IN THE SUPREME COURT OF THE STATE OF 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,

Appellees,

vs.

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

Appellants,

Case No: 82358
(lead case)

Consolidated With:

82880

(same caption)

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JOINT APPENDIX SUBMITTED BY APPELLANTS AND APPELLEES

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DISTRICT COURT

CLARK COUNTY, NEVADA

FORE STARS, LTD., a Nevada limited liability company; 180 LAND CO., LLC; A NEVADA LIMITED LIABILIITY COMPANY; SEVENTY ACRES, LLC, a Nevada limited liability company, Plaintiffs, vs. DANIEL OMERZA, DARREN BRESEE, STEVE CARIA, and DOES 1 THROUGH 100, Defendants.	Case No.: A-18-771224-C Dept: II **SUPPLEMETAL OPPOSITION TO DEFENDANTS' SPECIAL MOTION TO DISMISS PURSUANT TO NRS 41.635 ET SEQ**

COME NOW the Plaintiffs, by and through their counsel, Lisa A. Rasmussen, Esq. of the Law Offices of Kristina Wildeveld & Associates, and hereby submit this

Case Number: A-18-771224-C

Supplemental Opposition to Defendants' Special Motion to Dismiss (anti-SLAPP), filed with this Court's permission.

I. Procedural History

Plaintiffs filed their Complaint in May 2018. In April 2018 Defendants filed a Motion to Dismiss pursuant to NRS 41.635, et seq. (Nevada's Anti-SLAPP statutory scheme) as well as a Motion to Dismiss pursuant to NRCP 12(b)(5). A hearing was held on May 14, 2020 on the Motion to dismiss, which was denied. Supplemental briefing followed the hearing. This court determined on May 29, 2018, *inter alia*, that the defendants had not established by a preponderance of the evidence that their communication was made in good faith.

The defendants filed a notice of appeal, which the statute allows, in June 2018. While the appeal was pending, Plaintiff filed a motion to permit discovery to commence. The discovery commissioner granted that motion in part and the defendants objected to her report and recommendation. This court sustained the objection and, relying on NRS 41.5660(3)(e), denied the motion to commence discovery, effectively staying any discovery in this matter.

The Nevada Supreme Court vacated and remanded this matter to this court to the extent that (a) intentional tort allegations are not immune from anti-SLAPP treatment and (b) that this court erred in concluding that the appellants/defendants had not met their burden at step one of the anti-SLAPP analysis. The Nevada Supreme Court also stated that the Plaintiffs/Respondents did not present prima facie evidence as required by NRS 41.660(3)(b) of demonstrating a probability of prevailing on their claims, instead relying on the fact that the claims were not made in good faith. The Supreme Court noted, however, that it appeared that this issue got conflated with other issues related to California law. Thus, the Nevada Supreme Court, on the record before it, believed

that this court erred in its determination that the Plaintiffs/Respondents had met their two-step burden. What the Nevada Supreme Court *did not conclude* is that the Plaintiffs/Respondents could never meet their two-step burden.

The Nevada Supreme Court specifically acknowledged that Plaintiffs/Respondents had requested limited discovery pursuant to NRS 41.660(3)(b), but that this court did not rule on the merits of that request and instead stayed all discovery pending the appeal. It specifically stated:

> Whether respondents met the standard in NRS 41.660(4) for obtaining discovery relevant to a special motion to dismiss is a decision the district court is better situated to address, and we therefore decline to address it in the first instance in the context of this interlocutory appeal.
>
> Accordingly, for the reasons set forth above, we vacate the portion of the district court's order denying appellant's 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).

NSC Order, page 12.

This Court then permitted limited discovery pursuant to Order which was later narrowed to permit only discovery on "What the Defendants relied on when they made their statements" to the City reflected in Exhibit 5, attached hereto. Specifically, the statements were:

> 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. [Optional Clause]

II. THE STATEMENTS CONTAINED IN EXHIBIT 5 ARE FALSE AND NO PARTY DISPUTES THAT

The statements are false and no party disputes that. They are false because there is no "Peccole Ranch Master Plan" that has been recorded anywhere and there is no such designation as stated in this "statement/declaration" to the City of Las Vegas. Additionally, all persons who have purchased lots in Queensridge, either the single family homes section, the townhomes or the towers have received CCRs, which are recorded, that state that there is no right to any adjacent land that formerly comprised the Badlands Golf Course and that there is no right to control any future development on that land. The seller made no warranties about the adjacent land. For these reasons, the statements are false.

Defendants do not dispute that these statements are false. Rather, their argument is that when they made these statements, they had a good faith basis to believe the statements were truthful and that because the false statements were made for the purpose of petitioning the government for redress, they are not subject to liability.

On remand, the Defendants have worked very hard to convince this Court that Plaintiffs should not be permitted to do any discovery, and that the Court should simply grant the Motion to Dismiss because Defendants have already met their burden under prong one of Nevada's Anti-SLAPP statute and Plaintiffs have not established that they can prevail under prong two. Defendants suggest that the Nevada Supreme Court recognized that Defendants had met prong one and that there was nothing left to discuss on that element.

This is not accurate because the Nevada Supreme Court also stated:

> [A]bsent evidence that clearly and directly overcomes such declarations [Defendants' Declarations], the sworn declarations are sufficient for purposes of step one.

Evidence to the contrary is precisely what Plaintiffs are entitled to demonstrate to this Court. The discovery responses and the depositions of the Defendants make this point because they demonstrate that the Defendants' collective positions that they made the statements in Exhibit 5 in good faith, without knowledge of their falsity, is not supported by their testimony. In fact, their testimony establishes that this position is neither plausible nor accurate.

III. THE TESTIMONY OF DEFENDANTS DOES NOT SUPPORT THEIR POSITION THAT THE STATEMENTS CONTAINED IN EXHIBIT 5 WERE MADE IN GOOD FAITH

The defendants do not make sense in their testimony because other than perhaps Mr. Omerza, none of them point to any information they relied on when they purchased their lot/home/condo, which is what the statement asserts. They attempt to convince, however, that because they relied on a newspaper article, Frank Schreck, or an order from Judge Crockett, their statements were made in good faith. The problem, however, is that the statements specifically state that they relied on a Peccole Ranch Master Plan in purchasing their lot. The statements do not say I recently learned that I have a legal interest in no development on the Badlands course.

Here is a breakdown of their testimony.

Omerza Testimony

Mr. Omerza formerly owned a home in Queensridge located at 800 Petit Chalet. (Ex. 1, *Omerza Deposition Transcript*, page 9.) He purchased his home in 2003. (Id.) He was provided a copy of the CCR's at the time of his purchase. The CCR's specifically state that there are no rights or control over the subject land.

Mr. Omerza stated that he read a newspaper article in January 2018 about Judge Crockett's decision in case number A752344 (Ex. 1, page 14; Exhibit 2, newspaper article dated Jan. 19, 2020.) He attended three or four city council meetings and he spoke at

one of those hearings. (Ex. 1, page 15; Exhibit 3, Omerza City Council statement on June 21, 2017.) He first learned that Mr. Lowie had purchased the golf course in the newspaper. (Ex. 1, page 20.) Mr. Omerza is certain that he spoke with his neighbors about the purchase by Mr. Lowie. (Id, page 22.) He further received "surveys" that were like "blast surveys," from the Queensridge community. (Id, page 24.)

Mr. Omerza concedes that he knew there would be development at one point, but that he was concerned that the proposed development did not take into account flood zone issues, traffic, police and fire and schools. (Id, page 25.) He stated he did not have an opinion one way or the other, but he thought "the zoning wasn't met and the questions weren't answered." (Id.) He obtained information from FEMA prior to purchasing his home, which was not on the golf course. (Id.)

Mr. Omerza stated that he gathered forms with people's signatures, but that he did not submit one to the City of Las Vegas. (Id, page 26.) He circulated 36 forms. (Id, page 27; see also Exhibit 5, the form.) His lawyer would not permit him to answer whether he returned those to the City of Las Vegas. (Id.)

Omerza claims that he listened to people speak at city council meetings and that he heard from attorneys and someone from UNLV law school and that they were eloquent. He states that he looked at the FEMA report he requested when he bought his house and that Judge Crockett's decision was "part of building my opinion." More importantly, also notes that he received "these items" **after Mr. Lowie initiated the lawsuit**. (Id, page 28.)

Mr. Omerza received an email with the "Declaration" for people's signature in an email. He could not figure out the "Docu-sign" feature, so he printed 50 of them and gave out 36 of them. (Id, pages 29-30.)

Mr. Omerza went over to Mr. Lowie's office to look at his major plan and it looked like he had accounted for the flood zone. He expressed that people were not

adverse to his proposal until he changed over 80 percent of the parameters. (Id, page 34.) Mr. Omerza never told Mr. Lowie that the property could not be developed. Mr. Omerza agrees that the agenda in June 2017 was "to let the newly elected officials decide," and that the agenda was not to state that the land could not be developed for the reasons Judge Crockett later stated. Nothing in the false declarations submitted to the City was discussed at the city council meeting in June 2017. (Id, pages 34-35, see also Omerza statements to City, June 2017, Exhibit 3.)

When asked why Mr. Omerza believed that any Queensridge residents relied on the terms of the "Peccole Master Ranch Plan" he stated that it gave them an opportunity to say what they believed and for me to present it to the city council. (Ex 1, pages 36-37.)

No "Peccole Ranch master Plan" was ever recorded or documented anywhere. Mr. Omerza concedes that he never read any such document. (Id., page 37.) He states that he did some Google research and read materials supplied to him by his real estate agent. (Id.) What was supplied by his real estate agent were documents that made it clear that the golf course could be developed, the CCR's.

Mr. Omerza also told this court that "based on further conversations with neighbors," he came to believe that this "Peccole Ranch Master Plan" that is not recorded anywhere precluded development. When asked what neighbors he talked to he generally describes people he ran into walking his dog and he does not know their names. (Id, page 39.) Mr. Omerza did not print out any documents referencing the "Peccole Ranch Master Plan," and he has no documentation to support his alleged research from 17 years ago. (Ex. 1, page 49.)

The declarations distributed by Mr. Omerza were returned to him at his address. (Id, page 43.) He said that was done so he could bring the documents to city council.

(Id.) Mr. Omerza does not know when he received the email because he did not keep it. (Id, page 55-56.)

There is no recorded document that resembles the "Peccole Ranch Master Plan" referenced by Mr. Omerza. He references a FEMA report and Google searches. Mr. Omerza does not state that he himself submitted one of the statements contained in Exhibit 5, but states that he circulated 36 copies of the same to others, and that he collected them. He was not permitted to state whether or not he actually presented them to the City of Las Vegas. More discussion on this in the prong 2 analysis appears *infra.*

Bresee Deposition Testimony

Mr. Bresee presently lives at 9821 Winter Palace Drive in the Queensridge single family homes community. (Exhibit 4, Deposition transcript from Bresee, page 7.) He has lived there for 20-21 years. (Id, page 8.) Mr. Bresee had no documents relevant to the discovery requests propounded upon him. (Id, pages 9-11.)

A statement "Exhibit 7" to the Deposition and "Exhibit 5" herein was handed to him by a neighbor. (Ex. 4, Id, page 14.) The neighbor who handed it to him was Frank Schreck. (Id.) He does not remember when it was handed to him, but it took it and signed it later. (Id.) He believes he faxed it to city council.

Mr. Bresee believed that the statement in Exhibit 5 was correct because "just my understanding that Queensridge is located in the Peccole Ranch Master Plan Community." (Exhibit 4, page 15.) This opinion stems from information he learned from his real estate agent when he bought the lot in 1997. (Id, page 15.) He stated he read "excerpts" from Judge Crockett's opinion, but he has no idea when he read them. (Id, page 16.) It could have been Frank Schreck who provided those excerpts. (Id, page 17.)

Mr. Bresee said he probably received these excerpts by email, possibly by mail. (Id, page 22.) The only person he talked to before he signed the statement that was submitted to city council was Frank Schreck. (Id, page 23.)

Although Mr. Bresee states in his declaration submitted to this Court "that based on my conversations with other Queensridge residents, many other residents have similar beliefs." (Id, page 27.) When asked who the other neighbors are, Mr. Bresee identifies Frank Schreck and someone named Mike, whose last name he does not know. (Id, page 28.) Mr. Bresee was upset about the development prospects. (Id, page 30.)

Mr. Bresee is social friends with Frank Schreck. (Id, page 32.) He spoke to Mr. Schreck approximately half a dozen times about development of the golf course. (Id, page 33.) When asked what makes him believe that his home is part of a "Peccole Ranch Master Plan" Mr. Bresee stated, "I am not sure really sure other than I always thought that it was." (Id., page 40.) He assumes he would have received a document about this when he purchased his lot and completed his home build, but he does not possess any such documents. (Id, page 41.)

Mr. Bresee testified that never spoke to anyone about his concerns that were reflected in the statement submitted to the city that is at issue in this litigation. (Id, page 37.) When specifically asked what formal action he relied on to conclude that the properly formerly known as the Badlands Golf Course was designated as parks, recreation and open space he stated: "I guess it would be Judge Crockett's order or judgment or whatever it is." Yet he concedes that he learned this "after he purchased his home," not before as reflected in the statement. (Id, page 44.)

Mr. Bresee agrees that he received a preservation letter from counsel for Plaintiffs in March 2008. (See Exhibit 6 hereto, referred to as Exhibit 8 in the Deposition Transcript.) He did not preserve any documents because he "didn't really have any

documents to preserve." (Id, page 47.) He does not know why he does not have any documents, or why he did not preserve any documents as requested. (Id, pages 49-50.)

Bresee did not disclose his June 2016 letter to city council wherein he stated that he supported the development as initially proposed by Mr. Lowie. (See Exhibit 18.) In that communication, Mr. Bresee does not discuss anything having to do with a "Peccole Ranch Master Plan," instead he states that he supports the development if it is as initially proposed by Mr. Lowie. (Id.)

Mr. Bresee admits that he returned the statement to the City and concedes that he has nothing to support his assertion to this Court that he relied on the "Peccole Ranch Master Plan" and that his statement made to the City was made in good faith. His declaration carefully states that he did not knowingly make any false statements. When pressed, however, he gives this Court nothing to support *how* this could have possibly been a true statement, much less a false statement made in good faith.

Deposition of Steve Caria

Mr. Caria lives in Queensridge Tower 1, a condominium he purchased in 2013. (See Exhibit 7, Deposition Transcript of Steve Caria, page 8.)

Mr. Caria does not remember reading disclosures that plainly stated that the seller was making no representations as to the subdivision use or development of any of the adjoining or neighborhood land. (Exhibit 7, page 9.) Steve Caria attended several city council meetings and addressed the city council on numerous occasions. In October 2016 he attended a city council meeting and he referenced a circulating petition. (Exhibit 8, city council meeting transcript, October 2016.)

Mr. Caria admits to receiving an email from Frank Schreck dated January 11, 2018, a document he produced. (Exhibit 7, page 16, See also Exhibit 9, attached hereto, Exhibit 2 to the Deposition.) Mr. Caria knows several of the people included in the email from Frank Schreck. (Ex. 7, pages 18-20, 22-23.)

Mr. Caria relied on the information provided by Frank Schreck in the subject email because he perceived Mr. Schreck to be "a reputable attorney" who was working with land planners who seemed to be knowledgeable. (Id, page 24.) Mr. Caria references an order from Judge Crockett, but he does not recall if he received the order and he did not produce the order. (Id, pages 26-27.)

Mr. Caria does not recall whether or not he submitted the statement now known to be false to the City of Las Vegas, but he circulated the email that was sent to him from Ann Smith, which he believes originated from Frank Schreck. (Id, pages 28-29.) People returned the false statements to him, but he does not remember what he did with them. (Id, page 29.) As to whether he believed the false statements to be true, he stated "I believed everything that Frank [Schreck] said was true." (Id, page 30.) If Frank Schreck wrote it, Steve Caria believed it to be true. (Id, page 31.) When asked about the details of which boxes people should check, depending on whether they own a home or a condominium, Mr. Caria's response is "According to what he [Schreck] states here." (Id., page 32.)

When asked if the intent was to get people to sign the false statement and return it to the City to influence the City, Mr. Caria said:

> Intent was to provide information to people. Whether this was truthful to them or not, I didn't know. I assumed it was truthful based on

Mr. Schreck. But each individual, there were people that had differing opinions at Queensridge, I believe.

(Id., page 32.)

During his deposition, Mr. Caria was asked what else he relied on that led him to believe the statements he circulated to be sent to the city were accurate. He identified a newspaper article written by Jamie Munks (about Judge Crockett's order) he stated: "I am looking at the checklist of things that I reviewed with Mitch." This led to the undersigned asking that he produce the checklist. A copy of the checklist is attached hereto as Exhibit 10. All of the things on the "checklist" reflect information learned in 2015 or later and none of it is information prior to Mr. Caria's purchase of his property in 2013.

Mr. Caria brought some type of petition to the City in February 2017, but he does not recall what the petition said. (Exhibit 7, page 43, see also Exhibit 11, minutes from February 2017 City Council meeting.) Mr. Caria does not remember his testimony to the City on that occasion, but he is certain that if he said he is not sure that 80 percent of the residents were opposed to development, a statement he in fact made. (Id, page 45, see also Ex. 11.)

Mr. Caria also does not remember an email he sent to Bob Coffin and several others in June 2017. (Ex. 7, pages 48-54; see also Exhibit 12, email from Caria to Bob Coffin.) Mr. Caria also attended a city council meeting on September 6, 2017, but his attorney would not allow him to answer questions about his testimony at that hearing. (Ex. 7, pages 54-44; see also Exhibit 13, minutes from September 2017 City Council meeting.)

The things that Mr. Caria relied upon in circulating the false statement to be provided to the City were purportedly a transcript from a hearing with Judge Crockett (not produced); an order from Judge Crockett (not produced); a newspaper article from the LVRJ and Frank Schreck and his associates and information from "the legal team and land consultants." (Ex. 7, page 57.) All information was learned after Caria purchased his property at Queensridge Tower 1. (Id, page 95.)

Frank Schreck drafted the false statement to be submitted to the City of Las Vegas and it was provided to Mr. Caria through Ann Smith. (Id, pages 59-60.)

Mr. Caria sent an email to Steve Seroka on February 14, 2018. (Exhibit 14, email from Caria to Seroka.) Mr. Caria does not remember the email and his lawyer would not permit him to answer questions about it. (Ex. 7, page 62.)

Mr. Caria has never looked at anything called a "Peccole Ranch Master Plan." (Id, page 66.) There was nothing that Mr. Caria relied upon in purchasing his home that told him that the adjacent property could not be developed. (Id, page 88.) He had no knowledge of a Peccole Ranch Master Plan when he purchased his home. (Id, page 89.) He did not rely on it because he did not know it. (Id.) He "assumed it" because of the way it "looked and felt." (Id, page 90.) He cannot describe any of the boundaries of the "Peccole Ranch Master plan." (Id, page 91.)

Mr. Caria also received a preservation letter, yet he did not produce many of the communications he referenced throughout his deposition. (See Exhibit 15,

Caria preservation letter, compare with Caria's responses to the Requests for Production propounded by Plaintiffs, Exhibit 16.)

Mr. Caria admits that he knew nothing about any Peccole Ranch Master Plan when he purchased his condominium in 2013. Notably. Caria "is not sure" if he submitted the statement (Exhibit 5) to the City himself, but he sent it out to many others for them to sign and send to the City. He has no explanation for this. His correspondence and statements to City council, combined with his frequent communication with Frank Schreck and "the experts" demonstrate that he relied on what he was told by Frank Schreck, a newspaper article and Judge Crockett, all of which amounts to a theory of litigation developed during the Judicial Review matter in case A752344, a position adopted by Judge Crockett, but later overturned on direct appeal to the Nevada Supreme Court. (See Exhibit 19, NSC Remand and Judgment dated August 26, 2020.) [1]

Caria did not remember his statements to the City of Las Vegas and his attorney did not permit him to address myriad questions posed to him. When asked about his memory, he stated that he does not know if his medications affect him. However, he seems to remember in great detail the information he obtained from Frank Schreck, which he believed to be "reputable."

In sum, the statements submitted to this Court, that defendants did not knowingly make any false statements to the City, are not supported by their testimony. Other than Omerza, they all admit that they were relying in information that they learned in January, February or March of 2018. Crockett made an oral ruling on January 11, 2018, the newspaper article is published on January 19, 2018 and Crockett's

[1] The Crockett order was reversed on March 5, 2020, but the Appellees (including Frank Schreck) sought petition for rehearing and petition for en banc review, all of which were denied, resulting in the ultimate remittitur issuing in August 2020. (Exhibit 19.)

order, which Caria relies on, is not filed until March 5, 2020. The Complaint in this case was filed on March 15, 2020. Caria and Omerza "do not know" if they submitted one of the false statements, yet their circulated (and collected) the signatures of others. This of course makes no sense.

IV. THIS COURT MUST MAKE A CREDIBILITY ASSESSMENT AND IT WOULD BE A FAR STRETCH TO DETERMINE THAT THE DEFENDANTS "DID NOT KNOWINGLY" SUBMIT FALSE STATEMENTS

The defendants cannot support their own statements to this Court that they "did not knowingly make a false statement." Caria and Bresee cannot point to anything that predates their purchase of the house that resembles anything like the statement about the "Peccole Ranch Master Plan" which does not exist in any legal or recorded form. It was a concept. Caria knows nothing about it, Bresee did not ever see anything like that, but his realtor led him to believe he had unobstructed rights to the former Badlands Golf Course even though all CCR's state that is not the case. Omerza googled about it and he has a FEMA report. Yet none of the three of them had any compunction with submitting and/or aiding and abetting others to submit a statement that cannot possibly be true in order to influence the City of Las Vegas.

This Court must make a credibility determination as to whether or not it believes the testimony of the defendants. That determination is central to this Court's ultimate determination as to whether Plaintiffs can show by a preponderance of the evidence that they are likely to prevail on the merits because at the end of the day, the defendants have to actually be believable.

And, as the Nevada Supreme Court also noted in its order in this case, the anti-SLAPP statutes contemplate "consideration of the substantive merits of the plaintiff's complaint, but Plaintiff must produce evidence that would be admissible at trial. NSC

Order, page 10, *citing to* HMS Capital, Inc. v. Lawyer's Title Co, 12 Cal.Reptr.3d 786, 791 (Ct. App. 2004), De Havilland v. FX Networks LLC, 230 Cal. Rptr. 3d 625, 634 (Ct. App. 2018) and Bikkina v. Mahadevan, 193 Cal. Rptr. 3d 499, 511 (Ct. App. 2015). Defendants' deposition testimony and the documents submitted herewith would be admissible at trial. Not only did the defendants seek to impose extreme limitations on the discovery permitted herein, they sought to avoid producing documents that would undoubtedly lead to further impeachment of their already untenable and fragile position. Their focus can really only exist in a narrow little vacuum chamber and that has been their interest in severely limiting discovery.

In Shapiro v. Welt, 133 Nev. Adv Rep. 6, 389 P.3d 262, 267-68 (Nev. 2017) the Nevada Supreme Court noted that no communication may seek refuge under NRS 41.660 unless it is truthful and made without knowledge of falsehood. It is a long stretch to believe that the statements at issue (Exhibit 5) were made without knowledge of falsehood because by definition, the statements cannot be true. This Court should determine that the position and testimony of the Defendants is not credible. This actually rebuts prong one and addresses the Nevada Supreme Court's comment that "absent any evidence to the contrary . . ." wherein the court opined that Defendants had met their burden on prong one. This court should determine that there is evidence to the contrary and that Defendants cannot meet their burden in prong one.

V. PLAINTIFFS HAVE CLEARLY ESTABLISHED THAT THEY WILL, AT A MINIMUM, PREVAIL ON THEIR CIVIL CONSPIRACY CLAIM

To demonstrate a probability of success on the merits, Plaintiff must show by a preponderance of the evidence that he is likely to prevail. "A preponderance of evidence requires that the evidence lead the fact finder to conclude that the existence of a contested fact is more probable than its non-existence." In re M.F., 132 Nev. 209, 217 (2016).

In Nevada, 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. Hilton Hotels v. Butch Lewis Productions, 109 Nev. 1043, 1048 (1993), *citing* Sutherland v. Gross, 105 Nev 192, 196 (1989).

The email from Frank Schreck (Exhibit 9) mocks Mr. Lowie and states that he bought a "pig in a poke" and that he only prevailed with the City by "wearing everyone down." Mr. Schreck solicited the defendants named herein to do his work for him in a concerted effort to win at his "game" by causing economic damage to Mr. Lowie. Not only did Mr. Schreck solicit these defendants to do his work, his firm is now representing them since they have been sued. The conspiracy claim need not name every co-conspirator and in fact it names 100 DOE conspirators. Mr. Schreck has funded a well-financed and funded operation to cause economic damage to Mr. Lowie and that operation utilize the defendants herein as its foot soldiers.

Not only is Mr. Schreck the mastermind behind the conspiracy laid out in this case, he is a party litigant to two other cases involving the subject property and adverse to the Plaintiffs herein.

Plaintiffs can show, by a preponderance of the evidence that they will prevail on prong two, the merits of the case on their civil conspiracy claim at a minimum.

VI. THIS COURT'S LIMITATIONS ON THE DISCOVERY PREVENTED PLAINTIFFS FROM DISCOVERING ADDITIONAL INFORMATION ABOUT THE CIVIL CONSPIRACY

NRS 41.660(3)(e) states:

> Upon 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.

The Nevada Supreme Court addressed the issue of "limited discovery" in Toll v. Wilson, 135 Nev. 430 (2019). Toll a local online blog writer), filed a special motion to dismiss under NV's Anti-SLAPP statute after he was sued for defamation by Gilman, a local politician. Gilman filed a motion for limited discovery under the statute. The District Court granted the motion, and discovery was limited to information that would help discern whether Toll knew statements he made were false or whether he actual acted with malice in making the statements. During the limited discovery, Gilman deposed Toll and asked questions about the sources of Toll's statements. Toll filed a petition for writ of prohibition or mandamus, challenging the order allowing limited discovery as well as another decision.

The Nevada Supreme Court held that: "NRS 41.660(4) provides that "the court shall allow limited discovery" when a party needs access to information held by the opposing party to meet or oppose the plaintiff's burden under the second prong of the anti-SLAPP statute:

> "In this case, the district court did not arbitrarily and capriciously exercise its discretion by ordering limited discovery so that Gilman could ascertain whether Toll made his statements with actual malice. Without knowing what evidence Toll relied on when he asserted that Gilman did not live in Storey County, it could be difficult to determine whether Toll acted with actual malice. Thus, limited discovery may be appropriate."

Toll v. Wilson, 135 Nev. at 1220.

Here, Plaintiffs should have been permitted to ask about more than "just what the Defendants relied on in making their statements" (Exhibit 5), but about whether the statements were submitted to the City, when they were submitted to the City, and about all other communications with the other co-conspirators, including Frank Schreck. This court did not authorize that line of inquiry and counsel for the Defendants literally

instructed the defendant witnesses not to answer many questions. See Exhibits 1, 4 and 7, Deposition Transcripts.

By limiting the written discovery and by limiting the questions that could be asked in the depositions, this Court constrained Plaintiffs in their ability to show the broader depth of the conspiracy and more of its intended goals—to harm Mr. Lowie and his plaintiff companies.

Thus, if this Court is not convinced, for any reason, that Plaintiff will prevail on the merits on its conspiracy claim, this Court must permit the additional discovery that addresses that claim. The court can see some of the questions that were precluded and how the discovery was extremely constrained.

CONCLUSION

This Court's initial reaction was to deny the defendants' special motion to dismiss because, in part, it did not believe that it would simply be okay to make false statements and in part because it did not believe that the anti-SLAPP statute was applicable to intentional torts. The Court's instinct was correct, because the Defendants' position that they did not "knowingly" submit false statements to the City is simply not plausible. Plaintiffs have established, even through their very limited discovery, that a civil conspiracy existed and that Mr. Schreck and or others were the architects of that conspiracy, whose aim was to damage Mr. Lowie. Mr. Schreck appears to have taken a win at all costs approach by engaging in a deluge of litigation and by soliciting others to participate in his conspiracy and game.

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This Court should deny the Special Motion to Dismiss and permit this litigation to proceed. If this Court does not think there is sufficient evidence of a civil conspiracy, it must permit additional discovery specifically on the issue of the civil conspiracy. Even with their carefully curated responses, the defendants all have one thing in common – Frank Schreck.

DATED: October 13, 2020. Respectfully submitted,

THE LAW OFFICES OF KRISTINA WILDEVELD & ASSOCIATES,

/s/ Lisa A. Rasmussen
LISA A. RASMUSSEN, ESQ.
NEVADA BAR NO. 7491
ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the foregoing SUPPLEMENTAL OPPOSITION TO SPECIAL MOTION TO DISMISS via this court's EFile and Serve program on all parties receiving service in this case on this 13th day of October, 2020, including but not limited to:

Mr. Mitchell Langberg, Esq.

/s/ Lisa A. Rasmussen
Lisa A. Rasmussen, Esq.

DECLARATION OF LISA RASMUSSEN

I, LISA A. RASMUSSEN, hereby declare, under penalty of perjury of the laws of the state of Nevada as follows:

1. I am an attorney licensed to practice in all courts in the State of Nevada and I am counsel of record for Plaintiffs in the above-entitled action.
2. Exhibit 1 attached hereto is a complete and accurate transcript of the deposition of Daniel Omerza.
3. Exhibit 2 attached hereto is true and correct copy of a newspaper article produced by Daniel Omerza in response to the Requests for Production propounded by Plaintiffs.
4. Exhibit 3 attached hereto is a true and correct copy of minutes from a city council proceeding obtained through a public records request.
5. Exhibit 4 is true and correct copy of the complete and accurate transcript of Darren Bresee's deposition.
6. Exhibit 5 is true and correct copy of the subject "statement" circulated by defendants in this case and was Exhibit 7 to the deposition transcripts of each defendant.
7. Exhibit 6 is true and correct copy of the preservation letter sent to Darren Bresee.

8. Exhibit 7 is true and correct copy of the full and accurate transcript of the deposition of Steve Caria.

9. Exhibit 8 is true and correct copy of an excerpt of minutes of a city council proceeding obtained by public records request.

10. Exhibit 10 is true and correct copy of the "checklist" of Steve Caria's testimony that was requested during his deposition and produced after his deposition.

11. Exhibit 11 is true and correct copy of an excerpt from a transcript of a city council proceeding obtained pursuant to a public records request.

12. Exhibit 12 is true and correct copy of an email from Steve Caria obtained from a public records request.

13. Exhibit 13 is true and correct copy of an excerpt from a transcript of a city council proceeding obtained pursuant to a public records request.

14. Exhibit 14 is true and correct copy of an email from Steve Caria obtained from a public records request.

15. Exhibit 15 is a true and correct copy of the preservation letter sent to Steve Caria.

16. Exhibit 16 is a true and correct cop of the responses to Plaintiffs' Requests for Production of Documents provided by Steve Caria.

17. Exhibit 17 is true and correct copy of an excerpt from a transcript of a city council proceeding obtained pursuant to a public records request.

18. Exhibit 18 is a true and correct copy of an email from Darren Bresee to the City of Las Vegas obtained through a public records request.

19. Exhibit 19 is a true and correct copy of the Nevada Supreme Court Order of Reversal in docket number 75481 (the Crockett case).

Executed this 13th day of October, 2020 in Las Vegas, Nevada.

/s/ Lisa A. Rasmussen

_____

LISA A. RASMUSSEN, ESQ.

Electronically Filed
10/14/2020 1:12 AM
Steven D. Grierson
CLERK OF THE COURT

Exhibit 1

Exhibit 1

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 THROUGH 100, Defendants.	)	No. A-18-771224-C Dept. No. II

ZOOM DEPOSITION OF DANIEL OMERZA

Taken on Wednesday, August 26, 2020

Commencing at 8:55 a.m.

Witness Location: 100 North City Parkway

Suite 1600

Las Vegas, Nevada

Reported By: Cindy Huebner, CCR 806

APPEARANCES:

For the Plaintiffs Fore Stars, Ltd., 180 Land Co., LLC, and Seventy Acres, LLC

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- and -

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For the Defendants Daniel Omerza, Darren Bresee, and Steve Caria:

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(Original exhibits attached to original transcript.)

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Exhibit 2.	Defendant Steve Caria Response to Plaintiffs' Amended First Set of Requests for Production of Documents Related to Defendant's Anti-Slapp Special Motion to Dismiss	5
Exhibit 3.	Defendant Darren Bresee Response to Plaintiffs' Amended First Set of Requests for Production of Documents Related to Defendant's Anti-Slapp Special Motion to Dismiss	5
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Exhibit 8.	3/20/18 Jimmerson Law Firm Request for Preservation of Documents to Darren Bresee	5
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INFORMATION TO BE PROVIDED

None

(Deposition Exhibits 1-9 marked.)
(NRCP 30(b)(4) or FRCP 30(b)(5), as applicable, waived by the parties prior to the commencement of the deposition.)

COURT REPORTER: Before we proceed, I will ask all counsel to agree on the record that under the current National Emergency pursuant to Section 319 of the Public Health Services Act, there is no objection to this deposition officer administering a binding oath to this witness not appearing personally before me. Counsel also agree to waiving the reading of the caption.

Please state your agreement on the record, beginning with noticing counsel.

MS. RASMUSSEN: On behalf of the plaintiffs, Lisa Rasmussen, I agree.

MR. LANGBERG: Mitchell Langberg on behalf of defendants. I stipulate.

It seems somebody else has joined by phone, Lisa.

MS. RASMUSSEN: I don't know who that is.

(Enter Ms. Ghanem-Ham.)

MS. GHANEM-HAM: Hi. I just joined in. I apologize. I was having trouble connecting. It's Elizabeth Ghanem Ham on behalf of Fore Stars, in-house counsel associated in this case.

MS. RASMUSSEN: Okay. So Elizabeth has a phone and a video where she can see us but we can't see her. Gotcha. Okay.

Thanks, Elizabeth.

MS. GHANEM-HAM: Thank you. And I agree as well to the stipulation.

(Witness sworn.)

WHEREUPON:

DANIEL OMERZA

having been first duly sworn, was examined and testified as follows:

EXAMINATION

BY MS. RASMUSSEN:

Q. Good morning, Mr. Omerza. I know I just kind of introduced myself, but I am Lisa Rasmussen. I am counsel for the plaintiffs in this case. And also on the phone and the video is Elizabeth Ham. She is my co-counsel.

I am going to ask you some questions.

She is going to ask you some questions. We kind of broke this up because we are in a hurry to get these depositions completed because we had a court schedule. So I will ask you questions, she will ask you some questions after I am done.

Mr. Langberg, obviously, is your lawyer. He is here. He can request that you guys take a break at any time, but so can you. The only thing I ask is that you answer any pending question before you take a break.

And I know you have explained to me that you just had heart surgery, so are you feeling okay today?

A. Yes. Yeah, I am feeling fine.

Q. Okay, good. So I am going to -- this is an unusual format, but this is the way we are doing depositions now. So it's really important for the court reporter who is taking down everything that you say in her transcription, that you let me finish answering my questions before you start to give an answer and that we try not to talk over each other. We do this in person, too. Sometimes it's hard. Understood?

A. Yes.

Q. Okay. And I think it's a little easier to remember to give audible answers over the video than it is in person, but I want to make sure that you understand that you need to say yes or no or answer the question. I am not here to trick you. And so if you don't understand any of my questions, feel free to ask me to repeat the question. Okay?

A. Okay.

Q. All right. So have you ever had your deposition taken before?

A. No.

Q. Okay. Where do you live, Mr. Omerza?

A. I live 4150 West Hualapai Way, and that's Las Vegas, Nevada, and that's Apartment 1036.

Q. Is that in Queensridge?

A. No.

Q. Okay. Do you own a property in Queensridge?

A. Not at this time.

Q. Okay. And when did you own a property in Queensridge?

A. I sold the property at 800 Petit

Chalet Court March, about the 15th. I don't have the exact date.

Q. Is that of 2020?

A. That is, uh-huh.

Q. Okay. And what was the address of the property that you owned?

A. It was 800 Petit, P-E-T-I-T, Chalet, C-H-A-L-E-T, Court, Las Vegas, Nevada 89145.

Q. And when did you purchase the Petit Chalet property?

A. I would have to look it up. It was either 2003 or 2006. I think it was 2003.

Q. And so did you purchase it -- did you purchase a home that had already been built?

A. Yes. I was the third owner.

Q. Okay. So when you closed escrow on the Petit Chalet property, you were provided a copy of the CC&Rs, correct?

A. Yes.

Q. And you were aware that those CC&Rs had been recorded with the Clark County Recorder dating back as early as 1996, correct?

MR. LANGBERG: Objection as to form. You can answer.

///

BY MS. RASMUSSEN:

Q. You can answer. Do you want me to restate the question?

A. Please.

Q. Were you aware that the CC&Rs that you were provided had been recorded with the Clark County Recorder?

A. No.

Q. Prior to purchasing the property at 800 Petit Chalet, had you purchased other homes previously?

A. Yes.

Q. And how many times would you say in your lifetime you had purchased a home?

A. Two previous times. One here in Nevada and one in Florida.

Q. And when you purchased the prior homes, were there CC&Rs?

A. I don't believe so, no.

Q. So are you generally aware that CC&Rs are documents that are recorded with the county recorder?

A. No, I was not aware of that.

Q. Did you read the CC&Rs applicable to the Queensridge property that you purchased on

Petit Chalet Court?

A. I did read through it, not every word, because some things were talking about trees and the height of walls and this type of stuff, so I skipped through that. And I only looked at the stuff that was pertinent to me.

Q. And you would have also been provided a copy of the rules as well as the CC&Rs, correct?

MR. LANGBERG: Objection as to form. You can answer.

THE WITNESS: I'm not sure what they are so I can't -- I don't know.

BY MS. RASMUSSEN:

Q. Okay. So rules are things that say this is the speed limit, this is what you do with your trash cans, this is what you do when you are in the common space, things like that. Did you get a copy of those rules?

A. I don't -- I'm sure I did, but I don't remember. It would just make sense.

BY MS. RASMUSSEN:

Q. Okay. I am going to go ahead and have you look at Exhibit 1, which you should have a copy of it there.

A. Okay.

Q. So Exhibit 1, for the record, is Defendant Daniel Omerza's Response to Plaintiff's Amended First Set of Request for Production of Documents.

Is that the document that you have in front of you?

A. Yes.

Q. Okay. So now if you will turn to Page 2 of that document, and I am going to have you look at your response to Request for Production Number 3 which is at the bottom of that page.

A. Okay.

Q. So you were asked in Request for Production Number 3, "To the extent that you relied on any documents when you made the following statement in your declaration, please produce all such documents."

And then you state in your response, it starts on Line 23, "This responding party relied on a newspaper report of the decision of Judge Crockett in the Binion matter and on a sign posted on the Badlands fencing. Copies of these documents are produced herewith."

So is that your response to Question Number 3?

A. Yes.

Q. Okay. So now I am going to have you flip forward a couple pages to about the fifth page where there is a newspaper article.

A. I'm not sure what page that is.

Q. If you'll just keep going, you will see the newspaper article. It's on the fifth page of that document in front of you. Do you see it?

A. Yes.

Q. So is this the newspaper article that you were referencing in your response?

A. Yes.

MR. LANGBERG: Lisa, I'm sorry. For the record, Lisa, just so there is no confusion, this is a current print-out of the newspaper article.

MS. RASMUSSEN: Correct.

MR. LANGBERG: He didn't have the actual one or I didn't have it, so you could ask him if it's the same content, but I don't want you to think that it's what he had on that date.

BY MS. RASMUSSEN:

Q. Okay. So let me ask you, Mr. Omerza. You said that you read a newspaper article, and this newspaper article that we are looking at in this exhibit is dated January 19, 2018, correct?

A. Yes, uh-huh.

Q. So is it fair to say you would have read the article no earlier than January 19, 2018 and you either read it on that date or some date after that, correct?

A. That's true.

Q. Okay. Do you remember if you read the article in the printed paper or online?

A. Printed paper.

Q. Okay. Hang on. I am turning off the sound on my computer. There we go.

Okay. And so when you -- so you read this at least in January -- not before January 19, 2018 or some date thereafter, correct?

A. Correct.

Q. Is that a yes?

A. Yes.

Q. I have lost audio from him. Okay.

So apparently when I turned the volume down so I wouldn't hear my email notices I lost audio from you. Okay. So now I have it back. Sorry about that.

So when you read this article, did you have conversations with anyone about the article?

A. It would have been later on I believe I had a conversation with Frank Schreck after I was notified that I would be involved in a lawsuit.

Q. Okay. So is Mr. Schreck one of your attorneys?

A. I called him and asked to be represented by him, and he recommended that I use --

MR. LANGBERG: Sorry. I am going to object. That part is privileged.

Lisa, if this will help, we don't contend that Mr. Schreck functioned as an attorney for any of the defendants prior to this litigation. Does that help you with your questioning?

MS. RASMUSSEN: Yes.

MR. LANGBERG: Okay.

BY MS. RASMUSSEN:

Q. Okay. So, Mr. Omerza, I am not going to ask you about the content of conversations you had with anyone who was -- who is representing you as an attorney. So do you -- so I am just trying to clarify.

Do you consider Mr. Schreck to be one of your attorneys?

MR. LANGBERG: As of what date, Lisa? I'm so sorry.

I'm just going to say this for the record so you know where my privilege instructions will be. As of the date this lawsuit was filed, my firm and, therefore, Mr. Schreck is one of his attorneys. But prior to the date of this lawsuit, so at the time of the events that is the subject of this lawsuit, we do not contend that he was one of his attorneys.

So you will get instructions for any communications with Frank Schreck after the date this lawsuit was filed.

MS. RASMUSSEN: Understood. Thanks for clarifying.

///

BY MS. RASMUSSEN:

Q. Okay. So this lawsuit was filed on March 15, 2018, correct? Does that sound about right? Can everyone agree on that?

MR. LANGBERG: Yes.

THE WITNESS: Okay.

BY MS. RASMUSSEN:

Q. Okay. So prior -- in between the newspaper article on January 19th that we are looking at and March 15, 2018, did you have any conversations with Mr. Schreck?

A. Would you repeat that, please?

Q. Yes.

In between the date that you read the newspaper article and the date the complaint was filed, which is March 15, 2018, did you have any conversations with Mr. Schreck?

A. No.

Q. Do you know Mr. Schreck? Did you -- was filed in this case?

A. You are breaking up. I'm sorry. The screen is frozen and I'm not hearing you.

MS. RASMUSSEN: Okay. Can you hear me now, Mitch?

MR. LANGBERG: I can hear you. Can

you, Dan, hear everybody?

THE WITNESS: Yeah. I think I've got it back now. Okay. What was the question, please?

BY MS. RASMUSSEN:

Q. Okay. And if that keeps happening, just let me know and I will switch to my laptop because I sometimes get a better signal on that.

A. Okay.

Q. Do you know Mr. Schreck -- prior to this lawsuit being filed, did you know Mr. Schreck?

A. No.

Q. Did you know who he was?

A. Yes.

Q. Okay. And how did you know who he was?

A. I saw him at the city council meetings and he got up to speak quite a few times and so I knew of him and that he was an attorney, but I didn't know anything else.

Q. Okay. How many city council meetings did you attend?

A. I really don't want to guess. Can I

give you an average or, you know -- three or four perhaps. I don't know. It could be more. I'm not sure.

MR. LANGBERG: She is entitled to your best estimate, Dan, if you can make an estimate. If you can't, you shouldn't guess.

THE WITNESS: Okay. An estimate would be four.

BY MS. RASMUSSEN:

Q. Okay. So I think you said you believe that you attended three or four; is that correct?

A. That's correct.

Q. Did you speak at any of the city council meetings?

A. Yes. I spoke at one.

Q. I am going to have you turn to the last page of Exhibit 1, which has a picture of a sign.

A. Yes.

Q. So this was a document that you produced. So when did you see this sign?

A. I believe I saw it the day on -- the day that it was posted, but it was -- I'm not sure of the exact date. I would go in and out

of that entrance all the time and I would notice it. So I think it was probably the first date that it was posted.

Q. Okay. Do you see at the bottom there that it has a notice for a planning commission meeting on January 18th? Do you see that?

A. It says January -- for public hearing information planning commission meeting, January 9, 2018.

Q. Right. So you would have seen the sign before at least before January 9, 2018, I'm assuming. Is that fair to say?

A. Yes, I would. I would think so, yes.

Q. Okay. And did you go to the planning meeting on January 9, 2018?

A. I don't remember if I attended that meeting or not.

Q. When did it first come to your attention that there was possibly of development on what had previously been a golf course?

A. I believe there was a notification in the newspaper -- how did I hear about that? I don't know. I just heard that it had been purchased by Mr. Lowie.

Q. You heard that the golf course had been purchased by Mr. Lowie?

A. Yes.

Q. Were you aware that Mr. Lowie -- on the Queensridge?

MR. LANGBERG: Sorry, Lisa. I apologize. You are freezing and you sound like a Tron.

MS. RASMUSSEN: Okay. Let's take a break, and I'm going to switch over to my laptop and see if that cures the problem. Okay?

MR. LANGBERG: Yeah. Shows you how old I am, Tron.

MS. RASMUSSEN: Okay, okay. Everybody just stay there. I am going to disconnect from here and connect from the laptop. Hang on.

(Recess taken from 9:16 a.m.to 9:20 a.m.)

BY MS. RASMUSSEN:

Q. So, Mr. Omerza, I can't even remember the last question I asked you. I think what I asked you was when did you first learn that the property that used to be the golf course would

potentially be developed, and I think you said you learned that Mr. Lowie had purchased the property; is that correct?

A. Correct. I'm not -- it's a long time ago, so I am not exactly sure how -- whether it was in the newspaper or it was just, you know, somebody mentioned it to me. I'm not sure. I don't remember.

Q. Did you have conversations with your fellow neighbors in Queensridge about that?

A. I'm sure I did, yes.

Q. And did you receive one of those cards in the mail telling you that there was any public hearings or anything like that?

A. I don't remember that, no.

Q. Okay. So there is a reference at some of the city council meetings to petitions being gathered with signatures. What are those petitions?

MR. LANGBERG: So I am going to interject an objection here based on the scope designations by the court. I tried to give you leeway, Lisa, for foundational questions, but the scope of the deposition, and I don't mean to be patronizing, we might not agree, is what

did he rely on on these declarations. So I think that this is outside the scope, and I don't want to get into an argument with you, but I am happy for you to tell me why you think I'm wrong.

MS. RASMUSSEN: Well, what I'm trying to discern, Mr. Langberg, is if the petition is the same thing as Exhibit 7.

MR. LANGBERG: Okay.

MS. RASMUSSEN: I can go at it at a different direction. I just was trying --

MR. LANGBERG: I accept that. I accept that. Your question is fine. Thank you.

MS. RASMUSSEN: Okay. Uh-huh.

MR. LANGBERG: Will you call me Mitch, by the way?

MS. RASMUSSEN: Did I? Sorry, Mr. Langberg.

MR. LANGBERG: No. Will you please call me Mitch.

MS. RASMUSSEN: Oh, will I? Okay. All right.

BY MS. RASMUSSEN:

Q. Okay. So, Mr. Omerza, my question

was there is reference to petitions at some of those city council hearings. So what petitions are they talking about, if you know?

A. I'm not -- I don't know what they were talking about at the city council meetings as far as petitions. I received surveys that they were like blast surveys that I would read and, you know, that would be about it.

Q. So where did the survey come from?

A. They came from all over. We got surveys from Queensridge proper, the Queensridge community, we got them from the different people that were running for office, Mr. Seroka gave stuff out. And I don't remember, I didn't pay too much attention to who was sending out what survey, you know. It just wasn't important to me.

Q. Okay.

A. Those surveys --

Q. So when you say it wasn't important to you, I take it that you didn't want development at Queensridge. Is that a fair statement?

A. Hold on one second. Let me just turn this phone off.

What was that now, please?

Q. When you say it wasn't important to you, I take it that you didn't want development at Queensridge. Is that a fair assessment?

A. No. You know, I didn't feel as if the property would not be developed at some point in time. It's just that, you know, it was listed as a flood zone. There was no studies done to take into account traffic or police or fire or schools and that.

So I wasn't -- you know, my feeling wasn't one way or the other. It was if all of the zoning wasn't met and the questions weren't answered, then I felt that it was better to leave it the way it was. Okay?

Q. Okay. So when you say it was a flood zone, where do you get that information?

A. FEMA. You know, I asked FEMA about it before I purchased my home, and I received a map that said that it was a flood zone and it was -- not throughout the entire golf course, but portions of it. So that's it.

Q. So I am going to have you look, if you can, at Exhibit 7.

A. Okay. Okay.

Q. Okay. So this is a form, if you will.

A. Yeah, I recognize it.

Q. You recognize it.

-- is that your signature on it to the City of Las Vegas?

A. Right.

Q. Is that a yes?

A. I'm sorry. What was the question?

Q. Did you submit one of these forms with your signature on it to the City of Las Vegas?

A. No, I did not.

Q. Okay. Did you gather forms with other people's signatures on it to submit to the City of Las Vegas?

MR. LANGBERG: Objection as to form.

But you can answer the question.

THE WITNESS: Yes.

BY MS. RASMUSSEN:

Q. I asked if you submitted it to the City of Las Vegas. You told me no.

Did you submit it to anybody else other than the City of Las Vegas?

A. No.

Q. So then I will ask a different question. Did you ever sign one of these forms?

A. No, I did not.

Q. Okay. Did you circulate any of these forms for other people that lived in Queensridge to sign?

A. Yes, I did.

Q. And about how many of these forms do you think you circulated?

A. I circulated 36.

Q. I'm sorry. I didn't hear the answer because I had a glitch there.

A. Okay. I circulated 36.

Q. 36, okay.

And do you know if any of those 36 that you circulated were returned or ultimately received by the City of Las Vegas?

MR. LANGBERG: I'm going to object on the scope and instruct you not to answer.

Again, Lisa, I just want to -- I tried to -- I have given you leeway where I think it's foundational. And again, I don't want to argue with you, but if you think I am wrong, I am happy to listen to you. I hope you

understand I try to do that. Otherwise, we should move on.

MS. RASMUSSEN: Okay. I will ask a different question.

BY MS. RASMUSSEN:

Q. So, Mr. Omerza, you circulated this to other people. What made you believe that the statement contained in the form that is Exhibit 7 was accurate?

A. The professionals that came to speak at the city council, we had -- of course we had attorneys speaking. There was a gentleman from the UNLV who is the head of the law school in the real estate department. He was very eloquent. I looked at the FEMA report that I had had. I'm sure you could get a copy of that. And let's see, what else? The newspaper. Judge Crockett's decision was part of building my opinion.

I should note that I received these items back after Mr. Lowie initiated the lawsuit, and also that I would have signed one and mailed it in or presented it to the city council.

Q. Okay. So what items did you receive

back? You said you received items back.

A. Yeah. What I did was I was handing out envelopes, flyers -- this is a good presentation of what it was here on Exhibit 7 -- and I put them in a self-addressed stamped envelope to be returned to me, and then I was going to give them to the city council.

Q. Okay. So who prepared Exhibit 7? Who actually came up with the verbiage for Exhibit 7?

A. That, I don't know.

Q. Do you know where you got Exhibit 7 from?

A. Yes. It was a blast email and it was a survey, and I thought that it would be a good idea. As you can see, it had a place for signatures and for the address and dates. I did not know how to sign the form and mail it back because it was not a DocuSign-type situation.

So I came up with the idea that what I would do is I would hand these out in a self-addressed stamped envelope and then I would give them to the city council because I wanted -- I wanted the city council to

understand that the people that are objecting to this were not just the people on the golf course, they were just regular residents whose real estate values were being impacted by this entire thing.

Q. Okay. So you think you got it in an email, right?

A. Yes. I'm sure it came in an email of some kind, so.

Q. Okay.

A. And then I printed it out.

Q. And then you printed several copies, right?

A. Yeah. I printed a total of 50 copies of which I gave out 36.

Q. Okay. So I have some minutes from a city council meeting where you testified on June 21, 2017. Does that sound correct to you?

A. I didn't testify. I spoke maybe.

Q. You spoke, okay. So you spoke before the city council.

Does that date sound right?

A. I don't remember. I know I spoke once at the city council.

Q. Okay. So in your comments to the

city council, you said that you don't live on the golf course and that you had met with Mr. Lowie's representatives when he first proposed the project.

A. Yes, I did.

Q. Was there anything that you understood when you at the time you met with Mr. Lowie that precluded the project? Was there anything you had in your head that would preclude the project?

A. I don't understand what exactly you are asking.

Q. So what I am asking is did you have some legal theory, like the one included in Exhibit 7, that you believed precluded the project when you spoke with Mr. Lowie?

MR. LANGBERG: Sorry. I am going to object as to form.

And you can answer. Mr. Omerza, I just need to remind you that because of this process, if you will just pause before you answer the question so that I have a chance to insert objections, that will be helpful, but you can answer this question.

THE WITNESS: Okay. All right. Can

I get you to repeat that question for me, please?

BY MS. RASMUSSEN:

Q. Yes. No problem. I will rephrase it a little.

So in Exhibit 7, the statement in the form is 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. So that's what Exhibit 7 says, and it says some more. I just read the first part of it.

When you met with Mr. Lowie, did you discuss with him that you believed the property could not be developed?

MR. LANGBERG: Objection as to form.

You can answer.

THE WITNESS: She was breaking up. I'm sorry, but you know.

MR. LANGBERG: When you had the discussion with Mr. Lowie that you were talking about, did you -- why am I doing this? I'm so sorry, Lisa.

MS. RASMUSSEN: It's okay. It's fine. It's fine. Go ahead.

MR. LANGBERG: Did you believe that the property couldn't be developed?

THE WITNESS: At the current time, it was not zoned for development. It was zoned as open space.

And, you know, I really -- I object to the theory or the thought that it was a conversation between Mr. Lowie and I. Mr. Lowie was absolutely badgering me, asking a lot of questions. I felt we were having a conversation from one neighbor to another, and it got to the point where I just finally said I can't help you. So as far as answering the question, I think I just did, so.

BY MS. RASMUSSEN:

Q. Okay. So you are basically saying it wasn't a conversation, but then when -- you also told the City that he has changed his position. What did you mean by that?

A. Well, at first, he had talked about five-acre estates and it looked as though he was taking, from my point -- and I am not a geologist. I am just a resident. I have no expertise in any of this. But I went over to his office to look at his major plan that he

had, and it looked like he was accounting for the flood zone and it was a project that had some possibilities.

It wasn't until he changed all of his parameters that I think over 80 percent of the people in the community that were, you know, willing to go along with his project all of a sudden turned around and went wait a minute, this is not what we signed up for, so. That's just my opinion. I don't -- you know.

Q. Okay. Well, that is what I am asking you.

You didn't discuss with Mr. Lowie or any of his representatives that you didn't think that the property couldn't be developed at all; is that correct?

A. Yes. I think -- yes, that's correct.

Q. Okay.

A. I never told him he couldn't develop the property.

Q. Okay. And then it looks like your -- the rest of the gist of your comments before the city council were, and this was June of 2017, is that the city council should wait to hear and/or vote on the proposed project

until the newly elected officials were seated. Is that fair?

A. Yes, it is.

Q. And that is the -- and in June of 2017, you filled out the things that are in the declaration that are in Exhibit 7, right?

MR. LANGBERG: You cut out. I'm sorry, Lisa.

MS. RASMUSSEN: That's okay.

BY MS. RASMUSSEN:

Q. So in June of 2017 when you addressed the city council, you weren't addressing any of the things that are contained in Exhibit 7, right?

A. That's correct, to my knowledge. This happened a long time ago and I didn't take notes, so I am just relying on my memory at this point in time.

Q. Okay. Now, if you will look at Exhibit 4. Do you have Exhibit 4 in front of you?

A. Yes, I do.

Q. Just so I have the record clear and make sure it is the right exhibit, it should be a document entitled Declaration --

A. Declaration of Daniel --

Q. Is that the right document?

A. Yes.

Q. Okay. So I'm going to have you turn to Page 3 of that declaration. And on Paragraph 13, you have no understanding that any of these statements are false. First, I was not making any assertion at all. I was only offering the declarations to residents for their consideration and to sign if they believed them to be accurate.

And then you say the statements in these declarations correctly summarize my beliefs to the Queensridge residents reliance upon the terms of the Peccole Master Ranch Plan. Do you see that?

A. Yes, I do.

Q. Okay. -- believe that any of the residents in Queensridge relied upon the terms of the Peccole Ranch Master Plan?

A. Okay, yes.

Q. So my question is what made you believe that any residents in Queensridge would have relied on the Peccole Ranch Master Plan?

A. Well, obviously it gave them an

opportunity to say yes or no or not send the form back. You know, what they believed, I have no idea. I believed it to be true, and I was giving them an opportunity for them to speak up and for me to present it to the city council.

Q. Okay. Had you ever read the Peccole Ranch Master Plan?

A. The actual document, no, no. I read what was supplied to me by my real estate agent. I did as much research as I possibly could on my own. But no, I did not read the entire Peccole Master Plan. I did some Google searches. I found out -- well, I'm not going to get into that, but -- yeah, so.

Q. Okay. So when did you research the Peccole Ranch Master Plan?

A. I looked to see what -- did Mitch say something?

MR. LANGBERG: No.

THE WITNESS: Oh, okay.

Prior to me purchasing the home, I wanted to find out as much as I could about Queensridge. And the Peccole Master Plan was by the family, Peccole family. And Mr. Peccole

at some point in time prior to that had traded some land up in northern Nevada for the area now known as Peccole and then he built the three residential sections and the golf course. Does that answer your question?

BY MS. RASMUSSEN:

Q. Okay. So you said you hadn't read the document. So I guess -- let me ask this. Have you as we sit here today read the Peccole Ranch Master Plan?

A. No, I haven't.

Q. Okay. And then you further state in your declaration on Paragraph 13, further, based on my conversations with other Queensridge residents -- any of the other people you had conversations with?

MR. LANGBERG: You chopped out against. I'm so sorry.

MS. RASMUSSEN: It's okay. I'm sorry.

BY MS. RASMUSSEN:

Q. Who are the other residents that you had conversations with that you referenced in Paragraph 13 of your declaration?

MR. LANGBERG: Just to make the

record clear, Lisa, you could tell me if I am overstepping. But, Dan, if you look at Paragraph 13 on Line 19 where it starts with the words "Further based on my conversations," do you see that?

THE WITNESS: Yeah.

MR. LANGBERG: She wants to know what conversations you were basing that on. Correct, Lisa?

MS. RASMUSSEN: Correct.

THE WITNESS: That's an interesting question because I met many of my neighbors when I was walking my dog, and we would stop and chat and talk, you know, just move on and whatever. But I would have to say my neighbors, the current neighbors that were living there at the time, I spoke with them about it. I spoke with the people when I was walking my dog and we'd stop and chat and, you know, just be neighborly and so as far as that's -- yeah.

BY MS. RASMUSSEN:

Q. Okay. So --

A. This has all happened, you know, two years ago.

Q. When you say the residents had --
A. Excuse me?
Q. You say other residents had similar beliefs. Did you talk to other residents about the Peccole Ranch Master Plan?
A. Not in so many words. I never brought up the Peccole Ranch Master Plan, but we talked about the development of the golf course. I don't remember the Peccole Ranch Master Plan coming up because no one ever actually asked about it other than Mr. Lowie and -- okay.
Q. And when did Mr. Lowie ask about the Peccole Ranch Master Plan?
A. Mr. Lowie stopped on the street, I believe it was a Thursday, and he waved me over to his car. I walked over there, and then he asked me what I was handing out. And I explained to him that this was a survey that I was going to give to the city council and, you know, if you would like to fill it out. He goes, what's your name? I said, well, my name is on the envelope. He goes, what's your address? I said, my address is on the envelope. And he went, okay. And then he

started to ask me questions about the master plans. And I'm not an expert in the master plans. You know, I'm just a resident that tried to do as much due diligence as I could prior to buying my home and that's it. So that's when.

Q. Okay. So are there -- do you have names of any people that you spoke to in preparing or related to Exhibit 7? You said you don't know who prepared it. You said you got it in an email. Are there other residents or neighbors that you spoke to regarding Exhibit 7 before you started disseminating it to people to sign and return?

A. No --

MR. LANGBERG: Objection as to form.

Dan, you've got to wait just a second for me. And now everybody got to hear me cough.

Objection as to form, but you can answer the question.

THE WITNESS: Okay. Actually, I didn't speak to anyone about it. I just thought it would be a good idea and, you know, so I did it on my own. Everything that I've

read looked to me to be accurate and I thought, well, you know, people will have a chance. They can even write in on the bottom if they had an objection to it. I would have submitted that as well, so.

BY MS. RASMUSSEN:

Q. Did people return the forms to you?

A. They --

MR. LANGBERG: Stop.

I am going to object. Beyond the scope.

I will instruct you not to answer.

THE WITNESS: Okay.

MS. RASMUSSEN: Let me tell you why I was asking, Mitch. Because he said that when he talked to Mr. Lowie, he saw his name on the envelope. So I'm not -- he said earlier that they had a self-addressed stamped envelope, so I am asking if it was his name, is he the one to whom they were returned.

MR. LANGBERG: Yeah, I will let him answer that. I have been giving you a lot of leeway, and I don't want to let the prior leeway set the standard for the rest of the followup. So I will let him answer it, and we

are not trying to hide anything. I am just trying to keep to the scope. So I am going to start inserting those objections.

But go ahead, Dan, and answer the question about who those were supposed to be returned to. She wants to know -- again, I've clouded things.

So to safe the court reporter, correct me if I am wrong, Lisa, you want to know who the self-addressed stamped envelope was addressed to, correct?

MS. RASMUSSEN: Right.

THE WITNESS: It was addressed to me at my address at 800 Petit Chalet Court.

BY MS. RASMUSSEN:

Q. Okay.

A. And that was done so I could bring the documents to the city council.

Q. And just to clarify one more time, there is reference to petitions being submitted to city council. Do you know if Exhibit 7 is what is meant by petitions, if you know?

A. No, I don't know. No, I don't know.

Q. You don't know, okay.

I don't think that I have anymore

questions at this point. I think Ms. Ham has some questions. Does everyone want to take a short little break?

THE WITNESS: Yes, please.

MR. LANGBERG: You want a break? How long of a break would you like, Dan?

THE WITNESS: Just enough to use the men's room, five minutes.

MR. LANGBERG: We will take the five-minute break.

And then, Lisa, I am going to -- just for the record, I am going to reserve any objection to multiple questioners. I actually don't think the rules allow it, but I understand these are unique circumstances and the timing was short, so I am going to accommodate that. I can't imagine it's going to be an issue of stuff being asked and answered, but I just want to reserve it and that's it. I don't think you'll hear --

MS. GHANEM-HAM: I would like to just put on the record that we have multiple plaintiffs here. Do you want us to break it down via plaintiff and we would have the right to ask separately? So we could do it that way

as well.

MR. LANGBERG: That's a fair point, and I withdraw the objection.

MS. GHANEM-HAM: Thank you.

MR. LANGBERG: It's not even an objection. I withdraw the reservation.

MS. GHANEM-HAM: Thank you.

MS. RASMUSSEN: I am going to move to our conference room while we take this break and see if I could get a better signal in there.

(Recess taken from 9:53 a.m.to 10:00 a.m.)

EXAMINATION

BY MS. GHANEM-HAM:

Q. Back on the record. Good morning. Elizabeth Ghanem-Ham, Bar Number 6987.

Mr. Omerza, I am associated into this case and I am in-house counsel for the various plaintiffs in this case, the owners of the land formerly known as the Badlands Golf Course.

So you are -- understand you are still under oath and all of the statements that you have made when we began this are still in

effect at this time?

A. Yes.

Q. Okay. I am going to try to stick to the scope. I am sure if I step one toe out of line, Mr. Langberg will step in and remind me. But I wasn't as involved in those hearings and perhaps I understand the scope to be slightly different. But I am going to go quickly and try to get through some prenup stuff before I get around to anything else.

You had stated that you relied -- my understanding of your testimony so far is that you relied on a few items prior to purchasing your home in regard to your belief that you are part of -- the home we are referencing here in this deposition was part of the Peccole Ranch Master Plan?

A. Yes.

Q. And my understanding of your testimony is that you relied on the FEMA report; is that correct?

A. Yes.

Q. Prior to your purchase?

A. Yes.

MR. LANGBERG: I am objecting as to

form, belated.

But go ahead.

BY MS. GHANEM-HAM:

Q. And do you have that report in your possession now?

A. Yes.

Q. Okay. And that's not something that you produced, I don't believe. I am sure you all will correct me if I am wrong. I am going to request that you produce that report.

A. Okay.

Q. Did you have that document, again, prior to the purchase of your home?

A. The exact document, I'm not sure if I had the original or if it's a copy.

Q. Okay. Where did you receive the copy from?

A. I'm guessing FEMA.

Q. Okay. So how did you obtain that copy?

A. I wrote a letter to FEMA and they submitted that.

Q. What did you ask FEMA to give you exactly?

A. I wanted to know if my home or the

surrounding area was on a floodplain.

MR. LANGBERG: Elizabeth, before you ask the next question, I think it appears to me that you have the speaker on on your phone and it's being picked up on your computer, so I think you have to close your phone line.

MS. GHANEM-HAM: Is it echoing?

MR. LANGBERG: Yes.

MS. GHANEM-HAM: I am going to try to hang up my phone. If I lose you, I will call back in.

(Discussion held off the record.)

BY MS. GHANEM-HAM:

Q. I think I was asking about the copy of the FEMA report that you have, Mr. Omerza.

A. Uh-huh.

Q. Do you recall? Okay.

You stated that you contacted FEMA via telephone and asked for them to provide you with information relevant prior to the purchase of your home and that would have been in 2003 and 2006; is that correct?

A. I know I contacted them. I am not sure the method, but I wanted to make sure that my home wasn't in a floodplain prior to me

purchasing it and so I did that. Now, I am not sure if I got the original document or a copy of it.

Q. But you are going to produce that document, correct?

A. Yes.

Q. Okay. And you also stated that you relied on some research that you did in regard to the Peccole Ranch Master Plan; is that correct?

A. Yes.

Q. Okay. And did you print that research?

A. No.

Q. Okay. That research was done prior to your purchase of your home in Queensridge?

A. Yes.

Q. And it was done how? How did you conduct the research?

A. This is 17 years ago. I don't remember.

Q. Did you go down to the city and request a copy of documentation regarding the Peccole Ranch Master Plan?

A. No.

Q. Did you have any contact with the government, the city in regards to the Peccole Ranch Master Plan prior to purchasing your home?

A. No.

Q. And -- okay. You made a statement, I believe, during your testimony that people were originally for development but then after the plans changed, I believe you said 80 percent of the people were no longer for development.

A. That's correct.

Q. And so did you -- do you know how many people live in Queensridge?

MR. LANGBERG: Objection. Beyond the scope.

Instruct not to answer.

MS. GHANEM-HAM: That's beyond the scope, how many people live in Queensridge?

MR. LANGBERG: Yes.

BY MS. GHANEM-HAM:

Q. So how many people do you know that live in Queensridge, can you give me a number?

MR. LANGBERG: Objection. Beyond the scope. Instruct not to answer.

MS. GHANEM-HAM: I am just trying to

ascertain, you know, what 80 percent of the people means.

MR. LANGBERG: I understand.

MS. GHANEM-HAM: Let me ask a different way.

BY MS. GHANEM-HAM:

Q. Did you attend any meetings in regards to the development of the property outside of city hall?

A. No.

Q. So you didn't attend any meetings at a clubhouse or at the SunCoast or any outside location, is that accurate, Mr. Omerza?

A. Yeah, I'm --

Q. I apologize.

A. I want to give you a correct answer.

Q. Uh-huh. I apologize. Take your time.

A. Yeah. I'm trying to think of whether I attended a Queensridge board meeting and it was discussed, and I'm not sure.

Q. Okay. Did you frequent the board meetings, the Queensridge board meetings?

A. Not too often. Maybe once or twice.

Q. Once or twice ever in your time of

living in Queensridge?

A. Yes.

Q. Okay. When did you -- I think you testified that you first met Mr. Schreck, Mr. Frank Schreck at a city council hearing?

A. I didn't meet Frank Schreck there. I noticed in there he was doing a presentation.

MR. LANGBERG: Okay, you've got to stop. Elizabeth lost her sound, it looks like, so let's pause.

(Discussion held off the record.)

(Record read as follows:

"Q. When did you -- I think you testified that you first met Mr. Schreck, Mr. Frank Schreck at a city council hearing?

A. I didn't meet Frank Schreck there. I noticed in there he was doing a presentation.")

BY MS. GHANEM-HAM:

Q. Prior to this lawsuit being filed, how often would you say you met Mr. Schreck?

A. Excuse me?

Q. Prior to the lawsuit -- this lawsuit being filed, how often would you say you met

with Mr. Schreck, Mr. Frank Schreck?

A. I never did.

Q. Never, okay.

Did you ever correspond with him?

A. No.

Q. Okay. I am going to ask if you know any of the following people. Do you know Roger Wagner?

A. No.

Q. Do you know Steve Caria?

A. I met him at Frank Schreck's office.

Q. I'm sorry. You met him --

A. At Frank Schreck's office.

Q. After the lawsuit?

A. Yes.

Q. Or before?

A. After.

Q. Okay. Do you know Duncan Lee?

A. No.

Q. Jack Binion?

A. No.

Q. Did you ever meet with any of the HOA board members of Queensridge?

A. If I went to a meeting, I am sure I met them.

Q. Okay. Were you ever a part of any committees against the development of a golf course?

A. No.

Q. Were you aware of the existence of any such committee?

A. No.

Q. Were you aware or were you -- or did you participate in a collection of funds to legally battle the development of the golf course?

A. No.

MR. LANGBERG: Objection as to form and beyond the scope, but you have your answer. He said, "No."

And, Dan, I really need you to pause so I can object. Thank you.

THE WITNESS: Okay.

BY MS. GHANEM-HAM:

Q. Okay. I want to understand -- did somebody engage you to hand out the petitions that you were handing out in regards to this matter?

MR. LANGBERG: Objection as to form. Elizabeth --

MS. GHANEM-HAM: Let me restate that.

MR. LANGBERG: Okay.

BY MS. GHANEM-HAM:

Q. I think we identified -- let me get my exhibits open -- 7. We referenced it as a petition, as a statement, as a declaration.

I believe your testimony, Mr. Omerza, was that you received an email that had this statement attached. Is that accurate?

A. Yes.

Q. Who did you receive that email from?

MR. LANGBERG: Objection. Asked and answered.

You can answer again.

MS. GHANEM-HAM: Sorry. I apologize if I am re-asking.

MR. LANGBERG: That's all right.

She is asking you who you received it from. You can answer it again.

THE WITNESS: Okay. It was a blast email, I guess, and I'm not -- I don't know who it came from. I read it and, you know, I thought it was good information, and it basically said everything that Judge Crockett said, so I thought it was good.

BY MS. GHANEM-HAM:

Q. Everything Judge Crockett said, okay.

A. Yeah.

Q. Did you attend the -- what are you referencing when you say everything Judge Crockett said?

A. I'm referencing his determination on the lawsuit to stop building. I believe it was, right? It was what, Binion? Was it Crockett -- I'm not sure. I'm not sure what the case exactly said.

Q. So are you referencing -- did you attend a court hearing?

A. No, I did not.

Q. Okay. Did you read something about a decision that Judge Crockett made in regard to development of the land?

A. Yeah. I believe it was Article 1 -- or Exhibit 1 that you have.

Q. Exhibit 1 is your responses to the request for production of documents.

A. Hold on a second. I'm sorry.

Q. Yeah, I don't know the order in here.

Are you referencing something that you had read?

A. Yeah, in the newspaper.
Q. In the newspaper, okay.
Did you ever see an order from Judge Crockett, a written decision in regards to this matter?
A. No, I did not.
Q. I want to step back just a minute to the email you referenced that contains this document, the Exhibit 7 that we have been referencing. Do you still retain that email in your possession?
A. No.
Q. You deleted it?
A. I'm sure I did, yeah.
Q. Okay. Do you recall receiving a preservation letter from an attorney requesting that you preserve all of the emails and correspondence in relation to this matter?
A. No.
Q. How soon after -- when did you receive the email in relation to when you disbursed it or disseminated it to the community?
A. I don't remember.
Q. Okay. Was it -- do you think it was

within days or weeks or was it a year prior?

A. No.

MR. LANGBERG: Objection as to form.

You can answer.

THE WITNESS: I would guess within seven days.

BY MS. GHANEM-HAM:

Q. Okay. Have you ever contributed funds to -- have you ever contributed funds to -- that would be utilized for objecting to the development of the land formerly known as Badlands Golf Course?

MR. LANGBERG: Objection as to form. Objection, beyond the scope.

Instruct not to answer.

BY MS. GHANEM-HAM:

Q. Mr. Omerza, are you paying for your attorney's fees here today?

MR. LANGBERG: Objection. Instruct not to answer. Beyond the scope.

MS. GHANEM-HAM: I think that's -- beyond the scope. Beyond the scope, okay. I'm going to reserve the right to come back and ask that question.

MR. LANGBERG: Okay.

MS. GHANEM-HAM: I think I am just about done.

BY MS. GHANEM-HAM:

Q. Mr. Omerza, you made a statement that you were against development because there was no zoning?

A. I'm not sure what that question is.

MR. LANGBERG: I am going to object as to form.

MS. GHANEM-HAM: Okay.

BY MS. GHANEM-HAM:

Q. It was my understanding that you testified earlier that you were against development for a few reasons. One of them is that you felt it was in a flood zone and another one was that you felt there weren't proper reports that were done like traffic reports and so forth and another one was that there was no zoning. That is my understanding collectively of your testimony.

MR. LANGBERG: Objection as to form.

But you can answer.

BY MS. GHANEM-HAM:

Q. Does that sound accurate, like an accurate summation?

A. It was close, close. There were no studies done as to the impact to what would happen with the local community. And the zoning stated that it was for open space or parks. So as long as it's zoned for open space and parks, there really can be no -- it's my understanding that there can be no development.

Q. And where did you get that understanding from?

MR. LANGBERG: I am going to object as to form.

But you can answer.

THE WITNESS: Okay. I don't know where I studied that or I read about it. Now, I am sure you could do building without doing studies if your city council deemed it so but then they would change the zoning, so I think the zoning is the key here.

BY MS. GHANEM-HAM:

Q. And is it safe to say that's your opinion based on --

A. It's definitely my opinion because I am not an expert.

Q. Okay. And that opinion was produced based on what can you identify something? In

other words, did you read any of the applications submitted to city hall for development? Did you, you know, beyond attending the three or four hearings speak with any of the city council members or their staff?

MR. LANGBERG: Objection as to form.

You can answer the question.

BY MS. GHANEM-HAM:

Q. What can you tell me you relied on to form your opinions?

MR. LANGBERG: Hang on.

MS. GHANEM-HAM: I apologize.

MR. LANGBERG: You don't have to apologize. I may have an instruction based on scope. I want to -- so let me clarify, Elizabeth.

Are you asking what he relied upon to form his opinion that the stuff in the declaration was accurate or are you asking about what he relied on to form his opinion when he was -- back in 2017?

MS. GHANEM-HAM: I am asking what he relied on to support his testimony today that he was against development for those reasons.

MR. LANGBERG: Right. And so I might

have -- we could have him step out of the room. I am not trying to coach him, I promise you.

I have a scope objection if you are asking about anything other than what he relied on to form the opinion for the declarations. I granted leeway earlier, but I am not going to let that sector the bar.

So if you are asking him about why he objected to it before these declarations went out, I am not going to let him answer that anymore. He has answered it. But if you are asking what he relied on for the declarations, then have at it.

MS. GHANEM-HAM: It is my understanding that his testimony is essentially that he did all of this research and work and educated himself prior to buying his land -- prior, sorry, to buying his home in Queensridge which forms the basis of his declaration which states that he relied on certain things prior to purchasing his home.

So when he makes the statement that he was not forced -- because of all of the research he had done prior, that's how he came about that knowledge, I am trying to understand

the foundation of it. So if you have this particular question, it is beyond the scope.

MR. LANGBERG: Okay. Great.

MS. GHANEM-HAM: Let me ask it another way.

BY MS. GHANEM-HAM:

Q. Your belief -- your position in signing that declaration was because you were not intending on there to be any development based on the research you had done prior to purchasing your home. Is that accurate?

MR. LANGBERG: I am going to object as to form.

You can answer.

THE WITNESS: Research I did prior to me buying the home led me to buy the home, okay? The rest of this, I think we are getting a little convoluted. I went to the city council meeting, I listened to the experts, I read the article that Judge Crockett on his decision, I saw the signs outside of Queensridge requesting zoning changes, and I used all of that information to base my opinion.

BY MS. GHANEM-HAM:

Q. Did you ever meet with any one of the city council members or their staff?

A. I met with Mr. Seroka, I believe I met with his staff once, and I met with Mr. Seroka when he was running for office.

Q. Where did you meet him when he was running for office?

A. It was in someone's home that was throwing a -- that had an open house for him to meet the Queensridge people.

Q. When did you meet with Mr. Seroka once he took office? Do you recall when that was?

A. I don't believe I met with him after he took office. You are talking about a private meeting?

Q. Yes. First it was a city council hearing, yes.

A. No, we never had a conversation -- or we never met privately.

Q. Did you ever correspond with him?

A. I don't remember.

Q. Did you ever correspond with his staff?

A. Well, I met with one of his staff

members, a gentleman. I don't remember his name, and it was after the lawsuit. He asked to talk to me. He gave me a call.

Q. Was his name Mark Newman?

A. That sounds correct.

Q. Where did you meet with him?

A. Excuse me?

Q. Where did you meet with him?

MR. LANGBERG: Objection. Beyond the scope.

Instruct not to answer.

BY MS. GHANEM-HAM:

Q. Did you discuss with him Judge Crockett's order?

MR. LANGBERG: Objection. Beyond the scope.

Instruct not to answer.

He said this was after the litigation was filed.

MS. GHANEM-HAM: Oh, after the litigation was filed, okay.

MR. LANGBERG: Yes.

BY MS. GHANEM-HAM:

Q. Okay. I think I'm just about done. One last review.

Mr. Omerza, did you do a thorough search of your emails and correspondence in order to respond to the request for production of documents that have been introduced as Exhibit 1 to this case?

A. Yes, I did.

Q. And is it your testimony that everything you turned over through this production is all that you were able to locate?

A. Yes.

MR. LANGBERG: Well, other than the FEMA report which --

THE WITNESS: Yes, the FEMA report.

MR. LANGBERG: I will get it to you if you -- yes.

BY MS. GHANEM-HAM:

Q. So if you corresponded, if you corresponded with the city council members and/or their staff, would that have been something you saved or deleted?

A. I didn't have it so it wouldn't be deleted.

MS. GHANEM-HAM: So you know, Mr. Langberg, through public record requests, we do have correspondence with Mr. Omerza, I

believe, and staff. I request that he do another search of his email to ensure that he has responded accurately or carefully. I'm not sure how to --

MR. LANGBERG: I will confer with him. But let's be clear that even if he had correspondence with staff, it wouldn't necessarily be responsive unless it's something that he relied on in coming to the belief that the statements in the declarations were accurate. So I will confer with him and see if there was anything that was missed.

MS. GHANEM-HAM: Okay. All right. I don't have anything further.

MR. LANGBERG: Lisa, do you have anything more?

MS. RASMUSSEN: No, I don't. I am just going to -- so thank you, Mr. Omerza, for coming down today and doing the deposition. We appreciate it.

Mitch, I am just going to mute my video and my phone and leave this open for our next depo which is in 25 minutes.

MR. LANGBERG: May I ask a question in that regard?

MS. RASMUSSEN: Yes.

MR. LANGBERG: If the deponent arrives early, do you want to start early or do you want to break until 11:00?

MS. RASMUSSEN: Elizabeth, do you have an opinion on that?

MS. GHANEM-HAM: I am fine if he arrives early to move forward, but I am going to log out of this to preserve my battery and then just let me know by text or something.

(Proceeding concluded at 10:34 a.m.)

CERTIFICATE OF REPORTER

STATE OF NEVADA
SS.
COUNTY OF CLARK

I, Cindy Huebner, Certified Court Reporter in the State of Nevada, do hereby certify:

That I reported the taking of the Zoom deposition of the witness, DANIEL OMERZA, commencing on Wednesday, August 26, 2020, at 8:55 a.m.

That prior to being examined the witness was by me duly sworn to testify to the truth.

That the foregoing transcript is a true, complete, and accurate transcription of the stenographic notes of the testimony taken by me in the matter entitled herein to the best of my knowledge, skill, and ability.

That prior to the completion of the proceedings, the reading and signing of the transcript was not requested by the witness or a party.

I further certify that I am not a relative or employee of an attorney or counsel of any of the parties, nor a relative or employee of an attorney or counsel involved in said action, nor a person financially interested in the action.

IN WITNESS WHEREOF, I have hereunto set my hand in my office in the County of Clark, State of Nevada, this 9th of September, 2020.

_____
Cindy Huebner, CCR No. 806

Exhibit 2

Exhibit 2

Las Vegas ‘abused its discretion’ in Badlands vote, judge rules

The 250-acre site of a closed golf course, seen in June 2017, is slated for development. (Patrick Connolly/Las Vegas Review-Journal)

By Jamie Munks Las Vegas Review-Journal

January 19, 2018 - 4:40 pm

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A Clark County District Court judge said the city of Las Vegas “abused its discretion” in approving a developer’s plans for condominiums on the Badlands golf course without a major modification to the master plan.

Opponents of plans to develop the shuttered course from the surrounding Queensridge development challenged the City Council’s

February 2017 vote to allow developer EHB Cos. to build condos on 17 acres at the property’s eastern tip, and requested a judge weigh in.

Judge Jim Crockett in a hearing last week sided with the opponents, calling it “ironic” that the city and the developer “want to point to staff recommendations that were made toward the end of this process, but they want to disregard the repeated recommendations by staff in the earlier stages which made it clear that a major modification was a requirement,” according to the court transcript from the Jan. 11 hearing.

The City Council split 4-3 in favor of 435 for-sale condominiums at the former golf course’s eastern edge. Multiple development plans for the course have come before the Planning Commission and City Council since EHB bought the property, though the 435 condos are the only proposal the council has given the green light to. Construction on the condos hasn’t begun. The council voted down other development proposals in June and August.

The condo plans are one installment in a sustained struggle between the developers and a group of opponents who live in the tony

APP 0925

Queensridge community, their properties overlooking the course. The battles have played out in courtrooms and City Hall, and their difference boils down to a fundamental disagreement over whether the golf course can be developed.

City staff at first “repeatedly explained” a major modification to the Peccole Ranch Master Plan was needed to approve the application, Crockett said.

“Instead, over the course of many months there was a gradual retreat from talking about that, and instead all of a sudden that discussion and the need for following staff’s recommendation just went out the window,” Crockett said.

The developers and their attorneys contend a major modification isn’t required for their development plans and that the golf course isn’t subject to the Peccole Ranch Master Plan. The developers also assert the property carries hard zoning and isn’t classified common open space.

“We are confident that the city’s interpretation of its own code is proper and will ultimately prevail,” said an EHB Cos. statement responding to Crockett’s decision.

Deputy City Attorney Phil Byrnes, who represented the city in court, told Crockett the golf course is not a planned development district and doesn’t require a major modification.

City Attorney Brad Jerbic could not be reached for comment.

The judge gave Todd Bice, the attorney representing the Badlands development opponents, two weeks to prepare an order. The developers and the city could appeal Crockett’s decision after that’s finalized.

This month, the council heard an appeal from the Queensridge opponents challenging the city planning director’s decision to not require EHB Cos. to submit a general plan amendment and a major modification of the master plan with a new round of development plans for another section of the course, which the council has yet to publicly consider.

The City Council voted 4-2 to deny that appeal, with Councilwoman Lois Tarkanian abstaining. Councilman Bob Coffin later said he accidentally voted with the majority — the opposite of what he intended to do. Coffin’s effort to have the council rescind that action and take another vote on the appeal died with a 3-3 vote Wednesday. Council members were briefed on Crockett’s decision in a closed-door session on Wednesday.

Coffin during the open meeting questioned why the council would revisit the issue when a judge had since ruled against the city.

“We lost the case. On this exact point,” Coffin said at Wednesday’s council meeting. “Why would we today thumb our nose at the judge and say ‘Sorry, Judge Crockett, we don’t care what you said in court … our position is going to be against you and for whoever — the developer.’”

The immediate implications for the city of the court decision on council-approved and pending plans for developing the course weren’t immediately clear.

New plans

Last week, the Las Vegas Planning Commission voted to advance to the City Council a separate set of plans to build single-family homes on a large swath of the 250-acre Badlands course, west of the planned condominium proposal. City staff recommended approval.

Multiple versions of plans have come before the Planning Commission and the council over the past two years. The developer’s team decried the process and how long it’s dragged on.

“The process has failed this developer. The process has not treated this developer as it treats other developers …” the developer’s attorney, Stephanie Allen, told the Planning Commission Jan. 9. “Every time you press pause it’s hundreds of thousands of dollars that go down the tank for this particular property owner.”

Contact Jamie Munks at jmunks@reviewjournal.com or 702-383-0340. Follow @JamieMunksRJ on Twitter.

Related

Las Vegas City Council denies Badlands appeal

Las Vegas might require community outreach to develop open space

Las Vegas wants standard for golf course redevelopment

Las Vegas City Council nixes another Badlands debate

Badlands developer forces council vote, threatens to sell property

Exhibit 3

Exhibit 3

LILIAN MANDEL

Oh, hello. My name is Lillian Mandel, and I've been in Las Vegas 27 years, and 17 years I've been at Fairway Pointe, which is adjacent to the Badlands. And when we bought in that situation, we were told that was Badlands and was open up to the public.

And then when it was sold, I all of a sudden was worried, and then I heard it was Mr. Lowie. And because of all the projects he's done in this city, I was thrilled, because I'm right up against the fifth hole. And mainly, one of the main things was the Tivoli Village. It was sitting on a wash, a big hole that said nobody could build anything. He was capable of doing it.

So I approve his ability of building things that are beautiful. I don't have a problem with it, and I'm glad that it's not a builder who's going to build big homes back there. So I would love for them to deal with logic instead of anger. That's all I have to say.

MAYOR GOODMAN

Thank you. Thank you very much, and thank you for staying on the time.

LILIAN MANDEL

You're welcome.

DAN OMERZA

Mayor Goodman and ladies and gentlemen, my name is Dan Omerza, and I live in Queensridge. I don't live on the golf course. I met with Mr. Lowie's representatives when he first proposed the project. I went to his office, and it was very grand. And since that time, he's changed his position many, many times, which makes everyone in the Queensridge development very nervous. Okay. I think that since we just had a very big election and some folks will no longer be here on this Council in a few short weeks, I think it would be disingenuous to vote on anything right now until the people who have put the people in this, in your Council, are here to vote with our representatives as we picked them. I think it would be very sad if we pushed things forward at this point. Thank you.

MAYOR GOODMAN

Thank you, Mr. Omerza. I appreciate it.

DAN OMERZA

Thank you. Yes, ma'am.

TRESSA STEVENS HADDOCK

Good evening. Tressa Stevens Haddock; I'm the lady that keeps coming back outside the gates where the construction is. And I just want to know on what you're voting on this evening? Where's the construction, because, again, that's my concern. I moved there for health reasons, and I'm the person that there's only one road where construction, and no one said tonight. Did they change the location of where construction is, or is it still going to be Clubhouse, which is right where my house is located? That's my question.

MAYOR GOODMAN

Thank you.

FRANK SCHRECK

Mayor, members of the City Council, Frank Schreck, 9824 Winter Palace. We have a bunch of professionals to address some of the issues that have been raised, so we'd like to have the time to be able to do that. We'll try to make it as brief as possible, but this is obviously a serious matter for our community. We voiced our concern already that this is inconsistent with the general, the Development Agreement and it shouldn't even be heard tonight.

One thing I do want to start off saying, there are not two courts that have said that the developer has a right to develop. They got one decision that had findings of fact and conclusion of law from Doug Smith's court that had nothing at all to do that was of the issues that were in front of him. The other court, that we're involved in, has denied our 278A. We've appealed that. And the

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Steven D. Grierson
CLERK OF THE COURT

Exhibit 4

Exhibit 4

Case Number: A-18-771224-C

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 THROUGH 100, Defendants.	No. A-18-771224-C Dept. No. II

ZOOM DEPOSITION OF DARREN BRESEE

Taken on Wednesday, August 26, 2020

Commencing at 10:56 a.m.

Witness Location: 100 North City Parkway

Las Vegas, Nevada

Reported By: Cindy Huebner, CCR 806

APPEARANCES:

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INFORMATION TO BE PROVIDED

None

(Deposition Exhibits 1-9 marked.)
(NRCP 30(b)(4) or FRCP 30(b)(5), as applicable, waived by the parties prior to the commencement of the deposition.)

COURT REPORTER: Before we proceed, I will ask all counsel to agree on the record that under the current National Emergency pursuant to Section 319 of the Public Health Services Act, there is no objection to this deposition officer administering a binding oath to this witness not appearing personally before me. Counsel also agree to waiving the reading of the caption.

Please state your agreement on the record, beginning with noticing counsel.

MS. RASMUSSEN: On behalf of the plaintiffs, Lisa Rasmussen, I agree.

