IN THE SUPREME COURT OF THE STATE OF NEVADA

INDICATE FULL CAPTION:

FORE STARS, LTD.,180 LAND CO, LLC, and SEVENTY ACRES, LLC
Appellants,
vs.
DANIEL OMERZA, DARREN BRESEE and STEVE CARIA

No. 82338

DOCKETING STATEMENT
CIVIL APPEALS

GENERAL INFORMATION

Appellants must complete this docketing statement in compliance with NRAP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, identifying issues on appeal, assessing presumptive assignment to the Court of Appeals under NRAP 17, scheduling cases for oral argument and settlement conferences, classifying cases for expedited treatment and assignment to the Court of Appeals, and compiling statistical information.

WARNING

This statement must be completed fully, accurately and on time. NRAP 14(c). The Supreme Court may impose sanctions on counsel or appellant if it appears that the information provided is incomplete or inaccurate. *Id.* Failure to fill out the statement completely or to file it in a timely manner constitutes grounds for the imposition of sanctions, including a fine and/or dismissal of the appeal.

A complete list of the documents that must be attached appears as Question 27 on this docketing statement. Failure to attach all required documents will result in the delay of your appeal and may result in the imposition of sanctions.

This court has noted that when attorneys do not take seriously their obligations under NRAP 14 to complete the docketing statement properly and conscientiously, they waste the valuable judicial resources of this court, making the imposition of sanctions appropriate. *See* KDI Sylvan Pools v. Workman, 107 Nev. 340, 344, 810 P.2d 1217, 1220 (1991). Please use tab dividers to separate any attached documents.

1. Judicial District Eighth Department II

County Clark Judge Richard F. Scotti

District Ct. Case No. A-18-771224-C

2. Attorney filing this docketing statement:

Attorney Lisa A. Rasmussen Telephone (702)222-0007

Firm The Law Offices of Kristina Wildeveld & Associates

Address 550 E. Charleston Blvd., Suite A
Las Vegas, NV 89104

Client(s) Fore Stars, Ltd.; 180 Land Co., LLC; and Seventy Acres, LLC

If this is a joint statement by multiple appellants, add the names and addresses of other counsel and the names of their clients on an additional sheet accompanied by a certification that they concur in the filing of this statement.

3. Attorney(s) representing respondents(s):

Attorney Mitchell J. Langberg Telephone (702)382-101

Firm Brownstein Hyatt Farber Schreck, LLP

Address 100 North City Parkway, Suite 1600
Las Vegas, NV 89106-4614

Client(s) Daniel Omerza, Darren Bresee and Steve Caria

Attorney N/A Telephone

Firm

Address

Client(s)

(List additional counsel on separate sheet if necessary)

4. Nature of disposition below (check all that apply):

- ☐ Judgment after bench trial
- ☐ Judgment after jury verdict
- ☐ Summary judgment
- ☐ Default judgment
- ☐ Grant/Denial of NRCP 60(b) relief
- ☐ Grant/Denial of injunction
- ☐ Grant/Denial of declaratory relief
- ☐ Review of agency determination
- ☒ Dismissal:
  - ☐ Lack of jurisdiction
  - ☐ Failure to state a claim
  - ☐ Failure to prosecute
  - ☒ Other (specify): NRS 41.635, et seq, SLAPP
- ☐ Divorce Decree:
  - ☐ Original ☐ Modification
- ☐ Other disposition (specify): _____

5. Does this appeal raise issues concerning any of the following?

- ☐ Child Custody
- ☐ Venue
- ☐ Termination of parental rights

6. Pending and prior proceedings in this court. List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal:

Omerza, et al. v. Fore Stars, et al., Dkt. No. 76273

7. Pending and prior proceedings in other courts. List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (*e.g.*, bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition:

N/A

8. Nature of the action. Briefly describe the nature of the action and the result below:

Land owners brought suit against defendants for submitting false and misleading signed declarations to the City of Las Vegas for the purpose of thwarting the city's approval of further residential development of the owners' land. The defendants moved for special dismissal under the anti-SLAPP statutes. The district court ruled in favor of the land owners, the defendants appealed, and this Court found erroneous the district court's disposition of the special motion and remanded the case back to the district court for a determination of whether further discovery was necessary. The district court permitted very limited discovery on one issue at the Defendants' insistence, and dismissed the complaint based on NRS 41.635, et seq and "litigation privilege." A motion for reconsideration was filed. It was denied because the notice of appeal had been filed. This appeal follows.

9. Issues on appeal. State concisely the principal issue(s) in this appeal (attach separate sheets as necessary):

(1) The determination of whether a party has demonstrated a "good faith communication" under NRS 41.660(3)'s first prong does not envision consideration of unilateral declarations alone, but must involve credibility determinations and consideration of relevant evidence relating to the claimed good faith. The anti-SLAPP statute's first prong envisions courts serving an active, rather than ministerial role, when determining the existence of good faith.
(2) The litigation privilege does not apply to respondents' statements made before the City Council, as City Council meetings are not quasi-judicial in nature.
(3) The burden under NRS 41.660(3)'s second prong requires only a prima facie showing of a probability of prevailing on a claim, with the court merely deciding whether a plaintiff's underlying claim is legally sufficient.

10. Pending proceedings in this court raising the same or similar issues. If you are aware of any proceedings presently pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket numbers and identify the same or similar issue raised:

Appellant is not aware of any such pending proceedings.

11. Constitutional issues. If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employee thereof is not a party to this appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

☒ N/A

☐ Yes

☐ No

If not, explain:

12. Other issues. Does this appeal involve any of the following issues?

☐ Reversal of well-settled Nevada precedent (identify the case(s))

☐ An issue arising under the United States and/or Nevada Constitutions

☒ A substantial issue of first impression

☐ An issue of public policy

☐ An issue where en banc consideration is necessary to maintain uniformity of this court's decisions

☐ A ballot question

If so, explain: The Court has not previously addressed either: (1) the type of assessment which district courts are to apply when analyzing a defendant's claim of good faith communication under the first prong of NRS 41.660(3), nor (2) whether City Council meetings are quasi-judicial in nature so as to afford the litigation privilege in relation to matters submitted therein.

13. Assignment to the Court of Appeals or retention in the Supreme Court. Briefly set forth whether the matter is presumptively retained by the Supreme Court or assigned to the Court of Appeals under NRAP 17, and cite the subparagraph(s) of the Rule under which the matter falls. If appellant believes that the Supreme Court should retain the case despite its presumptive assignment to the Court of Appeals, identify the specific issue(s) or circumstance(s) that warrant retaining the case, and include an explanation of their importance or significance:

As there exist no apparent provisions for assignment of this matter with the Court of Appeals under NRAP 17(b), the Supreme Court should retain this appeal under NRAP 17(a). Additionally, retention of this appeal by the Supreme Court is most warranted because this appeal presents questions directly bearing upon the meaning and intention of the Supreme Court's law of the case in this matter (ORDER VACATING AND REMANDING, No. 76273, January 23, 2020), and whether the district court correctly interpreted and applied same. Last, the need for Supreme Court retention of this appeal in order to address these important matters of first impression and statewide public importance under NRAP 17(a) (11) and (12), respectively.

14. Trial. If this action proceeded to trial, how many days did the trial last? _____

Was it a bench or jury trial? _____

15. Judicial Disqualification. Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal? If so, which Justice?
Yes.

Justice Herndon as his district court order in a case related to Plaintiffs' claims regarding the same subject property (180 Land Co) is also being appealed and will also require recusal in that matter (appeal may not be docketed yet). Not certain as to other Justices.

TIMELINESS OF NOTICE OF APPEAL

16. Date of entry of written judgment or order appealed from 12/10/2020

If no written judgment or order was filed in the district court, explain the basis for seeking appellate review:

N/A

17. Date written notice of entry of judgment or order was served 12/10/2020

Was service by:

☐ Delivery

☒ Mail/electronic/fax

18. If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCP 50(b), 52(b), or 59)

(a) Specify the type of motion, the date and method of service of the motion, and the date of filing.

☐ NRCP 50(b) Date of filing _____

☐ NRCP 52(b) Date of filing _____

☐ NRCP 59 Date of filing _____

NOTE: Motions made pursuant to NRCP 60 or motions for rehearing or reconsideration may toll the time for filing a notice of appeal. *See* AA Primo Builders v. Washington, 126 Nev. ____, 245 P.3d 1190 (2010).

(b) Date of entry of written order resolving tolling motion _____

(c) Date written notice of entry of order resolving tolling motion was served _____

Was service by:

☐ Delivery

☐ Mail

19. Date notice of appeal filed 1/8/2021

If more than one party has appealed from the judgment or order, list the date each notice of appeal was filed and identify by name the party filing the notice of appeal:

20. Specify statute or rule governing the time limit for filing the notice of appeal, *e.g.*, NRAP 4(a) or other

NRAP 4(a)

SUBSTANTIVE APPEALABILITY

21. Specify the statute or other authority granting this court jurisdiction to review the judgment or order appealed from:

(a)

☒ NRAP 3A(b)(1)	☐ NRS 38.205
☐ NRAP 3A(b)(2)	☐ NRS 233B.150
☐ NRAP 3A(b)(3)	☐ NRS 703.376
☒ Other (specify) Also NRS 41.635, et seq.	

(b) Explain how each authority provides a basis for appeal from the judgment or order:
The district court's order dismissing the action served as a final adjudication on the merits of all claims, leaving nothing further to be addressed by the district court, save post-judgment attorney fee issues. A motion for reconsideration was pending in the district court at the time the Notice of Appeal was filed and has since been denied because the Notice of Appeal was filed.

22. List all parties involved in the action or consolidated actions in the district court:

(a) Parties:

Fore Stars, Ltd., 180 Land Co., LLC, and Seventy Acres, LLC, Appellants

Daniel Omerza, Darren Bressee and Steve Caria, Respondents.

(b) If all parties in the district court are not parties to this appeal, explain in detail why those parties are not involved in this appeal, *e.g.*, formally dismissed, not served, or other:

N/A

23. Give a brief description (3 to 5 words) of each party's separate claims, counterclaims, cross-claims, or third-party claims and the date of formal disposition of each claim.

Each Appellant claims: Injury to use and development of land

Each Respondent claims: Suppression of Speech

24. Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action or consolidated actions below?

☒ Yes

☐ No

25. If you answered "No" to question 24, complete the following:

(a) Specify the claims remaining pending below:

N/A

(b) Specify the parties remaining below:
N/A

(c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b)?

☐ Yes

☒ No

(d) Did the district court make an express determination, pursuant to NRCP 54(b), that there is no just reason for delay and an express direction for the entry of judgment?

☐ Yes

☒ No

26. If you answered "No" to any part of question 25, explain the basis for seeking appellate review (*e.g.*, order is independently appealable under NRAP 3A(b)):
The order is independently appealable under NRAP 3A(b) and NRS 41.635, et seq.

27. Attach file-stamped copies of the following documents:

- The latest-filed complaint, counterclaims, cross-claims, and third-party claims
- Any tolling motion(s) and order(s) resolving tolling motion(s)
- Orders of NRCP 41(a) dismissals formally resolving each claim, counterclaims, cross-claims and/or third-party claims asserted in the action or consolidated action below, even if not at issue on appeal
- Any other order challenged on appeal
- Notices of entry for each attached order

VERIFICATION

I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this docketing statement.

Fore Stars, LTD; 180 Land Co., LLC, Se
Name of appellant

Lisa A. Rasmussen
Name of counsel of record

Date

/s/ Lisa A. Rasmussen
Signature of counsel of record

Nevada, Clark
State and county where signed

CERTIFICATE OF SERVICE

I certify that on the 12th day of February, 2021, I served a copy of this completed docketing statement upon all counsel of record:

☒ By personally serving it upon him/her; or

☐ By mailing it by first class mail with sufficient postage prepaid to the following address(es): (NOTE: If all names and addresses cannot fit below, please list names below and attach a separate sheet with the addresses.)

Via Eflex: Mr. Mitchell Langberg, Esq.

Dated this 12th day of February, 2021

/s/ Lisa A. Rasmussen
Signature

COMP
James J. Jimmerson, Esq. # 000264
Email: ks@jimmersonlawfirm.com
JIMMERSON LAW FIRM P.C.
415 S. 6th St. #1000
Las Vegas, NV 89101
Telephone: (702) 388-7171
Facsimile: (702) 387-1167

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

DISTRICT COURT
CLARK COUNTY, NEVADA

FORE STARS, LTD., a Nevada Limited Liability Company; 180 LAND CO., LLC, a Nevada Limited Liability Company; SEVENTY ACRES, LLC, a Nevada Limited Liability Company; Plaintiffs, vs. DANIEL OMERZA, DARREN BRESEE, STEVE CARIA,, AND DOES 1-1000, Defendants.	CASE NO. A-18-771224-C DEPT. NO: Department 31 **COMPLAINT**

Plaintiffs, Fore Stars, Ltd. ("Fore Stars"), 180 Land Co., LLC ("180 Land Co."), and Seventy Acres, LLC ("Seventy Acres"), (collectively referred to as "Plaintiffs") by and through their undersigned counsel, James J. Jimmerson, Esq., of the law firm of Jimmerson Law Firm, P.C., for their complaint against Defendants states as follows:

PARTIES

1. Plaintiff Fore Stars Ltd., is a limited liability company organized to do business in the State of Nevada.

2. Plaintiff 180 Land Co LLC is a limited liability company organized to do business in the State of Nevada.

3. Plaintiff Seventy Acres LLC is a limited liability company organized to do business in the State of Nevada.

4. Defendant David Omerza ("Omerza") is an individual residing in Clark County, Nevada.

5. Defendant, Daniel Bresee ("Bresee"), is an individual residing in Clark County, Nevada.

6. Defendant, Steve Caria ("Caria"), is an individual residing in Clark County, Nevada.

7. The true names of DOES 1 through 1000, their capacities, whether individual, associate, partnership, municipality or otherwise, are known and unknown to the Plaintiffs, but DOES 1 through 1000 actions, and the resulted harm to the Plaintiffs, is not fully known. Some or all of the DOES are, upon information and belief, residents within the Queensridge Common Interest Community created under NRS 116, but who have no claim of title, use or entitlement to the adjoining real property owned by Plaintiffs herein. Therefore, Plaintiffs sue these Defendants by such fictitious names. Plaintiffs are informed and believe, and therefore allege, that each of the Defendants, designated as DOES 1 through 1000, are or may be legally responsible for the events referred to in this action, and caused damages to the Plaintiffs, as herein alleged, and the Plaintiffs will ask leave of this Court to amend the Complaint to insert the true names and capacities of such Defendants, when the same have been ascertained, and to join them in this action, together with the property charges and allegations. (DOES 1 through 1000 collectively referred to herein as the "DOES"). Plaintiffs also reserve their right to expand the number of DOES to a number larger than 1000 as discovery and investigation commences.

Jurisdiction and Venue

8. The State of Nevada possesses both subject matter and personal jurisdiction over the parties hereto. The events involving this lawsuit, and the contacts of the parties within Clark County,

Nevada, grant both subject matter and personal jurisdiction over the parties to this Court. Venue also lies properly in Clark County, Nevada.

Allegations Common To All Claims

9. Plaintiffs Fore Stars, Ltd., 180 Land Co., LLC, and Seventy Acres, LLC (collectively "Land Owners" or "Plaintiffs") own approximately 250 acres of land which was previously leased to a golf course operator who operated the Badlands Golf Course (collectively the "Land").

10. On May 20, 1996, Nevada Legacy 14, LLC recorded a Master Declaration of Covenants, Conditions, Restrictions and Easements for Queensridge, which was later amended and restated, ("Queensridge Master Declaration") with the Clark County Recorder in order to establish the common interest community known as "Queensridge." Queensridge was created and organized under the provisions of NRS 116.

11. The Queensridge Master Declaration describes Queensridge in Section 2.1 as "an exclusive master-planned community", and in Section 1.55 states: "Master Plan" shall mean the Queensridge Master Plan proposed by Declarant for the Property and the Annexable Property which is set forth in Exhibit "1," hereto, as the same may be from time to time supplemented and amended by Declarant, in Declarant's sole discretion, a copy of which, and any amendments thereto, shall be on file at all times in the office of the Association."

12. The Purchase Agreement ("PSA"), that was executed by Defendant Omerza, and by Defendant Bresee, and by Defendant Caria, contains certain very specific disclosures and acknowledgements with respect to the Land , including but not limited to notice via the respective CC&Rs and other documentation that the Land is developable. Depending on the location of the lot/home, Defendants acknowledged receipt of documents, including but not limited to, some or all of the following:

///

a. PSA Addendum "1" to PSA, wherein Defendants initialed that they received:

i. A public offering statement which disclosed that the adjacent Land (then a golf course) is not a part of Queensridge.

ii. The Queensridge Master Declaration, which disclosed that the adjacent Land (then a golf course) is not a part of Queensridge (and a comparable Master Declaration for Queensridge Towers); and

iii. A Notice of Zoning Designation of Adjoining Lot (as attachment "C" to the PSA). The Adjoining Lot was the Land and the zoning disclosed was RPD-7.

b. PSA Addendum "1" – Additional Disclosures Section 4 – No Golf Course or Membership Privileges. Purchaser shall not acquire any rights, privileges, interest, or membership in the Badlands Gold Course or any other golf course, public or private, or any country club membership by virtue of its purchase of the Lot.

c. PSA Addendum "1" – Additional Disclosures Section 7 – Views/Location Advantages. The Lot may have a view or location advantage at the present time. The view may at present or in the future include, without limitation, adjacent or nearby single-family homes, multiple-family residential structures, commercial structures, utility facilities, landscaping, and other items. The Applicable Declarations may or may not regulate future construction of improvements and landscaping in the Planned Community that could affect the views of other property owners. Moreover, depending on the location of the Lot, adjacent or nearby residential dwellings or other structures, whether within the Planned Community or outside the Planned Community, could potentially be constructed or modified in a manner that could block or impair all or part of the view from the Lot and/or diminish the location advantages of the Lot, if any. Purchaser acknowledges that Seller has not made any representations, warranties, covenants, or agreement to or with Purchaser concerning

the preservation or permanence of any view or location advantage for the Lot, and Purchaser hereby agrees that Seller shall not be responsible for any impairment of such view or location advantage, or for any perceived or actual loss of value of the Lot resulting from any such impairment. Purchaser is and shall be solely responsible for analyzing and determining the current and future value and permanence of any such view from or location advantage of the Lot. This section was specifically initiated by the Lot Purchasers.

d. As to the Queensridge Towers, the Public Offering Statement also specifically disclosed (1) that the zoning to the south was R-PD7, "Residential up to 7 du;" (2) that "As to those properties contiguous to the Condominium Property, Developer makes no representation that development will follow the above plan, assumes no responsibility for errors or omissions in the information provided and makes no representations as to the development of such properties. As to the property to be submitted to the Condominium pursuant to the Declaration, Developer reserves the right to make changes In the proposed land use,"; and (3) Developer makes no representations as to the desirability or existence of any view from the Unit. The anticipated or currently existing view from the Unit may be changed at any time, either due to action taken by Developer, affiliates of the Developer or any third party." Additionally, the PSA for Queensridge Towers specifically stated: "Seller makes no representations as to the subdivision, use or development of any adjoining or neighboring land (including land that may be withdrawn from the Condominium according to the terms of the Declaration). Without limiting the generality of the foregoing, views from the Unit may be obstructed by future development of adjoining or neighboring land and Seller disclaims any representation that views from the U it will not be altered or obstructed by development of neighboring land;" and "Without limiting the generality of the foregoing or any disclosures in the POS, Purchaser acknowledges that affiliates of Seller control land

neighboring or in the vicinity of the Property. Neither Seller nor its affiliates make any representation whatsoever relating to the future development of neighboring or adjacent land and expressly reserve the right to develop this land in any manner that Seller or Seller's affiliates determine in their sole discretion."

13. The Land, upon which the golf course was operated, was not annexed into Queensridge under Queensridge Master Declaration.

14. The Queensridge Master Declaration established Custom Home Estate Design Guidelines included as Exhibit 1 (page 1-3) an Illustrative Site Plan depicting the portion of the Land adjacent to the Lot purchased by Defendants as a neighborhood of single family homes, and as Exhibit 2 (page 1-4) designating the portion of the Land adjacent to the Lot purchased by Defendants as "Future Development."

15. Upon information and belief, Defendant Omerza closed escrow on a piece of real property within the Queensridge Community under a PSA.

16. Upon information and belief, a deed was recorded evidencing the Defendant Omerza's acquisition of this real property.

17. Upon information and belief, Defendant Bresee closed escrow on a piece of real property within the Queensridge Community under a PSA.

18. Upon information and belief, a deed was recorded evidencing the Defendant Bresee's acquisition of this real property.

19. Upon information and belief, Defendant Caria closed escrow on a piece of real property within One Queensridge Place Community under a PSA.

20. Upon information and belief, a deed was recorded evidencing the Defendant Caria's acquisition of this real property.

///

21. The deed obtained by Defendant Omerza and the deed obtained by Defendant Bresee and the deed obtained by Defendant Caria are clear by their respective terms that they have no rights to affect or control the use of Plaintiffs' real property.

22. Conversely, the deeds memorializing the property owned by the respective Plaintiffs, are clear on their face that they are not affected by or conditioned upon the Queensridge Community, a common interest community.

23. In or about March 2018, the Defendants and Does 1-1000, and perhaps others, reached an agreement between themselves and engaged in a scheme to attempt to improperly influence and/or pressure the Plaintiffs to give over to Defendants and/or their co-conspirators a portion of their real estate and/or a portion of their project and to improperly influence and/or pressure public officials including, but not limited to, the City of Las Vegas Planning Commission and the Las Vegas City Council to delay or deny Plaintiff's land rights to develop their property. This scheme and agreement between Defendants and their co-conspirators included, but not limited to, the preparation, promulgation, solicitation and execution of a statement and/or declaration (hereinafter "Declaration") aimed to be sent or delivered to the City of Las Vegas that each of the signatories, "The undersigned purchased a residence/lot in Queensridge which is located within the Peccole Ranch Master Planned Community" and that "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 Park Recreations – Open Space which land use designation does not permit the building of residential units." And finally, that "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." Said Declaration is attached hereto as Exhibit 1.

24. That said declaration or statement is false.

25. That said declaration or statement, being false, is being intentionally prepared, circulated, executed, and delivered to the City of Las Vegas for the improper purposes of attempting to delay or deny Plaintiffs' development of their land rights and their property, and is intended to do so, by falsely and intentionally misrepresenting facts, as stated therein that the Defendants, and their co-conspirators, made their purchase of their real property in reliance upon the fact that the open space/natural drainage system would 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 Park Recreations – Open Space which land use designation does not permit the building of residential units" as those words are used within the Declaration prepared, promulgated, solicited and/or executed by the Defendants and their co-conspirators.

