamation claim access to the courts is also to deprive him of his right to protect his reputation under the *Nevada Constitution*.

Why does the current statute go too far? The current statute goes too far because the person is speaking on merely a matter of public interest, not necessarily a matter of public concern, which is one that has political, social, or other community interest at large. In Nevada currently, if there is a matter of public interest, it may be just mere curiosity. Let us assume that somebody knowingly makes a false statement of fact. He will be able to implicate the anti-SLAPP statute. A plaintiff who is seeking to defend his reputation is going to have to prove, in less than seven days, by clear and convincing evidence, every single element of his claim including that the statement is defamatory, false, and in some cases, the defendant knew or had serious doubt about truth at the time the statement was made. While I am familiar with this and I swim in this water all the time, this concept is incredible to me. How can any plaintiff prove the subjective knowledge and intent of a defendant by clear and convincing evidence with no discovery within seven days, unless a defendant has somehow admitted it?

The real question here is, as a matter of policy, do we allow people whose reputations have been maligned by significant false and defamatory statements to have a remedy to repair their reputation? We are not talking about big corporations alone. As a matter of fact, for big corporations, the anti-SLAPP statute is not nearly the disincentive as it is to individuals and small business owners. Because of the incredible penalties under the anti-SLAPP statute and the fact that the burdens are so high, they will have to consider whether or not to defend their reputation and are willing to risk losing their homes, retirement, and savings to do so. If they do not prove their case, they will be subject to attorney fees, penalties, and a separate suit.

A few years ago, I lectured at the local branch of the Association of Corporate Counsel. Despite what you might read, although I live in California, I am a member of the State Bar of Nevada. I have lived here for six years, and a third of my cases are in Nevada. I honestly wish I still lived here. I have a great passion for this subject. I was speaking to the Association of Corporate Counsel, and the lecture was on protecting reputations on the Internet badlands. Basically, what we now know is there is another side to these review sites, which are important and legitimate places to speak one's opinions. Disgruntled employees, former employees, and competitors are using these sites to put up

false reviews that are devastating. There is no way to get these websites to take down the false statements. It is protected under the Communications Decency Act. The fact of the matter is people rely on them. If somebody is looking for a doctor, they go to Yelp. Let us say there are three doctors on there, and for one doctor, there is a completely fabricated allegation of malpractice. The potential patient will not investigate if it is true. The potential patient will go on to one of the other doctors listed rather than take the risk. I am receiving calls from people every day throughout the country having to do with the attacks they deal with on the Internet. There needs to be a remedy.

People speak on legitimate matters of public concern, which includes reviewing goods and services under Nevada law. It is a matter of public concern. They should have their rights too. If a plaintiff is going to come and say that someone speaking on a matter of public concern has defamed him, that plaintiff should be put to the task of showing he has prima facie evidence that the statement was defamatory and false. Our bill does other things to revise this, but these are the main points of concerns. I am happy to answer any questions.

Assemblyman Elliot T. Anderson:

I want to thank you for coming by to help me get through this bill and understand it. It has been a real crash course in the First Amendment and the defamation law. I want to point out that we are academically lucky to have this discussion because it is an interesting area of law. I think we will hear from some very good lawyers, including yourself.

I want to get into the definition of public concern because I think it is a critical piece of this. For better or for worse, we have to talk about it. You sent me some documents yesterday. One of the issues you included was the definition from Washington trying to define what a public concern is. Washington defines it as social, political, et cetera. I am wondering if that definition would be a little bit more inclusive. If the defendant cannot show in their SLAPP motion that it is based on an issue of public concern, the plaintiff could be entitled to attorney fees. With those two elements working together, I think we have to be very careful. I am worried that if the definition is not inclusive enough, it could discourage these motions because people would be on the hook for attorney fees.

Looking at Washington's definition and looking at our definition in section 4, do you think that Washington's definition is a bit more inclusive? It appears to me like it is a little bit broader. Say we have a casino, and someone is concerned about labor policies and how employees are being treated. To me, the Washington definition would protect someone who is speaking out about

employment practices because it fits the social definition. However, under section 4 of the bill, it might be a more general interest definition and it might be excluded. Does that make sense?

Mitchell Langberg:

I understand the question, and it makes sense. I will disagree, however. It feels like this is moot court for a moment. The concept of what is a matter of public concern is well defined in cases both federally and at the state level. I pointed out the Washington case because it had a wonderful discussion about matters of public concern are different than matters of public interest. I think under S.B. 444 (R1), the labor dispute at a casino would clearly fall under a matter of public concern. Let me make a distinction that would apply under S.B. 444 (R1). No matter what we do, there is going to be debate in individual cases, and courts are going to have to decide. A labor dispute or a comment about an employer's employment practices in this community, particularly under *Pegasus v. Reno Newspapers, Inc.*, 118 Nev. 706, 57 P.3d 82 (Nev. 2002), would be matters of public concern. Perhaps an employment dispute that is about specifics such as, my company says I was drinking on the job and I was not, is not one of general public concern, but rather one of a personal, private interest. Under Washington's definition and the one covered by S.B. 444 (R1), it might be different. I do not think it is difficult to parse out what standards there are. There may be some very marginal calls if the standard of public interest is the California standard. There is a great deal of debate about what public interest is. No one is ever going to agree at the line. There are federal cases, particularly out of the U.S. Court of Appeals for the Tenth and Second Circuits, which talk about public employees and when they have a First Amendment right to speak freely and when they do not. The standard is the government can impinge on First Amendment rights depending on whether someone is speaking on a matter of public concern versus private concern. We adopted that, and it is where the second part of the definition comes from.

Chairman Hansen:

Before we go on to further questions, I would like to make it clear that I am going to allow testimony until 9:30 a.m. from the proponents. I will then allow about 45 minutes for the opponents. I just wanted to make sure that you get the people up to testify that you want, Senator Brower. If there are other experts that you intend to have testify, I want to make sure that we can coordinate that correctly. Some of these questions are obviously going to be quite detailed with legalese.

Senator Brower:

Thank you for that reminder; we are cognizant of that. Your question is an excellent one, Assemblyman Anderson. When we started talking about drafting the bill, this issue probably generated the most concern and discussion on my part. With all things considered, this is what we came up with. We had an eye towards coming up with not the best bill for a potential plaintiff, not the best bill for a potential defendant, but the most balanced bill that would work for this type of litigation in the public interest for Nevadans. I think your question is right on target, but we think this is about as good as it gets.

Assemblyman Elliot T. Anderson:

Can you talk about the attorney fees in section 6? As I understand the bill, the defendant would be the moving party. They would move an anti-SLAPP motion and would have the burden to show that it is a matter of public concern. If they cannot, it would lead to attorney fees if there is no reasonable basis found. I am worried about that because the whole idea of a SLAPP motion is to protect litigants that do not have a ton of money. They may be going against someone with deep pockets. Do those folks with deep pockets need those attorney fees? Many times they have folks on staff. I worry that it is a fundamental shift from the idea of an anti-SLAPP motion to protect those smaller litigants. Can you comment on that?

Mitchell Langberg:

Your question is a good one, but it has a false premise. The belief is that defamation plaintiffs tend to be the big guys and defamation defendants tend to be the little guys. If you search Nevada law, you will see that some of our lead cases are public officials or mom-and-pop restaurants that are suing for defamation because they have been financially devastated by the things that have been said about them. If a defendant wins the anti-SLAPP motion, that defendant automatically gets his reasonable attorney fees with no showing of bad faith. If a plaintiff defeats the SLAPP motion, that plaintiff gets his attorney fees only on a showing of bad faith. Remember that plaintiff is also exercising his First Amendment right to petition. Part of my job is difficult because people say First Amendment and everybody thinks free speech. This is a free-speech-protecting statute beyond three-quarters of the states and equal to the rest. The point is that there has to be a remedy. The whole concept behind SLAPP-backs in the current statute recognizes that there are people who will file an anti-SLAPP motion to try to intimidate and financially pressure a plaintiff. There needs to be that remedy, which requires a showing of bad faith.

Assemblyman Ohrenschall:

This is a particular concern to me because back in 1997, Assembly Bill No. 485 of the 69th Legislative Session was sponsored by an assemblywoman from Clark County named Genie Ohrenschall. Therefore, she was the sponsor of this law in its original form. She is still very concerned about it, and I have a couple of questions to ask.

The bill shows text to be omitted from *Nevada Revised Statutes* (NRS) 41.670. That is the chapter that has the penalties for a frivolous or vexatious lawsuit for up to \$10,000. Why is that not adequate if someone is trying to abuse the SLAPP process?

Mitchell Langberg:

The body of S.B. 444 (R1) provides that when a defendant prevails on an anti-SLAPP motion, he is going to be awarded all of his attorney fees. It is the same provision that exists in California, which was one of the alleged models for the bill last term. I appreciate the reference to the statute that preceded last term's statute. It was a good statute and was with the majority of anti-SLAPP statutes. This improves upon it because it expands the First Amendment rights that are covered by the anti-SLAPP statute from that old version.

Assemblyman Ohrenschall:

In section 5 of the bill, we are changing the time periods. Let us say that I am an irate consumer who stands outside of Bob's Used Cars, and I am holding a sign that says "Bob's Used Cars sells lemons. Never buy a car here." Let us say that I do that every day. On January 1, I get served with a defamation suit. Under the old law, I would have 60 days to get an attorney and figure out if a SLAPP suit is warranted with the attorney. However, under the new law, you are shortening it to 20 days.

Mitchell Langberg:

Under old law, you mean current law right?

Assemblyman Ohrenschall:

Under the proposed bill, we are truncating it to 20 days. There are a lot of unsophisticated people who do not have in-house counsel and do not know much about law. It might be that person standing outside of Bob's Used Cars who is worked up and scared who may spend 20 days just trying to figure out which attorney is competent to practice in this area. I wonder if that is wise.

Mitchell Langberg:

There is a missing premise there. Anti-SLAPP motion or not, for a defamation case, contract case, fraud case, or negligence case, that person needs to find an attorney within 20 days because in Nevada, an answer and/or motion to dismiss is due within 20 days.