MR. LANGBERG: Mitchell Langberg on behalf of defendants. I stipulate.

MS. GHANEM-HAM: And I agree as well to the stipulation.

(Witness sworn.)

Thereupon--

DARREN BRESEE

having been first duly sworn, was examined and testified as follows:

EXAMINATION

BY MS. RASMUSSEN:

Q. Good morning, Mr. Bresee. Have you ever had your deposition taken?

A. No.

Q. Okay. So let me tell you a couple things about the process.

So the court reporter is writing everything down as you say it. So when I ask a question, make sure you wait until I am finished before you give the answer so we are not talking over each other. Okay?

A. Okay.

Q. And then the other thing is you need to make sure you give an audible answer every time because she can't pick up head nods and shaking of the head. Okay?

A. Got it. Right.

Q. All right. And if you at any time need to take a break, you can let me know you

need to take a break. Mr. Langberg will do the same thing, if he feels like he needs to take a break. And I don't expect that we will go that long. But if for any reason you need a break, that's fine. Just let me know. We do have one rule about that though and that's if there is a question pending, you need to answer that question. Okay?

A. Okay.

Q. All right. So we are kind of limited on the scope of the types of things we can ask you here. So Mr. Langberg has been very diligent about reminding us about our limitations and so he sometimes makes objections. And when he does, one of us will let you know if you can answer the question or not. Okay?

A. Okay.

Q. All right. So let me get some background from you.

Do you currently live in the Queensridge community?

A. Yes.

Q. And what is your address?

A. 9821 Winter Palace Drive.

Q. And how long have you lived there?
A. Probably 20, 21 years.
Q. Okay. So do you remember what year you purchased your house?
A. I had it built. I moved in October 1999. I remember because it was just before the millennium, and I bought the land two years before that.
Q. Okay. And in terms of background, are you employed or retired?
A. Employed.
Q. And where do you work?
A. I am self-employed. I own a trucking company, D & N Delivery.
Q. All right. So when you bought your lot, do you remember receiving a copy of the CC&Rs for the Queensridge community?
A. Yes.
Q. And did you also receive rules for the Queensridge community?
A. I don't recall receiving rules, but it may have been part of a packet I received.
Q. Okay. When you -- do you have what is called a premium lot or --
A. Yes, it is a premium lot.

Q. Okay. All right. So you are aware that you are a defendant in this lawsuit obviously, so I am going to have you look at what is -- hang on. I need to figure out what exhibit it is.

MR. LANGBERG: If you tell me the document, I could probably tell you the exhibit.

MS. RASMUSSEN: It is his responses to the -- I just don't know if he is Exhibit 2 or 3.

MR. LANGBERG: He is Number 3.

BY MS. RASMUSSEN:

Q. Okay. If you will go ahead and open Exhibit 3, please.

A. Are you talking to me?

Q. Yes.

MR. LANGBERG: It's in the book --

THE WITNESS: I don't have anything.

MR. LANGBERG: Isn't there a binder there?

THE WITNESS: No.

MR. LANGBERG: Oh, no. Did Dan walk out with the binder?

THE WITNESS: I don't have it. I was

wondering. It's like all I've got is a pen.

MS. GHANEM-HAM: Is there a way to email them to wherever he is at and have them make copies now?

MR. LANGBERG: I have somebody there that could make another set real quick. I am so sorry.

(Discussion held off the record.)

BY MS. RASMUSSEN:

Q. So if you will look at that book at Exhibit 3.

A. All right.

Q. So this document should say Defendant Darren Bresee's Response to Plaintiff's Amended First Set of Request for Production of Documents. Is that what the document is?

A. Yes.

Q. Okay. So if you will turn to Page 2, on your response to the first request for production, the answer is the responding party has no documents responsive to this request.

So I am going to have you go back and look at the first request for production and confirm that you don't, in fact, have any documents responsive to that request.

A. I do not have any documents.

Q. Okay. Request for Production Number 2, also on Page 2, asks you if you have any title or escrow documents related to your purchase of the residence in Queensridge. And it says that you have no documents responsive to that request; is that correct?

MR. LANGBERG: I will object to the form -- hang on. I am going to object to the form.

You can answer.

THE WITNESS: I do not have documents, so I guess no, I do not. No.

BY MS. RASMUSSEN:

Q. Okay. Request for Production Number 3 states things that were -- statements that were made and then asks if you have documents responsive to that request. And again, you said you didn't have any documents responsive to that request; is that correct?

A. That's correct.

Q. And then on Page 3, Request to Production Number 4, again you say you don't have any documents responsive to that request; is that correct?

A. That's correct.

Q. Okay. And then response to Request Number 5, this is on Page 3 also, again, you say you don't have any documents responsive to the request, correct?

A. Correct.

Q. Okay. So now I am going to have you -- well, let me ask you some additional background questions.

So when you bought your lot in you said it was around '97, does that sound right?

A. Approximately, yeah, yeah.

Q. Okay. So you were given a copy of the Queensridge CC&Rs, and then you also have a Grant, Bargain, Sale Deed, correct?

A. I don't recall 100 percent. I recall seeing CC&Rs. I am going to say yes.

Q. Okay. Well, you got a deed to the house, right, when you -- or the lot, when you bought the lot, right?

A. Yes.

Q. And the deed, it states what you are getting, what's being conveyed to you, and it has some language that says subject to. You wouldn't disagree with me on that, would you?

MR. LANGBERG: Objection as to form.

You can answer.

THE WITNESS: Would I -- could you say that question again?

BY MS. RASMUSSEN:

Q. Yes.

The Grant, Bargain, Sale Deed lists what is being conveyed to you, which at that time would have been the lot, and then it says subject to, however, and it lists some things that it is subject to. And if you want, I will go through them.

MR. LANGBERG: I will object as to form. I am objecting as to form.

But you can answer.

THE WITNESS: I don't really recall, but I will agree that I received something. And if it said to what you just said, I will agree to that.

BY MS. RASMUSSEN:

Q. Okay. Very well.

Okay. So let's look now at Exhibit 7 in your book.

A. All right.

Q. Have you seen this before?

A. I believe I have, yes.
Q. Okay. And where have you seen it?
A. Where?
Q. Yes.
A. I believe it was handed to me, and I believe that this is what I recall, this is what I signed some time ago.
Q. Okay. So who handed it to you?
A. I'm sorry, what?
Q. Who handed it to you?
A. A neighbor.
Q. Okay. Do you remember the name of the neighbor who handed it to you?
A. His name is Frank.
Q. Is that Frank Schreck?
A. Yes.
Q. Okay. And do you remember when Mr. Schreck provided it to you?
A. I do not.
Q. And so did you sign it at the time it was handed to you or did you take it and sign it later?
A. Take it and signed it later.
Q. And after you signed it, what did you do with it?

A. I believe I faxed it to city council.
Q. Okay. So let's look at what Exhibit 7 says. It says, "The undersigned purchased a resident lot in Queensridge which is located within the Peccole Ranch Master Plan Community."
What made you believe that that was a true statement?
A. I am just looking at it. Where is what you just said in the sentence here?
Q. It is on Exhibit 7. It is the very top line.
A. Oh, the very top line. What made me think that was true?
Q. Uh-huh.
A. Just my understanding that Queensridge is located in the Peccole Ranch Master Plan Community.
Q. Okay. What led to that understanding?
A. The salesman that sold me the lot.
Q. Okay. Anything else?
A. Yeah. I mean, fast-forwarding in time, probably some of the communications that I may have received or looked at, like Judge

Crockett's ruling may have clarified some things or made me recall some things. So I would say maybe whatever was going on between the city council or the judge's ruling.

Q. Did you go to any hearings in Judge Crockett's court?

A. No.

Q. Did you read Judge Crockett's -- any orders signed by Judge Crockett?

A. I've read excerpts.

Q. Okay. And who provided those excerpts to you?

A. I really don't recall.

Q. Do you know when you would have been provided these excerpts?

A. I don't recall the time. Probably shortly after he came down with his ruling, so whatever date, year that was.

Q. Do you remember when the date was?

A. I do not.

Q. Do you remember when you were handed Exhibits 7?

A. Again, I do not recall the exact date, of course. No, I don't recall.

Q. Okay. So these excerpts that you

were provided, you don't remember when you got them or who provided them to you?

A. It says -- you want specific dates. No, I can't recall that.

Q. Do you remember who provided the excerpts to you?

A. No, I do not.

Q. Would it have been a neighbor?

A. Yeah. More than likely, it was a neighbor.

Q. Okay. Would it have been Mr. Schreck?

A. It could have been, yeah.

Q. Would it have been anyone else in the community that you can think of?

A. It could have been. And I don't know his last name, but there was a neighbor by the name of Mike who I played tennis with occasionally and we would have casual conversations about what was going on, and he may have sent a text. But I don't recall if it was anything specific to what your question is, so there may have been conversation. I just don't recall.

Q. Okay. Let's look at the next

sentence on Exhibit 7.

A. All right.

Q. It says, "The undersigned made such a 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."

Do you see that?

A. Yes, I do.

Q. Okay. So when you signed Exhibit 7, what did you rely on to make you believe that that statement was true?

A. I would go back to the salesman at the time that I purchased this, that the golf course would always remain a golf course or a park or some sort of open space, and then I guess, again, fast-forward to Judge Crockett's decision kind of reconfirmed what I thought to be true.

Q. Okay. So I just want to be clear.

You've read excerpts of Judge Crockett's decision, not the whole decision, right?

A. I don't recall how much I've read. I know I've read excerpts, and I'm sure the whole decision was sent or whatever. Did I look at everything and read everything? No.

Q. Okay. And who was the salesman who sold you your lot?

A. His name was Greg, Greg Gorjian (phonetic).

Q. Okay. And then -- so you've identified either excerpts or the whole decision from the Judge Crockett order, you've identified the salesman, and you said you think you might have some text messages about it?

A. Maybe in the most general sense. Oh, I may have read something in the newspaper as well, now that I am just kind of thinking about it.

Q. Okay. And then going back to Exhibit 7, it says, "At the time of the purchase, the undersigned paid a significant lot premium to the original developer as consideration for the open space/natural drainage system." Is that correct?

A. Yes.
Q. All right. So what were you relying on when you agreed that that was a true statement?
A. Again, I refer back to the salesman, Greg Gorjian.
Q. Okay. So when you adopted that sentence at the time of the purchase, "the undersigned paid a significant lot premium to the original developer," you are relying on what you were told by the salesman, right?
A. Yes.
Q. Do you know if you paid a significant lot premium?
A. Yes.
Q. And how do you know that?
A. Because I wrote a check for the lot.
Q. Okay. But how do you know that that lot that you purchased contained a premium compared to other lots?
A. Because the street that I am on were all custom lots and you had to pay a premium, whatever the valuation of each lot was, compared to other neighborhoods in Queensridge which the home price had built in the lot

price. So if you wanted to build a home, you had to pay above and beyond the home price, which would be the lot premium.

Q. Do you remember how much you paid for the lot?

A. Not exactly. I could probably come close to a guess, but I think it was around 300,000, something like that.

Q. So going back to Exhibit 7, you said you signed it and then you faxed it to the City, right?

A. I believe I did, yes.

Q. And were there any documents -- was there anything that you looked at in between the time you received this from Mr. Schreck and the time you sent it to the City?

A. Were there any documents that I may have received?

Q. Or looked at, reviewed before you sent this to the City.

A. I don't recall. I --

MR. LANGBERG: I am going to object as to form.

But you can answer -- you've got the answer, "I don't recall."

THE WITNESS: Yeah, I really don't recall.

MR. LANGBERG: Mr. Bresee, please remember to pause just briefly before you answer.

THE WITNESS: All right. All right. Sorry.

BY MS. RASMUSSEN:

Q. So I want to go back to these excerpts or portions of Judge Crockett's order that led you to believe that these statements in Exhibit 7 were accurate. Do you know how you received them? Did you receive them on pieces of paper or by email, or how would they have been received by you?

A. Probably email and maybe possibly mail. I am trying to think if the board sent anything out. I received some letters or some documentations from the board, but I don't know if it was specific to Judge Crockett. It may have been.

Q. And when you say the board, are you talking about the Queensridge HOA board?

A. Yes.

Q. Did you talk to anyone about

Exhibit 7 before you signed it and/or conveyed it to the City?

A. Yes.

Q. And who did you talk to?

A. My neighbor, Frank Schreck.

Q. Okay. And what was the gist of the conversation?

A. The gist of the conversation was the statement that I was going to fax to the city council.

Q. Okay. So Mr. Schreck provided it, handed it to you, and what did he say?

A. Of course I don't remember the exact conversation. But I think the idea was that according to Judge Crockett that if there was going to be a change to the existing golf course, open space, park, that there would have to be major modification to the plan, the master plan, in order for that to happen. And, you know, we purchased these lots knowing that this was going to remain open space and should continue to remain open space. Kind of something like that.

Q. Did you talk to anyone else before you signed Exhibit 7 and returned it to the

City?

A. I don't recall if I spoke to someone prior to this. It could have been before or after. I just don't remember a time.

The individual that I mentioned earlier, Mike, who I played tennis with, he happened to be on the board at the time. So when we would play tennis, there would be some casual conversation about what's going on. But what exactly was spoken, I don't recall exactly. But basically the idea is what's in my statement that I faxed to the city council.

Q. And your statement, you are talking about Exhibit 7, right?

A. Exhibit 7, correct.

Q. Okay. Did you provide at any other time anything else to city council related to the issue of development at Queensridge?

MR. LANGBERG: I am going to object to the question as beyond the scope and instruct not to answer.

MS. RASMUSSEN: Okay. Let me ask it a different way.

BY MS. RASMUSSEN:

Q. Regarding your statement on

Exhibit 7, the statements that you adopted on Exhibit 7, did you provide anything else to city council related to Exhibit 7?

MR. LANGBERG: Same objection. Same instruction.

BY MS. RASMUSSEN:

Q. Okay. Did you talk to anyone -- have you ever appeared before city council?

MR. LANGBERG: Same objection. Same instruction.

MS. RASMUSSEN: I disagree that I can't ask that question.

MR. LANGBERG: I understand. I mean, if you want to tell me how you think that fits into what he relied on, so --

MS. RASMUSSEN: Because I am trying to set a timeline and I am trying to understand what he may have understood before he sent Exhibit 7 to city council.

MR. LANGBERG: I understand. So if your question is -- again, if you wanted to step out so I don't want you to think I am coaching him.

MS. RASMUSSEN: No. Let me ask it a different way. I think I could fix it for you.

MR. LANGBERG: Okay.
BY MS. RASMUSSEN:
Q. So prior to the time you sent Exhibit 7 to city council, had you ever appeared before city council?
MR. LANGBERG: So -- Lisa, if you switched that to attended a city council, then I would agree that that would be okay.
BY MS. RASMUSSEN:
Q. Okay. Prior to the time you sent Exhibit 7 to city council, had you ever attended any city council hearings?
A. No.
Q. Okay. Had you talked to anyone about city council hearings prior to the time you sent Exhibit 7 to the City?
A. I don't recall.
Q. Would you have talked to Frank Schreck about city council hearings before you sent this Exhibit 7 to the City?
A. Yeah.
Q. And if you can recall, what would he have told you -- what did he tell you about city council hearings prior to you signing Exhibit 7?

A. I definitely don't recall that.

Q. Okay. Now I am going to have you look at Exhibit 5, please.

A. All right.

Q. Okay. So Exhibit 5, for the record, should say -- this should be your declaration; is that correct?

A. Yes.

Q. All right. Just making sure we are looking at the same document.

So if you will turn to Page 3 of that declaration --

A. Okay.

Q. -- and if you will look at Paragraph 13.

A. Okay.

Q. In the second sentence, you state, "The statements correctly summarize my beliefs." Do you see that?

A. I do.

Q. And then you say, "Further based on my conversations with other Queensridge residents, many other residents have similar beliefs."

So let me take these one at a time.

So when you say the statements correctly summarize my beliefs you, I am trying to ask you -- what I am asking you is where your beliefs come from. So you've identified conversations with Mr. Schreck, the salesman who sold you the property, and some excerpts of an order you've read from Judge Crockett, right?

A. Yes. And neighbors.

Q. And neighbors, okay.

So who are the neighbors?

A. One neighbor's name is Mike. I don't recall his last name. And I guess that's pretty much it that I can recall.

Q. All right. So in Paragraph 13, you say, "Many other residents have similar beliefs." How do you know that?

A. Because, well, in talking with Frank and talking with the board member Mike. But going back to Frank, he showed me a petition that was going around summarizing my beliefs that was signed by two dozen people, and that's pretty much it. So I knew that some people had the same beliefs just by that document, and then reconfirmed with Board Member Mike who he

and I were kind of in agreement on this.

Q. Okay. This petition you are describing, what did it say?

A. I'm sorry. You broke up on the first part. What was that?

Q. I'm sorry.

The petition that you are describing, what did it say?

A. I don't recall exactly what it said. It was basically objecting to the development from the open space to residential, and that's kind of the gist of what everybody was upset about.

Q. Did you sign the petition?

A. You know, I don't recall if I -- I don't recall if I did. I don't know. I think my understanding was that it was going to circle back later on or these were just the signatures. I don't recall signing it. I may have. I don't know.

Q. Were you provided a copy of it?

A. No.

Q. So you were shown signatures and that led you to believe that all these other people believed the same thing you believed?

A. Yes.

I just remembered another neighbor, if you want to put that in.

Q. Okay. What is the name?

A. It was the neighbor to my west, Tom Love.

Q. And did you have conversations with Tom Love that made any influence on you when you adopted the statements contained in Exhibit 7?

A. Influence in that it just reconfirmed my belief on what was true.

Q. Okay. And what did Tom Love say to you? What was your conversation with him?

A. I don't recall exactly, but it was basically the same thing, you know, objecting to the change of the golf course to residential, you know. Just general two-neighbors-being-upset-about-it conversation.

Q. So you were both upset about it, right?

A. Upset and that we didn't think it could be done, but we objected to it.

Q. Okay. So anything else that led to

your belief that the statements you adopted in Exhibit 7 were true?

A. Anything else, no.

MS. RASMUSSEN: Okay. Mitch, I have one additional exhibit I want to ask him about, so I am going to email it to you. Do you want -- I could let Elizabeth ask questions now while I do that.

MR. LANGBERG: Yeah, so that's fine. I will get somebody in the copy room to --

MS. RASMUSSEN: Yeah. It's just one page. It's not a big deal so I don't think it will take long for you to get someone to copy it.

But anyway, I will turn it over to Elizabeth. I will put myself on mute.

EXAMINATION

BY MS. GHANEM-HAM:

Q. Okay. Good morning, Mr. Bresee. I am Elizabeth Ghanem Ham, in-house counsel for Fore Stars and the designated -- the other plaintiffs in this matter. I just have a few followup questions on what you have already testified to.

A. I don't see you. Are you supposed to be on camera?

Q. You don't see -- I'm up -- well, I don't know where I am. I am on camera, but I am joined on my phone so I don't lose audio.

A. I see Cindy, Mitch, and Lisa and myself.

MR. LANGBERG: It's probably just the view, but I would suggest that you don't mess with it so we don't accidentally disconnect it.

THE WITNESS: It's no big deal. I can hear you.

MS. GHANEM-HAM: There is a gallery view at the top that you could click on if you --

THE WITNESS: Do I need to do that?

MS. GHANEM-HAM: No.

THE WITNESS: It doesn't matter. I can hear you, so.

BY MS. GHANEM-HAM:

Q. Are you friends with Frank Schreck?

A. Just neighbor friends. Hi, how ya doing?

Q. But you didn't know him prior to owning the lot in Queensridge?

A. I had ran into him on occasion at other social events casually.

Q. Approximately how many times did you speak to Mr. Schreck in regards to the development of the golf course known as Badlands?

A. Approximately -- of course I am kind of guessing here, but approximately helps me. Half a dozen times.

Q. Do you know any of the following individuals personally or have you spoken to any of them, and I will give you a list. Jeff Binion?

A. No.

Q. Robert Peccole?

A. I do know him from high school, but that's the only way.

Q. Okay. Have you spoken to him in regards to the development of the land formerly known as the golf course at Badlands?

A. No.

Q. Frank Schreck -- I'm sorry. You already testified to that.

Clyde Turner?

A. What was the original part of your

question? Do I know these people?

Q. Yes, yes. Or did you speak to them about the development of the golf course.

A. No.

Q. Do you know Roger Wagner?

A. You broke up. What was that?

Q. Do you know Roger Wagner?

A. No.

Q. Okay. Have you ever been a part of a committee that was -- have you ever been a part of a committee that would meet to discuss their opposition to development of the land known as the Badlands Golf Course?

MR. LANGBERG: I am going to object as beyond the scope.

I'm going to instruct not to answer.

BY MS. GHANEM-HAM:

Q. Have you ever met with a group of people in regard to the property, the land known as the Badlands Golf Course?

MR. LANGBERG: I am going to object. It is beyond the scope. To the extent -- sorry. Let me -- Elizabeth, may I tell you what is going to guide my objections or do you want me to just object?

MS. GHANEM-HAM: Sure.

MR. LANGBERG: Okay. To the extent that met with anybody prior to the declaration being signed in those meetings provided him information that he relied on, I am not going to object.

So the pattern I will object to if you ask before these -- the date of the declaration did you ever meet with this group of people, I am not going to object because that is foundational to did you rely on it. But afterwards, I would object. Does that make sense? Do you understand?

MS. GHANEM-HAM: It makes sense to me. Do you want me to rephrase the question?

THE WITNESS: Yes.

MS. GHANEM-HAM: Let me rephrase the question to you, Mr. Bresee.

BY MS. GHANEM-HAM:

Q. Remind me again when you purchased your home in Queensridge?

A. I purchased the lot on or about like 1997 and I moved in just prior to the year 2000. It was a custom home that I had built, so I moved in October of 1999.

Q. And when did you become aware that the land known as the Badlands Golf Course was intended for development?

A. Was intended or was not intended?

Q. Was intended.

A. I want to be clear on what your question is. When did I become aware of when it was intended for development?

Q. Yes.

A. Gosh, I'm not sure. Maybe on or about when it was closed and that there might have been some rumors maybe. I don't know.

Q. Okay. Are you familiar with who purchased the land formerly known as Badlands Golf Course?

A. I subsequently it being sued know the guy's name, yeah.

Q. Did you attend any meetings outside of city hall in regard to development of the land formerly known as the Badlands Golf Course?

MR. LANGBERG: Prior to signing the declaration?

MS. GHANEM-HAM: Yes, prior to signing the declaration.

THE WITNESS: As far as a meeting, I recall there was a meeting at the Sun Coast of the neighbors and the developer. I believe he was there.

BY MS. GHANEM-HAM:

Q. Did you attend that meeting?

A. I attended one of them. I don't know if there was more than one. But I did attend one, yes.

Q. Did you speak with anyone at that meeting in regard to your position regarding reliance on the land formerly known as the Badlands Golf Course remaining a golf course?

A. I didn't speak to anybody regarding that -- I'm sorry. Oh. I don't recall speaking to anybody on that specific point that you just asked. I was more of an observer.

Q. Do you recall speaking to --

MR. LANGBERG: I'm so sorry. Before you ask your question, I just haven't heard back from my copy center. So can you pause for a second so I can call them?

MS. GHANEM-HAM: Sure.

(Discussion held off the record.)

///

BY MS. GHANEM-HAM:

Q. Can you identify for me, Mr. Bresee, any person that you may have relied on for your position that is the foundation of the statement you signed being referred to as Exhibit --

MR. LANGBERG: 7.

MS. GHANEM-HAM: Well, no. Did we not provide one that he had signed? Yeah, maybe 7.

BY MS. GHANEM-HAM:

Q. -- Exhibit 7?

A. I would again refer back to the original salesman, as far as relying on Judge Crockett's -- a summarization of Judge Crockett's judgment and order, and then some casual conversation with neighbors. Kind of the same answer as before.

Q. Okay. Do you participate -- have you corresponded with any of the city council members and/or their staff?

A. Have I ever?

Q. Yes. In regards to this matter.

A. Yes.

I just received Exhibit 8 here. Do

you want me to put it in the binder?

MR. LANGBERG: And it's okay with me, Lisa and Elizabeth, if you want to go back and -- if you want to continue, Elizabeth, or give it back to Lisa. I don't care. However you want to do it.

MS. GHANEM-HAM: I will leave that up to you, Lisa.

MS. RASMUSSEN: I don't care. Exhibit 8 is the preservation letter. You can ask him about it, if you want, or I can do it.

MS. GHANEM-HAM: I will let you do it.

MS. RASMUSSEN: Okay. Are you finished with your questions?

MS. GHANEM-HAM: I am not.

MS. RASMUSSEN: Okay. Why don't you finish and then I will do it.

MS. GHANEM-HAM: Okay.

BY MS. GHANEM-HAM:

Q. So I think I was asking if you had attended any meetings with regards to the development of the land formerly known as Badlands Golf Course.

A. And I answered yes.

Q. Okay. Mr. Bresee, are you aware of whether you paid dues to the Peccole Ranch Master Plan?

MR. LANGBERG: I am going to object. That's beyond the scope, and instruct not to answer.

MS. GHANEM-HAM: I am not sure if that's beyond the scope.

BY MS. GHANEM-HAM:

Q. So your statement that you relied upon the open space as part of the Peccole Ranch Master Plan, do you believe that your home in Queensridge is located within the Peccole Ranch Master Plan?

A. I do believe that, yeah.

Q. What is that belief based on?

A. Again, I guess -- you know, I am not really sure other than I always thought that it was.

Q. Did you think that at the time you purchased your home or your lot upon which you built your home?

A. Yes.

Q. Is there a document that you can point to that states that you are part of the

Peccole Ranch Master Plan?

A. Is there a document I could point to? I am not in possession of that document, but I would assume it would have been whatever documents I received upon purchase of my lot and completion of my home.

Q. Are you in possession of those documents?

A. I am not.

Q. I don't recall, Lisa, if you asked this question, so I apologize if I'm repeating it.

Did you say you did review the documents at the time of the purchase of your lot prior to signing?

A. Did I review?

Q. Yes.

A. It would have been only casually, if not at all. Whatever I needed to sign I would sign, I guess.

Q. Do you know whether your deed to your home in Queensridge references the Peccole Ranch Master Plan?

A. Am I aware that my deed is part of the Peccole Ranch Master Plan? Is that what

you are asking?

Q. No. I am asking if you are aware of whether your deed references the Peccole Ranch Master Plan.

A. I am not aware.

Q. Okay. Is there -- are you aware of whether you pay a HOA fee to the Peccole Ranch Master Plan?

MR. LANGBERG: Objection -- I withdraw.

THE WITNESS: I pay a monthly fee. I do not know exactly what it goes to.

BY MS. GHANEM-HAM:

Q. Do you pay a Queensridge HOA fee?

A. Yes.

Q. Do you pay any other HOA fees?

A. In relation to the property at Queensridge?

Q. Correct.

A. I just pay -- I get the little coupon booklet, I pay it in full, and mail it off once a year. So if there is anything else that is itemized on it, I have no idea, but I am not aware if I pay anything else.

Q. Do you know who you write that check

to?

A. Whoever the management company is.

Q. But you are referencing Queensridge HOA then?

A. Yes.

Q. Okay. And nothing further?

A. No.

Q. Okay. Can you advise me of what subsequent formal action designated the land formerly known as the Badlands Golf Course as parks, recreation, and open space as stated in your declaration?

A. Can you repeat that? I am trying to understand.

Q. Sure, sure.

Your declaration states, Exhibit 7, if you will take a moment and read the second paragraph --

A. Okay. Read the second paragraph? Okay.

Q. Yes. At the beginning, "The undersigned makes such purchase and relies upon" --

Let me know when you are finished reviewing that.

A. Okay. So your question again is?
Q. So my question is what subsequent formal actions did you rely upon that designated the land as --
A. You mean formal action, are you referring to --
Q. In the general as plan parks, recs, and open space -- so I'm sorry. Let me recant. I know the court reporter didn't get us speaking over each other, so let me rephrase that.
What subsequent formal action did you rely upon that designated the land formerly known as the Badlands Golf Course in its general plan as parks, recreation, and open space?
A. I guess it would be Judge Crockett's order or judgment or whatever it is.
Q. After you purchased your home?
A. Definitely it would have been after I purchased it.
Q. Okay. What formal actions did you rely on prior to purchasing your home?
A. Formal action? I don't recall any.
Q. Okay. Can you explain to me what the

land use designation is on the property formerly known as the Badlands Golf Course?

A. Explain to you what I believe it to be?

Q. Yes.

A. That it's to be either a golf course, open space, park, and it is to remain that way.

Q. And you derived that understanding from somewhere other than the Judge Crockett order?

A. Where else? There is the salesman that sold me the lot.

Q. Okay. And remind me what he told you exactly.

A. Again, this is an old conversation, 20-plus years ago, but he was obviously trying to sell me the lot and I had to pay a premium for this lot. He goes, oh, yeah, no, it will be to the effect that it will always be an open space, a park at least, a golf course, that sort of thing.

Q. And did you ever review your closing documents to confirm the truth of those statements?

MR. LANGBERG: Objection as to form.

You can answer.

THE WITNESS: Are you saying I can answer?

MR. LANGBERG: Yes, you may answer.

THE WITNESS: I forgot already the question. What was the question again?

MS. GHANEM-HAM: Ms. Court Reporter, do you mind repeating that question?

(Record read as follows:

"Q. And did you ever review your closing documents to confirm the truth of those statements?")

THE WITNESS: No.

MS. GHANEM-HAM: I have no further questions.

MS. RASMUSSEN: Okay. I'm back on then.

FURTHER EXAMINATION

BY MS. RASMUSSEN:

Q. I am going to have you look at Exhibit 8 --

MR. LANGBERG: I think you cut out, Lisa. Sorry.

///

BY MS. RASMUSSEN:

Q. I'm sorry.

I am going to have you look at Exhibit 8 which I think you just received and put in the book.

A. Okay. I have it.

Q. Do you remember receiving this letter in March of 2018?

A. I do.

Q. Okay. So the letter asks you to preserve certain kinds of items, documents, emails. Is that a fair assessment?

A. Yes.

Q. Did you preserve anything after receiving that letter?

A. Preserve. I really didn't have any documents to preserve.

Q. Okay. So today I asked you questions about what you were relying on when you adopted the statements in Exhibit 7, and one of the things you told me that you were relying on --

MS. RASMUSSEN: Elizabeth, can you mute your phone because I am getting feedback from you?

MS. GHANEM-HAM: My phone is muted,

Lisa.

BY MS. RASMUSSEN:

Q. One of the things that you told me you were relying on were some excerpts for a court order from Judge Crockett, right?

A. Yes.

Q. And then when I asked you how you would have received them, you said you thought you got them in an email, right?

A. Yes.

Q. Did you preserve those emails pursuant to the request in the letter?

MR. LANGBERG: Objection as to form.

You can answer.

THE WITNESS: Did I preserve them? No.

BY MS. RASMUSSEN:

Q. Why not?

A. Because this letter was received after anything I may have deleted.

Q. So you are saying that you would have received emails with excerpts from Judge Crockett's order and you would have already deleted them before you received the letter. Is that your testimony?

A. Maybe I didn't receive Judge Crockett's order by an email. I don't know. I mean, I didn't delete it -- I didn't receive this letter and then subsequently delete anything.

So I guess I need to go back to how I received Judge Crockett's order or information or summary, whether it was by neighbors telling me this, Frank Schreck telling me this, or a text message telling me this. But I did not delete anything, according to what this letter is telling me to do.

Q. The letter asks that you save all things, whether it's by text or email or US mail or someone handing it to you.

So my question is -- and then when we asked you to produce documents recently, you say you don't have any documents responsive to that. So my question is why don't you have documents responsive and are you aware that the letter asked you to preserve documents, specifically to preserve documents?

A. Okay. There is a lot of questions there. I am aware that it said to preserve. And why I do not have the documents, I do not

know.

MS. RASMUSSEN: Okay. I don't think I have any further questions.

Elizabeth, do you?

MS. GHANEM-HAM: Yes.

FURTHER EXAMINATION

BY MS. GHANEM-HAM:

Q. I'm sorry. I can't recall if I asked you this because I may have been interrupted. But have you ever met with any of the council members personally or their staff, city council?

A. No.

Q. This is the one I think I may have asked you. Did you ever correspond with the city council or their staff?

A. Yes.

MR. LANGBERG: Sorry. Prior to signing the statement?

MS. GHANEM-HAM: Yeah.

BY MS. GHANEM-HAM:

Q. Did that correspondence take place prior to signing the statement, declaration in regard to your reliance on the Peccole Ranch

Master Plan?

A. I believe it did, yes.

Q. And do you recall who you corresponded with?

A. I believe it was Councilman Beers.

Q. And is it your testimony that you didn't retain any of that correspondence?

A. That is correct, yeah.

Q. Do you recall if you corresponded with any other of the city council members in regards to this development of the land?

A. I don't believe I did.

MS. GHANEM-HAM: Okay. I have nothing further.

MR. LANGBERG: I have a couple questions, if you are done. Lisa, are you done?

MS. RASMUSSEN: (Nodding.)

EXAMINATION

BY MR. LANGBERG:

Q. Okay. Mr. Bresee, do you have separate work and personal email accounts?

A. Yes.

Q. And --

A. Yeah.

Q. Okay. Can you explain what your process is for your decision to save or delete emails?

A. Well, I used my work email for my personal email and to basically keep it clean. If it is something I need to save as far as like for me to remember something, I might save it. Otherwise, I just delete it upon reading it.

Q. Okay. To be clear, when you say delete it upon reading it, do you literally mean that after you read an email, you delete it if you don't think you need to save it?

A. Yes.

Q. With respect to the issues surrounding the dispute regarding the development of the Badlands, do you know whether your practice was to keep those emails or delete them when you've read them?

A. State the first part of your question again.

Q. Sure.

Focusing on any emails that you had regarding what I will call the Badlands

development dispute --

A. Okay.

Q. -- are those emails that you considered important that you kept or that you didn't need and deleted after you dealt with them?

A. I didn't consider them important and I deleted them as soon as I pretty much opened them. I am not even sure if I pretty much read them.

Q. So the record is clear, with respect to anything that you relied on when you signed the statement that is Exhibit 7, did you delete anything after you were served with that preservation letter?

A. No.

MR. LANGBERG: I have no further questions.

MS. GHANEM-HAM: I have just two follow-up questions.

FURTHER EXAMINATION

BY MS. GHANEM-HAM:

Q. In reference to the questions about your emails, your testimony that you did

correspond to your recollection with at least Bob Beers, do you know which email account you used?

A. That I would rely on? What was your --

Q. Earlier you testified that you believed you corresponded with Councilman Beers; is that correct?

A. Yes, yes.

Q. Okay. Which email did you utilize for that correspondence?

A. Which email did I use?

Q. Yes.

A. My work email.

Q. Your work email, who supports that email? Is it AOL? Who do you use for that? I don't know if I'm using the right term. I'm technologically --

A. Email?

Q. Yeah. Is it --

A. It's a Gmail.

Q. It's a Gmail account. Okay.

Do you ever recall supporting the development of the property, of the land?

A. Yes.

MR. LANGBERG: Objection. Beyond the scope. Instruct not to answer. He answered. You've got it.

THE WITNESS: Got it.

BY MS. GHANEM-HAM:

Q. You did support it, okay.

All right. I have nothing further.

MR. LANGBERG: Great. Lisa, anything further?

FURTHER EXAMINATION

BY MS. RASMUSSEN:

Q. Can I just ask what your work email address is?

A. Yeah. It's -- do you want me to answer that? It's 777airtruckexpress@gmail.com.

MS. RASMUSSEN: Okay. I don't have any further questions.

MR. LANGBERG: Okay. I don't either.

MS. RASMUSSEN: Thank you. So make sure you leave the exhibit book there.

(Proceedings concluded at 12:10 p.m.)

CERTIFICATE OF REPORTER

STATE OF NEVADA
SS.
COUNTY OF CLARK

I, Cindy Huebner, Certified Court Reporter in the State of Nevada, do hereby certify:

That I reported the taking of the Zoom deposition of the witness, DARREN BRESEE, commencing on Wednesday, August 26, 2020, at 10:56 a.m.

That prior to being examined the witness was by me duly sworn to testify to the truth.

That the foregoing transcript is a true, complete, and accurate transcription of the stenographic notes of the testimony taken by me in the matter entitled herein to the best of my knowledge, skill, and ability.

That prior to the completion of the proceedings, the reading and signing of the transcript was not requested by the witness or a party.

I further certify that I am not a relative or employee of an attorney or counsel of any of the parties, nor a relative or employee of an attorney or counsel involved in said action, nor a person financially interested in the action.

IN WITNESS WHEREOF, I have hereunto set my hand in my office in the County of Clark, State of Nevada, this 9th of September, 2020.

_____
Cindy Huebner, CCR No. 806

Exhibit 5

Exhibit 5

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 6

Exhibit 6

THE JIMMERSON LAW FIRM
A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW

James J. Jimmerson*
Lesley E. Cohen
Michael C. Flaxman

*ALSO ADMITTED IN CALIFORNIA

March 20, 2018

By Email and U.S. Mail

Darren Bresee
9821 Winter Palace Dr.
Las Vegas, NV 89145

Re: **Request for Preservation of documents, electronically stored information and other evidence.**

Dear Mr. Bresee:

We have been retained to prepare this letter on behalf of the owners of approximately 250 acres of real property upon which the Badlands Golf Course was formerly operated ("the Property"), including Fore Stars, Ltd., 180 Land Co., LLC and Seventy Acres, LLC, as well as its principals and executives, including EHB Companies, Yohan Lowie, Vickie DeHart, Paul DeHart and Frank Pankratz (collectively for purposes of this letter, called "Property Owners.")

This letter is sent as a formal request that you comply with your legal duty to preserve any and all evidence relating to the Property and the Property Owners, as defined by Rule 34 of the Federal Rules of Civil Procedure and Rule 34 of the Nevada Rules of Civil Procedure. Additionally, Nevada Revised Statute 199.220 provides criminal penalties for failing to preserve evidence and states in pertinent part:

> Every person who . . . with intent to delay or hinder the administration of the law or prevent the production thereof at any time, in any court or before any officer, tribunal, judge or magistrate, shall willfully destroy, alter, erase obliterate or conceal any book, paper, record, writing instrument or thing shall be guilty of a gross misdemeanor.

To fulfill your legal obligation, you must take any and all reasonable steps to preserve all hard copy documents and electronically stored information, including, but not limited to, emails, social medial posts, and text messages, and computer, phone and tablet hard drives and memory, that could be relevant to the Property and the Property Owners. Such evidence includes, but is not limited to, letters, emails, any form of social media, text

messages, voice messages and the like that relate in any way to the Property or the Property Owners, including, but not limited to, the following:

- Any and all communications in any form by and between homeowners and the related HOA;

- Any and all communications in any form to and from the members of the Las Vegas City Council or its staff;

- Any and all communications in any form to and from the members of the Las Vegas City Planning Commission or its staff;

- Any and all communications in any form to and from any employee of the City of Las Vegas;

- Any and all communications in any form to and from any quasi-governmental bodies including but not limited to the Las Vegas Valley Water District, the Clark County School District, and the Las Vegas Fire Department;

- Any and all records of funds used or provided to others for use relating in any way to the Property, the Property Owners, including but not limited to any and all legal disputes relating to the Property or Property Owners;

- Any and all public or provide posts, interviews, social media posts, or communication exchanges regarding the Property or the Property Owners; and

- Any and all communications between and among homeowners relating in any way to the Property or the Property Owners.

The foregoing list is not exhaustive and you must preserve all information relevant to the Property and/or its owners. All hard copy and electronically stored information must be preserved intact and without modification. Your failure to preserve relevant information may constitute a spoliation of evidence which could allow for a variety of remedies including sanctions against you.

///

///

///

We trust that you will preserve the information as required, but in the event of a dispute arising from your failure to do so, we will rely on this letter in Court as evidence of this request and notice to you of your preservation obligations.

Thank you for your attention to the foregoing.

Sincerely,

THE JIMMERSON LAW FIRM, P.C.

James J. Jimmerson, Esq.

JJJ/sp

IN THE SUPREME COURT OF THE STATE OF 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, Appellees, vs. DANIEL OMERZA, DARREN BRESEE, STEVE CARIA, and DOES 1-1000, Appellants,	Case No: 82338 (lead case) Consolidated With: 82880 (same caption)

JOINT APPENDIX SUBMITTED BY APPELLANTS AND APPELLEES

VOLUME 8 (Pages 996-1216)

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Docket 82880 Document 2021-29191

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Vol.	Description	Date	Bates No.
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2	Motion to Dismiss 12(b)(5)	4/13/18	**148-162**
2	Special Motion to Dismiss	4/13/18	**163-197**
2	Opposition to Special MTD	5/4/18	**198-219**
2	Opposition to MTD 12(b)(5)	5/7/18	**220-235**
2	Reply to Special Motion to Dismiss	5/9/18	**236-251**
2	Reply to MTD 12(b)(5)	5/9/18	**252-262**
2	Request for Judicial Notice in support of Reply to Special MTD	5/9/18	**263-300**
2	Plaintiff's First Supplement to their Opposition to Special MTD	5/11/18	**301-305**
3	Plaintiff's Second Supplement to their Opposition to Special MTD	5/11/18	**306-327**
3	Defendants' Supplement in Support of MTD	5/23/18	**328-365**
3	Plaintiff's Supplement in Support of Opposition to Special MTD	5/23/18	**366-425**
4	Plaintiffs' Errata to Complaint	6/11/18	**426-523**
4	Findings of Fact, Conclusion of Law denying Motion to Dismiss	6/20/18	**524-537**
4	Notice of Appeal to FFCOL	6/27/18	**538-572**
5	Plaintiffs' Motion for an Order Permitting Discovery	9/14/18	**573-631**
5	Defendants' Opposition to Mtn for Discovery	10/1/18	**632-639**

5	Plaintiffs' Reply to Mtn for Discovery	10/12/18	**640-664**
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5	Defendants' Supplemental Exhibits in Further Support of Opposition to Mtn for Discovery	10/18/18	**671-679**
5	Minutes and Order from Discovery Commissioner	10/19/18	**680-681**
5	Defendants' Objections to the Discovery Commissioner's Report and Recommendation	1/3/19	**682-688**
5	Plaintiffs' Response to Objections to R&R	1/30/19	**689-712**
5	Order Denying Mtn for Discovery	4/11/19	**713-715**
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9	November 9, 2020, Minute Order	11/9/20	**1258-1259**
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9	Plaintiffs' Objections to Proposed Findings of Fact, Conclusions of Law as Proposed by Plaintiff	12/3/20	**1273-1286**
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11	Reporter's Transcript of Proceedings on Motion for Attorney's Fees	3/31/21	**1793-1815**

Electronically Filed
10/14/2020 1:12 AM
Steven D. Grierson
CLERK OF THE COURT

Exhibit 7

Exhibit 7

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 THROUGH 100, Defendants.	No. A-18-771224-C Dept. No. II

ZOOM DEPOSITION OF STEVE CARIA

Taken on Wednesday, August 26, 2020

Commencing at 12:34 p.m.

Witness Location: 100 North City Parkway

Suite 1600

Las Vegas, Nevada

Reported By: Cindy Huebner, CCR 806

APPEARANCES:

For the Plaintiffs Fore Stars, Ltd., 180 Land Co., LLC, and Seventy Acres, LLC

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- and -

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Eham@ehbcompanies.com

For the Defendants Daniel Omerza, Darren Bresee, and Steve Caria:

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INFORMATION TO BE PROVIDED

None

(Deposition Exhibits 1-9 marked.)

COURT REPORTER: Before we proceed, I will ask all counsel to agree on the record that under the current National Emergency pursuant to Section 319 of the Public Health Services Act, there is no objection to this deposition officer administering a binding oath to this witness not appearing personally before me. Counsel also agree to waiving the reading of the caption.

Please state your agreement on the record, beginning with noticing counsel.

MS. RASMUSSEN: On behalf of the plaintiffs, Lisa Rasmussen, I agree.

MR. LANGBERG: Mitchell Langberg on behalf of defendants. I stipulate.

MS. GHANEM-HAM: It's Elizabeth Ghanem Ham on behalf of Fore Stars, in-house counsel associated in this case, and I agree as well to the stipulation.

(Witness sworn.)

WHEREUPON:

STEVE CARIA

having been first duly sworn, was examined and testified as follows:

EXAMINATION

BY MS. RASMUSSEN:

Q. So have you ever had your deposition taken before?

A. Once. Yeah, just once, I believe.

Q. Okay. How long ago was that?

A. Oh, gosh. It was -- you know, I want to say probably possibly five years ago, but I am not sure. It was in reference to a construction defect lawsuit that I wasn't -- I was just an owner of a unit, in fact the unit that I live in in Queensridge.

Q. Okay. So let me just go over some ground rules. It's a little bit hard when we are on video, so make sure I finish my question before you start to give the answer because the court reporter is recording everything, and then if you could give audible --

MR. LANGBERG: Lisa, I'm sorry. But your audio is just frozen again, and your video

is frozen.

(Discussion held off the record.)

BY MS. RASMUSSEN:

Q. What I was saying, Mr. Caria, is that I just need to make sure you let me finish asking a question before you start the answer and then make sure you give audible answers because the court reporter --

MR. LANGBERG: I think you froze again. I'm so sorry.

MS. RASMUSSEN: Okay. Can you hear me now?

MR. LANGBERG: Yes.

MS. RASMUSSEN: Okay. All right. If it happens again, I will try tethering to my phone because that sometimes works. So just let me know, Mitch, if it keeps happening.

MR. LANGBERG: Of course.

BY MS. RASMUSSEN:

Q. So, Mr. Caria, if you need to take a break, you could let us know. Your attorney can ask to take a break as well. The only rule about that is that you can't take a break when there is a question pending. Understood?

A. Yes.

Q. Okay. All right. So let me get started on some background. So where do you live?

A. 9101 Alta Drive, Unit 202, 89145.

Q. Okay. That's in one of the Queensridge Towers, right?

A. Yes. Tower 1.

Q. Okay. And when did you purchase that property?

A. 2013.

Q. Okay. And do you remember when you purchased it that part of the Purchase Agreement and Joint Escrow Instructions contained a document that had something called a Declaration of Condominium attached to it?

A. I do not recall.

Q. Okay. And are those the kinds of documents that you would still have in your possession?

A. If they gave them to me, I would think so.

Q. Okay. And do you remember that -- do you remember whether or not you read certain disclosures that were in both the Purchase Agreement and Joint Escrow Instructions and the

Declaration of Condominium?

A. I don't recall any particular document. They had like a foot high of paperwork, so I don't recall.

Q. Okay. And do you remember reading specifically anything that stated that there was an exclusive, that you were basically agreeing on certain items regarding land use and views?

A. No --

MR. LANGBERG: Objection as to form.

But you can answer. He did answer. Sorry. He said no.

MS. RASMUSSEN: Reading --

MR. LANGBERG: You crashed on the beginning of that question.

BY MS. RASMUSSEN:

Q. Okay. Hold on a second.

Do you remember reading disclosures that specifically stated that the seller was making no representations as to the subdivision use or development or any of the adjoining or neighborhood land?

A. No.

Q. And do you know who the seller was

when you purchased your condominium?

A. No. I didn't know the seller.

Q. Okay. All right. So you purchased your condominium in --

MR. LANGBERG: You froze again. I'm sorry. Still froze.

(Discussion held off the record.)

BY MS. RASMUSSEN:

Q. Mr. Caria, I am going to fast-forward to ask you when you learned that there was potential development on the --

MR. LANGBERG: You just froze out again. Can I offer a suggestion?

MS. RASMUSSEN: Yeah.

(Discussion held off the record.)

BY MS. RASMUSSEN:

Q. When did you learn that there was potential development on what used to be the Badlands Golf Course?

A. I'm not sure.

Q. So let me ask you some questions that might give you a frame of reference with regard to that.

Do you remember attending a meeting and speaking to the Las Vegas City Council in

October of 2016?

A. Not officially. I went to a lot of meetings, and I don't know specifically one meeting from the other.

Q. Okay. So would you have any reason to doubt that you attended a city council meeting in October of 2016?

A. No.

Q. Okay. So if you attended a city council meeting, then you would have at least had some knowledge because you were there talking about development on the former Badlands Golf Course, you would have at least had some knowledge that there was a plan for development, right?

MR. LANGBERG: Objection as to form.

But you may answer the question.

THE WITNESS: Can you repeat that please, Lisa?

BY MS. RASMUSSEN:

Q. Yeah. Why don't I do this for you. I am going to read from --

I am happy to provide this to you, but I am just going to read some of the comments that Mr. Caria made at the city

council meeting to jog his memory. Okay?

MR. LANGBERG: Sure.

BY MS. RASMUSSEN:

Q. "My name is Steve Caria. I live at 9101 Alta Drive, Unit 202. I am here representing on behalf of a petition that was signed on October 13th by residents and a few renters of One Queensridge Place," and then you apologized for having a vocal cord problem, and then you go on to say, "First I would like to address the fact that 25 percent of the people at One Queensridge Place are renters," and then you say, "Approximately 30 to 50 percent of the people at One Queensridge Place are second, third, or fourth homes and not around at any given time."

That's how your comments before the city council starts. So does that jog your memory of you attending a city council meeting in October of 2016?

MR. LANGBERG: I am going to let him answer, but I am going to object to the form. But go ahead.

THE WITNESS: It cut out, and I didn't hear the last part and the question

associated.

BY MS. RASMUSSEN:

Q. Okay. So I have read some comments that you made at a city council meeting on October 18, 2016, and then I asked if that jogged your memory as to the fact that you appeared at a city council meeting on October 18, 2016.

A. I believe if you have notes from the meeting, that that would be appropriate, that I did attend the meeting in 2016.

Q. Okay. And you reference at that meeting a petition that had been circulated. Did you hear that part of what I was reading?

A. Oh, you know, I heard part of it. Yes, I do know you said that.

Q. Okay. So we can at least establish that you were involved in opposing development on the former Badlands Golf Course as early as October of 2016. Does that sound fair?

MR. LANGBERG: We will accept because I believe, Lisa, if you are reading from a transcript, I will accept your representation of the date, and so we will agree that he made those statements on that date. And if it was

in opposition, then it was.

MS. RASMUSSEN: Okay.

BY MS. RASMUSSEN:

Q. Mr. Caria, what I am trying to do is establish dates, and the reason I am doing this is because I asked you when you became aware that there was potential development on the Badlands Golf Course, and you told me you didn't know. So I am trying to give you some dates for frame of reference. I am not trying to trick you.

A. No, I understand. I am just trying to be truthful.

Q. Okay. Understood.

All right. So -- and you said that you appeared at the city council on numerous occasions, so I have some of those other dates and one of the other dates is February 15, 2017, another one is August 2, 2017, and another one is September 6, 2017. Does that sound about right to you?

A. If you have the records, that could be correct. I only add one thing. My wife had cancer in 2015 and treatments in '15 and a carryover for a few years of serious illness,

so my memory can be a little fogged about some of these things.

Q. Okay. Very good. So I'm not trying to pin you down to an exact date. I am just trying to get a frame of reference.

A. I understand.

Q. Okay. And let's do this. Let's go to Exhibit 2, which is in the notebook in front of you.

A. Uh-huh.

Q. And this is your responses to our request for documents. Do you see where it says on the caption Defendant Steve Caria Response to Plaintiff's Amended First Set of Request for Production of Documents?

A. Yes.

Q. Okay. I just want to make sure you've got the same document in front of you.

So go ahead and turn, if you will, to Page 2 of that document.

A. Uh-huh.

Q. And on Line 13, there is a request for production, and then on Line 23, there is a response to that request. In your response to that request, you say, "Responding party relied

on the transcript of the proceedings in the Binion matter that is produced with these responses." And then you say, "Responding party also relied on the Crockett decision but has not located it." And then you further say, "Responding party also relied on an email which is produced with these documents."

That was your response, correct?

A. Yes.

Q. Okay. So I am going to kind of go through each of those -- well, a few of those things are attached at the end. So let's flip to the end of your responses. And if you will look at the fifth page in your document after your responses end, there is an email attached. I would like you to find that email.

A. The email is from Frank Schreck?

Q. Correct.

A. Okay.

Q. Okay. And that email is dated January 11, 2018. Do you see that?

A. Let me see. Yes.

Q. Okay. And it is from Frank Schreck and it is to various people. You see that, right?

A. Yes.

Q. All right. So let me start with some of the other people that are -- that that email was sent to and ask if you know any of those people.

Do you know Jack Binion?

A. I have met Jack, but we are not on a personal -- have a personal relationship.

Q. Okay. And have you met Roger Wagner?

A. I have.

Q. Have you met -- and so what is your relationship with Roger Wagner?

A. Not a personal one. I just met him on a couple of occasions with -- once at a party, probably at potentially one of the council meetings, and maybe any other meetings that might have been associated to Queensridge.

Q. Okay. Do you know Michael Buckley?

A. I don't recall the name.

Q. Do you know Shawna Hughes?

A. I have met Shawna Hughes but don't have a relationship with her.

Q. And do you know Clyde Turner?

A. I had met Clyde in various situations. I met him -- I think we had dinner

with a group of people one night. I am not positive. But I've met him at council meetings and maybe some other meeting environment, but we do not have a personal relationship.

Q. Okay. And how about Jeffery Fine?

A. I don't recall meeting Jeffery Fine, but it's possible.

Q. And how about Elaine Wenger-Roesener?

A. Yes. I have met Elaine and I know Elaine from the same group with Clyde Turner.

Q. And that was maybe dinner together and maybe council meetings?

A. Yes, yes. And potentially a meeting related to Queensridge, I believe, or a fundraising activity, but not beyond that that I am aware of it.

Q. Would that be a fundraising activity for a city councilman?

A. I believe so.

Q. And would that be Steve Seroka?

A. Most likely Steve Seroka. Might have been -- I don't even know some of the council members so I don't know their names. It likely was for Steve Seroka, I believe, but I am not positive it was for Steve Seroka, but it's

potentially possible. And she does not live in the towers, and so I know her pretty much in the same group that Clyde Turner is associated with, Jack Binion is associated with, and that Schreck is associated with.

Q. Okay. You say this group. Does the group have a description other than just what you are describing it as?

A. No, no.

Q. Okay.

A. No. We are not -- no political affiliation or anything.

Q. Okay. So Elaine -- I notice Elaine Wenger-Roesener has an email address that says Queensridge HOA. Is she also part of the HOA association?

A. Yes. My understanding was, and I believe it to be the case, she was and/or is the president of the Queensridge Homeowners Association.

Q. Okay. And then the next name on this email is Elise Canonico.

A. I am not familiar with the name or the individual, but it's possible we've met.

Q. Okay. And then the next person is

Tim McGarry.

A. Yes. Tim lives in the towers, and I know him from meetings with Frank Schreck and I believe potentially a council meeting, and we've never really done anything socially, but, you know, maybe some things related to Queensridge, but that's the extent of it.

Q. Okay. And then Steve Seroka, obviously --

A. Excuse me. Just for clarification, Tim did invite me -- he and his wife have a foundation and they invited me out to see it because Tim knew I played professional baseball, and he puts on a program for severely handicapped children and adults, and he asked me to come out and, you know, just visit one day, and I did. I was so impressed with what it did for the community that I made a contribution to his foundation.

Q. Okay. So who did you play professional baseball for?

A. Well, it was in the days of Jim Palmer, the underwear guy. He was my roommate. The Baltimore Orioles.

Q. Okay.

MR. LANGBERG: See what happens when you answer more than the question?

BY MS. RASMUSSEN:

Q. When did you retire from baseball?

A. When I injured my shoulder back in the early 60s, early to mid 60s. That's 1960s, Lisa.

Q. I was born in the 60's. I understand.

Okay. So I didn't ask you this as a foundational question, but what is your work experience after baseball? What did your professional life look like?

A. After baseball, I went back and completed college. I went to UC Berkeley and got my degree at Berkeley. I coached a baseball team at the time. I then went to work for a medical supply company called Benwald (phonetic) Laboratories. I did that for a little over a year and decided I wanted to go into teaching, and then I taught for seven years. And then after that, I decided to go into a career and I got into the insurance industry and retired from that in the end of 2017, December 31, 2017, after about a 40-year

career. Other than that, I have been involved in some investments and, you know, some small equity-type projects over the years.

Q. Okay. Thank you for that. I appreciate it.

A. Uh-huh.

Q. Okay. Going back to this email, we left off on Tim McGarry. Steve Seroka is the city councilman, right?

A. Yes. Former, former.

Q. Former, okay.

So when did he stop being a city councilman?

A. You know, once again, it gets back to the time of my life when my wife had been very ill and circumstances. I don't recall when he resigned. It might have been 2016, 2017. I'm not sure. I'm not sure. I would imagine it was 2017 if my memory is somewhat cognizant.

Q. Okay. I will probably ask you something more about that later.

And then you are on here. How about Christina Rouse?

A. Yes. I met Christina Roush when she was running for city council.

Q. Okay.

A. And we did not have a personal relationship, but I have seen her at various functions. And in fact, she invited me and one of my associates to a fundraiser for one of the -- I think the State Treasurer of Nevada of which we attended because -- the little I knew about Christina, I thought she was a standup character.

Q. Okay. And how about Kenneth Thompson?

A. I am not aware of the name. But the people I say I don't know, I just don't recall them.

Q. Okay. Understood.

Now, let's look at the text of this email. So it has a case number and then Mr. Schreck says: The judge spent at least 30 minutes explaining why the City violated its own ordinance of staff recommendations. He hit every point imaginable including stating Yohan bought the property without any contingency on entitlement, so he bought a pig in a poke. He pointed out Yohan said he didn't buy the property until he had received the approval of

each council person. He said Yohan wore the City down until it just caved. He also spoke in the open space and the reliance -- he spoke of the open space and the reliance QR residents placed in the approved master plan when they bought expensive lots. The transcripts will be priceless and very useful in everything we do going forward.

So you are one of the recipients of this email, so I am assuming that you are going to tell me that you relied upon these statements by Mr. Schreck when you later made statements of your own to city council. Is that a fair statement on my part?

A. Yes. I didn't -- well, first, I didn't have access, but I didn't do any of the background research on things because Frank was a reputable attorney and was working with the legal firm and the land planners and other parties and seemed to be exceptionally knowledgeable and forthright in conversation.

So the answer is yes, I relied on information from Frank Schreck.

Q. And you considered Mr. Schreck to be sort of an expert in this particular issue. Is

that fair?

A. He portrayed himself not so much as an expert but someone that was working with all of the parties that were the legal and land use people. So I guess if he was an expert, you know, I wouldn't -- I don't know that this was his area of law, but I do know I relied on him because he was the conduit of information from the people that were.

Q. Okay. And then if you flip over to the next page, that is a transcript of a hearing that was held before Judge Crockett on January 11th. Do you see that?

A. Yes.

Q. Okay. Did you attended the hearing?

A. No.

Q. And did Mr. Schreck provide you with a copy of this transcript?

A. Most likely. I don't know. I do not recall.

Q. Okay. So you provided the transcript to me. Do you know where you got it?

A. I had a copy of it in my file that I found.

Q. Okay. Okay. So you were provided a

transcript. When you received it, did you read through it?

A. As I recall -- I would assume I did, but I don't recall. As I mentioned to you, I was attending to my wife a good portion of the time. So it's possible I read through it, but I can't recall exactly reading every line.

Q. Okay. Do you know when you received it?

A. No, ma'am.

Q. Do you know if you received it as a paper, hard copy, or if you received it in an email?

A. I might have received it either-or or both. I'm not positive.

Q. Okay. Would you have any records that would tell you how you received it, like an email?

A. If there is an email, I would think I would have a record of that.

Q. And so did you ever receive a copy of the order from Judge Crockett?

A. You mean the final position that he took on the case?

Q. An actual order that was entered is

what I am talking about.

MR. LANGBERG: I will object to --

THE WITNESS: I apologize. I don't know that terminology.

BY MS. RASMUSSEN:

Q. Okay. Did you receive anything that was signed by Judge Crockett?

A. I don't recall. I think so. You know, if I look at this, I -- I don't know. I do not recall. I'm sorry.

MR. LANGBERG: Lisa, may I interject briefly to clarify?

MS. RASMUSSEN: Yeah.

MR. LANGBERG: Just the language you are using and the language he is using. The order of Judge Crockett that you are referring to is the document that he is referring to in his responses that he says he can't locate.

MS. RASMUSSEN: Okay. So going back on Page 2 of his responses, he said responding party also relied on the Crockett decision but has not located it. That's what we are talking about?

MR. LANGBERG: Correct.

MS. RASMUSSEN: Okay. All right.

BY MS. RASMUSSEN:

Q. So let me just back up a little bit or actually, let me have you go to Exhibit 7. Flip to Exhibit 7.

A. Okay.

Q. Okay. So Exhibit 7 is basically a Declaration of Statement that was submitted to the City of Las Vegas. This is a blank one.

Did you sign one of these and submit it to the City of Las Vegas?

A. I don't recall either, to be honest. I just don't remember.

Q. Okay. Did you circulate any of these for other people to sign to submit to the City of Las Vegas?

A. Yes. I circulated the email that was sent to me from Ann Smith which was referenced in the email chain I think you received that references Frank Schreck, how he had written out this format.

Q. Okay. There is a lot there, so I am going to try to unpack this a little bit. So you circulated an email that was sent -- who did you receive the email from?

A. Ann Smith.

Q. Ann Smith?
A. I believe. I believe that's part of the documents.
Q. Okay. And then you said it was kind of a forward from Ann Smith, that she received it from someone else. Do you remember who?
A. I believe Frank Schreck.
Q. Okay. And then did you further circulate it?
A. Yes, I did.
Q. Okay. And do you know what people were -- what were people to do with the document when they printed it out and signed it?
A. Well, I believe some of the people -- some of the individuals emailed it back to me, a couple, and then as best I can recall, and a few signed the document. But once again, I referred to -- it was kind of a crazy time in my life so I don't have complete memory of it.
Q. Okay. So on the people that returned them back to you, what did you do with them?
A. I don't recall.
Q. Okay. And you are not sure if you signed one or not?

A. I don't believe -- I don't -- well, I do not recall signing one.

Q. Okay. So let's look at Exhibit 7. So this says, "The undersigned purchased a resident lot in Queensridge which is located within the Peccole Ranch Master Plan Community."

Did you believe that that was a true statement?

A. Yeah. I believed everything that Frank said was true.

Q. Okay. Had you ever -- let me go on. I will go on first.

Then it says, "The undersigned made such purchase in reliance upon the fact that the open space 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 with land use designation does not permit the building of residential units."

Did you believe that to be true?

A. For the same reason I believe an

email from Frank, I believe what he was saying was true.

Q. So if Mr. Schreck told you, then you believed it was true, right?

A. Well, he wrote this, right.

Q. Okay.

A. I mean, I would assume. He is an attorney and is following the laws and only wrote what he thought was the law and the truth, and I took it on that basis.

Q. Okay. And then so on the top one, it says, "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."

That would not have applied to you, correct?

A. That would be correct.

Q. Okay. So the bottom form which basically says the same thing that leaves out that lot premium language would be in your opinion more appropriate for someone like you who lives in the towers, right?

A. As I am looking at this right now, yes.

Q. Okay. And so this document, it's your understanding was created by Mr. Schreck and it could be circulated to people who either had paid a lot premium or believe they had or people who lived in the tower, right?

A. According to what he states here.

Q. Okay. When you say "he," you mean Mr. Schreck, right?

A. Yes, yes.

Q. And the intent was to get people to sign these and return them to the City to influence the City, right?

A. Intent was to provide information to people. Whether this was truthful to them or not, I didn't know. I assumed it was truthful based on Mr. Schreck. But each individual, there were people that had differing opinions at Queensridge, I believe.

Q. And so who were some of the people who had different opinions?

A. I don't know individually except for Noel Gage, and I never talked to him about it.

Q. And how do you know that Mr. Gage had a differing opinion?

A. Because he came to city council

meetings and spoke on behalf of Yohan and EHB.

Q. Okay. So you were -- and what -- if you know, what was Mr. Gage's opinion that differed from the opinions you adopted from Mr. Schreck?

A. Well, I don't know that he had a different opinion. I just know he supported Yohan because it was a friend of his. That's all I know.

Q. Okay. So in circulating this Exhibit 7 for other people to sign and send back and some people sent it back to you, you believed what was in there at the time, correct?

A. I believed because it came from -- it was a source from Frank Schreck, yes.

Q. Okay. Okay. So you told me that you believed because it came from Frank Schreck. Is there any other reason that you believed it, anything else that led you to believe it?

A. Well, I guess. Well, there was a newspaper article that had been written by Jamie Munks. I am looking at the checklist of things that I had reviewed with Mitch.

MR. LANGBERG: Steve, please don't

tell her anything about our conversation. Our conversations are privileged. But you can go ahead, and let's just be fair here. So he has notes that he took for himself. You can read from them. We are going to need to produce a copy of those notes to them. Okay?

THE WITNESS: Oh, okay.

MR. LANGBERG: Okay. Go ahead. You can go ahead.

MS. GHANEM-HAM: This is Elizabeth Ghanem Ham. We would like to get a -- hold our position or get a confirmation that what he is looking at today --

MR. LANGBERG: I can't hear a thing.

MS. GHANEM-HAM: How can we ensure that the list that you produced will be the same that he is looking at at the moment? At the end, can he hold it up so we can confirm it is the same document?

MR. LANGBERG: You can confirm it by my representation. I am just the one who offered to produce it to you rather than assert privilege over it, so we will produce the document to you and if you want to question its veracity, you can. But you will know it

because he is going to read to you from it and then you will see that it is the same.

MS. GHANEM-HAM: Can he hold it up to the screen when he does so?

MR. LANGBERG: And for your information, it is a document that he prepared for me and not with me, so.

Steve, can you hold it up to the camera so they can see what the document is?

Up higher. There you go.

(Witness complied.)

MS. GHANEM-HAM: Is that just one page?

THE WITNESS: No. There is -- well, there is a page that goes over the second page related -- the same email.

MR. LANGBERG: So, Elizabeth, I don't remember the email as I sit here. You will get the list of stuff. There may be other privileged information in there. For example, I don't know if there is discussions between me and him in that email or if he is responding to questions that I have. But you will get the list of information that he is using to refresh his recollection.

MS. GHANEM-HAM: So I am clear, I understand there may be privileged information, it would be an email that went back and forth that was at least prepared by Mr. Caria that went to you, there may be other privileged information, you are going to take the opportunity to redact them and produce the documents and it consists of approximately two pages. Is that an accurate reflection?

MR. LANGBERG: Yes. So would you like him to -- would you like him to read the list to you?

MS. RASMUSSEN: He was telling me what was on the checklist, so go ahead.

THE WITNESS: Yes. The primary things on the checklist were the Crockett transcripts and ruling, the newspaper article in the Las Vegas Review Journal of January 19 by Jamie Merks -- or Munks, the reliance on Frank Schreck, and the legal team land use coordinators and others that he coordinated and brought together and was the source of information and that Frank had drafted the petition.

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BY MS. RASMUSSEN:

Q. And so when you say "petition," are you referring to Exhibit 7?

A. Yes.

Q. Okay. And I'm sorry, I interrupted you. So go ahead with your list.

A. And because of the city council meetings and related things, ongoing contact with George Garcia, the land use consultant primarily, and he had a partner, Doug Rankin, and also discussions with Steve Seroka and Mark Newman.

Q. And who is Mark Newman?

A. He was Steve Seroka's assistant.

Q. Okay. So these are the things that you relied on with regard to the petition, right?

A. Well, yeah -- in a general sense, I think it was an amalgamation of the things I just listed. And then at the city council meetings, Bob Peccole talking about, you know, what he believed was the master plan and what the use of that open space was to be, and the groundskeeper for Peccole, as I recall, also said that. And then there was a UNLV legal

professor who made a similar statement related to -- I don't know what times these were, but to the master plan. But it was all really centered around the Crockett transcripts and rulings because that to me was definitive.

Q. Okay. I am just making notes of everything. Sorry.

So how many times did you hear Bob Peccole at a city council meeting?

A. I don't recall. More than once.

Q. And what did you learn from the UNLV law professor?

A. That he said that -- as I recall, that there was a -- it was a master planned community and required a major modification, as best I recall.

Q. Okay. And what did you learn from Steve Seroka and -- I will start with him. Steve Seroka.

A. Well, Steve was just -- my relationship with Steve was one of just finding out what the reality was within the city as best as possible and nothing specific. He was doing a dive into the details of the step-by-step process, and I don't recall if he

resigned before the end of that. You know, I don't know. There was an open ordinance bill and some stuff, and that's all foggy to me.

Q. Okay. And how about what, if anything, you learned from Mark Newman, his assistant, that contributed to your amalgamation of information?

A. Basically the same stuff from Steve. He was his assistant and they basically had the same knowledge.

Q. What was Steve Seroka's position with regard to whether a development at -- what was your understanding of Steve Seroka's position with regards to the proposed development at Queensridge?

A. His --

MR. LANGBERG: Hang on. Hang on. You have to pause before you answer, please.

Prior to working with this statement, correct, the declaration?

MS. RASMUSSEN: Yes.

MR. LANGBERG: Can we assume that for all of these questions?

MS. RASMUSSEN: Yes.

MR. LANGBERG: Thank you.

BY MS. RASMUSSEN:

Q. Prior to the time you received Exhibit 7 and circulated it for other people to sign, what was your understanding of -- let me back up.

You know, you described an amalgamation of information that was driving your actions. So prior to the time you received this statement, circulated it for others to sign, what did you learn from Mark Newman that fed into that amalgamation?

A. I learned nothing new from Mark that I wouldn't have heard from Steve because they worked hand in hand together. And my relationship with Steve Seroka was just for him tell the truth and whatever that was is what it would be as he saw it. That was the extent of it.

Q. What was your understanding of Steve Seroka's position with regard to development at Queensridge?

A. Well, my understanding was he was doing a thorough review of the staff process to understand it at the very beginning to the current date, and he wasn't completed when I

last -- my last discussion with him, as I recall.

Q. And do you remember when your last discussion of him was?

A. I do not.

Q. Okay. You talked about the legal team coordinated by Frank Schreck. Do you recall who those people were?

A. No. I don't know them.

Q. Were they other lawyers or were they experts of some sort or --

A. My understanding is that they were attorneys and they worked in this area of law, but that's all I know.

MR. LANGBERG: Steve, I am going to remind you that it is really important for you to let Lisa finish her question. I know it's not a normal conversation, so you have to let her finish her question so that we make sure we answer the question that is being asked and also so I will have an opportunity to object. Okay?

THE WITNESS: Yes.

MR. LANGBERG: Thank you.

///

BY MS. RASMUSSEN:

Q. So you also gave me the name George Garcia. And what did you learn from George Garcia?

I think I asked that. Did I ask that already? I didn't mean to be repeating myself.

A. I don't know.

Q. Okay. What did you learn from George Garcia?

A. My contact with George was typically in the context of information that he knew from being the land planner and working with the legal team and Frank Schreck, and it was nothing different than -- his statements were nothing different than what the result was from the Crockett transcripts and ruling for all practical purposes.

Q. Okay. So let me ask you about some city council meetings. So I have a transcript that shows that you were present on February 15, 2017, which is a year earlier than the declaration, Exhibit 7. And it looks like at that meeting, you said the last time we -- I came to council, I brought in a petition with a hundred names on it from Queensridge opposing

the project.

So what was that petition that you would have brought to the City prior to February 2017?

A. You know, I don't recall, first of all. And secondly, I didn't distribute the petition to whatever number of people were. I think a group of people gave me petitions that were filled out, but I can't recall who because of my circumstances I mentioned.

Q. Okay. So one of the reasons I am asking is because I am trying to understand what your knowledge was prior to Exhibit 7, but I am also trying to understand what the petition is that is different than Exhibit 7. What did the petition say, if you remember?

A. I do not recall.

Q. Okay. Did it say that we are opposed to development at Queensridge?

A. Possibly.

Q. Did it say we are excited about development at Queensridge?

A. I don't believe so.

Q. Okay. So the fact that a petition was gathered with a bunch of signatures

indicates -- well, and it says here in your testimony, "Queensridge Towers isn't the only one in the Queensridge community that are objecting to this particular project. The entire Queensridge community is approximately 80 percent opposed."

Do you remember telling the city council that?

A. If I did, it's because I got the information from other sources.

Q. Okay. Where would you have gotten that information?

MR. LANGBERG: Objection as to form. Hold on. Objection as to form.

Let's go back to the last question. Can you answer her question, which is do you remember saying that?

THE WITNESS: I don't recall specifically making that statement. But if it is in the record, then it is in the record.

BY MS. RASMUSSEN:

Q. Okay. Well, you followed that with, "Please listen to your constituents. Listen to the people that are in these neighborhoods. If this was your neighborhood, I can tell you you

would be wanting to stick up for what's right and what's just and you've just heard from plenty of people."

Do you remember telling the city council that?

A. No.

Q. Okay. So do you have any reason to disagree with me that you were representing to the City that 80 percent of the Queensridge community was opposed to development?

A. I would say that I don't know that that is what I would have said, but the record -- what's on record, I guess, is what's on record. But I didn't know that 80 percent was against any development.

Q. Okay. You remember telling the city council on this same date, February 15, 2017, that you watched the video four times at the last meeting and that you thought that Mr. Lowie came on aggressively to the city council?

MR. LANGBERG: I am going to object to that question as beyond the scope and instruct you not to answer the question.

///

BY MS. RASMUSSEN:

Q. Okay. Do you remember telling the city council on this date, February 15, 2017, "We ask for your support, vote no, no to the general amendment and to 435 units." Do you remember that?

MR. LANGBERG: Objection. Beyond the scope. Instruct not to answer.

MS. RASMUSSEN: I disagree with you that it is beyond the scope because it goes to his prior knowledge of issues before Exhibit 7.

MR. LANGBERG: Well, that's why I let you ask him about the meeting, but what he asked them to do or didn't ask them to do I don't think is what he relied on in preparing or circulating the declaration, so that's the basis. But I understand that you reserve your right to challenge my instruction.

MS. RASMUSSEN: Okay. I will move on.

BY MS. RASMUSSEN:

Q. Mr. Caria, do you remember sending an email to Bob Coffin in June of 2017?

A. Not specifically, no. I have sent emails to council members, but I couldn't tell

you the dates.

Q. Okay. Who is Jim Sandoz, do you know?

A. Who?

Q. Jim Sandoz, S-A-N-D-O-Z?

A. The first name?

Q. Jim.

A. Oh, Jim. Yes. Jim is a resident at One Queensridge Place.

Q. Okay. And so I am looking at an email from him to you, CC'd to Carolyn Goodman, Lois Tarkanian, Anthony Savros, Bob Coffin, Steve Ross, Bob Beers, Ricki Barlow, Steve Seroka, and Michele Fiore, and the subject is Badlands Development Vote, and then it is a forward from an email that you sent Mr. Sandoz dated June 20, 2017, and it basically -- the title of it is "Dear Mayor, city council members, and lame ducks."

Do you remember sending that email to the city council and the mayor?

A. No.

Q. Okay. So let me go through some of what the email says and maybe you will remember it. So I am reading from some of it to refresh

your recollection, if you remember it.

"It is obvious to all of Ward 2 and much of Las Vegas that Yohan Lowie, Vickie DeHart, and EHB has been awarded unjustified support by the planning commission and the Las Vegas City Council."

Do you remember writing that?

A. No.

Q. The next sentence is, "It is unfathomable that the city council would not swear in the newly-elected officials, Steve Seroka and Michele Fiore, at this upcoming city council meeting. However, it follows the pattern of special treatment given to Yohan Lowie, Vickie DeHart, and EHB during this arduous and highly contentious process over the last few years."

Do you remember writing that?

A. I do not.

Q. The next sentence is, "The constituents in Ward 2 were primarily focused on the Badlands development, the Number 1 debated item during the June election, and Incumbent Beers was soundly defeated primarily because of the support of the Badlands

development."

Do you remember writing that?

A. I don't recall that email.

Q. Did you believe that Bob Beers was defeated because of his support of the Badlands development?

MR. LANGBERG: Objection. Beyond the scope. Instruct not to answer.

BY MS. RASMUSSEN:

Q. I'm going to read the next sentence. "Ward 2 and its residents are not in favor of this developer being allowed to side step the normal developer process and go directly to the council and receive special treatment."

Do you remember writing that?

A. No.

Q. Then you wrote, "What's the rush?"

Do you remember writing that?

A. No, I don't.

Q. Then you write, "You successfully avoided having elected officials not being sworn in to do what they were elected to do, support the people."

Do you remember writing that?

A. Not specifically, no.

Q. Then you wrote, "Something doesn't feel or smell right to this entire process involving Mr. Lowie and his associates."

Do you remember writing that?

A. No.

Q. Next paragraph says, "As a resident in Ward 2 and having been a real estate developer on projects both in the United States and in foreign countries, I am appalled at the overwhelming support some of the council is giving to this developer."

Do you remember writing that?

A. No.

Q. Had you been a real estate developer on projects in the United States and/or foreign countries?

A. I have had relationships and investments in such activities.

Q. And then you went on to write, "I am appalled to see" -- oh, I think I've read that.

You went on to say, "It is time to take a deep breath and table this vote on the developer agreement until the July meeting."

Do you remember writing that?

A. No.

Q. Then you wrote, "I have not seen Steve Ross nor Ricki Barlow ask one relevant question to the developer in the many meetings I have attended."

Do you remember writing that?

A. No.

Q. Then you wrote, "Are they experts in real estate development? Are they persuaded by the other factors? What's going on? No one even questions Bob Beers' motives. They get" --

Do you remember writing that?

A. No.

Q. Then you went on to say, "In fact, the unwavering support from Bob Beers indicates a conflict of interest and he should recuse himself from any matter involving Yohan Lowie, EHB, and related parties."

Do you remember writing that?

A. No.

Q. You go on to say, "Mayor Goodman, your legacy could well rest on the decision you make involving this development. There are thousands and thousands of eyes watching this matter on Wednesday."

Do you remember writing that?

A. No.

Q. Then you go on to say, "Do the right thing for the people and delay the vote on the developer agreement until the July council meeting so residents and HOAs in Ward 2 can properly review the developer agreement and propose appropriate adjustments. Anything less than this will show favored treatment to Yohan Lowie and his associates."

Do you remember writing that?

A. No.

Q. Then you go on to say, "It is incumbent on the mayor, the city council members to do the right thing and table this developer agreement until the newly-elected officials voted into office by the people are seated and allowed to participate in this very important decision involving the daily lives of those that live in and surround the Queensridge community."

Do you remember writing that?

A. No.

Q. Then you say, "I know you will do the right thing. Regards, Steve Caria."

Do you remember that?

A. No. As I told you, I have a lot of lost time in there.

Q. Okay. So even though you don't remember writing these specific words on June 20, 2017, you remember the feeling that you had that Yohan Lowie was getting somehow special treatment from the then constituted city council members?

MR. LANGBERG: Objection. Beyond the scope. Instruct not to answer.

MS. RASMUSSEN: I disagree that it's beyond the scope because it goes into the background of what he knew and what he relied on when he addressed Exhibit 7.

MR. LANGBERG: I disagree. But I understand that you are reserving your rights to bring a motion.

BY MS. RASMUSSEN:

Q. Regardless of whether or not you recall writing these words on June 20, 2017, do you remember believing that the new city council members should take over before the City took a vote?

MR. LANGBERG: Objection. Beyond the

scope. Instruct not to answer.

MS. RASMUSSEN: My response beyond the scope is the same for the record.

MR. LANGBERG: I understand it.

BY MS. RASMUSSEN:

Q. Okay. So you also attended an August 2, 2017 city council meeting and you addressed the city council on that date.

Do you remember going to the August 2, 2017 city council meeting?

A. No.

Q. Let me read some excerpts from it and we will see if that refreshes your recollection. "Steve Caria, 9101 Alta Drive, Unit 202. I would like to congratulate, first of all, Steve Seroka for his terrific victory and the new councilwoman, Michele Fiore."

Do you remember that?

A. No.

MR. LANGBERG: Objection. Beyond the scope. Instruct not to answer.

I'm going to -- I'll now let you ask him about things that he relied on in making the statements or even things that he didn't rely on. But I am not going to let you ask him

about his testimony at a city council meeting unless his testimony included information that was specific to what he thought was allowed and not allowed. So I just want to be clear about where my scope objections lie.

BY MS. RASMUSSEN:

Q. Okay. So I am going to go back to the question I asked you earlier. So what was the position of what -- as far as you are aware, what was Steve Seroka's position with regards to the development of the former Badlands Golf Course?

A. My understanding was he was going to do a thorough vetting of the process and do the right thing, whatever that would be.

Q. Okay. And so was there a thorough vetting of the process that contributed to your amalgamation of information that led us to Exhibit 7?

A. Not as important as the Crockett decision and the information from Frank Schreck and associated parties.

Q. Okay. Was there anything you learned from Steve Seroka in your conversations with him either before or after -- before he was

elected, before he resigned, after, at any point in time leading up to Exhibit 7 that contributed to your overall information and belief?

A. I mentioned what contributed to my overall belief and I gave you a list of those items and it was primarily, once again, dictated by the Crockett transcript decision, Frank Schreck, and associated parties.

Q. Okay. And so you attended another city council meeting on September 6, 2017. At that meeting, you referenced a petition with over a hundred names on it. Is there anything in that petition that led to your belief that the statements in Exhibit 7 were correct and accurate?

MR. LANGBERG: I will object as to form.

But you can answer the question. You may answer the question.

THE WITNESS: All of my decisions related to passing on the email in Exhibit 7 were directly related to Crockett's decision, the transcript, and Frank Schreck and the related items I told you. Those were the key

and dominant factors.
BY MS. RASMUSSEN:
Q. Okay. So next question, you remember --
MS. GHANEM-HAM: I'm sorry. It appears that Mr. Caria was still speaking but it was at least frozen for me.
BY MS. RASMUSSEN:
Q. Oh, I'm sorry. Did you finish your answer, Mr. Caria?
A. Yes. I repeated that anything related to the petition that we referenced here today about what I had believed and what influenced me or who influenced me as it related to this petition remains the same consistently, and that is the transcript, the ruling, the newspaper article, Frank Schreck and Schreck's associates and information from the legal team and land consultants and the other items that I had listed previously directly related. Nothing else influenced my sending forward that petition that is referenced here.
Q. When you say information from the legal team and land consultants, how was that

information conveyed to you?

A. Via Frank Schreck and sometimes maybe a conversation or a meeting at the city council and otherwise with some of the parties that I am relating to -- I am referencing.

Q. Okay. So what meetings did you have with anyone from city council?

A. No specific -- with reference to what? I'm sorry.

Q. Did you have meetings with Steve Seroka, Michele Fiore, anyone from city council prior to the time leading up to Exhibit 7?

A. Well, I had no specific meetings that I recall that were referenced in Exhibit 7 with either Michele Fiore or Steve Seroka. My recall is just this information for the petition was based on just those factors I've repeated several times.

Q. The question is not so much whether they are referenced in Exhibit 7. It's whether or not this amalgamation of information feeding into your brain, so to speak, is derived from these meetings and so that's why I am asking you because you listed meetings with city council as one of the things, so.

A. Most of those things are public record, as you know. Secondly, the meetings that I am referencing that created my thought process with this goes back to the Crockett decisions, Frank Schreck, and anything that would have been led and directed via Frank as such.

Q. Right. And I am just trying to ascertain what those specific efforts led by Mr. Schreck were and how you received that information. So you have referenced, for example, an expert team and land use expert and you have indicated that that somehow fed into your belief, but you haven't identified how you received that information.

A. Direct contact with Frank who relayed the messages as such and the Crockett decisions and the newspaper article.

Q. Okay. Did you have meetings with Mr. Schreck about these issues?

A. About the issues on the petition?

Q. Yes.

A. No. I never met with Frank specifically except that I knew that he had drafted it, and I believe that him drafting it

was based on information that I wouldn't have otherwise potentially had or I wouldn't have known otherwise. It was directly through the conduit of Frank to Ann Smith to me.

Q. And you got at least one direct email from Frank Schreck, right?

A. I'm sorry?

MR. LANGBERG: Say that again. Sorry.

BY MS. RASMUSSEN:

Q. You got at least one email, direct email from Frank Schreck, right?

A. Yeah, I believe that was part of the thread that was a document that I gave to --

MR. LANGBERG: Stop, stop. Just to clarify, they don't get to know about our communications or what you did or didn't give me because, for example, you might have provided me documents that weren't responsive to the requests, so you shouldn't assume that everything that you've got they have since the discovery was narrow. So you can answer her question, but you shouldn't assume about what she has or doesn't have.

THE WITNESS: Oh, okay.

MR. LANGBERG: Let me say your document responses say what she has, Exhibit 2.

THE WITNESS: I'm sorry. What is the question again?

BY MS. RASMUSSEN:

Q. So I have one email from Frank Schreck to you and a host of other people. So my question was when this information was conveyed to you by Frank Schreck, I asked you if you had direct meetings with him, you said no, and then I said, well, you got at least one email from him, and then your lawyer kind of intervened there.

So when you got information from Frank Schreck that led into your amalgamation of information about Exhibit 7, how was it communicated to you?

A. By the petition that Frank had drafted.

Q. Okay. And so when you say the petition Frank drafted, are you talking about Exhibit 7?

A. Yes.

Q. Okay. So do you remember sending an email to Steve Seroka on February 14, 2018?

A. No.

Q. Do you remember telling Steve Seroka that the development madness has gone on way too long, we are hopeful you will speak up and have your voice heard. Do you remember that?

A. No.

Q. Do you remember telling him we understand Goodman is a lost cause, as is Fiore, Fiore just makes a fool of herself and needs to know she is not supporting the residents of your ward. Do you remember that?

MR. LANGBERG: I am going to object. Beyond the scope. Instruct not to answer.

BY MS. RASMUSSEN:

Q. Do you remember telling Steve Seroka in this email on February 14, 2018 you understand the development and its issues very well? Do you remember saying that?

A. No.

MR. LANGBERG: Objection. Beyond the scope. You have your answer.

MS. RASMUSSEN: I disagree that that is beyond the scope.

MR. LANGBERG: I understand.

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MS. RASMUSSEN: So I'm reserving my rights.

MR. LANGBERG: You have your answer. He said no.

MS. RASMUSSEN: Okay.

BY MS. RASMUSSEN:

Q. Okay. So now I am going to have you look at Exhibit 6, if you will.

A. Okay.

Q. And this is your declaration. Do you see that?

A. Yes.

Q. Okay. And if you will turn to Page 3, Paragraph 13, starting on Line 17, you have a sentence that says, "Also, the statements in these declarations correctly summarize my beliefs as to the Queensridge residents' reliance upon the terms of the Peccole Ranch Master Plan."

Do you see where you said that?

A. Yes.

Q. And then on Line 19, you state, "Based upon my conversations with other Queensridge residents, many other residents have similar beliefs."

Do you see where you say that?

A. Yes.

Q. So what are the conversations that led you to believe that other Queensridge residents relied on the terms of the Peccole Ranch Master Plan?

A. I'm sorry. I am trying to read this, too. What was the question?

Q. What conversations did you have with other residents that led you to believe that other Queensridge residents relied on the terms of the Peccole Ranch Master Plan?

A. Primarily meetings that took place at the council meetings that would have taken place with a group gathering with Frank and those people that were involved in this process such as the land planner and such and his knowledge of the law and what the people stated in relationship to that.

Q. And what group gathering are you referencing with Frank Schreck?

A. Not one specific group gathering, but it could have been any group gathering, whether it was at -- whether it was at Queensridge or at the city council meeting or such.

Q. Well, how many group gatherings were there with Frank Schreck outside of the city council meeting?

A. I'm not sure. More than one and --

Q. Go ahead. I'm sorry.

A. -- and less than eight or ten. I'm not sure.

Q. And where would these meetings be held?

A. At the council, people would gather, at the council meetings. At -- potentially at One Queensridge Place if there was a meeting to raise -- you know, for any number of subjects. But not any one place or any one time.

Q. Okay. So you have referenced -- we have looked at Exhibit 7 and then your comments to city council have referenced other petitions.

Is there anything in those other petitions that led to your belief that contributed to the statements in Exhibit 7?

A. Once again, my statements related to Exhibit 7 have been mentioned four, five, six times already, and they are the same. Those were specifically the reasons that detailed my

belief that the petition was valid and correct.

Q. Okay. Is the Peccole Ranch Master Plan something that you have ever looked at?

A. No.

MS. RASMUSSEN: I don't have any further questions at this time. I think Ms. Ham has some questions for you and then I may have some followup based on that.

MS. GHANEM-HAM: I do. May I suggest a short break, five minutes? Would that be all right to give everyone an opportunity?

MR. LANGBERG: How long do you think -- I know you can't commit to it, but what is your estimate on time?

MS. GHANEM-HAM: I don't know. I don't think maybe 20 minutes, 30 tops.

MR. LANGBERG: Okay. Then we can take break.

(Recess taken from 2:05 p.m. to 2:14 p.m.)

EXAMINATION

BY MS. GHANEM-HAM:

Q. Mr. Caria, my name is Elizabeth Ghanem Ham. I represent Fore Stars and some of

its affiliated companies in regards to the land formerly known as the Badlands Golf Course. I am just going to ask you a few questions as it relates to your testimony already.

First, let me ask you on the break, I know you stepped out of the room, did you speak to anyone about this case during the break?

MR. LANGBERG: You can answer the question with a yes or a no.