26. That the actions of the Defendants and their co-conspirators to knowingly and intentionally sign the knowingly false Declaration were wrongful. The declaration is false, and it is intended to cause third-parties, including the City of Las Vegas, who detrimentally relied thereon, to take action against Plaintiffs. These actions of Defendants and their co-conspirators, in order to further their improper scheme and agreement, has caused irreparable injury to the Plaintiffs for which there is no adequate remedy of law.

27. The efforts of Defendants and their co-conspirators, are improper, and are an attempt to achieve something that is socially or morally improper or illegal, or out of balance from normal societal expectations of behavior.

28. Defendants, and their co-conspirators, have engaged in multiple concerted actions, including, but not limited to, the preparation, promulgation, and conspiracy to cause homeowners in the Queensridge Community to execute the proposed Declaration despite the fact that the

Declaration is, upon information and belief, false, misleading, and is being solicited and procured based upon false representations of fact that Defendants and their co-conspirators are intentionally causing to occur, with the intent of causing the homeowners who are being asked to sign the document, to detrimentally rely upon their representation approximately, and to cause the City of Las Vegas to rely on the same, directly causing damages to the Plaintiffs.

29. That attached hereto as Exhibits 2 and 3 are true and correct copies of two (2) Court Orders that are public record before the Eighth Judicial District Court. The Court Orders arise from the case of Fore Stars, et al v. Peccole, et al, Case Number A-16-739654-C. The Court Orders are dated November 30, 2016; and, Exhibit 2 dated January 31, 2017. Said Findings of Fact, Conclusions of Law, and Order and Judgments are included by reference within this Complaint as if fully set forth herein. Also attached hereto as Exhibit 4 is a true and correct copy of a Court Order filed May 2, 2017 that is a public record before the Eighth Judicial District Court. The Court Order arises from the case of Binion et al v. Fore Stars, et al Case Number A-17-729053, and specifically found that Plaintiffs therein failed to state a claim upon which relief may be granted in seeking an order "declaring that NRS Chapter 278A applies to the Queenridge/Badlands development and that no modifications may be made to the Peccole Ranch Master Plan without the consent of property owners" and "enjoining Defendants from taking any action (iii) without complying with the provisions of NRS Chapter 278A," and that "as a matter of law NRS Chapter 278A does not apply to common interest communities. NRS 116.1201 (4)." Said Findings of Fact, Conclusions of Law, and Order are included by reference within this Complaint as if fully set forth herein.

30. The actions of the Defendants, and their co-conspirators, are intended by them, to harm the Plaintiffs and Plaintiffs' land rights, and are being prepared, circulated and solicited to be signed by Defendants, and their co-conspirators solely for the purposes of harassing and maliciously attacking the reputation and character of Plaintiffs, their property rights to develop their property,

to cause economic damage and harm to Plaintiffs, and to slander the title of the property owned by the Plaintiffs referenced herein under the guise of seeking to petition members of the City of Las Vegas and/or its legislative branches, the Planning Commission and/or City Council, amongst others, that despite this guise and the campaign to cause delay and damage by the Defendants and their co-conspirators to the Plaintiffs and to the development of Plaintiffs' land, has caused Plaintiffs irreparable injury.

31. The action of the Defendants, in addition to causing irreparable injury to the Plaintiffs, has also caused the Plaintiffs substantial money damages in a sum in excess of $15,000 all to be proven at the time of trial.

32. Plaintiffs have been forced to retain counsel to prosecute this action and Plaintiffs are entitled to an award of attorneys' fees and costs.

FIRST CLAIM FOR RELIEF
(Equitable and Injunctive Relief)

33. Plaintiffs re-allege the allegations stated in paragraphs 1through 32 above.

34. The actions of Defendants and their co-conspirators, to prepare, promulgate, solicit and seek the signature of homeowners within the Queensridge common interest community and to cause them to misrepresent the facts and circumstances under which they purchased their property within Queensridge are improper, fraudulent, tortious, and intended to irreparably harm the Plaintiffs and to cause them harm and damages.

35. That the actions of the Defendants and their co-conspirators, are repetitive, and continuing, and in accordance with the Nevada Supreme Court decision of *Chisholm v. Redfield*, 347 P.2d 523 (1959) and other related cases, the repeated repugnant and tortious actions of the Defendants and their co-conspirators to essentially suborn the assertion of facts that are false and which are misrepresentations of facts, has irreparably damaged the Plaintiffs.

36. That the actions of the Defendants and their co-conspirators, have caused the

Plaintiffs irreparable harm, for which no adequate remedy of law exists. That the Plaintiffs can establish a likelihood of success on the merits, and that the balance of hardships in this case tips sharply in Plaintiffs' favor. Further, the public interest involved in this case, supports the Plaintiffs being granted equitable relief to preliminarily and permanently enjoin the Defendants and their co-conspirators from continuing their irreparable harm of the Plaintiffs and the Plaintiffs' property rights.

37. As a result of the Defendants' and their co-conspirators' actions, the Plaintiffs have no adequate remedy law and they are entitled to preliminary and permanent injunction against the Defendants and each of them, including against DOES 1 through 1000, in temporarily and permanently enjoining them from preparing, soliciting, and obtaining false signatures from homeowners through use of misrepresentation of facts and other sorted means, all to Plaintiffs' damage and detriment.

38. Plaintiffs are entitled to equitable relief as set forth herein enjoining and otherwise protecting Plaintiffs from the actions of Defendants and each of them.

SECOND CLAIM FOR RELIEF
(Intentional Interference with Prospective Economic Relations)

39. Plaintiffs incorporate paragraphs 1 through 38 above as if fully set forth herein.

40. Plaintiffs Fore Stars, Ltd., 180 Land Company, Seventy Acres LLC have expended hundreds of thousands of dollars, if not more, to properly develop their property, the Land, and to seek from the City of Las Vegas, permission to develop their real property since they came in control of the same in 2015.

41. Defendants, and DOES, knew, or should have known, that Plaintiffs would be developing the Land with third parties, and would be working with the City of Las Vegas to cause the same to occur.

42. Defendants, and DOES, knew, or should have known, that Plaintiffs' relationship with third parties would be disrupted, for several reasons, including, but not limited to, the preparation, promulgation, solicitation and execution of the Declarations and statements referenced herein. Defendants and DOES intended by their actions to disrupt the development of Plaintiffs' land.

43. Defendants, and DOES, engaged in wrongful conduct through the preparation, promulgations, solicitation and execution of the Declarations and statements referenced herein, which contain false representations of fact, and using their intentional misrepresentations to influence and pressure homeowners to sign a statement, relying upon the representations of the solicitors, Defendants herein, to the detriment of the Plaintiffs, as well as to the character and reputation of Plaintiffs in the community, and to the development of their Land.

44. The Defendants, and DOES, intend by their actions to intentionally disrupt the Plaintiffs' prospective economic advantages through the development of their property, which has caused the Plaintiffs damages in excess of $15,000 to be proven at the time of Trial.

45. Defendants' and DOES' wrongful conduct is a substantial factor in causing Plaintiffs, and each of them, substantial harm and money damages.

46. As a result of Defendants' and DOES' improper actions, Plaintiffs have been damaged in a sum in excess of $15,000.

47. The actions of Defendants and DOES were malicious, oppressive and/or fraudulent, for which Plaintiffs are entitled to an award of punitive damages in an amount to be determined at the time of Trial.

THIRD CLAIM FOR RELIEF
(Negligent Interference with Prospective Economic Relations)

48. Plaintiffs incorporate paragraphs 1 through 47 above as if fully set forth herein.

49. Plaintiffs, Defendants and DOES are within a proximate relationship that creates an undertaking by the Defendants not to harm the economic interests and value of Plaintiffs' Land.

50. Defendants and DOES knew, or should have known, of Plaintiffs' prospective economic advantages, and of their intent, desire and expenditure of substantial funds to develop their property.

51. Defendants, and DOES, knew, or should have known, that the statements contained within the prepared, promulgated and solicited Declaration were false, and that their actions in soliciting homeowners to sign the same were based upon negligent and/or fraudulent misrepresentations of fact, negligently and/or intentionally made to cause the homeowners to rely and to influence the homeowners to submit these Declarations to City of Las Vegas officials, despite their falsity, all in a scheme and plan to harm Plaintiffs.

52. Defendants, and DOES, knew, or should have known, that they were obliged to treat the Plaintiffs with reasonable care. Defendants and DOES breached their duty to act with reasonable care owed to the Plaintiffs, which behavior by the Defendants, and each of them, through the preparation, promulgations, solicitation and execution of these Declarations was negligently performed, and which proximately caused the Plaintiffs money damages in excess of $15,000.

53. The actions of Defendants and DOES were not privileged or otherwise protected.

54. The actions of Defendants and DOES were intended to disrupt the Plaintiffs' business and the development of their real estate.

55. As a result of Defendants' and DOES' negligent interference with Plaintiffs' prospective economic relations, the Plaintiffs have been damaged in a sum in excess of $15,000.

FOURTH CLAIM FOR RELIEF
(Conspiracy)

56. Plaintiffs incorporate paragraphs 1 through 55 as if fully set forth herein.

57. In March 2018, Defendants and their co-conspirators, including, but not limited to DOES 1 – 1000, reached an agreement between themselves and formed a concerted action to improperly influence and/or pressure third-parties, including officials within the City of Las Vegas, and others with the intended action of delaying or denying the Plaintiffs' land rights and their intent to develop their property.

58. The Defendants, and DOES 1 – 1000, by their agreement and their concerted action conducted themselves in a way to maximize their opportunities to achieve their improperly goals, including, but not limited to, their attempt to use this delay and denial of Plaintiffs' rights to bargain for a percentage of the project from the Plaintiffs, upon information and belief.

59. The actions of the Defendants were undertaken to achieve improper purposes or motives. The purpose sought to be achieved by these Defendants, and their co-conspirators, was an attempt by them to achieve something that was socially or morally improper, or illegal, or out of the bounds from normal societal expectations of behavior.

60. The Defendants, and their co-conspirators agreement was implemented by their concerted actions to object to Plaintiffs' development, to use their political influence, by utilizing false representations of fact in the form of the declarations of homeowners that the homeowners had allegedly detrimentally relied up the presence of the Peccole Master Plan prior to their purchase of their real property, a representation of fact that, upon information and belief is false and intentionally so. That the actions of the Defendants are without merit, undertaken in bad faith, and without reasonable grounds. They were undertaken specifically as a tactic to delay or prevent the Plaintiffs from developing their own land the goal itself, or in combination with the Defendants and their co-conspirators desire to pressure the Plaintiffs to deliver a portion of their project over to Defendants upon information and belief.

///

61. That the words and actions of the Defendants, and/or their co-conspirators are improper and have caused the Plaintiff substantial money damages in a sum in excess of Fifteen Thousand Dollars ($15,000), all to be proven at the time of trial.

FIFTH CLAIM FOR RELIEF
(Intentional Misrepresentation)

62. Plaintiffs incorporate paragraphs 1 through 61 as if fully set forth herein.

63. The actions of the Defendants and their co-conspirators, were intentional, constitute an intentional misrepresentation, and were undertaken with the intent of causing homeowners and the City of Las Vegas to detrimentally rely upon their misrepresentation of facts being falsely made by Defendants.

64. That said actions by the Defendants were detrimentally and reasonably relied upon by the homeowners, and was thought to have been relied upon by the City of Las Vegas, all to the Plaintiffs' damages as set forth herein in a sum in excess of Fifteen Thousand Dollars ($15,000).

65. That Defendants' intentional misrepresentations were intentionally and maliciously oppressively and fraudulently undertaken and asserted, for which the Plaintiffs are entitled to an award of punitive damages in a sum to be determined at the time of trial.

SIXTH CLAIM FOR RELIEF
(Negligent Misrepresentation)

66. Plaintiffs incorporate paragraphs 1 through 65 as if fully set forth herein.

67. Pled in the alternative pursuant to NRCP 8, Defendants had an obligation to the Plaintiffs not to defame slander or otherwise harm the Plaintiffs, and their property rights.

68. That Defendants owed the Plaintiffs a duty of care, which they breached by virtue of their actions which were at the very least negligent, and the representations that they made, were negligently, if not intentionally asserted, proximately causing the Plaintiffs damages in a sum in excess of Fifteen Thousand Dollars ($15,000).

WHEREFORE, Plaintiffs pray for judgment against Defendants, and each of them, as follows:

1. Compensatory Damages in a sum in excess of Fifteen Thousand Dollars ($15,000);

2. Punitive Damages in a sum in excess of Fifteen Thousand Dollars ($15,000);

3. Equitable relief and preliminary and permanent injunctive relief as prayed for herein;

4. An award of reasonable attorney's fees and costs; and

5. Such other and further relief as the Court deems proper in the premises.

Dated: March 15, 2018.

THE JIMMERSON LAW FIRM, P.C.

/s/ James J. Jimmerson, Esq.

James J. Jimmerson, Esq. #000264
Email: ks@jimmersonlawfirm.com
JIMMERSON LAW FIRM P.C.
415 S. 6th St. #1000
Las Vegas, NV 89101
Telephone: (702) 388-7171
Facsimile: (702) 387-1167
Attorneys for Plaintiffs Fore Stars, Ltd.,
180 Land Co., LLC., Seventy Acres, LLC

Exhibit "1"

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 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

Exhibit "2"

Electronically Filed
11/30/2016 09:15:13 AM

CLERK OF THE COURT

FFCL

DISTRICT COURT

CLARK COUNTY, NEVADA

ROBERT N. PECCOLE and NANCY A. PECCOLE, individuals, and Trustees of the ROBERT N. AND NANCY A. PECCOLE FAMILY TRUST,

Plaintiffs,

v.

PECCOLE NEVADA, CORPORATION, a Nevada Corporation; WILLIAM PECCOLE 1982 TRUST; WILLIAM PETER and WANDA PECCOLE FAMILY LIMITED PARTNERSHIP, a Nevada Limited Partnership; WILLIAM PECCOLE and WANDA PECCOLE 1971 TRUST; LISA P. MILLER 1976 TRUST; LAURETTA P. BAYNE 1976 TRUST; LEANN P. GOORJIAN 1976 TRUST; WILLIAM PECCOLE and WANDA PECCOLE 1991 TRUST; 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; EHB COMPANIES, LLC, a Nevada Limited Liability Company; THE CITY OF LAS VEGAS; LARRY MILLER, an individual; LISA MILLER, an individual; BRUCE BAYNE, an individual; LAURETTA P. BAYNE, an individual; YOHAN LOWIE, an individual; VICKIE DEHART, an individual; and FRANK PANKRATZ, an individual,

Defendants.

Case No. A-16-739654-C
Dept. No. VIII

FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT GRANTING DEFENDANTS FORE STARS, LTD., 180 LAND CO LLC, SEVENTY ACRES LLC, EHB COMPANIES LLC, YOHAN LOWIE, VICKIE DEHART AND FRANK PANKRATZ'S NRCP 12(b)(5) MOTION TO DISMISS PLAINTIFFS' AMENDED COMPLAINT

Hearing Date: November 1, 2016
Hearing Time: 8:00 a.m.

Courtroom 11B

This matter coming on for Hearing on the 2nd day of November, 2016 on Defendants Fore Stars, Ltd., 180 Land Co LLC, Seventy Acres LLC, EHB Companies LLC, Yohan Lowie, Vickie Dehart and Frank Pankratz's NRCP 12(B)(5) Motion To Dismiss Plaintiffs' Amended Complaint, James J. Jimmerson of the Jimmerson Law Firm, P.C. appeared on behalf of Defendants, Fore Stars, Ltd., 180 Land Co LLC, Seventy Acres LLC, Yohan Lowie, Vickie DeHart and Frank Pankratz; Stephen R. Hackett of Sklar Williams, PLLC and Todd D. Davis of

EHB Companies LLC, appeared on behalf of Defendant EHB Companies LLC; and Robert N. Peccole of Peccole & Peccole, Ltd. appeared on behalf of the Plaintiffs.

The Court, having fully considered the Motion, the Plaintiffs' Oppositions thereto, the Defendants' Replies, and all other papers and pleadings on file herein, including each party's Supplemental filings following oral argument, as permitted by the Court, hearing oral argument, and good cause appearing, issues the following Findings of Fact, Conclusions of Law and Judgment:

FINDINGS OF FACT

Complaint and Amended Complaint

1. Plaintiffs initially filed a Complaint in this matter on July 7, 2016 which raised three Claims for Relief against all Defendants: 1) Declaratory and Injunctive Relief; 2) Breach of Contract and 3) Fraud.

2. On August 4, 2016, before any of the Defendants had filed a responsive pleading to the original Complaint, Plaintiffs filed their Amended Complaint which alleged the following Claims for Relief against all Defendants: 1) Injunctive Relief; 2) Violations of Plaintiffs' Vested Rights and 3) Fraud.

3. Plaintiffs Robert and Nancy Peccole are residents of the Queensridge common interest community ("Queensridge CIC"), as defined in NRS 116, and owners of the property identified as APN 138-31-215-013, commonly known as 9740 Verlaine Court, Las Vegas, Nevada ("Residence"). (Amended Complaint, Par. 2).

4. At the time of filing of the Complaint and Amended Complaint, the Residence was owned by the Robert N. and Nancy A. Peccole Family Trust ("Peccole Trust"). The Peccole Trust acquired title to the Residence on August 28, 2013 from Plaintiff's Robert and Nancy Peccole, as individuals, and transferred ownership of the residence to Plaintiff's Robert N. and Nancy A. Peccole on September 12, 2016.

5. Plaintiff's Robert and Nancy Peccole, as Trustees of the Peccole Trust, have no ownership interest in the Residence and therefor have no standing in this action.

6. Plaintiff's Robert N. and Nancy A. Peccole, as individuals, acquired their present ownership interest in the Residence on September 12, 2016 and therefore had full knowledge of the plans to develop the land upon which the Badlands Golf Course is presently operated at the time they acquired the Residence.

7. Plaintiffs' Amended Complaint alleges that the City of Las Vegas, along with Defendants Fore Stars Ltd., Yohan Lowie, Vickie DeHart and Frank Pankratz, openly sought to circumvent the requirements of state law, the City Code and Plaintiffs' alleged vested rights, which they allegedly gained under their Purchase Agreement, by applying to the City for redevelopment, rezoning and by interfering with and allegedly violating the drainage system in order to deprive Plaintiffs and other Queensridge homeowners from notice and an opportunity to be heard and to protect their vested rights under the Master Declaration of Covenants, Conditions, Restrictions and Easements for Queensridge (hereinafter "Master Declaration" or "Queensridge Master Declaration")(*See* Amended Complaint, Par. 1).

8. Plaintiffs allege that Defendant Fore Stars Ltd. convinced the City of Las Vegas Planning Department to put a Staff sponsored proposed amendment to the City of Las Vegas Master Plan on the September 8, 2015 Planning Commission Agenda. The Amended Complaint alleges that the proposed Amendment would have allowed Fore Stars Ltd. to exceed the density cap of 8 units per acre on the Badlands Golf Course located in the Queensridge Master Planned Community. (Amended Complaint, Par. 44).

9. Plaintiffs allege that Defendant Fore Stars Ltd., recorded a Parcel Map relative to the Badlands Golf Course property without public notification and process required by NRS 278.320 to 278.4725. Plaintiffs further allege that the requirements of NRS 278.4925 and City of Las Vegas Unified Development Code 19.16.070 were not met when the City Planning Director certified the Parcel Map and allowed it to be recorded by Fore Stars, Ltd. and that the City of Las Vegas should have known that it was unlawfully recorded. (Amended Complaint, Par. 51, 61 and 62).

10. Plaintiffs allege in their First Claim for Relief that they are entitled to Injunctive Relief against the Developer Defendants and City of Las Vegas enjoining them from taking any action that violates the provisions of the Master Declaration.

11. Plaintiffs allege in their Second Claim for Relief that Developer Defendants have violated their "vested rights" as allegedly afforded to them in the Master Declaration.

12. Plaintiffs allege the following "Specific Acts of Fraud" committed by some or all of the Defendants in this case:

1. Implied representations by Peccole Nevada Corporation, Larry Miller, Bruce Bayne and Greg Goorjian. (Amended Complaint, ¶ 76).

2. A "scheme" by Defendants Peccole Nevada Corporation, Larry Miller, Bruce Bayne, all of the entities listed in Paragraph 34 as members of Fore Stars, Ltd, and Yohan Lowie, Vickie DeHart, Frank Pankratz and EHB Companies LLC in collusion with each other whereby Fore Stars, Ltd would be sold to Lowie and his partners and they in turn would clandestinely apply to the City of Las Vegas to eliminate Badlands Golf Course and replace it with residential development including high density apartments. (Amended Complaint, ¶ 77).

3. The City of Las Vegas, through its Planning Department and members joined in the scheme contrived by the Defendants and participated in the collusion by approving and allowing Fore Stars to illegally record a Merger and Resubdivision Parcel Map and accepting an illegal application designed to change drainage system and subdivide and rezone the Badlands Golf Course. (Amended Complaint, ¶ 78).

4. That Yohan Lowie and his agents publicly represented that the Badlands Golf Course was losing money and used this as an excuse to redevelop the entire course. (Amended Complaint, ¶ 79).

5. That Yohan Lowie publically represented that he paid $30,000,000 for Fore Stars of his own personal money when he really paid $15,000,000 and borrowed $15,800,000. (Amended Complaint, ¶ 80).

6. Lowie's land use representatives and attorneys have made public claims that the golf course is zoned R-PD7 and if the City doesn't grant this zoning, it will result in an inverse condemnation. (Amended Complaint, ¶ 81).

Plaintiffs' Motions for Preliminary Injunction against the City of Las Vegas and against the Developer Defendants and Orders Denying Plaintiffs' Motions for Rehearing, for Stay on Appeal and Notice of Appeal.

13. On August 8, 2016, Plaintiffs filed a Motion for Preliminary Injunction seeking to enjoin the City of Las Vegas from entertaining or acting upon agenda items presently before the City Planning Commission that allegedly violated Plaintiffs' vested rights as home owners in the Queensridge common interest community.

14. The Court denied Plaintiffs' Motion for Preliminary Injunction in an Order entered on September 30, 2016 because Plaintiffs failed to demonstrate that permitting the City of Las Vegas Planning Commission (or the Las Vegas City Council) to proceed with its consideration of the Applications constitutes irreparable harm to Plaintiffs that would compel the Court to grant Plaintiffs the requested injunctive relief in contravention of the Nevada Supreme Court's holding in *Eagle Thrifty Drugs & Market v. Hunter Lake Parent Teachers Ass'n*, 85 Nev. 162, 165, 451 P.2d 713, 714 (1969).

15. On September 28, 2016—the day after their Motion for Preliminary Injunction directed at the City of Las Vegas was denied—Plaintiffs filed a virtually identical Motion for Preliminary Injunction, but directed it at Defendants Fore Stars Ltd., Seventy Acres LLC, 180 Land Co LLC, EHB Companies LLC, Yohan Lowie, Vickie DeHart and Frank Pankratz (hereinafter "Developer Defendants").