Assemblyman Ohrenschall:

That is correct. However, finding an attorney and determining the merits of the case and whether a SLAPP motion is warranted are different things.

Mitchell Langberg:

I do agree with that, and the court is allowed to extend it. As a matter of routine, people stipulate to extend motions to dismiss. You will note that in the first instance, the only part of the anti-SLAPP motion is showing that the anti-SLAPP statute applies because it is a matter of speech on a public concern. All of the other issues about the merits of the case are deferred. Honestly, what is required in the first part of the anti-SLAPP motion is much less complicated and takes much less time than a motion to dismiss. With that said, somebody is going to have to find an attorney within 20 days or get an extension to answer or motion. They can do the same thing with regard to the single issue on the anti-SLAPP.

Assemblyman Ohrenschall:

Regarding the argument that seven days is not enough time, and going back to the hypothetical situation of me standing outside of Bob's Used Cars from Christmas to New Year's Day with the sign about Bob selling lemons. Let us say that June 1 of the following year, I get served with the lawsuit. There is a two-year statute of limitations from the time the alleged defamation occurred. Bob's Used Cars would have had two years to sue me. In this hypothetical, they waited six months before serving me with a defamation suit. Is it really too much to ask that Bob defend himself within seven days? He has had six months, and he could have had up to two years to file the defamation suit, feeling that he had been injured by my actions. Is it unreasonable to ask for a reply within seven days? Would 14 or 21 days be a reasonable answer?

Mitchell Langberg:

It would be unreasonable. Once again, you are assuming that the plaintiff has an attorney on retainer or an in-house counselor.

Assemblyman Ohrenschall:

I am not assuming he has an in-house counsel. He does have an attorney because he sued me. I am the alleged defamer, and he is the alleged victim.

Mitchell Langberg:

Eventually he has an attorney. The point is that at the time he realized he has been defamed, unless he is sophisticated, he may not recognize he has been defamed. Even if he does, he has to go and get an attorney. He may not know that until close to the statute of limitations is up. More realistically, in my experience, particularly with small businesses and individuals, the damage that is being incurred can be so substantial that there is no time to wait. As soon as the defamation is posted, as in a case where someone is intentionally making a false statement, you need to take action. You need to file your claim, get it out in the public record, and your sole goal is to be vindicated by a jury. You want to get there as quickly as you can. That seven days can be very onerous. What it sometimes takes is to make a showing of falsity by clear and convincing evidence. To prove a negative by clear and convincing evidence without any discovery and to prove what was in the defendant's mind is an onerous burden.

Assemblyman Nelson:

Thank you, Mr. Langberg, for presenting this bill. You touched upon one of my main concerns with the statute as it is currently written. The plaintiff would have to establish by clear and convincing evidence a probability of prevailing on the claim without any discovery at all. You changed it back to preponderance of the evidence. Can you comment why you did that for those who may not know the difference between those standards?

Mitchell Langberg:

We have changed it in S.B. 444 (R1) to prima facie evidence, which is consistent with the California statute. In the current statute, clear and convincing evidence is something short of beyond a reasonable doubt, which is what is used in criminal court. Some courts have said that clear and convincing evidence is evidence that would give you a 70 percent certainty of truth. Preponderance of the evidence is the standard by which most elements in most civil cases are governed. That just means 50 percent plus a feather to tip the scales. In a defamation case, at trial, the plaintiff only needs to show a preponderance of evidence on all of the elements except for a knowledge of falsity case, which needs to be shown by clear and convincing evidence at trial after discovery.

I appreciate the question about prima facie evidence because I believe that it has been misrepresented. Here is what prima facie evidence has been said to be, but is not. Prima facie evidence is not that you just have to allege the fact and the fact is taken as true until the defendant proves otherwise. That is not true. Prima facie evidence is admissible evidence under the rules of evidence that, if believed, would be sufficient to prove the cause of action. The question

becomes if the legislative intent that was expressed last term is to be accepted. This means that we are looking to find a mechanism to dispose of meritless lawsuits at the beginning of a case. The standard must be one that identifies meritless lawsuits but lets through lawsuits that have merit. The universal standard for that is prima facie evidence. It is the summary judgement standard. For the nonlawyers, a summary judgement is a mechanism by which a defendant or a plaintiff can say that there are no issues of fact that are material and in dispute so the court can decide the case. We do not need a jury because juries decide facts. To oppose a summary judgement motion, all you have to do is show that you have prima facie evidence. This is evidence, which if believed, without regard to the other side's evidence, would carry the day. You have to be allowed to get to trial. A standard at the outset of the case that is already placing an extra burden on the right to petition is understandable when talking about the free speech right on issues of public concern. A standard that is in excess of what everyone else has to prove to get to trial at the outset of the case is not only unreasonable, but it does something different. In meritorious cases, it would be dismissed. We can come up with hypothetical after hypothetical cases that we could agree have merit that would be dismissed under the current statute.

Assemblyman Araujo:

I am looking for more clarification, specifically in regard to section 12. The language changed from, "A cause of action against a person who engages in a good faith communication in furtherance of the right to petition or the right to free speech in direct connection with an issue of public concern is immune from any civil action for claims based upon the communication." It was changed pretty drastically, to "A cause of action against a person arising from a communication in furtherance of the right to petition or the right to free speech in direct connection with an issue of public concern is subject to a special motion to dismiss, and that motion must be granted by the court unless the plaintiff establishes that the claim is not meritless pursuant to section 8 of this act." I am looking for more clarification as to why we changed it so much. As a follow-up, I want to make sure we are not stripping away rights from folks who genuinely made an accusation in good faith without the intent to harm anyone.

Mitchell Langberg:

Thank you for the question, and thank you for your time yesterday. It is a good question. The truth is that the changes in this section of the bill are to provide clarification and give more rights to a defendant. States that have included the immunity language in their anti-SLAPP statutes did so because there was some question in federal court as to whether the federal court would apply states' anti-SLAPP statutes as substantive rights or procedural matters.

Somebody cleverly decided that using the term "immunity" would make it clear that it was a substantive right. It is confusing; it is not accurate to call it an immunity. It is unnecessary, particularly in the U.S. Court of Appeals for the Ninth Circuit, because the Ninth Circuit has made clear that anti-SLAPP statutes are substantive rights that relate to the substantive right of defamation and other claims that may fall under the anti-SLAPP statute. It is not accurate because an immunity is something that is not dependent on whether or not somebody can make a showing if they have enough evidence. That is not an immunity; it is a burden. Therefore, that is not accurate.

We took out the words "who engages in a good faith." We took that out for the protection of defendants because it is my opinion that if somebody is speaking on a matter of public concern, that should be enough to implicate the anti-SLAPP statute putting the plaintiff to the test of showing prima facie evidence. A defendant should not have to show any evidence about whether he believed what he said was true. We are talking about core First Amendment speech while talking about a public matter of public concern. A plaintiff coming into court should be able to show they have some evidence of falsity. We deleted that in order to recognize what I think is an important policy matter in favor of a defendant's First Amendment rights.

Assemblywoman Diaz:

I am still trying to reconcile what is in the bill and the points you are trying to make. Regarding section 6 and the awarding of attorney fees, you said the initial burden shift requires the showing of bad faith. As I read the section, it speaks to a reasonable basis and not bad faith. Bad faith is discussed in a different section, maybe section 8. Am I wrong?

Mitchell Langberg:

You are not off. In all candor, in practice, I believe that something someone does not have a reasonable basis for is something that is done in bad faith. How do you prove that something has been done in bad faith? By showing there was no reasonable basis. I cannot remember every single word, and I cannot tell you honestly whether it was an oversight or whether it was a matter of intent using different terms that are the corollaries of each other, but I think it has the same effect.

Senator Brower:

That is an excellent question, and I was thinking the same thing when I was reading the bill again during this hearing. I think Mr. Langberg is right. Perhaps further clarification or the use of different language might make the bill clearer.

However, with respect to other context, such as Rule 11 of the Federal Rules of Civil Procedure in the civil litigation context, or Hyde Amendment (1997) claims in the federal criminal context, generally bad faith is equated to without reasonable basis. It is an excellent point to raise.

Assemblyman Jones:

I have to confess, this bill is an example of third-year law school. There are so many issues that it could take a week of going back and forth. I am a lawyer myself, although not practicing in Nevada. It is unbelievable how many issues you have in this bill. They are all so technical and so specific that it could take years of analysis. My head is swimming looking at this bill, and I am a lawyer. I can imagine how the nonlawyers must feel. Rather than go further into the weeds, I would rather look at this from a practical application. What is it doing in the real world from a practical application? How is this affecting people? First of all, we had an anti-SLAPP law preventing people from making false statements against others. It lasted for almost 15 years until last session when we had a change. My first question is, what brought about the desire for that change? Why is there now a desire to change it back to shift the burden the other way?

Mitchell Langberg:

The old anti-SLAPP statute that Assemblyman Ohrenschall spoke of was a good idea at the time. Anti-SLAPP statutes were relatively new throughout the country. The original intent of the people who created the idea of the anti-SLAPP statutes was to protect people when they were exercising their First Amendment right to petition only. I can give you a long history, but we will get too far into the weeds. Nevada joined the small minority of states that started to adopt anti-SLAPP statutes. As time went on, anti-SLAPP statutes started to address not only speech that arises from the right to petition but also First Amendment rights that arise from the right of free speech in certain context. Today, that is still the minority of states. If you count the states with no anti-SLAPP statute at all and the ones that only have it for rights of petition, that leaves somewhere near less than a quarter of the states. Contrary to commentary, I feel strongly about the right to free speech. I think it was very important for Nevada to include the right of free speech in the anti-SLAPP statute. The concept of amending the statute last session was a good idea. We took the pendulum from the place where free speech rights were not protected at all, and it has moved to the place where it is too broad and the procedural mechanisms deprive plaintiffs of the right to petition.