THE WITNESS: Oh. No, and I mean, nothing about the case. I'm not sure exactly how that references. I didn't contact anybody.

MR. LANGBERG: Steve, she wants to know if you and I spoke about the case during the break is what she is really asking.

THE WITNESS: Briefly, yes. If that's the question, yes. I didn't contact anybody else. I thought the parties here were all privy to that.

BY MS. GHANEM-HAM:

Q. Okay. Did you speak to anyone else during the break other than Mr. Langberg?

A. No.

Q. What did you speak about with Mr. Langberg?

MR. LANGBERG: You are not going to get anything other than about the case. Otherwise, it's a privilege and I instruct him not to answer.

BY MS. GHANEM-HAM:

Q. Well, during the deposition, you are required to answer what you talked about --

MR. LANGBERG: No. That's only if I -- the case law says if I call for a break for anything other than privilege, then you are entitled to know. But if there is a regular break, I don't have to -- there is no waiver of the privilege. So if you want to discuss it later, we can, but that's the case authority.

MS. GHANEM-HAM: So I am going just to make a statement now and reserve all objections that you -- for later consideration by the court, any objections that you make and instruct him not to answer, I am going to go ahead and reserve that now so I don't have to keep saying it at the time.

MR. LANGBERG: Of course. And I agree with that. You don't have to reserve. I agree with that.

MS. GHANEM-HAM: All right. Thank

you.

BY MS. GHANEM-HAM:

Q. So is anyone in the room with you, Mr. Caria, anyone else?

A. No. It's a big room.

Q. Okay. So I have to ask you because it seems to me that a lot of your responses to Mr. Rasmussen's questions were you didn't recall. Are you on any medication or anything that would prevent you from remembering responses to answers?

A. Potentially.

Q. You are on some medication that could affect your testimony here today?

A. Well, I mean, potentially. I don't know if they do or if they don't.

Q. So you are on medication, but you are unsure whether that affects your testimony?

A. Yes. I am on multiple, multiple medications.

Q. Okay. Do you believe that it affects your memory?

A. Possibly.

Q. So that is a concern. I am going to let Ms. Rasmussen follow up on some of that

after my questions.

But for the moment, the best memory you have and what you are providing today could be affected by the medication you are on? Is that accurate to say?

A. I don't -- I don't know.

Q. Who would know the answer to that?

A. A doctor would be able to say whether or not it would affect my memory or not.

Q. Have you had any experiences that would lead you to believe that it affects your memory, the medications you are taking?

A. In reference to?

Q. Have you had any experiences that would lead you to believe that the medication you are taking does in fact affect your memory?

A. Not that I am aware of.

Q. Do you take --

MR. LANGBERG: Sorry. May I ask him a question just to try to speed this along?

MS. GHANEM-HAM: Yes, yes.

MR. LANGBERG: Mr. Caria, the medications that you are taking that may or may not affect your memory, is it anything that you are taking for a short period of time? Are

these medications that you take regularly and will be continuing to take?

THE WITNESS: Some medications for a long period of time and others have been changed due to a heart condition.

MR. LANGBERG: Are you on medication on an ongoing basis or is this going to change at a later date?

THE WITNESS: It could change based on my lab results.

MR. LANGBERG: Okay. I don't know if that was helpful, Elizabeth. I thought it might be.

MS. GHANEM-HAM: Okay. I don't know that it is, but that's okay.

BY MS. GHANEM-HAM:

Q. Mr. Caria, are you part of any committee that was opposed to the development of the property formerly known as the Badlands Golf Course?

A. Am I a part of any committee?

Q. Yes. Have you ever been a part of any committee that was opposed to the development of the land formerly known as the Badlands Golf Course?

A. I don't recall being a part of any committee.

Q. Okay. Are you aware of a committee that was formed to oppose -- that was formed and consisted of homeowners within One Queensridge Towers or Queensridge common interest community that opposed the development of the land formerly known as the Badlands Golf Course? Are you aware that such a committee existed?

A. No, not a formal.

Q. Not a formal committee, okay.

An informal committee?

A. Only conversation --

Q. Okay --

A. -- with people.

Q. I don't want to go too far into what Ms. Rasmussen asked you. But she inquired about how often you met with Mr. Schreck and/or other homeowners within the Queensridge community and/or One Queensridge Towers. I believe you said you met a handful of times. Is that accurate?

A. I believe so.

Q. Do you remember who else you met with

besides Mr. Schreck as the group?

A. George Garcia, maybe isolated members of the One Queensridge community, but specifically couldn't tell you each and -- each person that it might be, and also at council meetings.

Q. Okay. Outside of the city council meetings, did you say you couldn't tell me who they were?

A. No. Because they would be different all the time.

Q. Okay. So you identified Ann Smith as someone who you met with on occasion to discuss opposition to the development of the land; is that correct?

A. To -- I have spoken with Ann Smith, yes. Opposition to the development of the land or in reference to Exhibit 7?

Q. Let's start with opposition to the development of the land.

MR. LANGBERG: What is the question? I think I lost it because you are adopting a prior question.

MS. GHANEM-HAM: Yeah. I am trying to ascertain who it was that Mr. Caria has met

with that resides within One Queensridge Towers or the Queensridge community in regards to the opposition of the development of the land. That's my question.

MR. LANGBERG: Go ahead. Prior to the statement that is Exhibit 7?

MS. GHANEM-HAM: Yeah, let's establish something. Remind me, Mr. -- I will rephrase it.

BY MS. GHANEM-HAM:

Q. Mr. Caria, remind me when you purchased your home in the towers?

A. 2013.

Q. 2013, okay.

And the statement, Exhibit 7 that we are referencing, is it fair to say that was distributed sometime between January and February of 2018?

A. Yes. I believe so.

Q. Okay. So prior to 2018, attempts to develop the land was already underway. Is that accurate?

A. Yes.

Q. Okay. And you testified, my understanding of your testimony at least is

that you met with several homeowners at different times during groups, and I am trying to identify who those were prior to you submitting or signing that statement that we were referencing, I think, as Exhibit 7.

So prior to 2018, is it accurate to say that you met with multiple homeowners on occasion in regards to development of this land?

A. Yes.

Q. Okay. And we identified Ann Smith as one of those individuals, correct?

A. Yes.

Q. Okay. I am going to give you some other names. Tell me if these are individuals you also met with at some point in regard to the development of the land.

Jack Binion?

A. I was -- to answer that, to say I met with him, he was at a meeting. We don't have a relationship. I don't think he knows who I am. He might know. I'm not sure how to answer that.

Did I specifically have a meeting or a request a meeting with Jack Binion? No.

Q. Okay. Is it safe to say you had a meeting that may have had multiple participants and one of them was Jack Binion?

A. Yes.

Q. Okay. Robert Peccole, was he at any of those meetings?

A. Like at the city council?

Q. No.

A. If we did at the city council, I am not aware that Bob Peccole was at any specific meeting other than city council or some kind of other gathering of friends or party-type thing, but not do I recall him meeting. He might have been, but I don't recall.

Q. Okay. For purposes of this line of questioning, let's assume that when I reference meetings, I mean outside of city hall.

A. Okay.

Q. Okay. All right. So in reference to Mr. Binion then, was that meeting outside of city hall, Jack Binion?

A. Specifically -- let me see if I understand the question. Specifically in regards to discussing Badlands?

Q. Yes.

A. I don't believe I've ever had a meeting with Jack Binion outside of the city hall building in reference to Badlands. It's possible. I don't recall.

Q. Okay. So it sounds like I might have to -- it's possible that you don't recall. Okay.

So outside of city hall, I am going to give you a list of names, we have Jack Binion, you said possibly. Robert Peccole, possibly? Bob Peccole?

A. Yeah. I only remember city hall with Bob Peccole and personal gatherings, but not meeting specifically on Badlands.

Q. Okay. Roger Wagner? I'm sorry. Did you respond to that?

MR. LANGBERG: It looks like he might have froze.

MS. GHANEM-HAM: I think he did.

(Discussion held off the record.)

THE WITNESS: I believe you were asking about Roger Wagner.

BY MS. GHANEM-HAM:

Q. Yes.

A. I've met Roger, but I don't recall

meeting him at a specific meeting related to Badlands, but it's possible.

Q. Okay. How about Mr. Turner, Clyde Turner?

A. I seem -- I have seen Clyde at restaurants and other places, but I do not recall any specific meeting outside of the city hall, although that's possible. Like I said, these are new people to me.

Q. New people meaning you didn't know them prior to the attempted development of the land formerly known as the Badlands Golf Course?

A. I didn't know them before introductions by Frank Schreck and such.

Q. You knew Frank Schreck before --

A. No, not that I recall.

Q. How about Elaine Roesener?

A. Yeah. I know Elaine, yes.

Q. Did you meet with her in regards to opposition to the development of the land formerly known as the Badlands Golf Course?

A. I met -- I have met with Elaine and it could have had to do with Badlands and/or potentially raising funds for different

candidates, both inside and outside the district or ward.

Q. Okay. So --

MR. LANGBERG: Let me -- I'm sorry. Let me interject an instruction.

Mr. Caria, she is entitled to know what you did when you relied on in making the statements. And in order to do that, she gets to ask you if you spoke to people because you might have relied on things that they told you in making the statements that are Exhibit 7.

She is not entitled to know what you did talk to them about if it is not related to the dispute or what you relied on in Exhibit 7.

So please keep your answers to yes or no so that she can follow up and we can see if it is within the scope. Does that make sense?

THE WITNESS: Well, but the question is whether it was in opposition to the Badlands, and not --

MR. LANGBERG: So you could say yes or you could say no.

THE WITNESS: Okay.

MR. LANGBERG: Okay.

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BY MS. GHANEM-HAM:

Q. Let me cut to the chase and see if I could ask it. Who was it that you met with to discuss opposition to the development of the land formerly known as the Badlands Golf Course? Who did you meet with?

A. Frank Schreck, George Garcia, Elaine.

Q. Elaine Roesener?

A. Elaine Roesener.

Jim Sandoz, Tim and Chris McGarry, Alice Cobb, and -- you know, and others. And I am not sure exactly when or what the circumstances were.

Q. Did you meet with those individuals separately or all at once?

A. Both.

Q. Okay. So at times, you met with them in a group outside of city hall and at times, you met with them separately and individually. Is that an accurate statement?

A. Yes.

Q. And the purpose of your meeting was to discuss your opposition about the development of the property formerly known as the Badlands Golf Course?

A. Sometimes.

Q. What was the purpose of your meeting?

MR. LANGBERG: I am going to object to that question as beyond the scope.

You can answer the question only to the extent that it is information you relied on when you were circulating the statement that is Exhibit 7.

THE WITNESS: Well, I would say that the majority of the meetings were -- if they took place, were only based on information that was given to me by Frank Schreck and other professionals associated with the development.

BY MS. GHANEM-HAM:

Q. Is it safe to say though that you met with all of those opposed to the development as well?

A. That cut out a little bit.

Q. Is it accurate to say that whoever you were meeting with individually or in a group were opposed to the development of the land as well?

A. Just for reference, I know Mitch wants a yes or no answer. But are you referring to the entire development or just the

development, period?
BY MS. GHANEM-HAM:
Q. The development of the land formerly known as the Badlands Golf Course.
A. I understand that. But there were a lot of people that were looking for compromise so it wasn't just no development, if that's what you are saying.
Q. Okay. Compromise what?
MR. LANGBERG: I am going to object as beyond the scope and instruct not to answer.
BY MS. GHANEM-HAM:
Q. What do you mean by compromise?
MR. LANGBERG: Same objection.
MS. GHANEM-HAM: Are you instructing him not to answer?
MR. LANGBERG: Yes.
BY MS. GHANEM-HAM:
Q. How many city council meetings, city hall meetings, whether they be planning commission or city council members, how many meetings would you say you attended in person?
A. I don't recall.
Q. Would you say that it was more than a dozen?

A. I don't think so. Possible.
Q. Would you say -- okay.
Did you attend every meeting that you were put on notice of?
A. No.
Q. Would it be accurate to say you attended just about every meeting?
A. I don't recall.
Q. You didn't recall much of your statements that you made during city hall council meetings. Is that because you were reading from a statement prepared for you?
A. No.
MR. LANGBERG: I am going to object.
You need to give me time to object. You got your answer.
THE WITNESS: Okay. First of all, maybe I didn't understand the question.
BY MS. GHANEM-HAM:
Q. All right. Let me rephrase it. Did you prepare every statement yourself that you made to city hall during the hearings of the development of this land?
MR. LANGBERG: Objection. Beyond -- I'm sorry. I didn't mean to step on you,

Elizabeth. So the question, do you need to clean up the question or did you finish it? I am so sorry.

MS. GHANEM-HAM: I finished it. It's okay. I just want to know who prepared the statements he made for his testimony at city hall.

MR. LANGBERG: Got it. Objection. Beyond the scope. Instruct not to answer.

BY MS. GHANEM-HAM:

Q. Mr. Caria, do you own other property within the Queensridge common interest community?

A. No.

Q. So you understand that -- the only -- as I understand it, the home that you own is within One Queensridge Place, correct?

A. Yes.

Q. And you understand that that is a different association than a Queensridge common interest community?

A. Yes.

Q. Okay. So is your declaration submitted to the court stating that you reside within the Queensridge common interest

community, a master plan community in Clark County, Nevada accurate?

A. Did I reside there?

Q. Yes.

A. Yes.

Q. Okay. But you don't own other property besides -- maybe you don't understand me.

You don't own property beyond your condominium in One Queensridge Place?

A. Not within the Peccole area, no, or formerly Peccole area.

Q. Formerly Peccole area.

Do you believe you live within the Peccole Ranch Master Plan?

A. Yes.

Q. And that belief is based on all of the things you have already testified to, the Judge Crockett order and so forth?

A. Yes. And I should add that in the Crockett transcript, as I recall, having looked at the notes, that Judge Crockett does mention that the Queensridge residence did rely on the Peccole Master Plan.

Q. Okay. I am not sure I understand

your testimony.

You purchased your residence in 2013. Is that accurate?

A. Yes.

Q. Okay. And everything that you stated you relied on, the property, the condominium you own and reside in now is within the Peccole Ranch Master Plan occurred after your purchase. Is that accurate?

MR. LANGBERG: Objection as to form.

You may answer.

THE WITNESS: Yeah, I'm sorry. You will have to -- the last part of that question I didn't hear.

BY MS. GHANEM-HAM:

Q. So you purchased your home that you -- I assume you still live in One Queensridge Place; is that correct?

A. Yes.

Q. Okay. You purchased that property in 2013; is that correct?

A. Yes.

Q. Everything you relied on in regards to your statement that this property is within the Peccole Ranch Master Plan occurred after

you purchased your property; is that correct?

A. Yes.

Q. So how is it a true statement in Exhibit 7, and I am going to refer you back to it, that the undersigned made such purchase, referencing your purchase of your condominium for you, and relies 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 and its general plan as park recreation-open space which land use designation does not permit the building of residential use?

MR. LANGBERG: Objection. Form.

You may answer.

THE WITNESS: Were you reading off of the petition? I'm sorry.

BY MS. GHANEM-HAM:

Q. Yes, I was. Exhibit 7.

A. I am at Exhibit 7, and which one of those? The bottom one or the top?

Q. Which one did you reference as being your statement, the top or the bottom?

MR. LANGBERG: Objection. Form.
BY MS. GHANEM-HAM:
Q. I apologize if I am mixing -- maybe I am mixing up depositions.
Did you already testify that you find Exhibit 7 to be an accurate statement, that you agree with those statements, correct?
A. I rely that the statement from Frank Schreck was true.
Q. The statement from Frank Schreck was true.
Can you tell me what it was that you relied on in purchasing your home in One Queensridge Place that led you to believe that the property could not be developed pursuant to the Peccole Ranch Master Plan?
MR. LANGBERG: Objection. Form.
You may answer.
THE WITNESS: It wasn't a subject. It wasn't a point of reference.
BY MS. GHANEM-HAM:
Q. What did you rely on in purchasing your home that it was -- that the property that is formerly known as the Badlands Golf Course could not be developed pursuant to the Peccole

Ranch Master Plan at the time you purchased your home in 2013?

MR. LANGBERG: Objection. Form.

But you may answer.

THE WITNESS: I had no knowledge.

BY MS. GHANEM-HAM:

Q. Do you maintain your position that this is an accurate statement, that you -- let me back up.

Is it an accurate statement then that you purchased your home at One Queensridge Tower in reliance upon the fact that the open space/natural drainage system could not be developed pursuant to the City's approval of the Peccole Ranch Master Plan?

MR. LANGBERG: Objection. Form.

You may answer.

THE WITNESS: I am just -- I didn't rely on that. I didn't know it.

BY MS. GHANEM-HAM:

Q. So at the time you purchased your home, you did not know what you were stating now -- let me rephrase that. Strike that.

At the time that you purchased your home, you were unaware of it being -- the

position you take now that it is located within the Peccole Ranch Master Plan. Is that accurate?

MR. LANGBERG: Objection. Form.

You may answer.

THE WITNESS: I assumed it was.

BY MS. GHANEM-HAM:

Q. Based on what?

A. An assumption.

Q. What led you to that assumption?

A. That it was all a master planned area. It looked and felt, and that's all I know.

Q. Can you point to any document provided to you at the time you purchased your residence at One Queensridge Place that identifies Peccole Ranch Master Plan community?

A. Not that I am aware of.

Q. Do you pay an HOA fee to the Peccole Ranch Master Plan?

A. No.

Q. What was it -- is there anything on the title of your residence that you own that references Peccole Ranch Master Plan?

A. Not that I am aware of.

Q. Did you have conversations with anyone in 2013 or prior to your purchase of your residence at One Queensridge Place that would give you information that the towers were located within the Peccole Ranch Master Plan?

MR. LANGBERG: Objection. Form.

But you can answer.

THE WITNESS: I don't recall, but I don't think so.

BY MS. GHANEM-HAM:

Q. Can you describe for me the boundaries of the Peccole Ranch Master Plan?

MR. LANGBERG: I didn't hear the question. I'm sorry.

BY MS. GHANEM-HAM:

Q. Can you describe for me the Peccole Ranch Master Plan, the boundaries of it, what area is within the Peccole Ranch Master Plan?

A. The boundaries?

Q. Uh-huh.

A. Not specifically, no.

Q. What was it that gave you the assumption or the belief or the feeling that you were within the Peccole Ranch Master Plan when you purchased your home within the towers?

MR. LANGBERG: Objection. Form.

You can answer.

THE WITNESS: It was just an assumption.

BY MS. GHANEM-HAM:

Q. Based on what?

A. On I'm assuming it was part of what appeared to be a master planned community.

Q. Where did you get that appearance from? Did you review something?

A. I had lived in Queensridge for years previously and, you know, somewhere in the four years before that and maybe sometime in that time frame, that's when I made the assumption.

Q. Okay. You lived in the Queensridge common interest community prior to the tower. Is that accurate?

A. No, no. I purchased this unit in 2013, but I lived there from 2009 to '13.

Q. In the towers?

A. Yes.

Q. So between 2009 and 2013 prior to your purchase, who was it that you spoke to or what can you point to that led you to the belief that the towers were located within the

Peccole Ranch Master Plan?

A. I can't recall.

Q. Okay. I am going to go back to the city council meeting for just a moment. You said that you may have attended, could be a handful of meetings, a dozen meetings I think you identified potentially. Is that accurate?

A. I said it could be. I don't recall how many meetings.

Q. Did your wife attend those meetings with you?

A. No. She wasn't well. She attended a couple but was quite ill during this whole time frame.

Q. Do you recall the length of the meeting?

A. Do I recall what?

Q. The length of the meeting.

A. They were all different.

Q. Okay. Can you tell me the longest meeting you attended?

A. I'm sorry. You're not --

Q. How long it lasted. You attended several meetings at city hall; is that correct?

A. Yes.

Q. Okay. And you said some of them lasted long and some didn't. Do you recall being at a meeting that lasted for hours?

A. Yeah. I'm sure there was a meeting that lasted for hours.

Q. At every meeting that you attended in person, did you step to the podium and speak each time you attended?

A. I don't recall.

Q. Mr. Caria, were you responsible or given the task by Mr. Schreck or anyone to sort of corral the homeowners within One Queensridge Place in opposition to the development of land formerly known as the Badlands Golf Course?

A. No.

MR. LANGBERG: Objection. Form. But you have your answer.

BY MS. GHANEM-HAM:

Q. No?

A. No. He wasn't my boss.

Q. But you relied on him and took his statement as accurate in regards to the development of the land or opposition to it?

A. Yes.

Q. Okay. Is there anyone else that you

listened to or that you relied on?
A. Yes. Judge Crockett's transcript and ruling, the front-page newspaper article in the RJ by Jamie Munks.
Q. All occurring after your purchase of that property?
A. After the purchase, yes. George Garcia and the land use people --
MR. LANGBERG: Do you want him to repeat the list again?
MS. GHANEM-HAM: No.
BY MS. GHANEM-HAM:
Q. Everything you've identified took place after your purchase of your residence now at One Queensridge Tower, correct?
A. Yes.
Q. Okay. I think you identified that you had some communication, email communications with Mr. Schreck. Is that accurate?
A. Yes.
Q. Okay. And who is your internet provider?
MR. LANGBERG: You don't mean internet provider. You want to know who hosts

his email, right?
BY MS. GHANEM-HAM:
Q. Yeah. Who hosts your email?
Thank you.
A. Yahoo.
Q. What is your email address?
A. Stevecaria, one word, @yahoo.com.
MR. LANGBERG: You just muted. We are not hearing you. We lost your sound.
(Discussion held off the record.)
BY MS. GHANEM-HAM:
Q. My question was did you correspond with Mr. Schreck with his work email or personal email?
A. I don't recall.
Q. And you just had one email provider? You just had one email?
A. I believe so, yes. Well, I don't know. I might have -- I'm not sure. I am not a techie guy.
Q. And did you produce all correspondence you had with Mr. Schreck in response to our request for production of documents?
MR. LANGBERG: We produced one email,

so did you have more than one email with Mr. Schreck is what she is asking you.

THE WITNESS: Oh, yes. I produced a --

MR. LANGBERG: The answer is did you have more than one email with Mr. Schreck? Yes or no?

THE WITNESS: Yes.

MR. LANGBERG: Okay.

BY MS. GHANEM-HAM:

Q. Why haven't you produced those?

MR. LANGBERG: Counsel, because they are not responsive to the requests.

MR. GHANEM HAM: Well, I appreciate your testimony, Mr. Langberg. I am asking Mr. Caria why those weren't produced.

MR. LANGBERG: He is just going to tell you he doesn't know -- no. I object to that. Mr. Caria, I object to that question to the extent it calls for communications that are protected by the attorney-client privilege. You can answer that question, if you know the answer other than from me. If you only know the answer from me, I instruct you not to answer.

THE WITNESS: Yeah, I only know the answer from my attorney.

MR. LANGBERG: I am happy to tell you, Elizabeth, because I am not trying to hide the ball, that we produced all of the emails from Mr. Schreck that Mr. Caria relied on in creating or circulating Exhibit 7.

BY MS. GHANEM-HAM:

Q. In regards to Mr. Seroka or any of the city councilmen, did you correspond with them in writing as well?

A. Yes.

Q. And did you produce all of those emails?

A. Per the request of my legal counsel.

MR. LANGBERG: In other words, you can't answer that question without disclosing our conversations; is that correct?

THE WITNESS: I was instructed to provide information directly relating to the petition, why I believe the petition was accurate.

BY MS. GHANEM-HAM:

Q. And you testified that you felt the petition was accurate because Mr. Schreck told

you it was. Is that accurate?

A. And the rulings of Judge Crockett and the other items I had listed.

Q. How many email exchanges would you say exist between yourself and Mr. Schreck?

A. I have no idea.

Q. Is it 100?

A. I don't think so.

Q. Less than 100?

A. I would guess.

Q. Did you exchange emails with Mr. --

MR. LANGBERG: I'm really sorry. Steve, while you can't guess, she is entitled to your best estimate. So could you tell her whether -- on this topic whether there is, you know, a handful or 50 or 5,000, something that gives her an idea of how many email exchanges you had with Frank Schreck before you circulated Exhibit 7?

THE WITNESS: Related or not related or both?

MR. LANGBERG: Related to this issue of the Badlands.

THE WITNESS: Or to the petition specifically? Elizabeth, I am trying to answer

the question as best I can. Are you asking how many emails I had related to the petition with Frank Schreck or related to Badlands in a general sense?

BY MS. GHANEM-HAM:

Q. Related to Badlands in a general sense.

A. Okay. I would guess direct emails, and it's just a guess, 25 maybe, and that's over a five-year period.

Q. Over a five-year period, okay.

And how about with any of the city council members, how many emails would you say exist in relation to the development of the land formerly known as Badlands Golf Course?

A. As best I recall to any individual city council member, you know, a handful.

Q. Who did you meet with in preparation for your deposition here today?

MR. LANGBERG: You could answer that question. You can answer that question just identifying the people for the moment.

THE WITNESS: Mitch Langberg.

BY MS. GHANEM-HAM:

Q. Anybody else?

A. My personal attorney, Chris Evans.
Q. What documents did you review in preparation for your deposition here today?
A. Just the same documents we are discussing.
Q. Did you speak with any other individuals beyond the two that you identified as counsel, any other homeowners --
MR. LANGBERG: In preparation for the deposition? I'm sorry. I'm so sorry, Elizabeth.
MS. GHANEM-HAM: Yes, in preparation for your deposition.
MR. LANGBERG: Thank you.
THE WITNESS: I spoke to Dan Omerza a few days ago -- I mean, several days ago, but nothing of -- nothing of consequence.
BY MS. GHANEM-HAM:
Q. What was the substance of your conversation with Mr. Omerza in preparation for your deposition here today?
MR. LANGBERG: Let's pause for a second.
Is this a conversation that you had with just you and Mr. Omerza or was I on the

conversation as well?

THE WITNESS: Just me and Dan Omerza.

MR. LANGBERG: Then you may answer the question.

THE WITNESS: Just general chit-chat, nothing overly specific.

BY MS. GHANEM-HAM:

Q. What was the nature of the topics of your conversation?

A. They had sold their house in Queensridge residence, moved to a new location, and that everyone was looking forward to getting through this.

Q. Through what?

A. Through the depositions and the lawsuit.

Q. Did you discuss what your testimony would be here today?

A. No. I mean, not specifically, anything in the -- I think we talked about the Badlands article and the signage, but that was information we both knew.

Q. Are you aware of the Nevada Supreme Court ruling reversing Judge Crockett?

MR. LANGBERG: Objection. Beyond the

scope. Instruct not to answer.
BY MS. GHANEM-HAM:
Q. Is it your position as you sit here today that you still live within the Peccole Ranch Master Plan?
MR. LANGBERG: Objection. Beyond the scope. Instruct not to answer.
BY MS. GHANEM-HAM:
Q. Is it your position as you sit here today that no units, no residents, nothing can be built on the land formerly known as the Badlands Golf Course?
MR. LANGBERG: Objection. Beyond the scope. Instruct not to answer.
BY MS. GHANEM-HAM:
Q. Did you participate in any of the collection of funds to be utilized to oppose the development of the land formerly known as the Badlands Golf Course?
MR. LANGBERG: Objection. Beyond the scope. Instruct not to answer.
BY MS. GHANEM-HAM:
Q. Is it an accurate statement to say that you met with several other homeowners within the Queensridge common interest

community or One Queensridge Tower on a consistent basis for the past few years in regards to opposition of development of the land formerly known as the Badlands Golf Course?

MR. LANGBERG: Objection.

You can answer the question prior to distributing what is Exhibit 7. After that, I instruct you not to answer. And I am going to object as to form because I think you have answered it. But go ahead.

THE WITNESS: I'm consistently -- consistently on and off potentially. I mean, not at a consistent weekly meeting or anything like that, no.

BY MS. GHANEM-HAM:

Q. And did you derive from those meetings how you would proceed in opposing the development of the land formerly known as the Badlands Golf Course?

MR. LANGBERG: Objection -- hang on a second. Let me think about my objection.

Objection. It's potentially beyond the scope.

So to the extent that you got

information in those meetings that you relied on when you circulated Exhibit 7, you may answer. Other than that, it is beyond the scope and I instruct you not to answer.

Do you understand my instruction, Mr. Caria?

THE WITNESS: I believe so. Do you want to restate it?

MR. LANGBERG: If you derived information that you relied upon in circulating Exhibit 7 from those meetings, then you could answer in the affirmative. Otherwise, if it is just about the general opposition, then I instruct you not to answer.

THE WITNESS: As it relates to the petition, it's the reasons that I mentioned before and the reliance on Frank Schreck and the Crockett decisions and such. Those are the factors.

BY MS. GHANEM-HAM:

Q. I am not sure that answers the question.

Is it accurate to say that the purpose of your meeting with various homeowners was generally in opposition to the development

of land formerly known as the Badlands Golf Course?

MR. LANGBERG: Objection as to form.

You can answer.

THE WITNESS: Yes.

BY MS. GHANEM-HAM:

Q. Is it accurate to say that you are acting in concert then to ensure that your position opposing developments of the Badlands Golf Course would be effectuated?

MR. LANGBERG: Objection as to form. Objection. Beyond the scope. Instruct not to answer.

BY MS. GHANEM-HAM:

Q. So is it accurate to say that you came up with a plan during these meetings to oppose the development of the Badlands Golf Course, and one of the ways in which you intended to oppose it was by signing these declarations that you relied on the Peccole Ranch Master Plan in purchasing the One Queensridge Towers?

MR. LANGBERG: Objection as to form. Objection, beyond the scope.

Instruction not to answer.

MS. GHANEM-HAM: I don't need to reserve my right, so.

BY MS. GHANEM-HAM:

Q. Is it accurate to say in these meetings that you held with others you formed the opinion that your home is located within the Peccole Ranch Master Plan?

MR. LANGBERG: Objection as to form.

You may answer.

THE WITNESS: As I said earlier, I was of the assumption that it was within the Peccole Master Plan Development.

BY MS. GHANEM-HAM:

Q. But it was your assumption, not others?

MR. LANGBERG: Objection as to form.

You may answer.

THE WITNESS: I don't know. I don't know what everyone's opinion was.

BY MS. GHANEM-HAM:

Q. So I am just trying to ascertain all of the items that you referenced as forming your statement and opinion that you relied upon the Peccole Ranch Master Plan at the time you purchased your property occurred after you

purchased your property beyond your assumption. Is that accurate?

MR. LANGBERG: Objection as to form.

You can answer.

THE WITNESS: My answer is the people in the properties around, I was of the assumption and I'd heard other people talk about it being part of the Peccole Ranch Master Plan and development.

BY MS. GHANEM-HAM:

Q. After you purchased in 2013?

A. Yes -- well, possibly during the 2009 and '13 that I leased. I am not positive. I don't recall.

Q. Who would you have been talking to between 2009 and 2013 that would have led you to that belief?

A. Residents.

Q. Can you identify someone specifically?

A. Not that I can recall.

Q. All right. Can you tell me what a major modification is as it relates to land use?

A. My understanding is it is a change in

land use.

Q. I'm sorry. I didn't catch that. Could you say that again?

A. I said my understanding is that it is a change in the land use.

Q. A change. A major modification. Where did you gather your understanding from?

A. Just general information, conversation. Probably from Frank Schreck or consultants. I don't know. That was my understanding.

MS. GHANEM-HAM: Did you already ask, Lisa, about the preservation letter? Is that something you went through with Mr. Caria? I don't recall. Do we have one for him?

MR. LANGBERG: Let me help. It is Exhibit 9. We haven't done it yet.

MS. RASMUSSEN: Sorry. I muted the wrong one. It is Exhibit 9. He has it in front of him. Do you want to ask him or do you want me to ask him -- you could ask him about it.

MS. GHANEM-HAM: I apologize. I closed my screen here. Hold on. I don't know what I did. There we are.

I don't know that I received Exhibit 9. I sent it to you. Let me just make sure I have it.

MR. LANGBERG: Do you want me to do it for you?

MS. GHANEM-HAM: No, that's okay. I got it. Thank you.

BY MS. GHANEM-HAM:

Q. All right. Mr. Caria, do you recall receiving a letter approximately March of 2018 from the Jimmerson Law Firm?

A. Looking at it right now, the answer is yes.

Q. You do recall getting it, okay.

Did you take actions to preserve any and all communications between yourself and other homeowners or the city council or the city planning commission and the list of other entities outlined in this letter?

A. I believe so.

Q. Is it accurate to say you still retain those communications today?

A. As far as I know, yes.

Q. Okay. And did you communicate in any form with any quasi-governmental bodies like

the Las Vegas Valley Water District or the Clark County School District or the fire department in regard to the development of the land formerly known as the Badlands Golf Course?

MR. LANGBERG: Objection. Beyond the scope. Actually -- yeah, objection. Beyond the scope.

Instruct not to answer.

BY MS. GHANEM-HAM:

Q. Mr. Caria, did you rely on anyone outside of the people you have identified in forming your opinion that you relied on the Peccole Ranch Master Plan at the time of purchase of your condominium?

MR. LANGBERG: Objection as to form.

You may answer.

THE WITNESS: I may answer, you said?

MR. LANGBERG: You may answer.

THE WITNESS: Okay. What was the last part of the question?

BY MS. GHANEM-HAM:

Q. Have you identified everyone that you spoke to and relied upon in forming your opinion that you relied upon the Peccole Ranch

Master Plan in purchasing your home?

MR. LANGBERG: Same objection.

You may answer.

THE WITNESS: As I said previously, it was an assumption and it might have been something between 2009 and 2013, but I don't recall.

MR. LANGBERG: So you have identified everybody you relied on.

THE WITNESS: That I relied on, that I recall.

MS. GHANEM-HAM: I have nothing further. I have a delayed reaction on the video so I don't know. Can you all hear me?

MR. LANGBERG: Yeah. We heard you have nothing further so we are waiting to see if Lisa does.

MS. RASMUSSEN: I don't have anything further.

MR. LANGBERG: And I don't have anything at all.

THE WITNESS: And me either.

MR. LANGBERG: It's to you, Lisa. I don't know if you want to wrap it up.

MS. RASMUSSEN: Mr. Caria, thanks for

coming in today. Make sure you leave the exhibit book there and that you don't take it with you.

THE WITNESS: I won't. It's not mine.

MS. RASMUSSEN: Okay. I don't think we need anything more with the witness here. If you want to go ahead and let him go.

MR. LANGBERG: All right. Go ahead, Steve. You are free to go.

(Discussion held off the record.)

COURT REPORTER: And do you need copies, Counsel?

MR. LANGBERG: Yes.

MS. RASMUSSEN: Yes.

(Proceedings concluded at 3:18 p.m.)

CERTIFICATE OF REPORTER

STATE OF NEVADA
SS.
COUNTY OF CLARK

I, Cindy Huebner, Certified Court Reporter in the State of Nevada, do hereby certify:

That I reported the taking of the Zoom deposition of the witness, STEVE CARIA, commencing on Wednesday, August 26, 2020, at 12:34 p.m.

That prior to being examined the witness was by me duly sworn to testify to the truth.

That the foregoing transcript is a true, complete, and accurate transcription of the stenographic notes of the testimony taken by me in the matter entitled herein to the best of my knowledge, skill, and ability.

That prior to the completion of the proceedings, the reading and signing of the transcript was not requested by the witness or a party.

I further certify that I am not a relative or employee of an attorney or counsel of any of the parties, nor a relative or employee of an attorney or counsel involved in said action, nor a person financially interested in the action.

IN WITNESS WHEREOF, I have hereunto set my hand in my office in the County of Clark, State of Nevada, this 9th of September, 2020.

_____
Cindy Huebner, CCR No. 806

Exhibit 8

Exhibit 8

the 720 units onto Rampart, and having been in this building for 13 years, I've seen the increase in the traffic on that street, and this traffic cannot be thrown out on Rampart safely for the community.

The apartments, these are apartments. They keep calling them condos, but every time that we hear about these condos, they are going to be operated as apartments for six years. So, let's call them apartments, and there are 2,400 apartments that are going to be in a high profile development that do not meet the criteria. So, I've got a letter for the Council (sic) from my client that will show our objections.

CHAIRMAN MOODY

Thank you. We'll make that a part of the record tonight.

KEVIN BLAIR

Thank you very much.

CHAIRMAN MOODY

Thank you. Okay, ladies and gentleman, it looks like we're to the two minute portion for tonight's meeting. So, come on up. Your name and address, please.

STEVE CARIA

Yes, my name is Steve Caria. I live at 9101 Alta Drive, Unit 202. I'm here representing on behalf of a petition that was signed on October 13th by residents and a few renters of the 1 Queensridge Place. I'm sorry, I have a very bad voice. I have a vocal cord problem. I hope you can understand me.

First I would like to address the fact that 25percent of the people at 1 Queensridge Place are renters. Approximately 30 to 50 percent of the people at 1 Queensridge Place are second, third, or fourth homes are not around often at any given time. So, basically, we have about 30 percent of the people are local and here living at the complex. Having said that, I'd like to read this

petition. We have 50 signatures and 41 residents, the petition states, we the undersigned residents of 1 Queensridge Place hereby state our adamant opposition to the development high density housing directly below our homes. This petition is dated October 13th, 2016. Now, this is 50 signatures. This is a pretty big quorum as it relates to the number of people that live at Queensridge. But to take this even further, a couple things I'd like to say, one, being someone that's served the public, I wanna thank you and appreciate that all of you are giving your time to do this. This is not a simple job, and this is a complex, very difficult situation that you're faced with, however a very important one.

One of the things that's happened and many of the people that have signed this are in agreement with this, from the very beginning, many of the Queensridge residents believed this is a shell game that doesn't pass the smell test.

CHAIRMAN MOODY

Mr. Caria, let me ask you, and I'm sorry to cut you off, so, I know you're speaking on behalf of the 50 that have signed?

STEVE CARIA

Yes.

CHAIRMAN MOODY

Are you speaking on behalf of five or more people that are here tonight?

STEVE CARIA

I don't know. Yes. You can see the people there.

CHAIRMAN MOODY

Okay. I don't want to see hands raised for the second time. You've already got counted. I've seen several of you. It looks like you had five. So, I'm going to give you three additional minutes.

STEVE CARIA

Yeah, well, thank you. The absolute support from the City staff in rubberstamping this project is at epic levels. Having done developments both inside the United States and outside the United States, this is an egregious project. It just doesn't comply with the standards that I'm used to or that I've ever seen.

Councilman Bob Beers, I met with him personally at one of the meetings, had a conversation with him, and he said that this was absolutely an inverse condemnation issue and $100 million was going to be paid by the City of Las Vegas in the event that this project was turned down. I asked Mr. Jarvis, I'm sorry, I won't pronounce your name correctly, if that in fact was the case because I've heard from other people that is not the case. I've also heard the developer as well as Bob Beers make the statement that this is a done deal. Wow, a done deal. To change a planned community like this is a done deal. Think about it. Just of course just more fantasy. But one question that has already been brought up to you is, if this was in your backyard, in your community, I wonder how you would vote under those circumstances. I don't think that you would be very appreciative of this existing.

The developers are working the political landscape to the maximum. They seem to have done some things in terms of the politics, but the reality of this is, going back to what I said before, it has changed many times, it's worn down a lot of the people, we have a lot of our residents are in their 70s, 80s, and 90s, they don't even attend all of this, and many of them are not even here. We ask that you adamantly vote against this particular project and not support it. Thank you.

CHAIRMAN MOODY

Thank you. And before we move on, I'm going to ask Mr. Jerbic. I've heard this comment now a few times about inverse condemnation and perhaps you could address that for us.

BRAD JERBIC

I'll be happy to. The, with all due respect to what everybody says, this is what I believe are the facts. When EMB acquired the property in Queensridge, that's the Badlands Golf Course, they

Exhibit 10

Exhibit 10

Langberg, Mitchell

From: Steve Caria <stevecaria@yahoo.com>
Sent: Tuesday, August 18, 2020 2:35 PM
To: Langberg, Mitchell
Subject: Fw: Information discussion/summary re. depositions

Subject: Information discussion/summary re. depositions

Mitch,

[redacted]

Information and contacts I had prior to my emailing the petition to OQP residents:

*****CROCKETT Transcripts and Ruling. [redacted] I did recall that Judge Crockett stated that the City of Las Vegas did not follow their own guidelines for development, didn't listen to their staff, and concluded that the developer should have been required to file for a MAJOR MODIFICATION to Badlands. Judge Crockett added that the developer had bought "a pig in a poke."

*****Newspaper Article, Jamie Munks (LV Review-Journal Jan. 19th 2018). "Las Vegas 'Abused discretion' in Badlands vote, judge rules." [redacted]

*****Ongoing contact with Frank Schreck, beginning approx. 2015. [redacted] In addition, although I received the initial email from Anne Smith in regards to the petition it was known that Frank had drafted the petition (see emails I sent to you). [redacted]

*****Ongoing contact with the land use consultants (George Garcia and Doug Rankin), Queensridge Residents, One Queensridge unit-owners, Steve Seroka and his asst. Marc Newman among others.

*****Queensridge Residents (multiple parties that I cannot recall/identify--although a few names jump out) that stated they had sales brochures and other material related to the purchase of prime golf course lots (sold at a premium) without any statement that the golf course could be converted to residential and/or commercial use. It was my recollection that they thought the land was zoned Open Space/Park/Golf which supported the premium price paid. Also, a number of OQP residents also were of the belief that the golf course was part of an OPEN SPACE/PARKS entitlement.

*****Approximately late December, 2017 or the first week of January, 2018 I saw signage with The City of Las Vegas logo that was posted at different locations around the Badlands property saying: LAND USE ENTITLEMENT REQUEST, which I believe was to be a General Plan Amendment to change the 250+ acres from OPEN SPACE/PARK to MEDIUM/LOW RESIDENTIAL. [redacted]

*****Sometime, I believe in 2016 Bob Beers and Brad Jerbic attended a meeting to discuss Badland's related concerns/issues with OQP residents. This meeting took place in the retreat room at OQP. At that meeting Bob Beers stated that the developer had an "inverse condemnation" case against the City because he had an absolute right to develop. After the meeting, I believe it was Lenny Swimmer and myself spoke with Brad Jerbic about Bob's statement, (as I best recall) and Mr. Jerbic stated that he "did not" believe that the developer has established an inverse condemnation action against the City of Las Vegas.

*****There were several meetings/gatherings with/without Frank Schreck, and George Garcia that took place beginning in 2015 until the most recent Supreme Court ruling. At these meetings several of the items listed above were discussed/shared about details related to the lawsuit, fundraising, interactions (or lack of) between EHB and residents of the Queensridge community. Attending these meetings would vary, but included very knowledgable people of the main issues, such as, Steve Seroka (after his election), Frank, George, President's of the impacted HOA's, residents, etc.

*****I attended several (too many) City Council meetings related to the Badlands development. At one of these meetings Bob Peccole spoke, and discussed, as best I recall, that it was the family's intent that Badlands was to remain Open Space. To my recollection, this coincides with a gentlemen, who described himself, as the groundkeeper for the Peccole's during the time of development of the Master Plan Community. My recollection is he stated much of what Bob Peccole has also stated in the public record.
At two other City Council meetings: a real estate law professor from UNLV (never had his name) spoke to the City Council and said (as I recall) that in his opinion the Badlands was part of the Master Plan Community and thus would require a major modification to change the zoning.
At another council meeting, [redacted]

*****I believe sometime in 2015 I met with Greg Goorjan, the realtor who said he was involved in the sale of the Peccole land to the development group. A couple of things he mentioned (as best I recall) is that the seller requested a HOLD HARMLESS AGREEMENT, between the seller and buyer. I have never seen this document, but assumed Greg wasn't lying. My assumption was that the seller's believed that the Badlands property was OPEN SPACE and potentially not developable. I came to this conclusion because the effective cost of the property, I have been told, is approximately $30,000 per acre for the 250+ acres. Considering that a recent sale on Alta, within approximately 1/2 mile of Badlands, for 350+ units sold was approx. $1,500,000/acre would make the entitlements worth an enormous multiple of the purchase price. If this is all correct, I could only assume that the Peccole family did not in fact, believe that Badlands was anything other than OPEN SPACE.

[redacted]

Exhibit 11

piecemeal this, that he needs to really negotiate in good faith and fair dealings. This is common sense, common sense that he should deal with us fairly, with the community.

And I would ask that you help us, as our elected officials, to really look at us and help our homeowners get a fair shake from this developer. And I really appreciate your time, and I would ask you to also just remember the way that he talked to this, you know, Council in November and understand that's the way that we've been treated and talked to for the last 15 months. Thank you.

STEVE CARIA

Mayor, Council members, Steve Caria, 9101 Alta Way. It’s pretty hard, well, and first of all, I guess I should recognize Councilman Barlow, are you there? Councilman Barlow, hello?

COUNCILMAN BARLOW

Yes, I can hear you.

MAYOR PRO TEM ROSS

I can answer for you.

STEVE CARIA

No, I just wanted to check in and see if you were hanging around. A question I have, oh, Mr. Ross. Thank you. Can you tell me is this normal procedure to have somebody on the phone? I don't know. Is that? It is normal procedure?

MAYOR GOODMAN

Yeah.

STEVE CARIA

Okay. Good. Well, very good. You know, it's hard to pick up and to say what everybody else has said here. But I do want, I do want to make a couple of things known.

Last time we, I came to the Council, I brought in a petition with 100 names on it from Queensridge opposing the project. Queensridge isn't the only one. Queensridge Towers isn't the only ones in the Queensridge community that are objecting to this particular project. The entire Queensridge community is approximately 80% opposed, 80%. Please, listen to your constituents. Listen to the people that are in these neighborhoods. If this was your neighborhood, I can tell you, you would be wanting to stick up for what's right and what's just, and you've heard that from plenty of people. The last thing I want to leave you with. I've watched the video four times of the last meeting. And at the last meeting that took place, Mr. Lowie came on and some people would say rather aggressively to the Council and might have even so much have had a veiled threat as to what you promised or what you didn't. Now you know what we've been dealing with, and we're not Council members. We're just members of the community. We ask for your support. Vote no, no to the general amendment and no to 435 units. It's going to bring more development -

MAYOR GOODMAN

Thank you.

STEVE CARIA

- more egregious activity at this location.

MAYOR GOODMAN

Thank you.

STEVE CARIA

Thank you.

LARRY SADOFF

Madame Mayor, Council members, my name is Larry Sadoff, and I live at 9101 Alta Drive. And although I strongly oppose the project, I'd like to leave you about three words, what is fair? What is fair? And I know you have a tough decision to make, but clearly, as Mr. Jerbic said, you

Exhibit 12

To: lvcouncilman@hotmail.com[lvcouncilman@hotmail.com]
From: Bob Coffin
Sent: Tue 6/20/2017 4:46:26 PM
Subject: FW: Badland's Development vote

From: Jim Sandoz
Sent: Tuesday, June 20, 2017 9:46:20 AM (UTC-08:00) Pacific Time (US & Canada)
To: Steve Caria
Cc: Carolyn G. Goodman; Lois Tarkanian; Stavros Anthony; Bob Coffin; Steven Ross; Bob Beers; Ricki Y. Barlow; Steven Seroka; michele@votefiore.com
Subject: Re: Badland's Development vote

Dear Mayor and City Council,
i strongly agree with Steve Caria regarding the Badlands Developement what is the rush, you have been affecting our lives and property values during this development process why not wait a little longer and have the new members of the council way in on the decision.

Jim Sandoz
[redacted]

On Jun 20, 2017, at 9:00 AM, Steve Caria <[redacted] wrote:

Dear Mayor and City Council Members and "Lame Ducks",

It is obvious to all of Ward 2, and much of Las Vegas that Yohan Lowie, Vicky DeHart and EHB have been awarded unjustified support by the Planning Commission and the Las Vegas City Council.

It is unfathomable that the City Council would not swear-in the newly elected officials, Steve Seroka and Michele Fiore at this upcoming City Council Meeting. However, it follows the pattern of special treatment given to Yohan Lowie, Vicky DeHart and EHB during this arduous and highly contentious process over the past two years.

The constituents in Ward 2 were primarily focused on the Badland's Development (#1 debated item) during the June election, and incumbent Beers was sounded defeated primarily because of his support of The Badland's Development! Ward 2 and its residents are not in favor of this developer being allowed to side step the normal developer process and go directly to the Council and receive special treatment. What's the rush? You successfully avoided having elected officials not being sworn in to do what they were elected to do, support the people! Something doesn't feel or smell right to this entire process involving Mr. Lowie and his associates.

As a resident in Ward 2, and having been a real estate developer on projects both in the US and in foreign countries I am appalled at the overwhelming support "some" of the council is giving to this developer. It is time to take a deep breath and table this vote on the developer agreement until the July meeting. I have not seen Steve Ross nor Ricky Barlow ask one relevant question to the developer in the many meetings I have attended. Are they experts in real estate development? Are they persuaded by other factors? What is going on? No one even questions Bob Beers motives, they "GET IT"!

In fact, the unwavering support from Bob Beers indicates a conflict of interest and he should recuse himself from any matter involving Yohan Lowie, EHB and related parties.

Mayor Goodman, your legacy could well rest on the decision you make involving this development. There are thousands, and thousands of eyes watching this matter on Wednesday.

Do the right thing for the people, and delay the vote on the developer agreement until the July Council Meeting so residents and HOA's in Ward 2 can properly review the developer agreement and propose appropriate adjustments. Anything less than this will show favored treatment to Yohan Lowie and his associates.

It is incumbent on the Mayor, and City Council Members to do the right thing, and table this developer agreement until the newly elected officials, voted into office by the people, are seated and allowed to participate in this very important decision involving the daily life's of those that live in and surround the Queensridge community.

I know you will do the RIGHT thing!

Regards,

Steve Caria

[redacted]

Exhibit 13

MAYOR GOODMAN

Thank you.

JIM JIMMERSON

The solution is resolution between conversations of the homeowners and the developers of the land for which this moratorium may or may not apply.

MAYOR GOODMAN

Thank you.

JIM JIMMERSON

Thank you. I appreciate working in front of you. Thank you.

MAYOR GOODMAN

Thank you.

STEVE CARIA

Steve Caria, 9101 Alta Drive. Mayor, Council members, first I think that, you know, one of the major things is we've seen a number of heroic events and people recognized earlier today. The Badlands development is not one of them.

One of the things that we heard from the gentleman earlier is that there are only 15 or 20 residents that are opposed to Badlands. This is simply not true. I personally had a petition with over 100 names at One Queensridge Place, that I presented to the Planning Commission and also to this Council, opposed to this project. Now, I can tell you, 100 names at One Queensridge Place is the majority of the people, because no one is never there.

The second thing is, is that there were two surveys, one by One Queensridge Place. Seventy-five percent of those that responded, 75 percent of those that responded at One Queensridge Place opposed the project. Eighty percent at the Queensridge residences opposed the project of those that responded.

Councilman Seroka won the election. His election was against an incumbent. The number one issue of that election was the Badlands development. The people are opposed to it. You talk as if,

you know, you hear people saying that the people are in favor of it. Yes, some are, a few, and they're the distant few, not the majority.

To carry on, just a couple of other things. Councilman Seroka on August 2nd provided a factual and in-depth and a knowledgeable overview of this development. I really ask for you Council members to support the Ward Council member and his position, because he's put in hundreds of hours to study this.

You also heard today that there are other projects throughout the nation that have put on moratorium successfully to study these kinds of cases and these kinds of circumstances. I believe that Mr. (sic) Seroka is in favor of a moratorium, because it makes sense. We need to reset. Everybody is burnt out. There's (sic) been multiple changes, multiple factors that have taken place. We all know that, and it has been stated before, a lot of the items that have upset the community. I'm not going to relist them. You know what they are. You've heard them.

Let me see here. One council member, I do want to bring this up. One council member, who's really been falsely accused of being anti-Semitic, that just isn't true. Members and residents of the Jewish community at One Queensridge Place have come up to me and said this. They don't believe that to be the case whatsoever. And I want to say then we give our approval to Mr. (sic) Coffin.

The developer is responsible for this development. He's in a position to make tens, if not hundreds of millions of dollars flipping the land. He's not going to build out these projects. And as a result of that, I think that it's his responsibility. He should carry the load, and we shouldn't be responsible for him having to wait six months.

Last comment and that's this. If any one of you, your family, your circumstances, or your community was going to have two 150-foot buildings built in your backyard, a 130-unit hotel built in your backyard, in the middle of a planned community, I don't believe any one of you would vote in favor of that.

Please support Ward 2, our representative, Mr. (sic) Sheroka (sic) in terms of the views that he's already suggested. Thank you.

MAYOR GOODMAN

Thank you. Next.

Electronically Filed
10/14/2020 1:12 AM
Steven D. Grierson
CLERK OF THE COURT

Exhibit 14

To: Steven Seroka[sseroka@lasvegasnevada.gov]
From: Steve Caria
Sent: Wed 2/14/2018 3:20:57 PM
Subject: Badlands Development

Steve,

This development madness has gone on way tooooo long. Many of us are hopeful you will speak UP and have your voice heard.

We understand Goodman is lost cause as is Fiore. Fiore just makes a fool of herself and needs to know she is NOT supporting the residents of YOUR ward.

This has gone on too long and we need a voice Steve. You understand the development and itâ€™s issues very well.

Please stand up and make a very clear statement. I know you know this is nonsense.

Thank you,

Steve

Sent from my iPhone

Exhibit 15

THE JIMMERSON LAW FIRM
A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW

James J. Jimmerson*
Lesley E. Cohen
Michael C. Flaxman

*ALSO ADMITTED IN CALIFORNIA

March 20, 2018

By Email and U.S. Mail

Steve Caria
9101 Alta Dr. # 202
Las Vegas, NV 89145

Re: **Request for Preservation of documents, electronically stored information and other evidence.**

Dear Mr. Caria:

We have been retained to prepare this letter on behalf of the owners of approximately 250 acres of real property upon which the Badlands Golf Course was formerly operated ("the Property"), including Fore Stars, Ltd., 180 Land Co., LLC and Seventy Acres, LLC, as well as its principals and executives, including EHB Companies, Yohan Lowie, Vickie DeHart, Paul DeHart and Frank Pankratz (collectively for purposes of this letter, called "Property Owners.")

This letter is sent as a formal request that you comply with your legal duty to preserve any and all evidence relating to the Property and the Property Owners, as defined by Rule 34 of the Federal Rules of Civil Procedure and Rule 34 of the Nevada Rules of Civil Procedure. Additionally, Nevada Revised Statute 199.220 provides criminal penalties for failing to preserve evidence and states in pertinent part:

> Every person who . . . with intent to delay or hinder the administration of the law or prevent the production thereof at any time, in any court or before any officer, tribunal, judge or magistrate, shall willfully destroy, alter, erase obliterate or conceal any book, paper, record, writing instrument or thing shall be guilty of a gross misdemeanor.

To fulfill your legal obligation, you must take any and all reasonable steps to preserve all hard copy documents and electronically stored information, including, but not limited to, emails, social medial posts, and text messages, and computer, phone and tablet hard drives and memory, that could be relevant to the Property and the Property Owners. Such evidence includes, but is not limited to, letters, emails, any form of social media, text

messages, voice messages and the like that relate in any way to the Property or the Property Owners, including, but not limited to, the following:

- Any and all communications in any form by and between homeowners and the related HOA;

- Any and all communications in any form to and from the members of the Las Vegas City Council or its staff;

- Any and all communications in any form to and from the members of the Las Vegas City Planning Commission or its staff;

- Any and all communications in any form to and from any employee of the City of Las Vegas;

- Any and all communications in any form to and from any quasi-governmental bodies including but not limited to the Las Vegas Valley Water District, the Clark County School District, and the Las Vegas Fire Department;

- Any and all records of funds used or provided to others for use relating in any way to the Property, the Property Owners, including but not limited to any and all legal disputes relating to the Property or Property Owners;

- Any and all public or provide posts, interviews, social media posts, or communication exchanges regarding the Property or the Property Owners; and

- Any and all communications between and among homeowners relating in any way to the Property or the Property Owners.

The foregoing list is not exhaustive and you must preserve all information relevant to the Property and/or its owners. All hard copy and electronically stored information must be preserved intact and without modification. Your failure to preserve relevant information may constitute a spoliation of evidence which could allow for a variety of remedies including sanctions against you.

///

///

///

We trust that you will preserve the information as required, but in the event of a dispute arising from your failure to do so, we will rely on this letter in Court as evidence of this request and notice to you of your preservation obligations.

Thank you for your attention to the foregoing.

Sincerely,

THE JIMMERSON LAW FIRM, P.C.

James J. Jimmerson, Esq.

JJJ/sp

Exhibit 16

RSPN
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

DEFENDANT STEVE CARIA RESPONSE TO PLAINTIFFS' AMENDED FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS RELATED TO DEFENDANT'S ANTI-SLAPP SPECIAL MOTION TO DISMISS

Defendant Steve Caria ("Caria") responds to Plaintiffs' Amended First Set of Requests for Production of Documents Related To Defendants' Anti-SLAPP Special Motion to Dismiss as follows:

RESPONSES TO AMENDED FIRST SET OF

REQUEST FOR PRODUCTION OF DOCUMENTS

REQUEST FOR PRODUCTION NO. 1:

If you relied on any of the following in preparing the Declaration(s), please produce the following: all documents by and between you and any other individual concerning the Land upon which the Badlands golf course was previously operated, including but not limited to, any past or

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

present homeowner within the Queensridge common interest community (hereinafter "Queensridge"), any employee of the management company that manages the Queensridge HOA, any Las Vegas City Council member, any Las Vegas Planning Commissioner, and any Las Vegas City employee.

RESPONSE TO REQUEST FOR PRODUCTION NO. 1:

Responding party has no documents responsive to this request.

REQUEST FOR PRODUCTION NO. 2:

If you relied on any of the following in preparing Your Declaration, please produce the following: any title and escrow documents concerning or related to Your purchase of a residence/lot in Queensridge as stated in the Declaration.

RESPONSE TO REQUEST FOR PRODUCTION NO. 2:

Responding party has no documents responsive to this request.

REQUEST FOR PRODUCTION NO. 3:

To the extent that you relied on any documents when you made the following statement in Your Declaration, please produce all such documents:

> 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….

RESPONSE TO REQUEST FOR PRODUCTION NO. 3:

Responding party relied on the transcript of the proceedings in the *Binion* matter which is produced with these responses. Responding party also relied on the Crockett decision, but has not located it. Further, Responding party also relied on an email which is produced with these responses.

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100 North City Parkway, Suite 1600
Las Vegas, NV 89106-4614
702.382.2101

REQUEST FOR PRODUCTION NO. 4:

To the extent that you relied on the following for making any of the statements in the Declaration(s), please produce the following: all non-privileged communications between You and any other resident member or former member of the Queensridge HOA regarding the allegations in the Complaint on file in this case.

RESPONSE TO REQUEST FOR PRODUCTION NO. 4:

Responding party relied on an email which is being produced with these responses.

REQUEST FOR PRODUCTION NO. 5:

Produce any and all documents in Your possession between you and the other two defendants named in this case that You relied on in making the declaration(s) you executed or gathered.

RESPONSE TO REQUEST FOR PRODUCTION NO. 5:

Responding party has no documents responsive to this request.

DATED this 21st 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

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 **DEFENDANT STEVE CARIA RESPONSE TO PLAINTIFFS' AMENDED FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS RELATED TO DEFENDANT'S ANTI-SLAPP SPECIAL MOTION TO DISMISS** be submitted electronically for filing and/or service with the Eighth Judicial District Court via the Court's Electronic Filing System on the 24th 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

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

----- Forwarded Message -----
From: Schreck, Frank A. <fschreck@bhfs.com>
To: 'BUCKLEY, MICHAEL' <mbuckley@fclaw.com>; 'Shauna Hughes' <shughes@lynchhopper.com>
Cc: Jack Binion (tina@blizzardam.com) <tina@blizzardam.com>; rogerpwagner@hotmail.com <rogerpwagner@hotmail.com>; Clyde Turner (ctt@turnerinvestments.net) <ctt@turnerinvestments.net>; Jeffrey Fine (JFine@finelv.com) <jfine@finelv.com>; Elaine Wenger-Roesener (elaine@queensridgehoa.com) <elaine@queensridgehoa.com>; Elise Canonico (elisesellslvhomes@gmail.com) <elisesellslvhomes@gmail.com>; tim@timmcgarry.net <tim@timmcgarry.net>; 'Steven Seroka' <stevenseroka@live.com>; 'Steve Caria' <stevecaria@yahoo.com>; Christina Roush (ceroush@gmail.com) <ceroush@gmail.com>; Kenneth Thompson (kenneth.thompson@swgas.com) <kenneth.thompson@swgas.com>
Sent: Thursday, January 11, 2018, 02:23:18 PM PST
Subject: RE: help [FC-Email.FID7068920]

A-17-752344-J The Judge spent at least 30 minutes explaining why the city violated its own ordinance and staff recommendations. He hit every point imaginable including stating Yohan bought the property without any contingency on entitlements so he bought a “pig-in-a-poke”. He pointed out Yohan said he didn’t buy the property until he had received the approval of each Council person. He said Yohan wore the city down until it just caved. He also spoke of the open space and the reliance QR residents placed in the approved Master Plan when they bought expensive lots. The transcript will be priceless and very useful in everything we do going forward.

Frank A. Schreck
Brownstein Hyatt Farber Schreck, LLP
100 North City Parkway, Suite 1600
Las Vegas, NV 89106
702.464.7058 tel
FSchreck@BHFS.com

TRAN

IN THE EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA

JACK BINION, Plaintiff,	)	
vs.	)	Case No.A-17-752344-J
	)	Dept. No. 24
LAS VEGAS CITY OF, ET AL, Defendants.	)	

HEARING

Before the Honorable Jim Crockett

Thursday, January 11, 2018, 9:00 a.m.

Reporter's Transcript of Proceedings

REPORTED BY:

BILL NELSON, RMR, CCR #191
CERTIFIED COURT REPORTER

APPEARANCES:

For the Plaintiff:	Todd Bice, Esq. Dustun Holmes, Esq.
For the Defendants:	Christopher Kaempfer, Esq. James Smyth, Esq. Stephanie Allen, Esq. Philip Byrnes, Esq. Todd Davis, Esq.

Las Vegas, Nevada, Thursday, January 11, 2018

* * * * *

THE COURT: Jack Binion versus Las Vegas City Of. Please tell me that somebody ask this be reported.

THE COURT REPORTER: No, Judge.

MR. BICE: We'll make that request, Your Honor, Plaintiffs will.

Todd Bice and Dustun Holmes on behalf of the Plaintiff.

MR. HOLMES: Dustun Holmes on behalf of Plaintiff.

MR. KAEMPFER: Chris Kaempfer, K-a-e-m-p-f-e-r, my father was a Court Reporter, on behalf of Defendant Seventy Acres, together with James Smyth from our firm and Stephanie Allen.

And we have in-house counsel Todd Davis on behalf of Seventy Acres.

MR. BYRNES: Phil Byrnes for the City Of Las Vegas.

THE COURT: All right.

Have a seat.

MR. KAEMPFER: Your Honor, if I could, also Yohan Lowie and Vickie DeHart are the ownership on

behalf of Seventy Acres are here in court.

THE COURT: Mr. Lowie and who?

MR. KAEMPFER: Vickie DeHart.

THE COURT: Okay.

So I have read and reread these briefs several times now. I've read them a minimum of two times, and in some cases three times.

The matter has been very competently and comprehensively briefed by counsel for the Petitioners, for Seventy Acres, and for the City of Las Vegas, and I appreciate that.

I want to tell you what my inclination is, and I will then reference some of the things from the briefs that I think would help to explain what my inclination is and why, and then I will invite counsel to make any addition oral argument they wish to make that isn't a reiteration of what is in your briefs.

Please be comfortable knowing that I have read your briefs. They are heavily highlighted and annotated, and I have referred to the exhibits you have directed me to. I realize not all 23,000 pages were included, but I appreciate that too, there's no need to include things that don't specifically support and oppose a point.

So I've looked at the -- although I didn't have the original unabridged set of City's exhibits first presented in the black binder, then I got the other set in the white binder, and I've had a chance to review records, and I'll call it testimony, even though it's unsworn, of people who spoke at the various hearings.

I find the Petitioners' arguments persuasive.

I think that the city failed to follow LVMC, Las Vegas Municipal Court, Rule 19.040, and staff recommendations that a major modification needed to be approved in order for the application to be approved. I realize that there were 23,000 pages of information, but the city and Seventy Acres repeat this many times, but the mere volume or number of pages is really not something that necessarily carries the day.

The question is, what do they say?

There is -- For the Court Reporter's benefit I'll say, there is reference to Peccole Ranch Master Plan and Peccole's P-e-c-c-o-l-e, and there's a reference to Peccole Ranch Master Plan number II, Roman numeral two.

Historically this is a project that had --

there was a phase 1 of Peccole Ranch, and Badlands, which was a golf course in phase 2 of Peccole Ranch. Both golf courses were designed to be in a major flood zone and were designated as flood drainage and open space.

At the time that was done 25 years ago or more the city mandated these designations to address the natural flood problem and the open space necessary for master plan development.

Phase 2 of the Peccole Ranch Master Plan was approved on April 4th, 1990. That specifically defined the Badlands 18-hole golf course as flood drainage, in addition to satisfying the the required open space necessitated by the city for master planned development.

Keep in mind that I've lived here since 1952, 1-9-5-2, so I am familiar with how things looked before master planning became the way things are done here in the Vegas Valley.

The phase 2 golf course open space designation was for 211.6 acres.

The William Peccole family knew that residential development would not be feasible in the flood zone, but as a golf course. It could also be used to enhance the value of the surrounding

residential lots.

The staff, when it finally came down to the application for the subject 17.49 acres, the staff repeatedly explained that this had to be a major modification had to be made to the master plan in order to approve the application.

The staff said, the site is part of the 1569 acre Peccole Ranch Master Plan. This is the staff speaking.

Pursuant to title 19.10.040, a request has been submitted for a modification to the 1990 Peccole Ranch Master Plan.

So the applicant new that they needed to apply for that, and staff said it was necessary.

In terms of the record I'm referring to, I'm referring to pages 1 through 27 -- pages 2425, through 2428, pages 6480 to 6490, and pages 17,362 to 17,377.

The next thing staff said is, the site, and this is in quotes, the site is part of the Peccole Ranch Master Plan. The appropriate avenue for considering any amendment to the Peccole Ranch Master Plan is through the major modification process as outlined in title 19.10.040, close quotes.

Quoting again, the staff says, the current

general plan amendment rezoning and site development review requests are dependent upon action taken on the major modification, close quotes.

Next, the proposed development requires a major modification on the Peccole Ranch Master Plan.

Next quote, the department of planning has determined that any proposed development not in conformance with the approved 1990 Peccole Ranch Master Plan would be required to pursue a major modification.

Next, the Peccole Ranch Master Plan must be modified to change the land use designations from golf/drainage to multi-family prior to approval of the proposed general plan amendment.

The next quote, in order to redevelop the property as anything other than a golf course or open space, the applicant has proposed a major modification of the 1990 Peccole master plan.

The last quote I'll reference of staff, in order to address all previous entitlements on this property, to clarify intended future development relative to existing development, and because of the acreage of the proposal for development staff has required a modification to the conceptual plan adopted in 1989 and revised in 1990.

This alone, without getting into the question of substantial evidence, is legally fatal to the City's current approval of this application because legally they were required to first deal with and make an approval of a major modification to the master plan, and that was never done.

Instead, over the course of many months there was a gradual retreat from talking about that, and instead all of a sudden that discussion and the need for following staff's recommendation just went out the window.

I realize that the city attorneys office offered his interpretation of the law and said that he didn't think that a major modification was required, but the Court's not bound by that, that is simply counsel advising their client.

The city is not permitted to change the rules and follow something other than what was already in place.

The people who bought into this Peccole Ranch Master Plan 1 and 2 did so in reliance upon what the master planning was. They bought their homes, some of them made a very substantial investment, but no one making an insubstantial investment, and they moved into the neighborhood.

I realize that something has happened with the golf course. I myself have never been on this property, I think I went to somebody's home that was somewhere in Queens Ridge one time several years ago, but that's been my total exposure to it, but I understand there was a transfer of the golf course leased property from one person to another, and ultimately a decision was made to close the golf course.

Though one of the things that was interesting in the latter staff recommendations was the applicant began to I guess wear down the City's and the planning department's resistance to this idea was -- well, I'll deal with that later.

The staff made it clear that a major modification was mandatory.

The city can't decide to just ignore that and not go through that process.

With regard to substantial evidence, I'm not going to weigh evidence or offer my opinions on whether the evidence was greater or less than something to substitute fact finding by the city, but the initial flaw, which is a fatal one, is the legal flaw, which is failure to deal with the major modification that was required in order to approve

this application. That in and of itself standing by itself tells me that the city abused its discretion in approving this plan.

When we look at the question of whether or not substantial evidence supports it, it's ironic that the city and Seventy Acres, they want to point to staff recommendations that were made toward the end of this process, but they want to disregard the repeated recommendations by staff in the earlier stages which made it clear that a major modification was a requirement.

Respondents' claim that the staff reports are substantial evidence supporting the city council's approval, but ignore the fact that the staff reports continuously emphasize that approval of the applications were dependent upon a major modification to the Peccole Ranch Master Plan.

Also, when I look at the testimony that was offered by various people at the hearing.

I note that a Michael Buckley made a very cogent but succinct presentation as to why he opposed this application, and that is in the record at page 17,261 and 17,262.

Frank Shreck made an excellent explanation as to why he was opposed to this, and that is in the

record at pages 17,262 to about 17,266, including his responses to questions that were posed to him.

There was also an individual, I think his name was George Garcia, who saw the big picture here, and that is that the progress to all intents and purposes is incompatible with the master plan that is currently in existence out there, and that's why a major modification would be necessary.

One would basically have to allow the tail to wag the dog, so that the applicant's request to allow it to develop the 17.49 acres as requested would be permitted.

I think that in terms of the duties that the city council has, as well as the planning commission, it is to protect and serve. They need to protect the property rights of those who are already committed and invested in a project, and while they can consider an application such as the one that is under consideration here, the applicant did create his own problems because the applicant -- a representative for the applicant, Mr. Yohan Lowie, testified at the hearing that he bought this property before he got zoning approval to do what he envisioned doing, and of course that paints him into a corner.

The old saying is, you are buying a pig in a poke, which means you're buying something in a burlap sack, you don't know what it is, and you are paying a price for it based upon what you think you are buying.

The problem is, he also indicated that he had secured pre-approval from every member of the city council before he made this purchase.

Well, of course he's welcome to have conversations with the members of the city council about what his plans and intentions are, and by the way it's not disputed by any members of the city council he made that representation, and I guess I could reference it specifically, it's in the record at the November 16th, 2016 city council meeting, and the pages 6454 he says at line 6 -- 7364 to 7365 -- I came to all of you, every single one of you here, before I purchased this golf course, and I told you here's the dilemma.

Well, okay, but before making such a substantial investment typically what one does is, one makes the purchase conditioned upon being able to secure the zoning that is going to make this a smart and wise deal for the purchaser, and apparently that wasn't done. The cart was put in front of the horse.

And I mention this parenthetically because whether he did or didn't is of no consequence to me, I think that's the purely legal determination that LVMC 19.040 was not complied with means necessarily that city council abused its discretion, and their approval of the application was legally improper.

I also think that with regard to whether there's substantial evidence to support it that cannot be said at all.

I think because the early indications from the same staff representatives were that major modification needed to be done, and the evidence suggested that city council chose to just ignore and side-step or otherwise steam-roll past it and do simply what the applicant wanted, without justification for it, other than the applicant's will that it be done.

So that's my intended ruling.

I'm happy to hear from council for Seventy Acres and from the City Of Las Vegas, but I need to let you know that if I find you just repeating what is said in your briefs that I read, I'm going to interrupt you and say, you said that in your brief, and I saw that.

I'm asking you to augment anything you wish

to augment.

Mr. Kaempfer.

MR. KAEMPFER: Thank you, Your Honor.

I will deal with just three points.

First of all, with regard to purchasing the property as a pig in the poke, Mr. Lowie received a letter from the City Of Las Vegas that is part of our record indicating that the property is zoned for 17.49 acres RPD-7, so you rely -- You know, I've done a little bit of this over the last 40 years, you rely on representations that you get from the city as to what property is zoned before you make that purchase.

So that is point number 1.

Point number 2 with regard to the modification, it has to be remembered that there are two separate applications that were filed.

The first application that was filed related just to this 17 acres, that application was delayed, so that we could at request of city council do an application on all of the property. They wanted to see everything. They wanted to see the whole project develop.

It was with regard to that project, the whole project developed, a development agreement that they said, and we want you to do a major

modification.

So when we talk about when the major modification is required, it's required when they ask us to do the whole thing.

Now, ironically then we present the whole thing in front of the city counsel, the planning commission, the planning commission denies it. So we withdraw that portion of it, and we move forward only with the 17 acres.

So the major mod that we filed was with this whole project, not with the 17 acres.

Now, that is the first point.

The second point, we then took the 720 units that we originally applied for, and reduced it to 435. When it was reduced to that amount, it then fit within the allowable remaining multi-family units under the Peccole plans.

We have always believed, and we're going to hear from the city that it's not part of the major modification process, and they have demonstrative evidence to show you in that regard, but --

THE COURT: Let me ask you, do you consider this property where the 435 units would be to not be part of the open area drainage?

MR. KAEMPFER: This part was all part of

the golf course.

THE COURT: Right.

MR. KAEMPFER: Not all the golf course has drainage issues on it, and I thank you for asking.

No, it's -- All the golf course is part of drainage, some have drainage issues, some don't.

We can develop some right now, others would require a FEMA approval, so there's a lot --

THE COURT: I saw where a drainage plan was to be submitted. Was it ever actually submitted?

MR. KAEMPFER: Yes, we submitted a plan, it was reviewed, and the county approved conceptually what we were doing, what we would have to do if we wanted to develop the whole 250 because we have to go underground with some underground boxes and then take those out just like they did over at Tivoli across the street.

But I can't emphasize enough, Your Honor, that the two different applications, that this one stands on its own, that if we were here on that 250, and they filed for the major mod and had been denied, the city was recommending we do that, actually the city has determined -- and again, you're going to see that they don't think this property is subject to the major modification provisions at all, but even if it

is, by reducing the density from 720 to 435 we fit within those numbers of Peccole Ranch, and the city will confirm that.

So consequently when you fit within those numbers, a major modification isn't required. That is why staff recommendation at the time of the planning commission was for a major modification.

When we got to the city counsel, there was no requirement of a major modification was part of the application we filed. So this application kind of should stand on its own, and on its own the major modification is not required or recommended.

Candidly, the city, as you well know, they throw recommendations out all the time.

We knew in our minds that this was not something that the law required or the code required, but we said we would do it with regard to the whole 250.

Now, I do want to address one thing.

I live in Queens Ridge. I'd like to tell you how sophisticated I am.

When I bought my home, I'm going to look at the CC & R's and do all that, but I just want to address very briefly the idea this was always intended to be a golf course because if it were

intended to be a golf course, it could have been and should have been protected in that right, it could have been zoned RE, could have been zoned U, could have been zoned something that evidenced it's not developable, but what the Peccoles did is, they painted that golf course with the RPD-7 brush, and then when they created the CC & R's, just to show that wasn't a mistake they put in their CC & R's that the golf course is not part of Queens Ridge, that the golf course cannot be annexed into Queens Ridge, and essentially anybody and everybody who bought into Queens Ridge was not buying any interest in that golf course.

And then, Your Honor, what they did was, if they bought a lot on the golf course, they made you sign an agreement, this is Peccoles, the people who tell you, we always wanted it to be golf course and all that, this is a quote, seller has made no representation or warranties concerning zoning or future development of phases of the planned community, or the surrounding area, or nearby property, close quotes.

And another quote, and in this purchase document purchaser shall not acquire any rights, privileges, interest, or membership in the Badlands

Golf Course by virtue of its purchase of the lot.

And then finally, perhaps most importantly, people on the golf course signed a document that said, the view may at present or in the future include, without limitation, include adjacent or nearby single-family homes, multi-family residential structures, commercial structures, utility facilities, and landscaping, and other items.

So everyone who bought into Queens Ridge, be it me by virtue of CC & R's, and those who have custom lots by virtue of the document they signed, knew that that golf course -- or should have known that golf course could be developed.

I agree with Your Honor absolutely that if in fact that major mod is a requirement, that that was not complied with, but it doesn't apply to the 17, and I can't emphasize that enough, it applies -- they wanted it applied when we were doing the whole thing, not the 17, and when we took it down here from 720 units to 435 units, and we fit within that, the city will tell you that clearly no major modification was required.

So we would respectfully ask that Your Honor consider those statements.

THE COURT: All right.

Thank you, Mr. Kaempfer.

Mr. Byrnes.

MR. BYRNES: Thank you, Your Honor.

The Court's essentially made a legal finding that a major modification is required under 19.10.040.

The one thing the Court hasn't done is, look at the code.

No matter what the staff says, city attorney, you have to look at the code first.

And when I was getting ready for this, I thought this was going to be an issue here, so I actually had a few visual aids prepared.

THE COURT: Just so you know, I did look at the code.

MR. BYRNES: Okay.

Then I want to point something out.

THE COURT: All right.

MR. BYRNES: When you look at the entire development --

MR. BICE: What provision are we reading from?

MR. BYRNES: 19.10.040.

MR. BICE: Very good.

I got a copy right here.

MR. BYRNES: This is a zoning code.

If you look at the first line --

THE COURT: I can't read it.

MR. BYRNES: You can't read it?

THE COURT: No.

THE WITNESS: It's the planned development district.

This was a zoning classification. It applies to parcels that are zoned PD.

Now, the only place I could find in the code where you talk about major mods is 19.10.040(G). That is what everyone is talking about here.

If you read the first line, the development of property within the planned development district may proceed only in strict accordance with the approved master development plan.

This is not a planned development district.

Now, if you go look at the City's website where this section is, there's this map, they referred to this planned development district map.

If you click on it -- Would it help if I moved this up a little further?

THE COURT: Yeah.

MR. BYRNES: If you look on the map, here's the entire city, the pink areas show where the

planned development is.

Queens Ridge is down here, and there's two little pink areas, is the planned development district, these are the only planned development district in the Queens Ridge area.

Now, if you blow that up, you have this map --

THE COURT: Okay.

MR. BYRNES: -- the planned development district, this is the house, this is Renaissance across Rampart, this is the subject property never been classified as a planned development district.

THE COURT: Is it part of the Peccole Ranch Master Plan?

MR. BYRNES: Correct.

But the golf course is not a planned development district, it's RPD.

THE COURT: My question was, is the golf course part of the Peccole Ranch Master Plan?

MR. BYRNES: That's not an easy question.

It's part of the area that is the subject --

THE COURT: I read that the Badlands was part of Peccole Ranch II Master Plan, and then another golf course, I guess it was called Canyon

Gate or something, was part of the Peccole Ranch Number I Master Plan.

MR. BYRNES: Canyon Gate is another area down by Sahara --

THE COURT: I understand, but it was Peccole Ranch Number I, right?

MR. BYRNES: I believe that's correct.

THE COURT: And both of them were referenced in the documents as part of the master plan.

MR. BYRNES: Correct.

THE COURT: Okay.

THE WITNESS: My point is, the major modification requirement of 19.10.040 only applies the property that is zoned PD.

The subject property and the rest of the golf course is not.

THE COURT: Okay.

MR. KAEMPFER: Your Honor, if I might, Mr. Davis, who is in-house counsel, asked me to read a provision -- Actually, might Mr. Davis just explain this?

He's an attorney for the Seventy Acres.

THE COURT: Okay.

MR. DAVIS: Thank you, Your Honor.

Todd Davis, in-house counsel for Seventy Acres.

I just wanted to point out that if you look at the Peccole Ranch Conceptual Master Plan phase II from 1990, if you go to page 16, at the bottom of page 16 there's a couple sentence paragraph, it starts with, quality of development.

Design architecture and landscape standards will be established for the development.

A design review committee will review and approve all plans for parcel development of Peccole Ranch.

Covenants, conditions and restrictions will be established to guarantee the continued quality of development, and a master homeowners association will be established for the maintenance of common landscaping and open space.

Separate restrictions will be maintained to common area space within those areas.

My point is simply, anything that is in Queens Ridge common interest community where Chris lives is part of the master plan, but if it wasn't in the CC & R's, it never made it in.

THE COURT: Okay.

MR. DAVIS: It's a little bit of an

impossibility for us to put this property into his association.

THE COURT: Okay.

MR. BYRNES: Should I continue now?

THE COURT: Sure.

MR. BYRNES: What I wanted to emphasize is, again the develop of property within the planned development district, this is not within the planned development district, Subsection (D) doesn't apply to this property. This property is RPD, not PD.

You have to look at 19.10.050, the next -- ordinance next in order in that development area. That does contain provision plan amendments approvals conditions.

Amendments to an approved site development plan review shall be reviewed and approved pursuant to LVMC 19.16.1.008, that is site development plans.

The a approving body may attach the amendment to an approved site development plan area and so on.

You go through site development, the PD, and you go through major mods through PD.

And in this case the city council did say it was approved.

The Court's entire finding is based upon

the premise that the major mod under 19.10.040 applies to this property, and it doesn't.

This is based on site development review, which is proper, and it's also --

THE COURT: Was the staff unfamiliar with that?

MR. BYRNES: I don't know what the staff is trying to do, but the code --

THE COURT: Aren't the staff members making recommendations, aren't they long-term professionals who make recommendations for the planning commission and city council to rely upon?

MR. BYRNES: They make representations.

The city council is never bound by staff, and staff makes mistakes, but the code is clear.

THE COURT: I'm sure the city council can make mistakes too, we all can.

MR. BYRNES: Lawyers make mistakes too.

THE COURT: So do Judges.

MR. BYRNES: But you have to remember the limited review we have here.

THE COURT: I don't know, this thing went on for well over a year.

MR. BYRNES: The Court's function --

THE COURT: Yes, counsel provided me with

documentation, so I could at least see the black and white results of that review and what the recommendations were.

MR. BYRNES: Correct, Your Honor.

But your role here is to look at the record and say, is there something in here that supports what city council did, you can't re-weigh the evidence, and with all due respect you can't substitute your judgment for what you think the council should have done.

THE COURT: Well, I'm not.

I tried to make that clear at the beginning that my determination is a purely legal one, that I think that LVMC 19.10.040 and the staff's recommendation, and the fact that the applicant applied for a major modification, all indicate that everybody knew a major modification was necessary.

Then somewhere -- Which means city council had to do that.

City council didn't do that, so they abused their discretion.

The fact that they went on down the road and started retreating from the city code and from staff's recommendations, I don't think that that is self-serving evidence to kind of bolster their

decision warrants upholding it.

I'm not re-weighing the evidence though in terms of whether there is substantial evidence to support.

My determination is a purely legal one.

MR. BYRNES: But your determination is based completely on a finding that Subsection (D) of 19.10.040 applies to this property.

THE COURT: Yes.

MR. BYRNES: It's based on the limited expressed language development of property within the plan development district is subject to that provision.

THE COURT: I understand your point, I just disagree.

MR. BYRNES: This is not within a planned development district.

THE COURT: I understand your point, but I disagree.

MR. BYRNES: I mean, if you have questions about the findings here, then I believe your only recourse would be to remand this to city council for further findings about the application of this order.

THE COURT: No, the Court's entitled to interpret the city code and whether or not it's been

complied with, and my interpretation is, the city code required major modifications, and city council didn't make a major modification.

MR. BYRNES: If you like, at the Cimarron Hills case it's clear that the City's interpretation of its own code is entitled to deference, unless it's a manifested abuse of discretion.

THE COURT: Right.

MR. BYRNES: Here if you look at the further cases, you have to defer to the City's interpretation of its own law if it's within the expressed terms of the ordinance.

I have just shown the expressed terms of the ordinance, this doesn't apply.

THE COURT: You have showed me your perspective and your view that the expressed terms of the ordinance doesn't apply, and I understand what you're saying, but I disagree.

MR. BICE: Your Honor, I'd like to just be heard.

THE COURT: Hold on.

I want to make sure Mr. Byrnes is finished.

Everybody will get a chance to address this.

MR. BYRNES: I have said my piece.

I respectfully disagree with the Court, and we'll deal with this down the road, I guess.

THE COURT: Thank you.

Mr. Kaempfer.

Mr. Kaempfer: One more quick COMMENT.

I've been asked to put on the record as well that the Peccole Ranch Master Plan had expired, and that has been before, I just wanted the record to note that's our position that it was expired, and that's why in 2001 the ordinance what was adopted reaffirmed all of the property from you went back to U for PD-7.

So thank you, Your Honor.

THE COURT: You say U. You are referring to the capital letter U?

MR. KAEMPFER: The U, meaning undeveloped.

THE COURT: Right.

THE COURT: Mr. Bice.

MR. BICE: Briefly, Your Honor.

I've known Mr. Byrnes a long time, and I respect Mr. Byrnes, but this argument that is a hyper-technical argument he's now come up with, with all due respect to him, and the city attorneys office they know full well why staff says that provision applies, and said for years it applies, because RPD,

Your Honor, they don't use that anymore.

The RPD criteria that they were using in the past has been eliminated in favor of PD, so to come into court and say he doesn't know why the city staff is applying this criteria to Queens Ridge is with all due respect to Mr. Byrnes that is just not right, he knows full well why staff was applying that provision, because staff has always applied that to -- for PD because RPD doesn't exist anymore, the code had been amended, and it's now called PD. There's no RPD designation going forward in the city.

Let me tell you about Mr. Kaempfer's argument because it's just not -- just not right.

He claims to you that the only reason that they submitted this major modification was, it was in conjunction with the broader development, that's not true.

The original application --

THE COURT: Is that from the 180 code?

MR. BICE: Yes, that was a later application.

The original application was for Seventy Acres LLC, and this is the staff's report from January of 2016, for the record to be clear that is record 17,362 through 17,377 what staff repeatedly

said, repeatedly told them on the Seventy Acres, you must submit a major modification, had nothing to do with the 250, you must submit a major modification because it's a master planned community, and by the way under the City's general plan, this is right out of page 26 of the general plan, the following master development plan areas are located within the southwest sector. Then it goes on to list, and we put this in the brief --

THE COURT: Yes, you told me that.

MR. BICE: All of them, if the city were right on this, Your Honor, all of these master planned communities would be vulnerable to a developer just wiping them out without any modifications to the existing plan. That is not what the code contemplated, and that is why the staff from day one pointed out you must obtain a major modification, because this is covered by the Peccole Ranch Master Plan.

And what the developer did in response to the staff, this is clear back in January of '16, the developer then submitted a major modification, in addition to submitting other applications, and that major modification went by number MOD-63600, that process was going forward.

THE COURT: It's MOD-1600, right?

MR. BICE: MOD-63600.

What was really happening here is, as they were moving forward they realized they were not going to get the votes on that major modification, they can count heads, they just like weren't going to get the approval from the planning commission for it, so that is when they withdrew it.

That major modification was exactly what the city required clear was in 2016, and then they withdrew it, took the position we can can go forward now without a major modification.

But ironically even the staff knew that was wrong after the planning commission meeting because on November 16 of 2016, this is for the record at record 2421 through 2438, staff again repeatedly emphasizes, this is after the planning commission meeting and after the withdrawal, Your Honor, they point out you must have a major modification, and in fact you can't proceed without a major modification for the general planning amendment.

And in fact, Your Honor, I'd point out for the Court on the last page of that staff report there's master planned areas on the graph, right beneath it is Peccole Ranch, and if you go to the

right of that, there's a list of whether or not it's in compliance, and the staff puts N for no because the staff's acknowledging it is not in compliance.

That is why, Your Honor, the statute requires a major modification by it's expressed terms, and I'll find the language here.

THE COURT: Well, in the Exhibit 1 the City Of Las Vegas provided they referenced actually excerpts of Exhibit 1, which they referred to as Exhibits 33 and 35, but I went back and looked at the entirety of Exhibit 1, which included Exhibit 33 and 35, that there were some pages from it, and that is the staff report to the February 15th, 2017 council meeting, which is even after the November 16th, 2016 you are talking about --

MR. BICE: Correct.

THE COURT: -- and it says, the proposed development -- This is on record page 11,240, at the bottom it says, the proposed development requires a major modification of the Peccole Ranch Master Plan.

It says on page 11,241, the department of planning has determined that any proposed development not in conformance with the approved 1990 Peccole Ranch Master Plan would be required to pursue a major modification of the plan prior to or concurrently

with any new entitlement.

It goes on to say, in order for this site development plan review request to be approved, the 1990 Peccole Ranch Master Plan land use designation over this site must be amended from golf course drainage to multi-family.

And then on page 11,242 still talking about that same staff report at page 3, it says that section 19.16.030 (1) of the Las Vegas Zoning Code requires that the following conditions be met in order to justify a general plan amendment, and it is that the Peccole Ranch Master Plan must be modified prior to approval of proposed general plan amendment, and the applicant has submitted a second general plan amendment that would be compatible with the proposed high-density residential land use if the major modifications approved.

That is from record 11,243.

There are additional things that they say are conditions and requirements in that report.

They also say on page 11,243, item number 4, the proposed general plan amendment does not conform to the 1990 Peccole Ranch Master Plan, which designates the site for golf course drainage land uses.

So there's no question that the staff recommendation all along has been that it requires a major modification.

MR. BICE: Exactly, Your Honor.

I don't need to take up anymore of your time.

I wanted to respond.

THE COURT: Don't worry about my time.

We're here to deal with this.