16. On October 5, 2016, Plaintiffs improperly filed a Motion for Rehearing of Plaintiffs' Motion for Preliminary Injunction.[1]

17. On October 12, 2016, Plaintiffs filed a Motion for Stay Pending Appeal in relation to the Order Denying their Motion for Preliminary Injunction against the City of Las Vegas.

18. On October 17, 2016, the Court, through Minute Order, denied the Plaintiffs' Motion for Rehearing, Motion for Stay Pending Appeal and Motion for Preliminary Injunction

[1] The Motion was procedurally improper because Plaintiffs are required to seek leave of Court prior to filing a Motion for Rehearing pursuant to EDCR 2.24(a) and Plaintiffs failed to do so. On October 10, 2016, the Court issued an Order vacating the erroneously-set hearing on Plaintiffs Motion for Rehearing, converting Plaintiffs Motion to a Motion for Leave of Court to File Motion for Rehearing and setting same for in chambers hearing on October 17, 2016.

against Developer Defendants. Formal Orders were subsequently entered by the Court thereafter on October 19, 2016, October 19, 2016 and October 31, 2016, respectively.

19. The Court denied Plaintiffs' Motion for Rehearing of the Motion for Preliminary Injunction because Plaintiffs could not show irreparable harm, because they possess administrative remedies before the City Planning Commission and City Council pursuant to NRS 278.3195, UDC 19.00.080(N) and NRS 278.0235, and because Plaintiffs failed to show a reasonable likelihood of success on the merits at the September 27, 2016 hearing and failed to allege any change of circumstances since that time that would show a reasonable likelihood of success as of October 17, 2016.

20. The Court denied Plaintiffs' Motion for Stay Pending Appeal on the Order Denying Plaintiffs' Motion for Preliminary Injunction against the City of Las Vegas because Plaintiffs failed to satisfy the requirements of NRAP 8 and NRCP 62(c). Plaintiffs failed to show that the object of their potential writ petition will be defeated if their stay is denied, they failed to show that they would suffer irreparable harm or serious injury if the stay is not issued and they failed to show a likelihood of success on the merits.

21. The Court denied Plaintiffs' Motion for Preliminary Injunction against Developer Defendants because Plaintiffs failed to meet their burden of proof that they have suffered irreparable harm for which compensatory damages are an inadequate remedy and failed to show a reasonable likelihood of success on the merits. The Court also based its denial on the fact that Nevada law does not permit a litigant from seeking to enjoin the Applicant as a means of avoiding well-established prohibitions and/or limitations against interfering with or seeking advanced restraint against an administrative body's exercise of legislative power:

> In Nevada, it is established that equity cannot directly interfere with, or in advance restrain, the discretion of an administrative body's exercise of legislative power. [Citation omitted] This means that a court could not enjoin the City of Reno from entertaining Eagle Thrifty's request to review the planning commission recommendation. ***This established principle may not be avoided by the expedient of directing the injunction to the applicant instead of the City Council.***

Eagle Thrifty Drugs & Market v. Hunter Lake Parent Teachers Ass'n, 85 Nev. 162, 165, 451 P.22d 713, 714 (1969) (emphasis added).

22. On October 21, 2016, Plaintiffs filed a Notice of Appeal on the Order Denying their Motion for Preliminary Injunction against the City of Las Vegas. Subsequently, on October 24, 2016, Plaintiffs filed a Motion for Stay in the Supreme Court. On November 10, 2016, the Nevada Supreme Court dismissed Plaintiffs' Appeal, and the Motion for Stay was therefore denied as moot.

Defendants' Motion to Dismiss

23. Defendants Fore Stars, Ltd., 180 Land Co., LLC, Seventy Acres LLC, EHB Companies, LLC, Yohan Lowie, Vickie Dehart and Frank Pankratz filed a Motion to Dismiss Amended Complaint on September 6, 2016.

24. The Amended Complaint makes several allegations against the Developer Defendants:

1) that they improperly obtained and unlawfully recorded a parcel map merging and re-subdividing three lots which comprise the Badlands Golf Course land;
2) that, with the assistance of the City Planning Director, they did not follow procedures for a tentative map in the creation of the parcel map,;
3) that the City accepted unlawful Applications from the Developer Defendants for a general plan amendment, zone change and site development review and scheduled a hearing before the Planning Commission on the Applications;
4) that they have violated Plaintiffs' "vested rights" by filing Applications to rezone, develop and construct residential units on their land in violation of the Master Declaration and by attempting to change the drainage system; and
5) that Developer Defendants have committed acts of fraud against Plaintiffs.

25. The Developer Defendants contended that they properly followed procedures for approval of a parcel map because the map involved the merger and re-subdividing of only three parcels and that Plaintiffs' arguments about tentative maps only apply to transactions involving five or more parcels, whereas parcel maps are used for merger and re-subdividing of four or

fewer parcels of land. *See* NRS 278.461(1)(a)("[a] person who proposed to divide any land for transfer or development into four lots or less… [p]repare a parcel map…").

26. The Developer Defendants further argued that Plaintiffs erroneously represent that a parcel map is subject to same requirements as a tentative map or final map of NRS 278.4925. Tentative maps are used for larger parcels and subdivisions of land and subdivisions of land require "five or more lots." NRS 278.320(1).

27. The Developer Defendants argued that Plaintiffs have not pursued their appeal remedies under UDC 19.16.040(T) and have failed to exhaust their administrative remedies. The City similarly notes that they seek direct judicial challenge without exhausting their administrative remedies and this is fatal to their claims regarding the parcel map in this case. *See Benson v. State Engineer*, 131 Nev. ____, 358 P.3d 221, 224 (2015) and *Allstate Insurance Co. v. Thorpe*, 123 Nev. 565, 571, 170 P.3d 989, 993-94 (2007).

28. The Developer Defendants also argued that Plaintiffs have failed to exhaust their administrative remedies prior to seeking judicial review. The Amended Complaint notes that the Defendants' Applications are scheduled for a public hearing before the City Planning Commission and thereafter, before the City of Las Vegas City Council. The Planning Commission Staff had recommended approval of all seven (7) applications. *See* Defendants' Supplemental Exhibit H, filed November 2, 2016. The Applications were heard by the City Planning Commission at its Meeting of October 18, 2016. The Planning Commission's action and decisions on the Applications are subject to review by the Las Vegas City Council at its upcoming November 16, 2016 Meeting under UDC 19.16.030(H), 19.16.090(K) and 19.16.100(G). It is only after a final decision of the City Council that Plaintiffs would be entitled to seek judicial review in the District Court pursuant to NRS 278.3195(4).

29. The Developer Defendants argued that Plaintiffs do not have the "vested rights" that they claim are being violated in their Second Claim for Relief because the Badlands Golf Course land that was not annexed into Queensridge CIC, as required by the Master Declaration

and NRS 116, is unburdened, unencumbered by, and not subject to the CC&Rs and the restrictions of the Master Declaration.

30. The Developer Defendants argued that the Plaintiffs have failed to plead fraud with particularity as required by NRCP 9(b).

31. The Developer Defendants argued that Plaintiffs have not alleged any viable claims against them and their Amended Complaint should be dismissed for failure to state a claim.

Plaintiffs' Voluntary Dismissal of Certain Defendants

32. On October 4, 2016, Plaintiffs dismissed several Peccole Defendants from this case through a Stipulation and Order Dismissing Without Prejudice Defendants Lauretta P. Bayne, individually, Lisa Miller, individually, Lauretta P. Bayne 1976 Trust, Leann P. Goorjian 1976 Trust, Lisa P. Miller 1976 Trust, William Peccole 1982 Trust, William and Wanda Peccole 1991 Trust, and the William Peccole and Wanda Peccole 1971 Trust was entered.

33. On October 11, 2016, Plaintiffs dismissed the remaining Peccole Defendants through a Stipulation and Order Dismissing Without Prejudice Defendants: Peccole Nevada Corporation; William Peter and Wanda Peccole Family Limited Partnership, Larry Miller and Bruce Bayne. As such, no Peccole-related Defendants remain as Defendants in this case.

Dismissal of the City of Las Vegas

34. The City of Las Vegas filed a Motion to Dismiss on August 30, 2016. Said Motion was heard on October 11, 2016 and was granted on October 19, 2016, dismissing all of Plaintiffs' claims against the City of Las Vegas.

Lack of Standing

35. Plaintiff's Robert and Nancy Peccole, as Trustees of the Peccole Trust, have no ownership interest in the Residence and therefor have no standing in this action. As such, all

claims asserted by Plaintiff's Robert and Nancy Peccole, as Trustees of the Peccole Trust are dismissed.

Facts Regarding Developer Defendants' Motion to Dismiss

36. The Court has reviewed and considered the filings by Plaintiffs and Defendants, including the Supplements filed by both sides following the November 1, 2016 Hearing, as well as the oral argument of counsel at the hearing.

37. Plaintiff's Robert N. and Nancy A. Peccole, as individuals, acquired their present ownership interest in the Residence on September 12, 2016 and therefore had full knowledge of the plans to develop the land upon which the Badlands Golf Course is presently operated at the time they acquired the Residence.

38. Plaintiffs have not set forth facts that would substantiate a basis for the three claims set forth in their Complaint against the Developer Defendants: Injunctive Relief/Parcel Map, Vested Rights, and Fraud.

39. The Developer Defendants are the successors in interest to the rights, interests and title in the Badlands Golf Course land formerly held by Peccole 1982 Trust, Dated February 15, 1982; William Peter and Wanda Ruth Peccole Family Limited Partnership; and Nevada Legacy 14 LLC.

40. Plaintiffs' have made some scurrilous allegations without factual basis and without affidavit or any other competent proof. The Court sees no evidence supporting those claims.

41. The Developer Defendants properly followed procedures for approval of a parcel map over Defendants' property pursuant to NRS 278.461(1)(a) because the division involved four or fewer lots. The Developer Defendants parcel map is a legal merger and re-subdividing of land within their own boundaries.

42. The Developer Defendants have complied with all relevant provisions of NRS Chapter 278.

43. NRS 278A.080 provides: "The powers granted under the provisions of this chapter may be exercised by any city or county which enacts an ordinance conforming to the provisions of this chapter."

44. The Declaration of Luann Holmes, City Clerk for the City of Las Vegas, Exhibit L to Defendants' November 2, 2016 Supplemental Exhibits, states at paragraph 5, "[T]he Unified Development Code and City Ordinances for the City of Las Vegas do not contain provisions adopted pursuant to NRS 278A."

45. The Queensridge Master Declaration (Court Exhibit B and attached to Defendants' November 2, 2016 Supplement as Exhibit B), at p. 1, Recital B, states: "Declarant intends, without obligation, to develop the Property and the Annexable Property in one or more phases as a mixed-use common interest community pursuant to Chapter 116 of the Nevada Revised Statutes ("NRS"), which shall contain "non-residential" areas and "residential" areas, which may, but is not required to, include "planned communities" and "condominiums," as such quoted terms are used and defined in NRS Chapter 116."

46. The Queensridge community is a Common Interest Community organized under NRS 116. This is not a PUD community.

47. NRS 116.1201(4) states that "The provisions of Chapter 117 and 278A of NRS do not apply to common-interest communities." See Defendants' Supplemental Exhibit Q.

48. In contrast to the City of Las Vegas' choice not to adopt the provisions of NRS 278A, municipal or city councils that choose to adopt the provisions of NRS 278A do so, as required by NRS 278A.080, by affirmatively enacting ordinances that specifically adopt Chapter 278A. *See, e.g.,* Defendants' Supplemental Exhibit N and O, Title 20 Consolidated

Development Code 20.704.040 and 20.676, Douglas County, Nevada and Defendants' Supplemental Exhibit P, Ordinance No. 17.040.030, City of North Las Vegas. The provisions of NRS 278A do not apply to the facts of this case.

49. The City Council has not voted on Defendants' pending Applications and the Court will not stop the City Council from conducting its ordinary business and reaching a decision on the Applications. Plaintiffs may not enjoin the City of Las Vegas or Defendants with regard to their instant Applications, or other Applications they may submit in the future. *See Eagle Thrifty Drugs & Market v. Hunter Lake Parent Teachers Ass'n*, 85 Nev. 162, 165, 451 P.2d 713, 714 (1969).

50. Plaintiffs are improperly trying to impede upon the City's land use review and zoning processes. The Defendants are permitted to seek approval of their Applications, or any Applications submitted in the future, before the City of Las Vegas, and the City of Las Vegas, likewise, is entitled to exercise its legislative function without interference by Plaintiffs.

51. Plaintiffs' claim that the Applications were "illegal" or "violations of the Master Declaration" is without merit. The filing of these Applications by Defendants, or any Applications by Defendants, is not prohibited by the terms of the Master Declaration, because the Applications concern Defendants' own land, and such land that is not annexed into the Queensridge CIC is therefore not subject to the terms of its Master Declaration. Defendants cannot violate the terms of an agreement to which they are not a party and which does not apply to them.

52. Plaintiffs' inferences and allegations regarding whether the Badlands Golf Course land is subject to the Queensridge Master Declaration are not fair and reasonable, and have no support in fact or law.

53. The land which is owned by the Defendants, upon which the Badlands Golf Course is presently operated ("GC Land") that was never annexed into the Queensridge CIC, never became part of the "Property" as defined in the Queensridge Master Declaration and is therefore not subject to the terms, conditions, requirements or restrictions of the Queensridge Master Declaration.

54. Plaintiffs cannot prove a set of facts under which the GC Land was annexed into the "Property" as defined in the Queensridge Master Declaration.

55. Since Plaintiffs have failed to prove that the GC Land was annexed into the "Property" as defined in the Master Declaration, then the GC Land is not subject to the terms and conditions of the Master Declaration.

56. There can be no violation of the Master Declaration by Defendants if the GC Land is not subject to the Master Declaration. Therefore, the Defendants' Applications are not prohibited by, or violative of, the Master Declaration.

57. Plaintiffs' Exhibit 1 to their Supplement filed November 8, 2016 depicts a proposed and conceptual master plan amendment. The maps attached thereto do not appear to depict the 9-hole golf course, but instead identifies that area as proposed single family development units.

58. Plaintiffs' Exhibit 2 to their Supplement filed November 8, 2016, which is also Exhibit J to Defendants' Supplement filed November 2, 2016, approves a request for rezoning to R-PD3, R-PD7 and C-1, which all indicate the intent to develop in the future as residential or commercial. Plaintiffs alleged this was a Resolution of Intent which was "expunged" upon approval of the application. Plaintiffs alleged that Exhibit 3 to their Supplement, the 1991 zoning approval letter, was likewise expunged. However, the Zoning Bill No. Z-20011, Ordinance No. 5353, attached as Exhibit I to Defendants' Motion to Dismiss, demonstrates that

the R-PD7 Zoning was codified and incorporated into the amended Atlas in 2001. Therefore, Plaintiffs' claim that Attorney Jerbic's presentation at the Planning Commission Meeting (Exhibit D to Defendants' Supplement) is "erroneous" is, in fact, incorrect. Attorney Jerbic's presentation is supported by the documentation of public record.

59. Defendants' Supplemental Exhibit I, a March 26, 1986 letter to the City Planning Commission, specifically sought the R-PD zoning for a planned golf course "as it allows the developer flexibility and the City design control." Thus, keeping the golf course zoned for potential future development as residential was an intentional part of the plan.

60. Further, Defendants' Supplemental Exhibit K, two letters from the City of Las Vegas to Frank Pankratz dated December 20, 2014, confirm the R-PD7 zoning on all parcels held by Fore Stars, Ltd.

61. Plaintiffs' Exhibit 4 to their Supplement filed November 8, 2016, a 1986 map depicts two proposed golf courses, one proposed in Canyon Gate and the other proposed around what is currently Badlands. However, the current Badlands Golf Course is not the same as what is depicted on that map. Of note, the area on which the 9 hole golf course currently sits is depicted as single family development.

62. Exhibit A to the Queensridge Master Declaration defines the initial land committed as "Property" and Exhibit B defines the land that is eligible to be annexed, but it only becomes part of the "Property" if a Declaration of Annexation is filed with the County Recorder.

63. The Court finds that Recital A to the Queensridge Master Declaration defines "Property" to "mean and include both of the real property described in Exhibit "A" hereto and that portion of the Annexable Property which may be annexed from time to time in accordance with Section 2.3, below."

64. The Court finds that Recital A of the Queensridge Master Declaration further states that "In no event shall the term "Property" include any portion of the Annexable Property for which a Declaration of Annexation has not been Recorded…"

65. The Court finds that after reviewing the Supplemental Exhibit, Annexation Binder filed on October 20, 2016 at the Court's request, and the map entered as Exhibit A at the November 1, 2016 Hearing and to Defendants' November 2, 2016 Supplement, that the property owned by Developer Defendants that was never annexed into the Queensridge CIC is therefore not part of the "Property" as defined in the Queensridge Master Declaration.

66. The Court therefore finds that the terms, conditions, and restrictions of the Queensridge Master Declaration do not apply to the GC Land and cannot be enforced against the GC Land.

67. The Court finds that Exhibit C to the Master Declaration is not a depiction exclusively of the "Property" as Plaintiffs allege. It is clear that it depicts both the Property, which is a very small piece, and the Annexable Property, pursuant to the Master Declaration, page 10, Section 1.55, which states that Master Plan is defined as the "Queensridge Master Plan proposed by Declarant for the Property and the Annexable Property which is set forth in Exhibit "C," hereto…" Plaintiffs' Supplement filed November 8, 2016, Exhibit 5, is page 10 of the Master Declaration, and Plaintiffs emphasize that is a master plan proposed by the Declaration "for the property." But reading the provision as a whole, it is clear that it is a "proposed" plan for the Property (as defined by the Master Declaration at Recital A) and "the Annexable Property."

68. Likewise, Exhibit 6 to Plaintiffs' Supplement filed November 8, 2016 defines 'Final Map' as a Recorded map of "any portion" of the Property. It does not depict all of the Property. The Master Declaration at Section 1.55 is clear that its Exhibit C depicts the Property

and the Annexable Property, and Defendants' Supplemental Exhibit A makes clear that not all of the Annexable Property was actually annexed into the Queensridge CIC.

69. Plaintiffs' Supplemental Exhibit 7, which is Exhibit C to the Master Declaration, does not depict "Lot 10" as part of the Property. It depicts Lot 10 as part of the Annexable Property. Plaintiffs' Supplemental Exhibit 8 depicts, as discussed by Defendants at the November 1, 2016 Hearing, that Lot 10 was subdivided into several parcels, one of which became the 9 hole golf course. It was not designated as "not a part of the Property or Annexable Property" because it was Annexable Property. However, again, the public record Declarations of Annexation, as summarized in Defendants' Supplemental Exhibit A, shows that Parcel 21, the 9 holes, was never annexed into the Queensridge CIC.

70. The Master Declaration at Recital B provides that the Property "may, but is not required to, include…a golf course."

71. The Master Declaration at Recital B further provides that "The existing 18-hole golf course commonly known as the "Badlands Golf Course" is not a part of the Property or Annexable Property." The Court finds that does not mean that the 9-hole golf course was a part of the Property. It is clear that it was part of the Annexable Property, and was subject to development rights. In addition to the "diamond" on the Exhibit C Map indicating it is "subject to development rights, p. 1, Recital B of the Master Declaration states: "Declarant intends, without obligation, to develop the Property and the Annexable Property…"

72. In any event, the Amended and Restated Master Declaration of October, 2000 included the 9 holes, and provides "The existing 27-hole golf course commonly known as the "Badlands Golf Court" is not a part of the Property or Annexable Property."

73. The Court finds that Mr. Peccole's Deed (Plaintiffs' Supplemental Exhibit 9) and Preliminary Title Report provided by Plaintiffs both indicate that his home was part of the

Queensridge CIC, that it sits on Parcel 19, which was annexed into the Queensridge CIC in March, 2000. Both indicate that his home is subject to the terms and conditions of the Master Declaration, "including any amendments and supplements thereto."

74. The Court finds that, conversely, the Fore Stars, Ltd. Deed of 2005 does not have any such reference to the Queensridge Master Declaration or Queensridge CIC. Likewise none of the other Deeds involving the GC Land, Defendants' Supplemental Exhibits E, F, and G filed November 2, 2016, make any reference to such land being subject to, or restricted by, the Queensridge Master Declaration.

75. Plaintiffs' Supplemental Exhibit 10, likewise, ignores the second sentence of Section 13.2.1, which provides "In addition, Declarant shall have the right to unilaterally amend this Master Declaration to make the following amendments…" The four (4) rights including the right to amend the Master Declaration as necessary to correct exhibits or satisfy requirements of governmental agencies, to amend the Master Plan, to amend the Master Declaration as necessary or appropriate to the exercise Declarant's rights, and to amend the Master declaration as necessary to comply with the provisions of NRS 116. Declarant, indeed, amended the Master Declaration as such just a few months after Plaintiffs' purchased their home.

76. Contrary to Plaintiffs' claim, the Amended and Restated Master Declaration was, in fact, recorded on August 16, 2002, as reflected in Defendants' Second Supplement, Exhibit Q.

77. Regardless, whether or not the 9-hole course is "not a party of the Property or Annexable Property" is irrelevant, if it was never annexed.

78. The Court finds that the Master Declaration and Deeds, as well as the Declarations of Annexation, are recorded documents and public record.

79. This Court has heard Plaintiffs' arguments and is not satisfied, and does not believe, that the GC Land is subject to the Master Declaration of Queensridge.

80. This Court is of the opinion that Plaintiffs' counsel Robert N. Peccole, Esq. may be so personally close to the case that he is missing the key issues central to the causes of action.

81. The Court finds that the Developer Defendants have the right to develop the GC Land.

82. The Court finds that the GC Land owned by Developer Defendants has "hard zoning" of R-PD7. This allows up to 7.49 development units per acre subject to City of Las Vegas requirements.

83. Of Plaintiffs' six averments of Fraud in their Amended Complaint, the only one that could ***possibly*** meet all of the elements required is #1. That is the only averment where Plaintiffs claim that a false representation was made by any of the Defendants with the intention of inducing Plaintiffs to act based upon a specific misrepresentation. None of the remaining five averments involve representations made directly to Plaintiffs. Plaintiffs' first fraud claim fails for two reasons: first, Plaintiffs alleged that the representations were "implied representations." The elements of Fraud require actual representations, not implied representations and second, and more importantly, Plaintiffs have dismissed all of the Defendants listed in averment #1 who they claim made false representations to them.

84. Plaintiffs allegations of fraud against Developer Defendants fail and are insufficient pursuant to NRCP 9(b) because they are not plead with particularity and do not include averments as to time, place, identity of parties involved and the nature of the fraud. Plaintiffs have not plead any facts which allege any contact or communication with the Developer Defendants at the time of purchase of the custom lot. Furthermore, Plaintiffs have voluntarily dismissed the Peccole Defendants who allegedly engaged in said alleged fraud.