During the Senate hearings for this bill, the chief proponent at the time, who is now the chief opponent, was asked directly whether the now-current law would make us like California. He said yes. While there are aspects of the current statute that are like California, we could not be further from California with our anti-SLAPP statute as far as timing, burdens, penalties, et cetera.

Senator Brower:

While this Committee is well aware of our general propensity of not wanting to be like California, I would respectfully submit that on this issue, California has done a pretty good job.

Assemblyman Jones:

I appreciate that, but you are again using a lot of legal terms and jargon that does not communicate on a practical level what the comparison is between the old law, the current law, and the proposed law. You talk about a pendulum, but in practical reality, is this now going to allow rich people to squash the smaller people because they will now have the ability to? Or, did it prevent the rich people before from doing anything because people could do anything they wanted to and they had no rights to protect themselves against slander, et cetera? In a practical way, can you talk in real world language and not all these legal terms?

Mitchell Langberg:

I owe you an apology because you were clear in that part of the question. When we got to the legislative history, I moved off to the stuff that is really technical and interesting to me. As a practical matter, what is the difference between all of these things? I would say we do not need to go back to the original statute because it did not give any extra protection to anyone exercising their First Amendment rights to free speech. Therefore, if somebody big or large wanted to intimidate a potential defendant, there was no remedy there. The idea of the new statute was, if you are going to sue for defamation, you better have some evidence before you start challenging somebody on a matter of public concern or public interest, depending on which statute you are talking about. Basically, if your case is frivolous, we are going to get rid of it early and you will pay attorney fees so you cannot be so intimidating. Both the current statute and S.B. 444 (R1) are designed with that theory. However, the current statute goes too far by not only protecting against such intimidation, but deprives people of the ability to defend their reputations. Focusing on the big, bad bullies is an interesting thing to do because the people who are most harmed by the statute are not the big companies. The people most harmed by the statute are the individuals and small businesses whose reputations are being attacked and have only one forum to get their reputations vindicated having to face potential costs and burdens to do that.

I am going to give you an example of a case where, under the current statute, it would be thrown out, and under S.B. 444 (R1), it would not be thrown out. We are not talking about bullies. The chief opposition will be familiar with this because he was the plaintiff's counsel in this case. There was this revenge porn website. This website was for people who break up with their girlfriends and can post naked pictures in retaliation. There was also an antibullying website. The antibullying website was publicly calling out the revenge porn website guy. The revenge guy started publicly accusing the antibullying guy of being a pedophile and possessing child pornography. As you can imagine, if you are standing up against bullying, the concept that you might be abusing and bullying children into doing inappropriate things is very harmful to your reputation. The attorney for the antibullying guy filed a defamation suit under the original statute. The revenge porn guy did not respond to the complaint, received a default judgement, and the righteous plaintiff was awarded \$250,000.

Let us pretend that same case was filed today. We know that this was a case where the antibullying guy is being knowingly falsely accused of being a pedophile. Today, the revenge porn guy would file an anti-SLAPP motion and say this is a matter of public interest. The guy talks about antibullying and the subject matter of my speech was abuse of children. It could not be more of a public interest and could even be a matter of public concern under our statute. The revenge porn guy would come back and say he has a confidential source who said it was true. Whatever else he says, he lied about the guy and he is now going to lie about his evidence. He now has the anti-SLAPP statute in play. Within seven days, the antibullying guy would have to not only show that he is not a pedophile, but he has to prove by clear and convincing evidence that he is not a pedophile and that the revenge porn guy knew it was false or had serious doubt about the truth at the time. He has to show that by clear and convincing evidence, otherwise the case will be thrown out and he will owe attorney fees plus he can get sued for \$10,000.

Under S.B. 444 (R1), there is a different result. The revenge porn guy is going to say this is a matter of public concern. He will file his anti-SLAPP suit. The antibullying guy is going to put in a declaration showing he is not a pedophile. He is going to get people that know him to testify. He will say there has never been a police complaint about him. He will do whatever else he needs to in order to show that he has at least prima facie evidence of falsity and that it was defamatory. The case will go on, and he will have to show actual malice. All of the constitutional protections that exist will remain in the case. Somebody will argue with me about whether this is how it is going to turn out. I do this a lot, and that is how I think the turnouts would be. We can come up with other examples.

Chairman Hansen:

We are going to move to opposition now, and you will have the opportunity for rebuttal. However, we have 16 people signed up in opposition. I am going to start in southern Nevada.

Allen Lichtenstein, Private Citizen, Las Vegas, Nevada:

I will keep my comments as brief as possible and try to stay out of the weeds. There were a few interesting points made while listening to the proponents. The first point that I always find interesting is that we are among a minority of states that do not have anti-SLAPP laws. It is true, but Nevada is usually ahead of the curve in terms of protecting rights. The fact that most states do not have this, I do not take as a criticism.

I did not hear about any actual case since 2013 that has created the kinds of horror stories that are being presented. We have had a law in effect that does not cause any problems. Some people do not like the language and think it is too far in one particular direction. No one has pointed to a case that egregious results occurred from. The reason for the 2013 amendments was to broaden the scope of the law, which everyone seems to agree was necessary. However, this is all hypothetical.

The one area that concerns me the most is the actual definition in section 4 about an issue of public concern. It describes an issue of public concern as "any topic that concerns not only the speaker and the speaker's audience, but the general public, and is not merely a subject of curiosity or general interest." Just from the plain language, what does that mean? It means everybody. It means stuff like war and peace, the crash of the economy, a volcano, and things that affect everybody. As legislators, you know that a lot of the important work you do which ultimately affects our community does not directly concern everybody in the community. Regulation of particular industries may have some effect in the long run.

Another concern is that matters of general interest are discarded from what is considered public interest. To me, that sounds awfully condescending to the public. I was sitting here trying to imagine each of you going to town hall meetings and telling your constituents the issues that interest them are not really of public concern. None of you would do that because you would have a negative reaction, and rightfully so. The real question for me is a matter of public interest.

What I also found interesting is the case of revenge porn. Does an instance of revenge porn affect the general public, and is it of general concern? I think when we are talking about "of public interest," we have to have a more

expansive definition there because things that start off seemingly of individual interest may end up being something of very important public interest as we dig deeper. If I saw a blog about problems with a homeowners' association (HOA) back in 2006, it does not affect me because I do not live in an HOA. It does not affect a lot of people. Obviously, it had a great deal of effect on Nevada. I can say the same thing about human trafficking or prime mortgages. My biggest concern is to define things that do not affect the general public directly as being equivalent to a simple person-to-person employment type of argument, such as getting caught drinking on the job. There is a lot of law about that in the area of public employment. The law is pretty clear that it takes a pretty expansive view of what is in the public interest and only limits those particular things that truly are purely personal.

Regarding the case of *Pegasus v. Reno Newspapers Inc.*, about restaurant reviews, if you do not go to that particular restaurant, it is really not going to be of a public interest under this definition. Under the normal definitions of the courts, particularly the Nevada Supreme Court as in this case, it would be defined as a matter of public interest. What we are finding in section 4 is a rather severe truncation of what would be considered a public interest. It is to the extent that this section is even saying what interests the public may not be of public concern because the public does not know what is important to them. That is very troubling.

Chairman Hansen:

Are you representing the American Civil Liberties Union (ACLU) today?

Allen Lichtenstein:

I am not representing the ACLU. I am here as a private attorney who has represented many of these cases.

Chairman Hansen:

Vanessa Spinazola sent in a letter in opposition to the bill on behalf of the ACLU of Nevada ([Exhibit C](#)). I just wanted to double-check that with you.

John L. Smith, representing *Las Vegas Review-Journal*:

Thank you for letting me testify today. I come before you as a long-time Nevada journalist and author to voice strong opposition to S.B. 444 (R1). It would make critical and deleterious changes to Nevada's anti-SLAPP law. Legal experts will speak to the damage the changes will do to a law that helps provide an essential protection of the free speech rights for all Nevadans, whether you are speaking in a public place, blogging on the Internet, writing a column, or writing an investigative story for a newspaper.

The legislation arises out of the desire of Wynn Resorts and Steve Wynn, its Chairman, to change a law specifically designed to change Nevadans from practitioners of SLAPP litigation and lawsuits meant to silence criticism. Wynn certainly qualifies on that account. Last year, Wynn sued stock trader and analyst James Chanos after a public talk during an investigative journalism conference where Mr. Chanos warned of an ongoing upheaval in the immensely lucrative Macau casino market that has been so good to Wynn Resorts. Mr. Chanos warned that a crackdown on corruption by the Chinese government would likely have a powerful negative impact on casino stocks, and he was right. Remember, Mr. Chanos was appearing at an investigative journalism conference. Associated with the investigative reporting program at the University of California, Berkeley, the Logan Symposium is attended by hundreds of reporters and hosted by legendary investigative journalist Lowell Bergman of *60 Minutes*. Mr. Bergman's investigative unit last year was busy putting the final touches on its lengthy investigation of Macau's casino industry for a *FRONTLINE* documentary that was to air on the Public Broadcasting Service (PBS). Was the lawsuit intended not only to silence Mr. Chanos, but to chill out that investigative documentary? The very reasonable conclusion is, yes it was. Fortunately, a California court twice dismissed Wynn's lawsuit. By the way, you did not miss the *FRONTLINE* documentary; it never aired.

I know from firsthand experience that Steve Wynn is not shy about using the courts as his personal whipping post. Following the 1995 publication of my investigative biography of Steve Wynn called *Running Scared*, he sued me in a court of comfort and convenience in Clark County. He did not sue over the book, which was factual and gave a balanced look at his meteoric rise in the casino business. Instead he sued over a fragment of a sentence printed in a publisher's catalog advertising the book's publication. It was not the book, not even a full sentence in the catalog, but a factual fragment advertising that *Running Scared* would tell why a Scotland Yard report called Wynn an associate of organized crime. The report said that, and the chapter in the book accurately and fairly reflected the report. During the litigation, Wynn showed his vindictiveness by explaining to a reporter that he would "get Smith's house and bankrupt the publisher." Let me tell you, I was worried sick over the litigation even if I could not quite imagine Steve Wynn moving into my three-bedroom, 1300-square-foot starter home. I was eventually dismissed from the lawsuit, but the publisher was forced to pay to defend the remainder of the litigation. When Wynn won what I consider a kangaroo court decision, the publisher was forced to endure bankruptcy reorganization. The lawsuit was thrown out on appeal by the Nevada Supreme Court, so technically, Wynn did not prevail in court. That was not his purpose, however. His purpose was to punish anyone who sought to take a close look at his personal and business history.