MR. BICE: Mr. Kaempfer's final point where he's arguing something, by the way no one in the city has bought this argument, but I guess he's asking you to accept it, is that because they reduced the density on the 17 acres, they somehow now have made it fit within the pre-existing amount of density allowed for the site, and that somehow means it takes it outside of the major modification requirements.

Again, I'll make two points why that is wrong.

Number one, under the terms of the statute about a major modification, and as the staff recited, it required a major modification. It doesn't matter whether or not they reduced the number of units for formally on the master plan the city approved, and this is for the record page 18 of the master plan for

the density, that Mr. Kaempfer is claiming was pre-approved is only for the 461 acres and excludes the golf course because the golf course was specifically carved out with having no density whatsoever.

THE COURT: Under 461, was 250 and 211, correct?

MR. BICE: No, Your Honor, that 211 was the original golf course.

They later added more golf course to it, and it grew to 250.

The 401 and the 60 are where the houses are at today, which is what they had approved the housing.

What the Peccoles ultimately did, even though they got a total of 4247 units approved, they ultimately didn't build them all because what they did was ended up creating larger premium lots because they recognized they could actually make more money that way, and then they sold these larger premium lots, as opposed to building more homes.

So the land for which development was approved by the City Of Las Vegas has already been developed, and that is why the staff correctly said from day one, if you're going to try and change,

because the city designated this PROS under its plan, it's specifically marked on the City's maps when this purchaser bought this land, he knew full well what it was designated because all you go down and do is at look at the City's maps of the master plan, and it's all designated in green with the letters PROS across it, that's why the staff said, if you're going to try and now eliminate that designation and put houses on that property, it would require a major modification to the Peccole Ranch Master Plan.

I thank the Court for its time.

THE COURT: All right.

MR. KAEMPFER: Your Honor, I appreciate your time, and I know you want to get to the truth of this thing.

The City's never taken that position -- Bradley Jerbic's taken that position about the 435 being within the allowable density, so that isn't something I made up.

Secondly, there's actually no density that is currently authorized for the land that is in question here, the 17.49 acres.

I mean, there's a little dash there indicating that at that point in time they were not allocating anything for that.

I would agree with Your Honor's assessment of it.

I will roll over and play dead if you can show me that on the final staff approval relating to the 17 acres in front of city council it says staff recommendation of approval says, file a major mod.

Staff puts conditions of approval on all of their applications.

They talked about it, a major mod, they have always talked about that, but when it came down to it, when we went from the 720 to the 435, and when we went in front of that city council, there was no recommendation of filing a major mod with conditions relating to SDR-62393, said approval of the general plan amendment approval of shall be void two years, development in conformance with the site plan necessary building permits, but no requirement on the final SDR, which is what she's showing me it is, what I represented to the Court on 050.005.990 where it was part of the site development review approval of a major mod. That is on July 12th of 2016.

Then later on that condition is removed, and I can only suggest, Your Honor, it was removed because reduction in the number of units, the change in not doing the whole plan, but doing just the 17

acres.

So staff talks about a major mod, but when it comes down, are they recommending a major mod, insisting it as a zoning approval?

The answer is, no.

THE COURT: Understand the code requires it.

What I was pointing to was the fact that my interpretation of the law saying that it's required, I find corroboration in the fact that staff recommended to, and the applicant applied for, major modification.

MR. KAEMPFER: Your Honor, so we're clear, Your Honor's point is, a major modification is required under the code?

THE COURT: Yes.

MR. KAEMPFER: All right.

I would like also finally to make one other point.

This master plan was never recorded.

The other communities you're talking about have recorded master plans.

The only thing that was recorded against ours are the CC & R's, so I just wanted that for the record.

Thank you.

THE COURT: Mr. Bice, anything further?

MR. BICE: No, Your Honor.

Well --

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

THE COURT: Okay.

Mr. Byrnes.

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

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

THE COURT: Was this a new development?

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

THE COURT: Okay.

MR. BYRNES: It says --

THE COURT: I mean, the application.

MR. BYRNES: They actually rezoned it for

out of RPD when we did this.

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

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

THE COURT: All right.

Anything else?

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

THE COURT: Okay.

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

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

I referenced some of it by naming the

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

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

I realize you will want the transcript.

MR. BICE: Yes, I will.

That's true.

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

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

THE COURT: All right.

MR. BICE: I'm going to get out a business card to hand to the Court Reporter right now.

THE COURT: Anything further before we adjourn on this matter?

MR. BICE: No.

Thank you, Your Honor.

MR. KAEMPFER: Obviously we thank you for your time.

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

MR. HOLMES: Thank you, Your Honor.

THE COURT: All right.

(Proceedings concluded.)

REPORTER'S CERTIFICATE

I, Bill Nelson, a Certified Court Reporter in and for the State of Nevada, hereby certify that pursuant to NRS 2398.030 I have not included the Social Security number of any person within this document.

I further Certify that I am not a relative or employee of any party involved in said action, not a person financially interested in said action.

/s/ Bill Nelson

Bill Nelson, RMR, CCR 191

C E R T I F I C A T E

STATE OF NEVADA)
) ss.
CLARK COUNTY)

I, Bill Nelson, RMR, CCR 191, do hereby certify that I reported the foregoing proceedings; that the same is true and correct as reflected by my original machine shorthand notes taken at said time and place.

/s/ Bill Nelson

Bill Nelson, RMR, CCR 191
Certified Court Reporter
Las Vegas, Nevada

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Exhibit 17

away or short sell, and I think a lot of us are gonna continue to be adversely affected by adding a few thousand more homes to that neighborhood. Thank you.

STEVE CARIA

Steve Caria, 9101 Alta Drive, Unit 202. I'd like to congratulate, first of all, Steve Seroka for his terrific victory and the new Councilwoman, Michelle Fiore. A couple items I'd like to mention here is, and I, I'm befuddled sometimes, because I really feel, Mayor, with all due respect, that you have some prejudice towards this developer, because let me tell you some of the things that he's done. He's told the people of our residence and our community that it's a done deal, meaning the deal is done. We have no word in it. That's the first thing. So you want to know if he upset people, that's what he did.

The second thing is is that there were threats, and it's on film to the Council members, that he met with each of you, met in your private councils and you agreed to his proposal. That was a threat. Also, that he was a threat to one of the Planning Commissioners that belonged to Lois Tarkanian.

MAYOR GOODMAN

And he never met with me. He never met with me alone. He never made a threat.

STEVE CARIA

That's what he said.

MAYOR GOODMAN

It doesn't make any difference. I am telling you on fact on the record, Yohan Lowie never met in my office with me alone, nor did he make an offer and I said anything.

STEVE CARIA

That's great –. But he did say that, and it's on film. I, in addition to that, there's been an attack on an individual Council member. And I think that we all have to understand that we're not dealing with someone that's reasonable or fair or that people in the community want to live with.

Now, the last thing I want to, because there's (sic) a lot of things I could add to this list, but I've heard Councilwoman Fiore make a statement. And I want to tell you, the statement I don't necessarily agree with. I think the values in our community have already been devastated.

You've heard that over and over again. You've heard a couple of people try to give reasons. But I can tell you trucks backed up for 10 years, for 20 years, rock crushers, development, all that activity taking place in our backyard will cause more destruction and more loss of value than anything we're talking about.

And in addition to that, the entire vote to – unseat Councilman Beers was centered around one primary issue, and the primary issue was to get rid of this development. That was the number one issue in Ward Number 2. And Mr. Seroka is our representative, and I don't know why it hasn't been referred to him earlier to speak on this subject, because he's the one that's talked to thousands of people, knocked on thousands of doors, and we look to him for support. Thank you.

MAYOR GOODMAN

And that is where we've been trying to get to since one o’clock.

STEVE CARIA

I agree with you, Mayor. Thank you so much.

MAYOR GOODMAN

So, if we hadn't had so many repetitive comments, we'd be there, to Mr. Seroka, but he is the end.

STEVE CARIA

Well, I agree. And repetitive comments have come from both directions. And thank you so much.

MAYOR GOODMAN

One presentation only and that was it. Thank you.

JAMES JIMMERSON

Good afternoon. Jim Jimmerson. My address is 9101 Alta Drive. And I'm a resident of Queensridge Towers. And congratulations to both Chairperson (sic) Fiore and Chairperson (sic) Seroka; welcome aboard. And, a difficult issue to begin your – tenure, and I – wish you much success and much good fortune.

I am the lawyer for the developer in the litigation, and our firm is the Jimmerson Law Firm. My address is 415 South 6th Street, Las Vegas, and I'm a native of Las Vegas, and I've lived in Queensridge long ago, since 2001.

I will take in 10 minutes to try to respond to three and a half hours of response. You did allow two of the plaintiffs to testify for about an hour. But I will be brief. But if you'll give me just a few minutes, I'd be appreciative.

You didn't get here by accident. And you heard the comment two or three speakers ago about the homeowner is being held hostage. The reality is the only person that's being held hostage is the developer, if you'll bear with me.

If you read the Staff Report, you will see that the staff recommends approval of the Developer (sic) Agreement. And, at Page Two of the staff's response, it has an analysis, and it provides the reasons for its recommendation for the execution and approval of the Developer (sic) Agreement. And towards the end, it provides a series of findings that are important, that read, beginning, I'll not read them all, the proposed development agreement conforms to the requirements of NRS 278 regarding the content of development agreements.

The proposed density and intensity of development conforms to the existing zoning district requirements for each specified development area. Through addition, development, and design

Exhibit 18

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

Ok

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

Print for badlands stuff

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

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

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

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

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

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

Respectfully,

Darren Bresee
[redacted]

Exhibit 19

IN THE SUPREME COURT OF THE STATE OF NEVADA

SEVENTY ACRES, LLC, A NEVADA LIMITED LIABILITY COMPANY,
Appellant,
vs.
JACK B. BINION, AN INDIVIDUAL; DUNCAN R. LEE; 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. WAGNER; CAROLYN G. WAGNER, INDIVIDUALS AND AS TRUSTEES OF THE WAGNER FAMILY TRUST; BETTY ENGLESTAD AS TRUSTEE OF THE BETTY ENGLESTAD TRUST; PYRAMID LAKE HOLDINGS, LLC; JASON AWAD; SHEREEN AWAD AS TRUSTEES OF THE AWAD ASSET PROTECTION TRUST; THOMAS LOVE AS TRUSTEE OF THE ZENA TRUST; STEVE THOMAS; KAREN THOMAS AS TRUSTEES OF THE STEVE AND KAREN THOMAS TRUST; SUSAN SULLIVAN AS TRUSTEE OF THE KENNETH J. SULLIVAN FAMILY TRUST; DR. GREGORY BIGLER; AND SALLY BIGLER,
Respondents.

Supreme Court No. 75481
District Court Case No. A752344

FILED
AUG 26 2020
CLERK OF COURT

A-17-752344-J
CCJV
NV Supreme Court Clerks Certificate/Judgr
4927249

CLERK'S CERTIFICATE

STATE OF NEVADA, ss.

I, Elizabeth A. Brown, the duly appointed and qualified Clerk of the Supreme Court of the State of Nevada, do hereby certify that the following is a full, true and correct copy of the Judgment in this matter.

JUDGMENT

The court being fully advised in the premises and the law, it is now ordered, adjudged and decreed, as follows:

"ORDER the judgment of the district court REVERSED"

Judgment, as quoted above, entered this 5th day of March, 2020.

16

JUDGMENT

The court being fully advised in the premises and the law, it is now ordered, adjudged and decreed, as follows:

"Rehearing Denied."

Judgment, as quoted above, entered this 12th day of May, 2020.

JUDGMENT

The court being fully advised in the premises and the law, it is now ordered, adjudged and decreed, as follows:

"Order Denying En Banc Reconsideration."

Judgment, as quoted above, entered this 30th day of July, 2020.

IN WITNESS WHEREOF, I have subscribed my name and affixed the seal of the Supreme Court at my Office in Carson City, Nevada this August 24, 2020.

Elizabeth A. Brown, Supreme Court Clerk

By: Rory Wunsch
Deputy Clerk

IN THE SUPREME COURT OF THE STATE OF NEVADA

SEVENTY ACRES, LLC, A NEVADA LIMITED LIABILITY COMPANY,
Appellant,
vs.
JACK B. BINION, AN INDIVIDUAL; DUNCAN R. LEE 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. WAGNER AND CAROLYN G. WAGNER, INDIVIDUALS AND AS TRUSTEES OF THE WAGNER FAMILY TRUST; BETTY ENGLESTAD AS TRUSTEE OF THE BETTY ENGLESTAD TRUST; PYRAMID LAKE HOLDINGS, LLC; JASON AWAD AND SHEREEN AWAD AS TRUSTEES OF THE AWAD ASSET PROTECTION TRUST; THOMAS LOVE AS TRUSTEE OF THE ZENA TRUST; STEVE THOMAS AND KAREN THOMAS AS TRUSTEES OF THE STEVE AND KAREN THOMAS TRUST; SUSAN SULLIVAN AS TRUSTEE OF THE KENNETH J. SULLIVAN FAMILY TRUST; DR. GREGORY BIGLER; AND SALLY BIGLER,
Respondents.

No. 75481

FILED
MAR 05 2020
ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF REVERSAL

This is an appeal from a district court order granting a petition for judicial review of the Las Vegas City Council's decision that approved

20-08895

three land use applications. Eighth Judicial District Court, Clark County; James Crockett, Judge.[1]

Appellant Seventy Acres filed three development applications with the City's Planning Department in order to construct a multi-family residential development on a parcel it recently acquired. Specifically, Seventy Acres filed a general plan amendment, a rezoning application, and a site development plan amendment. Relying on reports compiled by the Planning Commission staff and statements made by the Planning Director, the City's Planning Commission and City Council approved the three applications.

Respondents filed a petition for judicial review of the City Council's approval of Seventy Acres's applications. Respondents' primary argument was that the City failed to follow the express terms of Title 19 of the Las Vegas Municipal Code (LVMC) in granting the applications. Respondents also argued that the City's decision was not supported by substantial evidence. Following a hearing, the district court concluded that the City adopted its interpretation of Title 19 of the LVMC as a litigation strategy and declined to give the City's interpretation of its land use ordinances deference. Citing a report prepared by the Planning Commission staff, the district court found that the City previously interpreted Title 19 of the LVMC as requiring Seventy Acres to obtain a major modification of the Peccole Ranch Master Plan before it could develop

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[1]The Honorables Kristina Pickering, Chief Justice, and Mark Gibbons, James Hardesty, Ron Parraguirre, and Abbi Silver, Justices, voluntary recused themselves from participation in the decision of this matter. The Governor designated The Honorable Lynne Simons, District Judge of the Second Judicial District Court, to sit in place of the Honorable James Hardesty.

the parcel. Therefore, the district court determined that the City's previous interpretation should apply and Seventy Acres was required to obtain a major modification of the Peccole Ranch Master Plan before having the subject applications approved. Accordingly, the district court granted the petition for judicial review and vacated the City Council's approval of Seventy Acres's three applications. Seventy Acres appeals.

Title 19 of the LVMC does not require a major modification for residential planned development districts

This court's role in reviewing an administrative agency's decision is identical to that of the district court and we give no deference to the district court's decision. *Elizondo v. Hood Mach., Inc.*, 129 Nev. 780, 784, 312 P.3d 479, 482 (2013); *City of Reno v. Bldg. & Constr. Trades Council of N. Nev.*, 127 Nev. 114, 119, 251 P.3d 718, 721 (2011). We review an administrative agency's legal conclusions de novo and its "factual findings for clear error or an arbitrary abuse of discretion and will only overturn those findings if they are not supported by substantial evidence." *City of N. Las Vegas v. Warburton*, 127 Nev. 682, 686, 262 P.3d 715, 718 (2011) (internal quotations omitted). When construing ordinances, this court "gives meaning to all of the terms and language[,] . . . read[ing] each sentence, phrase, and word to render it meaningful within the context of the purpose of the legislation." *City of Reno v. Citizens for Cold Springs*, 126 Nev. 263, 274, 236 P.3d 10, 17-18 (2010) (internal citation and internal quotation omitted). Additionally, this court presumes a city's interpretation of its land use ordinances is valid "absent a manifest abuse of discretion." *Boulder City v. Cinnamon Hills Assocs.*, 110 Nev. 238, 247, 871 P.2d 320, 326 (1994).

Having considered the record and the parties' arguments, we conclude that the City Council properly interpreted the City's land use ordinances in determining that Seventy Acres was not required to obtain a major modification of the Peccole Ranch Master Plan before it could develop the parcel. LVMC 19.10.040(B)(1) expressly limits master development plans to planned development district zoning designations. Therefore, the major modification process described in LVMC 19.10.040(G)(2), which is required to amend a master development plan, only applies to planned development district zoning designations. Here, the parcel does not carry the planned development district zoning designation. Therefore, the major modification process is not applicable to the parcel.

Instead, the parcel carries a zoning designation of residential planned development district. LVMC 19.10.050(B)(1) expressly states that site development plans govern the development of residential planned development districts. Therefore, as the City correctly determined, Seventy Acres must follow the site development plan amendment process outlined under LVMC 19.16.100(H) to develop the parcel. LVMC 19.10.050(D). This process does not require Seventy Acres to obtain a major modification of the Peccole Ranch Master Plan prior to submitting the at-issue applications. Accordingly, we conclude that the City Council's interpretation of the City's land use ordinances did not constitute a manifest abuse of discretion. *Cinnamon Hills Assocs.*, 110 Nev. at 247, 871 P.2d at 326 (1994).

Substantial evidence supports the City's approval of the applications

We next consider whether substantial evidence supports the City's decision to grant Seventy Acres's applications. "Substantial evidence is evidence that a reasonable person would deem adequate to support a decision." *City of Reno v. Reno Police Protective Ass'n*, 118 Nev. 889, 899,

59 P.3d 1212, 1219 (2002). In determining whether substantial evidence exists to support an agency's decision, this court is limited to the record as presented to the agency. *Id.* Although conflicting evidence may be present in the record, "we cannot substitute our judgment for that of the City Council as to the weight of the evidence." *Stratosphere Gaming Corp. v. City of Las Vegas*, 120 Nev. 523, 530, 96 P.3d 756, 761 (2004).

The parties dispute whether substantial evidence supported the City's decision to grant Seventy Acres's three applications.[2] The governing ordinances require the City to make specific findings to approve a general plan amendment, LVMC 19.16.030(I), a rezoning application, LVMC 19.16.090(L), and a site development plan amendment, LVMC 19.16.100(E). In approving the applications, the City primarily relied on a report prepared by the Planning Commission staff that analyzed the merits of each application.[3] The report found that Seventy Acres's applications met the statutory requirements for approval. The City also relied on the testimony

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[2]Respondents point to evidence in the record showing that the public schools that serve the community where the parcel is located are currently over capacity and that many of the residents that live in the surrounding area are opposed to the project. However, "it is not the place of the court to substitute its judgment for that of the [City Council] as to weight of the evidence." *Clark Cty. Liquor & Gaming Licensing Bd. v. Simon & Tucker, Inc.*, 106 Nev. 96, 98, 787 P.2d 782, 783 (1990) (explaining that "conflicting evidence does not compel interference with [a] . . . decision so long as the decision was supported by substantial evidence").

[3]The report erroneously found that Seventy Acres had to obtain a major modification of the Peccole Ranch Master Plan prior to submitting a general plan amendment. Setting that finding aside, the report found that Seventy Acres met the other statutory requirements for approval of its general plan amendment, its rezoning application, and its site development plan amendment.

of the Planning Director, who found that the applications were consistent with the goals, objectives, and policies of the City's 2020 Master Plan, compatible with surrounding developments, and substantially complied with the requirements of the City's land use ordinances. Evidence in the record supports these findings. Accordingly, we conclude that a reasonable person would find this evidence adequate to support the City's decision to approve Seventy Acres's general plan amendment, rezoning application, and site development plan amendment. *Reno Police Protective Ass'n*, 118 Nev. at 899, 59 P.3d at 1219.

In sum, we conclude that the district court erred when it granted respondents' petition for judicial review. The City correctly interpreted its land use ordinances and substantial evidence supports its decision to approve Seventy Acres's three applications. We therefore

ORDER the judgment of the district court REVERSED.

_____, J.
Stiglich

_____, J.
Cadish

_____, D.J.
Simons

cc: Hon. James Crockett, District Judge
Ara H. Shirinian, Settlement Judge
Law Offices of Kermitt L. Waters
EHB Companies, LLC
Marquis Aurbach Coffing
Claggett & Sykes Law Firm
Hutchison & Steffen, LLC/Las Vegas
Pisanelli Bice, PLLC
Las Vegas City Attorney
Eighth District Court Clerk

IN THE SUPREME COURT OF THE STATE OF NEVADA

SEVENTY ACRES, LLC, A NEVADA LIMITED LIABILITY COMPANY,
Appellant,

vs.

JACK B. BINION, AN INDIVIDUAL; DUNCAN R. LEE; 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. WAGNER; CAROLYN G. WAGNER, INDIVIDUALS AND AS TRUSTEES OF THE WAGNER FAMILY TRUST; BETTY ENGLESTAD AS TRUSTEE OF THE BETTY ENGLESTAD TRUST; PYRAMID LAKE HOLDINGS, LLC; JASON AWAD; SHEREEN AWAD AS TRUSTEES OF THE AWAD ASSET PROTECTION TRUST; THOMAS LOVE AS TRUSTEE OF THE ZENA TRUST; STEVE THOMAS; KAREN THOMAS AS TRUSTEES OF THE STEVE AND KAREN THOMAS TRUST; SUSAN SULLIVAN AS TRUSTEE OF THE KENNETH J. SULLIVAN FAMILY TRUST; DR. GREGORY BIGLER; AND SALLY BIGLER,
Respondents.

No. 75481

FILED

MAY 12 2020

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER DENYING REHEARING

Rehearing denied. NRAP 40(c).

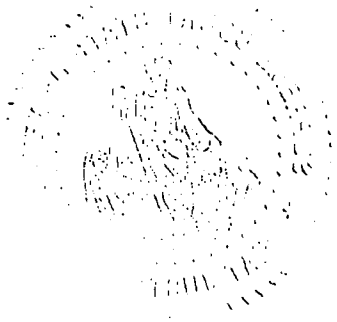
It is so ORDERED.

_____, J.
Stiglich

_____, J.
Cadish

_____, D.J.
Simons

cc: Hon. James Crockett, District Judge
Law Offices of Kermitt L. Waters
EHB Companies, LLC
Hutchison & Steffen, LLC/Las Vegas
Claggett & Sykes Law Firm
Pisanelli Bice, PLLC
Las Vegas City Attorney
Eighth District Court Clerk



IN THE SUPREME COURT OF THE STATE OF NEVADA

SEVENTY ACRES, LLC, A NEVADA LIMITED LIABILITY COMPANY,
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No. 75481

FILED
JUL 30 2020
ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

KENNETH J. SULLIVAN FAMILY TRUST; DR. GREGORY BIGLER; AND SALLY BIGLER,
Respondents.

ORDER DENYING EN BANC RECONSIDERATION

Having considered the petition on file herein, we have concluded that en banc reconsideration is not warranted. NRAP 40A. Accordingly, we

ORDER the petition DENIED.

_____, C.J.
Stiglich

_____, J.
Cadish

_____, Sr. J.
Saitta

_____, D.J.
Simons

cc: Law Offices of Kermitt L. Waters
EHB Companies, LLC
Hutchison & Steffen, LLC/Las Vegas
Claggett & Sykes Law Firm
Pisanelli Bice, PLLC
Las Vegas City Attorney

KENNETH J. SULLIVAN FAMILY TRUST; DR. GREGORY BIGLER; AND SALLY BIGLER,
Respondents.

ORDER DENYING EN BANC RECONSIDERATION

Having considered the petition on file herein, we have concluded that en banc reconsideration is not warranted. NRAP 40A. Accordingly, we

ORDER the petition DENIED.

_____, C.J.
Stiglich

_____, J.
Cadish

_____, Sr. J.
Saitta

_____, D.J.
Simons

cc: Law Offices of Kermitt L. Waters
EHB Companies, LLC
Hutchison & Steffen, LLC/Las Vegas
Claggett & Sykes Law Firm
Pisanelli Bice, PLLC
Las Vegas City Attorney

IN THE SUPREME COURT OF THE STATE OF NEVADA

SEVENTY ACRES, LLC, A NEVADA LIMITED LIABILITY COMPANY,
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JACK B. BINION, AN INDIVIDUAL; DUNCAN R. LEE; 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. WAGNER; CAROLYN G. WAGNER, INDIVIDUALS AND AS TRUSTEES OF THE WAGNER FAMILY TRUST; BETTY ENGLESTAD AS TRUSTEE OF THE BETTY ENGLESTAD TRUST; PYRAMID LAKE HOLDINGS, LLC; JASON AWAD; SHEREEN AWAD AS TRUSTEES OF THE AWAD ASSET PROTECTION TRUST; THOMAS LOVE AS TRUSTEE OF THE ZENA TRUST; STEVE THOMAS; KAREN THOMAS AS TRUSTEES OF THE STEVE AND KAREN THOMAS TRUST; SUSAN SULLIVAN AS TRUSTEE OF THE KENNETH J. SULLIVAN FAMILY TRUST; DR. GREGORY BIGLER; AND SALLY BIGLER,
Respondents.

Supreme Court No. 75481
District Court Case No. A752344

REMITTITUR

TO: Steven D. Grierson, Eighth District Court Clerk

Pursuant to the rules of this court, enclosed are the following:

Certified copy of Judgment and Opinion/Order.
Receipt for Remittitur.

DATE: August 24, 2020

Elizabeth A. Brown, Clerk of Court

By: Rory Wunsch
Deputy Clerk

cc (without enclosures):

Hon. James Crockett, District Judge
Claggett & Sykes Law Firm
Pisanelli Bice, PLLC
Law Offices of Kermitt L. Waters
Hutchison & Steffen, LLC/Las Vegas
EHB Companies, LLC
Las Vegas City Attorney

RECEIPT FOR REMITTITUR

Received of Elizabeth A. Brown, Clerk of the Supreme Court of the State of Nevada, the REMITTITUR issued in the above-entitled cause, on AUG 2 6 2020.

HEATHER UNGERMANN

Deputy District Court Clerk

RECEIVED
APPEALS
AUG 25 2020
CLERK OF THE COURT

IN THE SUPREME COURT OF THE STATE OF 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, Appellees, vs. DANIEL OMERZA, DARREN BRESEE, STEVE CARIA, and DOES 1-1000, Appellants,	Case No: 82338 (lead case) Consolidated With: 82880 (same caption)

JOINT APPENDIX SUBMITTED BY APPELLANTS AND APPELLEES

VOLUME 9 (Pages 1217-1420)

Lisa A. Rasmussen, Esq.
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JOINT APPENDIX INDEX

Vol.	Description	Date	Bates No.
1	Complaint with Exhibits	3/15/18	**1-95**
2	Request for Judicial Notice in Support of Special Motion to Dismiss	4/13/18	**96-147**
2	Motion to Dismiss 12(b)(5)	4/13/18	**148-162**
2	Special Motion to Dismiss	4/13/18	**163-197**
2	Opposition to Special MTD	5/4/18	**198-219**
2	Opposition to MTD 12(b)(5)	5/7/18	**220-235**
2	Reply to Special Motion to Dismiss	5/9/18	**236-251**
2	Reply to MTD 12(b)(5)	5/9/18	**252-262**
2	Request for Judicial Notice in support of Reply to Special MTD	5/9/18	**263-300**
2	Plaintiff's First Supplement to their Opposition to Special MTD	5/11/18	**301-305**
3	Plaintiff's Second Supplement to their Opposition to Special MTD	5/11/18	**306-327**
3	Defendants' Supplement in Support of MTD	5/23/18	**328-365**
3	Plaintiff's Supplement in Support of Opposition to Special MTD	5/23/18	**366-425**
4	Plaintiffs' Errata to Complaint	6/11/18	**426-523**
4	Findings of Fact, Conclusion of Law denying Motion to Dismiss	6/20/18	**524-537**
4	Notice of Appeal to FFCOL	6/27/18	**538-572**
5	Plaintiffs' Motion for an Order Permitting Discovery	9/14/18	**573-631**
5	Defendants' Opposition to Mtn for Discovery	10/1/18	**632-639**

5	Plaintiffs' Reply to Mtn for Discovery	10/12/18	**640-664**
5	Plaintiffs' Supplemental Exhibit in Further Support of Discovery Mtn	10/17/18	**665-670**
5	Defendants' Supplemental Exhibits in Further Support of Opposition to Mtn for Discovery	10/18/18	**671-679**
5	Minutes and Order from Discovery Commissioner	10/19/18	**680-681**
5	Defendants' Objections to the Discovery Commissioner's Report and Recommendation	1/3/19	**682-688**
5	Plaintiffs' Response to Objections to R&R	1/30/19	**689-712**
5	Order Denying Mtn for Discovery	4/11/19	**713-715**
5	Nevada Supreme Court Order on remand	1/23/20	**716-728**
6	Nevada Supreme Court Order on Rehearing	2/27/20	**729-730**
6	Supplemental brief for limited discovery	5/6/20	**731-737**
6	Opposition to request for discovery	5/11/20	**738-748**
6	May 29, 2020, Minute Order		**749**
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6	Minute Order on Request for Clarification	6/5/20	**753**
6	Defendants' Motion for protective order	7/2/20	**754-799**
6	Plaintiff' response to motion for protective order	7/7/20	**800-815**
6	Reply in support of protective order	7/9/20	**816-821**
6	July 21. 2020 Minute order	7/21/20	**822**

6	Order granting protective order	8/3/20	**823-829**
7	Plaintiffs' Supplemental Opposition to Motion to Dismiss (PART 1)	10/14/20	**830-995**
8	Plaintiffs' Supplemental Opposition to Motion to Dismiss (PART 2)	10/14/20	**996-1216**
9	Errata to Supplemental Opposition to Motion to Dismiss	10/14/20	**1217-1222**
9	Defendants' Supplemental Reply to Motion to Dismiss	10/30/20	**1223-1254**
9	Declaration of Mitchell Langberg in Support of Supplemental Brief (Reply) to Special MTD	10/30/20	**1255-1257**
9	November 9, 2020, Minute Order	11/9/20	**1258-1259**
9	Findings of Fact and Conclusions of Law granting Motion to Dismiss	12/3/20	**1260-1272**
9	Plaintiffs' Objections to Proposed Findings of Fact, Conclusions of Law as Proposed by Plaintiff	12/3/20	**1273-1286**
9	Notice of Entry of Order on FF, COL and Order granting Special MTD	12/10/20	**1287-1302**
9	Motion to Reconsider Order Granting Special MTD	12/24/20	**1302-1356**
9	Motion for Attorneys Fees and Costs	12/31/20	**1357-1420**
10	Defendants' Opposition to MTN to Reconsider Order Dismissing	1/7/21	**1421-1428**
10	Plaintiffs' Reply to Mtn to Reconsider	1/14/21	**1429-1440**
10	Errata to Reply to Mtn Reconsider	1/14/21	**1441-1477**
10	Opposition to Motion for Attorney's Fees and Costs	1/22/21	**1478-1591**
11	Minute Order Denying Motion to Reconsider	1/25/21	**1592**

11	Mtn to Reconsider Minute Order dated 1/25/21	2/2/21	**1593-1596**
11	Order Denying Mtn to Reconsider Order Dismissing	2/4/21	**1597-1604**
11	Declaration of Lisa Rasmussen submitted as Supplement to Mtn for Attorney's Fees	2/12/21	**1605-1607**
11	Reply in support of Motion for Attorney's Fees and Costs	2/12/21	**1608-1614**
11	Order Granting Motion for Attorney's Fees and Costs	4/16/21	**1615-1620**
11	Notice of Appeal Case No. 82338	1/8/21	**1621-1639**
11	Notice of Appeal Case No. 82880	5/5/21	**1640-1650**
11	Reporter's Transcript of Proceedings on SLAPP Motion to Dismiss	5/14/18	**1651-1712**
11	Reporter's Transcript of Discovery Commissioner Proceedings	10/19/18	**1713-1728**
11	Reporter's Transcript of Post Remand Hearing	4/29/20	**1729-1744**
11	Reporter's Transcript of Proceedings, Discovery/Protective Order Hearing	7/13/20	**1745-1775**
11	Reporter's Transcript of Proceedings, Discovery/Protective Order Hearing	7/29/20	**1776-1781**
11	Reporter's Transcript of Proceedings, on Special Motio to Dismiss, Post Remand	11/9/20	**1782-1792**
11	Reporter's Transcript of Proceedings on Motion for Attorney's Fees	3/31/21	**1793-1815**

Electronically Filed
10/14/2020 11:14 AM
Steven D. Grierson
CLERK OF THE COURT

Lisa A. Rasmussen, Esq.
Nevada Bar No. 7491
The Law Offices of Kristina Wildeveld & Associates
550 E Charleston Blvd. Suite A
Las Vegas, NV 89104
Tel. (702) 222-0007
Fax. (702) 222-0001

Email: Lisa@LRasmussenLaw.com

Attorneys for Plaintiffs

DISTRICT COURT

CLARK COUNTY, NEVADA

FORE STARS, LTD., a Nevada limited liability company; 180 LAND CO., LLC; A NEVADA LIMITED LIABILIITY COMPANY; SEVENTY ACRES, LLC, a Nevada limited liability company, Plaintiffs, vs. DANIEL OMERZA, DARREN BRESEE, STEVE CARIA, and DOES 1 THROUGH 100, Defendants.	Case No.: A-18-771224-C Dept: II **ERRATA TO PLAINTIFFS' SUPPLEMENTAL OPPOSITION**

COME NOW the Plaintiffs, by and through their counsel, Lisa A. Rasmussen, Esq. of the Law Offices of Kristina Wildeveld & Associates, and hereby submit this ERRATA, as follows:

Exhibit 9 was erroneously omitted from the filing earlier today. A true and correct copy of Exhibit 9 is attached hereto.

DATED: October 14, 2020. Respectfully submitted,

THE LAW OFFICES OF KRISTINA WILDEVELD & ASSOCIATES,

/s/ Lisa A. Rasmussen
LISA A. RASMUSSEN, ESQ.
NEVADA BAR NO. 7491
ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the foregoing ERRATA via this court's EFile and Serve program on all parties receiving service in this case on this 14th day of October, 2020, including but not limited to:

/s/ Lisa A. Rasmussen
Lisa A. Rasmussen, Esq.

Exhibit 9

Exhibit 9

the 720 units onto Rampart, and having been in this building for 13 years, I've seen the increase in the traffic on that street, and this traffic cannot be thrown out on Rampart safely for the community.

The apartments, these are apartments. They keep calling them condos, but every time that we hear about these condos, they are going to be operated as apartments for six years. So, let's call them apartments, and there are 2,400 apartments that are going to be in a high profile development that do not meet the criteria. So, I've got a letter for the Council (sic) from my client that will show our objections.

CHAIRMAN MOODY

Thank you. We'll make that a part of the record tonight.

KEVIN BLAIR

Thank you very much.

CHAIRMAN MOODY

Thank you. Okay, ladies and gentleman, it looks like we're to the two minute portion for tonight's meeting. So, come on up. Your name and address, please.

STEVE CARIA

Yes, my name is Steve Caria. I live at 9101 Alta Drive, Unit 202. I'm here representing on behalf of a petition that was signed on October 13th by residents and a few renters of the 1 Queensridge Place. I'm sorry, I have a very bad voice. I have a vocal cord problem. I hope you can understand me.

First I would like to address the fact that 25percent of the people at 1 Queensridge Place are renters. Approximately 30 to 50 percent of the people at 1 Queensridge Place are second, third, or fourth homes are not around often at any given time. So, basically, we have about 30 percent of the people are local and here living at the complex. Having said that, I'd like to read this

petition. We have 50 signatures and 41 residents, the petition states, we the undersigned residents of 1 Queensridge Place hereby state our adamant opposition to the development high density housing directly below our homes. This petition is dated October 13th, 2016. Now, this is 50 signatures. This is a pretty big quorum as it relates to the number of people that live at Queensridge. But to take this even further, a couple things I'd like to say, one, being someone that's served the public, I wanna thank you and appreciate that all of you are giving your time to do this. This is not a simple job, and this is a complex, very difficult situation that you're faced with, however a very important one.

One of the things that's happened and many of the people that have signed this are in agreement with this, from the very beginning, many of the Queensridge residents believed this is a shell game that doesn't pass the smell test.

CHAIRMAN MOODY

Mr. Caria, let me ask you, and I'm sorry to cut you off, so, I know you're speaking on behalf of the 50 that have signed?

STEVE CARIA

Yes.

CHAIRMAN MOODY

Are you speaking on behalf of five or more people that are here tonight?

STEVE CARIA

I don't know. Yes. You can see the people there.

CHAIRMAN MOODY

Okay. I don't want to see hands raised for the second time. You've already got counted. I've seen several of you. It looks like you had five. So, I'm going to give you three additional minutes.

STEVE CARIA

Yeah, well, thank you. The absolute support from the City staff in rubberstamping this project is at epic levels. Having done developments both inside the United States and outside the United States, this is an egregious project. It just doesn't comply with the standards that I'm used to or that I've ever seen.

Councilman Bob Beers, I met with him personally at one of the meetings, had a conversation with him, and he said that this was absolutely an inverse condemnation issue and $100 million was going to be paid by the City of Las Vegas in the event that this project was turned down. I asked Mr. Jarvis, I'm sorry, I won't pronounce your name correctly, if that in fact was the case because I've heard from other people that is not the case. I've also heard the developer as well as Bob Beers make the statement that this is a done deal. Wow, a done deal. To change a planned community like this is a done deal. Think about it. Just of course just more fantasy. But one question that has already been brought up to you is, if this was in your backyard, in your community, I wonder how you would vote under those circumstances. I don't think that you would be very appreciative of this existing.

The developers are working the political landscape to the maximum. They seem to have done some things in terms of the politics, but the reality of this is, going back to what I said before, it has changed many times, it's worn down a lot of the people, we have a lot of our residents are in their 70s, 80s, and 90s, they don't even attend all of this, and many of them are not even here. We ask that you adamantly vote against this particular project and not support it. Thank you.

CHAIRMAN MOODY

Thank you. And before we move on, I'm going to ask Mr. Jerbic. I've heard this comment now a few times about inverse condemnation and perhaps you could address that for us.

BRAD JERBIC

I'll be happy to. The, with all due respect to what everybody says, this is what I believe are the facts. When EMB acquired the property in Queensridge, that's the Badlands Golf Course, they

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STEVE CARIA

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

v.

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

Defendants,

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

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

Hearing Date: November 9, 2020

Hearing Time: 9:30 am.

I. INTRODUCTION

Plaintiffs in this case (the "Developer") were involved in quasi-judicial proceedings before the Las Vegas City Council in an attempt to develop the former Badlands golf course. Defendants (the "Residents") were in opposition. In an effort to participate in the quasi-judicial and political process, the Residents dared to provide other members of the community with a document to consider submitting to the City Council in opposition to the Developer's efforts (the "Statements") (attached to Developer's complaint and Exh. A, hereto).

Merely for the Residents' opposition and efforts to secure witness statements, the

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Case Number: A-18-771224-C

Developer has hauled the Residents into this multi-year litigation. The Residents didn't say anything false. Even if they had, just as the judicial proceedings privilege prevents the Developer and its counsel from being held liable for false statements they have made in this lawsuit, it also prevents the claims they have asserted against the Residents.

The Residents filed an anti-SLAPP motion. In considering the two prong analysis, this Court found that the Residents did not meet their burden under Prong 1—to demonstrate by a preponderance of the evidence that their statements were good faith communications in furtherance of certain First Amendment rights. Therefore, the Court denied the anti-SLAPP motion, which was subject to immediate appeal. The Supreme Court found that the Court erred and, in fact, the Residents had met their Prong 1 burden.[1] However, because this Court never reached the issue of whether to allow limited discovery ***in considering Prong 2*** (where the Developer would be required to make a *prima facie* showing on its claims), the Supreme Court remanded, expressly for the limited purpose of considering whether discovery would be permitted.[2]

Thus, this supplemental briefing should have been relatively straightforward. The Developer first asked for additional briefing "just on what discovery is requested. . . ." The Court allowed that briefing and ultimately granted limited discovery based on the Developer's "showing" as required by NRS 41.660(4). The Developer attempted to exceed the scope of the discovery ***it specifically requested and was granted***, necessitating a protective order from this Court expressly limiting the discovery to Prong 2 and, more specifically, to the issue of what the Residents relied on when they circulated the Statements. Having obtained that discovery,[3] the Developer was merely left to brief Prong 2 and attempt to show it had *prima facie* evidence to

[1] The Supreme Court explained that the Developer failed to offer evidence to rebut the Residents' Prong 1 showing. It did not offer Developer or instruct this Court to allow another bite at the Prong 1 apple. The order of remand is clear in that regard.

[2] By statute, when discovery is permitted, it can only be on Prong 2. No Prong 1 discovery is allowed. NRS 41.660(4).

[3] The Developer suggests the Residents wrongfully withheld information in discovery. To be sure, the Developer did not get everything it ***wanted***, but it did get everything in the Residents' possession, custody and control that was within the scope of discovery ***allowed***. If the Developer thought otherwise, it should have filed a discovery motion.

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support its claims.

But the Developer ignored the Supreme Court's remand order and the law. Instead, it devotes almost the entirety of its Supplemental Opposition to Prong 1. Even at that, the Developer provides a host of "facts" that have nothing to do with the issues on the anti-SLAPP motion.

Once the Court considers the Developer's brief, the relevant facts and the law, the Residents' anti-SLAPP motion should be granted for numerous reasons:

1) the Developer cannot relitigate Prong 1;

2) the Residents' communications were truthful, and certainly not knowingly false;

3) the Residents communications were absolutely privileged under the litigation privilege, regardless of truth or falsity;

4) the Developer has not made a *prima facie* showing on a conspiracy (or any other) claim; and

5) the Developer did not make a showing that it was entitled to any additional discovery.

II. ARGUMENT

A. The Developer Cannot Relitigate Prong 1

In the appeal of the prior ruling on this anti-SLAPP motion, the Nevada Supreme Court expressly held:

> "[i]n 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.

The Supreme Court was also clear in its remand order to this Court:

> …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).

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

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law of the case) by that court or a higher one in earlier phases." *Id.*

This Court has already acknowledged that the Nevada Supreme Court's mandate on remand was narrow. The Court has repeatedly issued minute orders that instructed the Developer that the discovery allowed by the Court was limited to Prong 2 of the anti-SLAPP analysis. During the April 29, 2020, hearing in this case, this Court told the Developer that the Nevada Supreme Court "made some affirmative rulings that establish the law of the case."

This Court was correct. In considering the Prong 1 issues, the Nevada Supreme Court explained that the Developer failed to present "evidence the clearly and directly overcomes" the declarations that were offered by the Residents. *Omerza v. Fore Stars, Ltd*, 455 P.3d 841 (Nev. 2020) As a result, the Court explained that the Residents:

> …met their burden of showing by a preponderance of the evidence that their communications were truthful or made without knowledge of their falsehood (i.e., that they were "good faith" communications) through the sworn declarations attached to their special motion to dismiss, which is sufficient to satisfy the good-faith component of the step-one inquiry under NRS 41.660(3)(a).

Id. Thus, the Nevada Supreme Court found (and the law of the case is) that the Residents "met their burden of showing that the communications were truthful or made without knowledge of their falsehood." *Id.*

The Developer does not get to relitigate Prong 1. Instead, in its clear mandate, the Nevada Supreme Court simply instructed this Court to "determine whether respondents are entitled to discovery under ***NRS 41.660(4)***." (emphasis added). As this Court has already acknowledged and as is clear from the statute, NRS 41.660(4) only allows discovery related to Prong 2 of the anti-SLAPP analysis. That is the portion of the analysis in which the Developer must demonstrate that it has *prima facie* evidence to support its claims.

B. The Residents' Communications Were Truthful And Certainly Not Knowingly False

Even if the Court were to reconsider the Prong 1 issues already resolved by the Supreme Court, it is clear that the Residents met their burden of showing the Statements were either true or not knowingly false. In order to overcome the Residents' evidence, the Developer was required to

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present "evidence that clearly and directly overcomes" the Residents' declarations. *Omerza v. Fore Stars*, Ltd, 455 P.3d 841 (Nev. 2020). Because the Developer did not do that before the appeal, the Supreme Court conclusively determined that the Residents met their burden on Prong 1. Even if this Court reconsiders that finding, the Developer has still not "clearly and directly" overcome the evidence.

One must start with the Statements that form the sole basis for the Developer's claims. Members of the community were not asked to consider signing Statements that would say the Developer was legally prohibited from seeking City Council approval to develop the Badlands. Nor did the Statements say the Queensridge CC&Rs (an agreement between the residents and the ***Queensridge*** developer and/or HOA[4]) prevented this Developer from doing anything outside of Queensridge. Instead, the Statements merely offered members of the community an opportunity to participate in the City Council quasi-judicial proceeding by submitting testimony that said they relied on 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."

Members of the community could decide for themselves whether they agreed with the Statements and wanted to submit them in opposition to the Developer's efforts before the City Council.

And, the Statements ***were not false***. While the Developer seems to argue there was no enforceable Peccole Ranch Master Plan, the Developer forgets that it expressly applied for a modification ***of that very plan***. *See* Exh. B, Developer's Application for Zoning Change identifying the project as "Peccole Ranch Master Plan."

One is left to wonder why the Developer would seek to modify the plan and then try to persuade this Court that the plan does not exist. There certainly was disagreement as to what the Developer was required to do in order to build on the Badlands. But ***everyone*** agrees there was a

[4] *See Stoneridge Parkway, LLC v. Silverstone Ranch Cmty. Ass'n*, 441 P.3d 547, fn 2 (Nev. 2019)(unpublished, No. 76626, May 29, 2019); *Pinnacle Museum Tower Assn. v. Pinnacle Mkt. Dev. (US), LLC*, 55 Cal. 4th 223, 240, 282 P.3d 1217, 1227 (2012) (CC&R's are contracts among homeowners or between homeowners and their associations).

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master plan. For example, at the time the Residents circulated the Statements, Judge Crockett had determined that the Peccole Ranch Master Plan ***did*** prohibit the development unless the Developer obtained a major modification (*See* Crockett Order, Exh. C). Throughout Judge Crockett's order he cites to numerous documents that reference the plan, the approval of the plan by the Planning Commission and the City Council, the reliance on the plan by City staff, etc.[5] That order also stated that members of the community relied on the master plan when they purchased their homes. The Supreme Court ***already concluded*** that the Residents reasonably relied on Judge Crockett's order.

In another case involving the Developer and Badlands, the Nevada Supreme Court ultimately found that the Developer was not required to seek modification of the Peccole Ranch Master Plan. But the Court also: 1) acknowledged the master plan existed, and 2) acknowledged that ***amendment of the General Plan (which Developer sought) was required***. *See Seventy Acres, LLC v. Binion*, 458 P.3d 1071 (Nev. 2020)(unpublished, No. 75481, March 05, 2020).

As quoted above, the Statements the Developer challenges set out that objection to development was based on, among other things, both the master plan and the General Plan. In other words, the Nevada Supreme Court's decision in the *Seventy Acres* case, confirms that the Statements the Residents distributed ***were true***.

The Developer does not get to "parse each individual word in the statements to test it for its truthfulness;" instead, "the relevant inquiry in prong one of the anti-SLAPP analysis is whether a preponderance of the evidence demonstrates that the gist of the story, or the portion of the story that carries the sting of the statement, is true." *Rosen v. Tarkanian*, 135 Nev. 436, 440-41 (2019). Here, the gist and sting of the Statements is that members of the community opposed the Developer's requests for amendments/modifications to land use restrictions that, without such amendments/modifications, prevented development of Badlands. At the time of the Statements,

[5] Because the existence of the Peccole Ranch Master Plan and the City's prior insistence that the Developer seek modification of that plan is not in reasonable dispute—and because the issue is not within the mandate of the Nevada Supreme Court's remand in this case—the Residents have not provided the numerous documents Judge Crockett referenced in his order. The Residents will provide them to the Court if the Court would like to review them.

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they believed that both the Peccole Ranch Master Plan and the City's General Plan supported their position. As it turned out, as confirmed by the Nevada Supreme Court, the General Plan did support their position. Thus, the Statements were truthful and certainly were made without knowledge of falsity.

C. The Developer Cannot Prevail On Prong 2 Because The Residents' Communications Were Absolutely Privileged Under The Litigation Privilege, Regardless Of Truth Or Falsity

The Developer gives short shrift (really, none at all) to their Prong 2 analysis even though that is the only issue left to be litigated after this Court granted the very discovery the Developer requested.

On Prong 2, the Developer abandons every claim other than its claim for conspiracy. The Court need not turn to the substantive merits of that claim because it is barred by the absolute litigation privilege.

1. **The litigation privilege**

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) (emphasis added) (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).

Critically, the statement at issue does not have to be made ***during*** any actual proceedings. See *Fink v. Oshins*, 118 Nev. 428, 433 (2002) (emphasis added) ("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*).

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2. **The relevant City Council proceedings were quasi -judicial**

In this case, the Nevada Supreme Court determined the statements underlying each of Respondents' 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 v. Fore Stars, Ltd*, 455 P.3d 841 (Nev. 2020).

Those City Council proceedings are quasi-judicial. As set out more fully in the original anti-SLAPP briefing, 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." *State ex rel. Bd. of Parole Comm'rs v. Morrow*, 127 Nev. 265, 273 (2011). Moreover, the Developer admitted it was a quasi-judicial proceeding. *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).

Critically, the absolute litigation privilege applies without regard to how the Developer styles its 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).

Because the Supreme Court already determined that the Residents' 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 declarations, the Residents' statements were all made in connection with, and preliminary to, a quasi-judicial proceeding and, therefore, were protected by the absolute litigation privilege.

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That is an absolute bar to all of Developer's claims. Therefore, the anti-SLAPP motion should be dismissed.

D. The Developer Has Not Made A *Prima Facie* Showing On A Conspiracy (Or Any Other) Claim

The Nevada Supreme Court gave the Developer clear guidance as to what it was required to do to meet its Prong 2 burden. The 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 v. Fore Stars, Ltd,* 455 P.3d 841 (Nev. 2020). This is the same standard as a court applies in a summary judgment motion. *Id.*

The Developer hardly tries to meet this burden, devoting only one page to the entire factual and legal argument. Neither the "evidence" offered nor the legal argument meet the burden set out by the Supreme Court.

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). 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" plaintiff). Here, the Developer does not offer any evidence of an ***agreement*** to do something ***unlawful***.

The lack of evidence of damages is also fatal to the Developer's conspiracy claims. Such a claim 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

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specific overt acts."). "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) (emphasis added).

As to damages, the Court should be mindful that the Developer's entire set of claims is based on the Residents circulating the Statements to community members to oppose the Developer's efforts to change the land use restrictions on the Badlands. The Developer offers no evidence it was damaged. Why? Perhaps because the City Council proceedings did not advance. Instead, the Developer appealed (successfully) Judge Crockett's decision and the City Council's ***prior*** decisions to allow development without a modification to the Peccole Ranch Master Plan were affirmed.

It is also notable that the Developer offers no evidence to support any of its other claims, even though the Supreme Court already said its 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)).

In sum, the Developer has failed to provide admissible evidence to support each of the elements of its conspiracy claim. Therefore, the Developer cannot meet its Prong 2 anti-SLAPP burden.

E. The Developer Did Not Make A Showing That It Was Entitled To Any Additional Discovery

The Developer's demand for more discovery is bold. The Developer asked for additional briefing on the discovery issue and promised to identify the discovery it wanted. This Court granted the request, allowing for the exact discovery requested.

Pursuant to NRS 41.660(3)(e), discovery was stayed as soon as the anti-SLAPP motion was filed. Consistent with the Nevada Supreme Court's ruling in this case and NRS 41.660(4), Plaintiffs were only entitled to discovery "***upon a showing***" by the Developer that "information

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necessary" to meet their Prong 2 burden was "not reasonably available without discovery." The requirement for a showing has meaning. The Developer was only eligible to obtain discovery that it was able to show was necessary. And, even then, it was eligible only for "limited discovery for the purpose of ascertaining such information."

The Court's grant of limited discovery to address Prong 2 and only to the extent that was requested by the Developer in its brief (the only thing it made any showing on) was perfectly appropriate.

Moreover, in light of the absolute litigation privilege and the fact that the Developer has not satisfied the critical damages element of its claim, the Developer could not have made a showing that any additional discovery is necessary or warranted.

Eventually, this matter has to come to an end. The entire purpose of the anti-SLAPP statute is to allow "defendants to quickly and cheaply dispose of meritless suits against them filed in retaliation for certain forms of speech." *Panicaro v. Crowley*, No. 67840, 2017 WL 253581, at *1 (Nev. App. Jan. 5, 2017); *Omerza v. Fore Stars, Ltd*., 455 P.3d 841, fn 4 (Nev. 2020) (Legislature's intent to limit the chilling effect that SLAPPs have on the rights to petition and to speech by quickly resolving meritless SLAPPs). In this case, the process has been neither quick nor cheap.

There is no basis to allow more discovery and the Developer's effort to destroy the Residents must now end.

III. CONCLUSION

For all of the foregoing reasons, the Residents respectfully request that this Court grant their anti-SLAPP motion and dismiss the Developer's complaint.

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DATED this 30th day of October, 2020.

BROWNSTEIN HYATT FARBER SCHRECK, LLP

BY: */s/ Mitchell J. Langberg*

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of Brownstein Hyatt Farber Schreck, LLP, and pursuant to NRCP 5(b), EDCR 8.05, Administrative Order 14-2, and NEFCR 9, I caused a true and correct copy of the foregoing **DEFENDANTS' SUPPLEMENTAL BRIEF IN SUPPORT OF SPECIAL MOTION TO DISMISS (ANTI-SLAPP MOTION) PLAINTIFFS' COMPLAINT PURSUANT TO NRS §41.635 ET. SEQ** be submitted electronically for filing and/or service with the Eighth Judicial District Court via the Court's Electronic Filing System on the 30th day of October, 2020, to the following:

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and SEVENTY ACRES, LLC

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

EXHIBIT A

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 B

DEPARTMENT OF PLANNING

APPLICATION / PETITION FORM

Application/Petition For: REZONING

Project Address (Location) S. Rampart/W. Charleston/Hualapai/Alta

Project Name ~~Peccole Ranch Master Plan 250.92 Acres~~ 2016 Major Modification to Peccole Ranch Master Plan **Proposed Use**

Assessor's Parcel #(s) 138-31-702-002; 138-31-801-002 **Ward #** 2

General Plan: existing PROS proposed DR **Zoning:** existing R-PD7 proposed R-E

Commercial Square Footage _____ **Floor Area Ratio** _____

Gross Acres 178.27 **Lots/Units** 2 **Density** _____

Additional Information _____

PROPERTY OWNER 180 Land Co LLC **Contact** Frank Pankratz

Address 1215 South Fort Apache, Suite 120 **Phone:** (702) 940-6930 **Fax:** (702) 940-6931

City Las Vegas **State** Nevada **Zip** 89117

E-mail Address _____

APPLICANT 180 Land Co LLC **Contact** Frank Pankratz

Address 1215 South Fort Apache, Suite 120 **Phone:** (702) 940-6930 **Fax:** (702) 940-6931

City Las Vegas **State** Nevada **Zip** 89117

E-mail Address Frank@ehbcompanies.com

REPRESENTATIVE GCW, Inc. **Contact** Cindie Gee

Address 1555 South Rainbow **Phone:** (702) 804-2107 **Fax:** (702) 804-2299

City Las Vegas **State** Nevada **Zip** 89146

E-mail Address cgee@gcwengineering.com

I certify that I am the applicant and that the information submitted with this application is true and accurate to the best of my knowledge and belief. I understand that the City is not responsible for inaccuracies in information presented, and that inaccuracies, false information or incomplete application may cause the application to be rejected. I further certify that I am the owner or purchaser (or option holder) of the property involved in this application, or the lessee or agent fully authorized by the owner to make this submission, as indicated by the owner's signature below.

Property Owner Signature* EHB COMPANIES LLC, its MANAGER
BY FRANK PANKRATZ AS MANAGER

*An authorized agent may sign in lieu of the property owner for Final Maps, Tentative Maps, and Parcel Maps.

Print Name Frank Pankratz

Subscribed and sworn before me

This 25 day of February, 20 16.

Leeann Stewart-Schencke

Notary Public in and for said County and State

LEEANN STEWART-SCHENCKE
Notary Public, State of Nevada
Appointment No. 07-4284-1
My Appt. Expires Jul 26, 2019

FOR DEPARTMENT USE ONLY
Case #
Meeting Date:
Total Fee:
Date Received:*
Received By:

*The application will not be deemed complete until the submitted materials have been reviewed by the Department of Planning for consistency with applicable sections of the Zoning Ordinance.

PRJ-69491
04/28/16

Revised 10/27/08

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EXHIBIT C

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3/5/2018 11:09 AM
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Attorneys for Plaintiffs

DISTRICT COURT

CLARK COUNTY, NEVADA

JACK B. BINION, an individual; DUNCAN R. and IRENE LEE, individuals and Trustees of the LEE FAMILY TRUST; FRANK A. SCHRECK, an individual; TURNER INVESTMENTS, LTD., a Nevada Limited Liability Company; ROGER P. and CAROLYN G. WAGNER, individuals and Trustees of the WAGNER FAMILY TRUST; BETTY ENGLESTAD AS TRUSTEE OF THE BETTY ENGLESTAD TRUST; PYRAMID LAKE HOLDINGS, LLC.; JASON AND 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 BIGLOR AND SALLY BIGLER,

Plaintiffs,

v.

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

Defendants.

Case No.: A-17-752344-J

Dept. No.: XXIV

ORDER GRANTING PLAINTIFFS' PETITION FOR JUDICIAL REVIEW

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☐ Voluntary Dismissal	☒ Summary Judgment
☐ Involuntary Dismissal	☐ Stipulated Judgment
☐ Stipulated Dismissal	☐ Default Judgment
☐ Motion to Dismiss by Deft(s)	☐ Judgment of Arbitration

Case Number: A-17-752344-J

On January 11, 2018, Plaintiffs'[1] Petition for Judicial Review came before the Court for a hearing. Todd L. Bice, Esq. and Dustun H. Holmes, Esq. of the law firm PISANELLI BICE PLLC appeared on behalf of Plaintiffs, Christopher Kaempfer, Esq., James Smyth, Esq., Stephanie Allen, Esq appeared on behalf of Defendant Seventy Acres, LLC ("Seventy Acres"), and Philip T. Byrnes, Esq., with the LAS VEGAS CITY ATTORNEY'S OFFICE appeared on behalf of the Defendant City of Las Vegas ("City").The Court, having reviewed Plaintiffs' Memorandum in Support of the Petition for Judicial Review, the City's Answering Brief, Seventy Acres' Opposition Brief, Plaintiffs' Reply Brief, the Record for Review, and considered the matter and being fully advised, and good cause appearing makes the following findings of fact and conclusions of law:

FINDINGS OF FACT AND CONCLUSIONS OF LAW[2]

A. FINDINGS OF FACT

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ROR002658-2660.

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

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

ROR00264-2669.

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

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course/drainage on approximately 211 acres. ROR002666-2667. For the single-family units which would border the proposed golf course/open space, the zoning sought was for R-PD7, which equates to a maximum of seven (7) single-family units per acre on average. ROR002666-2667. Such a zoning approval for a planned development like Peccole Ranch Phase II and its proposed golf course/open space/drainage is common as confirmed by the City's own code at the time because R-PD zoning category was specifically designed to encourage and facilitate the extensive use of open space within a planned development, such as that being proposed by the Peccole Family. ROR02716-2717.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

B. CONCLUSIONS OF LAW

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

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

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

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

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

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

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

See LVMC 19.10.040(G).

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

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

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

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

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

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

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

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

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

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

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

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

. . .

. . .

. . .

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

DATED: March 1, 2018

THE HONORABLE JIM CROCKETT
EIGHTH JUDICIAL DISTRICT COURT

Submitted by:

PISANELLI BICE PLLC

By: _____
Todd L. Bice, Esq., Bar No. 4534
Dustun H. Holmes, Esq., Bar No. 12776
400 South 7th Street, Suite 300
Las Vegas, Nevada 89109

Attorneys for Plaintiffs

Approved as to Form and Content by:

KAEMPFER CROWELL

By: NOT SIGNED
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DECL
MITCHELL J. LANGBERG, ESQ., Bar No. 10118
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Counsel for Defendants,
DANIEL OMERZA, DARREN BRESEE, and
STEVE CARIA

DISTRICT COURT

CLARK COUNTY, NEVADA

FORE STARS, LTD., a Nevada limited liability company; 180 LAND CO., LLC; a Nevada limited liability company; SEVENTY ACRES, LLC, a Nevada limited liability company, Plaintiffs, v. DANIEL OMERZA, DARREN BRESEE, STEVE CARIA, and DOES 1 THROUGH 100, Defendants,	CASE NO.: A-18-771224-C DEPT. NO.: II **DECLARATION OF MITCHELL J. LANGBERG IN SUPPORT OF DEFENDANTS' SUPPLEMENTAL BRIEF IN SUPPORT OF SPECIAL MOTION TO DISMISS (ANTI-SLAPP MOTION) PLAINTIFFS' COMPLAINT PURSUANT TO NRS §41.635 ET. SEQ** Hearing Date: November 9, 2020 Hearing Time: 9:30 am.

DECLARATION OF MITCHELL J. LANGBERG

I, MITCHELL J. LANGBERG, hereby declare as follows:

1. I am an attorney at Brownstein Hyatt Farber Schreck, counsel for defendants Daniel Omerza, Darren Bresee and Steve Caria (collectively, the "Defendants") in the above-captioned action. I am over 18 years of age and am competent to testify as to the matters set forth in this Declaration based upon my own personal knowledge.

2. This Declaration is made in support of Defendants' Supplemental Brief In Support Of Special Motion To Dismiss (Anti-Slapp Motion) Plaintiffs' Complaint Pursuant To NRS

§41.635 Et. Seq (the "Supplemental Reply").

3. Attached as Exhibit A to the Supplemental Reply is a true and correct copy of the statement that underlies Plaintiffs' complaint and is attached to Plaintiffs' complaint.

4. Attached as Exhibit B to the Supplemental Reply is a true and correct copy of one of several Application/Petition Forms for rezoning of "Peccole Ranch Master Plan" that were submitted to the City of Las Vegas by one or more of the Plaintiffs, all available on the City of Las Vegas website. This particular version is available at https://files.lasvegasnevada.gov/badlands/Peccole-Ranch-MasterPlan-Rezoning-Application-180-Land-Co-LLC.pdf.

5. Attached as Exhibit C to the Supplemental Reply is a true and correct copy of Judge Crockett's Order Granting Plaintiffs' Petition for Judicial Review in *Binion, et. al. v. The City of Las Vegas, et. al.*, Eighth Judicial District Court case number A-17-752344-J.

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

Executed on this 30th day of October, 2020, at Las Vegas, Nevada

MITCHELL J. LANGBERG

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 **DECLARATION OF MITCHELL J. LANGBERG IN SUPPORT OF DEFENDANTS' SUPPLEMENTAL BRIEF IN SUPPORT OF SPECIAL MOTION TO DISMISS (ANTI-SLAPP MOTION) PLAINTIFFS' COMPLAINT PURSUANT TO NRS §41.635 ET. SEQ** be submitted electronically for filing and/or service with the Eighth Judicial District Court via the Court's Electronic Filing System on the 30th day of October, 2020, to the following:

Lisa A. Rasmussen, Esq.
The Law Offices of Kristina Wildeveld & Associates
550 E. Charleston Boulevard, Suite A
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Attorneys for Plaintiffs
FORE STARS, LTD., 180 LAND CO., LLC;
and SEVENTY ACRES, LLC

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

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

November 09, 2020 12:16 PM Minute Order

HEARD BY: Thompson, Charles COURTROOM:

COURT CLERK: Hansen-McDowell, Kathryn

RECORDER:

REPORTER:

PARTIES PRESENT:

JOURNAL ENTRIES

On June 20, 2018, Judge Scotti entered Findings of Fact, Conclusions of Law and an Order denying this motion. Defendants appealed and on January 23, 2020, the Nevada Supreme Court entered an Order vacating Judge Scotti s order and remanding with an opportunity for Plaintiffs to conduct limited discovery.

Plaintiffs first argue that they may revisit step one of the anti-SLAPP analysis. On July 13, 2020, Judge Scotti entered a minute order including the following: This matter came back after a remand from the Nevada Supreme Court where it appeared to the Court that the Supreme Court had resolved prong 1 and was remanding back to this Court for appropriate proceedings regarding prong 2, whether limited discovery should go forward and resolve the issue of the litigation privilege. Following arguments by counsel regarding their respective positions, Court advised it was not one hundred percent convinced that prong 1 was completely disposed of by the Nevada Supreme Court, after hearing Ms. Rasmussen paraphrasing the order. Court advised it needs to go back and review the Supreme Court order.

On July 21, 2020, after reviewing the Supreme Court Order, Judge Scotti entered a minute order which contained the following: Discovery is limited to the second prong of the anti-SLAPP analysis. It is clear from this minute order that Judge Scotti believed that prong 1 was resolved and that the limited discovery was only allowed with regard to prong 2.

This Court agrees with Judge Scotti. It is clear from the Supreme Court s order filed January 23, 2020, that the Defendants met their burden at step one of the anti-SLAPP analysis. In other words, the Court found that the Defendant s communications were in furtherance of their right to petition the government in connection with an issue of public concern and that the communications were in good faith. The Court then held that the Plaintiffs had not met their step-two burden of demonstrating with prima facie evidence a probability of prevailing on their claims. However, they believed that the Plaintiffs should be permitted limited discovery to see if they could meet that step-two burden.

Thereafter, Judge Scotti entered an order prescribing the limited discovery that would be permitted. Plaintiffs complain that the order was too limited. I believe that the judge appropriately exercised his discretion in this regard. Also, I do not sit as an appellate court over Judge Scotti. Thus, I decline to find that his Order was in any way in error.

Defendants first argue that the litigation privilege is dispositive of the prong 2 issue. I find that the argument has merit. First, the City Council proceedings were quasi-judicial and the privilege does apply to quasi-judicial proceedings. Also, the privilege applies even though the communications are not directed at the Council itself. Fink v. Oshins, 118 Nev. 428 (2002). In accordance with the holding in Oshins, communications between the residents would be included.

Today, Ms. Rasmussin cited 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 and the holding in the decision appears to be expressly limited to defamation suits. I believe that the Oshins case is more on point.

The civil conspiracy claim is the only claim that Plaintiff has argued meets the prong two test. However, a civil conspiracy must be to accomplish some unlawful objective where damage results. There was no unlawful objective here. Further, no damage to Plaintiffs may be claimed because the proceeding never occurred.

Even if the litigation privilege is not dispositive of the prong two issue, I find that Plaintiff has failed to demonstrate with prima facie evidence a probability of prevailing on any of their claims.

For the reasons set forth in Defendants Supplemental Brief filed October 30, 2020, the Motion to Dismiss is GRANTED. Mr. Langberg is directed to prepare a proposed appropriate order with findings. Further, he is directed to submit the Order, pursuant to the electronic submission requirements of AO 20-17.

CLERK'S NOTE: The above minute order has been distributed to: Lisa Rasmussen: Lisa@VeldLaw.Com, Mitchell Langberg: mlangber@bhfs.com. 11/10 km

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DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

v.

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

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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

Case Number: A-18-771224-C

("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

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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

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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.

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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

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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.

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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."

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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

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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"

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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-

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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

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

DATED: _____

DISTRICT COURT JUDGE

Respectfully Submitted:

DATED this 2nd day of December, 2020.

BROWNSTEIN HYATT FARBER SCHRECK, LLP

BY: _____
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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: _____
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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:

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DISTRICT COURT

CLARK COUNTY, NEVADA

FORE STARS, LTD., a Nevada limited liability company; 180 LAND CO., LLC; A NEVADA LIMITED LIABILIITY COMPANY; SEVENTY ACRES, LLC, a Nevada limited liability company, Plaintiffs, vs. DANIEL OMERZA, DARREN BRESEE, STEVE CARIA, and DOES 1 THROUGH 100, Defendants.	Case No.: A-18-771224-C Dept: II **OBJECTIONS TO DEFENDANTS' PROPOSED ORDER RDER ON DEFENDANTS' ANTI-SLAPP; AND PLAINTIFFS' PROPOSED ORDER**

Plaintiffs, by and through their counsel, hereby object to the proposed order submitted by Defendants in this matter and lodge, for the purpose of establishing a record, their own proposed order, attached hereto.

Dated this 3rd day of December, 2020.

Respectfully submitted by:
The Law Offices of Kristina Wildeveld & Associates,

/s/ Lisa A. Rasmussen

LISA A. RASMUSSEN, ESQ.
Nevada Bar No. 7491
Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I served a copy of the foregoing upon the following person via this court's file and serve EFLEX program:

Mr. Mitchell Langberg, Esq.
Counsel for Defendants

on this 3rd day of December, 2020.

/s/ Lisa A. Rasmussen

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DISTRICT COURT

CLARK COUNTY, NEVADA

FORE STARS, LTD., a Nevada limited liability company; 180 LAND CO., LLC; A NEVADA LIMITED LIABILIITY COMPANY; SEVENTY ACRES, LLC, a Nevada limited liability company, Plaintiffs, vs. DANIEL OMERZA, DARREN BRESEE, STEVE CARIA, and DOES 1 THROUGH 100, Defendants.	Case No.: A-18-771224-C Dept: II **ORDER ON DEFENDANTS' ANTI-SLAPP MOTION TO DISMISS**

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. Additionally, the Court was not certain that NRS 41.660 was intended to address intentional torts.

7. Defendants filed a timely notice of appeal.

8. Because the Court did not believe dismissal was appropriate under NRS 41.660, and Defendants appealed, it did not consider or grant Plaintiffs' request for discovery pursuant to NRS 41.660(4) filed during this Court's earlier jurisdiction, prior to or during the appeal.

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

10. The Nevada Supreme Court held that "absent evidence to the contrary," Defendants had met their burden under Prong 1.

11. The Nevada Supreme Court also stated that Plaintiffs had not met their burden under Prong 2, but 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. It was Defendants' first 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. Plaintiffs contended that the Nevada Supreme Court had remanded primarily because this Court erroneously determined that the Anti-Slapp statute was not applicable to intentional torts and that this court had not previously analyzed whether Defendants met their burden under prong 1 or whether Plaintiffs had met their burden under prong 2.

16. At a post-remand hearing, the parties offered argument about the appropriateness of discovery. Plaintiffs' counsel requested to brief the issue, on what discovery Plaintiffs would request, why it was relevant, and how Plaintiffs believed it comported with the Nevada Supreme Court's ruling.

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

18. 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.

19. After issuing its order allowing limited discovery, Defendants filed a "Request for Clarification," generally asserted that it believed this Court had directed discovery that was too broad.

20. The dispute was litigated by way of further motion practice and the Court issued orders clarifying that discovery would only be permitted. In its order, the Court limited Plaintiffs, at Defendants' request to the specific discovery Plaintiffs requested "in their papers."

21. Plaintiffs were limited to a total of 15 written requests for production to be allocated across three defendants as the Plaintiffs deemed fit and one deposition for each defendant, not to exceed four hours.

22. Plaintiffs propounded written discovery that included questions supported by allegations in the complaint, and questions addressing what documents and information the defendants relied on when they made their statements to the City of Las Vegas.

23. Defendants filed a motion for a protective order asserting that these written requests were beyond the scope of what the court had permitted and that Plaintiffs were seeking to "relitigate prong 1."

24. Plaintiffs argued that the discovery they requested was consistent with "what was in their papers" and that their "papers" included the Complaint, the prior motion for discovery, the post-remanding briefing on discovery, and argument made at the various hearings.

25. Briefing on the Motion for Protective Order ensued and continued at oral argument.

26. At the conclusion of that round of litigation, this Court further limited Plaintiffs to their discovery by permitting them only to ask the Defendants what they relied on when they made their statements.

27. After completion of the limited discovery, the Court also allowed supplemental briefing, which consisted of a Supplemental Opposition filed by Plaintiffs and a Supplemental Reply filed by Defendants.

28. In their briefing, Plaintiffs contended that the Court was permitted to reconsider whether Defendants met their Prong 1 burden because the Nevada Supreme Court's order stated "absent evidence to the contrary," . . . Defendants had met their burden on prong 1. 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 because it did not permit any questions that would address prong 2, the merits of the case and that written discovery propounded by Plaintiffs that went directly to the allegations in the Complaint had bee disallowed.

29. With respect to Prong 2, Plaintiffs urged that at a minimum they had met their burden on prong two with regard to their conspiracy claim. Plaintiff is not required to demonstrate that it will prevail on every claim, but must demonstrate that it can prevail on at least one claim.

30. Plaintiffs offered deposition transcripts in support of their argument that a conspiracy existed, and also relied on the papers and pleadings on file in this case.

31. Plaintiffs argued that the court was permitted to assess the credibility of the witnesses and that in doing so, it must determine whether Defendants assertions that they did not knowingly provide false information to the City of Las Vegas was made "in good faith."

32. Defendants contended that any credibility assessment was irrelevant because the Nevada Supreme Court already determined prong 1 had been established.

33. Defendants also contended that the litigation privilege bars Plaintiffs from any relief.

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

CONCLUSIONS OF LAW

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

36. This court considers the following from the Nevada Supreme Court's order upon remand:

(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).

37. The Nevada Supreme Court's order of remand stated: "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).

38. Therefore, as a matter of law, this Court's task on remand was to determine whether Plaintiffs were entitled to discovery under NRS 41.660(4) and to determine whether the matter should be dismissed pursuant to the Anti-SLAPP statute.

39. 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."

40. Paragraph (b) of subsection 3 of the anti-SLAPP statute is the Prong 2 portion of the anti-SLAPP analysis that requires a plaintiff to demonstrate with prima facie evidence a probability of prevailing on its claim.

41. 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.

42. 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.

43. 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). However, as noted in the factual findings, the Court limited Plaintiffs to the discovery they expressly requested and precluded any other discovery that they did not expressly request.

44. Though Plaintiffs argue in their supplemental opposition to the anti-SLAPP Motion that they were not allowed adequate discovery, the discovery permitted was narrowed to only what they specifically requested in their supplemental briefing.

45. 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.

46. 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.

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

48. 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).

49. 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*).

50. At oral argument on the supplemental briefings to the anti-SLAPP Motion, Plaintiffs' counsel cited to a case decided by the Nevada Supreme Court on July 9, 2020, asserting that *Spencer v. Klementi*, 466 P.3d 1241 (Nev. 2020) precludes a conclusion that Plaintiffs' relief is barred by the doctrine of litigation privilege because litigation privilege does not apply in situations lacking due process such as the opportunity to cross examine.

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

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

55. 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.*

56. 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).

57. 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. However, the City Council proceedings did not advance because the Plaintiffs appealed (successfully) Judge Crockett's decision, and the City Council's prior decisions to allow development without a modification to the Peccole Ranch Master Plan were affirmed, two years later. Defendants claim that this evidences a lack of damages, despite the obvious damages to Plaintiff in the two year interim.

58. Nonetheless, this Court finds that Plaintiffs have not established any current evidence of damages suffered, assuming arguendo a conspiracy existed. Therefore, Plaintiffs have failed to meet their Prong 2 anti-SLAPP burden.

59. Because Plaintiffs have failed to meet their burden under Prong 2 of the anti-SLAPP analysis, Defendants' anti-SLAPP motion will be granted.

60. 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.

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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: _____

_____
DISTRICT COURT JUDGE

Respectfully submitted by:
The Law Offices of Kristina Wildeveld & Associates,

/s/ Lisa A. Rasmussen
_____
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DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

v.

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

. . .

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. . .

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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*

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of Brownstein Hyatt Farber Schreck, LLP, and pursuant to NRCP 5(b), EDCR 8.05, Administrative Order 14-2, and NEFCR 9, I caused a true and correct copy of the foregoing **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:

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DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

v.

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

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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

Case Number: A-18-771224-C

("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

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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

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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.

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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

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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.

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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."

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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

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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”

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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-

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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

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

DATED: _____

DISTRICT COURT JUDGE

Respectfully Submitted:

DATED this 2nd day of December, 2020.

BROWNSTEIN HYATT FARBER SCHRECK, LLP

BY: _____
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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: _____
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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:

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Attorneys for Plaintiffs

DISTRICT COURT

CLARK COUNTY, NEVADA

FORE STARS, LTD., a Nevada limited liability company; 180 LAND CO., LLC; A NEVADA LIMITED LIABILIITY COMPANY; SEVENTY ACRES, LLC, a Nevada limited liability company, Plaintiffs, vs. DANIEL OMERZA, DARREN BRESEE, STEVE CARIA, and DOES 1 THROUGH 100, Defendants.	Case No.: A-18-771224-C Dept: II **MOTION FOR RECONSIDERATION OF COURT'S ORDER DATED DECEMBER 10, 2020** **HEARING REQUESTED**

COME NOW the Plaintiffs, by and through their counsel, Lisa A. Rasmussen, Esq. of the Law Offices of Kristina Wildeveld & Associates, and hereby respectfully request that the Court reconsider its Order dated December 20, 2020 for the reasons outlined in

the attached Memorandum of Points and Authorities and based on the pleadings and papers on file in this case and any argument that may be had on this Motion.

Dated this 24th day of December, 2020,

The Law Offices of Kristina Wildeveld & Associates,

/s/ Lisa A. Rasmussen

LISA A. RASMUSSEN, ESQ.
Nevada Bar No. 7491
Counsel for Plaintiffs

MEMORANDUM OF POINTS AND AUTHORITIES

Plaintiffs respectfully request that this Court reconsider its December 10, 2020 order for each of the reasons set forth below. Specifically, Plaintiffs respectfully ask this court to deny the Defendants' special motion to dismiss pursuant to the Anti-SLAPP statute because Defendants cannot meet their burden on prong 1, the Nevada Supreme Court's Order did not establish law of the case with regard to prong 1, the litigation privilege does not apply in this circumstance and Plaintiffs made a showing sufficient to satisfy prong 2, which they need not even reach since Defendants cannot satisfy their burden under prong 1.

One thing is certain and that is that Nevada's anti-SLAPP statute has the ability, and perhaps already has, led to incongruous results. The defendants have applied an assault of circular reasoning in this case to convince the court that Plaintiffs are only entitled to conduct discovery with regard to prong 2, then disallowing and arguing against the same discovery when it was propounded, only to pick up their favorite argument – that the Nevada Supreme Court already determined prong 1—topped off with the final touch of "it doesn't really matter because litigation privilege precludes this litigation." Plaintiffs do not believe any of that is accurate and respectfully ask this

Court to reconsider its order and to deny the motion to dismiss. It cannot be that uttering a magic phrase determines whether or not litigation can go forward or not, with no additional analysis by the Court.

I. PLAINTIFFS HAVE ESTABLISHED ADMISSIBLE EVIDENCE CLEARLY AND DIRECTLY CONFLICTING WITH DEFENDANTS' DECLARATIONS AND REPRESENTATIONS

References herein to the transcripts of Bresee, Caria and Omerza refer to the depositions transcripts already on file with this Court and filed with Plaintiffs' Supplement to their Opposition to the Special Motion to Dismiss as Exhibits 1, 3 and 7. They are not reattached herein.

Pursuant to NRS 41.660(3)(a), under Prong 1, Defendants must show that the Plaintiff's 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." Furthermore, only communication "which is truthful or is made without knowledge of its falsehood" is protected as a good faith communication. Shapiro v. Welt, 133 Nev. Adv Rep. 6, 389 P.3d 262, 267-68 (Nev. 2017). On appeal, the Nevada Supreme Court stated "absent evidence that clearly and directly overcomes" sworn declarations were sufficient for Defendants to meet their Prong 1 burden of their anti-SLAPP Motion. Omerza v. Fore Stars, Ltd, 455 P.3d 841, *2 (Nev. 2020). Furthermore, a quasi-judicial proceeding "must be contemplated in good faith and under serious consideration." *See* Shapiro v. Welt, 133 Nev. 35, 40, 389 P.3d 262, 268-269 (Nev. 2017).

Daren Breese stated he had purchased his property at a premium in reliance on the Peccole Ranch Master Plan which allegedly stated the "open space natural drainage system" could not be developed (*Breese Deposition Transcript*, page 5.) Breese stated Judge Crockett's

ruling partially led to this understanding of the Peccole Ranch Master Plan, a ruling that came approximately twenty one years after the purchase of the property and a ruling that the Nevada Supreme Court later reversed, and that maybe he read something in the newspaper about it (Id, page 15-16.) Seventy Acres, LLC v. Binion, 458 P.3d 1071 (Nev. 2020). Breese stated the premium was paid in consideration for the open drainage system but then later admits he paid the premium "[b]ecause the street I am on were all custom lots and you had to pay a premium." (*Breese Deposition Transcript*, page 19-20.)

Breese repeatedly states he came to this conclusion based on representations by Frank Schreck's petition and his neighbors "summarizing" his beliefs. (Id, page 28.) Breese states his belief that his home was located in the Peccole Ranch Master Plan is based merely on the belief that he "always thought that it was." (Id, page 40.) He further states he did not possess any documents stating his property was located within the Master Plan nor did he recall whether his deed referenced the Master Plan (Id, page 41-42.)

Similarly, Steve Caria stated his belief supporting his Exhibit 7[1] Petition was based *primarily* on Judge Crockett's decision and Schreck's representations (*Caria Deposition Transcript*, page 56.) Judge Crockett's decision came five years after Caria purchased his Queensridge Towers property (Id, page 71.) Caria repeatedly states he believed he lived in the Peccole Ranch Master Plan because of Judge Crockett's ruling stating the Queensridge residents relied on said Plan (Id, page 85.) Caria also admits he has never actually seen the Peccole Ranch

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[1] This is Exhibit 7 to the Plaintiffs Supplemental Opposition to the Motion to Dismiss.

Master Plan (Id, page 66.) Caria concedes he personally did not rely on the Master Plan because he had no knowledge of it at the time of his purchase nor did he ever see any documents acknowledging Queensridge was located within the Master Plan (Caria Deposition Transcript, page 89-90.) Caria later states his belief that his property was located within the Master Plan "was just an assumption." (*Caria Deposition Transcript*, page 92.)

Likewise, Daniel Omerza states his position that Queensridge residents relied on the Peccole Ranch Master Plan was based on reading a news article about Judge Crockett's ruling (*Omerza Deposition Transcript*, page 13.) Additionally, Omerza states he purchased his property in 2003, fifteen entire years before the Crockett ruling. (Id., page 9.)

Plaintiffs dispute the claim that the Nevada Supreme Court found the Defendants' satisfied their Prong 1 burden, the Nevada Supreme Court stated merely that absent evidence to the contrary, Defendants' sworn declarations could satisfy their Prong 1 burden. Omerza v. Fore Stars, Ltd, 455 P.3d 841, *2 (Nev. 2020). There is admissible evidence that raises doubt as to whether the Defendants actually relied on the Peccole Ranch Master Plan when purchasing their property. In each Defendant's deposition, they state their belief of any alleged reliance on the Peccole Ranch Master Plan did not come from any actual documents but instead was based on Judge Crockett's ruling, news articles, and statements from Schreck and other neighbors.

The Nevada Supreme Court reversed Judge Crockett and held that Plaintiffs did not need "to obtain a major modification of the Peccole Ranch Master Plan." Seventy Acres, LLC v. Binion, 458 P.3d 1071, *2 (Nev. 2020). A belief that is "just an assumption" cannot constitute good faith reliance. Furthermore, a reliance that is based wholly on news articles, statements, and rulings *after the fact* cannot suffice to deprive Plaintiff of their constitutional right to seek redress and recompense for injury. To hold otherwise would allow the Defendants to rely on a Peccole

Ranch Master Plan, which the evidence indicates they did not even know existed at the time of their home purchase, solely based on events and statements occurring after the purchase of their property.

In *Williams v. Lazer*, No. 80350-COA, 2020 WL 6955440 (Nev. App. 2020), a condominium purchaser, Williams, alleged her real estate agent, Lazer, behaved in an "unethical, unprofessional, racist, and sexist manner." In holding Williams had not met her Prong 1 burden, the Nevada Court of Appeals mentioned "the fact that the NRED conducted an investigation and closed the case without imposing discipline lends credence to Lazer's argument that Williams falsely accused him of unethical conduct as a realtor." (Id, *4.) The Nevada Court of Appeals affirmed the District Court finding Williams failed to prove it was more likely than not that she satisfied the burden of proving her statements were made in good faith (Id, *4).

Here, similarly, the Supreme Court of Nevada found no binding Peccole Ranch Master Plan existed to prevent the Plaintiffs from developing the former Badlands Golf Course, which should lead credence to the fact that the Defendants did not meet their Prong 1 burden. There is admissible, contradictory evidence, that at the very least disputes whether the Declarations were truthful or made without knowledge of its falsehood. Both Breese and Omerza stated they remembered receiving the CC&Rs for the Queensridge community when they purchased their home. (*Breese Deposition Transcript*, page 8); (*Omerza Deposition Transcript*, page 9). The CC&R's explicitly stated there are no rights or control over the former Badlands golf course land. The Defendants cannot state they somehow relied on a binding Peccole Ranch Master Plan, when the CC&Rs they received at the time of the purchase of their residence directly contradicts the existence of such a Plan.

Breese signed a declaration stating he purchased the property in reliance on the Peccole Ranch Master Plan, a Plan he could not recall seeing at any point in time. Furthermore, Breese states he paid a premium in consideration for the open drainage system but then later states he all custom lots had to pay a premium, indicating the premium was in fact for consideration of a custom lot. On remand, the Nevada Supreme Court held "absent evidence that clearly and directly overcomes" Defendants' sworn declarations, these declarations could meet their Prong 1 burden. *Omerza,* 455 P.3d, at *2. The admissible evidence in Defendants' depositions contradicts any purported reliance at the time of the purchase of the house and constitutes evidence that clearly and directly overcomes Defendants' sworn declarations. Furthermore, the Nevada Supreme Court's ruling that no such binding plan precluding Plaintiff from developing the land without modification existed is further evidence which clearly and directly overcomes Defendants' sworn declarations.

To hold that Defendants proved 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" by a preponderance of the evidence, *despite the lack of any evidence indicating knowledge or existence of a recorded and binding Peccole Ranch Master Plan at the time of the sales*, would be to, in Mr. Langberg's words, require the Plaintiff "to prove what was in the defendant's mind," an "onerous burden." S.B. 444. Assembly Comm. on Judiciary. 78th Sess. 21 (Nev. April 24, 2015) (Testimony of Mitchell Langberg) attached hereto as Exhibit 1. To determine whether Defendants have satisfied their burden by preponderance of the evidence under Prong 1, the Court must determine their claims are more likely true than not. This requires a credibility determination which weighs Plaintiff's admissible evidence casting doubt on Defendants' sworn testimonies. Coker v. Sassone, 135 Nev. 8, 432 P.3d 746 (Nev. 2019); NRS §

41.637. *See* Wilson v. State, No. 72941-COA, 2019 WL 316905, at *2 (Nev. App. 2019). Plaintiffs have sought a credibility determination repeatedly.

. . .

. . .

II. PLAINTIFFS WERE NOT AFFORDED BASIC DUE PROCESS RIGHTS DURING THE CITY COUNCIL MEETINGS, THUS LITIGATION PRIVILEGE SHOULD NOT APPLY

Furthermore, the Nevada Supreme Court's holding in *Spencer v. Klementi*, 466 P.3d 1241 (Nev. 2020) is applicable to the facts here. Due process is not limited to defamation suits. The Nevada Supreme Court held a quasi-judicial proceeding requires, at a minimum:

> "the opportunity to present and rebut evidence and witness testimony, [….] that such evidence and testimony be presented upon oath or affirmation, and [….] allowing opposing parties to cross-examine, impeach, or otherwise confront a witness."
> Spencer v. Klementi, 466 P.3d at 1247

The Nevada Supreme Court found that the litigation privilege did not extend to a quasi-judicial proceeding where these basic due process protections were not afforded (Id, 1247-1248). Specifically, the Court mentioned that the meeting allowed both parties to present personal testimony, but did not require an oath, did not allow for cross-examination, and did not allow for impeachment of witnesses (Id, 1248). The Nevada Supreme Court found that proceedings which lack these "basic due-process protections generally do not engender fair or reliable outcomes." Id.

Here, Plaintiffs were not afforded these same basic due process rights to contest these representations and statements. Plaintiffs dispute litigation privilege applies to these statements made before City Council. The City Council meetings may have afforded the opportunity for Mr. Lowie and Plaintiffs to make statements but Plaintiffs were not afforded the opportunity to cross

examine or impeach witnesses, as in *Spencer*. Additionally, the statements given to the City Council were not sworn statements nor were they made under oath. The statements made to the City Council amount to an airing of grievances and are not a quasi-judicial hearing where litigation privilege should apply as an absolute defense. The statements that illustrate this were attached to the Plaintiffs supplement to the Opposition to the Motion to Dismiss as Exhibits 8, 9, 13 and 17. They were just statements, followed up with some questions by City Council or its representatives and a thank you. This does not comport with what the Nevada Supreme Court just outlined in Spencer v. Klementi.

III. PLAINTIFFS HAVE SATISFIED THEIR PRONG 2 BURDEN OR, ALTERNATIVELY, ARE ENTITLED TO SEEK ADDITIONAL LIMITED DISCOVERY UNDER NRS § 41.660(4) TO SATISFY THEIR PRONG 2 BURDEN UNDER NRS § 42.660(3)(B).