85. Assuming the facts alleged by Plaintiffs to be true, Plaintiffs cannot meet the elements of any type of fraud recognized in the State of Nevada, including: negligent

misrepresentation, intentional misrepresentation or fraud in the inducement as their claim is pled against Developer Defendants. This alleged "scheme," does not meet the elements of fraud because Plaintiffs fail to allege that Developer Defendants made a false representation to them; that Developer Defendants knew the representation was false; that Developer Defendants intended to induce Plaintiffs to rely on this knowing, false representation; and that Plaintiffs actually relied on such knowing, false representation. Plaintiffs not only fail to allege that they have ever spoken to any of the Developer Defendants, but Mr. Peccole admitted at the October 11, 2016 Hearing that he had never spoken to Mr. Lowie.

86. Plaintiffs are alleging a conspiracy, but that would be a criminal matter. What they are trying to do is stop an administrative arm of the City of Las Vegas from doing their job.

87. Plaintiffs' general and unsupported allegations of a "scheme" involving Developer Defendants and the now-dismissed Peccole Defendants and Defendant City of Las Vegas do not meet the legal burden of stating a fraud claim with particularity. There is quite simply no competent evidence to even begin to suggest the truth of such scurrilous allegations.

88. Plaintiffs have failed to state a claim for relief against the following Defendants: Yohan Lowie, Vickie DeHart, Frank Pankratz, and EHB Companies LLC and those claims should be dismissed. Plaintiffs' only claims against Lowie, DeHart and Pankratz are the fraud claims, but the fraud claim is legally insufficient because it fails to allege that any of these individuals ever made any fraudulent representations to Plaintiffs. Lowie, DeHart and Pankratz are Mangers of EHB Companies LLC. EHB Companies LLC is the sole Manager of Fore Stars Ltd., 180 Land Co LLC, and Seventy Acres LLC. Plaintiffs have failed to properly allege the elements of any causes of action sufficient to impose liability, nor even pierce the corporate veil, against the Managers of any of the above-listed entities.

89. In light of Plaintiffs voluntarily dismissal of the Peccole Defendants, whom are alleged to have actually made the fraudulent representations to Plaintiff Robert Peccole, Plaintiffs' claims against Yohan Lowie, Vickie DeHart, Frank Pankratz, and EHB Companies LLC, whom are not alleged to have ever held a conversation with Plaintiff Robert Peccole, appear to have been brought solely for the purpose of harassment and nuisance.

90. Although ordinarily leave to amend the Complaint should be freely given when justice requires, Plaintiffs have already amended their Complaint once and have failed to state a claim against the Developer Defendants. For the reasons set forth hereinabove, Plaintiffs shall not be permitted to amend their Complaint a second time in relation to their claims against Developer Defendants as the attempt to amend the Complaint would be futile.

91. Developer Defendants introduced, and the Court accepted, the following Exhibits at the Hearing, as well as taking notice of multiple other exhibits which were attached to the various filings (including Plaintiffs' Deeds, Title Reports, Plaintiffs' Purchase Agreement, Addendum to Plaintiffs' Purchase Agreement, Fore Stars, Ltd.'s Deed, the Declarations of Annexation, and others):

1) Exhibit A: Property Annexation Summary Map;
2) Exhibit B: Master Declaration;
3) Exhibit C: Amended Master Declaration;
4) Exhibit D: Video/thumb drive from Planning Commission hearing of City Attorney Brad Jerbic.

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

CONCLUSIONS OF LAW

93. The Nevada Supreme Court has explained that "a timely notice of appeal divests the district court of jurisdiction to act and vests jurisdiction in this court" and that the point at which jurisdiction is transferred from the district court to the Supreme Court must be clearly

defined. Although, when an appeal is perfected, the district court is divested of jurisdiction to revisit issues that are pending before the Supreme Court, the district court retains jurisdiction to enter orders on matters that are collateral to and independent from the appealed order, i.e., matters that in no way affect the appeal's merits. *Mack-Manley v. Manley*, 122 Nev. 849, 855, 138 P.3d 525, 529-530 (2006).

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

95. The Court must draw every fair inference in favor of the non-moving party. *Id.* (emphasis added).

96. Courts are generally to accept the factual allegations of a Complaint as true on a Motion to Dismiss, but the allegations must be legally sufficient to constitute the elements of the claim asserted. *Carpenter v. Shalev*, 126 Nev. 698, 367 P.3d 755 (2010).

97. Plaintiffs have failed to state a claim upon which relief can be granted, even with every fair inference in favor of Plaintiffs. It appears beyond a doubt that Plaintiffs can prove no set of facts which would entitle them to relief.

98. NRS 52.275 provides that "the contents of voluminous writings, recordings or photographs which cannot conveniently be examined in court may be presented in the form of a chart, summary or calculation."

99. While a Court generally may not consider material beyond the complaint in ruling on a 12(b)(6) motion, "[a] court may take judicial notice of 'matters of public record' without converting a motion to dismiss into a motion for summary judgment," as long as the facts noticed are not "subject to reasonable dispute." *Intri-Plex Techs., Inc. v. Crest Grp., Inc.*, 499

F.3d 1048, 1052 (9th Cir. 2007)(citing *Lee v. City of Los Angeles*, 250 F.3d 668, 688–89 (9th Cir. 2001); *see also United States v. Ritchie,* 342 F.3d 903, 908–09 (9th Cir.2003)). Courts may take judicial notice of some public records, including the "records and reports of administrative bodies." *United States v. Ritchie*, 342 F.3d 903, 909 (9th Cir. 2003) (citing *Interstate Nat. Gas Co. v. S. Cal. Gas Co.,* 209 F.2d 380, 385 (9th Cir.1953)). The administrative regulations, zoning letters, CC&R and Master Declarations referenced herein are such documents.

100. Plaintiffs have sought judicial challenge and review of the parcel maps without exhausting their administrative remedies first and this is fatal to their claims regarding the parcel maps. *Benson v. State Engineer*, 131 Nev. ___, 358 P.3d 221, 224 (2015) and *Allstate Insurance Co. v. Thorpe*, 123 Nev. 565, 571, 170 P.3d 989, 993-94 (2007).

101. The City Planning Commission and City Council's work is of a legislative function and Plaintiffs' claims attempting to enjoin the review of Defendant Developers' Applications are not ripe. UDC 19.16.030(H), 19.16.090(K) and 19.16.100(G).

102. Plaintiffs have an adequate remedy in law in the form of judicial review pursuant to UDC 19.16.040(T) and NRS 233B.

103. Zoning ordinances do not override privately-placed restrictions and courts cannot invalidate restrictive covenants because of a zoning change. *Western Land Co. v. Truskolaski*, 88 Nev. 200, 206, 495 P.2d 624, 627 (1972).

104. NRS 278A.080 provides: "The powers granted under the provisions of this chapter may be exercised by any city or county which enacts an ordinance conforming to the provisions of this chapter."

105. NRS 116.1201(4) specifically and unambiguously provides, "The provisions of chapters 117 and 278A of NRS do not apply to common-interest communities."

106. NRS 278.320(2) states that "A common-interest community consisting of five or more units shall be deemed to be a subdivision of land within the meaning of this section, but need only comply with NRS 278.326 to 278.460, inclusive and 278.473 to 278.490, inclusive."

107. Private land use agreements are enforced by actions between the parties to the agreement and enforcement of such agreements is to be carried out by the Courts, not zoning boards.

108. Plaintiffs "vested rights" Claim for Relief is not a viable claim because Plaintiffs have failed to show that the GC Land is subject to the Master Declaration and therefore that claim should be dismissed.

109. Plaintiffs have failed to plead fraud with particularity as required by NRCP 9(b). The absence of any plausible claim of fraud against the Defendants was further demonstrated by the fact that throughout the Court's lengthy hearing upon the Defendants' Motion to Dismiss Plaintiffs' Amended Complaint, Plaintiffs did not make a single reference or allegation whatsoever that would suggest in any way that the Plaintiffs had any claim of fraud against any of the Defendants. Plaintiffs did not reference their alleged claim at all, and the Court Finds, at this time, that the Plaintiffs have failed o state any claim upon with relief may be granted against the Defendants. *See NRCP 9(b).*

110. Under Nevada law, a Plaintiff must prove the elements of fraudulent misrepresentation by clear and convincing evidence: (1) A false representation made by the defendant; (2) defendant's knowledge or belief that its representation was false or that defendant has an insufficient basis of information for making the representation; (3) defendant intended to induce plaintiff to act or refrain from acting upon the misrepresentation; and (4) damage to the plaintiff as a result of relying on the misrepresentation. *Barmettler v. Reno Air, Inc.*, 114 Nev.

441, 447, 956 P.2d 1382, 1386 (1998), citing *Bulbman Inc. v. Nevada Bell*, 108 Nev. 105, 110-11, 825 P.2d 588, 592 (1992); *Lubbe v. Barba*, 91 Nev. 596, 599, 540 P.2d 115, 117 (1975).

111. Nevada law provides: (i) a shield to protect members and managers from liability for the debts and liabilities of the limited liability company. *NRS 86.371*; and (ii) a member of a limited-liability company is not a proper party to proceedings by or against the company. *NRS 86.381*. The Court finds that naming the individual Defendants, Lowie, DeHart and Pankratz, was not made in good faith, nor was there any reasonable factual basis to assert such serious and scurrilous allegations against them.

112. If any of these Conclusions of Law is more appropriately deemed a Findings of Fact, so shall it be deemed.

ORDER AND JUDGMENT

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Defendants Fore Stars, Ltd., 180 Land Co LLC, Seventy Acres LLC, EHB Companies LLC, Yohan Lowie, Vickie Dehart and Frank Pankratz' Motion to Dismiss Amended Complaint is hereby GRANTED.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that as to the Defendants Fore Stars, Ltd., 180 Land Co LLC, Seventy Acres LLC, EHB Companies LLC, Yohan Lowie, Vickie Dehart and Frank Pankratz, Plaintiffs' Amended Complaint is hereby dismissed with prejudice.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that collateral to the instant Findings of Fact, Conclusions of Law, Order and Judgment, the Court will address the Defendants' Motion for Attorneys' Fees and Costs, and Supplement thereto pursuant to NRCP 11, and issue a separate Order and Judgment relating thereto.

DATED this 21 day of November 2016.

DISTRICT COURT JUDGE
A-16-739654-C

Respectfully submitted by:

JIMMERSON LAW FIRM, P.C.

/s/ James J. Jimmerson, Esq.

James J. Jimmerson, Esq.
Nevada Bar No. 000264
415 South 6th Street, Suite 100
Las Vegas, Nevada 89101
(702) 388-7171

Exhibit "3"

Electronically Filed
01/31/2017 01:33:42 PM

CLERK OF THE COURT

NOEJ
James J. Jimmerson, Esq.
Nevada State Bar No. 00264
Email: ks@jimmersonlawfirm.com
JIMMERSON LAW FIRM, P.C.
415 South 6th Street, Suite 100
Las Vegas, Nevada 89101
Telephone: (702) 388-7171
Facsimile: (702) 380-6422
Attorneys for Defendants Fore Stars, Ltd., 180 Land Co., LLC., Seventy Acres, LLC; Yohan Lowie, Vickie DeHart and Frank Pankratz

DISTRICT COURT
CLARK COUNTY, NEVADA

ROBERT N. PECCOLE and NANCY A. PECCOLE, individuals, and Trustees of the ROBERT N. and NANCY A. PECCOLE FAMILY TRUST,

Plaintiffs,

vs.

PECCOLE NEVADA, CORPORATION, a Nevada Corporation; WILLIAM PECCOLE 1982 TRUST; WILLIAM PETER and WANDA PECCOLE FAMILY LIMITED PARTNERSHIP, a Nevada Limited Partnership; WILLIAM PECCOLE and WANDA PECCOLE 1971 TRUST; LISA P. MILLER 1976 TRUST; LAURETTA P. BAYNE 1976 TRUST; LEANN P. GOORJIAN 1976 TRUST; WILLIAM PECCOLE and WANDA PECCOLE 1991 TRUST; 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; EHB COMPANIES, LLC, a Nevada Limited Liability Company; THE CITY OF LAS VEGAS; LARRY MILLER, an individual; LISA MILLER, an individual; BRUCE BAYNE, an individual; LAURETTA P. BAYNE, an individual; YOHAN LOWIE, an individual; VICKIE DEHART, an individual; FRANK PANKRATZ, an individual,

Defendants.

CASE NO. A-16-739654-C

DEPT. NO: VIII

NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW, FINAL ORDER AND JUDGMENT

Date: January 10, 2017
Courtroom 11B

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

PLEASE TAKE NOTICE that Findings of Fact, Conclusions of Law, Final Order and Judgment was entered in the above-entitled action on the 31st day of January, 2017, a copy of which is attached hereto.

Dated: January 31st, 2017.

THE JIMMERSON LAW FIRM, P.C.

By: [signature] 8357 for
James J. Jimmerson, Esq.
Nevada State Bar No. 000264
415 South 6th Street, Suite 100
Las Vegas, Nevada 89101
Attorneys for Defendants Fore Stars, Ltd., 180 Land Co., LLC., Seventy Acres, LLC, Yohan Lowie, Vickie DeHart and Frank Pankratz

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

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 31st day of January, 2017, I served a true and correct copy of the foregoing **NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW, FINAL ORDER AND JUDGMENT** *as* indicated below:

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

__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:

Robert N. Peccole, Esq. PECCOLE & PECCOLE, LTD. 8689 W. Charleston Blvd., #109 Las Vegas, NV 89117 bob@peccole.vcoxmail.com	Todd Davis, Esq. EHB Companies LLC 1215 S. Fort Apache, Suite 120 Las Vegas, NV 89117 tdavis@ehbcompanies.com
Lewis J. Gazda, Esq. GAZDA & TADAYON 2600 S. Rainbow Blvd., #200 Las Vegas, NV 89146 efile@gazdatadayon.com abeltran@gazdatadayon.com kgerwick@gazdatadayon.com lewisjgazda@gmail.com mbdeptula@gazdatadayon.com	Stephen R. Hackett, Esq. SKLAR WILLIAMS, PLLC 410 S. Rampart Blvd., #350 Las Vegas, NV 89145 ekapolnai@klar-law.com shackett@sklar-law.com

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
Telephone (702) 388-7171 · Facsimile (702) 387-1167

Electronically Filed
01/31/2017 08:48:41 AM

FFCL

CLERK OF THE COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

ROBERT N. PECCOLE and NANCY A. PECCOLE, individuals, and Trustees of the ROBERT N. AND NANCY A. PECCOLE FAMILY TRUST,

Plaintiffs,

v.

PECCOLE NEVADA, CORPORATION, a Nevada Corporation; WILLIAM PECCOLE 1982 TRUST; WILLIAM PETER and WANDA PECCOLE FAMILY LIMITED PARTNERSHIP, a Nevada Limited Partnership; WILLIAM PECCOLE and WANDA PECCOLE 1971 TRUST; LISA P. MILLER 1976 TRUST; LAURETTA P. BAYNE 1976 TRUST; LEANN P. GOORJIAN 1976 TRUST; WILLIAM PECCOLE and WANDA PECCOLE 1991 TRUST; 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; EHB COMPANIES, LLC, a Nevada Limited Liability Company; THE CITY OF LAS VEGAS; LARRY MILLER, an individual; LISA MILLER, an individual; BRUCE BAYNE, an individual; LAURETTA P. BAYNE, an individual; YOHAN LOWIE, an individual; VICKIE DEHART, an individual; and FRANK PANKRATZ, an individual,

Defendants.

Case No. A-16-739654-C
Dept. No. VIII

FINDINGS OF FACT, CONCLUSIONS OF LAW, FINAL ORDER AND JUDGMENT

Hearing Date: January 10, 2017
Hearing Time: 8:00 a.m.

Courtroom 11B

This matter coming on for Hearing on the 10th day of January, 2017 *on* Plaintiffs' *Renewed Motion For Preliminary Injunction,* Plaintiffs' *Motion For Leave To Amend Amended Complaint,* Plaintiffs' *Motion For Evidentiary Hearing And Stay Of Order For Rule 11 Fees And Costs,* Plaintiffs' *Motion For Court To Reconsider Order Of Dismissal*, and Defendants Fore Stars, Ltd., 180 Land Co LLC, Seventy Acres LLC, EHB Companies LLC, Yohan Lowie,

Vickie Dehart and Frank Pankratz's *Oppositions* thereto and *Countermotions for Attorneys' Fees and Costs,* and upon *Plaintiffs' Opposition to Countermotion for Attorney's Fees and Costs* and Defendants' *Countermotion to Strike Plaintiffs' Rogue and Untimely Opposition filed January 5, 2017 and Attorneys' Fees and Costs*, and upon Defendants Fore Stars, Ltd., 180 Land Co LLC, Seventy Acres LLC, EHB Companies LLC, Yohan Lowie, Vickie Dehart and Frank Pankratz's *Memorandum of Costs and Disbursements*, and no objection or Motion to Retax having been filed by Plaintiffs in response thereto, ROBERT N. PECCOLE, ESQ. of PECCOLE & PECCOLE, LTD. and LEWIS J. GAZDA, ESQ. of GAZDA & TADAYON appearing on behalf of Plaintiffs, and Plaintiff, ROBERT N. PECCOLE being present, and JAMES J. JIMMERSON, ESQ. of THE JIMMERSON LAW FIRM, P.C. appearing on behalf of Defendants Fore Stars, Ltd., 180 Land Co LLC, Seventy Acres LLC, Yohan Lowie, Vickie DeHart and Frank Pankratz, and Defendants Yohan Lowie and Vickie DeHart being present, and STEPHEN R. HACKETT, ESQ. of SKLAR WILLIAMS, PLLC and TODD DAVIS, ESQ. of EHB COMPANIES, LLC appearing on behalf of Defendants EHB Companies, LLC and the Court having reviewed and fully considered the papers and pleadings on file herein, and having heard the lengthy arguments of counsel, and having allowed Plaintiffs, over Defendants' objection, to enter Exhibits 1-13 at the hearing, and having reviewed the record, good cause appearing, issues the following Findings of Fact, Conclusions of Law, Final Orders and Judgment:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Preliminary Findings

1. The Court hearing on November 1, 2016 was extensive and lengthy, and this Court does not need a re-argument of those points. At that time, the Court granted both parties great leeway to argue their case and, thereafter, to file any and all additional documents and/or

exhibits that they wished to file, so long as they did so on or before November 15, 2016. Each party took advantage of said opportunity by submitting additional documents for the Court's review and consideration. The Court has reviewed all submissions by each party. Further, at the Court's extended hearing on January 10, 2017, upon Plaintiffs' and Defendants' post-judgment motions and oppositions, the Court further allowed the parties to make whatever arguments necessary to supplement their respective filings and in support of their respective requests;

2. On November 30, 2016, this Court, after a full review of the pleadings, exhibits, affidavits, declarations, and record, entered extensive *Findings of Fact, Conclusions of Law, Order and Judgment Granting Defendants Fore Stars, Ltd., 180 Land Co LLC, Seventy Acres LLC, EHB Companies, LLC, Yohan Lowie, Vickie DeHart and Frank Pankratz's NRCP 12(b)(5) Motion to Dismiss Plaintiffs' Amended Complaint.* On January 20, 2017, the Court also entered its *Findings Of Fact, Conclusions Of Law, and Judgment Granting Defendants Fore Stars, Ltd., 180 Land Co LLC, Seventy Acres LLC, EHB Companies LLC, Yohan Lowie, Vickie Dehart And Frank Pankratz's Motion For Attorneys' Fees And Costs* (the "Fee Order"). Both of these Findings of Fact, Conclusions of Law and Orders are hereby incorporated herein by reference, as if set forth in full, and shall become a part of these Final Orders and Judgment;

3. Following the Notice of Entry of the Court's extensive *Findings of Fact, Conclusions of Law, Order and Judgment Granting Defendants Fore Stars, Ltd., 180 Land Co LLC, Seventy Acres LLC, EHB Companies, LLC, Yohan Lowie, Vickie DeHart and Frank Pankratz's NRCP 12(b)(5) Motion to Dismiss Plaintiffs' Amended Complaint,* Plaintiffs filed four (4) Motions and one (1) Opposition, on an Order Shortening Time set for hearing on this date, Defendants filed their Oppositions and Countermotions for Attorneys' Fees and Costs, Defendants timely filed their *Memorandum of Costs and Disbursements*, and Plaintiffs chose not to file any Motion to Retax. After this briefing, Plaintiffs, at the January 10, 2017 Court hearing,

presented in excess of an hour and a half of oral argument. The Court allowed the new exhibits to be admitted over the objection of Defendants;

4. Following the hearing, the Court has reviewed the papers and pleadings filed by both Plaintiffs and Defendants, along with Exhibits, and the oral argument of Plaintiffs and Defendants, and relevant statutes and caselaw, and based upon the totality of the record, makes the following Findings:

Plaintiffs' Renewed Motion for Preliminary Injunction

5. As a preliminary matter, based on the record and the evidence presented to date by both sides, the Court does not believe the golf course land ("GC Land") is subject to the terms and restrictions of the Master Declaration of Covenants, Conditions, Restrictions and Easements of Queensridge ("Master Declaration" or "CC&Rs"), because it was not annexed into, or made part of, the Queensridge Common Interest Community ("Queensridge CIC") which the Master Declaration governs. The Court has repeatedly made, and stands by, this Finding;

6. The Court does not believe that William and Wanda Peccole, or their entities (Nevada Legacy 14, LLC, the William Peter and Wanda Ruth Peccole Family Limited Partnership, and/or the William Peccole 1982 Trust) intended the GC Land to be a part of the Queensridge CIC, as evidenced by the fact that if that land had been included within that community, then every person in Queensridge would be paying money to be a member of the Badlands Golf Course and paying to maintain it. They were not, and have not. In fact, the Master Declaration at Recital B states that the CIC "may, but is not required to include...a golf course" and Plaintiffs' Purchase documents make clear that residents of Queensridge acquire no golf course rights or membership privileges by their purchase of a house within the Queensridge CIC. *Exhibit C to Defendants' Opposition filed September 2, 2016 at page 1, Recital B, and Exhibit L to Defendants' Opposition filed September 2, 2016 at paragraph 4 of Addendum 1*;

7. By Plaintiffs' own exhibit, the enlargement of the Exhibit C Map to the Master Declaration, it shows that the GC Land is not a part of the CC&Rs. The Exhibit C map showed the initial Property *and* the Annexable Property, as confirmed by Section 1.55 of the Master Declaration;

8. Therefore, the argument about whether or not the Master Declaration applies to the GC Land does not need to be rehashed, despite Plaintiffs' insistence that it do so. The Court has repeatedly found that it does not. That is the Court's prior ruling, and nothing Plaintiffs have brought forward reasonably convinces the Court otherwise. *See* the Court's November 20, 2016 Order, Findings 51-76;