Wynn never collected a dime and lost the lawsuit. I will say one thing for him, he managed to inflict a lot of pain on myself and my family, and on my publisher and his family. I am proud to say that *Running Scared* is still in publication after 20 years, but that status did not come without a hell of a fight.

Wynn is not the only powerful Nevadan to claim offense at critical coverage and use the courts to punish a critic. He is far from it. Around these parts, SLAPP litigation is the sport of billionaires. Nevada has one of the nation's best anti-Slapp laws, and anything less is an invitation to bullies to attempt to drive working reporters, bloggers, and anyone else with a critical comment to ruination. In other words, all Nevadans, not just journalists, need this law to remain strong. We have an opportunity to correct a mistake made recently by the state Senate. You can do your fellow Nevadans a tremendous service by stopping misguided S.B. 444 (R1) in its tracks.

Assemblyman Elliot T. Anderson:

Mr. Lichtenstein, I know you are no longer associated with the ACLU, but I do want to draw on your experience. Can you tell me what you think limited discovery means? That is something that I have some great concern about because discovery can really ratchet up the cost of litigation. It can be used by litigants to abuse other litigants. There are some firms that have entire floors that do discovery requests. I am really concerned about that provision because I can see it being used to ratchet up those costs and bankrupt them even if they technically win the case. What do you think limited discovery means?

Allen Lichtenstein:

As a sole practitioner, I see this all of the time. Large firms will try to paper you to death in order to win the case based on cost. As for limited discovery, I would say the key element there is a question of relevance. It should not be a fishing expedition but to determine things that can be shown to have particular relevance to find particular facts to reach that particular kind of conclusion. We can go off on a particular tangent on how courts tend not to do that, but the idea of limited discovery is important in any kind of preliminary type of procedure such as an anti-SLAPP procedure. I do not think it is necessary to have that type of open-ended discovery, but judges have the ability to limit the discovery to things that are relevant for the particular purpose. In this case, it would be relevant to the anti-SLAPP statute.

Assemblyman Ohrenschall:

Mr. Smith, it was just about a month and an half ago when we had a bill in this Committee having to do with lay justices of the peace. I was informing

fellow Committee members about an excellent justice of the peace that I met as a kid while tagging along with my mother in Clark County. I am talking about Judge Jan Smith and what a great job she did.

My question is for Mr. Lichtenstein. The proposed bill omits text from NRS Chapter 41.670. My question is, are you aware of any hesitancy among our state's judges to impose the fines listed in subsections 2 and 3 of NRS Chapter 41.670 if there is a finding that a party has filed an anti-SLAPP motion with no merit solely in the effort to vex the other party?

Allen Lichtenstein:

I think the answer is going to depend on the judge. I also think that a statement by the Legislature of a very clear intention that these provisions are there to be taken seriously and not just as pro forma would go a long way to avoid those particular problems. Obviously, as we all know, judges have a certain level of independence. However, they also seem to be quite adherent to what they see as legislative intent. Clear legislative intent would be very helpful.

Assemblywoman Diaz:

This question is for Mr. Smith. On a national level, we are seeing that First Amendment rights are being annihilated. People in power basically get to dictate what gets printed in the press. As a reporter, if this law were to move forward, what do you think would be the ripple effect to you and fellow journalists? Would you still be willing to report things that you know can put you in a bad situation, or are you just going to say what you think people are going to want to hear?

John Smith:

A lot of it depends on the institution. My newspaper stands up for not only what I write but also for the staff in general. The institution is always important. There is a case currently pending in which a *Wall Street Journal* reporter has been sued individually by Sheldon Adelson. It was the reporter that was sued and not the newspaper. Folks who follow anti-SLAPP issues are certainly keeping an eye on that. There are challenges everywhere. I think the more you are out on your own as a freelancer, the tougher the job is. There is an expression that we use in our craft called the chilling effect. What happens quite often is even when lawsuits are not filed, when laws change to favor powerful potential plaintiffs, it seems to have a chilling effect on the ability of folks to be aggressive news gatherers, critics, and commentators. Those protections are essential, in my opinion.

Chairman Hansen:

Can I relate to that? The chilling effect of an opinion columnist running for office, Mr. Smith, I think you can appreciate where I am coming from with that. Thank you both for your testimony this morning.

Trevor Hayes, representing Nevada Press Association:

As I testified in a committee yesterday on a different bill, the current state of the press and the business model has changed. Mr. Smith talked about how the *Las Vegas Review-Journal* has stood up for him and its reporters throughout history. I believe that some of the other Nevada papers have done so too. In a time where newspapers are struggling to survive, to ask a newspaper to back one of its reporters to the tune of hundreds of thousands of dollars of litigation costs is a tough thing to ask them to do. You are going to have publishers and editors sitting and talking about the financial cost of writing the story, instead of asking if it is important for the readers, for legislators, for citizens to know. Is it going to be a good story, providing good reporting? It is honest and nondefamatory? Instead, the question is going to turn to how much money is it going to cost us to defend ourselves in a defamation case. Having strong anti-SLAPP laws makes that question a whole lot easier to answer.

Mr. Smith's book was written in 1995. Assemblywoman Genie Ohrenschall drafted the first anti-SLAPP law in 1997. He and his publisher could have gone through a lot less hassle on a case they eventually won had there been a strong anti-SLAPP law in place.

I want to apologize to Senator Brower because we missed this bill when it was being heard on the other side. This is a bill that is one of those solutions searching for a problem. We have heard of no case filed because of this statute that has been in place for two years. If you have read anything in the last week on this bill, everyone from bloggers to libertarian groups like *Reason* magazine to general interest newspapers in every corner of our state and others have stood up to say the anti-SLAPP law we have in place currently is a great law that protects free speech.

Mr. Langberg pointed out certain things in S.B. 444 (R1) that exist in other states. He did not point out a state that has all of those things. He said it is not a problem to have the prima facie standard that California has. It is not a problem to have the public concern that Washington has. It is not a problem to have the lack of penalties that this or other states have. Basically, there are bad parts to these other states' laws and no state, until Nevada, has tried to put

together all these bad things into one bill. Let us not do that. We have the best anti-SLAPP law in the country, or close to it. We have taken the good parts from other states. Let us not knock that down.

One of my biggest concerns is shortening the time from 60 days to 20 days for someone to file. If you are hit with a defamation suit, whether you are a sophisticated or unsophisticated defendant, it takes some time to get your bearings about you. You do not see this coming most of the time, even if you are a newspaper reporter and you think you have done a great job. All of a sudden you are hit with this. It takes time to go out and find the right attorney. If you are a less well-heeled defendant, it may take your meeting with several attorneys because you do not have the money to pay and are looking for someone to do it pro bono or on a reduced basis. Giving someone 60 days is not going to have a negative impact on the plaintiffs in this case.

Regarding changing the standard to prima facie evidence, prima facie evidence says that if I have admissible evidence, it has to be accepted as truth. The standard is, if I have admissible evidence, the court has to look at it as if it were true. The other side now has to have the burden to prove that it is false. Therefore, it is shifting the burden unlike what was testified to earlier. This will not stop good defamation cases from going forward. If someone makes a defamatory statement, those cases will go forward. What this does is stop someone from having a vexatious, penalizing, chilling effect, defamation suit against the rightful actor who spoke properly and spent three years going bankrupt to defend his right to speak freely. So much of what I wanted to say I believe was covered by Mr. Lichtenstein and Mr. Smith. The Nevada Press Association and I believe the law as it stands is fine the way it is.

Joseph Guild, representing Motion Picture Association of America:

I would like to apologize to the Chairman of the Senate Judiciary Committee. I have talked to him in private about this. Frankly, we missed this bill as well when it was on the Senate side. We do have concerns and believe it is an infringement on First Amendment rights. As most of you know, I am a Nevada lawyer for more than 30 years. I am licensed to practice in California as well. Frankly, I know a whole lot more about equine liability than I do about the First Amendment and SLAPP lawsuits. In that regard, I will introduce my colleague.

Melissa Patack, Vice President and Senior Counsel, Motion Picture Association of America:

I appreciate the opportunity to testify regarding S.B. 444 (R1). The Motion Picture Association of America is the trade association for the major producers and distributors of filmed entertainment content across all platforms

from theatrical to motion pictures to programming for cable, over-the-air broadcast, satellite television, and the Internet. Our member companies include The Walt Disney Company, Fox Filmed Entertainment, NBC Universal, Paramount Pictures, Sony Pictures Entertainment, and Warner Brothers. CBS is an associate member. I am here to explain why we oppose S.B. 444 (R1) and to offer our suggestions for amending the bill.

Anti-SLAPP laws exist in some form in 29 states. They are very important to our member companies as entertainment companies are frequently sued on a variety of theories from someone who believes they were not portrayed accurately in a motion picture to a news outlet over the reporting of a news story. These types of lawsuits implicate the First Amendment and are often filed because a plaintiff disagrees with what one of our companies or its affiliates has said or disseminated. The ability of the defendant to bring an anti-SLAPP motion can resolve the case efficiently and economically—preserving the defendant's First Amendment rights.

The bill pending before this Committee moves Nevada's anti-SLAPP law in the wrong direction. It would make the anti-SLAPP motion a complex two-part process. I think that has not really been discussed. That is one of the major changes. It bifurcates the process. The first proceeding would be whether the matter is of public concern. If the moving party establishes that, it goes on to the so-called merit. It is really in two parts and really increases the complexity of a SLAPP motion rather than what the SLAPP motion is designed to do, which is to expedite a resolution of the case.