Alternatively, the Prong 2 burden under NRS 42.660(3)(b) requires only a prima facie showing of *a probability* of prevailing on the claim. Under Prong 2, the Court does not make any findings of fact, instead Prong 2 "merely requires a court to decide whether a plaintiff's underlying claim is legally sufficient." Taylor v. Colon, 136 Nev. Adv. Op. 50, 468 P.3d 820, 824 (2020). Because the Nevada Supreme Court recognizes that both California and Nevada's anti-SLAPP statutes are "similar in purpose and language," Nevada courts look to California law for guidance. Shapiro v. Welt, 133 Nev. 35, 39, 389 P.3d 262, 268 (Nev. 2017). Additionally, NRS 41.665 expressly states the Prong 2 burden is the same burden Plaintiffs must meet in California's anti-SLAPP statute. Once a plaintiff meets the Prong 2 burden of showing a "probability of prevailing on any part of its claim, the plaintiff *has established* that its cause of action has some merit and the entire cause of action stands." Baral v. Schnitt, 1 Cal. 5th 376, 385, 376 P.3d 604, 609 (Cal. 2016) (emphasis in original). Under NRS 41.660(4), the Court *shall*

allow limited discovery upon a showing by a party that information necessary to meet the Prong 2 burden is in the possession of another party. Any alleged representation made by Mr. Schreck which created an alleged reliance by the Defendants is information necessary to meet a prima facie showing of a probability of prevailing on a claim.

Plaintiffs dispute the Order's finding that the Nevada Supreme Court determined that Plaintiffs' failed to meet their burden under Prong 2. The Nevada Supreme Court never decided Prong 2 on the merits, they merely remanded the case for this Court to determine Plaintiffs' request for limited discovery under NRS § 41.660(4) to meet their Prong 2 burden. This request must be allowed upon a showing that information necessary to meet the burden is in the possession of another party and is not reasonably available without discovery. The Order's contention that the Nevada Supreme Court already determined Plaintiffs failed to meet their Prong 2 burden is misguided. Plaintiffs never conducted a Prong 2 analysis because the original decision found that Defendants had not met their Prong 1 burden. Only once the Nevada Supreme Court found that the Defendants met their Prong 1 burden did the burden shift to Plaintiffs to satisfy Prong 2. The Nevada Supreme Court held that "[o]therwise, the inquiry ends at the first prong." Coker v. Sassone, 135 Nev. 8, 12, 432 P.3d 746, 749 (Nev. 2019). Prong 2 requires a prima facie showing of a probability of prevailing on a claim, but a request for limited discovery does not require such a showing, in fact it mandates the Court to allow such discovery if the information necessary to meet the Prong 2 burden is in possession of another party.

Plaintiffs have satisfied this showing, any information relating to representations on which the Defendants relied upon are necessary to meet the Prong 2 burden and are not reasonably available without discovery. All three Defendants conceded that these representations were the sole or primary bases for their position set forth in their declarations. The Court has

never decided Prong 2 on the merits. Plaintiffs have sought limited discovery repeatedly, only to be met by Defendant's repeated attempts to severely limit any discovery. *See* Defendant Steve Caria Response to Plaintiffs' Amended First Set of Requests for Production of Documents Related to Defendant's Anti-SLAPP Special Motion to Dismiss.

. This Court entered the May 29th Order allowing for fifteen requests for documents among the Defendants and for four-hour depositions of the three Defendants. Defendants then sought to limit the scope of discovery even further following the May 29th Order. *See* Defendant's Request for Clarification RE May 29, 2020 Minute Order. Before Plaintiffs were even able to respond to the Request for Clarification despite notifying this Court's law clerk they would file a response, this Court entered the June 5th Order, which limited discovery to matters relating to Prong 2, matters identified in Plaintiff's papers, and matters identified by the Plaintiff during the April 29th hearing. This Court granted the Request for Clarification on less than a 14 day notice absent an order shortening time.

In Plaintiffs' original Requests for Production of Documents, Plaintiffs sought information directly relating to its Prong 2 burden. *See* Plaintiffs' First Set of Requests for Production of Documents to Defendant Daniel Omerza Related to Defendant's Anti-SLAPP Special Motion to Dismiss attached hereto as Exhibit 2. These limited and targeted requests were in response to the Court's June 5th Order.

The first request asked for all documents by Defendants or any other individual "concerning the Land upon which the Badlands golf course was previously operated." (Id., page 5.) This request ties directly into the Prong 2 analysis of Plaintiffs' claims in the complaint, said documents will tie into whether the Defendants prepared, promulgated, and solicited Declarations which they knew or should have known were false. The second asked for all title

and escrow documents concerning or related to Defendants' purchases of their Queensridge residence. (Id.) Once again, request goes right to the heart of the Prong 2 analysis as it seeks disclosures that the subject land was developable at the time of the Defendants' purchases. The sixth request asked for all non-privileged communication between Defendants and any member or former member of the Queensridge HOA regarding the allegations in the Complaint. (Id., page 6.) The sixth request is narrowly tailored and seeks only non-privileged communications, which could go to the heart of the allegations in the Complaint. The seventh request asked for the production of all documents which would establish Defendants did not receive any of the disclosures listed in paragraphs 12(a) through (d) of the Complaint. (Id.). All of these requests comply with this Court's June 5th Order. This request goes directly to Prong 2, Plaintiffs have alleged in paragraph 12, that certain disclosures were provided to all three Defendants at the time of their property purchases. Additionally, this question goes to the credibility of the Defendants, a determination this Court must make.

In response to the Plaintiffs' request for documents, Defendants filed a Motion for Protective Order on July 3rd. This Court granted the Motion in its July 21st Order. In response, Plaintiffs amended their request for documents to be even more limited. Defendants' Motion for Protective Order was inappropriate as the information sought was necessary to meet the Prong 2 burden, was in possession of another party or a third party, and was not reasonably available without discovery pursuant to NRS 41.660(4). The limitation of discovery to "what was in the papers" and what the Defendants relied on in their statements does not effectuate NRS 41.660(4)'s plain language. NRS 41.660(4) allows for limited discovery of information necessary to meet the NRS 41.660(3)(b) burden of a showing of prima facie evidence of a probability of prevailing on a claim. The discovery should have involved allegations in the

Complaint and not merely what led to Defendants' beliefs when they made the false statements to City Council. Plaintiffs specifically requested the solicitation of information that address the merits of Plaintiffs' claims. (Plaintiffs' Brief in Support of Request for Limited Discovery, page 5.)

In response, Breese and Omerza refused to produce any documents other than the reversed Judge Crockett ruling and a news article about the ruling. Both the ruling and article occurred long after the Defendants purchased their properties, thus it is impossible these documents could have been relied on at the time the Defendants purchased their property. Nonetheless, Defendants produced these documents stating they relied on them for their Declarations which stated they purchased the property in reliance "upon the fact that the open space/ natural drainage system could not be developed" pursuant to the "Peccole Ranch Master Plan." See Exhibits 3, and 4, attached hereto, Omerza and Bresee discovery responses, in addition to Exhibit 16 attached to the Plaintiffs' Supplemental Opposition, Caria's discovery responses.

Interestingly, Caria's response to the third request, an e-mail sent by Mr. Schreck, plays directly into Plaintiffs' allegations in the Complaint. (Supplemental Opposition, Exhibit 16.) Furthermore, as a result of the depositions, a pattern emerged. Breese received the Declaration from Mr. Schreck. (*Breese Deposition Transcript*, page 14.) In addition to Mr. Schreck's email to Caria, during the deposition Caria also stated he relied on Mr. Schreck's representations. (*Caria Deposition Transcript*, page 24). Omerza does not state he relied on any representations made by Mr. Schreck, but still contacted Mr. Schreck following notice of the lawsuit. (*Omerza Deposition Transcript*, page 15).

As a result of these repeated limitations of Plaintiffs' discovery requests, Plaintiffs were not able to inquire on issues that directly addressed the merits of Plaintiffs' case. However, as a result of the extremely limited depositions and responses to discovery, Plaintiffs are able to meet their burden on Prong 2 with respect to the conspiracy claim. Despite Defendants' statements that Plaintiffs "only" addressed the civil conspiracy claim, Plaintiffs are not required to demonstrate that it will prevail on every claim, but only that a prima facie showing of a probability of prevailing on at least one claim. Mr. Schreck's email produced by Caria goes right to the heart of Plaintiffs' civil conspiracy claim that Defendants intended to pressure officials within the City of Las Vegas with the intended action of delaying or denying the Plaintiffs' land rights and Plaintiffs' intent to lawfully develop their property. The extremely limited and narrowly tailored discovery Plaintiffs were afforded bore out evidence of the civil conspiracy claim.

An actionable civil conspiracy "consists of a combination of two or more persons who, by some concerted action intended 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, 971 P.2d 1251, 1256 (Nev. 1998). A credibility determination under Prong 1 would determine whether Defendants' utilized false representations in the form of the homeowner declarations stating that the Defendants detrimentally relied upon the presence of the Peccole Master Plan prior to purchasing their property. There is admissible evidence which contradicts these declarations, such as the presence of CC&Rs that expressly stated otherwise. If this Court weighs the conflicting evidence and finds that the Defendants are not credible, then the Plaintiffs have stated a legally sufficient claim for civil conspiracy.

Plaintiffs allege Defendants unlawfully utilized false representations in an attempt to delay or prevent Plaintiffs from developing their property.

The Court "must draw 'every legitimate favorable inference' from the anti-SLAPP plaintiff's evidence." Kinsella v. Kinsella, 45 Cal. App. 5th 442, 453, 258 Cal. Rptr. 3d 725, 736 (Cal. Ct. App. 2020), *citing* Cuevas-Martinez v. Sun Salt Sand, Inc., 35 Cal. App. 5th 1109, 1117, 248 Cal. Rptr. 3d 200, 206 (Cal. Ct. App. 2019). Mr. Schreck is the common link between the Defendants and the Declarations. Mr. Schreck and the Defendants agreed to utilize these false representations in the Declarations stating that Defendants relied on a supposed "Peccole Ranch Master Plan" prior to purchasing their property for the purpose of harming Plaintiff by delaying and preventing the development of their property. Defendants actions were a concerted effort to use false representations for their own personal gain, to the detriment of the Plaintiffs.

Defendant contends Plaintiffs suffered no injury because the City Council proceedings allowed development. This is not correct, the City continues to prevent Plaintiffs from developing their land. Plaintiffs expended at least hundreds of thousands of dollars in anticipation of developing their property. During the two-year interim, Plaintiffs were sitting on undeveloped land, needlessly expending money, and missing out on unrealized revenue as a result of their undeveloped land. Plaintiffs to this day have not been allowed to develop their land and suffered cognizable and irreparable injury as a result of the Defendants' actions. Defendants' objective to delay or deny the Plaintiffs' land rights and the development of their property has been successful.

When the Nevada Legislature initially passed the Anti-SLAPP Bill, Mr. Langberg himself stated the "biggest flaw in the statute" was that the Legislature required the plaintiff to show prima facie evidence of each element of the claim without any discovery. S.B. 444.

Assembly Comm. on Judiciary. 78th Sess. 22 (Nev. April 6, 2015) (Testimony of Mitchell Langberg, Exhibit 1 attached hereto). Thankfully, the Legislature headed Mr. Langberg's warning and amended the Bill to include the NRS 41.660(4) provision for limited discovery. Ironically, Mr. Langberg is now requiring Plaintiffs to meet the same standard he called the Bill's "biggest flaw" by requiring Plaintiffs to prove each element of their civil conspiracy claim with the extremely limited and narrowly tailored discovery Plaintiffs were afforded. *Id.*

CONCLUSION

For each of the reasons set forth herein, it is respectfully requested that this Court reconsider its order granting the defendants' special motion to dismiss pursuant to the Anti-SLAPP statute and that the Court deny the motion and allow the litigation in this case to proceed.

DATED: December 24, 2020. Respectfully submitted,

THE LAW OFFICES OF KRISTINA WILDEVELD & ASSOCIATES,

/s/ Lisa A. Rasmussen
LISA A. RASMUSSEN, ESQ.
NEVADA BAR NO. 7491
ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the foregoing MOTION FOR RECONSIDERATIONvia this court's EFile and Serve program on all parties receiving service in this case on this 24th day of December, 2020, including but not limited to:

/s/ Lisa A. Rasmussen

_____

Lisa A. Rasmussen, Esq.

Exhibit 1

Exhibit 1

MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY

Seventy-Eighth Session
April 6, 2015

The Senate Committee on Judiciary was called to order by Chair Greg Brower at 1:32 p.m. on Monday, April 6, 2015, in Room 2134 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to Room 4412 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Greg Brower, Chair
Senator Becky Harris, Vice Chair
Senator Michael Roberson
Senator Scott Hammond
Senator Ruben J. Kihuen
Senator Tick Segerblom
Senator Aaron D. Ford

STAFF MEMBERS PRESENT:

Patrick Guinan, Policy Analyst
Nick Anthony, Counsel
Julia Barker, Committee Secretary

OTHERS PRESENT:

Todd Moody
Ishi Kunin
Catharine Murray, Executive Director, Premier Adoption Agency, Inc.
John T. Jones, Jr., Nevada District Attorneys Association
Nikolos Hulet
Kevin Schiller, Department of Social Services, Washoe County
Jason Frierson
William Horne, Nevada Alternative Solutions Inc.; CWNevada, LLC

Dan McNutt
Todd Mason, Wynn Resorts
Mitch Langberg
Brett Kandt, Special Assistant Attorney General, Office of the Attorney General
Chuck Callaway, Las Vegas Metropolitan Police Department
Eric Spratley, Lieutenant, Sheriff's Office, Washoe County
Christopher Boyd, City of Henderson
Shelly Capurro
Laurel Stadler, Northern Nevada DUI Task Force
Laura Freed, Deputy Administrator, Division of Public and Behavioral Health, Department of Health and Human Services,
Troy Dillard, Director, Department of Motor Vehicles
Tracy Birch, Las Vegas Metropolitan Police Department
Kiera Sears, Black Rock Nutraceuticals LLC
Will Adler, Executive Director, Nevada Medical Marijuana Association
Cindy Brown
Julie Monteiro
Mona Lisa Samuelson
Vicki Higgins, ECONEVADA LLC

Chair Brower:
I open the Senate Committee on Judiciary with the hearing on Senate Bill (S.B.) 255.

SENATE BILL 255: Makes various changes to provisions governing the termination of parental rights. (BDR 11-637)

SENATE BILL 444: Revises provisions governing civil actions. (BDR 3-1137)

Todd Mason (Wynn Resorts):
This issue is complex and we will propose amendments.

Chair Brower:
I do not see any proposed amendments.

Mr. Mason:
We have not proffered any amendments.

Chair Brower:
Do you anticipate needing to amend the bill?

Mr. Mason:
We will correct a couple errors of omission with proposed amendments.

Our intent is to improve existing law, make clarifications, and continue to protect the right of free speech and the right to petition. It is not to roll back the Strategic Lawsuits Against Public Participation (SLAPP) statute.

Mitch Langberg:
The bill is self-explanatory so understanding the problems with the statute would explain why the changes are being proposed.

Chair Brower:
We changed relevant sections of NRS 41 in the 77th Session. Why is the statutory scheme not working? How can it be improved? How does this bill make the scheme work or improve it?

Mr. Langberg:
Prior to the 77th Session, the anti-SLAPP statute in Nevada was a narrow statute, protecting people in the course of exercising their right to petition. Last Session, the Legislature recognized certain First Amendment free speech rights are being exercised and people are being sued as an intimidation process. The anti-SLAPP statute in the State missed that. The goal of last Session's legislation was to identify meritless or frivolous lawsuits impinging on people's First Amendment rights. However, the text of the statute goes far beyond that.

It allows for meritorious lawsuits to be dismissed because of timing restrictions on discovery, and a plaintiff's burden of proof is far beyond what is necessary to identify meritless or frivolous statutes.

Chair Brower:
The old statute was too narrow, and the revised statute passed last Session is overbroad in terms of its scope to the types of speech that should be affected. Does this bill bring us to the middle?

Mr. Langberg:
Yes. I am here to help you find a middle ground and address issues found in the practice of other State statutes. While we are protecting First Amendment rights of defendants, a plaintiff's right to file a lawsuit is a First Amendment right to petition the government to redress grievances. The Nevada Constitution recognizes free speech rights, noting the importance of people who—abusing that free speech right—answer for that abuse. An overlybroad statute impinges the First Amendment rights of potential plaintiffs, just as too narrow a statute impinges defendant rights.

There are two prongs to an anti-SLAPP statute. First is speech claiming to be subject to the anti-SLAPP statute. In this circumstance, the plaintiff must show the claim is not meritless or frivolous. The biggest flaw in the statute is the second prong. Statute requires a plaintiff subject to an anti-SLAPP motion prove each element of the claim by clear and convincing evidence. He or she must do so without any discovery and quickly enough so a court can make a ruling within 7 days of the motion being served to the plaintiff. This is different from the California statute, although the Nevada Supreme Court and Legislature indicate the Nevada statute is modeled after California's wherein a plaintiff must show prima fascie evidence of each element of the claim. That is evidence considered sufficient to carry the cause of action. That is the biggest flaw in the statute.

I respect people's First Amendment rights and have been on both sides of defamation cases. Nothing is so special about the First Amendment that the burden on the plaintiff in a defamation case should be higher than the burden on the government in a death penalty case. The government must only show probable cause in a death penalty case before proceeding to trial.

Senate Bill 444 makes this issue more reasonable. It spreads out the period of time so a court does not have to rule within 7 days. In my experience litigating anti-SLAPP motions, the plaintiff is put to an enormous task of arguing in opposition to the motion that the speech issue is not the type of speech protected by the SLAPP motion and put on his or her entire case to meet even a prima fascie standard. That can be expensive. Experts are often involved, witness declarations have to be collected and internal document discovery has to be done.

This bill breaks the motion into two pieces. A defendant asserting the lawsuit as a SLAPP suit intended to stop speech would make his or her motion on the issue of whether the speech at issue qualifies under the SLAPP statute. If the court determines it does not, the motion is dismissed and the plaintiff is not put to the task of showing his or her proof in a way unlike any other plaintiff in a similar case. If the court determines it is a SLAPP-qualified motion, the plaintiff will then be put to documenting proof of his or her case.

Statute does not give the court power to grant discovery when appropriate. In this case, a plaintiff is tasked with proving his or her case through clear and convincing evidence and may need discovery to prove falsity in a defamation case. In California, a court can allow discovery for good cause shown when discovery is necessary for the plaintiff. Such is not the case in Nevada.

The other major change recognizes defamation and speech-based cases often include elements of a claim requiring proof-subjective knowledge or intent of a defendant. It can be almost impossible to obtain prima fascie evidence, even with discovery, because one can only put together circumstantial evidence of a person's intent after discovery. The U.S. Court of Appeals for the Ninth Circuit said it had never seen a defendant admit knowledge of what he or she said was false. This bill eliminates any element requiring proof of the subjective intent or knowledge of the defendant for a plaintiff in a potential SLAPP case.

Chair Brower:
This is not a simple concept. Is the criticism the statutory scheme defines speech too broadly? Is the definition of the phrase "a communication in furtherance of the right to petition or the right to free speech in direct connection with an issue of public concern" broader than that?

Mr. Langberg:
It was more broad, and we have made an effort to define public concern. It is like nailing Jell-O to a tree. We are talking about a statute that imposes heavy burdens, including the threat of attorney's fees on a litigant. It is important to narrow it closely to First Amendment speech.

Chair Brower:
What type of speech could be subject to an anti-SLAPP motion under the law that is too broad and should not be part of S.B. 444?

Mr. Langberg:
A tabloid Website publishing a story about a celebrity having an affair with another celebrity is arguably subject to the anti-SLAPP motion under the statute.

Chair Brower:
Is that because it is a matter of public concern even though it deals with private behavior between two private individuals?

Mr. Langberg:
The statute uses the word public interest.

Chair Brower:
As opposed to public concern? Arguably, anything we Legislators do in our private lives is a matter of public interest because we are public officials.

Mr. Langberg:
Yes—if the public would be interested. There is more in U.S. Supreme Court cases and various circuit courts around the Country about what constitutes public concern. Public concern is considered something that lends itself to political, social or other legitimate concerns of a community. We tried to distinguish between public concern, public curiosity or general interest. That is not to say that a defendant in those cases would be unable to have a defense and assert First Amendment rights, but he or she should not benefit from special protections given to those involved in core First Amendment free speech issues.

Chair Brower:
Let us say a Legislator was accused of stealing from the government by cheating on his or her travel documentation. Exposing that would be protected because it is a matter of public concern. But a Legislator believed to be cheating on a spouse is not a matter of public concern, only public interest.

Mr. Langberg:
Yes. We might litigate that particular issue because somebody may assert a Senator's faithfulness might impact his or her ability to do the job. Suppose somebody published an article claiming you burned down a farm building in the middle of nowhere when you were 20 years old or shoplifted when you were the age of 16. There is no legitimate public concern in that, just a matter of public interest.

Chair Brower:
Criticism of the statute has stemmed not from the public official context but the business context when a high-profile business person is a quasi-celebrity. That person believes he or she has been defamed and finds it difficult to file a defamation suit under the statutory scheme lest it be portrayed as a SLAPP suit.

Mr. Langberg:
Yes, and it is twofold. The first issue is whether it is a matter of public concern. Perhaps for a business leader, much of what is said about the products or services the entity provides would be a matter of public concern. The burden in the second prong is so high as to make it impossible.

Chair Brower:
I would disagree with you because in the business context, what a CEO does is a matter of public interest. It is not a matter of public concern because he or she is not a public official, dealing with public funds in a public office. Concern is not the same as interest

Mr. Langberg:
I agree. A college student accused of cheating on an exam in an online chat room or a physician accused of violating homeowners' association rules is not a matter of public concern. But they could arguably be required to show by clear and convincing evidence each element of their claims. In the Wild West of the Internet, former employees or competitors use Yelp and other review sites to

attack competitors under the guise of consumers. The reviews say the worst-of-the-worst things. Although those issues may be of public concern, the business owner is still faced with the obligation to prove his or her case on a standard and time frame that is impossible to meet.

Chair Brower:
That gives us a good hypothetical because it is intentionally false and arguably defamatory. If that review results in a defamation lawsuit by a company, does the statutory scheme make it difficult for a plaintiff to succeed with a defamation claim?

Mr. Langberg:
Yes. Online businesses such as Yelp would not come to California because of lack of protections. However, there are so many protections. For example, Yelp cannot be sued because of federal immunity under the Communications Decency Act. Yelp cannot be sued for reviews on the Website, even if the review is false. The only recourse a business holder has in these situations is to identify the person who posted the review, which can be hard because of anonymity. In Nevada, a disgruntled student of a doctor claimed the doctor had his or her medical license withdrawn in another state and was successfully sued for malpractice. The doctor could not bring a defamation claim in this case.

Chair Brower:
Despite those facts being false?

Mr. Langberg:
Yes, because he would have to prove the person who made the statements knew they were false by clear and convincing evidence in less than 7 days.

Chair Brower:
Are the procedural requirements unreasonably harsh for a plaintiff to effectively deal with?

Mr. Langberg:
Yes.

With the first prong of the bill, a discovery stay is put in place. It does not exist on the second prong. We are working on amendments to include it in the

second prong or create a separate section saying there will be a stay, but a leave of court can be granted until the whole case is resolved.

Most SLAPP statutes in the bill allow for immediate interlocutory appeal by a defendant who loses his or her motion. We are working on an amendment to give the defendant that right.

Chair Brower:
I will close the hearing on S.B. 444 and open the hearing on S.B. 447.

Chair Brower:
I adjourn the meeting of the Senate Committee on Judiciary at 7:11 p.m.

RESPECTFULLY SUBMITTED:

_____
Julia Barker,
Committee Secretary

APPROVED BY:

_____
Senator Greg Brower, Chair

DATE: _____

EXHIBIT SUMMARY				
Bill	**Exhibit**		**Witness or Agency**	**Description**
	A	2		Agenda
	B	8		Attendance Roster
S.B. 255	C	20	Senator Scott Hammond	Proposed Amendment 6238
S.B. 442	D	4	Dan McNutt	Proposed Amendment
S.B. 447	E	3	Chuck Callaway	Proposed Amendment 6140
S.B. 447	F	1	Jennifer Lazovich	Proposed Amendment
S.B. 447	G	3	Laurel Stadler	Division of Public and Behavioral Health Medical Marijuana Program
S.B. 447	H	1	Department of Motor Vehicles	Proposed Amendment
S.B. 447	I	6	Kierra Sears	Written Testimony
S.B. 447	J	15	Black Rock Nutraceuticals	Proposed Amendment
S.B. 225	K	4	Patrick Guinan	Work Session Document
S.B. 260	L	3	Patrick Guinan	Work Session Document
S.B. 262	M	9	Patrick Guinan	Work Session Document
S.B. 443	N	5	Patrick Guinan	Work Session Document
S.B. 445	O	2	Patrick Guinan	Work Session Document
S.B. 484	P	16	Patrick Guinan	Work Session Document

Exhibit 2

Exhibit 2

RFP

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Attorneys for Plaintiffs

DISTRICT COURT
CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

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

Defendants.

Case No.: A-18-771224-C

Dept. No.: II

PLAINTIFFS' FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS TO DEFENDANT DANIEL OMERZA RELATED TO DEFENDANTS' ANTI-SLAPP SPECIAL MOTION TO DISMISS

TO: DEFENDANTS DANIEL OMERZA

TO: MITCHELL LANGBERG, ESQ., of the law firm of BROWNSTEIN HYATT FARBER SCHRECK, LLP, Defendants' counsel of record.

Plaintiffs Fore Stars, LTD. (hereinafter "Fore Stars"), 180 Land Company LLC (hereinafter "180 Land Company"), and Seventy Acres, LLC (hereinafter "Seventy Acres") (collectively "Land Owners" or "Plaintiffs"), by and through their undersigned counsel, Lisa A. Rasmussen, Esq., of the Law Offices of Kristina Wildeveld & Associates and, hereby request that

Defendant Daniel Omerza (hereinafter "Omerza") produce each of the documents and other tangible things within Defendants' "possession, custody, or control." N.R.C.P. 34(a).

DEFINITIONS AND INSTRUCTIONS

1. Documents and photographs sought in these Requests for Production shall include documents and photographs within the knowledge, possession, control or access of any agent, employee, attorney, or investigator of Defendant, or any person acting as Defendant's representative or on behalf of Defendants including, but not limited to, any otherwise independent attorney, agent, or investigator.

2. "You," "you," "Your," or "your" refers to Defendant as well as all present or past employees, agents, attorneys, investigators, and any other person or entity directly or indirectly subject to your respective control.

3. As used in these Requests, the following definitions shall apply: The term "Complaint" shall mean Plaintiff's Complaint filed in this case on or about March 15, 2018. The terms "Special Motion to Dismiss" and/or "Anti-SLAPP Motion" shall mean Defendant's Special Motion to Dismiss filed in this case on or about April 13, 2018. The term "Declaration" shall mean the declaration sent by Defendants' to their Queensridge neighbors in March 2018 and attached to the Complaint as Exhibit 1. The term "Affidavit" shall mean the affidavit executed by Defendant and attached to Defendants' Special Motion to Dismiss.

4. Whenever appropriate, the singular form of a word shall be interpreted as plural, and the masculine gender shall be deemed to include the feminine.

5. As used in this Requests for Production, the term “and” as well as “or” shall be construed either disjunctively or conjunctively, as necessary, to bring the scope of these Requests for Production any information which might otherwise be construed to be outside their scope.

6. As used in these Requests for Production, the term “document” includes, without limiting the generality of its meaning, all originals or copies, where originals are unavailable, and non-identical copies (whether different from originals by reason of notation made on such copies or otherwise) of all written, recorded or graphic matter, however produced or reproduced, whether or not now in existence, or correspondence, electronic mail, e-mail(s), electronic files, text messages, SMS messages, iMessages, telegrams, notes or sound recordings of any type of conversation, meeting or conference, minutes of meetings, memoranda, reports, summaries and results of investigations and tests, reviews, contracts, agreements, working papers, tax returns, statistical records, ledgers, books of account, vouchers, bank checks, bank statements, invoices, receipts, computer data, stenographers’ notebooks, manuals, directives, bulletins, desk calendars, appointment books, diaries, maps, charts, photographs, plats, drawings or other graphic representations, logs, investigators reports or papers similar to any of the foregoing, however denominated.

7. As used in these Requests for Production, the term “photograph” includes, without limiting the generality of its meaning, all originals or copies (whether different from originals by reason of notation made on such copies or otherwise) of all photographs, recorded or graphic matter, however produced or reproduced, whether or not now in existence, maps, charts, diagrams, plats, drawings or other graphic representations, or any other possible representations similar to any of the foregoing, however denominated.

9. If any document or photograph requested is not within your physical possession, so state. If the document or photograph is not in your physical possession, identify every person or entity you know or believe has physical possession of such document. If you at any time had possession or control of a document called for under this request and if such document has been lost, destroyed, purged, or is not presently in your possession or control, you shall describe the document, the date of its loss, destruction, purge or separation from possession or control, and the circumstances surrounding its loss, destruction, purge, or separation from possession or control.

10. As used in these Requests for Production, the term "person" includes, without limiting the generality of its meaning, every natural person, corporate entity, partnership, association, governmental body, or agency.

11. As used in these Requests for Production, the terms identification of a "person or entity" includes stating his, her or its full name, his or her most recent home address and telephone number, his, her or its most recent known business address and telephone number, his or her present position, and his, her or its prior connection or association with any party to this litigation.

12. If you cannot produce any document or photograph requested, after exercising diligence to secure the document or photograph, so state and answer to the extent possible, specifying your inability to produce and stating whatever information or knowledge you have concerning the document or photograph you are unable to produce.

13. If you claim privilege as to any communication as to documents or photographs requested, specify the privilege claimed, the communication and/or answer as to which that claim is made, the parties to the communication, the topic discussed in the communication and the basis for your claim.

14. These Requests for Production are continuing and require supplemental answers if you obtain further information with respect to the same between the date your answers are served and the entry of judgment.

REQUESTS FOR PRODUCTION

1. Produce all documents by and between you and any other individual concerning the Land upon which the Badlands golf course was previously operated, including but not limited to, any past or present homeowner within the Queensridge common interest community (hereinafter "Queensridge"), any employee of the management company that manages the Queensridge HOA, any Las Vegas City Council member, any Las Vegas Planning Commissioner, and any Las Vegas City employee.

2. Produce all title and escrow documents concerning or related to Your purchase of a residence/lot in Queensridge as stated in the Declaration.

3. Produce all documents concerning or related to Your statement in the Declaration that:

> 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….

4. Produce all documents concerning or related to Your statement in the Affidavit that you have "no understanding that any of the statements are false."

5. Produce all of Your non-privileged communications concerning or related to the good faith component of Your Special Motion to Dismiss.

6. Produce all non-privileged communications between You and any other resident member or former member of the Queensridge HOA regarding the allegations in the Complaint on file in this case.

7. Produce all documents establishing that You **did not receive** any of the disclosures listed in paragraph 12(a) through (d) inclusive of the Complaint on file in this case.

8. Produce any and all documents in Your possession between you and the other two defendants named in this case that are related to the declarations you gathered and your Affidavit in this case.

DATED this 30th day of June, 2020.

By: *Lisa A. Rasmussen*
Attorneys for Plaintiffs

The Law Offices of Kristina Wildeveld
& Associates

CERTIFICATE OF SERVICE

I hereby certify that on the 30th day of June, 2020, I caused a true and correct copy of the foregoing **PLAINTIFFS' FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS TO DEFENDANT DANIEL OMERZA RELATED TO DEFENDANTS' ANTI-SLAPP SPECIAL MOTION TO DISMISS** to be submitted via U.S. mail and/or electronically for filing and service with the Eighth Judicial District Court via the Electronic Filing System to the following:

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

/s/ Lisa A. Rasmussen

Exhibit 3

Exhibit 3

RSPN
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mlangberg@bhfs.com
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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

DEFENDANT DANIEL OMERZA RESPONSE TO PLAINTIFFS' AMENDED FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS RELATED TO DEFENDANT'S ANTI-SLAPP SPECIAL MOTION TO DISMISS

Defendant Daniel Omerza ("Omerza") responds to Plaintiffs' Amended First Set of Requests for Production of Documents Related To Defendants' Anti-SLAPP Special Motion to Dismiss as follows:

RESPONSES TO AMENDED FIRST SET OF

REQUEST FOR PRODUCTION OF DOCUMENTS

REQUEST FOR PRODUCTION NO. 1:

If you relied on any of the following in preparing the Declaration(s), please produce the following: all documents by and between you and any other individual concerning the Land upon which the Badlands golf course was previously operated, including but not limited to, any past or

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100 North City Parkway, Suite 1600
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present homeowner within the Queensridge common interest community (hereinafter "Queensridge"), any employee of the management company that manages the Queensridge HOA, any Las Vegas City Council member, any Las Vegas Planning Commissioner, and any Las Vegas City employee.

RESPONSE TO REQUEST FOR PRODUCTION NO. 1:

This responding party has no documents responsive to this request.

REQUEST FOR PRODUCTION NO. 2:

If you relied on any of the following in preparing Your Declaration, please produce the following: any title and escrow documents concerning or related to Your purchase of a residence/lot in Queensridge as stated in the Declaration.

RESPONSE TO REQUEST FOR PRODUCTION NO. 2:

This responding party has no documents responsive to this request.

REQUEST FOR PRODUCTION NO. 3:

To the extent that you relied on any documents when you made the following statement in Your Declaration, please produce all such documents:

> 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….

RESPONSE TO REQUEST FOR PRODUCTION NO. 3:

This responding party relied on a newspaper report of the decision of Judge Crockett in the *Binion* matter and on a sign posted on the Badlands fencing. Copies of these documents are produced herewith.

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

REQUEST FOR PRODUCTION NO. 4:

To the extent that you relied on the following for making any of the statements in the Declaration(s), please produce the following: all non-privileged communications between You and any other resident member or former member of the Queensridge HOA regarding the allegations in the Complaint on file in this case.

RESPONSE TO REQUEST FOR PRODUCTION NO. 4:

This responding party has no documents responsive to this request.

REQUEST FOR PRODUCTION NO. 5:

Produce any and all documents in Your possession between you and the other two defendants named in this case that You relied on in making the declaration(s) you executed or gathered.

RESPONSE TO REQUEST FOR PRODUCTION NO. 5:

This responding party has no documents responsive to this request.

DATED this 21st day of August, 2020.

BROWNSTEIN HYATT FARBER SCHRECK, LLP

BY: */s/ Mitchell J. Langberg*

MITCHELL J. LANGBERG, ESQ., Bar No. 10118
mlangberg@bhfs.com
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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

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 **DEFENDANT DANIEL OMERZA RESPONSE TO PLAINTIFFS' AMENDED FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS RELATED TO DEFENDANT'S ANTI-SLAPP SPECIAL MOTION TO DISMISS** be submitted electronically for filing and/or service with the Eighth Judicial District Court via the Court's Electronic Filing System on the 24th 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

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Las Vegas ‘abused its discretion’ in Badlands vote, judge rules

The 250-acre site of a closed golf course, seen in June 2017, is slated for development. (Patrick Connolly/Las Vegas Review-Journal)

By Jamie Munks Las Vegas Review-Journal

January 19, 2018 - 4:40 pm

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A Clark County District Court judge said the city of Las Vegas “abused its discretion” in approving a developer’s plans for condominiums on the Badlands golf course without a major modification to the master plan.

Opponents of plans to develop the shuttered course from the surrounding Queensridge development challenged the City Council’s

February 2017 vote to allow developer EHB Cos. to build condos on 17 acres at the property’s eastern tip, and requested a judge weigh in.

Judge Jim Crockett in a hearing last week sided with the opponents, calling it “ironic” that the city and the developer “want to point to staff recommendations that were made toward the end of this process, but they want to disregard the repeated recommendations by staff in the earlier stages which made it clear that a major modification was a requirement,” according to the court transcript from the Jan. 11 hearing.

The City Council split 4-3 in favor of 435 for-sale condominiums at the former golf course’s eastern edge. Multiple development plans for the course have come before the Planning Commission and City Council since EHB bought the property, though the 435 condos are the only proposal the council has given the green light to. Construction on the condos hasn’t begun. The council voted down other development proposals in June and August.

The condo plans are one installment in a sustained struggle between the developers and a group of opponents who live in the tony

Queensridge community, their properties overlooking the course. The battles have played out in courtrooms and City Hall, and their difference boils down to a fundamental disagreement over whether the golf course can be developed.

City staff at first “repeatedly explained” a major modification to the Peccole Ranch Master Plan was needed to approve the application, Crockett said.

“Instead, over the course of many months there was a gradual retreat from talking about that, and instead all of a sudden that discussion and the need for following staff’s recommendation just went out the window,” Crockett said.

The developers and their attorneys contend a major modification isn’t required for their development plans and that the golf course isn’t subject to the Peccole Ranch Master Plan. The developers also assert the property carries hard zoning and isn’t classified common open space.

“We are confident that the city’s interpretation of its own code is proper and will ultimately prevail,” said an EHB Cos. statement responding to Crockett’s decision.

Deputy City Attorney Phil Byrnes, who represented the city in court, told Crockett the golf course is not a planned development district and doesn’t require a major modification.

City Attorney Brad Jerbic could not be reached for comment.

The judge gave Todd Bice, the attorney representing the Badlands development opponents, two weeks to prepare an order. The developers and the city could appeal Crockett’s decision after that’s finalized.

This month, the council heard an appeal from the Queensridge opponents challenging the city planning director’s decision to not require EHB Cos. to submit a general plan amendment and a major modification of the master plan with a new round of development plans for another section of the course, which the council has yet to publicly consider.

The City Council voted 4-2 to deny that appeal, with Councilwoman Lois Tarkanian abstaining. Councilman Bob Coffin later said he accidentally voted with the majority — the opposite of what he intended to do. Coffin’s effort to have the council rescind that action and take another vote on the appeal died with a 3-3 vote Wednesday. Council members were briefed on Crockett’s decision in a closed-door session on Wednesday.

Coffin during the open meeting questioned why the council would revisit the issue when a judge had since ruled against the city.

“We lost the case. On this exact point,” Coffin said at Wednesday’s council meeting. “Why would we today thumb our nose at the judge and say ‘Sorry, Judge Crockett, we don’t care what you said in court … our position is going to be against you and for whoever — the developer.’”

The immediate implications for the city of the court decision on council-approved and pending plans for developing the course weren’t immediately clear.

New plans

Last week, the Las Vegas Planning Commission voted to advance to the City Council a separate set of plans to build single-family homes on a large swath of the 250-acre Badlands course, west of the planned condominium proposal. City staff recommended approval.

Multiple versions of plans have come before the Planning Commission and the council over the past two years. The developer’s team decried the process and how long it’s dragged on.

“The process has failed this developer. The process has not treated this developer as it treats other developers …” the developer’s attorney, Stephanie Allen, told the Planning Commission Jan. 9. “Every time you press pause it’s hundreds of thousands of dollars that go down the tank for this particular property owner.”

Contact Jamie Munks at jmunks@reviewjournal.com or 702-383-0340. Follow @JamieMunksRJ on Twitter.

Related

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Las Vegas City Council nixes another Badlands debate

Badlands developer forces council vote, threatens to sell property

LAND USE
ENTITLEMENT REQUEST
PROJECT NUMBER: PRJ-72218
GPA-72220
FROM: PR-OS (PARKS/ RECREATION/OPEN SPACE)
TO: ML (MEDIUM LOW DENSITY RESIDENTIAL)
Public Hearing Information
Planning Commission Meeting
JANUARY 9, 2018 @ 6:00 P.M.
City Hall - 495 South Main Street, 2nd Floor
City Council Chambers
For Information Call:
City of Las Vegas - Department of Planning
at 702-229-6301, TTY 7-1-1
http://www.lasvegasnevada.gov
CITY OF LAS VEGAS
NEVADA

Exhibit 4

Exhibit 4

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

DISTRICT COURT

CLARK COUNTY, NEVADA

FORE STARS, LTD., a Nevada limited liability company; 180 LAND CO., LLC; a Nevada limited liability company; SEVENTY ACRES, LLC, a Nevada limited liability company, Plaintiffs, v. DANIEL OMERZA, DARREN BRESEE, STEVE CARIA, and DOES 1 THROUGH 100, Defendants,	CASE NO.: A-18-771224-C DEPT. NO.: II **DEFENDANT DARREN BRESEE RESPONSE TO PLAINTIFFS' AMENDED FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS RELATED TO DEFENDANT'S ANTI-SLAPP SPECIAL MOTION TO DISMISS**

Defendant Darren Bresee ("Bresee") responds to Plaintiffs' Amended First Set of Requests for Production of Documents Related To Defendants' Anti-SLAPP Special Motion to Dismiss as follows:

RESPONSES TO AMENDED FIRST SET OF

REQUEST FOR PRODUCTION OF DOCUMENTS

REQUEST FOR PRODUCTION NO. 1:

If you relied on any of the following in preparing the Declaration(s), please produce the following: all documents by and between you and any other individual concerning the Land upon which the Badlands golf course was previously operated, including but not limited to, any past or

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present homeowner within the Queensridge common interest community (hereinafter "Queensridge"), any employee of the management company that manages the Queensridge HOA, any Las Vegas City Council member, any Las Vegas Planning Commissioner, and any Las Vegas City employee.

RESPONSE TO REQUEST FOR PRODUCTION NO. 1:

Responding party has no documents responsive to this request.

REQUEST FOR PRODUCTION NO. 2:

If you relied on any of the following in preparing Your Declaration, please produce the following: any title and escrow documents concerning or related to Your purchase of a residence/lot in Queensridge as stated in the Declaration.

RESPONSE TO REQUEST FOR PRODUCTION NO. 2:

Responding party has no documents responsive to this request.

REQUEST FOR PRODUCTION NO. 3:

To the extent that you relied on any documents when you made the following statement in Your Declaration, please produce all such documents:

> 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….

RESPONSE TO REQUEST FOR PRODUCTION NO. 3:

Responding party has no documents responsive to this request.

REQUEST FOR PRODUCTION NO. 4:

To the extent that you relied on the following for making any of the statements in the Declaration(s), please produce the following: all non-privileged communications between You and any other resident member or former member of the Queensridge HOA regarding the

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allegations in the Complaint on file in this case.

RESPONSE TO REQUEST FOR PRODUCTION NO. 4:

Responding party has no document responsive to this request.

REQUEST FOR PRODUCTION NO. 5:

Produce any and all documents in Your possession between you and the other two defendants named in this case that You relied on in making the declaration(s) you executed or gathered.

RESPONSE TO REQUEST FOR PRODUCTION NO. 5:

Responding party ha not documents responsive to this request.

DATED this 21st day of August, 2020.

BROWNSTEIN HYATT FARBER SCHRECK, LLP

BY: */s/ Mitchell J. Langberg*
MITCHELL J. LANGBERG, ESQ., Bar No. 10118
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Counsel for Defendants
DANIEL OMERZA, DARREN BRESEE, and STEVE CARIA

BROWNSTEIN HYATT FARBER SCHRECK, LLP
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of Brownstein Hyatt Farber Schreck, LLP, and pursuant to NRCP 5(b), EDCR 8.05, Administrative Order 14-2, and NEFCR 9, I caused a true and correct copy of the foregoing **DEFENDANT DARREN BRESEE RESPONSE TO PLAINTIFFS' AMENDED FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS RELATED TO DEFENDANT'S ANTI-SLAPP SPECIAL MOTION TO DISMISS** be submitted electronically for filing and/or service with the Eighth Judicial District Court via the Court's Electronic Filing System on the 24th 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

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

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Steven D. Grierson
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MATF
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mlangberg@bhfs.com
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Telephone: 702.382.2101
Facsimile: 702.382.8135

Attorneys For Defendants
DANIEL OMERZA, DARREN BRESEE,
and STEVE CARIA

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

v.

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

Defendants.

CASE NO. A-18-771224-C

DEFENDANTS' MOTION FOR ATTORNEYS' FEES AND ADDITIONAL MONETARY RELIEF PURSUANT TO NRS 41.670 AND NRS 18.010(2)

HEARING REQUESTED

Defendants Daniel Omerza, Darren Bresee, and Steve Caria, by and through their counsel of record Mitchell J. Langberg of BROWNSTEIN HYATT FARBER SCHRECK LLP, hereby move for an award of attorneys' fees in the amount of $694,044.00 and additional monetary relief in the amount of $10,000 per Defendant from each Plaintiff pursuant to NRS 41.670 and NRS 18.010(2).

. . .

. . .

. . .

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

This Motion is made and based upon NRS 41.670, NRS 18.010(2), NRCP 54, the following Memorandum of Points and Authorities, the supporting declaration and exhibits, the pleadings and papers on file in this matter, as well as upon any oral argument the Court may entertain should this matter be set for hearing by the Court.

DATED this 31st 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
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Attorneys For Defendants Daniel Omerza, Darren Bresee, and Steve Caria

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

On December 10, 2020, this Court entered its order granting Defendants' anti-SLAPP motion. By way of that order, this Court determined that Plaintiffs' filed a meritless lawsuit merely as a consequence of Defendants' good faith exercise of their First Amendment rights. To discourage such meritless lawsuits implicating First Amendment rights, Nevada's anti-SLAPP law requires Plaintiffs to pay Defendants attorneys' fees and allows for other monetary penalties. Those mandatory fees and potential additional penalties are all that is at issue in this motion.

More than 2 1/2 years ago, Defendants, who dared challenge Plaintiffs' real estate development plans, were served with a six-count complaint that accused them of a variety of torts, demanded substantial damages and put Defendants on notice that the plaintiff developers would seek the attorneys' fees charged by their high-profile litigation attorney.

Fortunately for Defendants, they were able to find experienced anti-SLAPP counsel who was willing to take the ***defense*** of the case on a contingency basis. Plaintiffs litigated this meritless lawsuit aggressively—as if cost was no object to the wealthy developer Plaintiffs. Had they been required to come out-of-pocket for the hundreds of thousands of dollars necessary to defend against Plaintiffs' unbridled attacks, Defendants very well may have been forced to capitulate even though they had done nothing wrong.

Plaintiffs' efforts to use the legal system as a tool of intimidation failed. By statute, they are required to pay fees. ***Plaintiffs'*** litigation tactics forced defense counsel to work nearly 650 hours on this case. Defense counsels' regular rates are in line with the rates Plaintiffs' counsel charged in this case. The contingent nature of the fee arrangement—which included the risk of no fees being paid if unsuccessful—merits a fee enhancement equal to 100% of the amount that would have been billed hourly. Plaintiffs should be ordered to pay fees of $694,044.00 and statutorily permitted additional monetary relief of $10,000 per Defendant from each Plaintiff.[1]

[1] Notably, Plaintiffs have recently filed a meritless motion seeking reconsideration of the anti-SLAPP motion. Defendants will supplement this fee request to include the additional fees incurred once that motion has been denied.

II. FACTS

Because the anti-SLAPP motion has been denied and an award of attorneys' fees is mandatory, the only facts that are truly relevant are the work that was done by defense counsel and whether the fees requested are reasonable.

However, mindful that the Court may not be familiar with the case, the Nevada Supreme Court's decision earlier in this case is attached as Exhibit 2. The Court provides a good summary of the underlying facts and anti-SLAPP issues throughout its order.

Most relevant to this motion is the time defense counsel spent obtaining dismissal of Plaintiffs' meritless lawsuit. That process is summarized here.[2]

March 15, 2018 – Plaintiffs filed their 19 page complaint with six claims for relief demanding "substantial money damages" and an award of attorneys' fees. That complaint was ultimately dismissed by the Court as a meritless lawsuit based on good faith communications in furtherance of the right to petition or free speech in direct connection with an issue of public concern.

April 13, 2018 – Defendants filed their anti-SLAPP Special Motion To Dismiss pursuant to NRS 41.635, et. seq. and a Motion to Dismiss pursuant to NRCP 12(b)(5).

May 4, 2018 – Plaintiffs filed their opposition to the anti-SLAPP motion.

May 7, 2018 – Plaintiffs filed their opposition to the 12(b)(5) motion.

May 9, 2018 – Defendants filed their reply briefs in support of both motions.

May 14, 2018 – The Court held a lengthy hearing on the motions and requested supplemental briefing.

May 23, 2018 – Plaintiffs and Defendants submitted their supplemental briefs.

May 29, 2018 – The Court entered its order denying the anti-SLAPP and 12(b)(5) motions.

[2] To avoid unnecessarily burdening the Court with voluminous exhibits, Defendants do not attached the pleadings from the case here because all are available electronically on the Court's docket system.

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May 30, 2018 – Despite the fact that no answer had been filed in the case, Plaintiffs noticed an Early Case Conference.

June 20, 2018 – The Court entered its Findings of Fact, Conclusions of Law, and Order denying the anti-SLAPP motion and 12(b)(5) motion.

June 27, 2018 – Defendants filed their Notice of Appeal pursuant to the automatic appeal right provided by NRS 41.670(4).

July 2, 2018 – Defendants submitted a Petition for Writ of Prohibition or Alternatively, Mandamus to the Nevada Supreme Court with respect to the 12(b)(5) motion.

September 14, 2018 – Despite the fact that NRS 41.666(3)(e) requires the Court to stay discovery pending any appeal of the denial of an anti-SLAPP motion, and after unsuccessful meet and confer efforts by defense counsel, Plaintiffs filed a Motion for Order Allowing Commencement of Discovery.

October 1, 2018 – Defendants filed their opposition to the discovery motion.

October12, 2018 – Plaintiffs filed their reply in support of the discovery motion.

October 17, 2018 – Plaintiffs filed supplemental exhibits to support their motion. Defendants filed a supplemental exhibit in opposition to the discovery motion.

October 17, 2018 – The Nevada Supreme Court denied Defendants' writ petition.

October 19, 2018 – The parties engaged in extensive oral arguments before the Arbitration Commissioner sitting for the Discovery Commissioner. The recommendation was to allow discovery to proceed.

October 23, 2018 – Defendants submitted their Opening Brief and Appendix (over 600 pages) to the Nevada Supreme Court.

November 29, 2018 – Plaintiffs submitted their Answering Brief to the Nevada Supreme Court.

December 26, 2018 – Defendants submitted their Reply Brief to the Nevada Supreme Court.

December 12, 2018 – The Discovery Commissioner issued her Report and Recommendation to allow discovery to proceed.

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January 3, 2019 – Defendants filed their objections to the Discovery Commissioner's Report and Recommendations, along with points and authorities in support of those objections.

January 15, 2019 – The Court set the discovery motion for hearing and requested a response to the objections from Plaintiffs.

January 30, 2019 – Plaintiffs filed their response to Defendants objections.

February 20, 2019 – The Court held a lengthy hearing on the discovery dispute.

March 15, 2019 – The Court issued a minute order denying Plaintiffs efforts to conduct discovery because "the statute mandates that the Court stay discovery pending appeal of an Order denying the Special Motion to Dismiss."

October 2, 2019 – The Court held a status check in the matter.

January 23, 2020 – The Nevada Supreme Court issued its order reversing the denial of the anti-SLAPP motion, expressly finding that Defendants ***had*** met their burden on the first prong of the anti-SLAPP analysis (demonstrating that their communication were good faith communications in furtherance of the right to petition or the right of free speech in direct connect with a matter of public concern). The Nevada Supreme Court further found that Plaintiffs ***had not*** met their burden under the second prong of the anti-SLAPP analysis (to demonstrate that they had *prima facie* evidence to support their claims). However, because the Court had not considered Plaintiffs' request for discovery on Prong 2, the case was remanded for the Court to consider whether discovery would be appropriate.

February 10, 2020 – Defendants filed a Petition for Rehearing asserting that the litigation privilege barred Plaintiffs' claims no matter what any discovery might reveal such that remand was unnecessary **and** noting that the Nevada Supreme Court's order suggested that the issue of the litigation privilege had been considered and rejected.

February 27, 2020 – The Nevada Supreme Court denied the Petition for Rehearing. However, it made clear that the litigation privilege issue was one for this Court to consider. Ultimately, this Court determined that the litigation privilege barred Plaintiffs' claims.

. . .

. . .

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April 29, 2020 – The Court held a further status check in the matter that involved lengthy argument about whether Plaintiffs would be permitted discovery before it ruled on the remaining aspects of the anit-SLAPP motion. The Court ordered further briefing on the subject.

May 6, 2020 – Plaintiffs submitted their briefing in support of discovery.

May 11, 2020 – Defendants submitted their briefing in opposition to such discovery.

May 29, 2020 – The Court issued a minute order allowing Plaintiffs' very limited discovery. That same day, Defendants submitted a request for clarification regarding the scope of such discovery.

June 5, 2020 – the Court issued its minute order clarifying the limits of permitted discovery.

June 24, 2020 – Plaintiffs served Requests for Production of Documents that did not comply (in form or scope) with the Court's order.

June 30, 2020 – Plaintiffs served revised Requests for Production of Documents that were beyond the limited scope authorized by the Court.

July 2, 2020 – After meet and confer efforts regarding the scope of discovery were not successful, Defendants filed a Motion for Protective Order Limiting Discovery.

July 7, 2020 – Plaintiffs filed their opposition to the protective order motion.

July 9, 2020 – Defendants' filed their reply in support of their protective order motion.

July 13, 2020 – The Court held a hearing on the protective order motion.

July 21, 2020 – The Court issued a minute order granting the protective order.

July 29, 2020 – The Court held a status check in the matter.

August 6, 2020 – Plaintiffs served their Amended Requests for Production of Documents.

August 24, 2020 – Defendants served their responses to the Requests for Production of Documents.

August 26, 2020 – Plaintiffs took the depositions of each of the three Defendants.

October 14, 2020 – Plaintiffs filed their lengthy supplemental opposition to the anti-SLAPP motion.

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October 15, 2020 – Defendants filed a motion to strike portions of the supplemental opposition because the supplemental opposition contained arguments on issues that had been conclusively decided by the Nevada Supreme Court and were law of the case and outside the scope of the order of remand.

October 20, 2020 – Plaintiffs filed their opposition to the motion to strike.

October 21, 2020 – Defendants filed their reply in support of the motion to strike.

October 30, 2020 – Plaintiffs filed their supplement reply in support of the anti-SLAPP motion.

November 9, 2020 – The Court held a hearing on the anti-SLAPP motion.

November 10, 2020 – The Court issued its minute order (entered the prior day) granting the anti-SLAPP motion. Defendants were directed to prepare findings of fact and conclusions of law.

December 2, 2020 – After meet and confer efforts were not successful to resolve differences between the parties with respect to the finding of fact and conclusions of law, Defendants submitted its form of Findings of Fact, Conclusions of Law, and Order.

December 3, 2020 – Plaintiffs submitted their version of the proposed order.

December 10, 2020 – The Court entered the form of Findings of Fact, Conclusions of Law, and Order that Defendants had submitted.

December 24, 2020 – Plaintiffs filed their Motion for Reconsideration of the anti-SLAPP motion.

Simply stated, through their meritless lawsuit designed only to intimidate and make an example out of Defendants for daring to oppose Plaintiffs' development plans, Plaintiffs engaged in (and continue to engage in) a course of conduct that required several hundred attorney hours to successfully repel. Plaintiffs must be ordered to pay all reasonable fees, as required by the anti-SLAPP law.

III. ARGUMENT

Pursuant to NRS 41.670(1)(a), when a defendant successfully has claims dismissed by way of an anti-SLAPP motion, the court "shall award reasonable costs and attorney's fees to the

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person against whom the action was brought." A court may also award an additional amount up to $10,000. NRS 41.670(1)(b).[3]

Where, as here, an anti-SLAPP motion disposes of ***all claims***, all attorneys' fees incurred in the action are recoverable, even for work not directly related to the anti-SLAPP motion. *See Goldman v. Clark Cty. Sch. Dist.*, 471 P.3d 753 (Nev. 2020)(unpublished)(allowing anti-SLAPP fees awarded for related 12(b)(5) motion to stand on appeal); *Graham-Sult v. Clainos*, 756 F.3d 724, 752 (9th Cir. 2014) (rejecting argument that award should not include "time lawyers spent on the motion to dismiss, reply, other filings, document review, and preparing initial disclosures.").[4] Fees on appeal are also included. *Evans v. Unkow*, 38 Cal. App. 4th 1490, 1499, 45 Cal. Rptr. 2d 624, 630 (1995).

Therefore, Defendants are entitled to an award of reasonable attorneys' fees for all work performed in the case. In Nevada, the analysis starts with applying a method to determine a reasonable fee. Where, as here, the fee arrangement is contingent, one appropriate method is to start with the Lodestar amount (reasonable rate multiplied by reasonable hours) and adjust in consideration of contingency-fee-related factors." *Shuette v. Beazer Homes Holdings Corp.*, 121 Nev. 837, 865, fn. 99 (2005). Once that amount is determined, a court must also consider the reasonableness in light of the *Brunzell* factors." *Id.* Those factors are:

> (1) the qualities of the advocate: his ability, his training, education, experience, professional standing and skill;
>
> (2) the character of the work to be done: its difficulty, its intricacy, its importance, time and skill required, the responsibility imposed and the prominence and character of the parties where they affect the importance of the litigation;
>
> (3) the work actually performed by the lawyer: the skill, time and attention given to the work;

[3] Fees are also awardable under NRS 18.010(2) because Plaintiffs' claims were meritless, as a matter of law.

[4] The Nevada Supreme Court has "repeatedly recognized the similarities between California's and Nevada's anti-SLAPP statutes, routinely looking to California courts for guidance in this area." *Coker v. Sassone*, 135 Nev. 8, 11, 432 P.3d 746, 749 (2019).

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(4) the result: whether the attorney was successful and what benefits were derived *Brunzell v. Golden Gate Nat. Bank*, 85 Nev. 345, 349 (1969).

In light of the contingent nature of the representation and the *Brunzell* factors, a fee award of $694,044.00 is reasonable, before considering fees in opposing the pending motion for reconsideration or any future appeal by Plaintiffs.

A. The Reasonableness Of The Rates And The Quality Of The Advocate

The Lodestar factor of the reasonableness of the attorney rates and *Brunzell* factor of the quality of the advocate are clearly related. Therefore, they are addressed together in this section.

Mitchell Langberg has been lead counsel on this matter. Not including this motion, he has worked 182.2 hours on this matter. His initial rate was $655. Over the 2 1/2 year duration of the case, his rate only increased by 5% to $690.[5] As set forth in his declaration (Exh. 1), he graduated from the University of Southern California School of Law in 1994. During his 26 years of practice, one of his primary focuses has been on defamation and First Amendment litigation. He is recognized by Best Lawyers in the area of Media and First Amendment Law. He is recognized with a Preeminent AV rating from Martindale-Hubbell. Mr. Langberg has handled approximately 50 cases involving anti-SLAPP motions (on both sides).

Aaron Hughes assisted Mr. Langberg until he left the Brownstein firm. He worked 306.9 hours on this matter. His rate on the matter was $485. As set forth in the Langberg Declaration, Mr. Hughes is a 1990 graduate from the University of California at Berkeley School of Law. Mr. Hughes is an experienced trial attorney working in a broad range of areas including intellectual property, securities litigation, and antitrust. Mr. Hughes is well-regarded for his skills as an

[5] In considering the reasonableness of the rate, it is worth note that Plaintiffs' counsel, Ms. Rassmussen, has represented to the court ***in this case*** that her rate is $600 per hour (*see* Page 14 of October 10, 2020, Response in Opposition to Motion to Strike and For Sanctions and Counter Motion for Sanctions). Ms. Rassmussen's experience is vast and laudable. But her focus has been on criminal law and other areas of law. She does not have the years or quantity of experience in anti-SLAPP litigation as does Mr. Langberg. Thus, if Ms. Rassmussen is charging her client a reasonable rate, Mr. Langberg's rate is certainly reasonable, too, in light of the fact that it is only modestly higher than Ms. Rassmussen's.

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appellate brief writer, having prepared winning briefs to the United States Supreme Court and the Colorado Supreme Court.

Because the anti-SLAPP issues and inevitable appeals would benefit from an adept writer, Mr. Langberg enlisted Mr. Hughes to lead all major brief writing while he was at the firm. Mr. Langberg led the on-the-ground efforts, developed strategy and supervised the work. Until he departed the firm, Mr. Hughes performed almost all of the brief writing, up to and including the successful briefing on appeal.

Nancy Lee assisted Mr. Langberg and Mr. Hughes with research and brief writing. She worked 97 hours on this matter. Her hourly rate was $450 until she left the firm. Ms. Lee is a 2004 graduate from Loyola Laws School in Los Angeles with diverse experience in a host of civil litigation matters. Ms. Lee previously worked at preeminent law firms including Stroock & Stroock & Lavan, Buchalter Nemer, and Loeb & Loeb.

The three remaining billers (Frank Schreck – 22.6 hours, Laura Langberg – 6 hours, William Nobriga – 5.5 hours) worked only 5.5% of total hours billed on ad hoc tasks as they became necessary. Most of Mr. Schreck's time was spent participating in initial client interviews and providing facts regarding underlying court cases and City Council proceedings that were critical to the anti-SLAPP motion.

There can be no good faith dispute that the rates charged, particularly in light of the quality of the advocates, were reasonable. Indeed, at least 2/3 of the work was performed by attorneys with rates substantially less than Ms. Rassmussen's. And, as discussed above, Mr. Langberg's rate has been only between $55 and $90 higher than Ms. Rassmussen's—certainly a reasonable amount in light of his extensive experience in the field.

B. The Reasonableness Of The Number Of Hours Worked, The Character Of The Work, And The Work Actually Performed

The Lodestar factor of the reasonableness of the number of hours worked is closely related to the *Brunzell* factor of the character of the work performed. Therefore, they are discussed together in this section.

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As a reference, Defendants have attached time entries for the work performed in this case (redacted where privilege requires it) as Exhibit 3. A column for Task Codes has been added by counsel to generally assign each entry to one of 13 tasks performed in the case. The following is a table defining those Task Codes and providing the fees based on the applicable attorney rates multiplied by hours worked:

TASK CODE	DESCRIPTION	ATTORNEY HOURS	FEES
A	Initial case review, client interviews, and initial research	20.7	15780.5
B	Research and preparation of anti-SLAPP Motion and motion to dismiss	116.2	59047
C	Substantive case management such as communications with opposing counsel, stipulations, etc.	1.6	720
D	Review oppositions on anti-SLAPP and Motion to Dismiss, research and prepare replies	91.7	46647.5
E	Hearing on anti-SLAPP motion	7.4	5397
F	Supplemental briefing on anti-SLAPP requested by court	23.4	15805
G	Opposing Plaintiffs' improper efforts to conduct discovery	34.6	18625
H	Research and prepare initial appellate briefs	144.8	70988
I	Review Plaintiffs' Supreme Court briefs, research and prepare reply, supplemental briefing	95.8	50037
J	Post-appeal briefing regarding whether discovery should be allowed	9.6	6624
K	Reviewing and responding to discovery requests (including client communications); preparing for and attending depositions	14.8	10212

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L	Briefing and hearings re limiting scope of discovery and related issues	12.2	8418
M	Prepare supplemental anti-SLAPP briefing, and final arguments	47.4	31476

A review of the timeline in the fact section reveals that nearly every task in this case was driven by the way Plaintiffs litigated the matter. It started with a shotgun complaint alleging numerous tort claims against Defendants in retaliation for their efforts to garner support to oppose a development in the City Council. It continued through Plaintiffs' efforts to force discovery while the appeal was pending, even though the anti-SLAPP statute created a mandatory stay. Each step of the way, Defendants stretched the process and caused more fees. Sometimes, they "supplemented" without leave of Court. Other times they sought leave to supplement in order to increase the necessity for briefing. When granted limited discovery, they overreached, requiring court intervention. And, after losing on appeal, they renewed arguments on issues the Nevada Supreme Court had already determined, forcing Plaintiffs to repeatedly respond.

Even now, rather than just exercise their appeal rights, Plaintiffs have filed a motion for reconsideration, raising the same tired arguments, yet again. They clearly do not care how much they spend. And, they do not care how much time Defendants' counsel is required to work on defend against this meritless lawsuit.[6]

The time spent on the case was all necessary. Plaintiffs' no holds barred tactics required Defendants to be incredibly thorough each step of the way, anticipating every reasonable argument Plaintiffs might raise and responding to the unreasonable arguments that could never have been anticipated. Unfortunately, thanks to Plaintiffs' tactics, a factfinder can only truly appreciate the necessity of the hours Defendants' counsel worked by reviewing the extensive briefing and observing the breadth and depth of the issues Plaintiffs' created at every stage.

[6] What is particularly remarkable is that the statements Defendants collected to provide to the City Council were never used (as reflected in the anti-SLAPP order from this Court). The City Council proceeding never occurred. The decision blocking development was reversed. Nothing Defendants did had any impact on Plaintiffs. Yet, they persist—out of spite.

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By way of example, the initial briefing to dismiss the case involved more than 100 hours of attorney time. All of it was necessary. Even for experts in anti-SLAPP litigation, Plaintiffs' meritless lawsuit created countless intricate issues to address.

First, Defendants had to address their anti-SLAPP first prong burden of demonstrating that their statements were good faith communications in furtherance of certain First Amendment rights. To do that, they had to show that their statements fell into one of four categories set out in NRS 41.660—communications aimed at procuring some sort of government action or result, communications of information to a government entity of concern to that entity, statements made in direct connection with an issue under consideration by a government body, or a communication in direct connect with an issue of public interest. Defendants had to address all four categories. The Nevada Supreme Court ultimately found that all applied.

Second, Defendants had to show that the statements were truthful or made without knowledge of falsity. Defendants had to address whether collecting statements to be submitted to the City Council were statements, at all. They had to also address their belief in the truth. That required their declarations, the analysis of orders issued by Judge Crockett in another case, the distinctions between CC&Rs and a Master Plan, and more.

Third, after addressing their burden on the first prong of the anti-SLAPP analysis, Defendants had to address ***Plaintiffs'*** burden on the second prong of the analysis—whether Plaintiffs could demonstrate a probability of prevailing on their claims. Initially, Defendants had to address the legal sufficiency of each of the six claims asserted. That required research for each of those claims.

Fourth, as the Court ultimately ruled, the claims were barred by the absolute litigation privilege. In fact, there were two privileges at issue. While the litigation privilege is generally straightforward and while its application here was controlling, it required detailed analysis. This included research and discussion of the fact that the litigation privilege applies to statements made outside of official proceedings, including statements that are made preliminary to such proceedings. The more intricate part of the analysis was the applicability to quasi-judicial proceedings and whether the anticipated City Council proceeding qualified as quasi-judicial.

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That issue was addressed in a multi-page analysis that required research and review of the Unified Development Code, including its procedures for amending the City's General Plan and whether those proceedings meet the applicable tests.

All of these issues required substantial research. And, because they involved subtle analysis, particularly thoughtful brief writing was required. The hours worked on the anti-SLAPP motion were all reasonable.

Another example was in the supplemental briefing the Court allowed after the remand from the Nevada Supreme Court and after some discovery had been conducted. In its final order, the Court recognized what was clear from the Nevada Supreme Court's order—Defendants met their first prong burden and the only issue on remand was whether Plaintiffs were entitled to discovery to attempt to meet their second prong burden. Yet, in their 19-page brief, Plaintiffs devoted ***fifteen pages*** to the issues conclusively decided by the Nevada Supreme Court. In turn, Defendants were required to, again, brief the issues.

Ultimately, an objective review of all of the work performed in the case—including hundreds of pages of briefs, countless cites to legal authority, extensive research efforts, and more—reveals that Plaintiffs chose to litigate this case in a manner that required several hundred hours of attorney time to defend.

The Lodestar value of the time at the hours discussed above is $339,777.00. ***Additionally***, Mr. Langberg has spent 21 hours on this brief, including legal research, extensive review of the record, analysis of the time and tasks, and writing the brief. Therefore, there is an additional Lodestar value of $14,490.00.

Considering the *Brunzell* factors of importance of the litigation, the skill, time and attention given to the work and other characteristics of the nature and scope of the work, the amounts are reasonable. The contingent aspect will be discussed below. But the work itself implicated important First Amendment rights on issues that are of immense concern in this community—including matters of regulating development and resident input in that process. The anti-SLAPP statute, itself, is designed to identify meritless litigation arising from the exercise of First Amendment rights. The fact the Legislature has created a special procedure in these cases

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emphasizes the social importance of anti-SLAPP litigation. And, the context of a wealthy developer sparing no expense in an attempt to silence his opposition speaks volumes about the challenges in the case.

Nobody can dispute that the quality of the work was very high. That is best exemplified by the fact that the Court initially determined the anti-SLAPP statute did not bar Plaintiffs' claims. Defense counsel successfully litigated an appeal, had the decision reversed, and on remand persuaded the Court that the lawsuit must be dismissed pursuant to the anti-SLAPP statute. This was not a case where counsel could simply "mail it in." Instead, despite the contingent nature of the fees, counsel marshalled all of his skills and experience, devoted all of the time and attention required (just as if fees were being paid monthly) and overcame the Court's initial rulings.

The Lodestar fees would be reasonable if the case were paid hourly. But they were not. Because the fees were contingent, an enhancement is appropriate.

C. The Lodestar Fees Should Be Enhanced Because Payment To Counsel Was Contingent On The Result

Where, as here, is determining the reasonableness of a fee, it is important to "account for the greater risk of nonpayment for attorneys who take contingency fee cases, in comparison to attorneys who bill and are paid on an hourly basis, as they normally obtain assurances they will receive payment." *O'Connell v. Wynn Las Vegas, LLC*, 134 Nev. 550, 559 (Nev. App. 2018). Courts may apply a multiplier on Lodestar analysis for a contingent fee:

> The purpose of a fee enhancement, or so-called multiplier, for contingent risk is to bring the financial incentives for attorneys enforcing important constitutional rights, such as those protected under the anti-SLAPP provision, into line with incentives they have to undertake claims for which they are paid on a fee-for-services basis.

Ketchum v. Moses, 24 Cal. 4th 1122, 1132, 17 P.3d 735, 742 (2001). The California Supreme Court explained:

> …the unadorned Lodestar reflects the general local hourly rate for a fee-bearing case; it does not include any compensation for contingent risk, extraordinary skill, or any other factors a trial court may consider. … The adjustment to the Lodestar figure, e.g., to provide a fee enhancement reflecting the risk that the attorney will

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> not receive payment if the suit does not succeed, constitutes earned compensation; unlike a windfall, it is neither unexpected nor fortuitous. Rather, it is intended to approximate market-level compensation for such services, which typically includes a premium for the risk of nonpayment or delay in payment of attorney fees. In this case, for example, the Lodestar was expressly based on the general local rate for legal services in a noncontingent matter, where a payment is certain regardless of outcome.

Id. at 1122, 745-46.

Whether to apply a multiplier and the multiple are in a court's discretion. A multiplier of 2 can be appropriate in a contingency case defending an anti-SLAPP motion. *See Berger v. Dobias,* No. B204631, 2009 WL 3088817, at *10 (Cal. Ct. App. Sept. 29, 2009).

In this case, because Defendants' counsel took the matter on a contingent basis, a fee enhancement is merited. The risk taken was sizable. The number of hours billed represents more than 1/3 the average annual hours of one full time attorney. The firm was at risk. Mr. Langberg was at risk, too. A law firm taking a loss of more than $300,000 on a single matter has obvious impact on the shareholder responsible for the work. Once the anti-SLAPP motion was initially denied by the Court, the firm could have sought to end its involvement in the case or change its financial relationship with the Defendants. But the firm persevered, increasing its exposure by continuing on with the appeal on a contingent basis, notwithstanding the odds of any losing party prevailing on appeal.

In light of this risk, there should be a fee enhancement of 2x for the contingent portion of the Lodestar fees. That is, the Lodestar fees ***to date*** are $$339,777.00. They should be enhanced by an additional $339,777.00. Under the *Ketchum* analysis, fees for preparing this motion are not contingent. Defendants became entitled to such fees upon granting of the anti-SLAPP motion before they were incurred. Therefore, they should not be enhanced.

D. Each Defendant Should Be Awarded An Additional $10,000

The fee award will compensate the attorneys for their time and risk. NRS 41.670(1)(b) also allows the Court to award Defendants $10,000 for Plaintiffs' meritless lawsuit. In light of all the foregoing facts and argument, each of the Defendants should be awarded $10,000 from each of the Plaintiffs.

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IV. CONCLUSION

Because Defendants' prevailed on the anti-SLAPP motion, they are entitled to an award of attorneys' fees. As set forth above, in consideration of the Lodestar method, the *Brunzell* factors, and the appropriateness for a fee enhancement, Defendants should be awarded fees in the total sum of $694,044.00. Additionally, each Defendant should be awarded $10,000 from each Plaintiff.

DATED this 31st day of December, 2020.

BROWNSTEIN HYATT FARBER SCHRECK, LLP

By *__/s/ Mitchell J. Langberg__*
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of Brownstein Hyatt Farber Schreck, LLP, and pursuant to NRCP 5(b), EDCR 8.05, Administrative Order 14-2, and NEFCR 9, I caused a true and correct copy of the foregoing **DEFENDANTS' MOTION FOR ATTORNEYS' FEES AND ADDITIONAL MONETARY RELIEF PURSUANT TO NRS 41.670 AND NRS 18.010(2)** be submitted electronically for filing and/or service with the Eighth Judicial District Court via the Court's Electronic Filing System on the 31st 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
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Attorneys for Plaintiffs
FORE STARS, LTD., 180 LAND CO., LLC;
and SEVENTY ACRES, LLC

/s/ Paula Kay
an employee of Brownstein Hyatt Farber Schreck, LLP

EXHIBIT 1

EXHIBIT 1

DECLARATION OF MITCHELL J. LANGBERG

I, MITCHELL J. LANGBERG, hereby declare as follows:

1. I am an attorney at Brownstein Hyatt Farber Schreck, counsel for defendants Daniel Omerza, Darren Bresee and Steve Caria (collectively, the "Defendants") in the above-captioned action. I am over 18 years of age and am competent to testify as to the matters set forth in this Declaration based upon my own personal knowledge.

2. Brownstein Hyatt Farber Schreck agreed to represent Defendants in this case on a contingency basis for purposes of seeking to dismiss the lawsuit through an anti-SLAPP motion and Motion to Dismiss. That is, if the firm would only receive fees if it successfully obtained a dismissal of the case.

3. I am lead counsel on this matter. Not including this motion, I have worked 182.2 hours on this matter. My initial rate was $655. Over the 2 1/2 year duration of the case, my rate for this case has only increased by 5% to $690. My rate in other cases is higher.

4. I graduated from the University of Southern California School of Law in 1994. During my 26 years of practice, one of my primary focuses has been on defamation and First Amendment litigation.

5. I am recognized by Best Lawyers in the area of Media and First Amendment Law. I am recognized with a Preeminent AV rating from Martindale-Hubbell.

6. I have handled approximately 50 cases involving anti-SLAPP motions (on both sides).

7. Aaron Hughes assisted me until he left the Brownstein firm. He worked 306.9 hours on this matter. His rate on the matter was $485.

8. Mr. Hughes is a 1990 graduate from the University of California at Berkeley School of Law. He is an experienced trial attorney working in a broad range of areas including intellectual property, securities litigation, and antitrust.

9. Mr. Hughes is well-regarded for his skills as an appellate brief writer, having prepared winning briefs to the United States Supreme Court and the Colorado Supreme Court.

10. Because the anti-SLAPP issues and inevitable appeals would benefit from an adept writer, I enlisted Mr. Hughes to lead all major brief writing while he was at the firm. I led the on-the-ground efforts, developed strategy and supervised the work. Until he departed the firm, Mr. Hughes performed almost all of the brief writing, up to and including the successful briefing on appeal.

11. Nancy Lee assisted Mr. Hughes and me with research and brief writing. She worked 97 hours on this matter. Her hourly rate was $450 until she left the firm.

12. Ms. Lee is a 2004 graduate from Loyola Laws School in Los Angeles with diverse experience in a host of civil litigation matters. Ms. Lee previously worked at preeminent law firms including Stroock & Stroock & Lavan, Buchalter Nemer, and Loeb & Loeb.

13. Attached to the motion as Exhibit 3 is a spreadsheet of time entries (redacted) from this matter. I personally downloaded all of the date from our time entry system. I added a column to categorize each entry into one of 13 categories (described in the motion).

14. All of the time billed was necessitated by Plaintiffs' litigation tactics in this meritless lawsuit. The rates are reasonable for the quality of the attorneys and the nature of the work.

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

Executed on this 31st day of December, 2020, at Las Vegas, Nevada

/s/ Mitchell J. Langberg
MITCHELL J. LANGBERG

EXHIBIT 2

EXHIBIT 2

IN THE SUPREME COURT OF THE STATE OF NEVADA

DANIEL OMERZA; DARREN BRESEE; AND STEVE CARIA,
Appellants,
vs.
FORE STARS, LTD, A NEVADA LIMITED LIABILITY COMPANY; 180 LAND CO., LLC, A NEVADA LIMITED LIABILITY COMPANY; AND SEVENTY ACRES, LLC, A NEVADA LIMITED LIABILITY COMPANY,
Respondents.

No. 76273

FILED
JAN 23 2020
ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER VACATING AND REMANDING

This is an appeal from a district court order denying an anti-SLAPP special motion to dismiss in a tort action.[1] Eighth Judicial District Court, Clark County; Richard Scotti, Judge.

Appellants live in the Queensridge community and oppose residential development of adjacent land that is the site of the now-closed Badlands Golf Course. They circulated a form declaration to other Queensridge residents to sign, representing to the City of Las Vegas that the signatory purchased a residence/lot in Queensridge with the

[1]Pursuant to NRAP 34(f)(1), we have determined that oral argument is not warranted.

understanding that land designated as open space/natural drainage system in the Peccole Ranch Master Plan would remain as such and could not be developed. Respondents, the entities that own the golf course land, sued appellants, pointing to the form declaration and efforts to have other residents sign the declaration as the basis for six claims for relief. Believing the claims to be based on the exercise of their rights to petition the government and to speech (i.e., a Strategic Lawsuit Against Public Participation or "SLAPP" action), appellants filed a special motion to dismiss, which the district court denied. This appeal followed.

This court's review of an order denying an anti-SLAPP motion to dismiss is de novo. *Coker v. Sassone*, 135 Nev., Adv. Op. 2, 432 P.3d 746, 748-49 (2019). The intent of Nevada's anti-SLAPP statutes is to protect citizens' First Amendment rights to petition the government for redress of grievances and to free speech by limiting the chilling effect of civil actions that are based on the valid exercise of those rights in connection with an issue of public concern. 1997 Nev. Stat., ch. 387, at 1363-64 (preamble to bill enacting anti-SLAPP statute). Appellants argue that the district court erred in concluding that (1) the anti-SLAPP statutes do not apply to the claims alleged in the complaint; (2) appellants had not met their initial burden to establish that respondents' claims are based upon appellants' good faith communication in furtherance of their right to petition or right to free speech on an issue of public concern, and (3) respondents had met their burden to demonstrate with prima facie evidence a probability of prevailing on their claims. We consider each argument in turn.

The district court erred in concluding that the anti-SLAPP statutes afford appellants no protection because the complaint alleges intentional torts

The district court concluded that the anti-SLAPP statutes do not protect appellants because respondents' complaint alleges intentional

torts and fraudulent conduct. The anti-SLAPP statutes apply to "an action [that] is brought against a person based upon a good faith communication in furtherance of the right to petition or the right to free speech in direct connection with an issue of public concern." NRS 41.660(1); *see also* NRS 41.650 ("A person who engages in a good faith communication in furtherance of the right to petition or the right to free speech in direct connection with an issue of public concern is immune from any civil action for claims based upon the communication."). That language does not exclude any particular claim for relief from its scope because its focus is on the defendant's *activity*, not the form of the plaintiff's claims for relief. *Cf. Navellier v. Sletten*, 52 P.3d 703, 711 (Cal. 2002) (discussing California's anti-SLAPP statute that applies to an action "arising from" the defendant's protected activity and observing that "[n]othing in the statute itself categorically excludes any particular type of action from its operation, and no court has the 'power to rewrite the statute so as to make it conform to a presumed intention which is not expressed'" (quoting *Cal. Teachers Ass'n v. Governing Bd. of Rialto Unified Sch. Dist.*, 927 P.2d 1175, 177 (Cal. 1997))).[2] Thus, so long as the claim for relief is based on a good faith communication in furtherance of petitioning or free speech rights on an issue of public concern, *see* NRS 41.660(1), it is subject to the anti-SLAPP statutes.[3] As

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[2]Based on extensive similarities between California's and Nevada's anti-SLAPP statutes, this court has "routinely look[ed] to California courts for guidance in this area." *Coker*, 135 Nev., Adv. Op. 2, 432 P.3d at 749.

[3]This court has decided a number of anti-SLAPP cases involving claims for relief other than defamation. *E.g., Delucchi v. Songer*, 133 Nev. 290, 396 P.3d 826 (2017) (defamation and intentional infliction of emotional distress). Although those decisions did not directly address whether the anti-SLAPP statute could be applied to the plaintiff's claims for relief,

the California Supreme Court has explained, the definitional focus on the defendant's activity reflects legislative recognition that "all kinds of claims could achieve the objective of a SLAPP suit—to interfere with and burden the defendant's exercise of his or rights." *Navellier*, 52 P.3d at 711 (quoting *Beilenson v. Superior Court*, 52 Cal. Rptr. 2d 357, 361 (Ct. App. 1996)).[4] We thus conclude that the district court erred in determining that the anti-

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courts have applied California's anti-SLAPP statute to various intentional tort claims, including the claims asserted by respondents in the underlying case. *See, e.g., Graham-Sult v. Clainos*, 756 F.3d 724, 739 (9th Cir. 2014) (concluding that California's anti-SLAPP statute applied to intentional and negligent misrepresentation claims that were based on defendants' protected communications).

[4]We are not persuaded by respondents' argument that the "good faith" qualifier on the activity protected by Nevada's anti-SLAPP statutes alters the definitional focus to the form of the plaintiff's claims for relief. Even with the good faith requirement, the definitional focus remains on the defendant's activity, not the form of the plaintiff's claims for relief (e.g., defamation, fraud, etc.). Respondents put the cart before the horse in arguing that the mere fact that they alleged intentional acts negates appellants' good faith. In analyzing a special motion to dismiss, the court must first look at whether the defendant established good faith and, if so, whether the plaintiff provided evidence to support its claims, as discussed below. Mere allegations of intentional conduct are not enough for a plaintiff to meet that burden. As NRS 41.660(3)(a) affords a defendant the opportunity to establish that a plaintiff's claim for relief is based on a good faith communication in furtherance of petitioning or free speech rights on an issue of public concern, the anti-SLAPP analysis necessarily looks beyond the form of the plaintiff's claims for relief. This makes sense given the purpose of the anti-SLAPP statutes' motion to dismiss provision—to provide a mechanism for the expeditious resolution of meritless SLAPPs regardless of the form the SLAPP takes. If the focus were instead on the form of the plaintiff's claims for relief, the plaintiff would be in control of the anti-SLAPP statutes' application and could circumvent the Legislature's intent to limit the chilling effect that SLAPPs have on the rights to petition and to speech by quickly resolving meritless SLAPPs.

SLAPP statutes afford appellants no protection because the complaint alleged intentional torts.

The district court erred in concluding that appellants had not met their burden at step one of the anti-SLAPP analysis

The showing required by the defendant at step one of the anti-SLAPP analysis has two components: (1) that the plaintiff's claims for relief are based on a "communication in furtherance of the right to petition or the right to free speech in direct connection with an issue of public concern" and (2) that the communication was in "good faith." NRS 41.660(3)(a). The defendant satisfies the first component by showing that the plaintiff's claims for relief are based on a communication that "falls within one of the four categories enumerated in NRS 41.637," *Delucchi v. Songer*, 133 Nev. 290, 299, 396 P.3d 826, 833 (2017), and the second component by showing that the communication "is truthful or is made without knowledge of its falsehood," *Rosen v. Tarkanian*, 135 Nev., Adv. Op. 59, ___ P.3d ___, ___ (2019) (quoting NRS 41.637); *see also Shapiro v. Welt*, 133 Nev. 35, 40, 389 P.3d 262, 268 (2017) (explaining that "no communication falls within the purview of NRS 41.660 unless it is 'truthful or is made without knowledge of its falsehood'" (quoting NRS 41.637)).

Appellants' communications fell within one or more of the categories enumerated in NRS 41.637

Appellants established by a preponderance of the evidence that their communications fall within one or more of the categories enumerated in NRS 41.637. *See Delucchi*, 133 Nev. at 299, 396 P.3d at 833. As to appellants' activities in communicating concerns to other Queensridge residents and soliciting signatures on the form declarations, evidence in the record demonstrates that those activities fell within at least two of the categories in NRS 41.637. In particular, the communications underlying

those activities were (1) aimed at procuring a governmental action, result or outcome—a city council vote against any measure that would allow for residential development of the Badlands Golf Course and (2) made in direct connection with an issue under consideration (amendment of the Master Plan/General Plan affecting Peccole Ranch) by a legislative body (the city council). *See* NRS 41.637(1), (3).

As to the signed form declarations that are the focus of respondents' claims for relief, evidence in the record demonstrates that the declarations fell within all four of the categories enumerated in NRS 41.637. In addition to the same two categories noted above with respect to the activist communications (those handing out the forms and soliciting other residents to sign them), the signed form declarations also (3) communicated information (the undersigned resident's belief) to a political subdivision of the state (the city council) regarding a matter reasonably of concern to that political subdivision (plan amendments needed to allow residential development of the Badlands Golf Course), *see* NRS 41.637(2); and (4) were made in direct connection with an issue of public interest (residential development of the Badlands Golf Course) in a public forum (proceedings on a city council agenda item), *see* NRS 41.637(4). Thus, to the extent that the district court decided that the communications did not fall within any of the categories enumerated in NRS 41.637, it erred.

Appellants met their burden of showing that the communications were truthful or made without knowledge of their falsehood

With respect to the good-faith component of the inquiry under NRS 41.660(3)(a), the preponderance standard requires proof that it is more likely than not that the communications were truthful or made without knowledge of their falsity. Appellants met their burden of showing by a preponderance of the evidence that their communications were truthful or

made without knowledge of their falsehood (i.e., that they were "good faith" communications) through the sworn declarations attached to their special motion to dismiss, which is sufficient to satisfy the good-faith component of the step-one inquiry under NRS 41.660(3)(a).[5] *See Rosen*, 135 Nev., Adv. Op. 59, ___ P.3d at ___ (observing that "[a] determination of good faith

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[5]To the extent that the district court focused on the existence of a genuine issue of material fact in determining that appellants did not meet their step-one burden on the good faith component, we conclude that the court erred, as the anti-SLAPP burdens and the summary-judgment burdens are substantively different. *See Delucchi*, 133 Nev. at 296, 396 P.3d at 831. Although *Coker* observed that after the 2015 statutory amendments, the anti-SLAPP "motion to dismiss again functions like a summary judgment motion procedurally," 135 Nev., Adv. Op. 2, 432 P.3d at 748, the focus in *Coker* was whether the amendments as to step two altered the appellate standard of review. Given that limited focus, *Coker* does not stand for the proposition that the preponderance burden in NRS 41.660(3)(a) is the equivalent of the burden on a party moving for summary judgment. Authority from other jurisdictions supports the discussion in *Delucchi* that the anti-SLAPP burdens and the summary-judgment burden are substantively different. *See Davis v. Cox*, 351 P.3d 862, 867 (Wash. 2015) (explaining that Washington's anti-SLAPP statute, which similarly contains a two-step process, "provides a burden of proof concerning whether the evidence crosses a certain threshold of proving a likelihood of prevailing on the claim" whereas the summary-judgment standard "does not concern degrees of likelihood or probability" but instead requires "a legal certainty"), *abrogated on other grounds by Maytown Sand & Gravel, LLC, v. Thurston Cty.*, 423 P.3d 223 (Wash. 2018), *abrogated in part by Yim v. City of Seattle*, 451 P.3d 694 (Wash. 2019). Similarly, under Nevada's anti-SLAPP statute, the court is *required* to move on to step two if the moving party (the defendant) has carried his or her burden at step one, NRS 41.660(3)(b), that by a preponderance of the evidence the claims for relief are based on protected good faith communications, NRS 41.660(3)(a). The existence of genuine issues of material fact is thus irrelevant. By contrast, genuine issues of material fact *preclude* summary judgment. Thus, at step one, the summary-judgment standard is incompatible with the burden set forth in NRS 41.660(3)(a).

requires consideration of all of the evidence submitted by the defendant in support of his or her anti-SLAPP motion," and such evidence may include a sworn statement asserting that the communications at issue were made in good faith). Thus, absent evidence that clearly and directly overcomes such declarations, the sworn declarations are sufficient for purposes of step one.

Here, the district court's order points solely to allegations in the complaint that appellants procured signatures on the form declarations and/or signed those declarations based on information that they knew to be false. The supporting documents attached to the complaint and referenced therein to support the allegations quoted by the district court are district court orders filed in *Peccole v. Peccole Nevada Corp.*, No. A-16-739654-C (Eighth Judicial District Court, Dept. 8) that, in a nutshell, concluded that the Badlands Golf Course is not subject to the Queensridge Master Declaration or the Queensridge Amended Master Declaration (i.e., the Queensridge CC&Rs); and a district court order filed in *Binion v. Fore Stars, Ltd. (Binion I)*, No. A-15-729053-B (Eighth Judicial District Court, Dept. 27) that concluded the Queensridge residents could not rely on NRS Chapter 278A to require property owner consent for a modification of the Peccole Ranch Master Plan because that chapter does not apply to common interest communities such as Queensridge.