9. Regarding the Renewed Motion for Preliminary Injunction, Plaintiffs' Renewed Motion and Exhibits are not persuasive, and the Court has made clear that it will not stop a governmental agency from doing its job. The Court does not believe that intervention is "clearly necessary" or appropriate for this Court. As the Court understands it, if the owner of the GC Land has made an application, the governmental agency would be derelict in their duty if it did not review it, consider it and do all of its necessary work to follow the legal process and make its recommendations and/or decision. The Court will not stop that process;

10. Based upon the papers, there is no basis to grant Plaintiffs' Renewed Motion for Preliminary Injunction;

11. Plaintiffs' argument that there is a "conspiracy" with the City of Las Vegas "behind closed doors" to get certain things done is inappropriate and without merit;

12. It is entirely proper for Defendants to follow the City rules that require the filing of applications if they want to develop their property, or to discuss a development agreement with the City Attorney, or present a plan to the City of Las Vegas Planning Commission or the Las Vegas City Council. That is what they are supposed to do;

13. Plaintiffs submitted four (4) photos to demonstrate that the proposed new development under the current application would "ruin his views." However, Plaintiffs' purchase documents make clear that no such "views" or location advantages were guaranteed to Plaintiffs, and that Plaintiffs were on notice through their own exhibit that their existing views could be blocked or impaired by development of adjoining property "whether within the Planned Community or outside of the Planned Community" *Exhibit 1 to Plaintiffs' Reply to Defendants' Motion to Dismiss, filed September 9, 2016.*

14. In response to the Court's inquiry regarding what Plaintiffs are trying to enjoin, Plaintiffs indicate they desire to enjoin Defendants from resubmitting the four (4) applications that have been withdrawn, without prejudice, but which can be refiled. The Court finds that refiling is exactly what Defendants are supposed to do if they want those applications considered;

15. Plaintiffs' argument that Defendants cannot file Applications with the City, because it is a violation of the Master Declaration is without merit. That might be true if the GC Land was part of the CC&R's. As repeatedly stated, this Court does not believe, and the evidence does not suggest, that the GC Land is subject to the CC&Rs, period;

16. Defendants' applications were legal and the proper thing to do, and the Court will not stop such filings. Plaintiffs' position is the filing was not allowed under the Master Declaration, and Plaintiffs will not listen to the Court's Findings that the GC Land was not added to the Queensridge CIC by William Peccole or his entities. Plaintiffs' position is vexatious and harassing to the Defendants under the facts of this case;

17. Plaintiffs argue that the new applications that were filed were negotiated and discussed with the City Attorneys' Office without the knowledge of the City Council. But, again, that is not improper. The City Council does not get involved until the applications are

submitted and reviewed by the Planning Staff and City Planning Commission. The Court finds that there is no "conspiracy" there. People are supposed to follow the rules, and the rules say that if you are going to seek a zone change or a variance, you may submit a pre-application for review, have appropriate discussions and negotiations, and then have a public review by the Planning Commission and ultimately the City Council;

18. The fact that a new application was submitted proposing 61 homes, which is different from the original applications submitted for "The Preserve" which were withdrawn without prejudice, is irrelevant;

19. Plaintiffs' argument that Defendants submitted a new application on December 30, 2016 to allegedly defeat Plaintiffs' Renewed Motion for Preliminary Injunction, to bring the case back into the administrative process, is not reasonable, nor accurate. There were already three (3) applications which were pending and which had been held in abeyance, and thus were still within the administrative process. The new application changes nothing as far as Plaintiffs' requests for a preliminary injunction;

20. Plaintiffs' Exhibit 5 demonstrates that notice was provided to the homeowners, which is what Defendants were supposed to do. There was nothing improper in this;

21. Even if *all* the applications had been withdrawn, Plaintiffs could not "directly interfere with, **or in advance restrain**, the discretion of an administrative body's exercise of legislative power." *Eagle Thrifty Drugs & Markets, Inc. v. Hunter Lake Parent Teachers Assn. et al*, 85 Nev. 162, 451 P.2d 713 (1969) at 165, 451 P.2d at 714. Additionally, "This established principle **may not be avoided by the expedient of directing the injunction to the applicant instead of the City Council**." *Id.* This holding still applies to these facts;

22. Regardless, the possible submission of zoning and land use applications will not violate any rights or restrictions Plaintiffs claim in their Master Declaration, as "A zoning

ordinance cannot override privately-placed restrictions, and a trial court cannot be compelled to invalidate restrictive covenants merely because of a zoning change." *W. Land Co. v. Truskolaski*, 88 Nev. 200, 206, 495 P.2d 624, 627 (1972). Additionally, UDC 19.00.0809(j) provides: "No provision of this Title is intended to interfere with or abrogate or annul any easement, private covenants, deed restriction or other agreement between private parties.... Private covenants or deed restrictions which impose restrictions not covered by this Title, are not implemented nor superseded by this Title."

23. Plaintiffs' argument that Defendants needed permission to file the applications for the 61 homes is, again, without merit, because Plaintiffs incorrectly assume that the CC&Rs apply to the GC Land, when the Court has already found they do not. Plaintiffs unreasonably refuse to accept this ruling;

24. Plaintiffs have no standing under *Gladstone v. Gregory,* 95 Nev. 474, 596 P.2d 491 (1979) to enforce the restrictive covenants of the Master Declaration against Defendants or the GC Land. The Court has already, repeatedly, found that the Master Declaration does not apply to the GC Land, and thus Plaintiffs have no standing to enforce it against the Defendants. Defendants did not, and cannot, violate a rule that does not govern the GC Land. The Plaintiffs refuse to hear or accept these findings of the Court;

25. Contrary to Plaintiffs' statement, the Court is not making an "argument" that Plaintiffs' are required to exhaust their administrative remedies; that is a "decision" on the part of the Court. As the Court stated at the November 1, 2016 hearing, Plaintiffs believe that CC&Rs of the Queensridge CIC cover the GC Land, and Mr. Peccole is so closely involved in it, he refuses to see the Court's decision coming in as fair or following the law. No matter what decisions are made, Mr. Peccole is so closely involved with the issues, he would never accept

any Court's decision, because if it does not follow his interpretation, in Plaintiffs' mind, the Court is wrong. *November 1, 2016 Hearing Transcript, P. 3, L. 13-2;*

26. Defendants have the right to close the golf course and not water it. This action does not impact Plaintiffs' "rights;"

27. A preliminary injunction is available when the moving party can demonstrate that the nonmoving party's conduct, if allowed to continue, will cause irreparable harm for which compensatory relief is inadequate and that the moving party has a reasonable likelihood of success on the merits. *Boulder Oaks Cmty. Ass'n v. B & J Andrew Enters., LLC*, 125 Nev. 397, 403, 215 P.3d 27, 31 (2009); citing NRS 33.010, *University Sys. v. Nevadans for Sound Gov't*, 120 Nev. 712, 721, 100 P.3d 179, 187 (2004); *Dangberg Holdings v. Douglas Co.*, 115 Nev. 129, 142, 978 P.2d 311, 319 (1999). A district court has discretion in deciding whether to grant a preliminary injunction. *Id.* The Plaintiffs have failed to make the requisite showing;

28. On September 27, 2016, the parties were before the Court on Plaintiffs' first Motion for Preliminary Injunction and, after reading all papers and pleadings on file, the Court heard extensive oral argument lasting nearly two (2) hours from all parties. The Court ultimately concluded that Plaintiffs failed to meet their burden for a Preliminary Injunction, had failed to demonstrate irreparable injury by the City's consideration of the Applications, and failed to demonstrate a likelihood of success on the merits, amongst other failings;

29. On September 28, 2016—the day after their Motion for Preliminary Injunction directed at the City of Las Vegas was heard—Plaintiffs ignored the Court's words and filed another Motion for Preliminary Injunction which, substantively, made arguments identical to those made in the original Motion which had just been heard the day before, except that Plaintiffs focused more on the "vested rights" claim, namely, that the applications themselves could not have been filed because they are allegedly prohibited by the Master Declaration. On

October 31, 2016, the Court entered an Order denying that Motion, finding that Plaintiffs failed to meet their burden of proof that they have suffered irreparable harm for which compensatory damages are an inadequate remedy and failed to show a reasonable likelihood of success on the merits, since the Master Declaration of the Queensridge CIC did not apply to land which was not annexed into, nor a part of, the Property (as defined in the Master Declaration). The Court also based its denial on the fact that Nevada law does not permit a litigant from seeking to enjoin the Applicant as a means of avoiding well-established prohibitions and/or limitations against interfering with or seeking advanced restraint against an administrative body's exercise of legislative power. See *Eagle Thrifty Drugs & Markets, Inc., v. Hunter Lake Parent Teachers Assoc.*, 85 Nev. 162, 164-165, 451 P.2d 713, 714-715 (1969);

30. On October 5, 2016, Plaintiffs filed a Motion for Rehearing of Plaintiffs' first Motion for Preliminary Injunction, without seeking leave from the Court. The Court denied the Motion on October 19, 2016, finding Plaintiffs could not show irreparable harm, because they possess administrative remedies before the City Planning Commission and City Council pursuant to NRS 278.3195, UDC 19.00.080(N) and NRS 278.0235, which they had failed to exhaust, and because Plaintiffs failed to show a reasonable likelihood of success on the merits at the September 27, 2016 hearing and failed to allege any change of circumstances since that time that would show a reasonable likelihood of success as of October 17, 2016;

31. At the October 11, 2016 hearing on Defendants City of Las Vegas' Motion to Dismiss Amended Complaint, which was ultimately was granted by Order filed October 19, 2016, the Court advised Mr. Peccole, as an individual Plaintiff and counsel for Plaintiffs, that it believed that he was too close to this" and was missing that the Master Declaration would not apply to land which is not part of the Queensridge CIC. *October 11, 2016 Hearing Transcript at 13:11-13;*

32. On October 12, 2016, Plaintiffs filed a Motion for Stay Pending Appeal in relation to the Order Denying their first Motion for Preliminary Injunction against the City of Las Vegas, which sought, again, an injunction. That Motion was denied on October 19, 2016, finding that Plaintiffs failed to satisfy the requirements of NRAP 8 and NRCP 62(c), Plaintiffs failed to show that the object of their potential writ petition will be defeated if their stay is denied, Plaintiffs failed to show that they would suffer irreparable harm or serious injury if the stay is not issued, and Plaintiffs failed to show a likelihood of success on the merits;

33. On October 21, 2016, Plaintiffs filed a Notice of Appeal on the Order Denying their Motion for Preliminary Injunction against the City of Las Vegas, and on October 24, 2016, Plaintiffs filed a Motion for Stay in the Supreme Court. On November 10, 2016, the Nevada Supreme Court dismissed Plaintiffs' Appeal, and the Motion for Stay was therefore denied as moot;

34. Plaintiffs can assert no harm, let alone "irreparable" harm from the three remaining pending applications, which deal with development of 720 condominiums located a mile from Plaintiffs' home on the Northeast corner of the GC Land;

35. Plaintiffs cannot demonstrate a likelihood of success on the merits. Plaintiffs have argued the "merits" of their claims *ad nausem* and they have not had established any possibility of success;

36. The Court has repeatedly found that the claim that Defendants' applications were "illegal" or "violations of the Master Declaration" is without merit, and such claim is being maintained without reasonable grounds;

37. Plaintiffs' argument within his Renewed Motion is just a rehash of his prior arguments that Lot 10 was "part of" the "Property," (as defined in the Master Declaration) that

the flood drainage easements along the golf course are not included in the "not a part" language, and that he has "vested rights." These arguments have already been addressed repeatedly;

38. In its *Findings of Fact, Conclusions of Law and Order Granting Defendants' Motion to Dismiss,* filed November 30, 2016, the Court detailed its analysis of the Master Declaration, the Declarations of Annexation, Lot 10, and the other documents of public record, and made its Findings that the Plaintiffs were not guaranteed any golf course views or access, and that the adjoining GC Land was not governed by the Master Declaration. Those Findings are incorporated herein by reference, as if set forth in full. Specifically Findings No. 51-76 make clear that the GC Land is not a part of and not subject to the Master Declaration of the NRS 116 Queensridge CIC;

39. There is no "new evidence" that changes this basic finding of fact, and Plaintiffs cannot "stop renewal of the 4 applications" or "stop the application" allegedly contemplated for property merely adjacent to Plaintiffs' Lot and which is not within the Queensridge CIC;

40. Since Plaintiffs were on notice of this undeniable fact on September 2, 2016, yet persisted in filing Motion after Motion to try and "enjoin" Defendants, that is exactly why this Court awarded Defendants $82,718.50 relating to the second Motion for Preliminary Injunction, the Motion for Rehearing and the Motion for Stay (Injunction), and why this Court awards additional attorneys' fees and costs for being forced to oppose a Renewed Motion for Preliminary Injunction and these other Motions now;

41. The alleged "new" information cited by Plaintiffs--the withdrawal of four applications without prejudice at the November 16, 2016 City Council meeting--is irrelevant because this Court cannot and will not, in advance, restrain Defendants from submitting applications. Further, the three (3) remaining applications are pending and still in the administrative process;

42. Zoning is a matter properly within the province of the legislature and that the judiciary should not interfere with zoning decisions, especially before they are even final. *See, e.g., McKenzie v. Shelly*, 77 Nev. 237, 362 P.2d 268 (1961) (judiciary must not interfere with board's determination to recognize desirability of commercial growth within a zoning district); *Coronet Homes, Inc. v. McKenzie*, 84 Nev. 250, 439 P.2d 219 (1968) (judiciary must not interfere with the zoning power unless clearly necessary); *Forman v. Eagle Thrifty Drugs and Markets*, 89 Nev. 533, 516 P.2d 1234 (1973) (statutes guide the zoning process and the means of implementation until amended, repealed, referred or changed through initiative). Court intervention is not "clearly necessary" in this instance;

43. Plaintiffs have admitted to the Supreme Court that their duplicative Motion for Preliminary Injunction filed on September 28, 2016 was without merit and unsupported by the law. In their *Response to Motion to Amend Caption and Joinder and Response to the Motion to Dismiss Appeal of Order Granting the City of Las Vegas Motion to Dismiss Amended Complaint*, filed November 10, 2016, Plaintiff's state:"..[T]he case of *Eagle Thrifty Drugs & Market, Inc. v. Hunter Lake Parent Teachers Association,* 85 Nev. 162 (1969) **would not allow directing of a Preliminary Injunction against any party but the City Council.** Fore Stars, Ltd., 180 Land Co LLC, Seventy Acres, LLC, Yohan Lowie, Vickie DeHart, Frank Pankratz and EHB Companies, LLC **could not be made parties to the Preliminary Injunction because only the City was appropriate under *Eagle Thrifty.*"** (Emphasis added.) Yet Plaintiffs have now filed a "Renewed" Motion for Preliminary Injunction;

44. Procedurally, Plaintiffs' Renewed Motion is improper because "No motions once heard and disposed of may be *renewed* in the same cause, nor may the same matters therein embraced be reheard, unless by leave of the court granted upon motion therefor, after notice of

such motion to the adverse parties." *EDCR 2.24 (Emphasis added.)* This is the second time the Plaintiffs have failed to seek leave of Court before filing such a Motion;

45. After hearing all of the arguments of Plaintiffs and Defendants, Plaintiffs have failed to meet their burden for a preliminary injunction against Defendants, and Plaintiffs have no standing to do so;

Plaintiffs' Motion for Leave to Amend Amended Complaint

46. Plaintiffs have already been permitted to amend their Complaint, and did so on August 4, 2016;

47. Plaintiffs deleted the Declaratory Relief cause of action, but maintained a cause of action for injunctive relief even after Plaintiffs were advised that the same could not be sustained, Plaintiffs withdrew the Breach of Contract cause of action and replaced it with a cause of action entitled "Violations of Plaintiffs' Vested Rights," and Plaintiffs' Fraud cause of action remained, for all intents and purposes, unchanged;

48. Plaintiffs were given the opportunity to present a proposed Amended Complaint and failed to do so. There is no Amended Complaint which supports the new alter ego theory Plaintiffs suggest;

49. After the November 1, 2016 hearing on the Motion to Dismiss, the Court provided an opportunity for Plaintiffs (or Defendants) to file any additional documents or requests, including a request to Amend the Complaint, with a deadline of November 15, 2016. Plaintiffs' Motion to Amend Amended Complaint was not filed within that deadline;

50. EDCR 2.30 requires a copy of a proposed amended pleading to be attached to any motion to amend the pleading. Plaintiffs never attached a proposed amended pleading, in violation of this Rule. This makes it impossible for the Court to measure what claims Plaintiffs

propose, other than those outlined in their briefs, all of which are based on a failed and untrue argument;

51. Plaintiffs continue to attempt to enjoin the City from completing its legislative function, or to in advance, restrain Defendants from submitting applications for consideration. This Court has repeatedly Ordered that it will not do that;

52. The Court considered Plaintiffs' oral request from November 1, 2016 to amend the Amended Complaint, and made a Finding in its November 30, 2016 Order of Dismissal, at paragraph 90, "Although ordinarily leave to amend the Complaint should be freely given when justice requires, Plaintiffs have already amended their Complaint once and have failed to state a claim against the Defendants. For the reasons set forth hereinabove, Plaintiffs shall not be permitted to amend their Complaint a second time in relation to their claims against Defendants as the attempt to amend the Complaint would be futile;"

53. Further amending the Complaint, under the theories proposed by Plaintiffs, remains futile. The Fraud cause of action does not state a claim upon which relief can be granted, as the alleged "fraud" lay in the premise that there was a representation that the golf course would remain a golf course in perpetuity. Again, Plaintiffs' own purchase documents evidence that no such guarantee was made and that Plaintiffs were advised that future development to the adjoining property could occur, and could impair their views or lot advantages. The alleged representation is incompetent (*See NRCP 56(e)),* fails woefully for lack of particularity as required by NRCP 9(b), and appears disingenuous under the facts and law of this case;

54. The Fraud claim also fails because Plaintiffs voluntarily dismissed the Defendants—all his relatives or their entities--who allegedly made the fraudulent representations that the golf course would remain in perpetuity;

55. While it is true that Defendants argued that Plaintiffs did not plead their Fraud allegations with particularity as required by NRCP 9(b), Defendants also vociferously argued in their Motion to Dismiss that Plaintiffs failed to state a Fraud claim upon which relief could be granted because their allegations failed to meet the basic and fundamental elements of Fraud: (1) a false representation of fact; (2) made to the plaintiff; (3) with knowledge or belief that the representation was false or without a sufficient basis; (4) intending to induce reliance; (5) creating justifiable reliance by the plaintiff; (6) resulting in damages. *Blanchard v. Blanchard*, 108 Nev. 908, 911, 839 P.2d 1320, 1322 (1992). The Court concurred;

56. To this day, Plaintiffs failed to identify any actual false or misleading statements made by Defendants to them, and that alone is fatal to their claim. Defendants' zoning and land use applications to the City to proceed with residential development upon the GC Land does not constitute fraudulent conduct by Defendants because third-parties allegedly represented at some (unknown) time roughly 16 years earlier that the golf course would never be replaced with residential development;

57. Plaintiffs do not and cannot claim that they justifiably relied on any supposed misrepresentation by any of the Defendants or that they suffered damages as a result of the Defendants' conduct because such justifiable reliance requires a causal connection between the inducement and the plaintiff's act or failure to act resulting in the plaintiff's detriment;

58. Plaintiffs have not, and cannot claim that any representations on the part of Defendants lead them to enter into their "Purchase Agreement" in April 2000, over 14 years prior to any alleged representations or conduct by any of the Defendants. The Court was left to wonder if any of these failings could be corrected in a second amended complaint, as Plaintiffs failed to proffer a proposed second amended complaint as is required under EDCR 2.30. As such, Plaintiffs' Motion to Amend Complaint was doomed from the outset;

59. All of Plaintiffs' claims are based on the theory that Plaintiffs have "vested rights" over the Defendants and the GC Land. The request for injunctive relief is based on the assertion of alleged "rights" under the Master Declaration;

60. The Court has already found, both of Plaintiffs' legal theories (1) the zoning aspect and exhaustion of administrative remedies, and (2) the alleged breach of the restrictive covenants under a Master Declaration "contract," are maintained without reasonable ground. Defendants are not parties to the "contract" alleged to have been breached, and Court intervention is not "clearly necessary" as an exception to the bar to interfere in an administrative process;

61. The zoning on the GC Land dictates its use and Defendants rights to develop their land;

62. Plaintiffs' reargument of the "Lot 10" claim, which Plaintiffs have argued before, which this Court asked Plaintiffs not to rehash, is without merit. Drainage easements upon the GC Land in favor of the City of Las Vegas do not make the GC Land a part of the Queensridge CIC. The Queensridge CIC would have to be a party to the drainage easements in order to have rights in the easements. Plaintiffs presented no evidence to establish that the Queensridge CIC is a party to any drainage easements upon the GC Land;

63. Plaintiffs do not represent FEMA or the government, who are the authorities having jurisdiction to set the regulations regarding "flood drainage." Plaintiffs do not have any agreements with Defendants regarding flood drainage and nor any jurisdiction nor standing to claim or assert "drainage" rights. Any claims under flood zones or drainage easements would be asserted by the governmental authority having jurisdiction;

64. Notwithstanding any alleged "open space" land use designation, the zoning on the GC Land, as supported by the evidence, is R-PD7. Plaintiffs latest argument suggests the land is

"zoned" as "open space" and that they have some right to prevent any modification of that alleged designation under NRS 278A. But the Master Declaration indicates that Queensridge is a NRS Chapter 116 community, and NRS 116.1201(4) specifically and unambiguously provides, "The provisions of chapters 117 and 278A of NRS do not apply to common-interest communities." The Plaintiffs do not have standing to even make any claim under NRS 278A;

65. There is no evidence of any recordation of any of the GC Land, by deed, lien, or by any other exception to title, that would remotely suggest that the GC Land is within a planned unit development, or is subject to NRS 278A, or that Queensridge is governed by NRS 278A. Rather, Queensridge is governed by NRS 116;

66. NRS 278.349(3)(e) states "The governing body, or planning commission if it is authorized to take final action on a tentative map, shall consider: Conformity with the zoning ordinances and master plan, except that if any existing zoning ordinance is inconsistent with the master plan, the zoning ordinance takes precedence;"

67. The Plaintiffs do not own the land which allegedly contains the drainage pointed out in Exhibits 11 and 12. It is Defendants' responsibility to deal with it with the government. Tivoli Village is an example of where drainage means were changed and drainage challenges were addressed by the developer. Plaintiffs have no standing to enforce the maintenance of a drainage easement to which they are not a party;

68. Plaintiffs' Amended Complaint, itself, recognizes that the Master Declaration does not apply to the land proposed to be developed by the Defendants, as it states on page 2, paragraph 1, that "Larry Miller did not protect the Plaintiffs' or homeowner's vested rights by including a Restrictive Covenant that Badlands must remain a golf course as he and other agents of the developer had represented to homeowners." The Amended Complaint reiterated at page 10, paragraph 42, "The sale was completed in March 2015 and conveniently left out any

restrictions that the golf course must remain a golf course." *Id.* Thus, Plaintiffs proceeded in prosecuting this case and attempting to enjoin development with full knowledge that there were no applicable restrictions, conditions and covenants from the Master Declaration which applied to the GC Land, and there were no restrictive covenants in place relating to the sale which prevented Defendants from doing so;

69. Plaintiffs improperly assert that the Motion to Dismiss relied primarily upon the "ripeness" doctrine and the allegation that the Fraud Cause of Action was not pled with particularity. But this is not true. The Motion to Dismiss was granted because Plaintiffs do not possess the "vested rights" they assert because the GC Land is not part of Queensridge CIC and not subject to its CC&Rs. The Fraud claim failed because Plaintiffs could not state the elements of a Fraud Cause of Action. They never had any conversations with any of the Defendants prior to purchasing their Lot and therefore, no fraud could have been committed by Defendants against Plaintiffs in relation to their home/lot purchase because Defendants never made any knowingly false representations to Plaintiffs upon which Plaintiffs relied to their detriment, nor as stated by Plaintiff to the Court did Defendants ever make any representations to Plaintiffs at all. Plaintiffs' were denied an opportunity to amend their Complaint a second time because doing so would be futile given the fact that they have failed to state claims and cannot state claims for "vested rights" or Fraud;

70. None of Plaintiffs' alleged "changed circumstances"—neither the withdrawal of applications, the abatement of others, or the introduction of new ones, changes the fundamental fact that Plaintiffs have no standing to enforce the Master Declaration against the GC Land, or any other land which was not annexed into the Queensridge CIC. It really is that simple;

71. Likewise, the claim that because applications were withdrawn by Defendants at the City Council Meeting and the rest were held in abeyance, that the *Eagle Thrifty* case no

longer applies and no longer prevents a preliminary injunction to enjoin Defendants from submitting future Applications, fails as a matter of law. Plaintiffs' Motion to Amend remains improper under *Eagle Thrifty* because Plaintiffs are effectively seeking to restrain the City of Las Vegas by requesting an injunction against the Applicant, and they are improperly seeking to restrain the City from hearing future zoning and development applications from Defendants. *Eagle Thrifty* neither allows such advance restraint, nor does it condone such advance restraint by directing a preliminary injunction against the Applicant;

72. Amending the Complaint based on the theories argued by Plaintiffs would be futile, and Plaintiffs continue to fail to state a claim upon which relief can be granted;

73. Leave to amend should be freely granted "when justice so requires," but in this case, justice requires the Motion for Leave to Amend be denied. It would be futile. Additionally, Plaintiffs have noticeably failed to submit any proposed second amended Complaint at any time. *See* EDCR 2.30. The Court is compelled to deny Plaintiffs' Motion to Amend;

///

///

Plaintiffs' Motion for Evidentiary Hearing and Stay of Order for Rule 11 Fees and Costs

74. Plaintiffs are not entitled to an Evidentiary Hearing on the Motion for Attorneys' Fees and Costs. NRS 18.010(3) states "in awarding attorney's fees, the court may pronounce its decision on the fees at the conclusion of the trial or special proceeding without written motion and with or without presentation of additional evidence."