The bill sets an unrealistic time barrier for the filing of an anti-SLAPP motion. Many defendants will not have the ability to comply with that short 20-day requirement. The bill also narrows the issues that can be subject to an anti-SLAPP motion from an issue of public interest to an issue of public concern. We also believe that narrows the focus. When a plaintiff files a lawsuit that implicates the First Amendment rights of a defendant, the plaintiff should have sufficient information that supports his or her claim. When the defendant files the anti-SLAPP motion, the plaintiff should have to come forward with evidence that is sufficient to support every element of his or her claim. It is important that the court have enough information to determine that the plaintiff can establish a legitimate claim.

The bill also took us by surprise since the Legislature amended Nevada's anti-SLAPP law in 2013. We are not aware of any court decisions that could be motivating this effort to roll back a very good law. To the extent the Legislature has the desire to revisit the law, we respectfully request you consider turning to

your neighbor to the west. The California anti-SLAPP law enacted in 1992 strikes a good balance. It allows the defendant the opportunity to seek dismissal of a case that seeks to stifle the defendant's First Amendment rights, and it does not dissuade plaintiffs from bringing claims in the first instance. I am happy to talk further about California's law. I also have some examples of cases that have been filed against our companies and how the SLAPP motion has worked to resolve these cases expeditiously. Thank you, and I appreciate your consideration.

Marc Randazza, Private Citizen, Las Vegas, Nevada:

I am here in opposition of S.B. 444 (R1). I practice defamation law extensively. I am licensed in five states. I am actually sitting for the Ontario, Canada bar exam this summer. I have worked on defamation cases worldwide, including one recently in Zambia. Let us just say that I am obsessed with this area of law, and not just on the defense side. I believe in protecting people's reputations. I believe in people being responsible for the exercise of their right of free speech. I have my name on a number of plaintiff's cases, as pointed out by the proponents. The majority of them have been in states where there is an anti-SLAPP law like the one we have now. I have no fear of this law when I am signing a complaint on behalf of a plaintiff because I do my homework first. I sit down and use some of that statute of limitations time to make sure that we are ready and have our evidence. Frankly, I get calls frequently from people who ask me to file the suit even though there is not much of a chance of winning. They suggest that we drive the defendants into discovery knowing the defendants do not want that. When that happens, I hear the cash registers ringing in my ears, and I think that I can keep this case going for 18 months or so. I do not use my law license that way, and I will not do it because I believe in freedom of expression. I do not believe in bullying people with lawsuits designed to suppress their First Amendment rights.

I want you to think about something. There are a lot of people talking about the technical aspects of this, which I really wanted to talk about. However, they have already expressed it eloquently and perfectly. I just want you to think about the spirit of what is happening here. The intellectual spark of the American Revolution was lit in a defamation suit. It was a seditious libel suit filed pre-Revolution against Mr. John Peter Zenger, by the then-governor of colonial New York. All they had to prove at that time to punish Mr. Zenger was that he published it. It was a prima facie case. The jury in that case refused to convict him despite the fact that the law required them to. From there grew our freedom of the press. From there grew our theories of free expression that continue to this day.

I believe its high-water mark in this country was in 2013 when this body passed the current anti-SLAPP law. I was involved in drafting the current anti-SLAPP law, and I was involved in advocating for it. I did not get everything I wanted. I would have seen it go a little further. We really looked to Washington to our inspiration, which was an evolution of Oregon's law, which was an evolution of California's law. One thing I wish we had put in there from Washington is the fact that these attorney fees can also be imposed on the attorney who brings the action. I am not going to make myself very popular with other members of the bar calling for liability for us, but I think if you want to amend the statute, put that in there.

I want to talk about the functionality of the 2013 law. As soon as it passed, I was able to go to clients of mine who run media companies and tech companies and say now we have the best one; move here. I did move some of them here. I am in the process of trying to move a Yelp competitor here. They are currently in New York. I have explained to them that they will be under this umbrella. It is true that they are protected under federal law from liability for anything that someone puts on that consumer review site. That is not an immunity from a lawsuit, however. I have many active cases on behalf of this client currently. Many of them begin with a phone call from a plaintiff's attorney who says, I know we will not win at the end, but do you really want to spend tens of thousands of dollars defending this? Or, do you want to pull this one review down? That does not infringe on my clients' rights. That infringes on the free market and the marketplace of ideas. That hurts the people who go to this review site looking for information about goods and services that they are going to consume. It is an artificial finger on the scales of justice and on the scales of the free market.

I do not fit into any camp whether liberal or conservative. I am very much a free-market libertarian. I seem to only wind up defending the little guy. This bill really eviscerates the statement that this body made in 2013 that we are going to be a bastion of liberty. Other states do not have laws this strong. Ohio and Pennsylvania are currently looking to us for inspiration. They are working on laws that are going to be mirrors of ours. Florida is on the verge of passing its own anti-SLAPP law partly inspired by us. We are standing at the top of the mountain here, and we want to climb down lower than we were when we passed the law in 2013. This statute is terrifying for a defendant. I can answer any specific questions you may have. I have my head into this thing very deeply, but I do not want to go off on my speech about liberty and the economy too much more.

Chairman Hansen:

Before I go to questions, this is just a reminder that I have another six people in southern Nevada that would like to testify. Since three of them are ordinary citizens, I want to make sure I give them an opportunity. Let us question these three and then we will go to the others.

Assemblyman Jones:

I do not want to get into the weeds because there are so many constitutional issues and technical legal issues. We had the original law that Assemblywoman Genie Ohrenschall brought about. What caused the change to go to the law that exists now, and what is really driving the change back? I would like the practical application for people and businesses in society. Why did we change it in 2013 and why are we trying to change it again in 2015?

Marc Randazza:

The pre-2013 law was way too narrow. It only applied to petitioning activity and not free speech. We expanded it for that purpose. There was also a question as to whether it would provide for an interlocutory appeal; it did not. If you lose an anti-SLAPP motion, it is not much good to you that the plaintiff's case was frivolous and you figure that out three years later on appeal after spending \$100,000; you are already dead. It allows you to immediately have that denial reviewed, which is very important. The current statute provides for your immunity from suit as a substantive right. What is beautiful about that is that it applies in federal court. If somebody decides to try to prey upon a Nevadan or a Nevada-based business, bringing them to court in a state that does not have an anti-SLAPP statute, which is a creative approach that is tried once in a while, you can attempt to use choice of law to have our SLAPP law applied in the other state. It is not always successful, but if we want to update our law, we could possibly sure-up that right.

The other things that were in the original law were great. Another issue is S.B. 444 (R1) completely and totally repeals the SLAPP-back law. I do not know why we would do that because it provides penalties for somebody who does abuse this law and is not scared of a \$15,000 legal bill that might get imposed on them for trying to take someone to task for simply exercising his First Amendment rights. If you want to know about this in very simple terms, it does not change the end result of the case. All that S.B. 444 (R1) does is narrow the class of cases and makes it harder to employ the statute to get rid of frivolous cases early. The end result of the case is the same. You just do not get there until you have gone through 36 months of litigation.

Assemblyman Elliot T. Anderson:

This question is for Mr. Randazza. I would like to ask you about section 12. We have heard some discussion about what section 12 would do. When Mr. Langberg came into my office, he mentioned the Ninth Circuit case which declared SLAPP suits to be substantive and would, therefore, apply if the forum court is outside of Nevada. Is that your understanding? It does look like section 12 crosses out the unity provision, which is loss-allocating and, therefore, substantive under a conflicts analysis. Can you comment generally on the totality of the case law and what this strike would do?

Marc Randazza:

I will talk about the Ninth Circuit case issue. The Ninth Circuit did not hold that anti-SLAPP statutes apply in federal court as a blanket statement. In fact, there have been federal appellate courts that have looked at other states' anti-SLAPP laws and said that since they are procedural and not substantive, they do not apply. Most notably, the Eleventh Circuit looked at Georgia's anti-SLAPP law, which is really similar to the West Coast states. However, it threw in a procedural element that controlled the statute. Most states will look at a legal issue and will not say that the whole case is governed by one state's law. Maybe the defendant's immunities are under one state's law, but other issues are under another state's law, or could even be the plaintiff's responsibility. It is not true that anti-SLAPP laws automatically apply in federal court. Only their substantive issues will apply. Assemblyman Anderson, you get an A+ for identifying that issue.

Ron Green, Private Citizen, Las Vegas, Nevada:

I am Marc's partner at Randazza Legal Group. I am also a 15-year Nevada resident. Unlike Mr. Randazza, I am not a nationally renowned First Amendment attorney. I practice primarily in trademarks and copyrights. I am not going to discuss the technical aspects of S.B. 444 (R1) or the current anti-SLAPP law. I am just going to tell you about what I have seen over the past 18 months.

Chairman Hansen:

Are the both of you with Mr. Randazza at the law firm? He has already testified, and I want to make sure I provide the opportunity for other folks to testify. If all three of you are basically representing the same view, I will have to stop you, unless you have something very specific and new to add that he did not testify to. I would like you to limit your testimony to new material only. Frankly, we are up against a time window.

Ron Green:

I am going to testify as to what I have seen the current anti-SLAPP law do. I have seen it interest media, technology, and entertainment companies in Nevada. I have seen those companies relocate to Nevada. After this bill was introduced, I have seen those same companies say that they may have to leave if this bill is passed. This bill is bringing business here and makes our citizens' First Amendment rights arguably the strongest in the nation. It does not make sense to pare that back when we are currently the leader. I do not want to see us become a follower again.

Theresa Haar, Private Citizen, Las Vegas, Nevada:

I am also an attorney with the Randazza Legal Group. I am a 25-year resident of Nevada. In addition to being licensed in Nevada, I am also licensed in New York. The difference between the progression in litigation in states that do not have anti-SLAPP laws versus Nevada is remarkably different. As Mr. Smith spoke about the chilling effect in states where there is no anti-SLAPP statute, we have had clients that have had no other option than to simply forgo their rights because they cannot afford the tens and hundreds of thousands of dollars that years of litigation costs. The anti-SLAPP statute that Nevada has is remarkable because it can afford people the opportunity to recover attorney fees. We have taken a number of cases on a contingency basis knowing that they will be made whole again by the award of attorney fees at the end. If you value your own opinions, if you value the opinions of Nevadans, and if you respect your right to express your opinion and to stand on your truth, I urge you to be in opposition of S.B. 444 (R1).