None of those orders directly draw into doubt appellants' declarations in this case as to whether the communications in connection with procuring signatures on the form declaration and/or in signing the form declaration were in good faith. In particular, the *Peccole* and *Binion I* orders do not address the key factual statements in the form declaration: that Queensridge is located within the Peccole Ranch Master Planned Community, that the undersigned purchased a residence/lot in Queensridge

in reliance that the open space/natural drainage system in the community could not be developed under the Peccole Ranch Master Plan or the city's General Plan, and (in the version of the declaration signed by appellant Darren Bresee) that the undersigned paid a lot premium as consideration for the open space/natural drainage system. Also, in *Binion v. City of Las Vegas* (*Binion II*), No. A-17-752344-J (Eighth Judicial District Court, Dept. 24), Judge Crockett observed during a hearing that purchasers of property subject to the Peccole Ranch Master Plan relied on that master plan in purchasing their homes, which provides some additional evidentiary support as to appellants' step-one burden. 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. *See Rosen*, 135 Nev., Adv. Op. 59, ___ P.3d at ___ (recognizing, in the context of a defamation action, that the defendant's step one burden to establish by a "preponderance of the evidence" that the communications "were true or made without knowledge of their falsity" is a "far lower burden of proof" than applies to the plaintiff under step two, as the plaintiff must show with prima facie evidence a probability of prevailing on his or her claims, i.e., that the statements were made with knowledge that they were false).

Respondents failed to meet their burden of demonstrating with prima facie evidence a probability of prevailing on their claims

The probability standard in step two of the anti-SLAPP motion to dismiss analysis is higher than the standard for a traditional motion to dismiss brought under NRCP 12(b)(5); in addition to stating a legally sufficient claim, the plaintiff must demonstrate that the claim is supported by a prima facie showing of facts that, if true, would support a favorable

judgment. *See* NRS 41.660(3)(b). In so doing, the plaintiff must point to competent, admissible evidence. *See* NRS 41.660(3)(d) (providing that at both steps of the anti-SLAPP motion to dismiss analysis, the court must "[c]onsider such evidence, written or oral, by witnesses or affidavits, as may be material in making a determination").

Respondents did not present "prima facie evidence," as required by NRS 41.660(3)(b), to demonstrate a probability of prevailing on their claims and they instead relied on their assertion that appellants' communications were not made in good faith. Citing to the NRCP 12(b)(5) standard and finding that the appellants stated valid claims for relief, the district court concluded that it was required to deny the appellants' anti-SLAPP motion to dismiss. Thus, from the order, it appears that the district court conflated two different standards for dismissal in denying the appellants' anti-SLAPP motion to dismiss. *Compare* NRS 41.660, *with* NRCP 12(b)(5); *see HMS Capital, Inc. v. Lawyers Title Co.*, 12 Cal. Rptr. 3d 786, 791 (Ct. App. 2004) ("In opposing an anti-SLAPP motion, the plaintiff cannot rely on the allegations of the complaint, but must produce evidence that would be admissible at trial."); *see also De Havilland v. FX Networks, LLC*, 230 Cal. Rptr. 3d 625, 634 (Ct. App. 2018) (observing that the anti-SLAPP statutes contemplate "consideration of the substantive merits of the plaintiff's complaint, as well as all available defenses to it, including, but not limited to, constitutional defenses" (internal quotation marks omitted)); *Bikkina v. Mahadevan*, 193 Cal. Rptr. 3d 499, 511 (Ct. App. 2015) (recognizing that on the second step of the inquiry, the plaintiff must demonstrate that his or her "claims have minimal merit," which requires showing that the "complaint is both legally sufficient *and* supported by a sufficient prima facie showing of facts to sustain a favorable judgment if

plaintiff's evidence is credited" (internal quotation marks omitted) (emphasis added)). The district court's order did not point to any evidence that respondents submitted to support that they had a probability of prevailing on their claims, and the record contains none.

Although respondents attached six exhibits to supplemental pleadings that they filed after the hearing on appellants' anti-SLAPP special motion to dismiss, the district court did not address any of the exhibits in the challenged order. Regardless, even if the exhibits had been credited in the order, they do not provide a sufficient prima facie showing of facts to sustain a judgment in respondents' favor, and the supplemental pleadings did not explain how the exhibits satisfied respondents' burden in that regard. As general allegations supporting their six claims for relief, respondents alleged that appellants engaged in wrongful conduct through their "preparation, promulgation, solicitation and execution" of form declarations that contain "false representations of fact," and that they "knowingly and intentionally sign[ed] the knowingly false" form declarations and circulated and delivered them in an attempt to delay or deny respondents' rights to develop their property. None of respondents' exhibits, however, constitute prima facie evidence supporting that appellants' communications contain "false representations of fact" or "intentional misrepresentations," as respondents alleged, and such evidence is essential to respondents' ability to prevail on their claims.[6] We therefore conclude that the district court erred in determining that

[6]Respondents' complaint asserts claims for intentional and negligent interference with prospective economic relations, conspiracy, intentional and negligent misrepresentation, and equitable and injunctive relief.

respondents met their step-two burden of demonstrating with prima facie evidence a probability of prevailing on their claims.

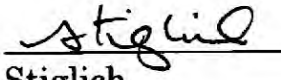
Whether respondents are entitled to discovery relevant to opposing the special motion to dismiss is an issue the district court must address in the first instance on remand

In opposing the anti-SLAPP motion to dismiss, respondents alternatively requested limited discovery related to their step-two burden under NRS 41.660(3)(b), but the district court did not rule on the merits of that request given its conclusion that appellants failed to meet their step-one burden. Whether respondents met the standard in NRS 41.660(4) for obtaining discovery relevant to a special motion to dismiss is a decision the district court is better situated to address, and we therefore decline to address it in the first instance in the context of this interlocutory appeal.

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).

It is so ORDERED.[7]

_____, J.
Gibbons



_____, J.
Stiglich

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[7]To the extent the parties' additional arguments are not expressly addressed in this disposition, we have considered them and conclude that they do not warrant a different outcome.

cc: Hon. Richard Scotti, District Judge
Ara H. Shirinian, Settlement Judge
Brownstein Hyatt Farber Schreck, LLP/Las Vegas
The Jimmerson Law Firm, P.C
Eighth District Court Clerk

EXHIBIT 3

EXHIBIT 3

Work Date	Timekeeper Name	Work Hours	Work Rate	Work Amount	Co	Narrative	Cc	Task Code
3/15/2018	Frank A. Schreck	0.90	875.00	787.50		Exchange emails with [redacted] re incidents iwth Y. Lowie threatening [redacted] and D. Omerza; telephone conference with G. Culp re incident		A
3/19/2018	Frank A. Schreck	3.40	875.00	2,975.00		Review copy of complaint by Four stars against residents; review Nevada SLAPP legislation; provide copy of complaint to M. Langberg; meet with M. Langberg twice to go over facts, background complaint, and SLAPP issues		A
3/19/2018	Mitchell J. Langberg	3.50	655.00	2,292.50		Review complaint and related documents; conduct research re anti-slapp motion and privileges		A
3/20/2018	Frank A. Schreck	2.80	875.00	2,450.00		Meet with M. Langberg about representation; extended telephone conference with D. Omeza re complaint, SLAPP and defensive strategy; extended telephone conference with S. Caria re complaint, SLAPP and defensive strategy		A
3/21/2018	Frank A. Schreck	0.80	875.00	700.00		Telephone conference with [redacted] and [redacted] re threats and SLAPP laws; telephone conference with M. Newman to explain lawsuit agains neighbors		A

3/27/2018	Mitchell J. Langberg	3.40	655.00	2,227.00	Review documents and begin research for anti-SLAPP motion	A
3/29/2018	Frank A. Schreck	1.00	875.00	875.00	Meet with clients and M. Langberg to discuss process/strategy/response; discuss evidence/letters	A
3/29/2018	Mitchell J. Langberg	3.70	655.00	2,423.50	Meet with clients and conduct interviews; research re claims	A
3/30/2018	Frank A. Schreck	1.20	875.00	1,050.00	Meet with Defendant D. Bresee and explained complaint, anti-SLAPP legislation and strategy being followed by the other 2 defendants	A
4/1/2018	Van Aaron Hughes	5.20	485.00	2,522.00	Review and analyze Fore Stars Complaint and attachments; review hearing transcript from related proceeding before Judge Crockett	B
4/2/2018	Mitchell J. Langberg	2.70	655.00	1,768.50	Conduct research on various privilege issues for anti-SLAPP motion	B
4/2/2018	Van Aaron Hughes	7.10	485.00	3,443.50	Review and analyze Fore Stars Complaint and attachments; review and analyze hearing transcript from related proceeding before Judge Crockett; review sample anti-SLAPP filing received from M. Langberg; research anti-SLAPP issues; telephone conference with M. Langberg re anticipated motions against Fore Stars Complaint	B

4/3/2018	Van Aaron Hughes	6.10	485.00	2,958.50	Research and analyze legal basis for striking Fore Stars Complaint; review and analyze transcript of hearing before Judge Crockett in Binion matter	B
4/4/2018	Mitchell J. Langberg	1.50	655.00	982.50	Continue research re various privielge issues	B
4/4/2018	Van Aaron Hughes	8.40	485.00	4,074.00	Research and outline anti-SLAPP motion and motion to dismiss Fore Stars Complaint; confer with M. Langberg re supporting declaration; draft form of supporting declaration	B
4/4/2018	Nancy M. Lee	5.00	450.00	2,250.00	Conduct research re scope and standards for absolute and conditional privileges in Nevada to assess potential arguments in responsive motions to plaintiffs' complaint, including by reviewing background materials relating to matter	B
4/5/2018	Mitchell J. Langberg	2.40	655.00	1,572.00	Correspond with opposing counsel re extension to response date (.2); work on declarations for anti-SLAPP motion (1.4); conduct research re quasi-judicial proceedings (.8)	B
4/5/2018	Van Aaron Hughes	1.30	485.00	630.50	Analyze and outline anti-SLAPP motion; review changes to supporting declaration received from M. Langberg	B

4/5/2018	Nancy M. Lee	6.50	450.00	2,925.00	Conduct supplemental research on applicable privileges relating to alleged defamatory statements, including the issue of court interpretations re quasi-judicial functions of the government in various state and federal jurisdictions; draft notes re research and potential arguments for motion to dismiss	B
4/6/2018	Van Aaron Hughes	4.80	485.00	2,328.00	Research, outline and draft anti-SLAPP motion and motion to dismiss Fore Stars Complaint	B
4/6/2018	Nancy M. Lee	2.00	450.00	900.00	Continue to conduct research re case law interpretation of the quasi-judicial processes, functions of city council and adjudication of land issues to assist with arguments in support of motions in response to complaint	B
4/7/2018	Van Aaron Hughes	4.60	485.00	2,231.00	Research, outline and draft anti-SLAPP motion and motion to dismiss Fore Stars Complaint; review relevant documents	B
4/9/2018	Van Aaron Hughes	4.90	485.00	2,376.50	Research, outline and draft anti-SLAPP motion; telephone conference with M. Langberg and N. Lee re arguments to advance in anti-SLAPP motion and Rule 12(b)(5) motion to dismiss	B

4/9/2018	Nancy M. Lee	2.50	450.00	1,125.00	Review additional case law and secondary sources in preparation of motion to dismiss and anti-slapp motion re scope of absolute privilege including specific issues of whether city council functions and land use matters in particular are characterized as legislative compared to quasi-judicial in nature, expanded in scope across numerous state and federal jurisdictions	B
4/10/2018	Mitchell J. Langberg	4.30	655.00	2,816.50	Conduct research re quasi-judicial proceedings for City Council hearings; review documents re prior proceedings; conference with [redacted] research re standards for major modification of master plan and general plan	B
4/10/2018	Van Aaron Hughes	5.80	485.00	2,813.00	Research and draft anti-SLAPP motion and Rule 12(b)(5) motion to dismiss; email correspondence with N. Lee re motion arguments	B
4/10/2018	Nancy M. Lee	0.20	450.00	90.00	Participate in strategy telephone conference to discuss status and plan of action relating to pending motions to dismiss and anti-slapp motion	B

4/10/2018	Nancy M. Lee	7.30	450.00	3,285.00	Continue to conduct supplemental legal research to support arguments in motion to dismiss and anti-slapp motion including the scope of qualified privilege for statements relating to general amendment plan, related malice element and relevant City municipal codes and city charter; draft arguments for motion to dismiss and anti-slapp motion re application of privilege to statements relating to Plaintiffs' city application	B
4/11/2018	Mitchell J. Langberg	1.20	655.00	786.00	Review meeting minutes, agendas, and applications from [redacted].	B
4/11/2018	Van Aaron Hughes	4.30	485.00	2,085.50	Draft and revise anti-SLAPP motion; confer with M. Langberg re s[redacted]; analyze issues raised in Binion action	B
4/11/2018	Nancy M. Lee	3.70	450.00	1,665.00	Review and analyze factual background relevant to privilege matters and supplement and revise arguments relating to privilege for motion to dismiss and anti-slapp motion in response to complaint	B
4/12/2018	Mitchell J. Langberg	3.20	655.00	2,096.00	Review and revise anti-SLAPP motion [redacted]; review and revise motion to dismiss	B

4/12/2018	Van Aaron Hughes	7.20	485.00	3,492.00	Draft and revise anti-SLAPP motion and Rule 12(b)(5) motion to dismiss Fore Stars Complaint; confer with M. Langberg and N. Lee re motions	B
4/13/2018	Frank A. Schreck	2.30	875.00	2,012.50	[redacted] meet with D. Omerza [redacted] review draft Motion to Dismiss; make comments to Motion to Dismiss; extended telephone conference with M. Langberg to discuss the proposed changes	B
4/13/2018	Mitchell J. Langberg	2.00	655.00	1,310.00	[redacted] confer with clients re same; further review and revisions to anti-SLAPP motion	B
4/13/2018	Van Aaron Hughes	4.10	485.00	1,988.50	Revise anti-SLAPP motion and Rule 12(b)(5) motion to dismiss Fore Stars Complaint; confer with M. Langberg and N. Lee re changes to motions [redacted]	B

4/13/2018	Nancy M. Lee	3.20	450.00	1,440.00	Prepare notices for motion to dismiss and anti-slapp motion in response to plaintiffs' complaint; assist with filing of motions by reviewing and editing drafts of motions and reviewing procedural requirements	B
4/13/2018	Nancy M. Lee	2.40	450.00	1,080.00	Prepare requests for judicial notice to support motion to dismiss and anti-slapp motion, including by compiling exhibits and conducting legal research for supporting case law in Nevada to support request	B
4/24/2018	Nancy M. Lee	1.60	450.00	720.00	Prepare stipulation and order to move hearing dates for motions to dismiss	C
5/4/2018	Mitchell J. Langberg	1.20	655.00	786.00	Review opposition to anti-SLAPP motion and research for reply	D
5/4/2018	Van Aaron Hughes	2.60	485.00	1,261.00	Review and analyze Plaintiffs'response to anti-SLAPP motion; email correspondence with M. Langberg and N. Lee re same	D
5/5/2018	Van Aaron Hughes	4.20	485.00	2,037.00	Analyze Plaintiffs'opposition to anti-SLAPP motion; telephone conference with M. Langberg and N. Lee re Plaintiffs'opposition and arguments to address in reply; outline reply brief	D

5/5/2018	Nancy M. Lee	0.60	450.00	270.00	Participate in telephone conference with team to strategize on legal arguments for reply brief in support of special motion to dismiss (anti-slapp motion)	D
5/5/2018	Nancy M. Lee	3.80	450.00	1,710.00	Review and analyze plaintiff's opposition brief relating to defendants' anti-slapp motion; assess and outline arguments in response to plaintiffs' opposition to motion	D
5/6/2018	Van Aaron Hughes	5.80	485.00	2,813.00	Analyze Plaintiffs' opposition to anti-SLAPP motion and cited authorities and documents; research and outline reply argument	D
5/6/2018	Nancy M. Lee	1.20	450.00	540.00	Draft and conduct research re arguments in reply brief re privilege to support special motion to dismiss (anti-slapp motion)	D
5/7/2018	Frank A. Schreck	1.70	875.00	1,487.50	Review plaintiffs response to Motion to Dismiss anti-SLAPP claim; meet with M. Langberg to dismiss	D
5/7/2018	Mitchell J. Langberg	1.80	655.00	1,179.00	Meet with F. Schreck re factual issues in Plaintiffs' opposition to anti-SLAPP motion; review opposition to motion to dismiss	D

5/7/2018	Van Aaron Hughes	7.40	485.00	3,589.00	Review and analyze Plaintiffs' opposition to anti-SLAPP motion and cited authorities and documents; research, outline and draft reply in support of motion	D
5/7/2018	Nancy M. Lee	8.10	450.00	3,645.00	Conduct supplemental legal research to support reply brief re anti-slapp motion, including research re the fair reporting privilege and numerous case law authority cited by plaintiffs in their opposition briefs; continue to supplement arguments re privilege for reply brief	D
5/8/2018	Frank A. Schreck	1.60	875.00	1,400.00	Prepare memorandum response to factual assertions by Plaintiff's in their response for M. Langberg	D
5/8/2018	Mitchell J. Langberg	1.60	655.00	1,048.00	Work on privilege section of anti-SLAPP reply	D
5/8/2018	Van Aaron Hughes	12.60	485.00	6,111.00	Research and draft reply in support of anti-SLAPP motion; email correspondence with M. Langberg and N. Lee re reply; draft reply in support of Rule 12(b)(5) motion to dismiss	D
5/8/2018	Nancy M. Lee	5.20	450.00	2,340.00	Conduct legal research re elements pertaining to Plaintiffs' various causes of action in complaint to supplement arguments for reply brief relating to motion to dismiss (under Rule 12(b)(5))	D

5/8/2018	Nancy M. Lee	0.30	450.00	135.00	Participate in strategy telephone conference to discuss arguments in reply brief in support of motion to dismiss and anti-slapp motion	D
5/8/2018	Nancy M. Lee	0.80	450.00	360.00	Prepare Request for Judicial Notice in support of reply briefs in support of motions to dismiss (anti-slapp and 12(b)(5))	D
5/8/2018	Nancy M. Lee	3.70	450.00	1,665.00	Supplement legal arguments in reply brief in support of anti-slapp motion; review and analyze plaintiffs' opposition to motion to dismiss (Rule 12(b)(5) to assess scope of additional research and reply arguments	D
5/9/2018	Mitchell J. Langberg	1.70	655.00	1,113.50	Review and revise anti-SLAPP reply; review and revise opposition motion to dismiss reply	D
5/9/2018	Van Aaron Hughes	12.70	485.00	6,159.50	Draft and revise reply in support of anti-SLAPP motion; confer with N. Lee re reply and attachments; draft and revise reply brief in support of Rule 12(b)(5) motion to dismiss	D
5/9/2018	Nancy M. Lee	7.50	450.00	3,375.00	Supplement and finalize reply briefs in support of motion to dismiss (under Rule 12(b(5)) and special motion to dismisss (under anti-slapp statute); review and prepare briefs for filing with court and service	D

5/11/2018	Mitchell J. Langberg	0.80	655.00	524.00	Review Plaintiffs' supplements to anti-SLAPP motion to dismiss	D
5/11/2018	Van Aaron Hughes	0.80	485.00	388.00	Review Plaintiffs' supplemental filing	D
5/13/2018	Mitchell J. Langberg	3.20	655.00	2,096.00	Prepare for hearing on anti-SLAPP motion	E
5/14/2018	Frank A. Schreck	2.50	875.00	2,187.50	Attend hearing on anti-SLAPP motion to dismiss	E
5/14/2018	Mitchell J. Langberg	1.70	655.00	1,113.50	Attend hearing on motions to dismiss complaint	E
5/14/2018	Van Aaron Hughes	2.40	485.00	1,164.00	Review video recording of hearing on motions to dismiss; confer with M. Langberg and N. Lee re same	F
5/15/2018	Mitchell J. Langberg	2.00	655.00	1,310.00	Review documents and conduct research for supplemental briefing	F
5/18/2018	Mitchell J. Langberg	1.40	655.00	917.00	Review video from hearing; research for supplemental briefing	F
5/19/2018	Frank A. Schreck	1.80	875.00	1,575.00	Conference with C. Turner, D. Roesener and D. Bresee re background on purchase of residences and representation of salesman	F
5/21/2018	Mitchell J. Langberg	1.30	655.00	851.50	Telephone conferences with potential declarants for supplemental brief; research for supplemental brief	F

5/22/2018	Frank A. Schreck	2.60	875.00	2,275.00	[redacted]; review documents provided, select appropriate documents and forward to M. Langberg; telephone conference with M. Langberg re same	F
5/22/2018	Mitchell J. Langberg	3.40	655.00	2,227.00	Conferences with potential declarants; work on supplemental brief; review documents for exhibits	F
5/23/2018	Mitchell J. Langberg	5.80	655.00	3,799.00	Conduct research and draft supplemental brief; review Plaintiffs' supplemental brief	F
5/25/2018	Mitchell J. Langberg	2.30	655.00	1,506.50	Research and prepare motion to strike supplemental brief by Plaintiffs	F
5/25/2018	Nancy M. Lee	0.40	450.00	180.00	Conduct legal research re consideration of legislative history for statutory interpretation in support of motion to strike portions of supplemental briefing by plaintiffs relating to motions to dismiss	F
6/1/2018	Mitchell J. Langberg	0.70	655.00	458.50	Correspond with opposing counsel and research re Early Case Conference timing in relation to filing answer	G
6/4/2018	Mitchell J. Langberg	1.20	655.00	786.00	Research re amendments to rule re Early Case Conferences and correspond with opposing counsel re same	G

6/5/2018	Nancy M. Lee	6.30	450.00	2,835.00	Conduct research of Nevada case law addressing writ proceedings on orders denying motions to dismiss, including cases addressing the litigation privilege	H
6/6/2018	Mitchell J. Langberg	1.30	655.00	851.50	Review research re writ relief for denial of "regular" motion to dismiss	H
6/6/2018	Nancy M. Lee	1.80	450.00	810.00	Conduct legal research re impact of minute orders denying motions to dismiss and related time period to answer complaint based on a review of case law and relevant procedural rules	H
6/6/2018	Nancy M. Lee	1.90	450.00	855.00	Continue research of case law addressing writ proceedings for orders denying motions to dismiss to include Ninth Circuit opinions and additional search terms	H
6/6/2018	Nancy M. Lee	4.80	450.00	2,160.00	Commence draft of motion to strike plaintiff's notice of early case conference; review relevant case background materials, including correspondence with opposing counsel	G

6/7/2018	Mitchell J. Langberg	1.80	655.00	1,179.00	Conference with clients re case update and strategy re proposed order and appeal of anti-SLAPP; review draft proposed order from opposing counsel and consider changes potential revisions; review and revise motion to strike notice of Early Case Conference	G
6/7/2018	Van Aaron Hughes	1.40	485.00	679.00	Review recent filings; telephone conference with M. Langberg and clients re case status	H
6/7/2018	Nancy M. Lee	4.20	450.00	1,890.00	Continue to prepare motion to strike Plaintiffs' Notice of Early Case Conference and draft declaration of Mitchell Langberg	G
6/11/2018	Mitchell J. Langberg	0.60	655.00	393.00	Prepare for and conduct meet and confer conference with opposing counsel re Early Case Conference and motion to strike	G
6/11/2018	Van Aaron Hughes	4.60	485.00	2,231.00	Confer with M. Langberg re write petition as to denial of Rule 12(b)(5) motion to dismiss; research and analyze grounds for petition to Nevada Supreme Court	H
6/11/2018	Nancy M. Lee	1.80	450.00	810.00	Prepare for filing of appeal of Court's rulings on motion to dismiss by reviewing and preparing required documents and conducting legal research re the same	H

6/11/2018	Nancy M. Lee	0.20	450.00	90.00	Confer on strategy re upcoming appellate proceedings re special motion to dismiss (anti-slapp motion) and motion to dismiss	H
6/12/2018	Van Aaron Hughes	5.50	485.00	2,667.50	Research and outline write petition for review of district court order denying Rule 12(b)(5) motion to dismiss; analyze legal authorities received from N. Lee and sample writ petitions received from M. Langberg	H
6/13/2018	Van Aaron Hughes	6.10	485.00	2,958.50	Research and outline petition for writ of prohibition or mandamus, based upon district court's denial of Rule 12(b)(5) motion to dismiss; review and analyze prior briefs and attachments	H
6/14/2018	Van Aaron Hughes	7.20	485.00	3,492.00	Research, outline and draft petition for writ of prohibition or mandamus, based upon district court's denial or Rule 12(b)(5) motion to dismiss	H
6/15/2018	Van Aaron Hughes	6.50	485.00	3,152.50	Research, outline and draft petition for writ of prohibition or mandamus, based upon district court's denial or Rule 12(b)(5) motion to dismiss; confer with M. Langberg re writ	H
6/18/2018	Van Aaron Hughes	2.50	485.00	1,212.50	Research and draft petition for writ of prohibition or mandamus	H

6/24/2018	Van Aaron Hughes	5.10	485.00	2,473.50	Research and draft petition for writ of prohibition or mandamus, based upon district court's denial or Rule 12(b)(5) motion to dismiss	H
6/25/2018	Van Aaron Hughes	6.40	485.00	3,104.00	Draft and revise petition for writ of prohibition or mandamus, based upon district court's denial or Rule 12(b)(5) motion to dismiss	H
6/26/2018	Mitchell J. Langberg	0.80	655.00	524.00	Review draft writ application re motion to dismiss and begin edits	H
6/26/2018	Van Aaron Hughes	2.80	485.00	1,358.00	Revise petition for writ of prohibition or mandamus to Nevada Supreme Court	H
6/27/2018	Mitchell J. Langberg	2.10	655.00	1,375.50	Review and revise writ petition for motion to dismiss; review and revise notice of appeal and supporting statement for anti-SLAPP motion	H
6/27/2018	Van Aaron Hughes	2.40	485.00	1,164.00	Revise petition for writ of prohibition or mandamus to Nevada Supreme Court; confer with M. Langberg re revisions	H
6/27/2018	Nancy M. Lee	0.50	450.00	225.00	Review notice of appeal and case appeal statement; and prepare same for filing	H
6/27/2018	Nancy M. Lee	3.50	450.00	1,575.00	Prepare appendix in support of writ petition re motion to dismiss and conduct research re requirements for same	H
6/28/2018	Mitchell J. Langberg	1.50	655.00	982.50	Continue to revise writ petition	H

6/28/2018	Nancy M. Lee	0.40	450.00	180.00	Review, analyze and prepare appendices in support of writ petition re motion to dismiss pursuant to NRCP 12(b)(5)	H
6/29/2018	Van Aaron Hughes	0.50	485.00	242.50	Review revised writ petition to Nevada Supreme Court; confer with M. Langberg re same	H
6/29/2018	Nancy M. Lee	5.40	450.00	2,430.00	Prepare to file writ petition re motion to dismiss pursuant to Rule 12(b)(5) including by reviewing and analyzing brief filing requirements, reviewing and editing writ petition brief and supporting appendices	H
7/5/2018	Mitchell J. Langberg	0.60	655.00	393.00	Research re [redacted]	H
7/9/2018	Mitchell J. Langberg	1.10	655.00	720.50	Prepare Notice of Suggestion of Recusal	H
7/23/2018	Mitchell J. Langberg	0.40	655.00	262.00	Correspond with opposing counsel re demand for early case conference	G
7/25/2018	Mitchell J. Langberg	0.60	655.00	393.00	Review and revise Supreme Court docketing statement	H
7/25/2018	Nancy M. Lee	0.20	450.00	90.00	Conduct research re appellate docketing statement requirements in pending appeal	H
9/25/2018	Van Aaron Hughes	2.40	485.00	1,164.00	Review and analyze Plaintiffs' motion to commence discovery and attachments; review email correspondence between M. Langberg and J. Jimmerson re discovery; outline resonse to motion	G

9/26/2018	Van Aaron Hughes	2.10	485.00	1,018.50	Research, outline and draft response in opposition to motion to commence discovery; review relevant pleadings and correspondence	G
9/29/2018	Van Aaron Hughes	5.50	485.00	2,667.50	Draft and revise response in opposition to motion to commence discovery and request for sanctions	G
10/1/2018	Mitchell J. Langberg	1.20	655.00	786.00	Review and revise motion to allow discovery	G
10/1/2018	Van Aaron Hughes	1.40	485.00	679.00	Review and revise response in opposition to motion to commence discovery; email correspondence with M. Langberg regarding response	G
10/5/2018	Van Aaron Hughes	1.50	485.00	727.50	Confer with M. Langberg re appeal to Nevada Supreme Court; review briefs to district court	G
10/10/2018	Van Aaron Hughes	3.80	485.00	1,843.00	Review and analyze pleadings and submissions to district court; outline issues to present to Nevada Supreme Court	H
10/11/2018	Van Aaron Hughes	5.10	485.00	2,473.50	Review pleadings and documents; outline opening brief to Nevada Supreme Court; review related court ruling; confer with M. Langberg re same	H
10/15/2018	Van Aaron Hughes	6.30	485.00	3,055.50	Research and outline brief to Nevada Supreme Court	H
10/16/2018	Van Aaron Hughes	6.60	485.00	3,201.00	Research, outline and draft brief to Nevada Supreme Court	H

10/17/2018	Van Aaron Hughes	7.10	485.00	3,443.50	Research and draft brief to Nevada Supreme Court; review relevant documents	H
10/18/2018	Mitchell J. Langberg	0.30	655.00	196.50	Prepare filing for supplemental exhibit	G
10/18/2018	Van Aaron Hughes	7.30	485.00	3,540.50	Research, draft and revise brief to Nevada Supreme Court	H
10/19/2018	Mitchell J. Langberg	2.00	655.00	1,310.00	Attend hearing on motion to commence discovery	G
10/19/2018	Van Aaron Hughes	5.80	485.00	2,813.00	Research, outline and draft brief to Nevada Supreme Court; telephone conference with M. Langberg regarding organization of opening brief; analyze court records to include in supporting Appendix	H
10/20/2018	Van Aaron Hughes	8.10	485.00	3,928.50	Draft and revise opening brief to Nevada Supreme Court	H
10/21/2018	Mitchell J. Langberg	1.00	655.00	655.00	Review and revise Supreme Court brief	H
10/21/2018	Van Aaron Hughes	4.80	485.00	2,328.00	Research and revise opening brief to Nevada Supreme Court; email correspondence with M. Langberg re brief	H
10/22/2018	Van Aaron Hughes	7.50	485.00	3,637.50	Revise and finalize opening brief to Nevada Supreme Court; email correspondence with M. Langberg re brief	H
10/29/2018	Mitchell J. Langberg	0.30	655.00	196.50	Review draft Report and Recommendations and confer with opposing counsel re same	G

11/16/2018	Van Aaron Hughes	0.40	485.00	194.00	Review recent Nevada Supreme Court decision; email correspondence with M. Langberg re same	H
11/29/2018	Mitchell J. Langberg	3.50	655.00	2,292.50	Review Respondent's Supreme Court brief; research re reply	I
11/29/2018	Van Aaron Hughes	1.60	485.00	776.00	Review and analyze Answer Brief to Nevada Supreme Court; email correspondence with M. Langberg re same	I
11/30/2018	Van Aaron Hughes	5.10	485.00	2,473.50	Review and analyze Answer Brief to Nevada Supreme Court; review cited authorities	I
12/3/2018	Van Aaron Hughes	3.50	485.00	1,697.50	Review and analyze Answer Brief to Nevada Supreme Court; outline potential arguments for reply brief	I
12/10/2018	Van Aaron Hughes	4.40	485.00	2,134.00	Review and analyze Developers' Answering Brief; review and analyze cited authorities	I
12/11/2018	Van Aaron Hughes	5.10	485.00	2,473.50	Review and analyze Developers' Answering Brief; review record on appeal; analyze authorities relied upon by Developers	I
12/12/2018	Van Aaron Hughes	4.20	485.00	2,037.00	Review and analyze Developers' Answering Brief and relevant case law and district court submissions; outline potential issues for reply brief	I
12/13/2018	Van Aaron Hughes	3.80	485.00	1,843.00	Research and analyze issues to address in reply brief to Nevada Supreme Court	I

12/14/2018	Van Aaron Hughes	4.90	485.00	2,376.50	Research and analyze potential issues on appeal; analyze recent Nevada Supreme Court cases on anti-SLAPP statute; telephone conference with M. Langberg re arguments on appeal	I
12/17/2018	Van Aaron Hughes	1.10	485.00	533.50	Outline arguments for reply brief to Nevada Supreme Court	I
12/18/2018	Van Aaron Hughes	4.40	485.00	2,134.00	Research, outline and draft reply brief to Nevada Supreme Court; review relevant portions of record on appeal	I
12/19/2018	Van Aaron Hughes	5.60	485.00	2,716.00	Research and draft reply brief to Nevada Supreme Court; review relevant portions of record on appeal	I
12/20/2018	Van Aaron Hughes	12.30	485.00	5,965.50	Research, draft and revise reply brief to Nevada Supreme Court	I
12/21/2018	Van Aaron Hughes	9.70	485.00	4,704.50	Research, draft and revise reply brief to Nevada Supreme Court	I
12/25/2018	Mitchell J. Langberg	2.80	655.00	1,834.00	Review and revise Supreme Court reply brief	I
12/25/2018	Van Aaron Hughes	2.20	485.00	1,067.00	Email correspondence with M. Langberg re revisions to reply brief; revise reply brief to Nevada Supreme Court	I
2/18/2019	Mitchell J. Langberg	1.00	655.00	655.00	Prepare for hearing on motion to commence discovery	G
2/20/2019	Mitchell J. Langberg	2.40	655.00	1,572.00	Attend hearing to oppose commencing discovery	G

3/22/2019	Mitchell J. Langberg	0.50	655.00	327.50	Prepare order denying discovery; correspondence with opposing counsel	G
3/26/2019	Mitchell J. Langberg	0.30	655.00	196.50	Review proposed changes to proposed order and confer with opposing counsel	G
10/2/2019	Mitchell J. Langberg	1.40	655.00	917.00	Attend status check	D
1/23/2020	Mitchell J. Langberg	2.40	690.00	1,656.00	Review ruling from Nevada Supreme Court; research for Petition for Rehearing	I
1/24/2020	Mitchell J. Langberg	2.30	690.00	1,587.00	Research and work on Petition for Rehearing	I
1/25/2020	William D. Nobriga	0.90	340.00	306.00	Review Opening Brief and Order	I
1/28/2020	William D. Nobriga	1.90	340.00	646.00	Research re motion for rehearing	I
1/29/2020	William D. Nobriga	2.00	340.00	680.00	Research re motion for Rehearing	I
1/30/2020	William D. Nobriga	0.70	340.00	238.00	Draft Standard of review section for petition for rehearing	I
1/31/2020	Mitchell J. Langberg	2.00	690.00	1,380.00	Continue to research and draft rehearing motion	I
2/4/2020	Mitchell J. Langberg	1.30	690.00	897.00	Conduct research for potential Petition for Rehearing	I
2/5/2020	Mitchell J. Langberg	3.40	690.00	2,346.00	Continue research for Petition for Rehearing; begin drafting Peition for Rehearing	I
2/10/2020	Mitchell J. Langberg	4.20	690.00	2,898.00	Conduct research and prepare Petition for Rehearing	I
2/24/2020	Mitchell J. Langberg	0.70	690.00	483.00	Update research re discovery standards for anti-SLAPP for District Court briefing	J
2/27/2020	Mitchell J. Langberg	0.50	690.00	345.00	Review ruling on Petition for Rehearing	I
3/1/2020	Mitchell J. Langberg	0.20	690.00	138.00	Prepare status update to Court	D

4/29/2020	Mitchell J. Langberg	1.40	690.00	966.00	Attend telephonic status check on discovery issue remanded by Supreme Court; prepare update to client	D
5/8/2020	Mitchell J. Langberg	0.40	690.00	276.00	Review Plaintiffs' brief in support of discovery	J
5/11/2020	Mitchell J. Langberg	4.30	690.00	2,967.00	Cconduct research re opposition ot discovery request; prepare opposition	J
5/29/2020	Mitchell J. Langberg	1.70	690.00	1,173.00	Review Court's order on discovery and prepare request for clarification; correspond with clients re same	J
6/1/2020	Mitchell J. Langberg	1.00	690.00	690.00	Telephone conference with clients re case status, strategy and discovery	J
6/7/2020	Mitchell J. Langberg	1.50	690.00	1,035.00	Conduct research for writ on discovery	J
6/25/2020	Mitchell J. Langberg	1.30	690.00	897.00	Review discovery requests; prepare summary and strategy email to clients; research re scope issues; correspond with opposing counsel	K
6/26/2020	Mitchell J. Langberg	1.80	690.00	1,242.00	Prepare for discovery meet and confer and motion for protective order; meet and confer with opposing counsel	L
6/30/2020	Mitchell J. Langberg	0.40	690.00	276.00	Review revised discovery; correspond with client re same	K
7/1/2020	Mitchell J. Langberg	1.50	690.00	1,035.00	Prepare motion for protective order re discovery	L
7/2/2020	Mitchell J. Langberg	2.70	690.00	1,863.00	Continue to work on motion for protective order	L
7/8/2020	Mitchell J. Langberg	0.80	690.00	552.00	Confer with client re deposition scheduling and discovery issues	K

7/9/2020	Mitchell J. Langberg	1.40	690.00	966.00	Prepare reply in support of motion for protective order	L
7/13/2020	Mitchell J. Langberg	2.00	690.00	1,380.00	Attend hearing on Motion for Protective order re scope of discovery	L
7/21/2020	Mitchell J. Langberg	0.70	690.00	483.00	Review minute order re discovery and correspond with client re same	L
7/22/2020	Mitchell J. Langberg	1.20	690.00	828.00	Prepare draft order on Motion for Protective Order re Discovery	L
7/28/2020	Mitchell J. Langberg	0.50	690.00	345.00	Review and revise draft order and comments from opposing counsel	L
7/29/2020	Mitchell J. Langberg	1.00	690.00	690.00	Attend Court status check	D
7/30/2020	Mitchell J. Langberg	0.40	690.00	276.00	Review additional revisions on order from opposing cousel	L
8/6/2020	Mitchell J. Langberg	0.80	690.00	552.00	Review document requests from Plaintiffs; correspond with opposing counsel re same; correspond with client re same	K
8/10/2020	Mitchell J. Langberg	1.30	690.00	897.00	Conference with clients re responding to document requests; review documents provided by client	K
8/14/2020	Mitchell J. Langberg	0.40	690.00	276.00	Confer with clients re document requests	K
8/17/2020	Mitchell J. Langberg	1.10	690.00	759.00	Work on review for document production	K
8/18/2020	Mitchell J. Langberg	0.80	690.00	552.00	Work on deposition preparation with S. Caria	K
8/20/2020	Mitchell J. Langberg	0.50	690.00	345.00	Multiple correspondence with opposing counsel re depositions; confer with clients re same	K

8/21/2020	Mitchell J. Langberg	2.20	690.00	1,518.00	Prepare responses to Requests for Production of Documents and document production	K
8/23/2020	Mitchell J. Langberg	1.00	690.00	690.00	Multiple communications with clients re deposition scheduling and preparation	K
8/25/2020	Mitchell J. Langberg	4.20	690.00	2,898.00	Deposition preparation meetings with clients	K
8/26/2020	Mitchell J. Langberg	7.30	690.00	5,037.00	Review exhibits provided by Plaintiffs, prepare for and attend depositions of defendants	M
9/14/2020	Mitchell J. Langberg	3.20	690.00	2,208.00	Review client deposition transcripts	M
9/18/2020	Mitchell J. Langberg	1.10	690.00	759.00	Review client depositions	M
10/6/2020	Mitchell J. Langberg	0.30	690.00	207.00	Correspond with opposing counsel and review draft stipulation	M
10/14/2020	Mitchell J. Langberg	5.40	690.00	3,726.00	Review Plaintiffs' supplemental brief; confer with opposing counsel re deadlines; work on motion to strike; review transcripts and prior orders	M
10/15/2020	Mitchell J. Langberg	2.20	690.00	1,518.00	Complete preparation of motion to strike and supporting papers	M
10/20/2020	Mitchell J. Langberg	0.50	690.00	345.00	Review opposition to motion to strike	M
10/21/2020	Mitchell J. Langberg	0.50	690.00	345.00	Prepare reply on motion to strike	M
10/26/2020	Mitchell J. Langberg	1.40	690.00	966.00	Review deposition citation in Supplemental Opposition; begin work on reply	M

10/28/2020	Mitchell J. Langberg	1.50	690.00	1,035.00	Work on Prong 1 analysis for Supplemental Reply	M
10/29/2020	Mitchell J. Langberg	2.60	690.00	1,794.00	Research and review public documents confirming existence of Peccole Ranch Master Plan; work on reply brief	M
10/29/2020	Laura B. Langberg	3.70	485.00	1,794.50	Research in support of supplemental reply in support of special motion to dismiss, including research re civil conspiracy under Nevada and Ninth Circuit authority; draft memorandum re same	M
10/30/2020	Mitchell J. Langberg	6.60	690.00	4,554.00	Continue legal and factual research for supplemental reply; draft reply brief	M
10/30/2020	Laura B. Langberg	2.30	485.00	1,115.50	Research in support of supplemental reply in support of special motion to dismiss, including research re CC&R issues; edit and revise final brief	M
11/9/2020	Mitchell J. Langberg	2.10	690.00	1,449.00	Prepare for and attend hearing on anti-SLAPP motion	M
11/18/2020	Mitchell J. Langberg	2.50	690.00	1,725.00	Prepare findings of fact and conclusons of law	M
11/19/2020	Mitchell J. Langberg	3.70	690.00	2,553.00	Continue to draft findings of fact and conclusions of law	M
12/2/2020	Mitchell J. Langberg	0.50	690.00	345.00	Review plaintiff's revisions to proposed order	M
						M

IN THE SUPREME COURT OF THE STATE OF NEVADA

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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, Appellees, vs. DANIEL OMERZA, DARREN BRESEE, STEVE CARIA, and DOES 1-1000, Appellants,	Case No: 82338 (lead case) Consolidated With: 82880 (same caption)

JOINT APPENDIX SUBMITTED BY APPELLANTS AND APPELLEES

VOLUME 10 (Pages 1421-1591)

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JOINT APPENDIX INDEX

Vol.	Description	Date	Bates No.
1	Complaint with Exhibits	3/15/18	**1-95**
2	Request for Judicial Notice in Support of Special Motion to Dismiss	4/13/18	**96-147**
2	Motion to Dismiss 12(b)(5)	4/13/18	**148-162**
2	Special Motion to Dismiss	4/13/18	**163-197**
2	Opposition to Special MTD	5/4/18	**198-219**
2	Opposition to MTD 12(b)(5)	5/7/18	**220-235**
2	Reply to Special Motion to Dismiss	5/9/18	**236-251**
2	Reply to MTD 12(b)(5)	5/9/18	**252-262**
2	Request for Judicial Notice in support of Reply to Special MTD	5/9/18	**263-300**
2	Plaintiff's First Supplement to their Opposition to Special MTD	5/11/18	**301-305**
3	Plaintiff's Second Supplement to their Opposition to Special MTD	5/11/18	**306-327**
3	Defendants' Supplement in Support of MTD	5/23/18	**328-365**
3	Plaintiff's Supplement in Support of Opposition to Special MTD	5/23/18	**366-425**
4	Plaintiffs' Errata to Complaint	6/11/18	**426-523**
4	Findings of Fact, Conclusion of Law denying Motion to Dismiss	6/20/18	**524-537**
4	Notice of Appeal to FFCOL	6/27/18	**538-572**
5	Plaintiffs' Motion for an Order Permitting Discovery	9/14/18	**573-631**
5	Defendants' Opposition to Mtn for Discovery	10/1/18	**632-639**

5	Plaintiffs' Reply to Mtn for Discovery	10/12/18	**640-664**
5	Plaintiffs' Supplemental Exhibit in Further Support of Discovery Mtn	10/17/18	**665-670**
5	Defendants' Supplemental Exhibits in Further Support of Opposition to Mtn for Discovery	10/18/18	**671-679**
5	Minutes and Order from Discovery Commissioner	10/19/18	**680-681**
5	Defendants' Objections to the Discovery Commissioner's Report and Recommendation	1/3/19	**682-688**
5	Plaintiffs' Response to Objections to R&R	1/30/19	**689-712**
5	Order Denying Mtn for Discovery	4/11/19	**713-715**
5	Nevada Supreme Court Order on remand	1/23/20	**716-728**
6	Nevada Supreme Court Order on Rehearing	2/27/20	**729-730**
6	Supplemental brief for limited discovery	5/6/20	**731-737**
6	Opposition to request for discovery	5/11/20	**738-748**
6	May 29, 2020, Minute Order		**749**
6	Defendants' Request for Clarification	5/29/20	**750-752**
6	Minute Order on Request for Clarification	6/5/20	**753**
6	Defendants' Motion for protective order	7/2/20	**754-799**
6	Plaintiff' response to motion for protective order	7/7/20	**800-815**
6	Reply in support of protective order	7/9/20	**816-821**
6	July 21. 2020 Minute order	7/21/20	**822**

6	Order granting protective order	8/3/20	**823-829**
7	Plaintiffs' Supplemental Opposition to Motion to Dismiss (PART 1)	10/14/20	**830-995**
8	Plaintiffs' Supplemental Opposition to Motion to Dismiss (PART 2)	10/14/20	**996-1216**
9	Errata to Supplemental Opposition to Motion to Dismiss	10/14/20	**1217-1222**
9	Defendants' Supplemental Reply to Motion to Dismiss	10/30/20	**1223-1254**
9	Declaration of Mitchell Langberg in Support of Supplemental Brief (Reply) to Special MTD	10/30/20	**1255-1257**
9	November 9, 2020, Minute Order	11/9/20	**1258-1259**
9	Findings of Fact and Conclusions of Law granting Motion to Dismiss	12/3/20	**1260-1272**
9	Plaintiffs' Objections to Proposed Findings of Fact, Conclusions of Law as Proposed by Plaintiff	12/3/20	**1273-1286**
9	Notice of Entry of Order on FF, COL and Order granting Special MTD	12/10/20	**1287-1302**
9	Motion to Reconsider Order Granting Special MTD	12/24/20	**1302-1356**
9	Motion for Attorneys Fees and Costs	12/31/20	**1357-1420**
10	Defendants' Opposition to MTN to Reconsider Order Dismissing	1/7/21	**1421-1428**
10	Plaintiffs' Reply to Mtn to Reconsider	1/14/21	**1429-1440**
10	Errata to Reply to Mtn Reconsider	1/14/21	**1441-1477**
10	Opposition to Motion for Attorney's Fees and Costs	1/22/21	**1478-1591**
11	Minute Order Denying Motion to Reconsider	1/25/21	**1592**

11	Mtn to Reconsider Minute Order dated 1/25/21	2/2/21	**1593-1596**
11	Order Denying Mtn to Reconsider Order Dismissing	2/4/21	**1597-1604**
11	Declaration of Lisa Rasmussen submitted as Supplement to Mtn for Attorney's Fees	2/12/21	**1605-1607**
11	Reply in support of Motion for Attorney's Fees and Costs	2/12/21	**1608-1614**
11	Order Granting Motion for Attorney's Fees and Costs	4/16/21	**1615-1620**
11	Notice of Appeal Case No. 82338	1/8/21	**1621-1639**
11	Notice of Appeal Case No. 82880	5/5/21	**1640-1650**
11	Reporter's Transcript of Proceedings on SLAPP Motion to Dismiss	5/14/18	**1651-1712**
11	Reporter's Transcript of Discovery Commissioner Proceedings	10/19/18	**1713-1728**
11	Reporter's Transcript of Post Remand Hearing	4/29/20	**1729-1744**
11	Reporter's Transcript of Proceedings, Discovery/Protective Order Hearing	7/13/20	**1745-1775**
11	Reporter's Transcript of Proceedings, Discovery/Protective Order Hearing	7/29/20	**1776-1781**
11	Reporter's Transcript of Proceedings, on Special Motio to Dismiss, Post Remand	11/9/20	**1782-1792**
11	Reporter's Transcript of Proceedings on Motion for Attorney's Fees	3/31/21	**1793-1815**

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Attorneys For Defendants,
DANIEL OMERZA, DARREN BRESEE,
and STEVE CARIA

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

v.

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

Defendants.

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

DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTION FOR RECONSIDERATION OF COURT'S ORDER DATED DECEMBER 10, 2020

Hearing Date: January 25, 2021

Hearing Time: Chambers

Defendants Daniel Omerza, Darren Bresee, and Steve Caria, by and through their counsel of record Mitchell J. Langberg of BROWNSTEIN HYATT FARBER SCHRECK LLP, respectfully submit this response in opposition to Plaintiffs' Motion For Reconsideration of Court's Order Dated December 10, 2020 ("Motion").

I. INTRODUCTION

Plaintiffs' Motion for Reconsideration is far more notable for what it fails to say than for what it says. Specifically, the motion does not address the standard a court should apply when deciding a reconsideration motion. That is no surprise. When the proper standard is applied,

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Case Number: A-18-771224-C

there is no basis to reconsider Defendants' anti-SLAPP motion, let alone issue a new and different order.

"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 (1976) (finding ***reconsideration*** was abuse of discretion where new case authority, but no new legal issues or facts, were presented to the district court). Critically, evidence is not "new" "if it was in the party's possession at the time of [the motion]…." *Wallis v. J.R. Simplot Co.,* 26 F.3d 885, 892, fn. 6 (9th Cir. 1994), as amended on denial of reh'g (July 14, 1994).

Plaintiffs offer no new legal or factual issues.[1] A review of the Findings of Fact Conclusions of Law and Order on Defendants' anti-SLAPP motion demonstrates that every legal and factual issue addressed in the Motion for Reconsideration was already considered. Unsatisfied with the result, Plaintiffs simply want to reargue in front of a new judge. They have a right of appeal to accomplish that.

II. ARGUMENT

A. The Motion For Reconsideration Must Be Denied Pursuant To EDCR 2.20(c) Because Plaintiffs Fail To Provide Legal Support

The fact that Plaintiffs have not set forth the legal standard for reconsideration motions or applied the facts to that standard is no mere procedural oversight. It is fatal to their motion.

EDCR 2.20(c) expressly provides:

> A party filing a motion must also serve and file with it a memorandum of points and authorities in support of each ground thereof. The absence of such memorandum may be construed as an admission that the motion is not meritorious, as cause for its denial or as a waiver of all grounds not so supported.

While Plaintiffs have reargued the substance of the underlying motion, they have ***not***

[1] To be fair, Plaintiffs do cite to the November 2020 Nevada Court of Appeals case of *Williams v. Lazer*, 476 P.3d 928 (Nev. App. 2020). But, that case is ***unpublished***. Citation to the case is a flagrant violation of the Supreme Court's directive in NRAP 36(c)(3) that "unpublished dispositions issued by the Court of Appeals may not be cited in any Nevada court for any purpose." This is yet another reason to deny the motion.

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provided any memorandum of points and authorities to support their initial request for reconsideration. Proving they are entitled to reconsideration is ***their heavy burden***. It is not appropriate to sandbag by skipping the most important factual and legal issues of the motion, forcing Defendants to address them first, and then respond on reply. Indeed, arguments raised for the first time on reply should not be considered. *Francis v. Wynn Las Vegas, LLC,* 127 Nev. 657, 671, 262 P.3d 705, 715, fn. 7 (2011).

Because Plaintiffs have not filed any points and authorities in support of their request that this Court reconsider the anti-SLAPP motion, the Motion for Reconsideration should be denied.

B. Applying The Applicable Standard, Plaintiffs Are Not Entitled To Have The Anti-SLAPP Motion Reconsidered

A motion for reconsideration is a two-step process. First a court determines whether, as a procedural matter, there are grounds to reconsider the underlying motion. If so, a court then determines whether, upon reconsideration, it should issue a new and different order.

EDCR 2.24(c) states that "if a motion for rehearing is granted, the court may make a final disposition of the cause without reargument or may reset it for reargument or resubmission or may make such other orders as are deemed appropriate under the circumstances of the particular case.

Here, there is no basis to reconsider the anti-SLAPP motion in the first instance. Even a cursory review of the court file will demonstrate that factual and legal issues on the anti-SLAPP motion were briefed extensively, including through initial briefs, briefing on related motions, supplemental briefs and a prior appeal.

Plaintiffs have not demonstrated that this is one of the "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*, 92 Nev. at 405 (1976). There, the Nevada Supreme Court ***reversed*** the district court's grant of reconsideration when the movant simply cited new legal authority for legal issues that were already presented in the original motion. The same is true here. All of the issues (legal and factual) are addressed in this Court's findings of fact and conclusions of law.

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This case is almost three years old. As the Nevada Supreme Court explained in this very matter, anti-SLAPP motions exist "to provide a mechanism for the ***expeditious*** resolution of meritless SLAPPs." *Omerza v. Fore Stars, Ltd*, 455 P.3d 841, fn. 4 (Nev. 2020). As the order stands now, Plaintiffs may appeal. Were the Court to have denied the anti-SLAPP motion, NRS 41.670(4) would have provided Defendants an immediate right of appeal. Particularly because this case will be appealed regardless, the underlying order should not be disturbed when Plaintiffs have made ***no showing*** to support their request.

Plaintiffs simply do not like the factual and legal conclusions reached by the Court. They have amble opportunity to revisit those on appeal.

C. There Is No Basis To Change The Order That Granted The Anti-SLAPP Motion

Even if the Court were to reconsider the underlying anti-SLAPP motion, there is no reason to vacate the order granting that motion and dismissing the case. Plaintiffs have offered nothing new. All the original arguments remain.

If the Court is inclined to reconsider the anti-SLAPP motion, Defendants do not reargue every aspect of the motion and because Plaintiffs merely rehash their repeated arguments. Defendants request that the Court review the underlying briefing and set the matter for further argument.

Because Plaintiffs offer no new facts or law, Defendants only address a few issues here.

1. Nothing Plaintiffs Offer Changes The Nevada Supreme Court Decision That Defendants Satisfied Prong 1 Of The Anti-SLAPP Analysis

An anti-SLAPP motion presents a court with a two prong analysis. The first prong requires the defendant to demonstrate that it made a good faith communication in furtherance of the right to petition or the right of free speech in direct connection with a matter of public concern. NRS 41.660. A good faith communication is one that is truthful or made without knowledge of falsehood.

The Nevada Supreme Court already determined that Defendants met their Prong 1 burden. This Court has confirmed on several occasions that the remand from the Supreme Court was limited to the issue of discovery for Prong 2 and the Prong 2 analysis. That issue has been briefed

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several times with extensive factual and legal analysis, including by the Court.

Even if the Court were to reconsider the Prong 1 issue (despite the clear mandate from the Nevada Supreme Court), nothing would change. The Prong 1 analysis asks:

> …whether a preponderance of the evidence demonstrates that the gist of the story, or the portion of the story that carries the sting of the [statement], is true and not the "literal truth of each word or detail used in a statement.

Taylor v. Colon, 136 Nev. Adv. Op. 50, 468 P.3d 820, 826 (2020) (internal quotations and citations omitted). Here, the gist of the statements which underlie Plaintiffs' claims is that residents relied on the zoning designation of the Peccole Ranch Master Plan when they purchased their property. *Omerza*, 455 P.3d 841 (Nev. 2020).

In their reconsideration motion, Plaintiffs make (inaccurate) arguments that, even if true, split hairs and ignore the gist of the statement. Plaintiffs' repeated citation to the Nevada Supreme Court's "absent evidence that clearly and directly overcomes language" is a red herring. The Court was explaining ***why*** Defendants had met their burden (because Plaintiffs had not offered sufficient rebutting evidence). But the Supreme Court ***did not*** invite Plaintiffs to take a second bite of the apple on remand. Indeed, the Court was 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)." NRS 41.660(4) allows discovery ***only*** on the second prong of the analysis.

At the end of the day, the gist of the statements Defendants circulated for signature by other residents said the same thing Judge Crockett said, as noted by the Nevada Supreme Court: "Judge Crockett observed during a hearing that purchasers of property subject to the Peccole Ranch Master Plan relied on that master plan in purchasing their homes, which provides some additional evidentiary support as to appellants' step-one burden."

2. Plaintiffs' Argument About The City Council Proceedings Is Misleading

Defendants gathered signatures on statements from other residents to submit to the City Council at a hearing in opposition to Plaintiffs' effort to change land use restrictions. What

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Plaintiffs do not say in their reconsideration motion is that in Paragraph 61 of its Findings of Fact and Conclusion of Law, this Court found that the City Council hearing never went forward. As a result, Plaintiffs cannot say that the proceedings were not quasi-judicial (though they admitted a prior proceeding of the same nature was). And, they cannot show that the statements caused them any harm. They cannot even say the statements were submitted.

3. Plaintiffs Are Not Entitled To More Discovery

Plaintiffs simply do not like complying with the rules. The issue of discovery was hotly litigated before the motion was decided. First, as to the scope of discovery, NRS 41.660(4) only allows discovery after a plaintiff makes a ***showing of necessity***. The briefing and the Findings of Fact and Conclusions of Law (¶ ¶ 17-21, 32-39) make clear that Plaintiffs only attempted to make a very limited showing and the Court granted discovery based on that.

To the extent that Plaintiffs claim that Defendants did not adequately respond (which is incorrect), they made no effort to raise the issue with the Court by motion to compel or otherwise before supplemental briefing on the anti-SLAPP motion or the hearing.

As with this motion and their briefing on Prong 1 before the first appeal, Plaintiffs' failure to address and meet the standards governing their requests impacts the availability of the relief they can receive. Here, Plaintiffs got just the discovery to which they were entitled (if not more).

4. The Nevada Supreme Court Found That Plaintiffs Failed To Meet Their Prong 2 Burden And Gave Them A Second Chance With Discovery—And They Failed To Meet Their Burden Again

Plaintiffs misrepresent the facts regarding the Nevada Supreme Court's decision on Prong 2. On page 10 of their brief, they say that "The Nevada Supreme Court never decided Prong 2 on the merits" and "the Order's contention that the Nevada Supreme Court already determined Plaintiffs failed to meet their Prong 2 burden is misguided."

One need only read the Supreme Court's opinion to see that Plaintiffs are wrong. The Court said:

> 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.

It is true that Plaintiffs hardly argued their Prong 2 burden in the District Court or in the Supreme

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Court. The significance is that the Supreme Court determined that Plaintiffs did not meet their Prong 2 burden on the record that existed at the time of the appeal. But, Plaintiffs were ultimately allowed to conduct some discovery. Having failed to meet their Prong 2 burden the first time around, it became Plaintiffs' burden on remand to demonstrate how they could meet that burden.

As this Court determined, in their supplemental briefing, they only attempted to meet their burden on their conspiracy claim. The briefing and the Court's order explain in detail how and why Plaintiffs failed to meet that burden, not the least of which is the fact that they did not even try to articulate a damages theory (arising from the statements obtained from residents which were never used in a City Council hearing).

III. CONCLUSION

Plaintiffs have not articulated the standard by which a reconsideration motion is evaluated. Nor have they presented any new facts or law to support their motion. There is no basis for reconsideration. And, even if there was, there is no basis to change the prior order granting the anti-SLAPP motion.

Therefore, the Motion for Reconsideration should be denied.

DATED this 7th day of January, 2021.

BROWNSTEIN HYATT FARBER SCHRECK, LLP

BY: */s/ Mitchell J. Langberg*
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of Brownstein Hyatt Farber Schreck, LLP, and pursuant to NRCP 5(b), EDCR 8.05, Administrative Order 14-2, and NEFCR 9, I caused a true and correct copy of the foregoing **DEFENDANTS' OPPOSITION TO 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 7th day of January, 2021, to the following:

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DISTRICT COURT

CLARK COUNTY, NEVADA

FORE STARS, LTD., a Nevada limited liability company; 180 LAND CO., LLC; A NEVADA LIMITED LIABILIITY COMPANY; SEVENTY ACRES, LLC, a Nevada limited liability company, Plaintiffs, vs. DANIEL OMERZA, DARREN BRESEE, STEVE CARIA, and DOES 1 THROUGH 100, Defendants.	Case No.: A-18-771224-C Dept: XIX **PLAINTIFFS' REPLY TO DEFENDANTS' OPPOSITION TO MOTION FOR RECONSIDERATION OF COURT'S ORDER DATED DECEMBER 10, 2020** **DATE OF HEARING: January 25, 2021** **TIME OF HEARING: n/a chambers**

COME NOW the Plaintiffs, by and through their counsel, Lisa A. Rasmussen, Esq. of the Law Offices of Kristina Wildeveld & Associates, and hereby submit its reply respectfully to Defendants' Opposition to Plaintiffs' Motion that the Court reconsider its Order dated December 20, 2020. This Reply/Opposition is made and based upon the pleadings and papers on file herein, the Points and Authorities set forth below and any oral argument that this Court may entertain on this matter.

Dated this 14th day of January, 2021,

The Law Offices of Kristina Wildeveld & Associates,

/s/ Lisa A. Rasmussen

LISA A. RASMUSSEN, ESQ.
Nevada Bar No. 7491
Counsel for Plaintiffs

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Even now, Defendants wish for this Motion to be struck procedurally rather than heard on the merits. Defendants have taken every possible step throughout this case to prevent any aspect of this case from being heard on the merits. Defendants are free to exercise their First Amendments rights, as they did initially. However, they are not free to conspire to spread a false document and abet others to sign this false document in an attempt to stop Plaintiffs from lawfully developing their land. Regardless, both EDCR 2.24(b) and Rule 59(e) allow for reconsideration of this Court's ruling if it is clearly erroneous.

Even if Plaintiffs were required to provide new issues of fact or law, the Nevada Supreme Court relied on Judge Crockett's ruling for its Prong 1 determination. Omerza

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v. Fore Stars, Ltd, 455 P.3d 841, at *3 (Nev. 2020) (unpublished). Shortly following the Prong 1 determination, Judge Crockett's ruling was reversed. Seventy Acres, LLC v. Binion, 458 P.3d 1071 (Nev. 2020) (unpublished). It cannot be said that Defendants' circular logic, with no evidentiary support, proves by a preponderance of the evidence that Plaintiffs satisfied their Prong 1 burden. The declarations they promulgated and signed cannot be true. There must be a credibility determination to determine whether a factfinder finds Defendants' statements to be truthful.

Additionally, Plaintiffs were entitled to more discovery, Plaintiffs were limited to merely what Defendants relied upon in making their statements. During the depositions, questions critical to proving a civil conspiracy claim were objected to by Defendants' counsel and Defendants refused to answer. However, even without more discovery, Plaintiffs have adequately alleged a civil conspiracy claim. Plaintiffs have suffered and continue to this day to suffer irreparable harm and damages from Defendants' wrongful conduct.

II. LEGAL ARGUMENT

A. Plaintiffs are entitled to have the anti-SLAPP Motion Reconsidered under Rule 59(e) and EDCR 2.24(b).

Although an EDCR 2.24(b) is silent on the requirements of a motion under this provision—other than the deadline, the Nevada Supreme Court has interpreted it as appropriate when "substantially different evidence is subsequently introduced *or the decision is clearly erroneous*." Masonry & Tile Contractors Ass'n of S. Nevada v. Jolley, Urga & Wirth, Ltd., 113 Nev. 737, 741, 941 P.2d 486, 489 (1997) (emphasis added). Plaintiffs contend this Court's Order was in clear error.

Alternatively, under Rule 59(e), the Nevada Supreme Court has held, "a motion to reconsider, vacate, set aside, or reargue [a final judgment] will ordinarily be construed as [a] Rule 59(e) motion" so long as it is filed within the allowed period, twenty eight days. AA Primo Builders, LLC v. Washington, 126 Nev. 578, 584, 245

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P.3d 1190, 1194 (2010) (citations omitted). The grounds for bringing a NRCP 59(e) motion include: "*correct[ing] manifest errors of law or fact*," "newly discovered or previously unavailable evidence," the need "to prevent manifest injustice," or a "change in controlling law." Id. at 582, 1193 (emphasis added). Plaintiffs contend this Court made manifest errors of law or fact in granting Defendants' anti-SLAPP Motion, as is clear by Plaintiffs' Motion to Reconsider. Regardless, EDCR 2.20(c) is permissive and not mandatory.[1]

Moreover, NRAP 28(c) limits a reply to "answering any new matter set forth in the opposing brief." There is no analogous provision in the EDCR or in the NRCP. Defendants' cited case does not actually say anything about limiting a reply to "answering any new matter set forth in the opposing brief" at the trial court level, in fact both Wynn's footnote and the case it cites specifically discuss appellant reply briefs. Francis v. Wynn Las Vegas, LLC, 127 Nev. 657, 671, 262 P.3d 705, 715, fn. 7 (2011) (citing Weaver v. State, Dep't of Motor Vehicles, 121 Nev. 494, 502, 117 P.3d 193, 198–99 (2005)).

Furthermore, it is ironic that Defendants claim citing to an unpublished Nevada Court of Appeals case as a basis for denying this Motion, when their own supplemental brief to the anti-SLAPP Motion, which this Court granted, does just that. Defs. Suppl. Br. Supp. Special Mot. Dismiss (Anti-SLAPP Mot.); 11:13 (citing Panicaro v. Crowley, No. 67840, 2017 WL 253581, at *1 (Nev. App. Jan. 5, 2017) as authority).

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[1] "The absence of such memorandum ***may be*** construed as an admission that the motion is not meritorious, as cause for its denial or as waiver of all grounds not so supported."

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B. The Court erred by applying the litigation privilege to Defendants' statements because the city council proceedings do not constitute a quasi-judicial proceeding.

Defendants cannot have it both ways. Both this Court's Order and Defendants claim that Spencer v. Klementi, 136 Nev. Adv. Op. 35, 466 P.3d 1241 (2020) can be distinguished from the facts at issue here because the case involved defamation. Findings of Fact and Conclusions of Law ¶ 51. Using this same logic, nearly all of the cases Defendants cited regarding the litigation privilege also can be distinguished because each one dealt with defamation. Fink v. Oshins, 118 Nev. 428, 430, 49 P.3d 640, 641 (2002) ("[i]n this appeal we consider the scope of an attorney's privilege as a defense to defamation actions"); Clark Cty. Sch. Dist. v. Virtual Educ. Software, Inc., 125 Nev. 374, 378, 213 P.3d 496, 499 (2009) (we conclude that the absolute privilege affords….the same protection from liability….for defamatory statements made during, or in anticipation of, judicial proceedings); Circus Circus Hotels, Inc. v. Witherspoon, 99 Nev. 56, 62, 657 P.2d 101, 105 (1983) ("whether this allegedly defamatory communication was made on a "privileged occasion."); Shapiro v. Welt, 133 Nev. 35, 40, 389 P.3d 262, 268 (2017) "Nevada has long recognized the existence of an absolute privilege for defamatory statements made during the course of judicial and quasi-judicial proceedings"). Defamation is not among Plaintiffs' claims for relief.

Defendants and this Court's Order state Spencer can be distinguished because the speaker was not under oath and no cross-examination was allowed, thus the Oshins case controls. This is nonsensical and in ***clear error.*** Oshins dealt with a statement made between an attorney and his client regarding a probate proceeding to remove an independent trustee. Oshins, 118 Nev. at 432–33, 49 P.3d at 642. Rather than a judicial proceeding of the type in Oshins, Defendants' actions revolve around an alleged "quasi-judicial proceeding." Spencer also involved a quasi-judicial proceeding, a planning commission meeting, where "the public is invited to speak about relevant community issues." Spencer, 466 P.3d at 1248. Defendants even describe the City

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Council meeting as a "community effort to raise significant issues." The Nevada Supreme Court declined to extend the litigation privilege because while the proceeding allowed for personal testimony, it did not require an oath, affirmation, cross-examination, or impeachment of witnesses, as here. Id. The City Council proceeding is much more analogous to the facts in Spencer than Oshins.

Even if the litigation privilege would shield against Plaintiffs' non-defamation claims, it should not apply here. The case Defendants and this Court used to establish that the City Council proceedings constituted as quasi-judicial in fact states, "at a minimum, a quasi-judicial proceeding must afford each party (1) the ability to present and object to evidence, (2*) the ability to cross-examine witnesses*, (3) a written decision from the public body, and (4) an opportunity to appeal to a higher authority." State, ex rel. Bd. of Parole Comm'rs v. Morrow, 127 Nev. 265, 273, 255 P.3d 224, 229 (2011) (emphasis added). Other Nevada Supreme Court cases have also required oaths to constitute as a quasi-judicial proceeding. Knox v. Dick, 99 Nev. 514, 518, 665 P.2d 267, 270 (1983); Spencer v. Klementi, 136 Nev. Adv. Op. 35, 466 P.3d 1241, 1247 (2020). This is not a balancing test. Each element is ***necessary*** for a finding of a quasi-judicial proceeding. In fact, the lack of ability to cross-examine has proven to be a fatal flaw. Stockmeier v. Nevada Dep't of Corr. Psychological Review Panel, 122 Nev. 385, 392, 181 P.3d 670 (2008), *abrogated on other grounds by* Buzz Stew, LLC v. City of N. Las Vegas, 124 Nev. 224, 181 P.3d 670 (2008).

This Court's Finding of Fact and Conclusions of Law (¶ 46) determined the City Council proceedings constituted as quasi-judicial merely because the City council "has the power to order the attendance of witnesses and the production of documents," completely ignoring the other *required* elements of Morrow. The Court further cites Morrow as standing for the proposition that "[t]his entire process meets the judicial function test for "determining whether an administrative proceeding is quasi-judicial." This is in ***clear error***.

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Morrow added the additional procedural protections of the judicial function test as a requirement for determining whether a proceeding is quasi-judicial, but it did not take away the required due process components in Stockmeier. Morrow, 127 Nev. at 274, 255 P.3d at 230. The Court in fact held:

> the due process protections afforded during a proceeding do not, alone, determine whether it is quasi-judicial; instead, whether procedural protections are afforded during the proceeding goes to the ability of the hearing entity to hear witnesses and make a decision affecting property rights and is but one consideration in determining whether the hearing entity is performing a judicial function

Id.

The Morrow Court declined to attach due process protections to a parole hearing because no liberty or property interest was at stake. Id. at 270–74, 227–30 (holding protections apply only "when government action deprives a person of liberty or property"). Defendants admit Plaintiffs' property interests were at stake in the City Council proceedings, thus the due process protections ***must*** apply. Defs. Anti-SLAPP Mot. 18:7–9. If the City Council meetings do not qualify as quasi-judicial proceedings, as they should not, then the litigation privilege does not apply as a "complete defense" to Plaintiffs' claims.

One of Defendants' favorite arguments and one that is repeated in this Court's Order is that Plaintiffs' Counsel "admitted" the City Council proceedings are quasi-judicial. Findings of Fact and Conclusions of Law ¶ 51; Defs. Suppl. Br. Supp. Special Mot. Dismiss (Anti-SLAPP Mot.) 8:15. If you read what Mr. Hutchinson said in these City Council proceedings, they are entirely consistent with Plaintiffs' argument. Mr. Hutchinson says, if the City Council is going to assume a quasi-judicial role and "adjudge people's property rights, the due process clause of the Constitution applies." Defs. Req. Judicial Notice 16: 415–20, attached hereto as Exhibit 1.

. . .

. . .

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C. The "gist" of Defendants' statements is false and this Court must make a credibility determination for Plaintiffs' Prong 2 burden.

The district court never made the required credibility determination in reaching its conclusion in the prior order.

References herein to the transcripts of Breese, Caria and Omerza refer to the deposition transcripts already on file with this Court and filed with Plaintiffs' Supplement to their Opposition to the Special Motion to Dismiss as Exhibits 1, 3 and 7. They are not reattached herein.

Aside from the language "[t]he undersigned purchased a residence/lot in Queensridge," everything in the declarations Defendants passed around and in at least one case actually signed, is provably false. Queensridge residents had no enforceable rights under the "Peccole Ranch Master Plan" because NRS 278A does not apply to common interest communities, such as Queensridge. Omerza v. Fore Stars, Ltd, 455 P.3d 841, 2020 WL 406783 at *3 (Nev. 2020) (unpublished); Binion v. Fore Stars, Ltd. (Binion I), No. A-15-729053-B (Eighth Judicial District Court, Dept. 27). Furthermore, the "Peccole Ranch Master Plan" did not even require a modification for development of the former Badlands Golf Course. Seventy Acres, LLC v. Binion, 458 P.3d 1071 (Nev. 2020) (unpublished) (reversing Judge Crockett's ruling).

Defendants entire argument for their "good faith belief" in the declarations involves Judge Crockett's ruling, which stated that Peccole Ranch residents purchased their homes in reliance on the "Peccole Ranch Master Plan," and Mr. Schreck's misrepresentations involving this ruling. Both Judge Crockett's ruling, which was later reversed a month and a half after the Nevada Supreme Court's ruling on this case, and Mr. Schreck's statements occurred years after the purchase of their residences/lots and thus could not possibly form the basis of reliance at the time the signatories purchased their residences/lots. Instead, *the very ruling that formed a basis for the Nevada Supreme Court's determination that Defendants had met Prong 1* of the anti-SLAPP analysis, was

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reversed because the "Peccole Ranch Master Plan" did not actually require a modification for the development of the land. Omerza, 455 P.3d 841 at *3 (holding Judge Crockett's ruling provided evidentiary support for determining Defendants met their Prong 1 burden). Thus, there is new law casting the Prong 1 determination directly into doubt.

Defendants essentially claim they relied on the Peccole Ranch Master Plan when purchasing their residences because Judge Crockett and Mr. Schreck stated, ***after the fact and many years later***, that they relied on the Peccole Ranch Master Plan. This type of circular reasoning forms the basis for Defendants' entire arguments throughout this case and cannot be used as a magic wand to shield the Defendants from any type of liability resulting from their wrongful acts. It cannot suffice for Defendants to merely say they did not knowingly make or knowingly abet others to make actually false statements without any actual evidence to support their claims when there is evidence to the contrary, the Nevada Supreme Court even stated as much. *Id.* at *2 (holding "absent evidence that clearly and directly overcomes such declarations, the sworn declarations are sufficient for purposes of step one.")

Instead, the evidence from Plaintiffs' very limited discovery and Defendants' depositions indicate just the opposite of Defendants' claims. The Defendants had **no** reasonable basis for believing the declarations were true and the declarations cannot in fact be true. Defendants conceded they never actually saw or recalled seeing any CC&Rs or plans at the time of their purchase which indicated Plaintiffs could not develop the subject land. (*Caria Deposition Transcript,* page 66, 88, 89); (*Breese Deposition Transcript,* page 42); (*Omerza Deposition Transcript,* page 49). Mr. Schreck drafted the blank declarations which represented a falsehood and Defendants agreed to spread these false declarations to other homeowners in the Queensridge community to obstruct Plaintiffs' from developing their land, constituting an actionable civil conspiracy claim.

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D. Plaintiffs are entitled to more discovery to meet their Prong 2 burden.

Plaintiffs' Opposition to the anti-SLAPP Motion expressly requested:

> the Land Owners should be allowed discovery in order to obtain facts including, but not limited to, from whom the Defendants received the information stated in the declarations, who prepared them, whether they read their CC&Rs, whether they read Judge Smith's orders, what they understood to be the implications of their CC&Rs as well as the court orders, why they believe the declarations to be accurate, what efforts they took, if any to ascertain the truth of the information in the declarations, and with whom and the contents of the conversations they had with other Queensridge residents.

Pls. Opp'n Defs. Anti-SLAPP Motion 18:19–26.

Instead of allowing this, the Defendants sought to limit, and objected to discovery to such an extent as to severely limit Plaintiffs' possibility of even showing a prima facie probability of succeeding on its claims under NRS 41.660(4). Plaintiffs were limited to merely asking about "what the Defendants relied on in making their statements." Defendants' counsel repeatedly objected to and instructed Defendants not to answer essential questions to proving a civil conspiracy claim. For example, Plaintiffs' counsel asked Caria the purpose and contents of a meeting in opposition to Plaintiffs' development, of which Mr. Schreck was in attendance. Defendants' counsel objected and instructed Caria not to answer. (*Caria Deposition Transcript*, page 80–82). Caria states he has around twenty-five emails with Schreck regarding the Badlands, however, only one email was produced. (Id., page 100). Moreover, Defendants did not preserve (or at least did not produce) relevant documents despite the preservation letter they admit they received. (Id., page 110); (*Breese Deposition Transcript*, page 47).

E. Plaintiffs stated valid claims.

Plaintiffs are tied up in many lawsuits and court proceedings which are obstructing the development and resulting in actual damages for Plaintiffs. These proceedings have nearly wiped out the economic value of Plaintiffs' land. Defendants actions are one of many different causes which damaged Plaintiffs. Plaintiffs have

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suffered damages from not being able to develop their land and to their business reputation directly from Defendants' actions. Additionally, Plaintiffs sought injunctive relief on top of the monetary damages. Plaintiffs would need to ascertain exactly what damages are attributable to Defendants, however, Plaintiffs' pleadings are sufficient.

Moreover, the fact that Plaintiffs focused on the civil conspiracy claim in their ***supplemental*** briefing does not mean the Court need not consider the other claims or that Plaintiffs abandoned the other claims. The civil conspiracy claim is just what was borne out by the depositions and required supplemental briefing.

CONCLUSION

For each of the reasons set forth herein, it is respectfully requested that this Court reconsider its order granting the Defendants' Special anti-SLAPP Motion to Dismiss and that the Court deny the motion and allow the litigation in this case to proceed.

DATED: January 14, 2020. Respectfully submitted,

THE LAW OFFICES OF KRISTINA WILDEVELD & ASSOCIATES,

/s/ Lisa A. Rasmussen
LISA A. RASMUSSEN, ESQ.
NEVADA BAR NO. 7491
ATTORNEYS FOR PLAINTIFFS

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CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the foregoing REPLY TO MOTION FOR RECONSIDERATION via this court's EFile and Serve program on all parties receiving service in this case on this 14 th day of January, 2021, including but not limited to:

Mr. Mitchell Langberg, Esq.

/s/ Lisa A. Rasmussen

_____

Lisa A. Rasmussen, Esq.

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DISTRICT COURT

CLARK COUNTY, NEVADA

FORE STARS, LTD., a Nevada limited liability company; 180 LAND CO., LLC; A NEVADA LIMITED LIABILIITY COMPANY; SEVENTY ACRES, LLC, a Nevada limited liability company, Plaintiffs, vs. DANIEL OMERZA, DARREN BRESEE, STEVE CARIA, and DOES 1 THROUGH 100, Defendants.	Case No.: A-18-771224-C Dept: II ***ERRATA* PLAINTIFFS' REPLY TO DEFENDANTS' OPPOSITION TO MOTION FOR RECONSIDERATION OF COURT'S ORDER DATED DECEMBER 10, 2020** **[EXHIBIT 1 TO REPLY]**

Case Number: A-18-771224-C

COME NOW the Plaintiffs, by and through their counsel, Lisa A. Rasmussen, Esq. of the Law Offices of Kristina Wildeveld & Associates, and hereby submits this Errata to the Reply to the Motion to Reconsider filed on today's date.

The undersigned erroneously forgot to file Exhibit 1 to the Reply when filing the Reply. The Exhibit is attached.

Dated this 14th day of January, 2021,

The Law Offices of Kristina Wildeveld & Associates,

/s/ Lisa A. Rasmussen

LISA A. RASMUSSEN, ESQ.
Nevada Bar No. 7491
Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the foregoing ERRATA TO REPLY TO MOTION FOR RECONSIDERATION via this court's EFile and Serve program on all parties receiving service in this case on this 14th day of January, 2021, including but not limited to:

Mr. Mitchell Langberg

/s/ Lisa A. Rasmussen

Lisa A. Rasmussen, Esq.

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EXHIBIT 1

EXHIBIT 1

CITY COUNCIL MEETING OF

FEBRUARY 21, 2018

VERBATIM TRANSCRIPT – AGENDA ITEMS 122 THROUGH 131

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

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

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

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

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

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

recommend APPROVAL.

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

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

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

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

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

Appearance List:

CAROLYN G. GOODMAN, Mayor

STEVEN G. SEROKA, Councilman

BRADFORD JERBIC, City Attorney

PETER LOWENSTEIN, Deputy Planning Director

LUANN D. HOLMES, City Clerk

BOB COFFIN, Councilman (via teleconference)

MICHELE FIORE, Councilwoman

STAVROS S. ANTHONY, Councilman

STEPHANIE ALLEN, Legal Counsel for the Applicant

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

FRANK SCHRECK, Queensridge Resident

Appearance List (cont'd):

TODD BICE, Legal Counsel for the Queensridge Homeowners

LISA MAYO, Concerned Citizen

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

Typed by: Speechpad.com

Proofed by: Debra A. Outland

MAYOR GOODMAN

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

COUNCILMAN SEROKA

Yes, Ma'am.

MAYOR GOODMAN

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

CITY ATTORNEY JERBIC

If you could ask the Clerk —

MAYOR GOODMAN

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

CITY ATTORNEY JERBIC

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

MAYOR GOODMAN

Thank you.

CITY ATTORNEY JERBIC

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

MAYOR GOODMAN

No.

CITY ATTORNEY JERBIC

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

MAYOR GOODMAN

And – Right.

CITY ATTORNEY JERBIC

Okay.

MAYOR GOODMAN

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

CITY ATTORNEY JERBIC

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

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

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

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

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

PETER LOWENSTEIN

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

CITY ATTORNEY JERBIC

That was October 26th of 2017?

PETER LOWENSTEIN

That is correct.

CITY ATTORNEY JERBIC

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

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

MAYOR GOODMAN

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

CITY ATTORNEY JERBIC

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

MAYOR GOODMAN

And that would – Okay.

CITY ATTORNEY JERBIC

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

MAYOR GOODMAN

And just read those numbers?

CITY ATTORNEY JERBIC

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

MAYOR GOODMAN

No, I prefer you read them.

CITY ATTORNEY JERBIC

Sure. It's Item 122 through 131, which is GPA-72220 –, WVR-72004, SDR-72005, TMP-72006, WVR-72007, SDR-72008, TMP-72009, WVR-72010, SDR-72011, and TMP-72012, Applicant/Owner 180 Land Company, LLC and 180 Land Company, LLC, et al. regarding these multiple parcels. The request is to abey these items until May 16th, 2018 made by the –

MAYOR GOODMAN

And could you make a statement as to the fact that we are a body sitting here of four with another Councilperson on the line and that in order for that abeyance to pass, it will need – I'd like you to speak to that.

CITY ATTORNEY JERBIC

It will need four votes. Under Nevada law, anything that comes before this Council requires a majority of the governing body. The governing body in this case is seven members. A majority is four. No matter how many people are absent or sick, it's going to require four votes on anything. The only exception to that is if an individual receives a written opinion from the Chief Legal Counsel of the City indicating they have an ethical conflict under Nevada law 281A. Then you reduce the governing body by whatever number of written opinions are given.

No written opinions have been given in this case. So the governing body remains seven, and anything today requires four votes. So a motion to hold this in abeyance is going to require four votes, and a motion on any one of these applications, 122 through 131, if they were heard today, would also require four votes.

MAYOR GOODMAN

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

CITY ATTORNEY JERBIC

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

MAYOR GOODMAN

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

LUANN HOLMES

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

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

MAYOR GOODMAN

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

COUNCILMAN COFFIN

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

MAYOR GOODMAN

Okay.

COUNCILWOMAN FIORE

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

MAYOR GOODMAN

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

COUNCILMAN COFFIN

(Inaudible)

MAYOR GOODMAN

Thank you.

COUNCILMAN COFFIN

(Inaudible)

MAYOR GOODMAN

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

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

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

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

CITY ATTORNEY JERBIC

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

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

MAYOR GOODMAN

Okay. Councilman Anthony?

COUNCILMAN ANTHONY

What's – the date again, Luann?

LUANN HOLMES

May 16th.

COUNCILMAN ANTHONY

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

MAYOR GOODMAN

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

COUNCILMAN COFFIN

I vote aye.

STEPHANIE ALLEN

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

MAYOR GOODMAN

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

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

CITY ATTORNEY JERBIC

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

MARK HUTCHISON

Thank you.

CITY ATTORNEY JERBIC

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

MARK HUTCHISON

I am.

CITY ATTORNEY JERBIC

Okay.

MARK HUTCHISON

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

MAYOR GOODMAN
Oh, I'm sorry.

MARK HUTCHISON
I under –

MAYOR GOODMAN
Could you repeat your name for the record? Thank you.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CITY ATTORNEY JERBIC

Mr. Hutchison?

MARK HUTCHISON

– because you've got one of two choices.

CITY ATTORNEY JERBIC

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

MARK HUTCHISON

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

MAYOR GOODMAN

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

CITY ATTORNEY JERBIC

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

This is really between right now Mr. Hutchison's letters and the City Council. I will say that we looked at these matters and take them very seriously. I can say there was a court ruling just recently where the judge took the bench and read the decision before he took any oral argument. This Council reads background information all the time before hearing testimony of the public. Everybody comes to this Council with some feeling one way or the other on just about every item. And, if it were true that you have to be Caesar's wife to sit on a City Council and not have any opinion about anything before you sit down, then nobody's ever voting on any issue ever. So I – don't agree with the characterization of the frame of mind that individuals have to have.

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

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

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

COUNCILMAN COFFIN

Oh, yes. I'm eagerly listening.

CITY ATTORNEY JERBIC

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

COUNCILMAN COFFIN

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

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

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

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

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

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

MAYOR GOODMAN

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

CITY ATTORNEY JERBIC

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

MAYOR GOODMAN

All right.

FRANK SCHRECK

Your – Honor.

MAYOR GOODMAN

We will stay on the abeyance.

FRANK SCHRECK

No, we – would like to just address –

TODD BICE

We need to make –

FRANK SCHRECK

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

TODD BICE

We need to make –

FRANK SCHRECK

– and his is very brief.

TODD BICE

Yeash. We need to make our record on this as well. You allowed them to make a record on this. We believe that it's appropriate that the record be accurate –

FRANK SCHRECK

Complete.

TODD BICE

– and complete on this –

MAYOR GOODMAN

Okay.

TODD BICE

– as opposed to one-sided.

MAYOR GOODMAN

You're together –

TODD BICE

Yes.

MAYOR GOODMAN

– so can you share the time?

FRANK SCHRECK

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

TODD BICE

As is –

FRANK SCHRECK

He's going to be more general.

TODD BICE

As is mine. With all due respect to my friend, Mr. Hutchison, the legal, the – standard is not as he articulates it. In fact, I almost wish it were, because if it were, the votes of this City Council in

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

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

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

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

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

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

MAYOR GOODMAN

Only –

TODD BICE

– with one final observation.

MAYOR GOODMAN

Only after you state your name, which you forgot.

TODD BICE

Madame Mayor, my apologies. Todd Bice, Pisanelli Bice, 700 or 400 South 7th Street. My apologies. So, in paragraph number 12 of his counterclaim, where this Applicant has sued the City, he specifically claims, again, that he had this pre-approval at the time that he purchased the property, which again, if he's telling the truth, he's the one who's admitting to the violations of the law and the violations of my client's rights. I thank you for your time.

FRANK SCHRECK

Is this on? Okay. Frank Schreck, 9824 Winter Palace Drive. I just want to briefly touch on the – anti-Semitic statements about Mr. Coffin. All of us know Mr. Coffin, and all of us know he's not an anti-Semite. But it seems that this Applicant, Mr. Lowie, has a propensity, when he loses or gets angry at someone, to call them anti-Semite. He did in a letter in the primary election. He called Councilman Seroka and Christina Roush anti-Semites. He's called Councilman Coffin an anti-Semite.

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

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

MAYOR GOODMAN

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

STEPHANIE ALLEN

Yes, Ma'am, please.

MAYOR GOODMAN

Okay. And only the abeyance?

STEPHANIE ALLEN

Only the abeyance.

MAYOR GOODMAN

Okay.

STEPHANIE ALLEN

Thank you, Your Honor, Council. Stephanie Allen, 1980 Festival Plaza, here on behalf of the Applicant. I'd like to just speak to the zoning item. I know there's a lot of personalities here and a lot of issues –

MAYOR GOODMAN

No.

STEPHANIE ALLEN

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

MAYOR GOODMAN

No.

STEPHANIE ALLEN

– and the abeyance in particular

MAYOR GOODMAN

No.

STEPHANIE ALLEN

– are what I want to talk about.

MAYOR GOODMAN
Only the abeyance –

STEPHANIE ALLEN
Only the abeyance.

MAYOR GOODMAN
Not the, not the zoning.

STEPHANIE ALLEN
Correct. So the – What I'd like to put onto the record is that we're three years into this, and I know you didn't ask and the Council has already voted, but three years into this, where we've been trying to get something approved so we can develop this property, do something with this property. We've had a number of different applications before you.

We believe this is the final application, probably, where it's a conforming application, no request for a zone change, just an application to develop the property under its existing R-PD7 zoning. Three more months is tantamount to a denial. Every time this gets abeyed, whether it's these applications or the prior applications, it directly harms the property owner, and it directly harms the community.