75. Plaintiffs' seek an Evidentiary Hearing on the "Order for Rule 11 Fees and Costs," but the request for sanctions and additional attorneys' fees pursuant to NRCP 11 was denied by this Court. Plaintiffs do not seek reconsideration of that denial, and no Evidentiary Hearing is warranted;

76. The Motion itself if procedurally defective. It contains only bare citations to statues and rules, and it contains no Affidavit as required by EDCR 2.21 and NRCP 56(e);

77. NRCP 60(b) does not allow for Evidentiary Hearing to give Plaintiffs "opportunity to present evidence as to why they filed a Motion for Preliminary Injunction against Fore Stars and why that was appropriate." It allows the setting aside of a default judgment due to mistakes, inadvertence, excusable neglect, newly discovered evidence or fraud. With respect to the Motion for Attorneys' Fees and Costs and Order granting the same, this is not even alleged;

78. Plaintiffs must establish "adequate cause" for an Evidentiary Hearing. *Rooney v. Rooney*, 109 Nev. 540, 542–43, 853 P.2d 123, 124–25 (1993). Adequate cause "requires something more than allegations which, if proven, might permit inferences sufficient to establish grounds....." "The moving party must present a prima facie case...showing that (1) the facts alleged in the affidavits are relevant to the grounds for modification; and (2) the evidence is not merely cumulative or impeaching." *Id.*

79. Plaintiffs have failed to establish adequate cause for an Evidentiary Hearing. Plaintiffs have not even submitted a supporting Affidavit alleging any facts whatsoever;

80. "Only in very rare instances in which new issues of fact or law are raised supporting a ruling contrary to the ruling already reached should a motion for rehearing be granted." *Moore v. City of Las Vegas*, 92 Nev. 402, 405, 551 P.2d 244, 246 (76). "Rehearings are not granted as a matter of right, and are not allowed for the purpose of reargument." *Geller v. McCown*, 64 Nev. 102, 108, 178 P.2d 380, 381 (1947) (citation omitted). Points or contentions available before but not raised in the original hearing cannot be maintained or considered on rehearing. See *Achrem v. Expressway Plaza Ltd. P'ship*, 112 Nev. 737, 742, 917 P.2d 447, 450 (1996);

81. There is no basis for an Evidentiary Hearing under NRCP 59(a). There were no irregularities in the proceedings of the court, or any order of the court, or abuse of discretion whereby either party was prevented from having a fair trial. There was no misconduct of the court or of the prevailing party. There was no accident or surprise which ordinary prudence could not have guarded against. There was no newly discovered evidence material for the party making the motion which the party could not, with reasonable diligence, have discovered or produced at trial. There were no excessive damages being given under the influence of passion of prejudice, and there were no errors in law occurring at the trial and objected to by the party making the motion. If anything, the fact that Defendants were awarded 56% of their incurred attorneys' fees and costs relating to the preliminary injunction issues, and denied additional sanctions pursuant to NRCP 11, demonstrates this Court's evenhandedness and fairness to the Plaintiffs;

82. Plaintiffs are not automatically entitled to an Evidentiary Hearing on the issue of attorneys' fees and costs, and the decision to forego an evidentiary hearing does not deprive a party of due process rights if the party has notice and an opportunity to be heard. *Lim v. Willick Law Grp.*, No. 61253, 2014 WL 1006728, at *1 (Nev. Mar. 13, 2014). *See, also, Jones v. Jones, 22016 WL 3856487, Case No. 66632 (2016)*;

83. In this case, Plaintiffs had notice and the opportunity to be heard, and already presented to the Court the evidence they would seek to present about why they filed a Motion for a Preliminary Injunction against these Defendants, having argued at the September 27, 2016 Hearing, the October 11, 2016 Hearing, the November 1, 2016 Hearing and the January 10, 2017 hearing that they had "vested rights to enforce "restrictive covenants" against Defendants under the *Gladstone v. Gregory* case. Those arguments fail;

84. The Court also gave Plaintiffs the opportunity to submit any further evidence they wanted, with a deadline of November 15, 2016. The Court considered all evidence timely submitted;

85. Plaintiffs filed on November 8, 2016 Supplemental Exhibits with their argument regarding the "Amended Master Declaration" and on November 18, 2016 "Additional Information" including description of the City Council Meeting. Plaintiffs also filed on November 17, 2016, their Response to the Motion for Attorneys' Fees and Costs;

86. On its face, the facts claimed in Plaintiffs' Motion, unsupported by Affidavit, regarding why he had to file the first Motion for Preliminary Injunction, second Motion for Preliminary Injunction on September 28, 2016, the Motion for Stay Pending Appeal and the Motion for Rehearing, which Motions were the basis of the award of attorneys' fees and costs, are unbelievable. Plaintiffs claim that the City was dismissed as a Defendant and the "only remedy" was to file directly against the Defendants. But Plaintiffs filed their Motion for Preliminary Injunction against Fore Stars the day after the hearing on their first Motion for Preliminary Injunction—even before the decision on their first Motion was issued detailing the denial of the Motion and the analysis of the *Eagle Thrifty* case. The Court had not even *heard*, let alone granted, City's Motion to Dismiss at that time;

87. Plaintiffs' justification that the administrative process came to an end when four applications were withdrawn without prejudice, three were held in abeyance, and "a contemplated additional violation of the CC&R's appeared on the record" is also without merit. Aside from the fact that Plaintiffs are not permitted to restrain, in advance, the filing of applications or the City's consideration of them, factually, as of September 28, 2016, the Planning Commission Meeting had not even occurred yet (let alone the City Council Meeting). The administrative process was still ongoing;

88. The claim that the *Gladstone case* was applicable directly against restrictive covenant violators after the administrative process ended and Defendants were "no longer protected by Eagle Thrifty" is, again, belied by the fact that the CC&R's do not apply to, and cannot be enforced against, land that was not annexed into the Queensridge CIC. *Gladstone* does not apply. Plaintiffs' argument is not convincing;

89. Plaintiffs' arguments regarding how "frivolous" is defined by NRCP 11 is irrelevant because those additional sanctions against Plaintiffs' counsel were denied as moot, in light of the Court awarding Defendants attorneys' fees and costs under NRS 18.010(2)(b) and EDCR 7.60;

90. Defendants' Motion sought an award of $147,216.85 in attorneys' fees and costs, dollar for dollar, incurred in having to defeat Plaintiffs' repeated efforts to obtain a preliminary injunction against Defendants, which multiplied the proceedings unnecessarily. After considering Defendants' Motion and Supplement and Plaintiffs' Response, the Court awarded Defendants $82,718.50. The attorneys' fees and costs awarded related only to those efforts to obtain a preliminary injunction through the end of October, 2016, and did not include or consider the additional attorneys' fees, or the additional costs, which were incurred by Defendants relating to the Motions to Dismiss, or the new filings after October, 2016;

91. NRS 18.010, EDCR 7.60 and NRCP 11 are distinct rules and statues, and the Court can apply any of the rules and statues which are applicable;

92. NRS § 18.010 makes allowance for attorney's fees when the Court finds that the claim of the opposing party was brought without reasonable ground or to harass the prevailing party, and/or in bad faith. *NRS 18.010(2)(b)*. A frivolous claim is one that is, "both baseless and made without a reasonable competent inquiry." *Bergmann v. Boyce*, 109 Nev. 670, 856 P.2d 560 (1993). Sanctions or attorneys' fees may be awarded where the pleading fails to be well

grounded in fact and warranted by existing law and where the attorney fails to make a reasonable competent inquiry. *Id.* The decision to award attorney fees against a party for pursuing a claim without reasonable ground is within the district court's sound discretion and will not be overturned absent a manifest abuse of discretion. *Edwards v. Emperor's Garden Restaurant*, 130 P.3d 1280 (Nev. 2006).

93. NRS 18.010 (2) provides that: "The court shall liberally construe the provisions of this paragraph in favor of awarding attorney's fees in all appropriate situations. It is the intent of the Legislature that the court award attorney's fees pursuant to this paragraph and impose sanctions pursuant to Rule 11 of the Nevada Rules of Civil Procedure in all appropriate situations to punish for and deter frivolous or vexatious claims and defenses because such claims and defenses overburden limited judicial resources, hinder the timely resolution of meritorious claims and increase the costs of engaging in business and providing professional services to the public."

94. EDCR 7.60(b) provides, in pertinent part, for the award of fees when a party without just cause: (1) Presents to the court a motion or an opposition to a motion which is obviously frivolous, unnecessary or unwarranted, (3) So multiplies the proceedings in a case as to increase costs unreasonably and vexatiously, and (4) Fails or refuses to comply with these rules;

95. An award of attorney's fees and costs in this case was appropriate, as Plaintiffs' claims were baseless and Plaintiffs' counsel did not make a reasonable and competent inquiry before proceeding with their first Motion for Preliminary Injunction after receipt of the Opposition, and in filing their second Preliminary Injunction Motion, their Motion for Rehearing or their Motion for Stay Pending Appeal, particularly in light of the hearing the day prior.

Plaintiffs' Motions were the epitome of a pleading that "fails to be well grounded in fact and warranted by existing law and where the attorney fails to make a reasonable competent inquiry;"

96. There was absolutely no competent evidence to support the contentions in Plaintiffs' Motions--neither the purported "facts" they asserted, nor the "irreparable harm" that they alleged would occur if their Motions were denied. There was no Affidavit or Declaration filed supporting those alleged facts, and Plaintiffs even changed the facts of this case to suit their needs by transferring title to their property mid-litigation after the Opposition to Motion for Preliminary Injunction had been filed by Defendants. Plaintiffs were blindly asserting "vested rights" which they had no right to assert against Defendants;

97. Plaintiffs certainly did not, and cannot present any set of circumstances under which they would have had a good faith basis in law or fact to assert their Motion for Preliminary Injunction against the non-Applicant Defendants whose names do not appear on the Applications. The non-Applicant Defendants had nothing to do with the Applications, and Plaintiffs maintenance of the Motion against the non-Applicant Defendants, named personally, served no purpose but to harass and annoy and cause them to incur unnecessary fees and costs;

98. On October 21, 2016, Defendants filed their Motion for Attorneys' Fees and Costs, seeking an award of attorneys' fees and costs pursuant to EDCR 7.60 and NRS 18.070, which was set to be heard in Chambers on November 21, 2016. Plaintiffs filed a response on November 17, 2016, which was considered by the Court;

99. Defendants have been forced to incur significant attorneys' fees and costs to respond to the repetitive filings of Plaintiffs. Plaintiffs' Motions are without merit and unnecessarily duplicative, and made a repetitive advancement of arguments that were without merit, even after the Court expressly warned Plaintiffs that they were "too close" to the dispute;

100. Plaintiff, Robert N. Peccole, Esq., by being so personally close to the case, is so blinded by his personal feelings that he is ignoring the key issues central to the causes of action and failing to recognize that continuing to pursue flawed claims for relief, and rehashing the arguments again and again, following the date of the Defendants' September 2, 2016 Opposition, is improper and unnecessarily harms Defendants;

101. In making an award of attorneys' fees and costs, the Court shall consider the quality of the advocate, the character of the work to be done, the work actually performed, and the result. *Brunzell v. Golden Gate National Bank*, 85 Nev. 345, 455 P.2d 31 (1969). Defendants submitted, pursuant to the *Brunzell* case, affidavits regarding attorney's fees and costs they requested. The Court, in its separate Order of January 20, 2017, has analyzed and found, and now reaffirms, that counsel meets the *Brunzell* factors, that the costs incurred were reasonable and actually incurred pursuant to *Cadle Co. v. Woods & Erickson LLP*, 131 Nev. Adv. Op. 15 (Mar. 26, 2015), and outlined the reasonableness and necessity of the attorneys' fees and costs incurred, to which there has been no challenge by Plaintiffs;

102. Plaintiffs were on notice that their position was maintained without reasonable ground after the September 2, 2016 filing of Defendants' Opposition to the first Motion for Preliminary Injunction. The voluminous documentation attached thereto made clear that the Master Declaration does not apply to Defendants' land which was not annexed into the Queensridge CIC. Thus, relating to the preliminary injunction issues, the sums incurred after September 2, 2016 were reasonable and necessary, as Plaintiffs continued to maintain their frivolous position and filed multiple, repetitive documents which required response;

103. Defendants are the prevailing party when it comes to Defendants' Motions for Preliminary Injunction, Motion for Stay Pending Appeal and Motion for Rehearing filed in

September and October, and Plaintiffs' position was maintained without reasonable ground or to harass the prevailing party. *NRS 18.010;*

104. Plaintiffs presented to the court motions which were, or became, frivolous, unnecessary or unwarranted, in bad faith, and which so multiplied the proceedings in a case as to increase costs unreasonably and vexatiously, and failed to follow the rules of the Court. *EDCR 7.60;*

105. Given these facts, there is no basis to hold an Evidentiary Hearing with respect to the Order granting Defendants' attorneys' fees and costs, and the Order should stand;

Plaintiffs' Opposition to Countermotion for Fees and Costs

106. This Opposition to "Countermotion," substantively, does not address the pending Countermotions for attorneys' fees and costs, but rather the Motion for Attorneys' Fees and Costs which was filed October 21, 2016 and granted November 21, 2016;

107. The Opposition to that Motion was required to be filed on or before November 10, 2016. It was not filed until January 7, 2017;

108. Separately, Plaintiffs filed a "response" to the Motion for Attorneys' Fees and Costs, and Supplement thereto, on November 17, 2016. As indicated in the Court's November 21, 2016 Minute Order, as confirmed by and incorporated into the Fee Order filed January 20, 2017, that Response was reviewed and considered;

109. Plaintiffs did not attach any Affidavit as required by EDCR 2.21 to attack the reasonableness or the attorneys' fees and costs incurred, the necessity of the attorneys' fees and costs, or the accuracy of the attorneys' fees and costs incurred;

110. There is sufficient basis to strike this untimely Opposition pursuant to EDCR 2.21 and NRCP 56(e) and the same can be construed as an admission that the Motion was meritorious and should be granted;

111. On the merits, Plaintiffs' "assumptions" that "attorneys' fees and costs are being requested based upon the Motion to Dismiss" and that "sanctions under Rule 11 for filing a Motion for Preliminary Injunction against Fore Stars Defendants" is incorrect. As made clear by the itemized billing statements submitted by Defendants, none of the attorneys' fees and costs requested within that Motion related to the Motion to Dismiss. Further, this is also clear because at the time the Motion for Attorneys' Fees and Costs was filed, the hearings on the City's Motion to Dismiss, or the remaining Defendants' Motion to Dismiss, had not even occurred;

112. Plaintiffs erroneously claim that Defendants cited "no statutes or written contracts that would allow for attorneys' fees and costs." Defendants clearly cited to NRS 18.010 and EDCR 7.60;

113. The argument that if this Court declines to sanction Plaintiffs' counsel pursuant to NRCP 11, they cannot grant attorneys' fees and costs pursuant to NRS 18.010 and EDCR 7.60 is nonsensical. These are district statutes with distinct bases for awarding fees;

114. This Court was gracious to Plaintiffs' counsel in exercising its sound discretion in denying the Rule 11 request, and had solid ground for awarding EDCR 7.60 sanctions and attorneys' fees under NRS 18.010 under the facts;

115. Since Motion for Attorneys' Fees and Costs, and Supplement, was not relating to the Motion to Dismiss, the arguments regarding the frivolousness of the Amended Complaint need not be addressed within this section;

116. The argument that Plaintiffs are entitled to fees because they "are the prevailing party under the Rule 11 Motion" fails. Defendants prevailed on every Motion. That the Court declined to impose additional sanctions against Plaintiffs' counsel does not make Plaintiffs the "prevailing party," as the Motion for Attorneys' Fees and Costs was granted. Moreover, Plaintiffs have not properly sought Rule 11 sanctions against Defendants;

117. There is no statute or rule that allows for the filing of an Opposition after a Motion has been granted. The Opposition was improper and should not have been belatedly filed. It compelled Defendants to further respond, causing Defendants to incur further unnecessary attorneys' fees and costs;

Plaintiffs' Motion for Court to Reconsider Order of Dismissal

118. Plaintiffs seek reconsideration pursuant to NRCP 60(b) based on the alleged "misrepresentation" of the Defendants regarding the Amended Master Declaration at the November 1, 2016 Hearing;

119. No such "misrepresentation" occurred. The record reflects that Mr. Jimmerson was reading correctly from the first page of the Amended Master Declaration, which states it was "effective October, 2000." The Court understood that to be the effective date and not necessarily the date it was signed or recorded. Defendants also provided the Supplemental Exhibit R which evidenced that the Amended Master Declaration was recorded on August 16, 2002, and reiterated it was "effective October, 2000," as Defendants' counsel accurately stated. This exhibit also negated Plaintiffs' earlier contention that the Amended Master Declaration had not been recorded at all. Therefore, not only was there no misrepresentation, there was transparency by the Defendants in open Court;

120. The Amended Master Declaration did not "take out" the 27-hole golf course from the definition of "Property," as Plaintiffs erroneously now allege. More accurately, it excluded the entire 27-hole golf course from the possible Annexable Property. This means that not only was it never annexed, and therefore never made part of the Queensridge CIC, but it was no longer even *eligible* to be annexed in the future, and thus could never become part of the Queensridge CIC;

121. It is significant, however, that there are two (2) recorded documents, the Master Declaration and the Amended Master Declaration, which both make clear in Recital A that the GC Land, since it was not annexed, is not a part of the Queensridge CIC;

122. Whether the Amended Master Declaration, effective October, 2000, was recorded in October, 2000, March, 2001 or August, 2002, does not matter, because, as Defendants pointed out at the hearing, Mr. Peccole's July 2000 Deed indicated it was "subject to the CC&Rs that were recorded at the time and as may be amended in the future" and that the "CC&Rs which he knew were going to be amended and subject to being amended, were amended;"

123. The only effect of the Amended Master Declaration's language that the "entire 27-hole golf course is not a part of the Property or the Annexable Property" instead of just the "18 holes," is that the 9 holes which were never annexed were no longer even annexable. Effectively, William and Wanda Peccole and their entities took that lot off the table and made clear that this lot would not and could not later become part of the Queensridge CIC;

124. None of that means that the 9-holes was a part of the "Property" before—as this Court clearly found, it was not. The 1996 Master Declaration makes clear that the 9-holes was only Annexable Property, and it could only become "Property" by recording a Declaration of Annexation. This never occurred;

125. The real relevance of the fact that the Amended Master Declaration was recorded, in the context of the Motion to Dismiss, is that, pursuant to *Brelint v. Preferred Equities*, 109 Nev. 842, the Court is permitted to take judicial notice of, and take into consideration, recorded documents in granting or denying a motion to dismiss;

126. Plaintiffs ignore the fact that notwithstanding the fact that the Amended Master Declaration, effective October, 2000, was not recorded until August, 2002, Plaintiffs transferred Deed to their lot twice, once in 2013 into their Trust, and again in September, 2016, both times

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

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

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

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

November 18, 2016—before issuance of the *Findings of Fact, Conclusions of Law, Order and Judgment* on November 30th --putting the Court on notice of what occurred at the City Council Meeting. However, as found hereinabove, the withdrawal and abeyance of City Council Applications does not matter in relation to the Motion to Dismiss. Plaintiffs did not possess "vested rights" over Defendants' GC Land before the meeting and they do not possess "vested rights" over it now;

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

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

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

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

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

134. Fraud requires a false representation, or, alternatively an intentional omission when an affirmative duty to represent exists. See *Lubbe v. Barba*, 91 Nev. 596, 541 P.2d 115 (1975). Plaintiffs alleged Fraud against Lowie, DeHart and Pankratz, while admitting they never

spoke with any of the prior to the purchase of their lot and have never spoken to them prior to this litigation. Plaintiffs' Fraud Cause of Action was dismissed because they cannot state facts that would support the elements of Fraud. No amount of additional time will cure this fundamental defect of their Fraud claim;

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

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

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

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

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

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

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

Defendants' Memorandum of Costs and Disbursements

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

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

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

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

Defendants' Countermotions for Attorneys' Fees and Costs

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

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

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

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

149. Plaintiffs' claim of an alleged representation that the golf course would never be changed, if true, was alleged to have occurred sixteen (16) years prior to Defendants acquiring the membership interests in Fore Stars, Ltd. Of the nineteen (19) Defendants, twelve (12) were relatives of Plaintiffs or entities of relatives, all of whom were voluntarily dismissed by Plaintiffs. The original Complaint faulted the Peccole Defendants for not "insisting on a restrictive covenant" on the golf course limiting its use, which would not have been necessary if

the Master Declaration applied. This was a confession of the frivolousness of Plaintiffs' position. *NRS 18.010(2)(b); EDCR 7.60(b)(1)*;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Plaintiffs' Oral Motion for Stay Pending Appeal.