Joe Johnson, representing Toiyabe Chapter, Sierra Club:

We are here in opposition of S.B. 444 (R1). I am happy to be here this morning. It has been a long time since I have been before your Committee. I was around here in 1997, when the original bill was passed. I was once an Assembly member and a member of the Assembly Committee on Judiciary. I am testifying today as a geologist. The weeds overwhelm me, but there are very significant reasons to leave the existing law alone. There are some proposed amendments that may clarify things. It is a very good bill, but I would like to go on record as opposing its passage.

Anne Macquarie, Private Citizen, Carson City, Nevada:

I am here speaking on behalf of myself and the Sierra Club. I am a citizen of Carson City. I urge you to oppose S.B. 444 (R1). As you have heard, we currently have a strong anti-SLAPP law on the books. If S.B. 444 (R1) is enacted, I believe it will greatly gut this law and diminish our right to free speech in Nevada. As you know, SLAPP lawsuits are used as a way to punish small organizations and individuals with sometimes years of attorney fees in

order to scare us from speaking out against the actions of powerful businesses and individuals. The name really does say it all—strategic lawsuit against public participation. My colleagues and I are all about public participation. I belong to, and have worked for, organizations that can be and have been threatened by such SLAPP suits. This bill would remove the vital protection of the existing law from the active citizens and small businesses of Nevada. I believe it does not help the citizens of our state.

John Mehaffey, Private Citizen, Las Vegas, Nevada:

When the 2013 law was enacted, I read about it in tech magazines. It essentially advertised our state as the place to move your tech business, especially if you were involved in the media or speech issues. I was about to leave the media business because I was burned out, but this got me excited about the First Amendment and invigorated my career. Part of my job involves the online poker industry. I help expose scams of the offshore sites from other states. There are a lot of bad characters in that industry. For the past few years, I have been part of exposing them and helping to advocate for players to not only avoid the scams but to get the industry legalized in their own states to protect them. It is a very heated debate. When the anti-SLAPP law was enacted, it gave me the reason to stay. I was going to move and get into another industry. It completely changed my mind.

One benefit of my business is that 100 percent of my revenue comes from outside of Nevada. Some of it even comes from outside of the country. Not only do I not take a job from somebody else, but I am creating jobs when I spend the money in Nevada's economy. I was also able to talk two other businesses into moving here specifically because this law exists. I am prepared to move to Texas if S.B. 444 (R1) passes, because they have an enacted law that is almost identical to ours.

I have been threatened by people who did not like that I exposed their business practices. In 2014, I received a letter from someone who was trying to use me as leverage against somebody he was angry at. I sent this person a link to our current anti-SLAPP law and suggested he read it. I never heard from him again.

My main concern about S.B. 444 (R1) is the change of definition on what is qualified speech. I work in the online poker industry, and most people do not care about that. I do not think that would fall under the new definition. Suddenly, I am going to be exposed to things that are freedom of the press simply because it is not considered to be a wide public concern issue. I feel that all speech should be covered. Whether it is factual or is someone's opinion, I do not think we should separate one thing from another. Just because you disagree with me or think the topic is of no interest to you does

not make it have any less effect. If I can prove that something has an effect, it should fall under this law, and I should be able to get a charge against me dismissed. I have never been involved in a lawsuit like this, but it is a concern when you work in media. You have to protect yourself.

My family planted roots here after this law went into effect. My wife is going to be a teacher in the Clark County School District this fall, and my kids are involved. We are all involved in the community. I want to stay here, but I am really prepared to leave if this passes. I do not see any reason to stay and continue on with the type of business that I operate. [John Mehaffey also submitted written testimony ([Exhibit D](#)).]

Heather Snedeker, Private Citizen, Las Vegas, Nevada:

I am a current law student at the William H. Boyd School of Law at the University of Nevada, Las Vegas. I am also a member of the Federalist Society at the law school. While I do not believe that First Amendment speech is particularly a partisan issue, I will be especially surprised if the conservative members of this Assembly are for S.B. 444 (R1).

First Amendment principals are the cornerstone of our foundation and our tradition as a nation. From the John Peter Zenger trial of 1735 to *New York Times Co. v. Sullivan*, it is clear that defamation claims must be absolutely proven by the plaintiff just so that we can all protect our rights to free speech. Lowering the standard to prima facie goes against our own principals as a nation.

I would also hope that Senator Brower or other proponents of this bill do not let a personal vendetta against a particular attorney who is leading the opposition against this bill cause them to sell out their own constituents. Voters in 2016 will not take too kindly to their assemblymen and assemblywomen selling out their rights for financial and personal reasons. Therefore, I urge you all to vote no on S.B. 444 (R1).

Chairman Hansen:

Thank you, although I would appreciate no ad hominem attacks on the persons bringing the bills forward. Frankly, this is not the place for that.

Homa Woodrum, Private Citizen, Las Vegas, Nevada:

I have lived in Nevada for 15 years, both in Las Vegas and Winnemucca. My practice focuses mostly on elder law and guardianship. I am also a food allergy blogger and cofounder of the Allergy Law Project, a blog that focuses on disability rights related to individuals who suffer from food allergies. I mention this because the intersection of being an attorney and being part of a narrow

online community results in contacts who reach out to me when they receive requests to remove content on their personal blogs. These individuals wonder about their rights and may opt to take down information rather than wrangle threatened legal action. Other individuals contact me after anaphylactic reactions wondering what they can or cannot say about their experiences out of a desire to keep others in the food allergy community safe. Some examples are a mother whose son was served real milk instead of soy milk; a college student being served his allergen knowingly by a barista; or a visitor to Las Vegas for a convention being served nuts and being left to administer his own epinephrine by hotel staff. Every single one of these individuals opted not to share their stories because of a commonly held notion that they cannot speak out against companies with big pockets without risking suit.

The way S.B. 444 (R1) is written, I would have to advise them that the risks are indeed too high. A suit can still be filed and the expense of a defense incurred even if you ultimately prevail. There are others, like Mr. Randazza, who I respect as a nationally recognized First Amendment attorney, that can speak more pointedly about the nuances of S.B. 444 (R1). I am here to add my voice because I think this is an access to justice issue. I imagine some attorneys would see S.B. 444 (R1) as job security. I would rather see continued protective measures available to the host who would be crushed by the expense of defending litigation. A plaintiff always has a choice to do a cost-benefit analysis before initiating suit. *Nevada Revised Statutes* 41.670 is a necessity in the digital era. As a Nevadan and attorney and a mommy-blogger, I thank you for your time and I urge you reject S.B. 444 (R1).

Chairman Hansen:

I see no questions. Thank you both for your testimonies. We are going to move to the neutral position on S.B. 444 (R1). Seeing none, I will bring Senator Brower and Mr. Langberg back up.

Senator Brower:

Mr. Langberg is going to begin by addressing a few points in rebuttal. I will then wrap things up.

Mitchell Langberg:

I want to say that I appreciate the policy decisions to be made in this, and I appreciate the portion of the opposition that has engaged in some intellectual debate about it. I think that is important and part of the First Amendment.

Changing the law by adopting S.B. 444 (R1) does not mean defendants do not have all of their constitutional rights and the ability to defend themselves against a defamation claim that has shown initial merit. With apologies to Assemblyman Jones, I realized that I half-answered your question, but I would like to fully answer your question now. People have said that there is no example of a case that has been filed that has somehow been harmed by the existing law. That is because when somebody is considering a case, particularly a case that requires proof of knowledge of falsity, it cannot be filed under this statute. That is not theoretical; that is real. There is more than one case that I have filed for Nevada businesses in other states because we could not proceed here. In other states, courts have found claims to be meritorious enough to proceed past initial motions. It is a practical effect. I also told you about the doctor on Yelp who has been falsely accused of committing malpractice. That is a real case that could not be filed here because he would be putting his finances at risk if he could not show clear and convincing evidence that the person knew it was false even though it was false.

I will reframe the premise because everyone is talking about First Amendment rights and free speech. The question is, when somebody is accessing his or her First Amendment rights to petition, what should be required? Why should he or she be required to do something that no other plaintiff has to do to prove he or she has evidence to support the case at the very beginning of trial? How much are we going to burden the First Amendment right to petition with our SLAPP statute? This is a balancing and a policy decision. The description by the Washington appellate courts, which I can make available to anybody, talks about the difference between matters of public concern and matters of public interest, and why one might get more initial protection than the other. It is a very good analysis to explain this. If it is a matter of public interest, people will still have all of their constitutional rights to be able to defend the lawsuit. Everyone who is a defendant in any lawsuit has to face the possibility that they may have to spend a lot of money to defend themselves. What is going to be subject to this special notion?

I want to clarify how this bill came to be and who is behind it in order to affect the ears with which listening occurs. I missed it the last time around. As soon as the statute that exists came out two years ago, I recognized what I think are very serious issues that impinge on the First Amendment right to petition. I started working very hard and talking to lots of people about how to do this because I am not familiar with the process. I am thankful for a client that I worked for in the litigation context whom I no longer work for today. When the negative impact that this could have on businesses was explained to my former client, he agreed and was willing to put his "know-how" behind it and assisted me to get this bill to you today. That is how we got here.

I want to make something else abundantly clear. I am very familiar with the case that Mr. Smith spoke of. I am talking about the Wynn case out of California against Mr. Chanos, which was recently dismissed. It should not surprise you that I disagree with the court's decision and we are appealing. If the same judge was considering the same case under S.B. 444 (R1), the case would have been dismissed. What S.B. 444 (R1) does is ensure that meritless lawsuits are dismissed. I hear cries for examples which I have now given you. What you have not yet heard is an example of a meritless lawsuit on a matter of public concern that would not be dismissed under S.B. 444 (R1). You will not hear that because we worked very hard to balance the First Amendment rights to have meritless cases dismissed with the interest of plaintiffs having cases that meet the minimal standard get to the next step where there are even more constitutional protections that a defendant might use to have the case dismissed.