So I – know the vote has already taken place, but for purposes of this Council, we would appreciate a vote on these applications and due process and the ability for you all to hear the zoning facts, not the personality discrepancies, just the facts of the zoning case and make a determination as to whether or what he can do with this property so that we can move on for the betterment of him and the overall community, because that's really what your job is as a Council and the leadership of this Council is, is to decide what's best for the community and the

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

MAYOR GOODMAN

Thank you.

STEPHANIE ALLEN

I just wanted to put that on the record.

MAYOR GOODMAN

Thank you.

STEPHANIE ALLEN

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

MAYOR GOODMAN

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

LISA MAYO

Mayor –

MAYOR GOODMAN

– is closed.

LISA MAYO

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

CITY ATTORNEY JERBIC

Ms. Mayo –

LISA MAYO

– please?

CITY ATTORNEY JERBIC

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

LISA MAYO

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

do we get it into the public record?

CITY ATTORNEY JERBIC

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

LISA MAYO

Okay, I will. Thank you.

CITY ATTORNEY JERBIC

You got it.

MAYOR GOODMAN

Thank you. Okay.

(END OF DISCUSSION)

/dao

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DISTRICT COURT

CLARK COUNTY, NEVADA

FORE STARS, LTD., a Nevada limited liability company; 180 LAND CO., LLC; A NEVADA LIMITED LIABILIITY COMPANY; SEVENTY ACRES, LLC, a Nevada limited liability company, Plaintiffs, vs. DANIEL OMERZA, DARREN BRESEE, STEVE CARIA, and DOES 1 THROUGH 100, Defendants.	Case No.: A-18-771224-C Dept: XIX **RESPONSE IN OPPOSITION TO DEFENDANTS' MOTION FOR ATTORNEYS' FEES AND ADDITIONAL MONETARY RELIEF PURSUANT TO NRS 41.670 AND NRS 18.010(2)**

COME NOW the Plaintiffs, by and through their counsel, Lisa A. Rasmussen, Esq. of the Law Offices of Kristina Wildeveld & Associates, and hereby submit this Response in Opposition to the Defendants' Motion for Attorneys' Fees and Additional Monetary Relief Pursuant to NRS 41.670 and NRS 18.010(2).

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiffs oppose Defendants' Motion for Attorneys' Fees and Additional Monetary Relief Pursuant to NRS 41.670 and NRS 18.010(2). Defendants' Motion is the latest of many attempts for Defendants and Mr. Schreck to harm Plaintiffs, with the ultimate goal of putting them out of business and preventing them from lawfully developing their land. Defendants propose a staggering award of $694,044.00. This calculation is not a result of a reasonable lodestar calculation, does not comport with the Brunzell factors, includes fees they are not entitled to, and is excessively driven up by strategic and malicious billing tactics. Defendants would never accept this legal bill if they were required to actually pay it. In this case, the Defendants have not paid any legal fees, but instead, the firm representing them, a firm headed by co-conspirator Frank Schreck, is representing them on a contingency fee basis. In may ways, this demand for nearly $700,000 in attorney's fees is simply a continuation of the conspiracy against Plaintiffs.

Plaintiffs have failed to meet their burden in establishing their requested fees are a product of a reasonable hourly rate and hours reasonably spent on the matter because they cannot meet this burden. Plaintiffs request Defendants' fee request be denied in its entirety due to being unreasonably inflated in a brazen and transparent (the only thing transparent about their billing) attempt to get revenge on Plaintiffs.

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However, if the Court chooses to award attorney's fees under NRS 41.670, Defendants are entitled to only an award of *reasonable* attorneys' fees relating solely to the anti-SLAPP Motion.

A lodestar enhancement for anti-SLAPP is unprecedented in the state of Nevada and would duplicate factors already considered in the lodestar calculation. Regardless, the facts here do not warrant an enhancement. Defendants request an unenhanced "lodestar calculation" of $354,267 in fees. Defendants have not met their burden in proving this calculation is a product of a *reasonable* hourly rate and the number of hours *reasonably* spent on the case, thus either of these may be further reduced or flat out denied by the Court if it finds them unreasonable. Nor do the Brunzell factors weigh in favor of such a high award.

Moreover, Plaintiffs request at least $155,014.00 of these fees should be denied in its entirety because they were incurred by matters unrelated to the anti-SLAPP Motion, result from Mr. Schreck being paid an hourly rate of $875 for providing factual information (likely to ensure any communication between Mr. Schreck and the Defendants is privileged), were incurred by meritless obstructionist motions and petitions, or were block-billed obscuring the time spent between working on the anti-SLAPP Motion and other matters, attached as Exhibit 2. Plaintiffs further request at least an additional $73,749.00 of the remaining $199,253 should be reduced substantially due to redundant, duplicative, or excessive billing, attached as Exhibit 3.

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Plaintiffs' actions do not warrant a punitive award under NRS 41.670(1)(b) and Plaintiffs *cannot* recover under NRS 18.010(2).

II. LEGAL ARGUMENT

An analysis of an award for a contingent attorney fee begins with the lodestar calculation, which involves "multiplying 'the number of hours *reasonably* spent on the case by a *reasonable* hourly rate.'" Shuette v. Beazer Homes Holdings Corp., 121 Nev. 837, 865, 124 P.3d 530, 549, fn. 98 (2005), *citing* Herbst v. Humana Health Ins. of Nev., 105 Nev. 586, 590, 781 P.2d 762, 764 (1989) (emphasis added). Once the lodestar amount is determined, this calculation must comport with the Brunzell factors. Id. The Brunzell factors, with no single factor controlling, are:

> (1) the qualities of the advocate: his ability, his training, education, experience, professional standing and skill; (2) the character of the work to be done: its difficulty, its intricacy, its importance, time and skill required, the responsibility imposed and the prominence and character of the parties where they affect the importance of the litigation; (3) the work actually performed by the lawyer: the skill, time and attention given to the work; (4) the result: whether the attorney was successful and what benefits were derived.

Brunzell v. Golden Gate Nat. Bank, 85 Nev. 345, 349–50, 455 P.2d 31, 33 (1969).

Under NRS 41.670(1)(a), if the court grants an anti-SLAPP motion to dismiss, "[t]he court shall award *reasonable* costs and attorney's fees to the person against whom the action was brought." NRS § 41.670(1)(a) (emphasis added). Furthermore, NRS 41.670(1)(b) allows but does not require the court to award "an amount of up to $10,000 to the person against whom the action was brought."

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Defendants seek to create sweeping precedent by establishing a "lodestar enhancement" for anti-SLAPP motions, something never recognized in Nevada before and only used in limited, discretionary, and distinguishable circumstances in California . Even Defendants' unenhanced $354,267 request is vastly inflated and is not reasonable pursuant to the lodestar calculation and Brunzell factors. Defendants' had no incentive to ensure their fees were reasonable, their client was never going to pay. Instead, they request an opaque bill full of unnecessary, inflated, duplicative, and redundant fees.

A. The lodestar fees should not be enhanced because there is no binding authority for an anti-SLAPP lodestar enhancement and it would unduly duplicate factors already considered in the lodestar calculation.

There are no Nevada cases that directly deal with the issue of whether a court may enhance a lodestar award to a prevailing party in a successful anti-SLAPP motion. Defendants point to a California case that is of course not binding, can be distinguished from the facts here, and does not even create a mandate for California courts but merely permits courts to enhance a lodestar fee. Ketchum v. Moses, 17 P.3d 735, 746 (Cal. 2001).

Plaintiffs find the United States Supreme Court's precedent more persuasive. In Dague, the Court considered the fee-shifting provision in a federal environmental statute. Specifically, the Court decided the issue of whether a court "may enhance the fee award above the 'lodestar' amount in order to reflect the fact that the party's

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attorneys were retaining on a contingent-fee basis and thus assumed the risk of receiving no payment at all for their services." City of Burlington v. Dague, 505 U.S. 557, 559 (1992). The Court rejected the argument that "without the possibility of a fee enhancement … competent counsel might refuse to represent" a client. Id. at 560. The Court further rejected the argument that a "'reasonable' fee for attorneys who have been retained on a contingency-fee basis must go beyond the lodestar, to compensate for risk of loss and of consequent nonpayment." Id. at 562.

The Dague Court recognized the existence of a "'strong presumption' that the lodestar represents the 'reasonable' fee," describing lodestar as "the guiding light of our fee-shifting jurisprudence." Id., *quoting* Pennsylvania v. Delaware Valley Citizens' Council for Clean Air, 478 U.S. 546, 565 (1986). The Court further placed the burden on the fee applicant to show "such an adjustment is *necessary* to the determination of a reasonable fee." Id., *quoting* Blum v. Stenson, 465 U.S. 886, 898 (1984) (emphasis in original).

Recognizing a lodestar multiplier would unduly duplicate factors that are already part of the lodestar calculation, the Supreme Court held:

> The risk of loss in a particular case (and, therefore, the attorney's contingent risk) is the product of two factors: (1) the legal and factual merits of the claim, and (2) the difficulty of establishing those merits. The second factor, however, is ordinarily reflected in the lodestar—either in the higher number of hours expended to overcome the difficulty, or in the higher hourly rate of the attorney skilled and experienced enough to do so.

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Id. at 562–63, *citing* Blum, 465 U.S. at 898–99. The Court further held that the first factor should not play into the calculation of the award because it is "a factor that always exists….so that computation of the lodestar would never end the court's inquiry in contingent-fee cases." Id. at 563.

The Court also rejected the argument that contingent enhancements may be appropriate in certain limited scenarios because it would require the fee applicant to "establish that without the adjustment for risk [he] would have faced substantial difficulties in finding counsel" and would require a risk assessment of every case. Id. at 564, *quoting* Pennsylvania v. Delaware Valley Citizens' Council for Clean Air, 483 U.S. 711, 731 (1987).

A fee-shifting statute should bar the prevailing party from recovering for the risk of loss. Id. at 565. To hold otherwise, the Dague Court held, "would in effect pay for the attorney's time (or anticipated time) in cases where his client does not prevail" and would "concoct a hybrid scheme that resorts to the contingent-fee model to increase a fee award but not to reduce it." Id. at 566 (distinguishing the lodestar model from the contingent-fee model). The Court recognized that such an enhancement or multiplier of a fee-shifting statute would make fee awards "more complex and arbitrary," "more unpredictable," and "more litigable." Id. at 566. The entire purpose of anti-SLAPP legislation is to deter litigation, not exacerbate it. *See* NRS § 41.670.

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A more recent Supreme Court decision reaffirmed Dague and held that the fee seeking party bears the burden "of identifying a factor that the lodestar does not adequately take into account and proving with specificity that an enhanced fee is justified" without subsuming an existing factor in the lodestar calculation. Perdue v. Kenny A. ex. Rel. Winn, 559 U.S. 542, 546 (2010).

Defendants base their argument for a lodestar multiplier on a nonbinding and unpersuasive California case. Lengthy litigation commenced three years after the California legislature initially passed the California anti-SLAPP bill. Ketchum v. Moses, 17 P.3d 735, 738, 746 (Cal. 2001). The California trial court made repeated reference to the plaintiff's statements that he intended to tie the Moses up in court and "make the case so expensive that Moses would not be able to afford a lawyer." Id. at 1128–29, 739 (2001). The superior court expressly stated, "that was part of my thinking and ruling on the amount of attorney's fees and the multiplier as well [….] *I intended by that to give my message* that that kind of statement goes against his interests." Id. at 1129, 739–40.

Additionally, the California Supreme Court noted the defendant's counsel included declarations from local attorneys describing the local market rate for such a contingent fee and although anti-SLAPP laws were novel at the time, the enhanced award amounted to $140,212, roughly equal to $232,550.85 in 2020 dollars, almost exactly a third of what Defendants are now seeking. Id. at 739. Furthermore, the California Supreme Court recognized that the declarations showed it was local custom

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for attorneys to enhance fees by 2.0 for anti-SLAPP motions. Id. Unlike Moses, Defendants cannot point to any local attorneys enhancing fees by using a 2.0 multiplier for anti-SLAPP cases because they do not exist. Additionally, the other case in support of Defendants' position of a lodestar enhancement and cited by Defendants is an unpublished California Court of Appeal case, forbidden to be cited under California Rules of Court 8.1115 and the equivalent NRAP 36(c).

Moreover, the California Supreme Court held that a trial court is not required to apply a lodestar enhancement but that it is wholly within its discretion and is dependent on factors such as whether the attorney mitigated the risk of nonpayment and whether the attorney satisfied the burden of proof that lodestar calculation does not adequately reflect the contingency risk or extraordinary skill involved. Id. at 1138, 746. Extraordinary skill or representation is particularly "susceptible to improper double counting" and should be awarded only when "the quality of representation far exceeds the quality of representation that would have been provided by an attorney of comparable skill and experience billing at the" lodestar hourly calculation. Id. at 1138–1139. Finally, if the fee request is unreasonable, the Court does not even need to consider the lodestar enhancement. Christian Research Inst. v. Alnor, 165 Cal. App. 4th 1315, 1329, 81 Cal. Rptr. 3d 866, 877 (Cal. App. Ct. 2008).

Here, the Court should follow the Dague ruling. Defendants entire argument for the enhancement is the large number of hours billed. This is exactly what the United

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States Supreme Court described as substantially duplicating a lodestar factor. The number of hours worked is clearly one of two components in the lodestar calculation. Mr. Langberg's describes himself as an expert in anti-SLAPP litigation, he certainly knows how to mitigate to avoid putting his firm and himself "at risk." Moreover, the risk of loss is necessarily reflected in Mr. Langberg's hourly rate as an anti-SLAPP attorney.

Furthermore, NRS 41.670(1)(b) creates an additional remedy for Defendants who prevail on an anti-SLAPP motion and a deterrent to Plaintiffs by allowing an award of up to $10,000 to each Defendant. There is no California equivalent of NRS 41.670(1)(b). If the Legislature intended to create an additional incentive for anti-SLAPP attorneys or an additional deterrent to Plaintiffs by creating a lodestar enhancement mechanism, it would have done so. Where California's anti-SLAPP statute differs from Nevada's "California's jurisprudence is not relevant." Padda v. Hendrick, 461 P.3d 160 (Nev. 2020) (unpublished).

Even if Ketchum were controlling, Langberg did not satisfy his burden of proof and it is wholly within this Court's discretion to award a lodestar enhancement. Mr. Langberg did not provide any evidence in his Declaration that it is local custom for anti-SLAPP attorneys to seek a multiplier of an award. Furthermore, the Ketchum trial court repeatedly referred to the plaintiff's bad faith motive in initiating the lawsuit and even stated its award was meant to deter similar bad faith lawsuits. Here, the Plaintiffs

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initiated a good faith lawsuit to vindicate its rights regarding their property. The fact that the Defendants initially received an adverse ruling which was only reversed after the case made it to the Nevada Supreme Court is a testament to this. Furthermore, even under Ketchum, the Defendants argument would constitute "double counting," as Defendants intend to add a factor already calculated by the lodestar calculation, the risk of loss.

Moreover, even assuming Ketchum controlled and somehow this case was deserving of a lodestar enhancement, any work performed after the Motion is granted cannot be enhanced because the fee is no longer contingent. Thus, not only are the fees for this Motion not enhanced, but any fees incurred after the November 9th hearing would not be enhanced as this Court granted the anti-SLAPP Motion.

B. Even without the enhancement, Defendants' lodestar calculation is unreasonable.

Pursuant to NRS 41.670(1)(a), a prevailing defendant in an anti-SLAPP motion to dismiss shall be awarded *reasonable* costs and attorney's fees. A determination of a reasonable fee is within this Court's discretion and "is tempered only by reason and fairness." Shuette v. Beazer Homes Holdings Corp., 121 Nev. 837, 864, 124 P.3d 530, 548–49 (2005). The lodestar calculation is the favored approach, absent a contingency-fee agreement, it is calculated by "multiplying 'the number of hours *reasonably* spent on the case by a *reasonable* hourly rate.'" Id. at 549, fn. 98, *citing* Herbst v. Humana Health Ins. of Nev., 105 Nev. 586, 590, 781 P.2d 762, 764 (1989) (emphasis added).

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A reasonable hourly rate is defined as the "rate prevailing in the community for similar work performed by attorneys of comparable skill, experience, and reputation." Camacho v. Bridgeport Fin., Inc., 523 F.3d 973, 979 (9th Cir. 2008), *quoting* Barjon v. Dalton, 132 F.3d 496, 502 (9th Cir. 1997). *See* Ford Motor Co. v. Jones-W. Ford, Inc., 454 P.3d 1260 (Nev. 2019) (unpublished) (affirming an award of attorney's fees because counsel provided evidence of prevailing billing rates). Additionally, padded billing "in the form of inefficient or duplicative efforts is not subject to compensation." Ketchum, 17 P.3d at 735. The number of hours Defendants' counsel spent on the case and the hourly rate Defendants' counsel charged are not reasonable and are part of a strategy to increase the amount of money Defendants' counsel would receive for working on the case. Moreover, Defendants' entire listing is block-billed and it is impossible to determine how much time was actually spent on each individual task.

Defendants cite Goldman as standing for the proposition that NRS 41.670(1)(a) mandates an award of all attorneys' fees incurred in the action, not just the work directly related to the anti-SLAPP motion. Goldman v. Clark Cty. Sch. Dist., 471 P.3d 753 (Nev. 2020) (unpublished). On the contrary, in Goldman, the Nevada Supreme Court reviewed an award of attorney's fees and affirmed it merely on the basis that it did not constitute a manifest abuse of discretion, the standard of review for such matters. Id.

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In resolving ambiguities in anti-SLAPP legislation, Nevada courts often look to California law for guidance because each state's anti-SLAPP statute is "similar in purpose and language," absent any language to the contrary. Shapiro v. Welt, 133 Nev. 35, 39, 389 P.3d 262, 268 (2017). The analogous California provision states, "a prevailing defendant on a special motion to strike shall be entitled to recover his or her attorney's fees and costs." Cal. Civ. Proc. Code § 425.16 (West). NRS 41.670(1)(a) similarly states, "[t]he court shall award reasonable costs and attorney's fees to the person against whom the action was brought."

The California Supreme Court interpreted their anti-SLAPP attorney's fees provision as applying "only to the motion to strike, and not to the entire action." S. B. Beach Properties v. Berti, 138 P.3d 713, 717 (Cal. 2006); Christian Research Inst. v. Alnor, 165 Cal. App. 4th 1315, 1318, 81 Cal. Rptr. 3d 866, 869 (Cal. App. Ct. 2008) (reducing the number of hours for an anti-SLAPP award from 600 hours to 71 hours due to blockbilling and vague entries). Moreover, an "unreasonably inflated" fee request may be grounds for ***denying a fee award in its entirety***. Ketchum, P.3d at 745. This has found support in Nevada's federal courts and there is no directly contradicting authority. Banerjee v. Cont'l Inc., Inc., No. 217CV00466APGGWF, 2018 WL 4469006, at *1 (D. Nev. Sept. 17, 2018) (denying an award for attorneys' hours that were block-billed and obscured the time spent on the anti-SLAPP motion and the time spent on a separate motion to dismiss; reducing for excessive billing).

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If the Court decides to follow this reasoning, Defendants unreasonable and inflated fee request may be denied in its entirety. However, even if this Court chooses not to outright deny the Motion, Plaintiffs have attached entries which should be denied in their entirety including initial client interviews, initial case reviews, and for other matters unrelated to the anti-SLAPP Motion and appeal. However, due to the Defendants' block-billing, it is impossible to distinguish how much time was spent on the anti-SLAPP Motion and how much time was spent on the separate 12(b)(5) Motion. These block-billed entries should be denied in their entirety.

Here, first of all, five attorneys worked on Defendants' case, all charging full hourly rates for attorneys. Defendants even concede Mr. Schreck did not provide legal analysis but instead mostly provided factual information because his acts lie at the heart of the case itself. It is absurd to pay Mr. Schreck $875 an hour for what amounts to acting as a witness. Mr. Schreck's actions led to the commencement of this lawsuit and as co-conspirator, he continues to benefit from obstructing Plaintiffs from lawfully developing their land. Mr. Schreck now seeks at least $19,775 for acting as a witness, co-conspirator, and putting Defendants in this situation to begin with. Conveniently, his law firm accepted the case on a contingent basis and now seeks the absurd and vastly inflated sum of $694,044, even the unenhanced inflated $354,267 figure is unreasonable, in attorneys' fees.

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Moreover, Defendants' counsel provided no evidence necessary to satisfy their burden of proving the reasonableness of their hourly rates. Defendants have not demonstrated the prevailing rate in the community for similar work by attorneys of comparable skill. This is an especially important consideration regarding the four other attorneys working on the case, all of whom charged substantial hourly rates. Defendants' counsel would be hard-pressed to justify Mr. Schreck's $875 hourly rate for "providing facts."

Next, Defendants claim to have incurred $347,022 in fees. Plaintiffs incurred only $132,722.21, nearly a third of Defendants' request, and their fees for comparison are attached hereto as Exhibit 1. Defendants also allege the number of billable hours is so high because of "Plaintiffs' litigation tactics." On the contrary, the Defendants' billable hours are so high because they had five attorneys working on the case, often doing redundant or duplicative work and increasing litigation costs unnecessarily throughout the entire case. At least 241 hours of the Defendants' total 650 billable hours were spent preparing and briefing for the Nevada Supreme Court, which even if their allegations were true, has nothing to do with "Plaintiffs' litigation tactics." Moreover, Defendants constantly delayed and prolonged the production of documents Plaintiffs were entitled to.

Additionally, Mr. Langberg attempts to justify his exorbitant fee by claiming it is "in line with the rates Plaintiffs' counsel charged in the case." This is not true.

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Defendants claim Ms. Lee and Mr. Hughes have "substantially less" rates than Plaintiffs' counsel and then in the very next sentence say Mr. Langberg's rate is "only" between $55 and $90 higher than Ms. Rasmussen. To begin with, Defendants' assertion is not even correct, Mr. Langberg's hourly rate is in fact $190 higher than Ms. Rasmussen and has been since before Ms. Rasmussen took the case. However, even assuming arguendo that Mr. Langberg's rate is only $55 higher than Ms. Rasmussen's, there is only a $25 difference between Ms. Rasmussen and Mr. Hughes' rate and only a $50 difference between Ms. Rasmussen and Ms. Lee's rate. Using Defendants' own logic, this must mean Mr. Langberg's rate is *substantially more* than Ms. Rasmussen's, especially when in fact Mr. Langberg's rate is in fact $190, not $55, higher. Mr. Schreck was paid $375 an hour more than Ms. Rasmussen for providing factual, not legal, information.

Mr. Schreck billed the Defendants for 3.40 hours at $875 an hour, totaling $2,975.00, to review the Complaint and disclose facts to Mr. Langberg. On March 19, 2018, Mr. Langberg billed the Defendants $2,292.50 for reviewing the Complaint and conducting research, although his own billing states he didn't begin his research until March 27th. Mr. Hughes incurred $8,924 in fees from reading and analyzing the Complaint and Judge Crockett transcript over the course of three days. This pattern continues throughout the billing, it is quite obvious why the Defendants' racked up such a high fee amount.

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Ultimately, Defendants charged 116.2 attorney hours for the research, preparation, drafting, and filing of the anti-SLAPP Motion. All of these hours were billed at hourly rates between $450 and $875, totaling $59,047, nearly half of the fees incurred by Plaintiffs' counsel over the entire course of litigation. The District of Nevada has found a lesser sum to be unreasonable. Id. at *4–5 (finding 61.4 attorney hours at a $450 hourly rate spent on an anti-SLAPP Motion to be unreasonable and reducing them to 20 hours).

On the other hand, Mr. Jimmerson spent at most 1.30 hours reviewing and analyzing the Defendants' anti-SLAPP motion. Additionally, Ms. Polselli and Ms. Kennedy at the Jimmerson Law Firm charged substantially less than the five attorneys working for Defendants. Defendants spent 116.2 hours in researching and preparing their anti-SLAPP motion for $59,047. Ms. Swanis charged Plaintiffs a total of 35.10 hours at a substantially lower rate ($85) to research, outline, and prepare the opposition of the anti-SLAPP motion for a total of $2,983.50. This total is only $7 more than Mr. Schreck's bill for merely reading the complaint. Plaintiffs' other attorneys charged only an additional 19 hours to discuss, review, revise, and file the opposition. Including the Jimmerson Law Firm and the amendment to the Opposition of the anti-SLAPP motion, Plaintiffs incurred only $9,107.50, compared to the Defendants' $59,047.

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For the reply to the opposition to the anti-SLAPP motion, Defendants' pattern continued. Just the cost of the ***first*** reading of the Opposition, a 22 page document, between the four attorneys (Mr. Langberg, Mr. Schreck, Ms. Lee, and Mr. Hughes) amounted to approximately $5,244.00. Mr. Schreck charged $1,487.00 on May 7th to read the opposition and to meet with Mr. Langberg to discuss "factual issues." Mr. Langberg also bills the Defendants an additional $1,179 for this meeting. Moreover, both Mr. Schreck and Mr. Langberg attend the anti-SLAPP hearing on May 14, 2018, Mr. Schreck charges for 2.5 hours for $2,187.50 and Mr. Langberg charges for 1.70 hours for $1,113.50, totaling $3,301.00. Interestingly, according to the billing, only Mr. Langberg prepared for the hearing, so it is curious that Mr. Schreck attended. Defendants ultimately charged 91.7 attorney hours for drafting the Reply to Plaintiffs' Opposition to the anti-SLAPP Motion (a 16 page document), an amount found unreasonable by the District Court of Nevada. Id. (finding 51.5 attorney hours spent on anti-SLAPP reply at a partner rate of $450 to be unreasonable and reducing it 10 hours). Defendants also billed 23.4 hours for their supplemental brief filed on May 23, 2018, Plaintiffs only billed 9.8 hours for their supplemental brief.

From June 5, 2018 until June 11th, Ms. Lee charged 16.60 hours for approximately $7,470 in researching Nevada case law involving writ proceedings on orders denying motions to dismiss. On June 11, 2018, Mr. Hughes commenced research on the same subject, charging 38 hours for approximately $18,430. Mr. Langberg

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charged $851.50 for research regarding "writ relief for denial of 'regular' motion to dismiss" on June 6, 2018. Ultimately, Defendants request $39,650 for a denied writ for the denial of Defendants' 12(b)(5) Motion and should not be considered as part of their NRS 41.670 award because it is unrelated to Defendants anti-SLAPP Motion.

Moreover. Plaintiffs incurred $9,358.50 in preparing, drafting, filing and correcting their Answer Brief. On the other hand, Defendants incurred $31,944.50 in attorney's fees in preparing, drafting, and filing their Opening Brief despite spending less hours on their brief. Mr. J.J. Jimmerson spent 1.40 hours reviewing and analyzing the Defendant's Opening Brief, Ms. Polselli spent 1.40 hours reviewing and analyzing the Opening Brief, and Mr. J.M. Jimmerson spent 1.50 researching and analyzing the Opening Brief, totaling $1,883.00 in fees. On the other hand, Mr. Langberg spent 3.50 hours reviewing the Plaintiffs' Answer Brief and Mr. Hughes spent 23.90 hours reviewing the Plaintiffs' Answer Brief and reviewing the cited authorities. This totaled $13,883.50 in fees, just Mr. Langberg's review of the Answer Brief totaled more than the fees for all three of Plaintiffs' attorneys who worked on the matter.

On April 29, 2020, Ms. Rasmussen charged Plaintiffs for 1 hour for the Blue Jeans video hearing. Mr. Langberg charged Defendants for 1.40 hours for the same hearing, the extra twenty-four minutes were billed to "prepare [to] update [the] client." For the May 29, 2020 Minute Order, Ms. Rasmussen charged Plaintiffs for 0.10 hours, while Mr. Langberg charged Defendants for 1.70 hours because he block-billed the

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review of the order with preparing the request for clarification. After the June 26, 2020, meet and confer, Ms. Rasmussen charged for 0.50 hours, while Mr. Langberg for 1.80 hours. On July 13, 2020, Ms. Rasmussen charged for 1.70 hours for the hearing on the Motion for Protective Order, while Mr. Langberg charged for 2 hours. For the Amended Request for Production on August 6, 2020, Ms. Rasmussen charged for 0.60 hours, while Mr. Langberg charged for 0.80 hours for reviewing the Amended RFP's.

Mr. Langberg made it clear that he would seek and threatened to use this "lodestar enhancement." He had an incentive to run up costs to maximize his award from the case and that is exactly what he did. Plaintiffs' various counsel, including the Jimmerson Law Firm, Ms. Swanis, and Ms. Rasmussen worked a total of 481.50 hours on the case since its commencement. Defendants spent 650 hours on the case. It bears importance to once again reiterate the fact that Defendants' counsel charged substantially higher rates for their work, which led to nearly triple the attorney's fees of that incurred by Plaintiffs. Ms. Swanis performed 151 hours of Plaintiffs' total billable hours at $85 an hour.

It is ironic that Defendants accuse Plaintiffs of driving up the fees due to "litigation tactics." Defendants repeatedly drove up the costs because their strategy from the beginning was to maximize their anti-SLAPP award. Upon issuing the May 29th Order, Defendants immediately filed an unnecessary Request for Clarification to further limit this Court's order. Defendants charged $1,173 for this request. Plaintiffs'

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counsel was forced to needlessly expend time in reviewing Defendants' bad faith request, communicating with the court clerk, and drafting a response to the request just for the Court to ultimately enter an additional order limited discovery even further before Plaintiffs had the opportunity to file a response in the allowable amount of time. Ultimately, this request resulted in the needless accumulation of at least $1,550 in additional fees for Plaintiffs.

Not satisfied with the even more limited discovery, Defendants then moved for a protective order. Plaintiffs expended $900 in drafting the requests for production pursuant to the clarified order, $100 in emails with Mr. Langberg discussing the issues he had with the requests, $250 discussing these issues telephonically for the June 26th meet and confer, the same meet and confer Defendants charged 1.30 more hours for. Plaintiffs then incurred $350 in revising the requests in a good faith attempt to resolve Mr. Langberg's issues raised in the meet and confer. Plaintiffs then reviewed Defendants' Motion for Protective Order, drafted a response, further communicated with Mr. Langberg regarding the motion, attended the hearing on the Motion, then reviewed and revised the Court's ultimate Order on the matter, and attended a status check on the matter. This costly Motion ultimately costs the Plaintiffs at least $5,600. Defendants charged $10,281 for the same Motion.

Ultimately, the Defendants charged $4,002 for reviewing the requests for production, conferring with the clients about the requests, reviewing the documents,

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and preparing responses to the requests. This $4,002 resulted in cookie-cutter responses for all three Defendants denying the existence of all the requested documents except for Judge Crockett's ruling, an additional email (from Mr. Schreck) for Caria, and a posted sign for Omerza. Notably, there were a total of 15 requests for production permitted, for all three defendants, so this was not complex discovery, in fact it was the simplest discovery process ever.

The Defendants then filed a Motion to Strike and for Imposition of Sanctions in an even more brazen attempt to obstruct Plaintiffs discovery to defeat the anti-SLAPP motion. This Court correctly described this motion as "meritless." The Defendants purposely conflated the Court's ruling on the discovery requests with Plaintiff's Supplemental Brief in Opposition to the Anti-SLAPP Motion, without even identifying what should be stricken in a motion to strike. Defendants also moved for sanctions under EDCR 7.60(b)(1) and (3) for allegedly presenting frivolous arguments and unnecessarily multiplying these proceedings to increase costs unreasonably and vexatiously. Defendants now seemingly make the same argument again. This Court already made the determination in its October 26, 2020 Order that Plaintiffs did not violate EDCR 7.60(b), meaning Plaintiffs did not unnecessarily multiply these proceedings to increase costs unreasonably and vexatiously. Defendants charged approximately $5,934 on this meritless motion. Plaintiffs were forced to incur $2,500 in defending against this meritless motion to strike. Defendants billing for this Motion to

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Strike should be denied in its entirety and in fact Plaintiffs should be allowed a credit for their $2,500.

Moreover, this Court is fully within its discretion to not limit reducing or denying to the entries Plaintiffs' listed pursuant to NRS 41.670. NRS 41.670 mandates an award of *reasonable* attorneys' fees. If this Court finds the hourly rate charged by the five attorneys to be excessive, which Plaintiffs contend they are, especially in light of the fact that Defendants' counsel have not satisfied their burden of reasonableness, the Court may reduce the hourly rate of any or every one of Defendants' attorneys.

C. The Brunzell factors do not weigh in favor of awarding Defendants' counsel such an excessive amount of attorneys' fees.

Once a lodestar figure is calculated, this Court "must continue its analysis by considering the requested amount in light of the" Brunzell factors. Shuette v. Beazer Homes Holdings Corp., 121 Nev. 837, 864–65, 124 P.3d 530, 549 (2005). Restated briefly, these include Defendants' counsels' "professional qualities, the nature of the litigation, the work performed, and the result." Id. at 865. Importantly, no single factor is controlling. Brunzell v. Golden Gate Nat. Bank, 85 Nev. 345, 349–50, 455 P.2d 31, 33 (1969). Moreover, an award of fees under the Brunzell factors must be supported by "substantial evidence." Logan v. Abe, 131 Nev. 260, 266, 350 P.3d 1139, 1143 (2015). Additionally, fee requests should exclude hours that are "excessive, redundant, or otherwise unnecessary." Hensley v. Eckerhart, 461 U.S. 424, 434 (1983). *See* O'Connell v. Wynn Las Vegas, LLC, 134 Nev. 550, 562, 429 P.3d 664, 673 (Nev. App. 2018)

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(requiring counsel to show, with substantial evidence, how their work helped accomplish the desired result).

Mr. Langberg is a self-proclaimed anti-SLAPP expert[1], Plaintiffs do not dispute that he is experienced in defamation cases, although Mr. Langberg typically represents plaintiffs in defamation and/or anti-SLAPP cases. Mr. Langberg uses the plural form of "expert," implying the other four attorneys who worked on the case are anti-SLAPP experts, despite their talent as attorneys, Plaintiffs reject this assertion. In fact, Mr. Langberg references the fact that Plaintiffs' counsel is not an anti-SLAPP expert in criticizing her hourly rate. An anti-SLAPP expert required the work of four nonexpert attorneys to work on substantial portions of the entire case and at substantial hourly rates, excessively driving up their fees. As for the second factor, this case certainly posed complex legal theories. However, Defendants needlessly expended time and costs in dragging out the litigation. Furthermore, Mr. Langberg is theoretically an anti-SLAPP expert, so he is already familiar with the issues. The Nevada Legislature called him to testify as an expert when they passed the anti-SLAPP statute. Defendants billed far more hours than Plaintiffs' counsel, largely because the nonexpert attorneys spent hours upon hours researching anti-SLAPP laws.

[1] Defs. Mot. for Att'y Fees and Additional Monetary Relief 14:2.

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In addition, the work actually performed poses a problem in the Brunzell analysis as well. Defendants did not satisfy their burden of proof showing their billed hours "reflect the distinct contribution of each lawyer to the case." Davis v. City & Cty. of San Francisco, 976 F.2d 1536, 1544 (9th Cir. 1992), *vacated in part on denial of reh'g*, 984 F.2d 345 (9th Cir. 1993); DeLew v. Nevada, No. 2:00-CV-00460-LRL, 2010 WL 11636127, at *8 (D. Nev. Jan. 7, 2010). On the contrary, Defendants' billing indicates multiple lawyers worked and charged for the same work repeatedly. For example, Mr. Schreck and Mr. Langberg double-billed for attending the same exact hearing, despite Mr. Langberg stating Mr. Schreck only "provided facts." Mr. Schreck and Mr. Langberg also double-billed for a meeting between just the two of them. Defendants' entire billing is full of similar instances. Furthermore, for an anti-SLAPP expert to expend 116.2 hours and $59,047 on researching and preparing an anti-SLAPP motion is excessive and not reasonable.

Finally, the Defendants obtained their desired result. This Court granted the anti-SLAPP Motion and the land still lays undeveloped. However, they are in no better of a position than they were before the case commenced. Furthermore, there is not substantial evidence accompanying Defendants' Motion. Their opaque, duplicative, and redundant billing techniques and lack of any evidence demonstrating customary billing practices attests to this.

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D. Defendants should not be awarded the $10,000 pursuant to NRS 41.670(1)(b).

There is no binding authority on the issue of when NRS 41.670(1)(b) damages should be awarded. Nor is there an equivalent provision in California's anti-SLAPP law. Texas has the most analogous provision, permitting sanctions if necessary to deter the complaining party from filing similar lawsuits in the future. Tex. Civ. Prac. & Rem. Code Ann. § 27.009 (West). Nevada's award is also entirely discretionary. *See* Butler v. State, 120 Nev. 879, 893, 102 P.3d 71, 81 (2004) (holding the word "may" created a permissive grant of authority). The Nevada Supreme Court described a SLAPP lawsuit as one that is "filed to obtain a financial advantage over one's adversary by increasing litigation costs until the adversary's case is weakened or abandoned." John v. Douglas Cty. Sch. Dist., 125 Nev. 746, 752, 219 P.3d 1276, 1280 (2009).

The District Court of Nevada explained an award of $10,000 pursuant to NRS 41.670(1)(b), however the award was later vacated on other grounds. Shapiro v. Welt, No. A-14-706566-C, 2017 WL 11476100, at *1 (Nev.Dist.Ct. Oct. 20, 2017). The court granted the award to "deter the [plaintiffs] from bringing similar actions in the future." Id. at *14. The court found that the plaintiffs "attempted to use litigation to intimidate the" defendants into silence. Id. On appeal, the Nevada Supreme Court did not decide on the merits of the NRS 41.670(1)(b) award, instead it vacated the award because it reversed the district court's finding that the defendants' activities were protected. Shapiro v. Welt, 432 P.3d 745 (Nev. 2018) (unpublished). In a separate District Court

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case, the court interpreted 41.670(1)(b) as being "aimed at frivolous or vexatious conduct that warrants a type of punitive (and perhaps in the right case, compensatory) award." Banerjee v. Cont'l Inc., Inc., No. 217CV00466APGGWF, 2018 WL 4469006, at *6 (D. Nev. Sept. 17, 2018). Neither case binds this Court, nonetheless, Plaintiffs find their reasoning the most persuasive.

Here, an NRS 41.670(1)(b) award is not appropriate. Plaintiffs did not seek "to use litigation to intimidate the defendants into silence." Nor did Plaintiffs seek to "obtain a financial advantage over one's adversary by increasing litigation costs until the adversary's case is weakened or abandoned." Plaintiffs did not engage in frivolous or vexatious conduct by initiating or maintaining this case. Instead, Plaintiffs sought, in good faith, to vindicate their rights and commence lawful development on their property. Plaintiffs suffered and continue to suffer harm due to this right constantly being obstructed and infringed. To this day, Plaintiffs have not developed their land. Defendants allege Plaintiffs engaged in a "meritless lawsuit designed only to intimidate and make an example out of Defendants for daring to oppose Plaintiff's development plans." This is not true, Defendants promoted and spread information, which was ultimately proven false, to obstruct Plaintiffs' lawful development. Plaintiffs were harmed and sought to rectify this harm.

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E. Attorneys' fees should not be awarded pursuant to NRS 18.010(2).

The bulk of Defendants' argument involves NRS 41.670. However, they relegate their argument for an award under NRS 18.010(2) in a footnote, claiming Plaintiffs' claims were "meritless." NRS 18.010(2)(a) allows an award of attorneys' fees when the prevailing party has not recovered more than $20,000. The Nevada Supreme Court requires a money judgment as a "prerequisite to an award of attorney fees pursuant to NRS 18.010(2)(a)." Smith v. Crown Fin. Servs. of Am., 111 Nev. 277, 285, 890 P.2d 769, 774 (1995).

Alternatively, NRS 18.010(2)(b) allows the prevailing party to recover attorneys' fees if the court finds the claim was "brought or maintained without reasonable ground or to harass the prevailing party." The Legislature intended to "punish [….] and deter frivolous or vexatious claims." The word "meritless" appears nowhere in NRS 18.010(2)(b). NRS 18.010(2)(b) requires the Court to looking to the case-specific circumstances, moreover, complex and unsettled areas of law with reasonably supportable grounds, do not warrant NRS 18.010(2)(b) awards, even if they do not amount to a cause of action. Baldonado v. Wynn Las Vegas, LLC, 124 Nev. 951, 967–68, 194 P.3d 96, 107–08 (2008). The discovery that a legal theory is inaccurate does not mean the claim is unreasonable or meant to harass. Semenza v. Caughlin Crafted Homes, 111 Nev. 1089, 1096, 901 P.2d 684, 688 (1995).

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Here, Defendants' statutory award under NRS 41.670(1)(b) is discretionary. If this Court chooses to not award Defendants the $10,000 statutory award, then the condition precedent of a money judgment for an NRS 18.010(2)(a) award of attorneys' fees is not met. If this Court chooses to award Defendants the NRS 41.670(1)(b) statutory award, their net judgment would equal $30,000 and place them above NRS 18.010(2)(a)'s $20,000 limit. Schouweiler v. Yancey Co., 101 Nev. 827, 830, 712 P.2d 786, 788 (1985) (holding NRS 18.010 did not authorize the court to divide the total judgment by the number of prevailing parties); Parodi v. Budetti, 115 Nev. 236, 241, 984 P.2d 172, 175 (1999) (holding the value of the total judgment controls).

Moreover, a dismissal, even one resulting from an anti-SLAPP motion, does not mean the claim was frivolous or brought to harass the prevailing party. In fact, as recently as October 26, 2020, this Court found that Plaintiffs were not acting frivolously, vexatiously, or unreasonably in maintaining its claims when it denied Defendants' Motion to Strike and for Imposition of Sanctions under EDCR 7.60(b). Additionally, in the Order, the Court expressly stated, "Defendants motion was meritless, but not frivolous" in denying Plaintiffs' Countermotion for Sanctions. The language in EDCR 7.60(b) and NRS 18.010(2)(b) are substantially similar and the Court found that a meritless motion did not amount to an award of sanctions. Defendants can provide no evidence Plaintiffs brought this claim with the intent to harass. Furthermore, Plaintiffs brought the claim on reasonable grounds. Signed declarations

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representing a falsehood were used to obstruct Plaintiffs' land development and Plaintiffs sought a remedy, as is their legal right to do so. The fact that the case required a Nevada Supreme Court decision attests to the reasonableness of Plaintiffs' grounds.

CONCLUSION

For each of the reasons set forth herein, it is respectfully requested that this Court deny or substantially reduce Defendants' award of attorneys' fees .

Dated this 22nd day of January 2021,

The Law Offices of Kristina Wildeveld & Associates,

/s/ Lisa A. Rasmussen

LISA A. RASMUSSEN, ESQ.
Nevada Bar No. 7491
Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I served a copy of the foregoing via this Court's E-File and Serve program on this 22nd day of January 2021 upon the following person(s):

Mr. Mitchell Langberg

/s/ Lisa A. Rasmussen

LISA A. RASMUSSEN, ESQ.

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EXHIBIT 1

EXHIBIT 1

THE JIMMERSON LAW FIRM, PC
415 SOUTH SIXTH STREET, SUITE 100
LAS VEGAS, NEVADA 89101
TELEPHONE:(702) 388-7171 - TAX I.D.#
FAX: (702) 387-1167

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03/20/2018
ACCOUNT NO: 6186-10M
STATEMENT NO: 663678

Fore Stars, Ltd., 180 Land Co., Seventy Acres, LLC
lschencke@ehbcompanies.com
EHB Companies, LLC
1215 S. Fort Apache Rd., Suite 120
Las Vegas NV 89117

c/o Fore Stars, Ltd., 180 Land Co., Seventy Acres, LLC

adv. Daniel Omerza

INTERIM STATEMENT

			HOURS	
03/15/2018	JJJ	Multiple Telephone conferences with client this morning regarding new lawsuit to be filed against two homeowners (.8); Review email and flyer (.1); Office conference with Shahana Polselli regarding same (.2); Email to Yohan Lowie regarding same (.1); Review of Finding Fact, Conclusions of Law from Peccole and dictate Complaint (3.1); Telephone conference with Elizabeth Ham regarding same (.2); Office conference with discuss, ask to clarify with Ham (.2); Continue dictation, review and revision of Complaint (2.1); Text exchanges with Shahana Polselli regarding client suggestion regarding same (.2); Confirm completion and filing of complaint with Shahana Polselli and telephone conference with Shahana Polselli regarding same (.2); Email to clients (.1);	7.30	4,343.50
03/16/2018	JJJ	Review email from ' (.1); Work with Kim Stewart to receive filed Complaint, issue Summons and effectuate service (.5); Office conference with Shahana Polselli Regarding same (.1);	0.70	416.50
		J.J. JIMMERSON	8.00	4,760.00
03/15/2018	DD	Transcribe diction 39 and 43 of complaint dictated by James J. Jimmerson, Esq.	1.60	200.00
		Deana DePry	1.60	200.00
03/15/2018	SP	Review email regarding preservation letters and adding Omerza (.1); Review email and flyer (.1); Office conference with James J. Jimmerson, Esq. regarding same and need for Complaint (.2); Review James J. Jimmerson, Esq. email to Yohan Lowie regarding same (.1); Review of Finding Fact, Conclusions of Law from Peccole and provide to James J. Jimmerson, Esq. for Complaint (.3); Review of emails from Knighton following James J. Jimmerson, Esq call with Ham, download documents (.2); Office conference with James J. Jimmerson, Esq. regarding same and whether ' Defendants, discuss, asked to clarify with Ham (.2); Draft Second and Third Claims for Relief as dictated by James J. Jimmerson, Esq. (1.3); Office conference with James J. Jimmerson, Esq. Regarding same (.3); Review and revise and reformat full Complaint (.3); Telephone conference with Elizabeth Ham regarding same (.1); Continue revising and reformatting same, finalize and send to clients (.3); Telephone conference with Elizabeth Ham regarding questions and changes to same (.2); Review two emails from		

			HOURS	
		Jennifer Knighton and attachments to the same, download (.2); Telephone conference with Elizabeth Ham (.1); Review and analyze complaint and add language per Elizabeth Ham (.3); Further Telephone conference with Elizabeth Ham regarding [redacted] suggested addition (.1); Text exchanges with James J. Jimmerson, Esq. regarding same (.2); Review Allf order and revise Complaint to include and quote the same, finalize for filing (.4); Office conference with Kim Stewart regarding same, regarding coversheet and Initial Appearance Fee Disclosure, and file complaint (.3); Text and email to James J. Jimmerson, Esq. confirming same (.1);	5.40	1,350.00
03/16/2018	SP	Review email from [redacted] (.1); Email to Kim Stewart and Patricia Kennedy to facilitate service of Complaint when filed (.2); Office conference with Patricia Kennedy regarding same, regarding starting process of summons, regarding service addresses and access t (.3); Office conference with James J. Jimmerson, Esq. regarding same (.1); Office conference with Kim Stewart and confirm Complaint out for service and summons is issued (.2);	0.90	225.00
		SHAHANA POLSELLI	6.30	1,575.00
03/16/2018	KS	Prepare Summons for three Defendants and cause same to be issued by the Clerk	0.50	62.50
		KIM STEWART	0.50	62.50
		FOR CURRENT SERVICES RENDERED	16.40	6,597.50
		1.5% ADMINISTRATIVE CHARGE (PHONE CHARGES, POSTAGE, ETC.)		98.96
03/19/2018		Photocopies 95 @ .20		19.00
		TOTAL EXPENSES		19.00
		TOTAL CURRENT WORK		6,715.46
		BALANCE DUE		$6,715.46
		CLOSING BALANCE		$6,715.46

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LS 3/27/18

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Amount: add 3% convenience fee Signature:

04/20/2018
ACCOUNT NO: 6186-10M
STATEMENT NO: 663969

Fore Stars, Ltd., 180 Land Co., Seventy Acres, LLC
lschencke@ehbcompanies.com
EHB Companies, LLC
1215 S. Fort Apache Rd., Suite 120
Las Vegas NV 89117

c/o Fore Stars, Ltd., 180 Land Co., Seventy Acres, LLC

adv. Daniel Omerza

OK as revised cdh

INTERIM STATEMENT

			HOURS	
03/27/2018	JJJ	Review email from Elizabeth Ham regarding (.1); Email to Shahana Polselli and Elizabeth Ham regarding same (.1);	0.20	119.00
03/28/2018	JJJ	Telephone conference with Shahana Polselli regarding conversation , instruct her to send Minute Order from (.1);	0.10	59.50
30/2018	JJJ	Review letter from clients regarding Bresee and us at the same time (.1); Review Yohan Lowie response (.1); Review Elizabeth Ham response (.1); Return call, leave message (.1); Email to Ham and Shahana Polselli regarding improving complaint (.1); Review new letter from .1); Telephone conference with Shahana Polselli Regarding same (.1); Email to Kim Stewart regarding response (.1); Email exchange with Kim Stewart regarding same (.1);	1.00	N/C
04/01/2018	JJJ	Review and analyze emails and letters from (1.5);	1.50	892.50
04/04/2018	JJJ	Office conference with Shahana Polselli Regarding letters from .1); Call to and leave message for and dictate letter (.3);	0.40	238.00
04/05/2018	~~JJJ~~ SP JJJ	Review email from Mitch Langberg regarding representation of defendants and due date of complaint (.1); Review James J. Jimmerson, Esq. email to Langberg regarding same (.1); Review Langberg response to same (.1); Review James J. Jimmerson, Esq. email to Langberg confirming earlier call and conditional extension (.1); Review James J. Jimmerson, Esq. email to Elizabeth Ham regarding same (.1); Office conference with James J. Jimmerson, Esq. and James M. Jimmerson, Esq. for his Telephone conference with Elizabeth Ham and regarding preservation letters regarding .8); Office conference with James J. Jimmerson, Esq. regarding his earlier call with Elizabeth Ham and with James J. Jimmerson, Esq. and James M. Jimmerson, Esq. regarding Amending Complaint and timing of the same (.3); Review Langberg confirmation email (.1);	~~1.70~~ .9	1,011.50
04/06/2018	JJJ	Review and revise draft to (.5); Finalize same and send (.1);	0.60	357.00

billed under 6186-01

			HOURS	
04/10/2018	JJJ	Office conference with Shahana Polselli regarding interview tomorrow and preservation letter (.3); Review Complaint to prepare for interview (1.2); Telephone conference with (.1); Further Office conference with Shahana Polselli regarding preservation letter (.2); Review and revise same (1.2);	3.00	1,785.00
04/16/2018	JJJ	Office conference with Shahana Polselli Regarding filings and need to amend Complaint (.3); Review and analyze Request for Judicial Notice (.4); Review and analyze Motion to Dismiss (.4); Review and analyze Minute Order regarding recusal of Kishner (.1);. Email to client regarding same (.1);	1.30	773.50
04/17/2018	JJJ	Download, review and analyze Notice of Dept Reassignment (.1); Office conference with Shahana Polselli regarding same (.1); Email to clients regarding same and regarding filing Peremptory Challenge (.1); Review Elizabeth Ham response to same (.1); Telephone conference with Yohan Lowie regarding Peremptory Challenge (.2); Review and analyzed filed Defendants' Special Motion to Dismiss (Anti-SLAPP Motion) Plaintiffs' Complaint Pursuant to NRS §41.635 et. seq. filed by Opposing Counsel (.5); Telephone conference with Kim Stewart regarding email from Elizabeth Ham regarding same (.1); Email to staff regarding receipt of email (.1);	1.30	773.50
8/2018	JJJ	Office conference with Shahana Polselli Regarding recusal and plan (.2);	0.20	119.00
04/19/2018	JJJ	Email to Shahana Polselli regarding Peremptory Challenge (.1);	0.10	59.50
04/20/2018	JJJ	Telephone conference with Shahana Polselli regarding Peremptory Challenge, dictate letter to opposing counsel (.3); Review research from Echols (.5); Office conference with Shahana Polselli regarding preparation of Opposition (.2); Email to Ham regarding same (.1);	1.10	654.50
		J.J. JIMMERSON	11.50	6,842.50
03/26/2018	SP	Office conference with Kim Stewart regarding filing Affidavits of Service (.1);	0.10	25.00
03/27/2018	SP	Office conference with Kim Stewart regarding Summons and Affidavits of Service, review same (.2); Review email from Elizabeth Ham regarding assignment to Kishner and calling Judicial Executive Assistant or Law Clerk (.1); Email to James J. Jimmerson, Esq. regarding same (.1); Review James J. Jimmerson, Esq. email approving same (.1);	0.50	125.00
03/28/2018	SP	Telephone conference with Law Clerk regarding recusal (.2); Telephone conference with James J. Jimmerson, Esq. regarding same (.2); Prepare email to Law Clerk forwarding minute order in per James J. Jimmerson, Esq. (.1);	0.50	125.00
03/30/2018	SP	Review letter from (.1); Review James J. Jimmerson, Esq. email to Elizabeth Ham and clients regarding conflict with epresenting Bresee and us at the same time (.1); Review ' response (.1); Review Elizabeth Ham response (.1); Review James J. Jimmerson, Esq. email regarding improving complaint (.1); Review Elizabeth Ham email regarding conflict and review email from regarding same (.1); Email exchange with Elizabeth Ham regarding same (.1);		

			HOURS	
		Review new letter from [redacted] regarding trying to reach James J. Jimmerson, Esq., no return call (not true) and having referred out case for Bresee (.1); Telephone conference with James J. Jimmerson, Esq. regarding same and put package together of all letters on the matter (.3); Review James J. Jimmerson, Esq. email regarding calling [redacted] on Monday (.1); Review James J. Jimmerson, Esq. email to Kim Stewart regarding same and her response (.1); Review [redacted] email regarding it being too late (.1);	1.40	350.00
04/04/2018	SP	Office conference with James J. Jimmerson, Esq. regarding letters from [redacted], and his call and dictation of letter to counsel (.3);	0.30	75.00
04/05/2018	SP	Review email from Mitch Langberg regarding representation of defendants and due date of complaint (.1); Review James J. Jimmerson, Esq. email to Langberg regarding same (.1); Review Langberg response to same (.1); Review James J. Jimmerson, Esq. email to Langberg confirming earlier call and conditional extension (.1); Review James J. Jimmerson, Esq. email to Elizabeth Ham regarding same (.1); Office conference with James J. Jimmerson, Esq. and James M. Jimmerson, Esq. for his Telephone conference with Elizabeth Ham and [redacted] regarding preservation letters regarding [redacted] .8); Office conference with James J. Jimmerson, Esq. regarding his earlier call with Elizabeth Ham and with James J. Jimmerson, Esq. and James M. Jimmerson, Esq. regarding Amending Complaint and timing of the same (.3); Review Langberg confirmation email (.1);	~~1.70~~	425.00
04/06/2018	SP	Email to Elizabeth Ham regarding Hutchison letters and denial letters (.1); Review and analyze [redacted] preservation letters (.2); Draft detailed preservation letter to [redacted] and send to James J. Jimmerson, Esq. and James M. Jimmerson, Esq. (1.4); Email exchange with James M. Jimmerson, Esq. regarding same (.1); Office conference with James M. Jimmerson, Esq. following his review of same (.1); Follow up Email to Elizabeth Ham regarding denial letters (.1); Review and analyze James J. Jimmerson, Esq. letter to [redacted] (.1);	2.00	500.00
04/10/2018	SP	Office conference with James J. Jimmerson, Esq. regarding interview tomorrow, [redacted] calls regarding same, discuss preservation letter to [redacted] (.3); Further Office conference with James J. Jimmerson, Esq. regarding preservation letter, he is revising same (.2);	0.50	125.00
04/16/2018	SP	Review and analyze Request for Judicial Notice, download for James J. Jimmerson, Esq. review (.4); Review and analyze Motion to Dismiss (.4); Review and analyze Minute Order regarding recusal of Kishner (.1); Office conference with James J. Jimmerson, Esq. regarding same and send him all documents, discuss amending Complaint (.3); Review James J. Jimmerson, Esq. email to client regarding same (.1);	1.30	325.00
[redacted]17/2018	SP	Download, review and analyze Notice of Dept Reassignment (.1); Email to James J. Jimmerson, Esq. that case was assigned to Judge Crockett (.1); Office conference with James J. Jimmerson, Esq. regarding same (.1); Review James J. Jimmerson, Esq. email to clients regarding same and regarding filing Peremptory Challenge (.1); Review Elizabeth Ham response to same (.1); Review and analyzed filed Defendants' Special Motion to Dismiss		

			HOURS	
		(Anti-SLAPP Motion) Plaintiffs' Complaint Pursuant to NRS §41.635 et. seq. filed by Opposing Counsel (.5); Review email from Elizabeth Ham regarding same (.1);	1.10	275.00
04/18/2018	SP	Office conference with James J. Jimmerson, Esq. regarding recusal and plan (.2);	0.20	50.00
04/19/2018	SP	Office conference with James M. Jimmerson, Esq. regarding meeting, Omerza opposition and emailing (.1); Review and respond to email and forward Motion (.1); Further exchange with Echols regarding same (.1); Review and respond to James J. Jimmerson, Esq. email regarding Peremptory Challenge (.1); Draft same and review with Esq. (.2); Finalize and file same (.2); Email to James J. Jimmerson, Esq. confirming completion (.1);	~~0.90~~	225.00
04/20/2018	SP	Telephone conference with James J. Jimmerson, Esq. regarding Peremptory Challenge, James J. Jimmerson, Esq. dictates letter to opposing counsel (.3); Download and review Notice of Department Reassignment (.1); Briefly review and analyze research from Micah Echols regarding Anti Slapp cases, download (.5); Office conference with James J. Jimmerson, Esq. regarding same, regarding preparation of Opposition (.2); Review James J. Jimmerson, Esq. email to Ham regarding same (.1); Review Elizabeth email regarding research (.1);	1.30	325.00
		SHAHANA POLSELLI	~~11.80~~	~~2,950.00~~
03/27/2018	PK	Received and reviewed E-filed Notice of Service for x 3 Summons and Affidavit of Service (.3); Received an additional E-filed Affidavit of Service (.1);	0.40	90.00
04/09/2018	PK	Review and analyzed Notice of Appearance and Initial Appearance Fee Disclosure filed by Brownstein Hyatt Farber Schreck, LLP (.2);	~~0.20~~	45.00
04/16/2018	PK	Review and analyzed Defendants' Request for Judicial Notice In Support of (1) Defendants' Special Motion to Dismiss (Anti-SLAPP Motion) Plaintiffs' Complaint Pursuant to NRS §41.635 et. seq. and (2) Defendants' Motion to Dismiss Pursuant to NRCP 12(b)(5) filed by Brownstein Hyatt Farber Schreck, LLP (.1); Review and analyzed Defendants' Motion to Dismiss filed by Brownstein Hyatt Farber Schreck, LLP (.1); Received Minutes E-served by Court (.1);	0.30	67.50
04/17/2018	PK	Review and analyzed filed Notice of Department Reassignment by Court (.1); Review and analyzed filed Defendants' Special Motion to Dismiss (Anti-SLAPP Motion) Plaintiffs' Complaint Pursuant to NRS §41.635 et. seq. filed by Opposing Counsel (.1);	0.20	45.00
04/20/2018	PK	Review and analyzed our Peremptory Challenge of Judge (.1); Review and analyzed Department Reassignment (.2);	~~0.30~~	67.50
		Patricia Kennedy	~~1.40~~	~~315.00~~
		FOR CURRENT SERVICES RENDERED	24.70	10,107.50
		Total Non-Billable Hours	1.00	

	1.5% ADMINISTRATIVE CHARGE (PHONE CHARGES, POSTAGE, ETC.)	151.61
04/06/2018	Photocopies 81 @ .20	16.20
04/10/2018	Photocopies 96 @ .20	19.20
04/16/2018	Photocopies 149 @ .20	29.80
04/17/2018	Photocopies Special Motion to Dismiss, et al. 140 @ .20	28.00
04/18/2018	Photocopies - Motion to Dismiss, Request for Judicial Notice, et al. 102 @.20	20.40
	TOTAL EXPENSES	113.60
03/26/2018	Electronic Filing - Summons (Bresee)	3.50
03/26/2018	Electronic Filing Affidavit of Service (Caria)	3.50
03/26/2018	Electronic Filing - Affidavit of Service (Omerza)	3.50
03/26/2018	Electronic Filing - Affidavit of Service (Bresee)	3.50
03/26/2018	Electronic Filing - Summons (Omerza)	3.50
03/26/2018	Electronic Filing - Summons (Caria)	3.50
03/27/2018	Service fee for Darren Bresee Junes Legal Service Invoice # EP137698	141.15
?7/2018	Service fee for Steve Caria Junes Legal Services Invoice # EP137699	73.15
03/27/2018	Service fee for Daniel Omerza Junes Legal Services Invoice # EP137702	73.15
04/19/2018	Electronic Filing - Peremptory Challenge	467.00
	TOTAL ADVANCES	775.45
	TOTAL CURRENT WORK	11,148.16
	PREVIOUS BALANCE	$6,715.46
04/17/2018	Adjustment / reduction to statement invoice - 9101 Alta Reduction	-6,715.46
	BALANCE DUE	~~$11,148.16~~
	CLOSING BALANCE	$11,148.16

10,369.16
(714.00) Tiffany Swanis
$9655.16

9328.5

COMPANY LMCTown JOB #
ACCT # 6030 SUB ACCT
COST CODE TYPE
APPROVED

Finance charge assessed after 30 days.
Make check payable to THE JIMMERSON LAW FIRM, P.C.
STATEMENT REFLECTS CHARGES & PAYMTS REC'D THRU 20TH OF MONTH
Approved by Attorney:

hs 5/29/18

THE JIMMERSON LAW FIRM, PC
415 SOUTH SIXTH STREET, SUITE 100
LAS VEGAS, NEVADA 89101
TELEPHONE:(702) 388-7171 - TAX I.D.# 8
FAX: (702) 387-1167

For your convenience, you may pay by AMEX, VISA & MC.
Account#: Exp:
Amount: add 3% convenience fee Signature:

Fore Stars, Ltd., 180 Land Co., Seventy Acres, LLC
lschencke@ehbcompanies.com
EHB Companies, LLC
1215 S. Fort Apache Rd., Suite 120
Las Vegas NV 89117

05/20/2018
ACCOUNT NO: 6186-10M
STATEMENT NO: 664189

c/o Fore Stars, Ltd., 180 Land Co., Seventy Acres, LLC

adv. Daniel Omerza

			HOURS	
04/22/2018	JJJ	Review email from Mitch Langberg (.1); Telephone conference with Mitch Langberg regarding scheduling, will agree to extend Oppositions deadlines to May 7th and proposes hearing May 14 (.3);	0.40	238.00
04/23/2018	JJJ	Office conference with Shahana Polselli regarding conversation with Ham, conversation with Langberg this weekend and prepare email to Ham regarding same (.3); Review response from Elizabeth Ham and respond to same (.1);	0.40	238.00
04/24/2018	JJJ	Review and respond to email from Mitch Langberg (.1); Review documents sent by Elizabeth Ham regarding for Amended Complaint and email division of work (.1); Office conference with Shahana Polselli regarding same and telephone conference with Elizabeth Ham, and email to Mitch Langberg (.5); Review Langberg response regarding same and regarding deadlines (.1); Email exchange with Langberg (.1);	0.90	535.50
04/25/2018	JJJ	Telephone conference with Shahana Polselli regarding email from Mitch Langberg (.1);	0.10	59.50
04/26/2018	JJJ	Email exchange with Shahana Polselli regarding hearing and opposition deadlines (.1); Email exchange with Langberg regarding compromise on deadlines (.1);	0.20	119.00
04/30/2018	JJJ	Office conference with James M. Jimmerson, Esq. and Shahana Polselli regarding Amended Complaint (.2);	0.20	119.00
05/02/2018	JJJ	Office conference with Shahana Polselli regarding Amended Complaint and documents for same, discuss hearings (.3);	0.30	178.50
05/03/2018	JJJ	Review email from Mitch Langberg (.1);	0.10	59.50
05/04/2018	JJJ	Review and analyze email from Elizabeth Ham forwarding Opposition draft, Transcript and video (.1); Office conference with Shahana Polselli Regarding Opposition (.2); Review and revise same (.4); Text exchanges with Shahana Polselli (.1); Dictate further revisions to James M. Jimmerson, Esq and text exchange with Shahana Polselli re same (.4); Email to opposing counsel (.1);	1.30	773.50
05/07/2018	JJJ	Office conference with Shahana Polselli regarding Opposition, not yet received (.1); Telephone conference with Shahana Polselli regarding Opposition,		

			HOURS	
		adding introductory paragraph (.2); Further telephone conference with Shahana Polselli regarding status, waiting on Elizabeth Ham to return revised (.2); Further telephone conference with Shahana Polselli, changes read, opposition filed (.2); Review and analyze final Opposition and caselaw sent (.5);	1.0 ~~1.20~~	595 ~~714.00~~
05/08/2018	JJJ	Office conference with Shahana Polselli regarding Opposition and whether leave to amend was requested (.1); Review Todd Davis email regarding reference to the property (.1);	0.20	119.00
05/09/2018	JJJ	Office conference with Shahana Polselli Regarding email to ; James J. Jimmerson, Esq. language, and respond to Todd's email (.3); Review Elizabeth Ham response (.1); Telephone conference with Elizabeth Ham (.2); Review response (.1); Review and analyze email from Langberg forwarding two Replies and Request for Judicial Notice (.2);	.7 ~~0.90~~	416.50 ~~535.50~~
05/10/2018	JJJ	Review and analyze Reply regarding Anti-Slapp, Reply regarding Motion to Dismiss and request for judicial notice (.8); Office conference with James M. Jimmerson, Esq. regarding same (.2); Office conference with Shahana Polselli Regarding same (.2); Email to Ham regarding same (.1); Email to regarding universal factual language (.1);	1.40	833.00
05/11/2018	JJJ	Review and analyze email from Elizabeth Ham regarding replies and next steps (.1); Telephone conference with Shahana Polselli same and regarding coordinating call, filing documents, Reply arguments (.7); Conference call with James M. Jimmerson, Esq. and Elizabeth Ham and Shahana Polselli regarding Supplement and arguments (1.1); Review of documents for potential exhibits (.2); Conferences with Shahana Polselli and James M. Jimmerson, Esq. and Elizabeth Ham to prepare First Supplement, Second Supplement, Declaration of Yohan Lowie and all exhibits, conferences with Yohan Lowie, Telephone conference with Elizabeth Ham Review of videos and transcripts later provided, multiple revisions to documents, and multiple Telephone conference with Shahana Polselli and Elizabeth Ham and James M. Jimmerson, Esq. regarding same (4.2); Telephone conferences with and email exchanges with Shahana Polselli regarding mail fraud information (.2); Review email forwarding email (.1); Email to Yohan Lowie regarding email and statute (.1); Review and respond to email from Shahana Polselli (.1); Email exchanges with Shahana Polselli and James M. Jimmerson, Esq. regarding video (.1); Review James M. Jimmerson, Esq. response regarding same (.1); Review and analyze email from Mitch Langberg (.1);	6.0 ~~7.10~~	3570.00 ~~4,224.50~~
05/12/2018	JJJ	Review email from Shahana Polselli forwarding message from Yohan Lowie in Spam (.1); Review and analyze email (.1); Instructions to Kim Stewart to check spam for prior email (.1);	0.30	178.50
05/13/2018	JJJ	Telephone conference with Elizabeth Ham regarding oral argument (.5); Review materials, caselaw, research and filings and prepare for oral argument for tomorrow's hearing (4.4);	~~4.90~~ 4.5	2677.50 ~~2,915.50~~
05/14/2018	JJJ	Review Todd Davis email regarding Notice of Association (.1); Continued preparation for oral argument, and Office conference with Shahana Polselli		

			HOURS	
		regarding research (1.5); Travel to and attend hearing with clients, Elizabeth Ham, Esq. and Shahana Polselli, and post-hearing conference with clients and Elizabeth Ham and Shahana Polselli regarding next steps (2.0); Office conference with Shahana Polselli regarding video, transcript and timing (.2); Process payment for CD (.1); Office conference with Shahana Polselli regarding research and Langberg comments (.3); Review and analyze same (.4); Email to clients (.1); Review email from Yohan Lowie (.1);	4.80	2,856.00
05/15/2018	JJJ	Review four emails forwarded from client (.4); Office conference with Shahana Polselli regarding call from client (.1); Return client's call and Telephone conference with client (.2); Office conference with Shahana Polselli regarding same (.2);	0.90	535.50
		J.J. JIMMERSON	25.60	15,232.00
				14101.50
04/23/2018	SP	Review email from Mitch Langberg regarding scheduling (.1); Telephone conference with Elizabeth Ham regarding preparation of Opposition in Omerza case, Ham to prepare draft subject to other deadlines, our office to Amend Complaint but she needs to provide more information to do so (.3); Office conference with James J. Jimmerson, Esq. regarding conversation with Ham and Langberg email, James J. Jimmerson, Esq. sends email to Ham regarding same (.3);	0.70	175.00
04/24/2018	SP	Review response from Elizabeth Ham last night and James J. Jimmerson, Esq. response to same (.1); Review email from Elizabeth Ham and attached screenshot of Nextdoor post from : (.1); Review email from Mitch Langberg (.1); Review email from Elizabeth Ham regarding division of work and respond (.1); Email to James M. Jimmerson, Esq. (.1); Email exchange with Ham (.1); Review and download letter to homeowners (.1); Office conference with James J. Jimmerson, Esq. regarding same and Telephone conference with Elizabeth Ham with James J. Jimmerson, Esq., James J. Jimmerson, Esq. emails Mitch Langberg (.5); Review Langberg response regarding same and regarding deadlines (.1); Review James J. Jimmerson, Esq. after hours response to Langberg (.1); Review and download Langberg response (.1);	1.50	375.00
04/25/2018	SP	Telephone conference with James J. Jimmerson, Esq. regarding email from Langberg, deferring to Ham (.1); Email to Elizabeth Ham regarding same (.1); Telephone conference with Ham regarding same (.1); Email to Langberg that I will discuss with James J. Jimmerson, Esq. and Ham (.1); Further Telephone conference with Ham regarding wanting to have both motions heard on same day (.1); Review Langberg email forwarding proposed Stipulation and Order to continue (.1);	0.70	175.00
04/26/2018	SP	Email exchange with James J. Jimmerson, Esq. regarding hearing and opposition deadlines (.1); Review James J. Jimmerson, Esq. email to Mitch Langberg (.1); Review email from Langberg agreeing to compromise (.1); Email to Ham and Langberg (.1); Brief Telephone conference with Ham regarding same (.1); Email to Langberg (.1); Revise Stipulation and Order and have signed and send (.1); Email exchange with Langberg and coordinate delivery of original Stipulation and Order (.2); Office conference with James M. Jimmerson, Esq. (.1);	1.00	250.00

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

05/20/2018
ACCOUNT NO: 6186-10M
STATEMENT NO: 664189

adv. Daniel Omerza

			HOURS	
04/30/2018	SP	Office conference with James J. Jimmerson, Esq. and James M. Jimmerson, Esq. regarding Amended Complaint (.2); Download documents for same (.1);	0.30	75.00
05/02/2018	SP	Review filed Stipulation and Order confirming deadlines and moving hearing (.1); Office conference with James J. Jimmerson, Esq. regarding Amended Complaint and provide him documents for same, discuss hearings (.3);	0.40	100.00
05/03/2018	SP	Review email from Mitch Langberg (.1);	0.10	25.00
05/04/2018	SP	Review and analyze email from Elizabeth Ham forwarding Opposition draft, Transcript and video (.1); Telephone conference with Elizabeth Ham regarding same (.2); Review and analyze video transcript and draft Opposition (.8); Emails to James J. Jimmerson, Esq. and James M. Jimmerson, Esq. regarding same (.1); Review Caria and Omerza transcripts from city council (.2); Review email from Elizabeth Ham (.1); Review and analyze emails from Caria and Bresee to City Council (.2); Review, analyze and download email from Elizabeth Ham regarding additional argument regarding judicial notice (.1); Review of video (.1); Office conference with James J. Jimmerson, Esq. regarding Opposition (.2); Office conference with James M. Jimmerson, Esq. regarding same and prepare notes and summary per James M. Jimmerson, Esq. for additional changes (.5); Review email from I and : response (.1); Review, analyze and revise Opposition (.8); Review James M. Jimmerson, Esq. revisions to same (.2); Text exchanges with James J. Jimmerson, Esq. regarding revisions (.1); Further text exchange with James J. Jimmerson, Esq. regarding further revisions dictated to James M. Jimmerson, Esq. (.1); Review James J. Jimmerson, Esq. email to opposing counsel (.1); Receipt of final opposition for filing and service from James M. Jimmerson, Esq. with instructions, file and serve same (.3); Review and analyze same, and Office conference with James M. Jimmerson, Esq. regarding typos (.2); Revise Opposition to correct errors, refile and reserve (.5);	5.00	1,250.00
05/07/2018	SP	Review and respond to email from Elizabeth Ham re emails (.1); Office conference with James J. Jimmerson, Esq. regarding Opposition (.1); Email to Elizabeth Ham re status of the same (.1); Review and analyze email from Elizabeth Ham at 3:09 pm with draft opposition and two cases, download and review same (.5); Office conference with James M. Jimmerson, Esq. regarding same (.2); Add countermotion (.3); Review James M. Jimmerson, Esq. revisions to opposition sent to Ham (.2); Telephone conference with Elizabeth Ham regarding same and redline and send changes to last Opposition (.2); Office conference with James M. Jimmerson, Esq. regarding Declaration (.1); Revise same and process with James M. Jimmerson, Esq. (.5); Email to Elizabeth Ham (.1); Telephone conference with James J. Jimmerson, Esq. regarding Opposition, adding introductory paragraph (.2); Email to Elizabeth Ham regarding same (.1); Receipt of Ham revised Opposition at 6:22 pm, redline same (.1); Continued revisions to Opposition and review of same per James J. Jimmerson, Esq. (.3); Telephone conference with Elizabeth Ham regarding filing same and next steps (.3); Finalize, file and email to opposing counsel, receive confirmation of receipt, and prepare courtesy copies for the court (.3);	3.70	925.00

			HOURS	
05/08/2018	SP	Office conference with James J. Jimmerson, Esq. regarding Opposition and whether leave to amend was requested (.1); Review Todd Davis email regarding reference to the property (.1);	0.20	50.00
05/09/2018	SP	Office conference with James J. Jimmerson, Esq. regarding email to Todd Davis, James J. Jimmerson, Esq. drafts and sends response to same, discussion of language (.3); Review Elizabeth Ham response (.1); Review Todd Davis response and download both for James J. Jimmerson, Esq. review (.1); Review and analyze email from Langberg forwarding two Replies and Request for Judicial Notice, download all three documents for James J. Jimmerson, Esq. review tomorrow, email to Elizabeth Ham (.2);	0.70	175.00
05/10/2018	SP	Review James J. Jimmerson, Esq. email to Elizabeth Ham with Omerza Replies (.1); Review and analyze Reply regarding Anti-Slapp, Reply regarding Motion to Dismiss and request for judicial notice (.8); Office conference with James J. Jimmerson, Esq. regarding same (.2); Review James J. Jimmerson, Esq. email to Ham regarding same (.1); Review James J. Jimmerson, Esq. response to Todd Davis regarding universal factual language (.1);	1.30	325.00
05/11/2018	SP	Download, review and analyze email from Elizabeth Ham regarding replies and next steps (.1); Telephone conference with James J. Jimmerson, Esq. Regarding same and regarding coordinating call, filing documents, Reply arguments (.7); Coordinate conference call for 2 pm and review email regarding same (.3); Prepare binder of research documents and evidence for James J. Jimmerson, Esq. for Monday's hearing, completed by (1.8); Conference call with James J. Jimmerson, Esq., James M. Jimmerson, Esq. and Elizabeth Ham regarding Supplement and arguments (1.1); Send James J. Jimmerson, Esq. and James M. Jimmerson, Esq. copies of documents referenced to use as exhibits (.2); Work with James J. Jimmerson, Esq., James M. Jimmerson, Esq. and Elizabeth Ham to prepare First Supplement, Second Supplement, Declaration of Yohan Lowie and all exhibits, courtesy copies, filing, emailing to opposing counsel, run slips, review emails from EHB with videos and transcripts, letter, multiple revisions to documents, and multiple Telephone conference with James J. Jimmerson, Esq. and Elizabeth Ham and Office conference with James J. Jimmerson, Esq. regarding same (4.2); Telephone conferences with and email exchanges with James J. Jimmerson, Esq. regarding mail fraud information, review file for emails, no email received regarding same by James J. Jimmerson, Esq. or Kim Stewart or Shahana Polselli, research regarding same (.5); Download email from Yohan Lowie today and send to James J. Jimmerson, Esq. (.1); Review James J. Jimmerson, Esq. email to Yohan Lowie regarding same (.1); Review and respond to email from James J. Jimmerson, Esq. (.1); Review and respond to James J. Jimmerson, Esq. email regarding video (.1); Review James M. Jimmerson, Esq. response regarding same (.1); Review and analyze email from Mitch Langberg (.1);	9.50	2,375.00
05/12/2018	SP	Review email in Spam from Yohan Lowie from yesterday regarding (.1); Email and text to James J. Jimmerson, Esq. regarding same (.1); Review and analyze email and statute (.1); Review and respond to email from Elizabeth Ham regarding who added to (.1);	0.40	100.00
05/14/2018	SP	Review Todd Davis email regarding Notice of Association (.1); Arrive early and		

			HOURS	
		assist James J. Jimmerson, Esq. with research for oral argument, and comparing transcript and email to declarations, preparing chart of same, copying documents necessary for hearing (1.5); Travel to and attend hearing with James J. Jimmerson, Esq., Elizabeth Ham, Esq. and client, texts to regarding emailed document needed, and post-hearing conference with James J. Jimmerson, Esq., clients and Elizabeth Ham regarding next steps (1.9); Call and email to Clerk regarding video (.1); Research regarding legislative history on Anti-SLAPP statute and relevant caselaw regarding discovery and burdens (2.6); Complete request form for expedited transcript and video and Office conference with James J. Jimmerson, Esq. regarding timing (.2); Review email from clerk regarding invoice and prepare check for payment (.1); Office conference with James J. Jimmerson, Esq. regarding same (.1); Deliver to court to pick up CD and order expedited transcript (.1); Office conference with James J. Jimmerson, Esq. regarding research and Langberg comments (.3); Review James J. Jimmerson, Esq. email to clients regarding same (.1); Review email from Yohan Lowie (.1);	7.20	1,800.00
05/15/2018	SP	Review and download 4 emails forwarded from James J. Jimmerson, Esq. and sent to only him (.4); Advised of call from Yohan Lowie, Office conference with James J. Jimmerson, Esq. regarding same, call to office that James J. Jimmerson, Esq. will return call immediately after meeting (.1); Receipt of CD from hearing and upload same to Jennifer Knighton, email to Elizabeth Ham regarding same (.2); Office conference with James J. Jimmerson, Esq. regarding his call with Yohan Lowie (.2); Receipt of transcript estimate and prepare request for same (.2); Finalize and deliver transcript request to court (.2);	1.30	325.00
05/16/2018	SP	Receipt of invoice for paper transcript, request check and facilitate pickup of same (.2);	0.20	50.00
05/17/2018	SP	Review and analyze email with Transcript from hearing and forward to Elizabeth Ham (.1);	0.10	25.00
05/20/2018	SP	Text exchange with James J. Jimmerson, Esq. regarding responsive brief (.1); Review and analyze James J. Jimmerson, Esq. email with recording regarding same (.1);	0.20	50.00
		SHAHANA POLSELLI	34.50	8,625.00
05/02/2018	PK	Receive and review Stipulation and Order Continuing Hearing Dates for Defendants' Motion to Dismiss and Special Motion to Dismiss (Anti-SLAPP Motion) and Related Briefing Deadlines and Notice of Entry for the same (.3);	0.30	67.50
05/08/2018	PK	Receive and reviewed our Opposition to Defendants' Motion to Dismiss Pursuant to NRCP 12(b)(5) that was filed (.1); Receive and reviewed our Opposition to Defendants' Special Motion to Dismiss (Anti-SLAPP Motion) Plaintiffs' Complaint Pursuant to NRS 41.635 Et Seq. Filed 05.04.18 (.1);	0.20	45.00
05/10/2018	PK	Receive and reviewed Defendants' Reply Brief In Support of Motion to Dismiss Pursuant to NRCP 12(B)(5) filed by Opposing Counsel (.2); Defendants' Request for Judicial Notice In Support of (.1) Received and Reviewed		

			HOURS	
		Defendants' Reply in Support of Special Motion To Dismiss (Anti-SLAPP Motion) Plaintiffs' Complaint Pursuant to NRS §41.635 Et. Seq. and (.2) Defendants' Reply in Support of Motion To Dismiss Pursuant to NRCP 12(B)(5) (.2);	0.70	157.50
05/11/2018	PK	Conference with Shahana Polselli and James M. Jimmerson, Esq., advised to assist with binder preparation (.2); Completed the same (1.8); Conference with Shahana Polselli and draft Index and insert into x 3 Binders (.2); Assist with filing (.2);	2.40	540.00
05/14/2018	PK	Received a copy of E-filed Notice of Association of Counsel (.1);	0.10	22.50
		Patricia Kennedy	~~3.70~~ 3.5	~~832.50~~ 787.50
05/04/2018	JMJ	Reviewing draft opposition and revising the same (2.0); emails on denial letters (.4); emails on (.4)	2.80	1,120.00
05/07/2018	JMJ	Reviewing draft opposition to 12(b)(5) motion to dismiss and revising the same (2.5); review/revise Anti-slapp motion (.4)	2.90	1,160.00
05/09/2018	JMJ	Review and analyze reply in support of motions to dismiss (1.0)	1.00	400.00
05/10/2018	JMJ	Emails on motion to dismiss (.4)	0.40	160.00
05/11/2018	JMJ	Review and analyze reply in support of motions to dismiss (1.2); Call with client and James J. Jimmerson, Esq. regarding supplemental exhibits (1.2); drafting submission papers for supplemental exhibits, including declaration of Y. Lowie (3.2); call with James J. Jimmerson, Esq. on declaration of Y. Lowie (.3)	5.90	2,360.00
05/14/2018	JMJ	Legal research on privileges (1.0); appearance at hearing on motions to dismiss (1.0); legal research on "good faith communications" (1.5)	3.50	1,400.00
		JAMES M JIMMERSON	16.50	6,600.00
		FOR CURRENT SERVICES RENDERED	80.30	31,289.50
05/20/2018	JJJ	COURTESY DISCOUNT PER JAMES J. JIMMERSON, ESQ.		-12,500.00
		TOTAL COURTESY DISCOUNTS FOR THIS PERIOD		-12,500.00
		1.5% ADMINISTRATIVE CHARGE (PHONE CHARGES, POSTAGE, ETC.)		469.34

04/26/2018	Hand Delivery Item: Stipulation and Order to Brownstein Hyatt Farber Schreck	5.00
05/01/2018	COPY/PRINTING: 135 PAGE(S) @ .20	27.00
05/01/2018	COPY/PRINTING: 1 PAGE(S) @ .20	0.20
05/04/2018	COPY/PRINTING: 255 PAGE(S) @ .20	51.00
05/07/2018	COPY/PRINTING: 113 PAGE(S) @ .20	22.60
05/07/2018	COPY/PRINTING: 1 PAGE(S) @ .20	0.20
05/07/2018	Hand Delivery Item: Opposition and Countermotion to Regional Justice Center Department II	5.00

— any copy fees over $150 must be approved by Ham — GJH

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

05/20/2018
ACCOUNT NO: 6186-10M
STATEMENT NO: 664189

adv. Daniel Omerza

05/08/2018	COPY/PRINTING: 32 PAGE(S) @ .20	6.40
05/09/2018	COPY/PRINTING: 49 PAGE(S) @ .20	9.80
05/11/2018	COPY/PRINTING: 2490 PAGE(S) @ .20	498.00
05/11/2018	COPY/PRINTING: 9 PAGE(S) @ .20	1.80
05/11/2018	Hand Delivery Item: Supplements and Notice of Association to Regional Justice Center Department II	5.00
05/14/2018	COPY/PRINTING: 846 PAGE(S) @ .20	169.20
05/14/2018	Hand Delivery Item: Payment for Hearing Transcript to Regional Justice Center	5.00
05/15/2018	Hand Delivery Item: Supplements and Notice of Association to Brownstein Hyatt Farber & Schreck	5.00
05/16/2018	COPY/PRINTING: 374 PAGE(S) @ .20	74.80
05/16/2018	COPY/PRINTING: 604 PAGE(S) @ .20	120.80
05/16/2018	Hand Delivery Item: Pick-up 05-14-18 Hearing Transcript from Regional Justice Center	5.00
05/17/2018	COPY/PRINTING: 62 PAGE(S) @ .20	12.40
	TOTAL EXPENSES	1,024.20

05/04/2018	Electronic Filing - Opposition	3.50
05/07/2018	Electronic Filing - Opposition to Motion to Dismiss	3.50
05/11/2018	Electronic Filing - Second Supplement to Opposition to AntiSLAPP Motion	3.50
05/11/2018	Electronic Filing - Notice of Association of Counsel	3.50
05/14/2018	05-14-18 Hearing Recording Fee Clark County Treasurer # 64504	45.00
05/16/2018	05-14-18 Hearing Transcript Kristen Lunkwitz # 65479	372.62
05/20/2018	Westlaw legal research charges, Usage Period: 04-21-18 through 05-20-18	8.93
	TOTAL ADVANCES	440.55
	TOTAL CURRENT WORK	20,723.59
	PREVIOUS BALANCE	$11,148.16
	BALANCE DUE	$31,871.75
	CLOSING BALANCE	$31,871.75

19,548.09
(3510.50) Tiffany Swanis
$16,037.59

COMPANY LMChown JOB #
ACCT # 10030 SUB ACCT
COST CODE TYPE
APPROVED

Finance charge assessed after 30 days.
Make check payable to THE JIMMERSON LAW FIRM, P.C.
STATEMENT REFLECTS CHARGES & PAYMTS REC'D THRU 20TH OF MONTH
Approved by Attorney: _____

5/29/18

THE JIMMERSON LAW FIRM, PC
415 SOUTH SIXTH STREET, SUITE 100
LAS VEGAS, NEVADA 89101
TELEPHONE:(702) 388-7171 - TAX I.D.# {
FAX: (702) 387-1167

For your convenience, you may pay by AMEX, VISA & MC.
Account#: Exp:
Amount: add 3% convenience fee Signature:

06/20/2018
ACCOUNT NO: 6186-10M
STATEMENT NO: 664273

Fore Stars, Ltd., 180 Land Co., Seventy Acres, LLC
lschencke@ehbcompanies.com
EHB Companies, LLC
1215 S. Fort Apache Rd., Suite 120
Las Vegas NV 89117

c/o Fore Stars, Ltd., 180 Land Co., Seventy Acres, LLC

adv. Daniel Omerza

			HOURS	
05/21/2018	JJJ	Text exchange with Shahana Polselli regarding deadline (.1); Review email from Elizabeth Ham (.1); Review and analyze briefing and dictate points for possible inclusion and revision in supplement (.3);	0.50	297.50
05/22/2018	JJJ	Text exchange with and Telephone conference with Shahana Polselli regarding status of supplement draft (.1);	0.10	59.50
05/23/2018	JJJ	Office conference with Shahana Polselli regarding status of supplement (.1); Email to Elizabeth Ham regarding same (.1); Further Office conference with Shahana Polselli regarding dictation, resent same (.5); Review and analyze initial draft of Supplement (.3); Office conference with James M. Jimmerson, Esq. and Shahana Polselli regarding same, review revisions proposed, review of emails from Davis and Ham regarding same, and revise and finalize two versions of supplement (1.2); Attempt to call Elizabeth Ham (.1); Receipt of approval of our version and finalize with Shahana Polselli (.2); Email to clients confirming same (.1); Review and analyze Minutes (.1); Review and analyze Defendants' supplement with exhibits and office conference with Shahana Polselli regarding same (.5); Review and respond to email from Elizabeth Ham (.1);	3.30	1,963.50
05/29/2018	JJJ	Download, review and analyze Motion to Strike (.2); Review and analyze Minute Order (.1); Telephone conference with Shahana Polselli regarding same (.2); Review email from Todd Davis (.1); Email to Mitch Langberg regarding withdrawing Motion (.1);	0.70	416.50
05/30/2018	JJJ	(NO CHARGE) Review and respond to email from Todd Davis regarding motion and discovery (.1); Email to Shahana Polselli regarding same (.1); Review and analyze response from Mitch Langberg regarding withdrawing motion and conference call (.1); Email to Langberg regarding same (.1);	0.40	0.00
	JJJ	Email to Todd Davis regarding motion and regarding discovery (.1); Office conference with Shahana Polselli regarding same and regarding discovery rules (.2); Dictate email to opposing counsel (.1); Review and finalize Early Case Conference notice (.1); Revise, finalize and send email with Early Case Conference attached (.2); Review and analyze opposing counsel response (.1); Telephone conference with Yohan Lowie i regarding Judge Scotti's ruling in client's favor; ((No Charge);	0.80	476.00
05/31/2018	JJJ	Office conference with Shahana Polselli regarding email from Langberg		