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

ORDER AND JUDGMENT

NOW, THEREFORE:

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

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

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

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

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

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

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

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

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

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

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

DATED this 31 day of January, 2017.

DISTRICT COURT JUDGE
A-16-739654-C

BH

Exhibit “4"

Electronically Filed
5/2/2017 1:41 PM
Steven D. Grierson
CLERK OF THE COURT

ORDR

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 CAROL YN 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

Plaintiffs,

vs.

FORE STARS, LTD., a Nevada Limited Liability Company; 180 LAND CO., LLC, a Nevada Limited Liability Company; SEVENTY ACRES, LLC, a Nevada Limited Liability Company; and THE CITY OF LAS VEGAS,

Defendants.

CASE NO. A-15-729053-B

DEPT. NO. XXVII

Courtroom #3A

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

Date of Hearing: February 2, 2017

Time of Hearing: 1:30 pm

THIS MATTER coming on for hearing on the 2nd day of February, 2017 on Defendants CITY OF LAS VEGAS' *Motion to Dismiss Plaintiffs' First Amended Complaint*, and Defendants FORE STARS, LTD; 180 LAND CO., LLC, SEVENTY ACRES, LLC'S *Motion to Dismiss Plaintiffs' First Amended Complaint*, and Plaintiffs' Oppositions thereto, and Countermotions under NRCP 56(f), and the Court having reviewed the papers and pleadings on file and heard the arguments of counsel at the hearing, and good cause appearing hereby

FINDS and ORDERS as follows:

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

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

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

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

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

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

. . .

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

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

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

ORDER

NOW, THEREFORE:

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

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

...

...

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

Dated this 1 day of May, 2017.

HONORABLE NANCY ALLF

Respectfully Submitted:

JIMMERSON LAW FIRM

James J. Jimmerson, Esq.
Nevada Bar No. 00264
415 S. Sixth Street, #100
Las Vegas, Nevada 89101
Attorneys for Fore Stars Ltd., 180 Land Co., LLC, and Seventy Acres, LLC

Approved as to Form:

PISANELLI BICE PLLC

Todd L. Bice, Esq.
Nevada Bar No. 4534
Dustun H. Holmes, Esq.
Nevada Bar No. 12776
400 South 7th Street, Suite 300
Las Vegas, Nevada 89101
Attorneys for Plaintiffs

Approved as to Form:

CITY OF LAS VEGAS

Bradford R. Jerbic, Esq.
Nevada Bar No. 1056
Philip R. Byrnes, Esq.
Nevada Bar No. 0166
495 S. Main Street, 6th Floor
Las Vegas, Nevada 89101
Attorneys for the City of Las Vegas

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

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

DISTRICT COURT

CLARK COUNTY, NEVADA

FORE STARS, LTD., a Nevada limited liability company; 180 LAND CO., LLC; a Nevada limited liability company; SEVENTY ACRES, LLC, a Nevada limited liability company, Plaintiffs, v. DANIEL OMERZA, DARREN BRESEE, STEVE CARIA, and DOES 1 THROUGH 100, Defendants,	CASE NO.: A-18-771224-C DEPT NO.: II **NOTICE OF ENTRY OF ORDER GRANTING DEFENDANTS' MOTION FOR PROTECTIVE ORDER LIMITING DISCOVERY** **ELECTRONIC FILING CASE**

PLEASE TAKE NOTICE that an Order Granting Defendants' Motion for Protective Order Limiting Discovery was entered on August 3, 2020.

. . .

. . .

. . .

A true and correct copy of said Order is attached hereto.

DATED this 5th day of August, 2020.

BROWNSTEIN HYATT FARBER SCHRECK, LLP

BY: */s/ Mitchell J. Langberg*

MITCHELL J. LANGBERG, ESQ., Bar No. 10118
mlangberg@bhfs.com
100 North City Parkway, Suite 1600
Las Vegas, NV 89106-4614
Telephone: 702.382.2101
Facsimile: 702.382.8135

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

BROWNSTEIN HYATT FARBER SCHRECK, LLP
100 North City Parkway, Suite 1600
Las Vegas, NV 89106-4614
702.382.2101

BROWNSTEIN HYATT FARBER SCHRECK, LLP
100 North City Parkway, Suite 1600
Las Vegas, NV 89106-4614
702.382.2101

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of Brownstein Hyatt Farber Schreck, LLP, and pursuant to NRCP 5(b), EDCR 8.05, Administrative Order 14-2, and NEFCR 9, I caused a true and correct copy of the foregoing **NOTICE OF ENTRY OF ORDER GRANTING DEFENDANTS' MOTION PROTECTIVE ORDER LIMITING DISCOVERY** be submitted electronically for filing and/or service with the Eighth Judicial District Court via the Court's Electronic Filing System on the 5th day of August, 2020, to the following:

Lisa A. Rasmussen, Esq.
The Law Offices of Kristina Wildeveld & Associates
550 E. Charleston Boulevard, Suite A
Las Vegas, Nevada 89104
Email: lisa@lrasmussenlaw.com

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

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

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

ELECTRONICALLY SERVED
8/4/2020 5:19 PM

Electronically Filed
08/04/2020 5:19 PM
CLERK OF THE COURT

CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

Fore Stars, Ltd., Plaintiff(s)	CASE NO: A-18-771224-C
vs.	DEPT. NO. Department 2
Daniel Omerza, Defendant(s)	

AUTOMATED CERTIFICATE OF SERVICE

This automated certificate of service was generated by the Eighth Judicial District Court. The attached Order was served via the court's electronic eFile system to all recipients registered for e-Service on the above entitled case as listed below:

Service Date: 8/4/2020

Shahana Polselli	sp@jimmersonlawfirm.com
Elizabeth Ham	EHam@ehbcompanies.com
Todd Davis	tdavis@ehbcompanies.com
Jennifer Knighton	jknighton@ehbcompanies.com
Mitchell Langberg	mlangberg@bhfs.com
George West	gowesq@cox.net
James Jimmerson	jmj@jimmersonlawfirm.com
James J Jimmerson	ah@jimmersonlawfirm.com
Efiling Email	efiling@jimmersonlawfirm.com
Lisa Rasmussen	Lisa@Veldlaw.com
Kristina Wildeveld	Kristina@Veldlaw.com

Jessica Malone	Jessica@Veldlaw.com
Michelle Sorensen	Michelle@Veldlaw.com
Mitchell Langberg	mlangberg@bhfs.com
Lisa Rasmussen	Lisa@Veldlaw.com
Lisa Rasmussen	Lisa@Veldlaw.com
Mitchell Langberg	mlangberg@bfhs.com

ORDR

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

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

DISTRICT COURT

CLARK COUNTY, NEVADA

FORE STARS, LTD., a Nevada limited liability company; 180 LAND CO., LLC; a Nevada limited liability company; SEVENTY ACRES, LLC, a Nevada limited liability company, Plaintiffs, v. DANIEL OMERZA, DARREN BRESEE, STEVE CARIA, and DOES 1 THROUGH 100, Defendants,	CASE NO.: A-18-771224-C DEPT. NO.: II **ORDER GRANTING DEFENDANTS' MOTION FOR PROTECTIVE ORDER LIMITING DISCOVERY**

Defendants' Motion for Protective Order Limiting Discovery (the "Motion") came on for hearing before this Court on July 13, 2020. Mitchell J. Langberg, Esq. of Brownstein Hyatt Farber Schreck appeared on behalf of Defendants. Lisa A. Rasmussen, Esq. of the Law Offices of Kristina Wildeveld & Associates appeared on behalf of Plaintiffs.

After considering the Motion, the opposition thereto, the reply in support thereof, and the arguments of counsel, and after considering the Nevada Supreme Court's decision and remand in this case, as well as all of the prior filings this Court believed to be relevant to the issues that were the subject of the Motion, the Court finds as follows:

1. This case is before the Court after remand by the Nevada Supreme Court with respect to Defendants' anti-SLAPP motion;

2. In its decision, the Nevada Supreme Court held that Defendants had met their burden under Prong 1 of the anti-SLAPP analysis, absent evidence to the contrary;

3. In its decision, the Nevada Supreme Court also found that the district court had not made any finding with regard to Plaintiffs' burden on prong 2 of the analysis because the court had focused its analysis on prong 1;

4. However, the Nevada Supreme Court also noted that Plaintiffs' request for discovery pursuant to NRS 41.660(4) had not be decided by this Court;

5. Therefore, the Nevada Supreme Court remanded the case to this Court for the purpose of determining whether Plaintiffs should be permitted discovery pursuant to NRS 41.660(4) and for a determination on the prong 2 analysis;

6. On April 29, 2020, at a post-remand status check, Plaintiffs requested leave to file an additional brief for the express purpose of "briefing just on what discovery is requested, why it's relevant, and how it comports with the Nevada Supreme Court's ruling."

7. This Court granted the request for additional briefing.

8. On May 29, 2000, this Court issued a minute order granting in part and denying in part Plaintiffs' request for limited discovery. This Court allowed Plaintiffs to propound 15 requests for production of documents (to be allocated among the defendants) and to take deposition of each of the Defendants for no longer than 4 hours, each. However, the Court did not address the substantive scope of such discovery.

9. On that same day, Defendants filed a request for clarification of the discovery order regarding the substantive scope of the discovery allowed.

10. On June 5, 2020, the Court clarified that the permitted discovery must relate to Prong 2 of the anti-SLAPP analysis and was limited to the matters identified in Plaintiffs' papers and at the April 29, 2020, status check.

11. Plaintiffs then served requests for production of documents and deposition notices on Defendants.

12. Defendants filed the Motion seeking a protective order. Defendants argued that Plaintiffs' document requests were overbroad because the requests were beyond the scope

BROWNSTEIN HYATT FARBER SCHRECK, LLP
100 North City Parkway, Suite 1600
Las Vegas, NV 89106-4614
702.382.2101

authorized by the Court based on the Nevada Supreme Court decision in this case, NRS 41.660(4), and the specific topics Plaintiffs identified in their request for limited discovery. Defendants requested that the Court limit the document requests and the scope of depositions accordingly.

13. Following the hearing, the Court withdrew its prior orders and took the matter under submission to consider the parties arguments with respect to the Motion, the prior briefing, NRS 41.660(4), and the Nevada Supreme Court's decision in this case.

14. After such review, and as set forth above, the Court finds that the only discovery that might be permitted is discovery authorized by NRS 41.660(4).

15. NRS 41.660(4) recognizes that there is an automatic discovery stay upon the filing of an anti-SLAPP motion. However, in the event that a plaintiff makes a showing that information necessary to meet its Prong 2 burden is in the possession of another party and not available without discovery, a court shall allow limited discovery for the purposes of ascertaining such information.

16. The Court finds that the only subjects on which Plaintiffs attempted to make a showing of such necessity were, with respect to the declarations to the City Council at issue in this case, "what documents [Defendants were] relying on, what information [Defendants were] relying on, or if that information was provided to [Defendants] by third persons."

17. Therefore, Plaintiffs' discovery should be limited to those topics.

18. Although Defendants urge that the litigation privilege precludes Plaintiffs' action entirely, this Court has not made that determination at this time.

19. The parties and the Court agree that because the Court has ordered some limited discovery, it is implicit in the Nevada Supreme Court's decision that the Court will then consider whether Plaintiffs can meet their Prong 2 burden in light of such discovery.

Therefore, it is hereby ORDERED that Defendants' Motion for a Protective Order is GRANTED and:

1. Discovery is limited to 15 requests for production of documents for Plaintiffs to allocate among the Defendants and one deposition of no more than 4 hours for each Defendant,

BROWNSTEIN HYATT FARBER SCHRECK, LLP
100 North City Parkway, Suite 1600
Las Vegas, NV 89106-4614
702.382.2101

all with respect to Prong 2 of the anti-SLAPP analysis;

2. Discovery is further limited to the topics of what documents Defendants relied on, what information Defendants relied on, or whether that information was provided to Defendants by third persons, all with respect to the declarations to the City Council;

3. Plaintiffs' shall serve their document requests by July 31, 2020;

4. Defendants shall respond to the document requests by August 14, 2020;

5. Depositions shall be completed by September 4, 2020;

6. Plaintiffs may file a supplemental brief in opposition to the anti-SLAPP Motion to Dismiss by October 4, 2020;

7. Defendants may file a supplemental reply by October 18, 2020;

8. The Court will conduct a hearing on Defendants' anti-SLAPP Motion to Dismiss on _____, 2020 at _____ a.m./p.m.

Dated this 3rd day of August, 202

DATED this ____ day of August, 2020.

DISTRICT COURT JUDGE

E4B 956 5E6A 89E9
Richard F. Scotti
District Court Judge

Respectfully Submitted By:

BROWNSTEIN HYATT FARBER SCHRECK, LLP

By: */s/ Mitchell J. Langberg*

MITCHELL J. LANGBERG, ESQ., Bar No. 10118
mlangberg@bhfs.com
100 North City Parkway, Suite 1600
Las Vegas, Nevada 89106-4614
Telephone: 702.382.2101
Facsimile: 702.382.8135

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

BROWNSTEIN HYATT FARBER SCHRECK, LLP
100 North City Parkway, Suite 1600
Las Vegas, NV 89106-4614
702.382.2101

Approved as to form:

THE LAW OFFICES OF KRISTINA WILDEVELD & ASSOCIATES

By: */s/ Lisa A. Rasmussen*
LISA A. RASMUSSEN, ESQ., Bar No. 7491
lisa@lrasmussenlaw.com
550 E. Charleston Boulevard, Suite A
Las Vegas, Nevada 89104
Telephone: 702.222.0007
Facsimile: 702.222.0001
Counsel for Plaintiffs
FORE STARS, LTD., 180 LAND CO., LLC; and
SEVENTY ACRES, LLC

BROWNSTEIN HYATT FARBER SCHRECK, LLP
100 North City Parkway, Suite 1600
Las Vegas, NV 89106-4614
702.382.2101

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

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

DISTRICT COURT

CLARK COUNTY, NEVADA

FORE STARS, LTD., a Nevada limited liability company; 180 LAND CO., LLC; a Nevada limited liability company; SEVENTY ACRES, LLC, a Nevada limited liability company, Plaintiffs, v. DANIEL OMERZA, DARREN BRESEE, STEVE CARIA, and DOES 1 THROUGH 100, Defendants,	CASE NO.: A-18-771224-C DEPT NO.: II **NOTICE OF ENTRY OF FINDINGS OF FACTS, CONCLUSIONS OF LAW, AND ORDER** **ELECTRONIC FILING CASE**

PLEASE TAKE NOTICE that the Findings of Fact, Conclusions of Law, and Order was entered on December 10, 2020.

. . .

. . .

. . .

A true and correct copy of said Findings of Fact, Conclusions of Law, and Order is attached hereto.

DATED this 10th day of December, 2020.

BROWNSTEIN HYATT FARBER SCHRECK, LLP

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

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

BROWNSTEIN HYATT FARBER SCHRECK, LLP
100 North City Parkway, Suite 1600
Las Vegas, NV 89106-4614
702.382.2101

BROWNSTEIN HYATT FARBER SCHRECK, LLP
100 North City Parkway, Suite 1600
Las Vegas, NV 89106-4614
702.382.2101

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of Brownstein Hyatt Farber Schreck, LLP, and pursuant to NRCP 5(b), EDCR 8.05, Administrative Order 14-2, and NEFCR 9, I caused a true and correct copy of the foregoing **NOTICE OF ENTRY OF FINDINGS OF FACTS, CONCLUSIONS OF LAW, AND ORDER** be submitted electronically for filing and/or service with the Eighth Judicial District Court via the Court's Electronic Filing System on the 10th day of December, 2020, to the following:

Lisa A. Rasmussen, Esq.
The Law Offices of Kristina Wildeveld & Associates
550 E. Charleston Boulevard, Suite A
Las Vegas, Nevada 89104
Email: lisa@lrasmussenlaw.com

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

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

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

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

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

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

v.

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

Defendants,

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

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

Date of Hearing: November 9, 2020
Time of Hearing: 9:30 am

WHEREAS this matter came on for hearing on the 9th of November, 2020 on *Defendants' Special Motion To Dismiss (Anti-SLAPP Motion) Plaintiff's Complaint Pursuant to NRS §41.635 et seq.* Lisa Rasmussen, Esq. of the Law Offices of Kristina Wildeveld & Associates, appearing via telephone on behalf of the Plaintiffs, Fore Star Ltd, 180 Land Co., LLC, and Seventy Acres, LLC and Mitchell J. Langberg, Esq. of Brownstein Hyatt Farber Schreck, LLP, appearing via telephone on behalf of Defendants Daniel Omerza, Darren Bresee, and Steve Caria.

The Court having reviewed the pleadings and papers on file, having considered the oral argument of counsel, and good cause appearing, hereby FINDS, CONCLUDES and ORDERS:

FINDINGS OF FACT

1. Plaintiffs Fore Starts, Ltd., 180 Land Co., LLC, and Seventy Acres, LLC

("Plaintiffs") filed a complaint against Daniel Omerza, Darren Bresse, and Steve Caria on March 15, 2018 (the "Complaint").

2. The Complaint alleged causes of action for Equitable and Injunctive Relief, Intentional Interference with Prospective Economic Advantage, Negligent Interference with Prospective Economic Advantage, Conspiracy, Intentional Misrepresentation, and Negligent Misrepresentation ("Claims").

3. Generally, the Complaint alleged that the Defendants participated in the circulation, collection, and/or execution of allegedly false statements (the "Statements") to be delivered to the City of Las Vegas in an effort to oppose Plaintiffs' development of what is commonly referred to as the former Badlands golf course ("Badlands").

4. On April 13, 2018, among other things, Defendants filed their Special Motion to Dismiss (anti-SLAPP Motion) Plaintiffs' Complaint Pursuant to NRS §41.635 et. seq. (the "anti-SLAPP Motion"), which is the subject of these Findings of Fact and Conclusions of Law.

5. After extensive briefing and oral argument, the Court denied the anti-SLAPP Motion for various reasons as set forth in the record, including that Defendants did not demonstrate that they met their initial burden of establishing "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," pursuant to NRS 41.660(3)(a) ("Prong 1").

6. Because the Court found that Defendants did not meet their Prong 1 burden, it did not consider Plaintiffs request for discovery pursuant to NRS 41.660(4) with respect to whether Plaintiffs had "demonstrated with prima facie evidence a probability of prevailing on the claim" pursuant to NRS 41.660(3)(b) ("Prong 2").

7. Defendants filed a timely notice of appeal.

8. After briefing, the Nevada Supreme Court decided the matter without oral argument.

9. The Nevada Supreme Court held that Defendants met their burden under Prong 1.

10. The Nevada Supreme Court also held that Plaintiffs did not meet their burden

BROWNSTEIN HYATT FARBER SCHRECK, LLP
100 North City Parkway, Suite 1600
Las Vegas, NV 89106-4614
702.382.2101

under Prong 2.

11. However, the Nevada Supreme Court noted that the Court had not considered Plaintiffs' request for discovery pursuant to NRS 41.660(4).

12. Therefore, the Nevada Supreme Court remanded the matter back to this Court with express direction: "Accordingly, for the reasons set forth above, we vacate the portion of the district court's order denying appellants anti-SLAPP special motion to dismiss and remand to the district court for it to determine whether respondents are entitled to discovery under NRS 41.660(4)."

13. On remand, the parties did not agree on whether discovery was appropriate under NRS 41.660(4) or even what the scope of the remand was.

14. Defendants contended that the order of remand required this Court to consider whether it would grant Plaintiffs discovery under the anti-SLAPP statute. It was Defendants' contention that no discovery should be permitted. But, if discovery would be permitted, it would have to be limited to Prong 2 issues for which Plaintiffs made a showing of necessity. Defendants further contended that if the Court determined discovery was not appropriate, the anti-SLAPP motion should be granted because the Nevada Supreme Court had already concluded that Defendants had met their Prong 1 burden and Defendants had not met their Prong 2 burden.

15. Moreover, Defendants contend that if the Court allowed discovery, the only issue that would be left to determine was whether, in light of that discovery, Plaintiffs could now meet their burden under Prong 2.

16. On the other hand, Plaintiffs contended that they were entitled to conduct discovery on both Prong 1 and Prong 2. Plaintiffs further contended that the Nevada Supreme Court's decision and remand order required this Court to reconsider both Prong 1 and Prong 2 of the anti-SLAPP analysis.

17. At a post remand hearing, the parties offered argument about the appropriateness of discovery. Plaintiffs' counsel requested to brief the issue, promising to identify the discovery requested and the grounds supporting that request: "Let me do some additional briefing just on what discovery is requested, why it's relevant, and how it comports with the Nevada Supreme

BROWNSTEIN HYATT FARBER SCHRECK, LLP
100 North City Parkway, Suite 1600
Las Vegas, NV 89106-4614
702.382.2101

Court's ruling."

18. The Court allowed the parties to brief their positions on discovery.

19. After briefing, the Court granted some limited discovery that was intended to be circumscribed by the scope allowed by the anti-SLAPP statute and what Plaintiffs had requested in their briefing.

20. After issuing its order allowing limited discovery, the parties had additional disputes about the scope of discovery ordered by the Court.

21. The dispute was litigated by way of further motion practice and the Court issued orders clarifying that discovery would only to that related to Prong 2 of the anti-SLAPP analysis and only on the topics of "what documents Defendants relied on, what information Defendants relied on, or whether that information was provided to Defendants by third persons" all with respect to the Statements. In its order, the Court explained that NRS 41.660(4) requires Plaintiffs to make a showing of necessity for limited discovery and these topics were the only topics on which Plaintiffs even attempted to make such a showing.

22. After completion of the limited discovery, the Court also allowed supplemental briefing.

23. In their briefing, Plaintiffs contended that the Court was required to reconsider whether Defendants met their Prong 1 burden. Further, Plaintiffs argued that even if Defendants met their Prong 1 burden, Plaintiffs had satisfied their burden on Prong 2. Finally, Plaintiffs argued that the discovery they were granted was too narrow.

24. With respect to Prong 2, the only one of the Claims that Plaintiffs addressed in their supplemental briefing was the claim for Conspiracy.