Somebody said that we have the best anti-SLAPP statute in the country. With a caveat, that is actually true. We have the best anti-SLAPP statute in the country if you believe that people whose reputations have been maligned and damaged in public should not have a right to seek redress in the courts. Certainly, if I ran a newspaper or media company, my preference would be to repeal all defamation laws because I do not want to answer those questions at all.

Assemblyman Anderson asked about discovery and what limited discovery means. Fortunately, both the states of Washington and California have recognized discovery is a constitutional right when it is controlled by the courts. They have litigated this very well. In the context of an anti-SLAPP motion, discovery can only be granted when the court finds there is good cause and approves the specified discovery request. Therefore, you do not get your discovery templates and send them all out. The court is going to approve the specific discovery requested.

There was a question about the current penalties for SLAPP-backs and whether judges are reluctant. I cannot tell you what happens in Nevada. There is not a lot of anti-SLAPP litigation here because cases are not being filed, and sometimes they are meritorious cases that are not being filed. From experience in California, where I have litigated anti-SLAPP cases, judges are very reluctant to do it. They have just told the defendants that they have lost on their anti-SLAPP motion and will have to spend the money to defend the lawsuit because there is merit to it. They are very reluctant to also say the defendant will have to pay attorney fees on top of that. They usually defer it until the end of the case. As you know, most cases do not ever get to the end.

I believe I have addressed the major concerns that stood out to me. If the Committee has any further questions, I am happy to answer them.

Senator Brower:

We appreciate the chance to have this very productive dialogue, and I know Mr. Langberg appreciates all of the excellent questions from the Committee.

I would like to make a few closing remarks. First, I would like to address Ms. Snedeker if she is still listening. I really appreciate law students participating in the process. I, too, am a member of the Federalist Society and have been since law school. I currently serve on the Executive Committee of the Federalist Society's Criminal Law and Procedure Practice Group, and I am a proud member of that group. I am also an adjunct professor at Boyd School of Law. I respectfully suggest to Ms. Snedeker, if she is interested in becoming an effective legislative advocate, she might want to think about taking the course on legislative advocacy. Frankly, I have no idea what she was talking about when she mentioned personal gain or vendetta. I thank you, Mr. Chairman, for trying to restore some decorum to the Committee's process.

From my perspective, we did not make a statement on this issue during the 2013 Legislative Session. That was a bill that probably did not deserve enough debate and scrutiny. A few of us were uncomfortable during various provisions. To say that the 2013 Legislature made a statement about what the policies should be is a gross exaggeration. We can make a statement this session in trying to restore some balance to the situation.

I want to commend Assemblyman Ohrenschall and his mother, whom I served with in this body. I know she is very proud of the 1997 law, and she should be. It is a good law. We think that S.B. 444 (R1) is an improvement upon that and we also think it is necessary change given what happened last session.

As Mr. Langberg said, we only have the best statute in the country currently. If you are a person who wants to engage in defamation with impunity, we have a pretty darn good law. If you are a potential plaintiff or defendant in a defamation case, I would respectfully submit that S.B. 444 (R1) represents a much better law and a much better process for litigating such disputes. The only goal of mine in supporting this bill and testifying before you today is to protect the right of both plaintiffs and defendants in these cases. That is what this bill does and why we think it is important.

I have watched this Committee closely over the last three days, and I have been impressed. I know you will focus on the real issues presented by this bill and that you will do your best to ignore the background noise, some of which we heard today. It is an important issue, and we need to get this right. This is not my bill, but I have interjected myself into this issue because I think it is important. I, Mr. Langberg, and others stand ready to work with this Committee to make this bill the best it can be. We understand your continued concerns and will take your recommendations and suggestions in order to get this right. Thank you very much for your time, and I am happy to answer any questions.

[Items submitted but not discussed, and are included as exhibits for the meeting, include a letter of opposition from Ryan A. Hamilton ([Exhibit E](#)), a letter of opposition from TechNet ([Exhibit F](#)), a letter of opposition from Reporters Committee for Freedom of the Press ([Exhibit G](#)), and letter of opposition from Marc Randazza ([Exhibit H](#)).]

Chairman Hansen:

Thank you all for your testimony. At this point, we are going to close the hearing on S.B. 444 (R1), and open it up to public comment.

Ed Uehling, Private Citizen, Las Vegas, Nevada:

I am a 72-year resident, and I have had two brushes with this issue. I just wanted to talk about those.

Chairman Hansen:

Sir, we have actually closed the hearing on that bill. However, you may briefly say whether you are in favor or against the bill.

Ed Uehling:

I am totally against the bill and very appalled by allowing this person to present himself as an advocate of the poor when everyone knows who he is representing and the bully he is representing.

Chairman Hansen:

Okay, that is all I need to know. Thank you, I appreciate your testimony. We will now close public comment. Is there anything else that needs to be brought to the Committee at this time?

Assemblyman Elliot T. Anderson:

I want to make a quick comment to Senator Brower and Mr. Langberg to say that I appreciated the academic discussion. It was invigorating, and I truly enjoyed it.

Assembly Committee on Judiciary
April 24, 2015
Page 47

Chairman Hansen:
This meeting is adjourned [at 10:40 a.m.].

RESPECTFULLY SUBMITTED:

Janet Jones
Recording Secretary

Lenore Carfora-Nye
Transcribing Secretary

APPROVED BY:

Assemblyman Ira Hansen, Chairman

DATE: _____

EXHIBITS			
Committee Name: <u>Assembly Committee on Judiciary</u>			
Date: <u>April 24, 2015</u>		Time of Meeting: <u>8 a.m.</u>	
Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
S.B. 444 (R1)	C	Vanessa Spinazola, ACLU of Nevada	Letter of Opposition
S.B. 444 (R1)	D	John Mehaffey, Private Citizen, Las Vegas, Nevada	Written Testimony
S.B. 444 (R1)	E	Ryan A, Hamilton, Private Citizen, Las Vegas, Nevada	Letter of Opposition
S.B. 444 (R1)	F	John Doherty, Vice President and General Counsel, TechNet	Letter of opposition
S.B. 444 (R1)	G	Bruce D. Brown, Executive Director, Reporters Committee for Freedom of the Press, Washington, D.C.	Letter of Opposition
S.B. 444 (R1)	H	Marc Randazza, Private Citizen, Las Vegas, Nevada	Testimony in Opposition

Committee Action:
Do Pass _____
Amend & Do Pass _____
Other _____

Assembly Committee on Judiciary

This measure may be considered for action during today's work session.

May 15, 2015

SENATE BILL 444

Revises provisions governing civil actions. (BDR 3-1137)

Sponsored by: Committee on Judiciary
Date Heard: April 24, 2015
Fiscal Impact: Effect on Local Government: No.
Effect on the State: No.

Senate Bill 444 defines, in relation to Strategic Lawsuits Against Public Participation, or "SLAPP lawsuits," an issue of "public concern" as any topic that concerns the general public beyond a mere curiosity or general interest and provides that any cause of action arising out of communication in furtherance of the right to petition or the right to free speech in direct connection with an issue of public concern is subject to a special motion to dismiss.

The bill also sets forth timelines and other requirements concerning such a motion, including conditions under which such a motion will be denied, when discovery must be allowed, and when appeals can be made. If a court finds that a motion to dismiss has been filed in bad faith, the court must award the plaintiff reasonable attorney's fees and costs. Finally, the bill deletes from statute additional compensatory awards relating to the dismissal of these claims. The bill's provisions apply only to an action commenced on or after October 1, 2015.

Amendments: An amended was proposed by C. Todd Mason, Wynn Resorts.

Assembly Committee: Judiciary
Exhibit: AA Page 1 of 4 Date: 05/15/2015
Submitted by: Diane Thornton

Proposed Amendment to SB 444 – Anti-SLAPP Reform (Summary of Revised Amendment)

Submitted by: C. Todd Mason, Wynn Resorts; todd.mason@wynnresorts.com

Date Submitted: 05/15/15 (1:25 p.m.)

Intent of the Amendment

The attached amendment addresses specific issues raised by opponents of the bill and concerns shared by Committee members. The revised amendment:

- 1) Changes the timeline for filing a motion to dismiss under the Anti-SLAPP statute from 20 days in the original bill to 60 days. **This now matches the current statute.**
- 2) Changes the standard of evidence for a plaintiff to meet in response to a motion from “prima facie” evidence in the original bill to “clear and convincing evidence.” **This language now matches current statute.**
- 3) Changes the type of speech covered by the Anti-SLAPP statute from an item of “public concern” to an issue “in the public interest,” removing the definition of “public concern” in the original bill. **This language now matches current statute.**
- 4) Allows for limited, reciprocal discovery by a respondent or moving party on a motion to dismiss under the statute. Any discovery is limited to “ascertaining such information necessary to meet or oppose the special motion to dismiss.”
- 5) Alters the timeline for a response and ruling on the motion to dismiss from 7 days in the current statute to 20 judicial days.
- 6) Restores the awarding of attorneys costs and fees and the potential award of additional award up to \$10,000. **This reverts to language in the current statute.**
- 7) All other provisions of the original bill are deleted.

Thank you for your consideration of this amendment and please contact me should you have any questions.

Proposed Amendment – Revision 2 to SB 444

New text not in the original bill is formatted in **green and bolded**.

NRS 41.635 is amended as follows:

NRS 41.635 Definitions. As used in NRS 41.635 to 41.670, inclusive, unless the context otherwise requires, the words and terms defined in NRS 41.637 and 41.640 have the meanings ascribed to them in those sections. ***"Plaintiff" shall include a counterclaimant or other party asserting a claim. "Defendant" shall include a counterdefendant or other party against whom a claim is asserted. "Complaint" shall include a counterclaim or other pleading in which a claim is asserted.***

NRS 41.660 is amended as follows:

NRS 41.660 Attorney General or chief legal officer of political subdivision may defend or provide support to person sued for engaging in right to petition or free speech in direct connection with an issue of public concern; special counsel; filing special motion to dismiss; stay of discovery; adjudication upon merits.