25. Moreover, with respect to the claim for Conspiracy, Plaintiffs did not offer any admissible evidence or make any argument regarding alleged damages resulting from the purported conspiracy.

26. The Court heard oral argument on the anti-SLAPP Motion on November 9, 2020.

CONCLUSIONS OF LAW

27. NRS 41.635, et. seq. comprises Nevada's anti-SLAPP statute.

BROWNSTEIN HYATT FARBER SCHRECK, LLP
100 North City Parkway, Suite 1600
Las Vegas, NV 89106-4614
702.382.2101

28. The following rulings by the Nevada Supreme Court constitute law of the case with respect to the anti-SLAPP Motion:

(a) "In sum, we conclude that the district court erred by finding that appellants had not met their burden under NRS 41.660(3)(a) to establish by a preponderance of the evidence that respondents' claims are grounded on appellants' good faith communications in furtherance of their petitioning rights on an issue of public concern." *Omerza v. Fore Stars, Ltd*, 455 P.3d 841, *3 (Nev. 2020).

(b) "We therefore conclude that the district court erred in determining that respondents met their step-two burden of demonstrating with prima facie evidence a probability of prevailing on their claims." *Id.* at *4 (Nev. 2020).

29. Thus, the Nevada Supreme Court clearly found that Defendants had met their Prong 1 burden and Plaintiffs had not met their Prong 2 burden.

30. The Nevada Supreme Court's order of remand was equally clear: "Accordingly, for the reasons set forth above, we vacate the portion of the district court's order denying appellants' anti-SLAPP special motion to dismiss and remand to the district court for it to determine whether respondents are entitled to discovery under NRS 41.660(4)." *Id.* at *4 (Nev. 2020).

31. Pursuant to the "mandate rule," a court must effectuate a higher court's ruling on remand. *Estate of Adams By & Through Adams v. Fallini*, 132 Nev. 814, 819, 386 P.3d 621, 624 (2016). The law-of-the-case doctrine directs a court not to "re-open questions decided (i.e., established as law of the case) by that court or a higher one in earlier phases." *Id*.

32. Therefore, as a matter of law, this Court's task on remand was to determine whether Plaintiffs were entitled to discovery under NRS 41.600(4).

33. Pursuant to NRS 41.600(4), "[u]pon a showing by a party that information necessary to meet or oppose the burden pursuant to paragraph (b) of subsection 3 is in the 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."

34. Paragraph (b) of subsection 3 of the anti-SLAPP statute is the Prong 2 portion of

BROWNSTEIN HYATT FARBER SCHRECK, LLP
100 North City Parkway, Suite 1600
Las Vegas, NV 89106-4614
702.382.2101

the anti-SLAPP analysis that requires a plaintiff to demonstrate with prima facie evidence a probability of prevailing on its claim.

35. Therefore, as a matter of law, discovery is only allowed with respect to Prong 2 of the anti-SLAPP analysis. No discovery is allowed with respect to Prong 1 of the anti-SLAPP analysis.

36. Even with respect to Prong 2, NRS 41.600(4) only allows a party discovery if the party has: 1) made a showing, 2) that information to meet or oppose the Prong 2 burden, 3) is in the possession of another, and 4) is not available without discovery. Then, a court may allow limited discovery, but only for the purpose of ascertaining such information.

37. Therefore, as a matter of law, this Court could only grant discovery to the extent Plaintiffs made a showing of necessity as set forth in NRS 41.600(4). As noted in the factual findings, the Court granted Plaintiffs the discovery they expressly requested as that is the only discovery for which Plaintiffs even attempted to make a showing.

38. Though Plaintiffs argue in their supplemental opposition to the anti-SLAPP Motion that they were not allowed adequate discovery, the discovery permitted was appropriate and, in light of Plaintiffs' request, all that was allowed under NRS 41.600(4).

39. The Court notes that in their supplemental opposition, Plaintiffs complain that Defendants did not adequately respond to the discovery permitted. Defendants dispute that contention. Because Plaintiffs never filed a motion to compel, there is no basis to conclude that Defendants failed to comply with their discovery obligations pursuant to the Court's order and any argument to the contrary has been waived.

40. Having considered the appropriateness of discovery pursuant to the Nevada Supreme Court's remand order and having allowed limited discovery pursuant to the anti-SLAPP statute, the only matter left for this Court is to determine whether Plaintiffs have now met their Prong 2 burden in light of any new evidence they offer post-discovery.

41. First, Defendants argue that no matter what evidence Plaintiffs could have offered, Plaintiffs Claims cannot be supported because the litigation privilege is a complete defense and is dispositive of the Prong 2 issues.

BROWNSTEIN HYATT FARBER SCHRECK, LLP
100 North City Parkway, Suite 1600
Las Vegas, NV 89106-4614
702.382.2101

42. The Court agrees that the alleged facts that underlie Plaintiffs claims are subject to the absolute litigation privilege and provide an complete defense to the Claims.

43. Nevada recognizes "the long-standing common law rule that communications uttered or published in the course of judicial proceedings are absolutely privileged so long as they are in some way pertinent to the subject of controversy." *Circus Circus Hotels, Inc. v. Witherspoon*, 99 Nev. 56, 60 (1983) (citation omitted). This rule includes "statements made in the course of quasi-judicial proceedings." *Knox v. Dick*, 99 Nev. 514, 518 (1983) (citation omitted); *see also Circus Circus*, 99 Nev. at 61 ("the absolute privilege attached to judicial proceedings has been extended to quasi-judicial proceedings before executive officers, boards, and commissions") (citations omitted).

44. Critically, the statement at issue does not have to be made during any actual proceedings. *See Fink v. Oshins*, 118 Nev. 428, 433 (2002) ("the privilege applies not only to communications made during actual judicial proceedings, but also to communications preliminary to a proposed judicial proceeding") (footnote omitted). "[B]ecause the scope of the absolute privilege is broad, a court determining whether the privilege applies should resolve any doubt in favor of a broad application." *Clark County Sch. Dist. v. Virtual Educ. Software, Inc.*, 125 Nev. 374, 382 (2009) (citation omitted) (*citing Fink*, *supra*).

45. The Nevada Supreme Court already determined that the statements underlying each of Plaintiffs' claims were made in good faith in connection with issues under consideration by a legislative body. That was the City Council's consideration of "amendment to the Master Plan/General Plan affecting Peccole Ranch." *Omerza,* 455 P.3d 841, *1 (Nev. 2020).

46. Those City Council proceedings were quasi-judicial. Unified Development Code (UDC) section 19.16.030, *et. seq*. addresses amendments to the General Plan. It provides an extensive set of standards establishing how the City Council must exercise judgment and discretion, hear and determine facts, and render a reasoned written decision. In the course of those proceedings, the Council has the power to order the attendance of witnesses and the production of documents. Las Vegas City Charter §2.080(1)(d),(2)(a). This entire process meets the judicial function test for "determining whether an administrative proceeding is quasi-judicial."

BROWNSTEIN HYATT FARBER SCHRECK, LLP
100 North City Parkway, Suite 1600
Las Vegas, NV 89106-4614
702.382.2101

State ex rel. Bd. of Parole Comm'rs v. Morrow, 127 Nev. 265, 273 (2011).

47. Moreover, Plaintiffs admitted it was a quasi-judicial proceeding at a May 9, 2018 hearing before the City Council. *See*, Defendants' Request for Judicial Notice filed on May 9, 2018, Exh. 1, p. 16, lines 415-420 (Mr. Hutchison (as counsel for these Developers) explaining that the proceeding are quasi-judicial).

48. The absolute litigation privilege applies without regard to how Plaintiffs styled their claims. "An absolute privilege bars any civil litigation based on the underlying communication." *Hampe v. Foote*, 118 Nev. 405, 409, 47 P.3d 438, 440 (2002), overruled in part on other grounds by *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 228 n. 6, 181 P.3d 670, 672 n.6 (2008).

49. Because the Supreme Court already determined that the Defendants' activities were made in connection with the City Council proceedings, and because those activities were quite obviously an attempt to solicit witnesses testimony to submit in the form of written statements, Defendants' statements were all made in connection with, and preliminary to, a quasi-judicial proceeding and, therefore, were protected by the absolute litigation privilege.

50. For the first time at the hearing on the anti-SLAPP Motion, Plaintiffs' counsel cited to a case decided by the Nevada Supreme Court on July 9, 2020, four months before the hearing and more than three months before Plaintiffs filed their supplemental opposition to the anti-SLAPP motion.

51. Nonetheless, the Court has considered Plaintiffs' offer of *Spencer v. Klementi*, 466 P.3d 1241 (Nev. 2020), for the proposition that the privilege does not apply to quasi-judicial proceedings where due process protections similar to those provided in a court of law are not present. This Court believes that *Spencer* is distinguishable from the current matter. *Spencer* involved a defamation suit arising out of defamatory comments made to a public body during a public comment session. The speaker was not under oath. No opportunity to respond was provided. No cross-examination was allowed. Importantly, the holding in the decision was expressly limited to defamation suits: "We therefore take this opportunity to clarify that a quasi-judicial proceeding in the context of defamation suits is one that provides basic due-process

BROWNSTEIN HYATT FARBER SCHRECK, LLP
100 North City Parkway, Suite 1600
Las Vegas, NV 89106-4614
702.382.2101

protections similar to those provided in a court of law." *Id.* at 1247. Therefore, the *Oshins* case controls.

52. Because it applies, the litigation privilege is an absolute bar to all of Plaintiffs' claims. Therefore, for that reason alone, Plaintiffs' claims fail on Prong 2 and the anti-SLAPP Motion should be granted.

53. As a separate and additional basis for dismissing Plaintiffs' claims pursuant to the anti-SLAPP statute, even if the litigation privilege did not apply, Plaintiffs have failed to meet their burden under Prong 2.

54. Mindful that the Nevada Supreme Court already determined that Plaintiffs' failed to meet their burden under Prong 2 based on the evidence and argument offered prior to the appeal, the Court now considers whether Plaintiffs have offered any new evidence or legal argument in an attempt to meet their burden on remand.

55. The civil conspiracy claim is the only claim for which Plaintiffs have made any new argument.

56. The Nevada Supreme Court explained that the Developer was required to "demonstrate that the claim is supported by a prima facie showing of facts" that is supported by "competent, admissible evidence." *Omerza*, 455 P.3d 841 at *4. This is the same standard as a court applies in a summary judgment motion. *Id.*

57. An actionable civil conspiracy "consists of a combination of two or more persons who, by some concerted action, intend to accomplish an unlawful objective for the purpose of harming another, and damage results from the act or acts." *Consol. Generator-Nevada, Inc. v. Cummins Engine Co.*, 114 Nev. 1304, 1311 (1998) (affirming summary judgment for defendant on the plaintiff's conspiracy claim because there was no evidence that the two defendants had agreed and intended to harm the plaintiff).

58. The evidence must be "of an explicit or tacit agreement between the alleged conspirators." *Guilfoyle v. Olde Monmouth Stock Transfer Co.*, 130 Nev. 801, 813, 335 P.3d 190, 198 (2014) (upholding district court's grant of summary judgment where plaintiff "has presented no circumstantial evidence from which to infer an agreement between [defendants] to harm"

BROWNSTEIN HYATT FARBER SCHRECK, LLP
100 North City Parkway, Suite 1600
Las Vegas, NV 89106-4614
702.382.2101

plaintiff). Here, Plaintiffs did not offer any admissible evidence of an agreement to do something unlawful.

59. A conspiracy claim also fails where the plaintiff cannot show that he suffered any actual harm. *Sutherland v. Gross*, 105 Nev. 192, 197 (1989); *see also Aldabe v. Adams*, 81 Nev. 280, 286 (1965), overruled on other grounds by *Siragusa v. Brown*, 114 Nev. 1384 (1998) ("The damage for which recovery may be had in a civil action is not the conspiracy itself but the injury to the plaintiff produced by specific overt acts.").

60. "The gist of a civil conspiracy is not the unlawful agreement but the damage resulting from that agreement or its execution. The cause of action is not created by the conspiracy but by the wrongful acts done by the defendants to the injury of the plaintiff." *Eikelberger v. Tolotti*, 96 Nev. 525, 528 (1980).

61. Plaintiffs' Claims were all based on Defendants circulating the Statements to community members to oppose the Developer's efforts to change the land use restrictions on the Badlands. But, because the City Council proceedings did not advance and Plaintiffs appealed (successfully) Judge Crockett's decision, the City Council's prior decisions to allow development without a modification to the Peccole Ranch Master Plan were affirmed.

62. Therefore, Plaintiffs offered no admissible evidence of damages suffered even if it had proven a conspiracy existed.

63. Also, Plaintiffs offered no evidence to support any of their other claims, even though the Supreme Court already said their prior showing was insufficient. Where a plaintiff cannot demonstrate an unlawful act because it cannot prevail on the other claims it has alleged to form the basis for the underlying wrong, dismissal of the civil conspiracy claim is appropriate. *Goldman v. Clark Cty. Sch. Dist.*, 471 P.3d 753 (Nev. 2020) (unpublished) (citing *Consol. Generator-Nevada, Inc. v. Cummins Engine Co.*, 114 Nev. 1304, 1311 (1998)).

64. Plaintiffs have failed to show an agreement to achieve an unlawful objective and failed to show any damage. Therefore, Plaintiffs have failed to meet their Prong 2 anti-SLAPP burden.

65. Because Plaintiffs have failed to meet their burden under Prong 2 of the anti-

BROWNSTEIN HYATT FARBER SCHRECK, LLP
100 North City Parkway, Suite 1600
Las Vegas, NV 89106-4614
702.382.2101

SLAPP analysis, Defendants' anti-SLAPP motion is well taken and will be granted.

66. Pursuant to NRS 41.670(1)(a), when a court grants an anti-SLAPP motion, it "shall award reasonable costs and attorney's fees." Pursuant to NRS 41.670(1)(b), the court also "may award" "an amount of up to $10,000 to the person against whom the action was brought." Defendants may request those fees, costs, and additional amounts by separate motion.

ORDER

WHEREFORE, IT IS HEREBY ORDERED that:

1. Defendants' Special Motion to Dismiss is hereby GRANTED, and

2. Defendants may seek attorneys' fees, costs, additional amounts by way of separate motion.

Dated this 10th day of December, 2020

DATED: _____

25B E0E 21B7 81BF
Richard F. Scotti
District Court Judge
DISTRICT COURT JUDGE

Respectfully Submitted:

DATED this 2nd day of December, 2020.

BROWNSTEIN HYATT FARBER SCHRECK, LLP

BY: _____
MITCHELL J. LANGBERG, ESQ.
NV Bar No. 10118
100 North City Parkway, Suite 1600
Las Vegas, NV 89106-4614
Telephone: 702.382.2101
Facsimile: 702.382.8135

Counsel for Defendants Daniel Omerza, Darren Bresee and Steve Caria

Approved as to form and content:

DATED this ____day of December, 2020.

LAW OFFICES OF KRISTINA WILDEVELD & ASSOCIATES

Counsel have disagreements regarding the contents of this order.

BY: _____
LISA A. RASMUSSEN, ESQ.
NV Bar No. 7491
550 E. Charleston Boulevard, Suite A
Las Vegas, NV 89104
Telephone: 702.222.0007
Facsimile: 702.222.0001

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

BROWNSTEIN HYATT FARBER SCHRECK, LLP
100 North City Parkway, Suite 1600
Las Vegas, NV 89106-4614
702.382.2101

CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

Fore Stars, Ltd., Plaintiff(s)	CASE NO: A-18-771224-C
vs.	DEPT. NO. Department 2
Daniel Omerza, Defendant(s)	

AUTOMATED CERTIFICATE OF SERVICE

This automated certificate of service was generated by the Eighth Judicial District Court. The foregoing Findings of Fact, Conclusions of Law and Judgment was served via the court's electronic eFile system to all recipients registered for e-Service on the above entitled case as listed below:

Service Date: 12/10/2020

Elizabeth Ham	EHam@ehbcompanies.com
Todd Davis	tdavis@ehbcompanies.com
Jennifer Knighton	jknighton@ehbcompanies.com
Mitchell Langberg	mlangberg@bhfs.com
Lisa Rasmussen	Lisa@Veldlaw.com
Kristina Wildeveld	Kristina@Veldlaw.com
Jessica Malone	Jessica@Veldlaw.com
Mitchell Langberg	mlangberg@bhfs.com
Lisa Rasmussen	Lisa@Veldlaw.com
Lisa Rasmussen	Lisa@Veldlaw.com
Mitchell Langberg	mlangberg@bfhs.com

Patricia Berg Patty@Veldlaw.com

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

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

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

v.

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

Defendants,

CASE NO.: A-18-771224-C
DEPT NO.: 19

NOTICE OF ENTRY OF ORDER DENYING PLAINTIFFS' MOTION FOR RECONSIDERATION OF COURT'S ORDER DATED DECEMBER 10, 2020

ELECTRONIC FILING CASE

PLEASE TAKE NOTICE that the Order Denying Plaintiffs' Motion For Reconsideration of Court's Order Dated December 10, 2020 was entered on February 4, 2021.

. . .

. . .

. . .

A true and correct copy of said the Order Denying Plaintiffs' Motion For Reconsideration of Court's Order Dated December 10, 2020 is attached hereto.

DATED this 4th day of February, 2021.

BROWNSTEIN HYATT FARBER SCHRECK, LLP

BY: */s/ Mitchell J. Langberg*

MITCHELL J. LANGBERG, ESQ., Bar No. 10118
mlangberg@bhfs.com
100 North City Parkway, Suite 1600
Las Vegas, NV 89106-4614
Telephone: 702.382.2101
Facsimile: 702.382.8135

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

BROWNSTEIN HYATT FARBER SCHRECK, LLP
100 North City Parkway, Suite 1600
Las Vegas, NV 89106-4614
702.382.2101

BROWNSTEIN HYATT FARBER SCHRECK, LLP
100 North City Parkway, Suite 1600
Las Vegas, NV 89106-4614
702.382.2101

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of Brownstein Hyatt Farber Schreck, LLP, and pursuant to NRCP 5(b), EDCR 8.05, Administrative Order 14-2, and NEFCR 9, I caused a true and correct copy of the foregoing **NOTICE OF ENTRY OF ORDER DENYING PLAINTIFFS' MOTION FOR RECONSIDERATION OF COURT'S ORDER DATED DECEMBER 10, 2020** be submitted electronically for filing and/or service with the Eighth Judicial District Court via the Court's Electronic Filing System on the 4th day of February, 2021, to the following:

Lisa A. Rasmussen, Esq.
The Law Offices of Kristina Wildeveld & Associates
550 E. Charleston Boulevard, Suite A
Las Vegas, Nevada 89104
Email: lisa@lrasmussenlaw.com

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

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

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

ORDR

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

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

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

v.

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

Defendants,

CASE NO.: A-18-771224-C
DEPT. NO.: ~~II~~ 19

ORDER DENYING PLAINTIFFS' MOTION FOR RECONSIDERATION OF COURT'S ORDER DATED DECEMBER 10, 2020

Plaintiffs' Motion for Reconsideration of Court's Order Dated December 10, 2020 (the "Motion") came on for chambers hearing before this Court on January 25, 2021.

After considering the Motion, the opposition thereto, and the reply in support thereof, the Court finds that because Plaintiffs have filed a Notice of Appeal in this case and, particularly, because that Notice of Appeal pertains to the very order on which Plaintiffs seek reconsideration, this Court lacks jurisdiction to consider the Motion.

. . .

. . .

Therefore, it is hereby ORDERED that Plaintiffs' Motion for Reconsideration of Court's Order Dated December 10, 2020 is DENIED.

DATED this ____ day of February, 2021.

Dated this 4th day of February, 2021

DISTRICT COURT JUDGE

8F9 810 7A90 4B93
Crystal Eller
District Court Judge

Respectfully Submitted By:

BROWNSTEIN HYATT FARBER SCHRECK, LLP

By: */s/ Mitchell J. Langberg*
MITCHELL J. LANGBERG, ESQ., Bar No. 10118
mlangberg@bhfs.com
100 North City Parkway, Suite 1600
Las Vegas, Nevada 89106-4614
Telephone: 702.382.2101
Facsimile: 702.382.8135

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

Approved as to form:

THE LAW OFFICES OF KRISTINA WILDEVELD & ASSOCIATES

By: */s/ Lisa A. Rasmussen*
LISA A. RASMUSSEN, ESQ., Bar No. 7491
lisa@lrasmussenlaw.com
550 E. Charleston Boulevard, Suite A
Las Vegas, Nevada 89104
Telephone: 702.222.0007
Facsimile: 702.222.0001
Counsel for Plaintiffs
FORE STARS, LTD., 180 LAND CO., LLC; and
SEVENTY ACRES, LLC

BROWNSTEIN HYATT FARBER SCHRECK, LLP
100 North City Parkway, Suite 1600
Las Vegas, NV 89106-4614
702.382.2101

From: Lisa Rasmussen <Lisa@veldlaw.com>
Sent: Wednesday, February 3, 2021 5:12 PM
To: Langberg, Mitchell
Subject: RE: draft order

Hi Mitch,

You may add my signature to the signature line.

Thank you,

Lisa

Lisa Rasmussen, Esq.
Law Offices of Kristina Wildeveld & Associates
550 E. Charleston Blvd.
Las Vegas, NV 89101
T. (702) 222-0007 | F. (702) 222-0001
www.veldlaw.com

Sent from Mail for Windows 10

From: Langberg, Mitchell
Sent: Wednesday, February 3, 2021 3:30 PM
To: Lisa Rasmussen
Subject: draft order

Lisa,

I know you have your motion to reconsider on file. But I still have to comply with the directive to submit an order. This is pretty vanilla. Let me know if you approve.

Mitch

Mitchell J. Langberg
Brownstein Hyatt Farber Schreck, LLP
100 North City Parkway, Suite 1600
Las Vegas, NV 89106
702.464.7098 tel
mlangberg@bhfs.com

prohibited. If you have received this email in error, please notify us immediately by calling (303) 223-1300 and delete the message. Thank you.

CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

Fore Stars, Ltd., Plaintiff(s) vs. Daniel Omerza, Defendant(s)	CASE NO: A-18-771224-C DEPT. NO. Department 19

AUTOMATED CERTIFICATE OF SERVICE

This automated certificate of service was generated by the Eighth Judicial District Court. The foregoing Order was served via the court's electronic eFile system to all recipients registered for e-Service on the above entitled case as listed below:

Service Date: 2/4/2021

Elizabeth Ham	EHam@ehbcompanies.com
Todd Davis	tdavis@ehbcompanies.com
Jennifer Knighton	jknighton@ehbcompanies.com
Mitchell Langberg	mlangberg@bhfs.com
Lisa Rasmussen	Lisa@Veldlaw.com
Kristina Wildeveld	Kristina@Veldlaw.com
Mitchell Langberg	mlangberg@bhfs.com
Lisa Rasmussen	Lisa@Veldlaw.com
Lisa Rasmussen	Lisa@Veldlaw.com
Mitchell Langberg	mlangberg@bfhs.com