1. If an action is brought against a person based upon a good faith communication in furtherance of the right to petition or the right to free speech in direct connection with an issue of public concern:
 - (a) The person against whom the action is brought may file a special motion to dismiss; and
 - (b) The Attorney General or the chief legal officer or attorney of a political subdivision of this State may defend or otherwise support the person against whom the action is brought. If the Attorney General or the chief legal officer or attorney of a political subdivision has a conflict of interest in, or is otherwise disqualified from, defending or otherwise supporting the person, the Attorney General or the chief legal officer or attorney of a political subdivision may employ special counsel to defend or otherwise support the person.
2. A special motion to dismiss must be filed within 60 days after service of the complaint, which period may be extended by the court for good cause shown.
3. If a special motion to dismiss is filed pursuant to subsection 2, the court shall:
 - (a) Determine whether the moving party has established, by a preponderance of the evidence, that the claim is based upon a good faith communication in furtherance of the right to petition or the right to free speech in direct connection with an issue of public concern;
 - (b) If the court determines that the moving party has met the burden pursuant to paragraph (a), determine whether the plaintiff has established by clear and convincing evidence a probability of prevailing on each element of the claim.
 - (c) If the court determines that the plaintiff has established a probability of prevailing on the claim pursuant to paragraph (b), ensure that such determination will not:
 - (1) Be admitted into evidence at any later stage of the underlying action or subsequent proceeding; or
 - (2) Affect the burden of proof that is applied in the underlying action or subsequent proceeding;
 - (d) Consider such evidence, written or oral, by witnesses or affidavits, as may be material in making a determination pursuant to paragraphs (a) and (b);
 - (e) Stay discovery pending:
 - (1) A ruling by the court on the motion; and
 - (2) The disposition of any appeal from the ruling on the motion; and
 - (3) ***Upon a showing by a party that information necessary to meet or oppose the burden set forth in subsection (b) is in the possession of another party or a third party and is not reasonably available without discovery, the court shall allow limited specified discovery for the purpose of ascertaining such***

information. (f) Rule on the motion *within 20 judicial days* after the motion is served upon the plaintiff.

(4) If the court dismisses the action pursuant to a special motion to dismiss filed pursuant to subsection 2, the dismissal operates as an adjudication upon the merits.

(5) The court may modify briefing and hearing schedules or other deadlines set forth in this Section upon a finding that doing so serves the interests of justice.

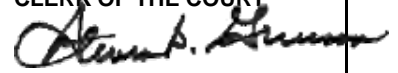
Note: All other provisions of the original bill are deleted.

Information. (f) Rule on the motion *within 20 judicial days* after the motion is served upon the plaintiff.

(4) If the court dismisses the action pursuant to a special motion to dismiss filed pursuant to subsection 2, the dismissal operates as an adjudication upon the merits.

(5) The court may modify briefing and hearing schedules or other deadlines set forth in this section upon a finding that doing so serves the interests of justice.

Note: All other provisions of the original bill are deleted.



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10 *DANIEL OMERZA, DARREN BRESEE,*
11 *and STEVE CARIA*

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

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

19 Plaintiffs,

20 v.

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

24 Defendants.

CASE NO. A-18-771224-C

**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**

Hearing Date: May 14, 2018

Hearing Time: 9:00 am

25 Defendants Daniel Omerza, Darren Bresee, and Steve Caria, by and through their counsel
26 of record Mitchell J. Langberg of BROWNSTEIN HYATT FARBER SCHRECK LLP, hereby
27 move to strike portions of Plaintiffs Supplement in Support of Opposition to Defendants' Special
28 Motion to Dismiss or in the Alternative for Further Supplemental Briefing.

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1 This Motion is made and based upon the following Memorandum of Points and
2 Authorities, the pleadings and papers on file in this matter, as well as upon any oral argument the
3 Court may entertain should this matter be set for hearing by the Court.

4 DATED this 25th day of May, 2018.

BROWNSTEIN HYATT FARBER SCHRECK, LLP

5
6
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NOTICE OF MOTION

TO: ALL INTERESTED PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that the undersigned will bring the foregoing **DEFENDANTS' MOTION TO STRIKE PORTIONS OF PLAINTIFFS' SUPPLEMENT IN SUPORT OF OPPOSITION TO SPECIAL MOTION TO DISMISS OR IN THE ALTERNATIVE FOR FURTHER SUPPLEMENTAL BRIEFING** for hearing before the above-entitled Court on the **27th** day of **June**, 2018, at _____ a.m./p.m. of said day in Department 2 of said Court.

DATED this 25th day of May, 2018.

BROWNSTEIN HYATT FARBER SCHRECK, LLP

By /s/ Mitchell J. Langberg
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*Attorneys For Defendants Daniel Omerza,
Darren Bresee, and Steve Caria*

MEMORANDUM OF POINTS AND AUTHORITIES

In their supplemental brief, Plaintiffs' improperly and *misleadingly* include legislative history regarding the anti-SLAPP statute in the form of transcripts from only some of the legislative hearings. The "evidence" and arguments should be stricken, or, in the alternative, Defendants' should be permitted supplemental briefing to *correctly* characterize that legislative history.

A. The Evidence and Argument Should be Stricken

The evidence and argument of legislative history should be stricken. Legislative history is *only* relevant if a statute is ambiguous.

The Nevada Supreme Court explained the method for statutory interpretation:

When interpreting a statute, legislative intent "is the controlling factor." *Robert E. v. Justice Court*, 99 Nev. 443, 445, 664 P.2d 957, 959 (1983). The starting point for determining legislative intent is the statute's plain meaning; when a statute "*is clear on its face, a court can not go beyond the statute in determining legislative intent.*" *Id.* [emphasis added]; see also *Catanio*, 120 Nev. at 1033, 102 P.3d at 590 ("We must attribute the plain meaning to a statute that is not ambiguous."). But when "the statutory language lends itself to two or more reasonable interpretations," the statute is ambiguous, and we may then look beyond the statute in determining legislative intent. *Catanio*, 120 Nev. at 1033, 102 P.3d at 590.

State v. Lucero, 127 Nev. 92, 95 (2011)(emphasis added).

Plaintiffs have not, and cannot, show any ambiguity in Nevada's anti-SLAPP statute. The language of every relevant provision is plain on its face. Therefore, any argument about the legislative history must be stricken.

B. In the Alternative, Further Supplementation by Defendants' Should be Allowed Because the Information Submitted is Incomplete and Misleading

If the Court does not strike the improper evidence and argument, Defendants should be given leave to file a supplemental brief. Plaintiffs have provide incomplete and misleading information.

For example, Plaintiffs fail to inform that Court that the legislative history provided pertains to a ***version of the proposed anti-SLAPP that was not adopted.*** The adopted version was different than that which was proposed at the time of the hearings submitted by Plaintiffs.

Further, the context of the discussions regarding balancing, the right to petition, and discovery is conspicuously absent from what was submitted by Plaintiffs. The former version of the anti-SLAPP statute had ***no provision*** for discovery under any circumstances whatsoever. The arguments for amendment included the fact that a court should have the ability to grant discovery ***if*** it was necessary in order for a party to meet their burden under prong 2 of the analysis, as the current statute now permits. Further, the former statute required a plaintiff to make a showing by ***clear and convincing evidence*** on prong 2. That was unconstitutional (as found by courts in other jurisdictions). So, the argument in favor of revising the statute pertained to the impact that had on the right to petition and other constitutional guarantees. The problem was corrected by adopting the current *prima facie* standard.

None of this bears on the issues before the Court on the instant motion. But, if the Court is inclined to consider the legislative history, Defendants should be permitted to provide all of the legal and factual information in the proper context.

DATED this 25th day of May, 2018.

BROWNSTEIN HYATT FARBER SCHRECK, LLP

By /s/ Mitchell J. Langberg
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*Attorneys 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 **DFENDANTS' MOTION TO STRIKE PORTIONS OF PLAINTIFFS' SUPPLEMENT IN SUPORT OF OPPOSITION TO SPECIAL MOTION TO DISMISS OR IN THE ALTERNATIVE FOR FURTHER SUPPLEMENTAL BRIEFING** be submitted electronically for filing and/or service with the Eighth Judicial District Court via the Court's Electronic Filing System on the 25th day of May, 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

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

/s/ Paula Kay
an employee of Brownstein Hyatt Farber Schreck, LLP

A-18-771224-C

**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 Defendants' Special Motion to Dismiss (Anti-SLAPP Motion) Plaintiffs' Complaint

HEARD BY: Scotti, Richard F.

COURT CLERK: Jennifer Lott

JOURNAL ENTRIES

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


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

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

PRINT DATE: 05/29/2018

Page 1 of 1

Minutes Date: May 29, 2018



1 **NOTC**

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

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

20 Plaintiffs,
21 vs.

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

24 Defendants.

Case No.: A-18-771224-C

Dept. No.: II


25 **NOTICE OF EARLY CASE**
26 **CONFERENCE**

27 TO: Daniel Omerza, Darren Bresee, and Steve Caria, Defendants.

28 TO: Mitchell Langberg, Esq. of BROWNSTEIN HYATT FARBER &
SCHRECK LLP, counsel for Defendants

PLEASE TAKE NOTICE that, pursuant to NRCP 16.1(a) and (b), an Early
Case Conference has been set for June 13, 2018 at 9:00 a.m. at the offices of The
Jimmerson Law Firm, P.C., 415 South Sixth Street, Suite 100, Las Vegas, Nevada
89101.

THE JIMMERSON LAW FIRM, P.C.


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CERTIFICATE OF SERVICE

I hereby certify that on the 30th day of May, 2018, I caused a true and correct copy of the foregoing **NOTICE OF EARLY CASE CONFERENCE** to be submitted electronically for filing and service with the Eighth Judicial District Court via the Electronic Filing System to the following:

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