			HOURS	
		regarding appeal and revise same (.1); Review Motion to Strike Office conference with James M. Jimmerson, Esq. regarding same (No Charge);	0.10	59.50
06/01/2018	JJJ	Review and analyze email from Langberg (.1); Office conference with Shahana Polselli regarding same (.1); Review Elizabeth response to same (.1); Office conference with Shahana Polselli regarding same and send response to Langberg, discuss research needed (.3); Office conference with Shahana Polselli regarding same (.1); Email to clients regarding same (.1);	0.80	476.00
06/03/2018	JJJ	Office conference with Shahana Polselli and review and revise proposed Finding Fact, Conclusions of Law (.4); Email to Elizabeth Ham regarding same (.1); Office conference with Shahana Polselli regarding emails from Langberg and need to respond, dictate same (.3);	0.80	476.00
06/04/2018	JJJ	Telephone conference with Shahana Polselli Regarding status of email to Omerza and Finding Fact, Conclusions of Law (.1);	0.10	59.50
06/05/2018	JJJ	Review Langberg email and Telephone conference with Shahana Polselli regarding same (.2);	0.20	119.00
06/07/2018	JJJ	(NO CHARGE) Telephone conference with Shahana Polselli regarding status of order and email from James M. Jimmerson, Esq. (.2);	0.20	0.00
06/11/2018	JJJ	Telephone conference with James M. Jimmerson, Esq. regarding EDCR 2.34 conference (.4);	0.40	238.00
		J.J. JIMMERSON	8.40	4,641.00
05/21/2018	SP	Text exchange with James J. Jimmerson, Esq. (.1); Review email from Elizabeth Ham (.1);	0.20	50.00
05/22/2018	SP	Text to James J. Jimmerson, Esq. regarding status (.1); Email to Elizabeth Ham regarding same (.1); Email and text exchanges with Elizabeth Ham regarding timing (.2); Telephone conference with James J. Jimmerson, Esq. regarding same (.1);	0.50	125.00
05/23/2018	SP	Email to Elizabeth Ham regarding status of supplement (.1); Review her response regarding same (.1); Office conference with James J. Jimmerson, Esq. regarding same and James J. Jimmerson, Esq. sends email to Ham, discussion of points dictated and receive recording of same (.5); Receipt of draft from Elizabeth Ham at 12:12 pm, review and analyze same (.2); Office conference with James M. Jimmerson, Esq. (.1); Draft James J. Jimmerson, Esq. points from dictation and additional points (.8); Review with James M. Jimmerson, Esq. and revise Supplement accordingly (1.8); Continued work with James M. Jimmerson, Esq. on revised supplement and email list of points to Ham and Davis per James M. Jimmerson, Esq. (.6); Review responses from Ham and Davis, James M. Jimmerson, Esq. (.2); Office conference with James J. Jimmerson, Esq. and continue work with James J. Jimmerson, Esq. and James M. Jimmerson, Esq. to prepare two versions of supplement, James J. Jimmerson, Esq. sends to Ham and Davis, prepare exhibit, prepare for filing, receive approval on our version, finalize and timely file and serve the same (1.4); Review James J. Jimmerson,		

			HOURS	
		Esq. email to clients confirming same (.1); Download, review and analyze Minutes (.1); Download, review and analyze Defendants' supplement with exhibits and Office conference with James J. Jimmerson, Esq. regarding same (.5); Review email from Elizabeth and James J. Jimmerson, Esq. response (.1);	6.50	1,625.00
05/27/2018	SP	Review and analyze Motion to Strike filed by opposing counsel (.2); Review and analyze James J. Jimmerson, Esq. email regarding same (.1);	0.30	75.00
05/29/2018	SP	Download, review and analyze Motion to Strike (.2); Review and analyze Minute Order (.1); Telephone conference with James J. Jimmerson, Esq. regarding same (.2); Email to clients (.1); Review and analyze response from Elizabeth Ham (.1); Review and analyze email from Todd Davis (.1); Provide James J. Jimmerson, Esq. with copy of same (.1);	0.90	225.00
05/30/2018	SP	Review and analyze email exchanges between James J. Jimmerson, Esq. and Mitch Langberg regarding Motion and withdrawing same (.2); Review and analyze email from James J. Jimmerson, Esq. to Todd Davis regarding same, and regarding discovery (.1); Office conference with James J. Jimmerson, Esq. regarding same and regarding discovery rules (.2); Draft Notice of Early Case Conference (.2); Draft email to opposing counsel regarding same as dictated by James J. Jimmerson, Esq. (.2); Review James J. Jimmerson, Esq. email to opposing counsel with Early Case Conference (.1); Review and download opposing counsel response (.1); Review Langberg response (.1);	1.20	300.00
05/31/2018	SP	Office conference with James J. Jimmerson, Esq. regarding email from Langberg regarding appeal (.1);	0.10	25.00
06/01/2018	SP	Review and analyze email from Langberg (.1); Office conference with James J. Jimmerson, Esq. regarding same (.1); Review Elizabeth response to same (.1); Office conference with James J. Jimmerson, Esq. regarding same and James J. Jimmerson, Esq. prepares response to Langberg (.3); Research regarding timing of Early Case Conference (.6); Office conference with James J. Jimmerson, Esq. regarding same and review his email to Langberg (.1); Review James J. Jimmerson, Esq. email to clients regarding same (.1); Review Langberg response and download for James J. Jimmerson, Esq. review (.1); Review second Langberg email and online research and review of cited case, download for James J. Jimmerson, Esq. review (.5); Review James J. Jimmerson, Esq. email regarding order (.1);	2.10	525.00
06/03/2018	SP	Review of decision, filings, and draft detailed Findings of Fact, Conclusions of Law, and Order (3.1); Prepare detailed memo to James J. Jimmerson, Esq. and update To Do list (.2); Office conference with James J. Jimmerson, Esq. for his review of proposed Finding Fact, Conclusions of Law, his revisions to same (.4); James J. Jimmerson, Esq. sends email to Elizabeth Ham regarding same (.1); Office conference with James J. Jimmerson, Esq. regarding emails from Langberg and need to respond, James J. Jimmerson, Esq. dictates same (.3);	4.10	1,025.00
06/04/2018	SP	Draft responsive email to Langberg as dictated by James J. Jimmerson, Esq. and send to James M. Jimmerson, Esq. (.2); Office conference with James M. Jimmerson, Esq. regarding same (.1); Further Office conference with James		

			HOURS	
		M. Jimmerson, Esq. Regarding Finding Fact, Conclusions of Law and review of same (.1); Revise Finding Fact, Conclusions of Law per James M. Jimmerson, Esq. (.1); Finalize and send to Elizabeth Ham (.1); Office conference with James J. Jimmerson, Esq. regarding status of email to Omerza (.1); Reminder to James M. Jimmerson, Esq. to send James J. Jimmerson, Esq. dictated email (.1); Review and analyze same, and Langberg initial response (.1); Review and analyze Langberg email to James M Jimmerson, Esq. (.2);	1.10	275.00
06/05/2018	SP	Review Langberg email with James J. Jimmerson, Esq., James M. Jimmerson, Esq. to respond but James J. Jimmerson, Esq. to discuss with him first (.2); Telephone conference with Elizabeth Ham regarding Finding Fact, Conclusions of Law and email from Langberg, amended Complaint (.1);	0.30	75.00
06/07/2018	SP	Telephone conference with James J. Jimmerson, Esq. regarding status of Finding Fact, Conclusions of Law and James M. Jimmerson, Esq. to respond to Langberg (.2); Review, analyze and respond to email from Elizabeth Ham with revised Order and regarding amending Complaint (.1); Download for James J. Jimmerson, Esq. review, review redlined Order, accept all changes to same and send to opposing counsel (.2); Telephone conference with Elizabeth Ham regarding Order and regarding amending Complaint (time split with other matters)(.1); Telephone conference with James J. Jimmerson, Esq. regarding same and review relevant paragraph (.3); Review and analyze email from Langberg requesting two changes in Finding Fact, Conclusions of Law, review Finding Fact, Conclusions of Law, email to James J. Jimmerson, Esq. and James M. Jimmerson, Esq. and Elizabeth Ham for determination (.2); Review email from Todd Davis regarding changes (.1); Office conference with James M. Jimmerson, Esq. regarding same (.1); Revise Finding Fact, Conclusions of Law per Todd Davis (.2); Review and analyze Langberg email regarding discovery conference, respond to same (.1); Review Langberg response regarding setting for tomorrow (.1); Finalize Finding Fact, Conclusions of Law and send to Langberg (.1);	1.80	450.00
06/08/2018	SP	Office conference with James M. Jimmerson, Esq. regarding 2.34 conference (.1); Email to Langberg regarding same (.1); Review and respond to Langberg email regarding Order (.1); Coordinate pickup of signed Order (.1); Review Langberg email regarding 2.34 conference (.1); Draft Errata to Complaint, revise Complaint, download exhibits and prepare full set to send to James J. Jimmerson, Esq. and Elizabeth Ham for review (.4); Receipt of signed Omerza Order (.1); Office conference with James M. Jimmerson, Esq. regarding countersigning same (.1);	1.10	275.00
06/11/2018	SP	Process Finding Fact, Conclusions of Law and deliver to the Court (.1); Email to Langberg regarding 2.34 conference (.1); Email exchange with Langberg regarding same (.1); Email exchange with Langberg regarding Order (.1); Office conference with James M. Jimmerson, Esq. and EDCR 2.34 conference with Langberg regarding Early Case Conference (.3); Office conference with James M. Jimmerson, Esq. regarding same and attempt to call James J. Jimmerson, Esq. with James M. Jimmerson, Esq., leave message (.1); Office conference with James M. Jimmerson, Esq. regarding Errata (.1); Review James M. Jimmerson, Esq. email to Mitch Langberg confirming their conversation about withdrawing Early Case Conference notice		

			HOURS	
		(.1); Review Langberg email confirming same (.1); Review, analyze and respond to email from Elizabeth ham regarding Errata (.1); Review further email from Ham regarding keeping reference (.1); Revise Errata and Complaint, attach with exhibits, send to Ham (.3); Technical difficulties with filing (.5-NC); Finalize and file same (.1);	1.70	425.00
06/12/2018	SP	Draft Notice of Vacating Early Case Conference (.2); Draft Amended Notice (.2); Office conference with James M. Jimmerson, Esq. regarding same (.2);	0.60	150.00
06/14/2018	SP	Review and analyze James M. Jimmerson, Esq. email with draft Opposition to Motion to Strike, along with opposition (.2); Review follow up email from James M. Jimmerson, Esq. to Elizabeth Ham regarding same (.1); Review Elizabeth Ham response with revised Opposition and her changes to same (.2); Telephone conference with James M. Jimmerson, Esq. regarding same (.2);	0.70	175.00
06/15/2018	SP	Review, analyze and download filed opposition (.2);	0.20	50.00
06/19/2018	SP	Review and respond to email from Mitch Langberg regarding Finding Fact, Conclusions of Law (.1);	0.10	25.00
06/20/2018	SP	Receipt of file stamped Finding Fact, Conclusions of Law and email to Kim Stewart regarding same (.1);	0.10	25.00
		SHAHANA POLSELLI	23.60	5,900.00
05/24/2018	PK	Received f-filing for Service of Minutes, Defendants' Supplemental Brief in Support of Special Motion to Dismiss (Anti-SLAPP Motion) Plaintiffs' Complaint Pursuant to NRS 41.635 et seq. and Plaintiffs' Supplement in Support of Opposition to Defendants' Special Motion to Dismiss (Anti-SLAPP) (.3)	0.30	67.50
05/29/2018	PK	Received Defendants' E-filed Motion to Strike Portions of Plaintiffs' Supplement in Support of Opposition to Defendants' Special Motion to Dismiss or in the Alternative, for Further Supplemental Briefing from Opposing Counsel and the Court's Minute Order, and analyzed the same (.2);	0.20	45.00
05/30/2018	PK	Received e-filed Notice of Early Case Conference (.1)	0.10	22.50
06/12/2018	PK	Conference with Shahana Polselli, advised to E-file/E-serve Notice of Vacating Early Case Conference and Amended Notice of Early Case Conference (.2); Completed the same (.3);	0.50	112.50
06/14/2018	PK	Received E-filed Notice of Vacating Early Case Conference and Amended Notice of Early Case Conference, saved electronically and printed for physical file (.3);	0.30	67.50
06/15/2018	PK	Received E-filed notice of Plaintiffs' Opposition to Defendants' Motion to Strike Portions of Plaintiffs' Supplement in Support of Opposition to Defendants' Special Motion to Dismiss or in the alternative for further supplemental briefing (.2);	0.20	45.00
		Patricia Kennedy	1.60	360.00

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

06/20/2018
ACCOUNT NO: 6186-10M
STATEMENT NO: 664273

adv. Daniel Omerza

			HOURS	
05/21/2018	JMJ	Emails on Supplements (.2)	0.20	80.00
05/22/2018	JMJ	Emails on Supplements (.2)	0.20	80.00
05/23/2018	JMJ	Revise supplement to opposition to motion to dismiss (3.0); discussions with S. Polselli on the same (.5)	3.50	1,400.00
05/25/2018	JMJ	Discussion with James J. Jimmerson, Esq. on motion to strike (.5)	0.50	200.00
05/29/2018	JMJ	Review and analyze motion to strike (.5); review and analyze minute order (.1); discussion of the minute order with James J. Jimmerson, Esq. (.3)	0.90	360.00
05/30/2018	JMJ	Meeting with James J. Jimmerson, Esq. on motion to strike (.5);	0.50	200.00
06/01/2018	JMJ	Emails on appeal regarding anti-SLAPP (.4); emails from opposing counsel on early case conference discovery dispute (.6)	1.00	400.00
06/04/2018	JMJ	Emails on discovery dispute on noticing of early case conference (1.0);	1.00	400.00
06/07/2018	JMJ	Emails on Findings of Fact, Conclusions of Law, and Order (.2);	0.20	80.00
06/08/2018	JMJ	Emails on EDCR 2.34 conference (.3);	0.30	120.00
06/11/2018	JMJ	EDCR 2.34 conference on notice of early case conference (.7); call with James J. Jimmerson, Esq. on the same (.4); legal research on district court jurisdiction pending appeal (1.5)	2.60	1,040.00
06/13/2018	JMJ	Research for Opposition to Motion to Strike (1.0); drafting Opposition to Motion to Strike (2.0);	3.00	1,200.00
06/14/2018	JMJ	Drafting Opposition to Motion to Strike (4); revising and filing the Opposition (.3);	4.30	1,720.00
		JAMES M JIMMERSON	18.20	7,280.00
		FOR CURRENT SERVICES RENDERED	51.80	18,181.00
06/20/2018	JJJ	COURTESY DISCOUNT PER JAMES J. JIMMERSON, ESQ.		-4,641.00
	JJJ	COURTESY DISCOUNT PER JAMES J. JIMMERSON, ESQ.		-1,000.00
		TOTAL COURTESY DISCOUNTS FOR THIS PERIOD		-5,641.00
		1.5% ADMINISTRATIVE CHARGE (PHONE CHARGES, POSTAGE, ETC.)		272.72
05/23/2018		COPY/PRINTING: 116 PAGE(S) @ .20		23.20
06/07/2018		COPY/PRINTING: 52 PAGE(S) @ .20		10.40
06/08/2018		Hand Delivery Item: Pick up signed Finding Fact, Conclusions of Law from Brownstein Hyatt Farber & Schreck LLP		5.00
06/08/2018		COPY/PRINTING: 66 PAGE(S) @ .20		13.20
06/11/2018		Hand Delivery		

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

06/20/2018
ACCOUNT NO: 6186-10M
STATEMENT NO: 664273

adv. Daniel Omerza

	Item: Deliver Finding Fact, Conclusions of Law to Regional Justice Center - Department II	5.00
06/11/2018	COPY/PRINTING: 98 PAGE(S) @ .20	19.60
06/13/2018	COPY/PRINTING: 12 PAGE(S) @ .20	2.40
06/19/2018	COPY/PRINTING: 37 PAGE(S) @ .20	7.40
	TOTAL EXPENSES	86.20
06/13/2018	Electronic Filing - Notice of Vacating Early Case Conference	3.50
06/20/2018	Westlaw legal research charges, Usage Period: 05-21-18 through 06-20-18	307.75
06/20/2018	E-file Finding Fact, Conclusions of Law and Order	3.50
	TOTAL ADVANCES	314.75
	TOTAL CURRENT WORK	13,213.67
	PREVIOUS BALANCE	$31,871.75
	BALANCE DUE	$45,085.42
	CLOSING BALANCE	$45,085.42

COMPANY LM Crown JOB #_____

ACCT # 6030 SUB ACCT _____

COST CODE _____ TYPE _____

APPROVED _____

LS 8/16/18

Finance charge assessed after 30 days.
Make check payable to THE JIMMERSON LAW FIRM, P.C.
STATEMENT REFLECTS CHARGES & PAYMTS REC'D THRU 20TH OF MONTH
Approved by Attorney: _____

THE JIMMERSON LAW FIRM, PC
415 SOUTH SIXTH STREET, SUITE 100
LAS VEGAS, NEVADA 89101
TELEPHONE:(702) 388-7171 - TAX I.D.# I
FAX: (702) 387-1167

For your convenience, you may pay by AMEX, VISA & MC.
Account#: Exp:
Amount: add 3% convenience fee Signature:

07/19/2018
ACCOUNT NO: 6186-10M
STATEMENT NO: 664558

Fore Stars, Ltd., 180 Land Co., Seventy Acres, LLC
lschencke@ehbcompanies.com
EHB Companies, LLC
1215 S. Fort Apache Rd., Suite 120
Las Vegas NV 89117

c/o Fore Stars, Ltd., 180 Land Co., Seventy Acres, LLC

adv. Daniel Omerza

INTERIM STATEMENT

			HOURS	
06/26/2018	JJJ	After hours Telephone conference with Shahana Polselli regarding hearing (.1); Email to clients and Elizabeth response (.1); Telephone conference with James M. Jimmerson, Esq. (.3); Further Telephone conference with Shahana Polselli regarding same and hearing being off calendar (.1) Email to client regarding same (.1);	0.70	416.50
06/27/2018	JJJ	Review Notice of Appeal filed in Omerza case (.1); Office conference with Shahana Polselli regarding hearing cancellation, filing of Notice of Appeal and Case Appeal Statement, changes to Order and next steps, prepare and send email to Langberg regarding cancellation of Motion (.3);	0.40	238.00
07/02/2018	JJJ	Review and analyze file stamped Petition for Writ (.4)	0.40	238.00
07/03/2018	JJJ	Office conference with Shahana Polselli Regarding Writ (.1); Review and analyze same (.4);	0.50	297.50
07/06/2018	JJJ	Office conference with Shahana Polselli regarding Writ, Appeal, assignment to settlement program (.2);. Email to clients regarding same (.1); Review of Notice of Assignment of appeal to Ara Shirinian and Office conference with Shahana Polselli regarding same (.1);	0.40	238.00
07/09/2018	JJJ	Office conference with Shahana Polselli Regarding assignment of Shirinian as mediator (.1);	0.10	59.50
07/10/2018	JJJ	Download, review and analyze Notice of Suggestion of Recusal (.1); Email to Elizabeth Ham recommending opposition (.1); Review and respond to email from Ham regarding association (.1);	0.30	178.50
07/11/2018	JJJ	Review and analyze email from Elizabeth Ham regarding response to Notice of Suggestion, download, review and analyze response and exhibits (.2);	0.20	0.00
07/12/2018	JJJ	Email to Elizabeth Ham regarding response to Notice of Suggestion of Recusal (.1); Review Elizabeth Ham response, and revise Response (.2);	0.30	0.00
07/19/2018	JJJ	Review and respond to email from opposing counsel regarding Early Case Conference (.1); Review his response to same (.1);	0.20	0.00
		J.J. JIMMERSON	3.50	1,666.00

			HOURS	
06/26/2018	SP	After hours Telephone conference with James J. Jimmerson, Esq. regarding hearing (.1); Review James J. Jimmerson, Esq. email to clients and Elizabeth response (.1); Review calendar, hearing in chambers, review file for Transcript, review Odyssey and see hearing taken off calendar (.3); Further telephone conference with James J. Jimmerson, Esq. regarding same, review his further email to client (.1);	0.60	150.00
06/27/2018	SP	Review Notice of Appeal filed in Omerza case (.1); Review and analyze case appeal statement (.1); Office conference with James J. Jimmerson, Esq. regarding hearing cancellation, filing of Notice of Appeal and Case Appeal Statement, changes to Order and next steps, James J. Jimmerson, Esq. sends email to Langberg regarding cancellation of Motion (.3);	0.50	125.00
06/28/2018	SP	Download, review and analyze email regarding posting of bond (.1); Review Langberg response to James J. Jimmerson, Esq. email (.1);	0.20	50.00
07/02/2018	SP	Review and analyze file stamped Petition for Writ (.4)	0.40	100.00
07/03/2018	SP	Office conference with James J. Jimmerson, Esq. regarding Writ and provide James J. Jimmerson, Esq. with copy of same (.1);	0.10	25.00
07/05/2018	SP	Review Omerza docketed Notice of Appearance (.1); Review Order appointing Nancy Saitta (.1);	0.20	50.00
07/06/2018	SP	Office conference with James J. Jimmerson, Esq. regarding Writ, Appeal, assignment to settlement program (.2); Review James J. Jimmerson, Esq. email to clients regarding same (.1); Review of Notice of Assignment of appeal to Ara Shirinian (.1); Office conference with James J. Jimmerson, Esq. regarding same (.1);	0.50	125.00
07/09/2018	SP	Office conference with James J. Jimmerson, Esq. regarding assignment of Shirinian as mediator (.1);	0.10	25.00
07/10/2018	SP	Download, review and analyze Notice of Suggestion of Recusal (.1); Email to Elizabeth Ham regarding same (.1); Review email from Elizabeth Ham regarding same (.1); Review James J. Jimmerson, Esq. response recommending opposition (.1); Text exchange with James J. Jimmerson, Esq. (.1); Review further James J. Jimmerson, Esq. email to Ham regarding association (.1);	0.60	150.00
07/11/2018	SP	Review and analyze email from Elizabeth Ham regarding response to Notice of Suggestion, download, review and analyze response and exhibits (.2); Email to James J. Jimmerson, Esq. regarding same (.1);	0.30	75.00
07/12/2018	SP	Review James J. Jimmerson, Esq. email to Elizabeth Ham regarding response to Notice of Suggestion of Recusal (.1); Format and prepare response with exhibits (.4); Office conference with James M. Jimmerson, Esq. regarding same, minor additional corrections made (.1); Reformat on proper stationary and in proper font, spacing, and correct typographical errors (.3); Review Elizabeth Ham response, redline Response and send for approval (.1); Review email from Elizabeth Ham with final draft and respond (.1); Review		

			HOURS	
		email from Langberg to mediator and mediator response regarding whether exemption is appropriate (.1); Review Langberg response (.1); Download file stamped Response and send to all (.1);	1.40	350.00
07/18/2018	SP	Review and analyze letter from Langberg to mediator (.1); Download and send to Elizabeth Ham (.1);	0.20	50.00
07/19/2018	SP	Review and analyze email from Mitch Langberg regarding Early Case Conference (.1); Office conference with James M. Jimmerson, Esq. regarding same (.1); Review James M. Jimmerson, Esq. email to Elizabeth Ham regarding same and court reporter (.1); Review James M. Jimmerson, Esq. email to Langberg (.1); Review Langberg response (.1); Review Langberg email regarding notice (.1); Office conference with James M. Jimmerson, Esq. regarding same and call with Ham (.2);	0.80	200.00
		SHAHANA POLSELLI	5.90	1,475.00
06/27/2018	PK	Received notice of E-filing of Case Appeal Statement from Opposing Counsel (.2); Received notice of E-filing Notice of Appeal from Opposing Counsel (.2);	0.40	90.00
06/28/2018	PK	Received E-filed Notice of Posting Bond on Appeal from Opposing Counsel (.1);	0.10	22.50
		Patricia Kennedy	0.50	112.50
06/26/2018	JMJ	Call with James J. Jimmerson, Esq. on motion to strike (.4); emails to client on the same (.2)	0.60	240.00
07/19/2018	JMJ	Emails to client on Early Case Conference (.2); Emails to opposing counsel on Early Case Conference (.2); Call with client on next steps (.3);	0.70	280.00
		JAMES M JIMMERSON	1.30	520.00
		FOR CURRENT SERVICES RENDERED	11.20	3,773.50
07/19/2018	JJJ	COURTESY DISCOUNT PER JAMES J. JIMMERSON, ESQ.		-1,000.00
		TOTAL COURTESY DISCOUNTS FOR THIS PERIOD		-1,000.00
		1.5% ADMINISTRATIVE CHARGE (PHONE CHARGES, POSTAGE, ETC.)		56.60
06/21/2018		COPY/PRINTING: 42 PAGE(S) @ .20		8.40
06/26/2018		COPY/PRINTING: 62 PAGE(S) @ .20		12.40
06/27/2018		COPY/PRINTING: 102 PAGE(S) @ .20		20.40
07/02/2018		COPY/PRINTING: 352 PAGE(S) @ .20		70.40
07/05/2018		COPY/PRINTING: 35 PAGE(S) @ .20		7.00
07/12/2018		COPY/PRINTING: 128 PAGE(S) @ .20		25.60
		TOTAL EXPENSES		144.20
		TOTAL CURRENT WORK		2,974.30
		PREVIOUS BALANCE		$45,085.42

THE JIMMERSON LAW FIRM, PC
415 SOUTH SIXTH STREET, SUITE 100
LAS VEGAS, NEVADA 89101
TELEPHONE:(702) 388-7171 - TAX I.D.#
FAX: (702) 387-1167

For your convenience, you may pay by AMEX, VISA & MC.
Account#: Exp:
Amount: add 3% convenience fee Signature:

08/21/2018
ACCOUNT NO: 6186-10M
STATEMENT NO: 664771

Fore Stars, Ltd., 180 Land Co., Seventy Acres, LLC
lschencke@ehbcompanies.com
EHB Companies, LLC
1215 S. Fort Apache Rd., Suite 120
Las Vegas NV 89117

c/o Fore Stars, Ltd., 180 Land Co., Seventy Acres, LLC

adv. Daniel Omerza

INTERIM STATEMENT

			HOURS	
7/20/2018	JJJ	Office conference with James M. Jimmerson, Esq. Regarding Early Case Conference (.2); Review Langberg email and dictate response (.2); Office conference with Shahana Polselli regarding same (.1);	0.50	297.50
7/23/2018	JJJ	Office conference with Shahana Polselli regarding response to Langberg email and mediation (.1); Email exchanges with Langberg (.3);	0.40	238.00
'2018	JJJ	Office conference with Shahana Polselli regarding Langberg response (.1);	0.10	59.50
7/25/2018	JJJ	Office conference with Shahana Polselli regarding Langberg email (.1); Email exchange with Langberg (.1); Review and analyze docketing statement and exhibits (.5);	0.70	416.50
8/20/2018	JJJ	Review email from Jennifer Knighton regarding call (.1); Office conference with Kim Stewart regarding same (.1); Attempt to call and emails to Elizabeth Ham (.1);	0.30	178.50
		J.J. JIMMERSON	2.00	1,190.00
7/20/2018	SP	Review Langberg email (.1); Office conference with James J. Jimmerson, Esq. regarding same and regarding response (.1); Draft response dictated by James J. Jimmerson, Esq. (.1);	0.30	75.00
7/23/2018	SP	Office conference with James J. Jimmerson, Esq. regarding response to Langberg email and mediation (.1); Review and analyze Notice removing the case from the settlement program (.1); Review James J. Jimmerson, Esq. email to Langberg regarding Early Case Conference (.1); Review Langberg response (.1); Review James J. Jimmerson, Esq. response to same (.1);	0.50	125.00
7/24/2018	SP	Review and analyze email from Mitch Langberg (.1); Office conference with James J. Jimmerson, Esq. regarding same (.1);	0.20	50.00
7/25/2018	SP	Office conference with James J. Jimmerson, Esq. regarding Langberg email (.1); Review James J. Jimmerson, Esq. email to Langberg (.1); Download and review Langberg reply (.1); Review and analyze docketing statement (.4);	0.70	175.00
8/20/2018	SP	Review email from Jennifer Knighton regarding call (.1); Review email exchange with Jennifer Knighton and Kim Stewart regarding same (.1);		

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

08/21/2018
ACCOUNT NO: 6186-10M
STATEMENT NO: 664771

adv. Daniel Omerza

		HOURS	
	Attempt to call Elizabeth Ham with James J. Jimmerson, Esq. (.1); Review email regarding same (.1);	0.40	100.00
	SHAHANA POLSELLI	2.10	525.00
	FOR CURRENT SERVICES RENDERED	4.10	1,715.00
	1.5% ADMINISTRATIVE CHARGE (PHONE CHARGES, POSTAGE, ETC.)		25.73
	TOTAL CURRENT WORK		1,740.73
	PREVIOUS BALANCE		$48,059.72
7/25/2018	Payment received. Thank you. Check # 1376		-9,655.16
	BALANCE DUE		$40,145.29
	CLOSING BALANCE		$40,145.29

COMPANY LMchoun JOB #_____

ACCT # 0030 SUB ACCT_____

COST CODE_____ TYPE_____

APPROVED_____

LS 8/31/18

Finance charge assessed after 30 days.
Make check payable to THE JIMMERSON LAW FIRM, P.C.
STATEMENT REFLECTS CHARGES & PAYMTS REC'D THRU 20TH OF MONTH
Approved by Attorney: _____

THE JIMMERSON LAW FIRM, PC
415 SOUTH SIXTH STREET, SUITE 100
LAS VEGAS, NEVADA 89101
TELEPHONE:(702) 388-7171 - TAX I.D.#
FAX: (702) 387-1167

PAID

For your convenience, you may pay by AMEX, VISA & MC.
Account#: Exp:
Amount: add 3% convenience fee Signature:

09/20/2018
ACCOUNT NO: 6186-10M
STATEMENT NO: 665092

Fore Stars, Ltd., 180 Land Co., Seventy Acres, LLC
lschencke@ehbcompanies.com
EHB Companies, LLC
1215 S. Fort Apache Rd., Suite 120
Las Vegas NV 89117

c/o Fore Stars, Ltd., 180 Land Co., Seventy Acres, LLC

adv. Daniel Omerza

			HOURS	
08/21/2018	JJJ	Review email from Elizabeth Ham regarding call, respond to same (.1); Office conference with Shahana Polselli regarding same (.1); Telephone conference with Elizabeth Ham regarding case status, filing regarding Early Case Conference and status of appeal case and Office conference with Shahana Polselli regarding same (.3);	0.50	297.50
09/10/2018	JJJ	Review and analyze email from Elizabeth Ham regarding Motion to Compel, download, review and analyze same (.4); Office conference with Shahana Polselli regarding same (.1); Review and analyze and revise Motion (.8);	1.30	773.50
09/11/2018	JJJ	Continue work on revisions to Omerza Motion and conferences with James J. Jimmerson, Esq. Regarding same (1.8);	1.80	1,071.00
09/12/2018	JJJ	Further revisions to Omerza Motion (.4); Review Elizabeth Ham email regarding Omerza filing (.1); Office conference with Shahana Polselli regarding same (.1); Email to Elizabeth Ham (.1); Finalize and approve Motion to send to Ham (.1);	0.80	476.00
09/13/2018	JJJ	Continued work on Motion and finalize revise draft (2.1); Review Ham email with minor changes (.1);	2.20	1,309.00
09/14/2018	JJJ	Office conference with Shahana Polselli regarding revised brief, review email from Ham and discuss revisions regarding Answer (.3); Finalize Motion for filing (.2); Email to Elizabeth Ham regarding documents from Coffin (.1);	0.60	357.00
09/20/2018	JJJ	Review and analyze email from Langberg regarding motion (.1); Email to James M. Jimmerson, Esq. regarding same (.1); Email to Langberg re timing (.1); Email to Elizabeth Ham forwarding email exchange (.1); Email to clients and Elizabeth Ham regarding response; they may pursue Order to Show Cause (.1); Review Langberg response (.1);	0.60	357.00
		J.J. JIMMERSON	7.80	4,641.00
08/21/2018	SP	Review email from Elizabeth Ham regarding call (.1); Review James J. Jimmerson, Esq. response regarding same (.1); Office conference with James J. Jimmerson, Esq. regarding call and subjects to discuss (.1); Office conference with James J. Jimmerson, Esq. and his call with Elizabeth Ham regarding case status, filing regarding Early Case Conference, and status of		

			HOURS	
		appeal case (.3);	0.60	150.00
08/23/2018	SP	Review and respond to email from Elizabeth Ham regarding Motion to Compel Discovery (and also Goorjan depo in Peccole matter) (.1);	0.10	25.00
09/10/2018	SP	Review and analyze email from Elizabeth Ham regarding Motion to Compel, download, review and analyze same (.4); Office conference with James J. Jimmerson, Esq. regarding same and provide him draft to review (.1); Review James J. Jimmerson, Esq.'s draft and revisions to same (.1); Revise Motion per James J. Jimmerson, Esq., redline and provide him draft (.5);	1.10	275.00
09/11/2018	SP	Continue work on revisions to Omerza Motion per James J. Jimmerson, Esq., review and download emails, organize same, modify brief per emails and timeline and assemble exhibits, revise Declaration of James M. Jimmerson, Esq. and conferences with James J. Jimmerson, Esq. regarding same (2.4);	2.40	600.00
09/12/2018	SP	Review Elizabeth Ham email regarding Omerza filing (.1); Office conference with James J. Jimmerson, Esq. regarding same and provide him revised draft, discussion of email (.1); Review James J. Jimmerson, Esq.'s email to Elizabeth Ham (.1); Office conference with James J. Jimmerson, Esq. regarding revisions (.1); Review James J. Jimmerson, Esq. changes to Motion, make revisions to same, finalize, redline, and email to Elizabeth Ham (.8);	1.20	300.00
09/13/2018	SP	Continued work on Motion and preparation of exhibits with James J. Jimmerson, Esq. and email to Elizabeth Ham (4.2); Review Ham email with minor changes and email exchange with Ham regarding same (.2); Finalize and reformat per James J. Jimmerson, Esq. on proper letterhead, assemble exhibits (.6); Review Elizabeth Ham email regarding motion and amending complaint (.1);	5.10	1,275.00
09/14/2018	SP	Office conference with James J. Jimmerson, Esq. and review revised Brief, discussion of issues with asking them to file Answer (.3); Revise Motion to remove references to Answer, review same and further Office conference with James J. Jimmerson, Esq. to finalize (.3); Review James J. Jimmerson, Esq.'s email to Elizabeth Ham regarding same (.1); Prepare Motion for filing, further revise Omerza Motion to include Notice of Motion, rescan and file same (.4); Email to clients with copy of same (.1); Review email from Elizabeth Ham forwarding documents (.1);Review James J. Jimmerson, Esq.'s email to Elizabeth Ham regarding documents from Coffin (.1);	1.40	350.00
09/17/2018	SP	Download, review and distribute filed stamped Motion with date (.1); Download, review and analyze email exchange between Coffin and George Garcia regarding Omerza suit (.1);	0.20	50.00
09/20/2018	SP	Review and analyze email from Langberg regarding motion (.1); Review James J. Jimmerson, Esq. response regarding same to James M. Jimmerson, Esq. (.1); Review James J. Jimmerson, Esq. response to Langberg (.1); Review James J. Jimmerson, Esq.'s email to Elizabeth Ham forwarding email exchange (.1); Review James J. Jimmerson, Esq.'s email to clients and Elizabeth Ham regarding response and tactics they may take (.1); Review and download Langberg response (.1);	0.60	150.00

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

adv. Daniel Omerza

			HOURS	
		SHAHANA POLSELLI	12.70	3,175.00
09/10/2018	JMJ	Review/revise motion to compel discovery and JMJ declaration (.7);	0.70	280.00
		JAMES M JIMMERSON	0.70	280.00
		FOR CURRENT SERVICES RENDERED	21.20	8,096.00
		1.5% ADMINISTRATIVE CHARGE (PHONE CHARGES, POSTAGE, ETC.)		121.44
09/11/2018		COPY/PRINTING: 34 PAGE(S) @ .20		6.80
09/14/2018		COPY/PRINTING: 14 PAGE(S) @ .20		2.80
		TOTAL EXPENSES		9.60
09/14/2018		Electronic Filing for Motion of Order Allowing Commencement of Discovery		3.50
		TOTAL ADVANCES		3.50
		TOTAL CURRENT WORK		8,230.54
		PREVIOUS BALANCE		$40,145.29
		BALANCE DUE		$48,375.83
		CLOSING BALANCE		$48,375.83

Finance charge assessed after 30 days.
Make check payable to THE JIMMERSON LAW FIRM, P.C.
STATEMENT REFLECTS CHARGES & PAYMTS REC'D THRU 20TH OF MONTH
Approved by Attorney: _____

THE JIMMERSON LAW FIRM, PC
415 SOUTH SIXTH STREET, SUITE 100
LAS VEGAS, NEVADA 89101
TELEPHONE:(702) 388-7171 - TAX I.D.#
FAX: (702) 387-1167

For your convenience, you may pay by AMEX, VISA & MC.
Account#: Exp:
Amount: add 3% convenience fee Signature:

Fore Stars, Ltd., 180 Land Co., Seventy Acres, LLC
lschencke@ehbcompanies.com
EHB Companies, LLC
1215 S. Fort Apache Rd., Suite 120
Las Vegas NV 89117

10/20/2018
ACCOUNT NO: 6186-10M
STATEMENT NO: 665240

c/o Fore Stars, Ltd., 180 Land Co., Seventy Acres, LLC

adv. Daniel Omerza

			HOURS	
09/21/2018	JJJ	Review James M. Jimmerson, Esq.'s response regarding Omerza response (.1); Review Yohan Lowie email regarding amending Omerza (.1); Review and analyze Elizabeth Ham's response regarding Langberg email (.1); Review and analyze Dustun Holmes email to James M. Jimmerson, Esq. (.1); Review James M. Jimmerson, Esq.'s Email to Holmes and response confirming call (.1);	0.50	297.50
09/24/2018	JJJ	Review and analyze multiple email exchanges between James M. Jimmerson, Esq. And Langberg (.3);	0.30	178.50
09/25/2018	JJJ	Office conference with Shahana Polselli regarding exchanges between James M. Jimmerson, Esq. and Langberg, current status (.3); Email to James M. Jimmerson, Esq. (.1); Email to clients (.1); Review and analyze video of Mitch Langberg and email from Elizabeth Ham (.1);	0.60	357.00
10/01/2018	JJJ	Review and analyze Opposition and Countermotion to Motion regarding discovery (.5);	0.50	297.50
10/02/2018	JJJ	Review and analyze Notice of Voluntary Disclosure filed in the Supreme Court regarding continuing to sit (.1); Email to clients regarding same (.1);	0.20	119.00
10/12/2018	JJJ	Review and analyze draft Reply (.3);	0.30	178.50
10/17/2018	JJJ	Download, review and analyze Order Denying Writ (.1); Office conference with Shahana Polselli Regarding same (.1);	0.20	119.00
10/18/2018	JJJ	Review and analyze supplement filed by opposing counsel (.2); Prepare for hearing tomorrow (1);	1.20	714.00
10/19/2018	JJJ	Office conference with James M. Jimmerson, Esq. and prepare for hearing (1.1); Travel to and attend hearing with James M. Jimmerson, Esq. before Discovery Commissioner, win hearing (.3);	1.40	833.00
		J.J. JIMMERSON	5.20	3,094.00
09/21/2018	SP	Review James M. Jimmerson, Esq. response regarding Omerza response (.1); Review Yohan Lowie email regarding amending Omerza (.1); Review and analyze Elizabeth Ham response regarding Langberg email (.1); Review and		

			HOURS	
		analyze Dustun Holmes email to James M. Jimmerson, Esq. (.1); Review James M. Jimmerson, Esq.'s email to Holmes and response confirming call (.1);	0.50	125.00
09/24/2018	SP	Review and analyze multiple email exchanges between James M. Jimmerson, Esq. and Langberg, and Office conferences with James M. Jimmerson, Esq. regarding same (.7);	0.70	175.00
09/25/2018	SP	Office conference with James J. Jimmerson, Esq. regarding exchanges between James M. Jimmerson, Esq. and Langberg, current status (.3); Review James J. Jimmerson, Esq. email to James M. Jimmerson, Esq. (.1); Review James J. Jimmerson, Esq. email to clients (.1); Review and analyze video of Mitch Langberg and email from Elizabeth Ham (.1); Email to Elizabeth Ham regarding same and distribute (.1);	0.70	175.00
10/01/2018	SP	Review and analyze Opposition and Countermotion to Motion regarding discovery (.5);	0.50	125.00
10/02/2018	SP	Review and analyze Notice of Voluntary Disclosure filed in the Supreme Court regarding continuing to sit (.1); Review and analyze James J. Jimmerson, Esq. email to clients regarding same (.1);	0.20	50.00
10/08/2018	SP	Office conference with James M. Jimmerson, Esq. regarding Reply Brief (.1);	0.10	25.00
10/12/2018	SP	Review and analyze draft Reply (.3); Office conference with James M. Jimmerson, Esq. regarding same (.2); Email to Elizabeth Ham (.1); Office conference with James M. Jimmerson, Esq. and call to Executive Home Builders regarding status (.2); Review email from Elizabeth Ham with approval, Office conference with James M. Jimmerson, Esq. and process same (.3);	1.10	275.00
10/17/2018	SP	Download, review and analyze Order Denying Writ (.1); Office conference with James J. Jimmerson, Esq. regarding same (.1); Draft Supplement per James J. Jimmerson, Esq. (.3);	0.50	125.00
10/18/2018	SP	Download file-stamped Supplement and process courtesy copies of all filings to Discovery Commissioner (.2); Review and analyze supplement filed by opposing counsel (.2); Work on putting together documents and binder for hearing (1.2); Office conference with James M. Jimmerson, Esq. regarding same and regarding outline (.3);	1.90	475.00
10/19/2018	SP	Office conference with James J. Jimmerson, Esq. regarding Reply filed by opposing side (.2); Review and analyze outline (.2); Assist in hearing preparation and office conference with James M. Jimmerson, Esq. (.2); Office conference with James J. Jimmerson, Esq. regarding hearing results (.2);	0.80	200.00
		SHAHANA POLSELLI	7.00	1,750.00
09/21/2018	JMJ	Email to James J. Jimmerson, Esq. on response to Langberg (.1);	0.10	40.00
09/24/2018	JMJ	Emails with Langberg on motion to commence discovery (.6);	0.60	240.00

			HOURS	
09/25/2018	JMJ	Emails with Langberg on motion to commence discovery (.6);	0.60	240.00
10/11/2018	JMJ	Drafting reply in support of motion to commence discovery (2.5);	2.50	1,000.00
10/12/2018	JMJ	Legal research in support of motion to commence discovery (2); Drafting reply in support of motion to copel discovery (9.5);	11.50	4,600.00
10/17/2018	JMJ	Drafting outline for hearing on motion to commence discovery (.5);	0.50	200.00
10/18/2018	JMJ	Drafting outline for hearing on motion to commence discovery (.5);	0.50	200.00
10/19/2018	JMJ	Drafting outline for hearing on motion to commence discovery (2); Appearance at hearing on the same (1); Legal research on opposing counsel's misrepresentation (.8);	3.80	1,520.00
		JAMES M JIMMERSON	20.10	8,040.00
		FOR CURRENT SERVICES RENDERED	32.30	12,884.00
10/20/2018	JJJ	Courtesy Discount per James J. Jimmerson, Esq.		-2,576.80
		TOTAL COURTESY DISCOUNTS FOR THIS PERIOD		-2,576.80
		1.5% ADMINISTRATIVE CHARGE (PHONE CHARGES, POSTAGE, ETC.)		188.80

09/26/2018	COPY/PRINTING: 6 PAGE(S) @ .20	1.20
10/12/2018	COPY/PRINTING: 82 PAGE(S) @ .20	16.40
10/17/2018	COPY/PRINTING: 59 PAGE(S) @ .20	11.80
10/19/2018	COPY/PRINTING: 15 PAGE(S) @ .20	3.00
	TOTAL EXPENSES	32.40

10/12/2018	Electronic Filing for Reply in Support of Motion to Compel Discovery.	3.50
10/17/2018	Electronic Filing for Supplemental Exhibit	3.50
	TOTAL ADVANCES	7.00
	TOTAL CURRENT WORK	10,535.40
	PREVIOUS BALANCE	$32,338.24
	BALANCE DUE	$42,873.64
	CLOSING BALANCE	$42,873.64

THE JIMMERSON LAW FIRM, PC
415 SOUTH SIXTH STREET, SUITE 100
LAS VEGAS, NEVADA 89101
TELEPHONE:(702) 388-7171 - TAX I.D.# 8
FAX: (702) 387-1167

For your convenience, you may pay by AMEX, VISA & MC.
Account#: Exp:
Amount: add 3% convenience fee Signature:

11/15/2018
ACCOUNT NO: 6186-10M
STATEMENT NO: 665438

Fore Stars, Ltd., 180 Land Co., Seventy Acres, LLC
lschencke@ehbcompanies.com
EHB Companies, LLC
1215 S. Fort Apache Rd., Suite 120
Las Vegas NV 89117

c/o Fore Stars, Ltd., 180 Land Co., Seventy Acres, LLC

adv. Daniel Omerza

INTERIM STATEMENT

			HOURS	
10/23/2018	JJJ	Download, review and analyze Appellant's Opening Brief (1.4);	1.40	833.00
10/25/2018	JJJ	Office conference with Shahana Polselli regarding brief (.2);	0.20	119.00
11/13/2018	JJJ	Review and analyze Notice issued in lieu of remittitur (.1); Email exchange with James M. Jimmerson, Esq. regarding same (.1);	0.20	119.00
11/15/2018	JJJ	Office conference with Shahana Polselli regarding Notice in Lieu of Remittiur and status of order (.1);	0.10	59.50
		J.J. JIMMERSON	1.90	1,130.50
10/23/2018	SP	Download, review and analyze Appellant's Opening Brief (1.4); Office conference with James M. Jimmerson, Esq. regarding same and review caselaw (.3); Email to Elizabeth Ham and Todd Davis regarding same (.1);	1.80	450.00
10/25/2018	SP	Office conference with James J. Jimmerson, Esq. regarding brief (.2);	0.20	50.00
10/29/2018	SP	Review and respond to email from court reporter regarding cite (.1);	0.10	25.00
11/13/2018	SP	Review and analyze Notice issued in lieu of remittitur (.1); Email exchange with James M. Jimmerson, Esq. regarding same (.1);	0.20	50.00
11/15/2018	SP	Office conference with James J. Jimmerson, Esq. regarding Notice in Lieu of Remittiur and status of order (.1);	0.10	25.00
		SHAHANA POLSELLI	2.40	600.00
10/23/2018	JMJ	Legal research (50-state survey) on Anti-SLAPP stays and appeals (4.5); Discussion with S. Polselli on the same (.5);	5.00	2,000.00
10/24/2018	JMJ	Review/analyze opening brief before Supreme Court on Anti-SLAPP (1.5);	1.50	600.00
9/2018	JMJ	Drafting discovery commissioner's report and recommendations (3.5); Emails to opposing counsel on the same (.2);	3.70	1,480.00
10/30/2018	JMJ	Emails to opposing counsel on changes to report and recommendations (.4);	0.40	160.00
10/31/2018	JMJ	Emails to opposing counsel on changes to report and recommendations (.2);		

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

11/15/2018
ACCOUNT NO: 6186-10M
STATEMENT NO: 665438

adv. Daniel Omerza

			HOURS	
		Revising report and recommendations (1);	1.20	480.00
11/06/2018	JMJ	Email with opposing counsel on report and recommendations (.1) ;	0.10	40.00
		JAMES M JIMMERSON	11.90	4,760.00
		FOR CURRENT SERVICES RENDERED	16.20	6,490.50
		1.5% ADMINISTRATIVE CHARGE (PHONE CHARGES, POSTAGE, ETC.)		97.36
10/21/2018		Hand Delivery		
		Item: Motion, Reply, Supp on 10/18/18		5.00
10/23/2018		COPY/PRINTING: 885 PAGE(S) @ .20		177.00
10/23/2018		COPY/PRINTING: 582 PAGE(S) @ .20		116.40
10/24/2018		COPY/PRINTING: 87 PAGE(S) @ .20		17.40
10/25/2018		COPY/PRINTING: 125 PAGE(S) @ .20		25.00
10/26/2018		COPY/PRINTING: 4 PAGE(S) @ .20		0.80
10/30/2018		Hand Delivery		
		Item: Transcript to Regional Justice Center		5.00
1[illegible]/2018		COPY/PRINTING: 29 PAGE(S) @ .20		5.80
11/07/2018		COPY/PRINTING: 13 PAGE(S) @ .20		2.60
11/08/2018		COPY/PRINTING: 36 PAGE(S) @ .20		7.20
		TOTAL EXPENSES		362.20
10/30/2018		Transcript for 10/19/18		120.16
11/15/2018		Westlaw legal research charges, Usage Period: 10/21/2018-11/14/2018		345.36
		TOTAL ADVANCES		465.52
		TOTAL CURRENT WORK		7,415.58
		PREVIOUS BALANCE		$42,873.64
11/06/2018		Payment received for 09.20.18 Statement. Thank you.		
		Check # 1419		-8,230.54
		BALANCE DUE		$42,058.68
		CLOSING BALANCE		$42,058.68

THE JIMMERSON LAW FIRM, PC
415 SOUTH SIXTH STREET, SUITE 100
LAS VEGAS, NEVADA 89101
TELEPHONE:(702) 388-7171 - TAX I.D.# 8
FAX: (702) 387-1167

For your convenience, you may pay by AMEX, VISA & MC.
Account#: Exp:
Amount: add 3% convenience fee Signature:

12/20/2018
ACCOUNT NO: 6186-10M
STATEMENT NO: 665632

Fore Stars, Ltd., 180 Land Co., Seventy Acres, LLC
lschencke@ehbcompanies.com
EHB Companies, LLC
1215 S. Fort Apache Rd., Suite 120
Las Vegas NV 89117

c/o Fore Stars, Ltd., 180 Land Co., Seventy Acres, LLC

adv. Daniel Omerza

			HOURS	
11/26/2018	JJJ	Office conference with Shahana Polselli regarding Answering Brief and telephone conference with Elizabeth Ham regarding same (.2); Download, review and analyze same (1.8); Office conference with Shahana Polselli regarding revisions to same (.5); Email to client regarding same (.1);	2.60	1,547.00
11/28/2018	JJJ	Review revised Brief for spacing, correction and addition (.2); Office conference with Shahana Polselli regarding Brief and approve (.1);	0.30	178.50
		J.J. JIMMERSON	2.90	1,725.50
11/20/2018	SP	Review and respond to email from Jennifer Knighton regarding deadline (.1);	0.10	25.00
11/26/2018	SP	Telephone conference with Elizabeth Ham regarding Answering Brief (.1); Office conference with James J. Jimmerson, Esq. regarding same and during his Telephone conference with Elizabeth Ham (.2); Download, review and analyze same (.5); Office conference with James J. Jimmerson, Esq. regarding his revisions to same, revise with James J. Jimmerson, Esq., finalize and file (.5); Review James J. Jimmerson, Esq. email to client regarding same (.1);	1.40	350.00
11/27/2018	SP	Receipt of email from Supreme Court regarding rejection of document, and email to counsel regarding same (.1); Review formal notification of 5 days to correct brief (.1);	0.20	50.00
11/28/2018	SP	Review, analyze and correct issues with Answering Brief per the Supreme Court (.8); Email to Elizabeth Ham regarding same (.1); Review Elizabeth Ham email regarding same (.1); Revise and finalize Brief, add and correct and print for James J. Jimmerson, Esq. Approval (.2); Office conference with James J. Jimmerson, Esq. regarding same (.1); Finalize and file (.1);	1.40	350.00
11/29/2018	SP	Download and distribute notification of file stamped Brief (.1);	0.10	25.00
		SHAHANA POLSELLI	3.20	800.00
21/2018	JMJ	Emails with opposing counsel (.2);	0.20	80.00
12/05/2018	JMJ	Emails with opposing counsel (.2);	0.20	80.00
		JAMES M JIMMERSON	0.40	160.00

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

12/20/2018
ACCOUNT NO: 6186-10M
STATEMENT NO: 665632

adv. Daniel Omerza

		HOURS	
	FOR CURRENT SERVICES RENDERED	6.50	2,685.50
	1.5% ADMINISTRATIVE CHARGE (PHONE CHARGES, POSTAGE, ETC.)		40.28
11/21/2018	COPY/PRINTING: 7 PAGE(S) @ .20		1.40
11/21/2018	COPY/PRINTING: 15 PAGE(S) @ .20		3.00
11/26/2018	COPY/PRINTING: 52 PAGE(S) @ .20		10.40
11/28/2018	COPY/PRINTING: 66 PAGE(S) @ .20		13.20
11/30/2018	COPY/PRINTING: 39 PAGE(S) @ .20		7.80
12/06/2018	COPY/PRINTING: 171 PAGE(S) @ .20		34.20
	TOTAL EXPENSES		70.00
	TOTAL CURRENT WORK		2,795.78
	PREVIOUS BALANCE		$42,058.68
	BALANCE DUE		$44,854.46
	CLOSING BALANCE		$44,854.46

COMPANY LM CROWN JOB #
ACCT # 6030 SUB ACCT
COST CODE TYPE
APPROVED
12/31/18

Finance charge assessed after 30 days.
Make check payable to THE JIMMERSON LAW FIRM, P.C.
STATEMENT REFLECTS CHARGES & PAYMTS REC'D THRU 20TH OF MONTH
Approved by Attorney:

Tiffany Swanis, Esq.
12249 Montura Rosa Place
Las Vegas, Nevada 89138
(702) 228-5090 / (702) 349-5091

April 1, 2020

Elizabeth Ham, Esq.
EHB Companies, LLC
1215 South Fort Apache, Suite 120
Las Vegas, Nevada 89117

Re: March 2020 Time Entries
Fore Stars adv. Omerza *et al.*
(Remand of NVSC Appeal Case No. 76273 / Dist. Ct. Case No. A-18-771224-C)

Dear Elizabeth:

The following are my time entries for the above-referenced matter for March 2020:

Date	Client/Matter	Description of Work	Time
Mar 13	Fore Stars/ Omerza *et al.*	Develop strategy with EGH regarding and motion for discovery; review and analyze NVSC orders regarding same.	.5
Mar 16	Fore Stars/ Omerza *et al.*	Outline and begin preparing motion for discovery to oppose anti-SLAPP motion on order shortening time.	2.1
Mar 17	Fore Stars/ Omerza *et al.*	Continue preparing motion for discovery, including facts and argument sections; review and analyze relevant documents for same.	1.3
Mar 18	Fore Stars/ Omerza *et al.*	Legal research regarding discovery to oppose anti-SLAPP motions; review and analyze relevant case law as well as *Coker* and *Rosen* – new cases relied on by appellate court in NVSC order; prepare motion for discovery on order shortening time.	3.9
Mar 19	Fore Stars/ Omerza *et al.*	Continue preparing motion for discovery; addt'l legal research for same; incorporate cases and statutes into same; prepare supporting affidavit, notice of motion, and proposed deposition notices.	4.2

Elizabeth Ham, Esq.
April 1, 2020
Re: March 2020 Time Entries

Mar 20	Fore Stars/ Omerza *et al.*	Prepare proposed requests for production of documents revise and edit motion, supporting affidavit, and proposed discovery; determine exhibits.	1.8
Mar 23	Fore Stars/ Omerza *et al.*	Finalize motion for discovery on order shortening time, notice of motion, supporting affidavit, and proposed discovery.	.5

Total Hours:	14.3
Invoice Total ($85/Hr):	$1,215.50

Please let me know if you have any questions or concerns. Thank you.

Very Truly Yours,

/s/ Tiffany Swanis

Tiffany Swanis, Esq.

COMPANY Fore Stars JOB #
[illegible] U0110 SUB ACCT
[illegible] CODE [illegible]
APPROVED
4/8/20

Tiffany Swanis, Esq.
12249 Montura Rosa Place
Las Vegas, Nevada 89138
(702) 228-5090 / (702) 349-5091

COMPANY Forestars JOB #
ACCT # 6030 SUB ACCT
COST CODE TYPE
APPROVED

OK
CGH

LS 5/10/18

May 4, 2018

Elizabeth Ham, Esq.
EHB Companies, LLC
1215 South Fort Apache, Suite 120
Las Vegas, Nevada 89117

Re: April 2018 Time Entries
Fore Stars adv. Omerza *et al.*

Dear Elizabeth:

The following are my time entries for the above-referenced matter for April 2018:

Date	Client/Matter	Description of Work	Time
Apr 25	Fore Stars/ Omerza *et al.*	Develop strategy with EGH regarding oppositions to motions to dismiss complaint; begin review and analyze relevant documents, including complaint, and exhibits thereto, as well as Defendants' motions and exhibits thereto, memoranda regarding anti-SLAPP motions, and related case law.	4.1
Apr 26	Fore Stars/ Omerza *et al.*	Outline and begin preparing opposition to Defendants' anti-SLAPP motion; legal research regarding same; review and analyze cases, statutes, and rules regarding same.	6.3
Apr 27	Fore Stars/ Omerza *et al.*	Prepare opposition to Defendants' anti-SLAPP motion; incorporate case law into argument section of same; Begin review and analyze hearing transcripts, videos, and other public records and evidentiary support for allegations in the complaint.	5.2

Apr 28	Fore Stars/ Omerza *et al.*	Additional legal research regarding anti-SLAPP actions, free speech, and "good faith communications" under NRS 41.635 *et seq.*; legal research regarding absolute and qualified privileges; review and analyze cases; prepare arguments in opposition regarding same.	3.1
Apr 29	Fore Stars/ Omerza *et al.*	Continue preparing opposition to Defendants' anti-SLAPP motion; revise and edit same; legal research regarding dismissal under NRCP 12(b)(5) and causes of actions in the complaint; review and analyze cases regarding same; develop opposition strategy.	3.6
Apr 30	Fore Stars/ Omerza *et al.*	Outline and begin preparing opposition to motion to dismiss pursuant to NRCP 12(b)(5).	4.4

Total Hours:	26.7
Invoice Total ($85/Hr):	$2,269.50

Please let me know if you have any questions or concerns. Thank you.

Very Truly Yours,

/s/ Tiffany Swanis

Tiffany Swanis, Esq.

Tiffany Swanis, Esq.
12249 Montura Rosa Place
Las Vegas, Nevada 89138
(702) 228-5090 / (702) 349-5091

June 6, 2018

Elizabeth Ham, Esq.
EHB Companies, LLC
1215 South Fort Apache, Suite 120
Las Vegas, Nevada 89117

Re: May 2018 Time Entries
Fore Stars adv. Omerza *et al.*

Dear Elizabeth:

The following are my time entries for the above-referenced matter for May 2018:

Date	Client/Matter	Description of Work	Time
May 1	Fore Stars/ Omerza *et al.*	Prepare, revise and edit opposition to Defendants' anti-SLAPP motion; additional legal research regarding dismissal under NRCP 12(b)(5) and causes of actions in the complaint; review and analyze cases regarding same; prepare opposition to motion to dismiss pursuant to NRCP 12(b)(5).	4.3
May 2	Fore Stars/ Omerza *et al.*	Revise and edit opposition briefs; shepardize citations; prepare email memorandum to EGH regarding oppositions as well as	4.1
		Total Hours:	8.4
		Invoice Total ($85/Hr):	$714.00

Please let me know if you have any questions or concerns. Thank you.

Very Truly Yours,

/s/ Tiffany Swanis

Tiffany Swanis, Esq.

COMPANY Forestars JOB # _____
ACCT # 0030 SUB ACCT _____
COST CODE _____ TYPE _____
APPROVED _____

6/27/18

Tiffany Swanis, Esq.
12249 Montura Rosa Place
Las Vegas, Nevada 89138
(702) 228-5090 / (702) 349-5091

September 10, 2018

Elizabeth Ham, Esq.
EHB Companies, LLC
1215 South Fort Apache, Suite 120
Las Vegas, Nevada 89117

Re: August 2018 Time Entries
Fore Stars adv. Omerza *et al.*

Dear Elizabeth:

The following are my time entries for the above-referenced matter for August 2018:

Date	Client/Matter	Description of Work	Time
Aug 29	Fore Stars/ Omerza *et al.*	Review and analyze relevant documents for motion to compel/open discovery, including district court findings of fact, various email communications, notice of appeal, and case appeal statement; develop strategy regarding motion; outline same.	2.8
Aug 30	Fore Stars/ Omerza *et al.*	Begin preparing motion to compel/open discovery; review and analyze additional relevant documents, including Defendants' writ petition.	3.9
Aug 31	Fore Stars/ Omerza *et al.*	Continue preparing motion to compel/open discovery; legal research regarding interlocutory appeals under NRS 41.635 *et seq.*, stay pending resolution of such appeals as well as writ petitions, and discovery disputes; review and analyze statues, rules, and case law regarding same into argument section of motion.	4.7
		Total Hours:	11.4
		Invoice Total ($85/Hr):	$969.00

POSTED
BD 10.23.18

Tiffany Swanis, Esq.
12249 Montura Rosa Place
Las Vegas, Nevada 89138
(702) 228-5090 / (702) 349-5091

October 10, 2018

Elizabeth Ham, Esq.
EHB Companies, LLC
1215 South Fort Apache, Suite 120
Las Vegas, Nevada 89117

Re: September 2018 Time Entries
Fore Stars adv. Omerza *et al.*

Dear Elizabeth:

The following are my time entries for the above-referenced matter for September 2018:

Date	Client/Matter	Description of Work	Time
Sept 4	Fore Stars/ Omerza *et al.*	Prepare motion to compel/open discovery, including argument regarding interlocutory appeal pursuant to NRS 41 *et. seq.;* prepare supporting affidavit; legal research regarding *Hoenycutt* procedure and stays pending appeals and writ petitions; shephardize and cite check draft of motion; revise and edit same.	4.6
Sept 5	Fore Stars/ Omerza *et al.*	Revise, edit and finalize motion to compel/open discovery.	.5
		Total Hours:	5.1
		Invoice Total ($85/Hr):	$433.50

Please let me know if you have any questions or concerns. Thank you.

Very Truly Yours,

/s/ Tiffany Swanis

Tiffany Swanis, Esq.

Tiffany Swanis, Esq.
12249 Montura Rosa Place
Las Vegas, Nevada 89138
(702) 228-5090 / (702) 349-5091

December 4, 2018
Forestars
Elizabeth Ham, Esq.
EHB Companies, LLC
1215 South Fort Apache, Suite 120
Las Vegas, Nevada 89117

Re: November 2018 Time Entries
Fore Stars adv. Omerza *et al.* (NVSC Appeal Case No. 76273)

Dear Elizabeth:

The following are my time entries for the above-referenced matter for November 2018:

Date	Client/Matter	Description of Work	Time
Nov 1	Fore Stars/ Omerza *et al.*	Prepare respondents' answering brief, including statement of facts section.	3.6
Nov 2	Fore Stars/ Omerza *et al.*	Continue preparing answering brief; review relevant portions of appellants' appendix for same.	4.7
Nov 4	Fore Stars/ Omerza *et al.*	Continue preparing answering brief, including fact sections regarding complaint, motions to dismiss, and district court order denying same.	4.2
Nov 5	Fore Stars/ Omerza *et al.*	Legal research regarding standard of review and legislative amendments to NRS 41.635 *et seq.* review and analyze cases and statutes regarding same; determine NVSC standard of review.	3.4
Nov 6	Fore Stars/ Omerza *et al.*	Continue preparing answering brief, including standard of review section; incorporate cases, statutes, and 2013-2015 legislative amendments into same to rebut appellants' de novo review arguments.	4.9
Nov 7	Fore Stars/ Omerza *et al.*	Review appellants' appendix and supplemental authorities and evidence filed by both parties; continue preparing answering brief, including	5.8

		statement of facts.	
Nov 8	Fore Stars/ Omerza *et al.*	Continue preparing answering brief, including arguments regarding "good faith communications" under Nevada's anti-SLAPP statutes.	3.9
Nov 9	Fore Stars/ Omerza *et al.*	Review record on appeal and evidence regarding falsity of appellants' purported communications under NRS 41.635 *et seq.*; prepare answering brief arguments regarding parties' respective burdens of proof; rebut appellants' arguments regarding same; review hearing transcripts.	5.1
Nov 10	Fore Stars/ Omerza *et al.*	Legal research regarding applicability of Nevada's anti-SLAPP statutes to defamation cases vs. intentional tort claims; review cases regarding same and incorporate into argument section of brief; legal research regarding the parties' burdens of proof under NRS 41.660.	4.8
Nov 12	Fore Stars/ Omerza *et al.*	Continue preparing answering brief, including sections regarding appellants' tortious conduct, Nevada's anti-SLAPP statutes, and the parties' respective burdens of proof; review and analyze cases regarding same.	6.2
Nov 13	Fore Stars/ Omerza *et al.*	Distinguish cases cited by appellants and rebut their arguments regarding various standards in light of 2013-2015 legislative amendments to Nevada's anti-SLAPP statutes; prepare arguments regarding plaintiffs' burden under Nevada and California law, discovery under NRS 41.660, and appellants' failure to demonstrate truthfulness of purported communications.	5.1
Nov 14	Fore Stars/ Omerza *et al.*	Additional legal research; review and analyze cases; incorporate same into answering brief; rebut appellants' arguments regarding plaintiffs' burden under Nevada and California law and discovery pursuant to NRS 41.660.	5.3
Nov 15	Fore Stars/ Omerza *et al.*	Continue preparing answering brief, including arguments regarding absolute litigation privilege and qualified privilege; prepare statement of issues and summary of arguments.	7.1
Nov 16	Fore Stars/ Omerza *et al.*	Prepare answering brief, including NRAP 26.1 disclosure, table of contents, table of authorities, conclusion, certificates of compliance and service;	6.9

		begin revise and edit brief; cite check and shephardize cases, statutes, and rules for relevant subsequent and/or negative history.	
Nov 17	Fore Stars/ Omerza *et al.*	Additional legal research; incorporate same into answering brief; continue revise and edit same, including tables of contents and authorities; revise edit and format footnotes.	5.6
Nov 18	Fore Stars/ Omerza *et al.*	Revise, edit and finalize answering brief, including statement of facts and argument sections.	3.7
Nov 19	Fore Stars/ Omerza *et al.*	Prepare final edits to answering brief; prepare email memorandum to EGH regarding same.	1.2
Nov 21	Fore Stars/ Omerza *et al.*	Develop strategy with EGH regarding (and evidence to rebut them.	n/c
Nov 23	Fore Stars/ Omerza *et al.*	Review and analyze EGH redline draft of answering brief; review appellants' appendix; insert citations to record into brief.	1.4
Nov 25	Fore Stars/ Omerza *et al.*	Continue inserting citations to record into brief; review record on appeal for same; revise and edit answering brief, including tables of contents and authorities.	2.2
		Total Hours:	85.1
		Invoice Total ($85/Hr):	$7,233.50

Please let me know if you have any questions or concerns. Thank you.

Very Truly Yours,

/s/ Tiffany Swanis

Tiffany Swanis, Esq.

COMPANY Forestars JOB #

ACCT # 10030

12/12/18

Nevada Licensed
Kristina Wildeveld, Esq.
Lisa A. Rasmussen, Esq.
Dayvid J. Figler, Esq.
Caitlyn McAmis, Esq.
Diamond S. Thomas, Esq.
Melissa Barry, Esq.

THE LAW OFFICES OF
KRISTINA WILDEVELD & ASSOCIATES
Criminal Defense, Complex Criminal and Civil Litigation, Lobbying, Appeals, Pardons, Post-Conviction, Juvenile

California Licensed
Kristina Wildeveld, Esq.
Lisa A. Rasmussen, Esq.
Caitlyn McAmis, Esq.

Arizona Licensed
Melissa Barry, Esq.

September 25, 2020

Elizabeth Ham
Fore Stars

Invoice Number: 195
Invoice Period: 04-25-2020 - 09-25-2020

Payment Terms: Upon Receipt

RE: Fore Stars vs Omerza

Time Details

Date	Professional	Description	Hours	Rate	Amount
04-25-2020	Lisa Rasmussen	Draft and file notice of appearance of counsel.	0.30	500.00	150.00
04-26-2020	Lisa Rasmussen	Review complaint, NSC order, prior filings in the case (Slapp Motions to dismiss).	1.80	500.00	900.00
04-27-2020	Lisa Rasmussen	T/C with Elizabeth discuss issues in case,.	0.50	500.00	250.00
04-29-2020	Lisa Rasmussen	Get Blue Jeans link for hearing; attend video hearing.	1.00	500.00	500.00
05-06-2020	Lisa Rasmussen	Draft Brief in Support of Discovery.	2.80	500.00	1,400.00
05-06-2020	Lisa Rasmussen	Research on Nevada cases re; Slapp Discovery Wingart case.	1.00	500.00	500.00
05-06-2020	Lisa Rasmussen	Review Transcript 5/14/18.	1.00	500.00	500.00
05-06-2020	Diamond Thomas	Legal research of Anti-Slapp discovery.	1.50	350.00	525.00
05-14-2020	Lisa Rasmussen	Email from Elizabeth.	0.10	500.00	50.00

We appreciate your business and your confidence in our firm.

Nevada Location
550 East Charleston Blvd, Suite A
Las Vegas, Nevada 89104
(702) 222-0007 | fax: (702) 222-0001

Se Habla Español

California Location
8121 West Sunset Blvd, Suite 103
Los Angeles, California 90069
www.veldlaw.com

Date	Professional	Description	Hours	Rate	Amount
05-29-2020	Lisa Rasmussen	Review minute order from court, court's order on limited discovery.	0.10	500.00	50.00
05-29-2020	Lisa Rasmussen	Review defendant's request for clarification.	0.20	500.00	100.00
05-29-2020	Lisa Rasmussen	Email to Elizabeth.	0.10	500.00	50.00
05-29-2020	Lisa Rasmussen	Review Order T/C with Elizabeth Ham.	0.30	500.00	150.00
06-04-2020	Lisa Rasmussen	Email correspondence to and from court clerk/ Langberg regarding "request for clarification" told clerk that I was filing a response and he said an order was forthcoming.	0.10	500.00	50.00
06-07-2020	Lisa Rasmussen	Draft response to Defendant's "Request for Clarification" of Court's Order.	1.50	500.00	750.00
06-08-2020	Lisa Rasmussen	Continue drafting response to Defendant's Request for clarification; court entered order before this response could be filed.	0.50	500.00	250.00
06-08-2020	Lisa Rasmussen	Review order from court on request for clarification; emails to and from Elizabeth regarding the same.	0.20	500.00	100.00
06-08-2020	Lisa Rasmussen	Email correspondence to and from Elizabeth regarding response to request for clarification.	0.20	500.00	100.00
06-18-2020	Lisa Rasmussen	Email correspondence to and from Elizabeth about getting discovery requests out, what to include.	0.10	500.00	50.00
06-19-2020	Lisa Rasmussen	Review prior motion for discovery, exhibits to complaint, filings regarding denial of motion to dismiss to determine what is "in our papers,," for the discovery requests.	1.20	500.00	600.00
06-19-2020	Lisa Rasmussen	Email correspondence to and from Elizabeth regarding proposed discovery requests for RFPs.	0.10	500.00	50.00
06-24-2020	Lisa Rasmussen	Draft requests for Production for Omerza, Caria, Bresee.	1.80	500.00	900.00
06-25-2020	Lisa Rasmussen	Email correspondence to and from Mitch regarding deposition dates, issues he has with our RFPs.	0.20	500.00	100.00
06-26-2020	Lisa Rasmussen	Telephone call with Mitch Langberg, meet and confer regarding RFPs.	0.50	500.00	250.00

Date	Professional	Description	Hours	Rate	Amount
06-30-2020	Lisa Rasmussen	Email correspondence to and from Mitch regarding deposition scheduling, deposition format.	0.20	500.00	100.00
06-30-2020	Lisa Rasmussen	Revise RFP's to Omerza, Bresee, Caria per attempts to resolve, meet and confer with Mitch Langberg.	0.70	500.00	350.00
07-02-2020	Lisa Rasmussen	Review Defendants' Motion for Protective order.	0.20	500.00	100.00
07-02-2020	Lisa Rasmussen	Prepare tentative deposition notices, discuss with Mitch via phone given his motion.	0.40	500.00	200.00
07-06-2020	Lisa Rasmussen	Emails with Mitch about moving deposition dates or waiting until after the hearing.	0.10	500.00	50.00
07-07-2020	Lisa Rasmussen	Email correspondence to and from Elizabeth regarding deposition dates, response to mtn for protective order.	0.10	500.00	50.00
07-07-2020	Lisa Rasmussen	Draft response to Motion for Protctive order.	2.10	500.00	1,050.00
07-08-2020	Lisa Rasmussen	Review Defendants' Reply to Mtn for Protective Order; follow up emails with Mitch about deposition scheduling.	0.30	500.00	150.00
07-10-2020	Lisa Rasmussen	Email to Mitch about deposition dates, rescheduling.	0.10	500.00	50.00
07-13-2020	Lisa Rasmussen	Attend hearing on Motion for Protective order.	1.70	500.00	850.00
07-13-2020	Lisa Rasmussen	Emails to and from Elizabeth regarding hearing, court's ruling and other issues.	0.50	500.00	250.00
07-16-2020	Lisa Rasmussen	Email correspondence to and from Elizabeth, review documents she sent.	0.30	500.00	150.00
07-17-2020	Lisa Rasmussen	Review court minute order.	0.10	500.00	50.00
07-20-2020	Lisa Rasmussen	Email correspondence to and from Elizabeth regarding hearing on 29th, ask court clerk for clarification.	0.10	500.00	50.00
07-21-2020	Lisa Rasmussen	Review minute order on court's ruling; emails to and from Elizabeth regarding same.	0.20	500.00	100.00
07-22-2020	Lisa	Review draft order from Mitch; revise; numerous	0.50	500.00	250.00

Date	Professional	Description	Hours	Rate	Amount
	Rasmussen	emails back and forth about my revisions.			
07-23-2020	Lisa Rasmussen	Emails to and from Elizabeth and Mitch about proposed revisions to draft order.	0.20	500.00	100.00
07-27-2020	Lisa Rasmussen	Emails to and from Mitch on status of draft order and revisions.	0.20	500.00	100.00
07-28-2020	Lisa Rasmussen	7 Emails to and from Mitch regarding language of proposed order; emails with clerk regarding hearing tomorrow.	0.30	500.00	150.00
07-29-2020	Lisa Rasmussen	Post hearing email to Elizabeth; review additional revisions made by Mitch to proposed order, make additional changes, emails regarding same.	0.30	500.00	150.00
07-29-2020	Lisa Rasmussen	Attend hearing via video.	1.00	500.00	500.00
07-29-2020	Lisa Rasmussen	Telephone call with Mitch.	0.20	500.00	100.00
07-30-2020	Lisa Rasmussen	Review final revisions and agreements with Mitch on proposed order; emails regarding same.	0.20	500.00	100.00
08-04-2020	Lisa Rasmussen	Review order entered by court.	0.10	500.00	50.00
08-06-2020	Lisa Rasmussen	Prepare Amended RFP's.	0.60	500.00	300.00
08-10-2020	Lisa Rasmussen	emails with Langberg Re: discovery resp. due date.	0.20	500.00	100.00
08-17-2020	Lisa Rasmussen	Email correspondence to and from Mitch regarding deposition dates.	0.20	500.00	100.00
08-20-2020	Lisa Rasmussen	Email correspondence to and from Mitch regarding deposition dates (x6); confirm court reporter.	0.30	500.00	150.00
08-20-2020	Lisa Rasmussen	Emails from Mitch.	0.20	500.00	100.00
08-21-2020	Lisa Rasmussen	Email to ‹	0.30	500.00	150.00
08-21-2020	Lisa Rasmussen	Telephone call with Mitch regarding question about docs to use for deposition.	0.30	500.00	150.00
08-21-2020	Lisa	Review RFP responses from Caria, Bresee and	0.40	500.00	200.00

Date	Professional	Description	Hours	Rate	Amount
	Rasmussen	Omerza.			
08-22-2020	Lisa Rasmussen	Email correspondence to and from Mitch to confirm depo start times and order.	0.10	500.00	50.00
08-24-2020	Lisa Rasmussen	Prepare depo notices coordinate court reporter.	0.40	500.00	200.00
08-25-2020	Lisa Rasmussen	Emails with Mitch regarding deposition exhibits; T/C with Elizabeth regarding depos; review emails from Elizabeth/staff regarding docs related to the deponents' purchases of the property to prep for depositions.	1.00	500.00	500.00
08-26-2020	Lisa Rasmussen	Prep for depositions.	1.50	500.00	750.00
08-26-2020	Lisa Rasmussen	Depositions of Omerza, Bresee & Caria.	6.30	500.00	3,150.00
08-26-2020	Lisa Rasmussen	T/C with Yohan.	0.40	500.00	200.00
08-26-2020	Lisa Rasmussen	Prepare deposition exhibits; email to court reporter and to Mitch Langberg in advance of depositions.	0.80	500.00	400.00
08-28-2020	Lisa Rasmussen	T/C with Elizabeth and email to Langberg.	0.50	500.00	250.00
08-31-2020	Lisa Rasmussen	Emails to and from Langberg follow up on Caria's document during depo.	0.20	500.00	100.00
09-08-2020	Lisa Rasmussen	Email correspondence to and from Elizabeth about transcripts, we don't have them yet.	0.10	500.00	50.00
09-14-2020	Lisa Rasmussen	Emails to and from Mitch about his witnesses not reviewing them, confusion on whether he waived that, reach agreement that they can review to see if they have changes, if so we will figure out originals; send transcripts to Elizabeth.	0.30	500.00	150.00
09-18-2020	Lisa Rasmussen	Email from Mitch, no changes to depositions.	0.10	500.00	50.00
			Total		20,475.00

Time Summary

Professional	Hours	Amount
Diamond Thomas	1.50	525.00
Lisa Rasmussen	39.90	19,950.00
Total		20,475.00

Expenses

Expense	Description	Amount
E112 - Court fees	E112 - Court fees - Filing fees for April 2020	3.50
E112 - Court fees	E112 - Court fees May 2020 Efiling fees.	3.50
E106 - Online research	E106 - Online research - Pacer charges for 2nd Qtr 2020.	4.20
E101 - Copying	E101 - Copying - For the month of June 2020.	11.50
E112 - Court fees	E112 - Court fees July 2020 Efiling fees.	3.50
None	Photocopies for depositions.	48.00
E106 - Online research	Lexis Nexis Research April 2020 through September 24, 2020.	51.10
None	Deposition transcripts for Omerza, Caria and Bresee	1,552.40
	Total Expenses	1,677.70
	Total for this Invoice	22,152.70

Client Statement of Account

As of 10-29-2020

Matter		Balance Due
Fore Stars vs Omerza		15,016.70
	Total Amount to Pay	**15,016.70**

Fore Stars vs Omerza

Transactions

Date	Transaction	Applied	Invoice	Amount
05-15-2020	Payment Received			(15,000.00)
09-25-2020	Invoice 195			22,152.70
10-28-2020	Invoice 207			7,864.00
			Balance	**15,016.70**

Open Invoices and Credits

Date	Transaction	Amount	Applied	Balance
05-15-2020	Payment	(15,000.00)		(15,000.00)
09-25-2020	Invoice 195	22,152.70		22,152.70
10-28-2020	Invoice 207	7,864.00		7,864.00
			Balance	**15,016.70**

Receipt

Invoice Number	195
Matter	Fore Stars vs Omerza
Professional	Lisa Rasmussen
Expense Code	E106 - Online research
Date	2020-09-25
Description	Lexis Nexis Research April 2020 through September 24, 2020.
Amount	51.10

Account Number	Date Range	Report Date	Currency
1001PGEHF LAW OFFICE OF LISA RASMUSSEN PC	04/07/2020 - 09/24/2020	09/25/2020	UNITED STATES DOLLAR

Billing data reports include estimated taxes. The official invoice includes taxes based on actual usage for usage-based services or/and default location for non-usage-based services at invoice period end.

SUMMARY BY CLIENT

	CONTRACT USE			TRANSACTIONAL USE					
CLIENT	GROSS AMOUNT	ADJUSTMENT	NET AMOUNT	TRANSACTIONAL GROSS AMOUNT	TRANSACTIONAL ADJUSTMENT	TRANSACTIONAL NET AMOUNT	TOTAL BEFORE TAX	TAX*	TOTAL CHARGES
FORE STARS	$252.00	($200.90)	$51.10	$0.00	$0.00	$0.00	$51.10	$0.00	$51.10
Total:	**$252.00**	**($200.90)**	**$51.10**	**$0.00**	**$0.00**	**$0.00**	**$51.10**	**$0.00**	**$51.10**

EXCHANGE RATE TO United States dollar

Date	Rate	From Currency	Base Currency
SEP-25-2020	1	UNITED STATES DOLLAR	UNITED STATES DOLLAR

Receipt

Invoice Number	195
Matter	Fore Stars vs Omerza
Professional	Lisa Rasmussen
Expense Code	
Date	2020-09-25
Description	Deposition transcripts for Omerza, Caria and Bresee
Amount	1552.40

INVOICE

Please Remit to:
Manning, Hall & Salisbury, LLC
617 S. Eighth St., Suite A
Las Vegas, NV 89101
(702)382-2898

Invoice No.	Invoice Date	Job No.
2001109	9/14/2020	156471
Job Date	**Case No.**	
8/26/2020		
Case Name		
Fore Stars, Ltd. vs. Omerza		
Payment Terms		
Net 30		

Lisa Rasmussen, Esq.
Law Offices of Kristina Wildeveld & Associates
550 E. Charleston Blvd.
Las Vegas, NV 89104

Original and one copy of the transcript(s) of:

Daniel Omerza		
Zoom Deposition Transcript	114.00 Pages	570.00
Exhibits	93.00 Pages	55.80
Darren Bresee		
Zoom Deposition Transcript	56.00 Pages	280.00
Exhibits	93.00 Pages	55.80
Steve Caria		
Zoom Deposition Transcript	69.00 Pages	345.00
Exhibits	93.00 Pages	55.80
(Copies via PDF Emailed)	1.00	0.00
Full Day Attendance Fee	1.00	180.00
Delivery original	1.00	10.00
TOTAL DUE >>>		**$1,552.40**
(-) Payments/Credits:		0.00
(+) Finance Charges/Debits:		0.00
(=) New Balance:		**1,552.40**

Tax ID: 88-0365408

Nevada Licensed
Kristina Wildeveld, Esq.
Lisa A. Rasmussen, Esq.
Dayvid J. Figler, Esq.
Caitlyn McAmis, Esq.
Diamond S. Thomas, Esq.
Melissa Barry, Esq.

THE LAW OFFICES OF
KRISTINA WILDEVELD & ASSOCIATES
Criminal Defense, Complex Criminal and Civil Litigation, Lobbying, Appeals, Pardons, Post-Conviction, Juvenile

California Licensed
Kristina Wildeveld, Esq.
Lisa A. Rasmussen, Esq.
Caitlyn McAmis, Esq.

Arizona Licensed
Melissa Barry, Esq.

October 28, 2020

Elizabeth Ham
Fore Stars

Invoice Number: 207
Invoice Period: 09-29-2020 - 10-28-2020

Payment Terms: Upon Receipt

RE: Fore Stars vs Omerza

Time Details

Date	Professional	Description	Hours	Rate	Amount
09-29-2020	Lisa Rasmussen	T/C with Elizabeth; Emails to Mitch.	0.30	500.00	150.00
10-06-2020	Lisa Rasmussen	Emails with Mitch regarding Stipulation.	0.20	500.00	100.00
10-06-2020	Lisa Rasmussen	Revise Stipulation to include Order and email to department.	0.30	500.00	150.00
10-13-2020	Lisa Rasmussen	Review depositions and prepare deposition testimony portion of brief; gather exhibits to use.	5.50	500.00	2,750.00
10-13-2020	Lisa Rasmussen	Research Slapp issue; draft remainder of Supplement Opposition; prepare mall exhibits for filing.	4.00	500.00	2,000.00
10-14-2020	Lisa Rasmussen	Prepared and filed Errata with Exhibit 9.	0.20	500.00	100.00
10-14-2020	Lisa Rasmussen	Prepared Stipulation for briefing deadline.	0.20	500.00	100.00
10-20-2020	Lisa Rasmussen	Draft Opposition to Motion to Strike.	4.80	500.00	2,400.00
10-26-2020	Lisa	Review court's order; e-mails with Mitch re:	0.20	500.00	100.00

We appreciate your business and your confidence in our firm.

Nevada Location
550 East Charleston Blvd, Suite A
Las Vegas, Nevada 89104
(702) 222-0007 | fax: (702) 222-0001

Se Habla Español

California Location
8121 West Sunset Blvd, Suite 103
Los Angeles, California 90069
www.veldlaw.com

Date	Professional	Description	Hours	Rate	Amount
	Rasmussen	Stipulation to Continue Reply Deadline			
			Total		7,850.00

Time Summary

Professional	Hours	Amount
Lisa Rasmussen	15.70	7,850.00
	Total	7,850.00

Expenses

Expense	Description	Amount
E112 - Court fees	E112 - Court fees	3.50
E112 - Court fees	E112 - Court fees	3.50
E112 - Court fees	E112 - Court fees	3.50
E112 - Court fees	E112 - Court fees	3.50
	Total Expenses	14.00
	Total for this Invoice	7,864.00

Client Statement of Account

As of 10-29-2020

Matter		Balance Due
Fore Stars vs Omerza		15,016.70
	Total Amount to Pay	**15,016.70**

Fore Stars vs Omerza

Transactions

Date	Transaction	Applied	Invoice	Amount
09-25-2020	Previous Balance			7,152.70
10-28-2020	Invoice 207			7,864.00
			Balance	**15,016.70**

Open Invoices and Credits

Date	Transaction	Amount	Applied	Balance
05-15-2020	Payment	(15,000.00)		(15,000.00)
09-25-2020	Invoice 195	22,152.70		22,152.70
10-28-2020	Invoice 207	7,864.00		7,864.00
			Balance	**15,016.70**

THE LAW OFFICES OF
KRISTINA WILDEVELD & ASSOCIATES
Criminal Defense, Complex Criminal and Civil Litigation, Lobbying
Appeals, Pardons, Post-Convictions, Juvenile
Nevada California

500 E Charleston Blvd., Suite A
Las Vegas, NV 89104
702-222-0007

December 11, 2020

Elizabeth Ham
Fore Stars

Invoice Number: 225
Invoice Period: 10-29-2020 - 12-11-2020

Payment Terms: Upon Receipt

RE: Fore Stars vs Omerza

Time Details

Date	Professional	Description	Hours	Rate	Amount
10-30-2020	Lisa Rasmussen	Reviewed Defendant's Supplemental Reply Brief.	0.40	500.00	200.00
10-30-2020	Lisa Rasmussen	Emails with Mitch and his demand that we file an errata.	0.30	500.00	150.00
11-05-2020	Lisa Rasmussen	Reviewed memo from Court regarding hearing on November 9, 2020.	0.10	500.00	50.00
11-09-2020	Lisa Rasmussen	Review minute order from Judge Thompson on his ruling; E-mail to Elizabeth.	0.20	500.00	100.00
11-09-2020	Lisa Rasmussen	Attend hearing on Motion to Dismiss.	1.00	500.00	500.00
11-09-2020	Lisa Rasmussen	Prepare for hearing on Motion to Dismiss.	0.80	500.00	400.00
11-11-2020	Lisa Rasmussen	Emails with Elizabeth.	0.20	500.00	100.00
11-18-2020	Lisa Rasmussen	Emails to and from Mitch regarding proposed order.	0.20	500.00	100.00

Date	Professional	Description	Hours	Rate	Amount
11-19-2020	Lisa Rasmussen	Reviewed email from Mitch with his proposed order.	0.40	500.00	200.00
11-20-2020	Lisa Rasmussen	Email from Mitch, Offer to Resolve, e-mail to Elizabeth regarding same.	0.10	500.00	50.00
11-20-2020	Lisa Rasmussen	T/C with Elizabeth.	0.30	500.00	150.00
11-23-2020	Lisa Rasmussen	Emails to and from Mitch (x12) regarding Stipulation to Extend Time to submit proposed order, draft stipulation, circulate and submit to court.	0.80	500.00	400.00
12-01-2020	Lisa Rasmussen	Emails from Mitch (x4).	0.10	500.00	50.00
12-01-2020	Lisa Rasmussen	Revise proposed order from Mitch, Forwarded to Elizabeth.	1.20	500.00	600.00
12-02-2020	Lisa Rasmussen	T/C with Elizabeth regarding proposed order; provided to Mitch.	0.50	500.00	250.00
12-02-2020	Lisa Rasmussen	Email from Mitch rejecting our changes.	0.10	500.00	50.00
12-02-2020	Lisa Rasmussen	Created our own proposed order working from our revisions by making further revisions and adding additional fats; submit to court as Plaintiff's proposed order.	1.00	500.00	500.00
12-03-2020	Lisa Rasmussen	Received our Order (returned) from Court and prepared our Objection to Defendants proposed order and filed.	0.40	500.00	200.00
12-07-2020	Lisa Rasmussen	Telephone call with with Elizabeth regarding status of forthcoming order from Scotti.	0.20	500.00	100.00
12-10-2020	Lisa Rasmussen	Reviewed Final Order sign by the Court and emailed to Elizabeth.	0.40	500.00	200.00
			Total		4,350.00

Time Summary

Professional	Hours	Amount
Lisa Rasmussen	8.70	4,350.00
Total		4,350.00

Expenses

Expense	Description	Price	Qty	Amount
None	Copying Fees	2.80	1	2.80

Expense	Description	Price	Qty	Amount
None	Court filing fee through December 11, 2020.	24.50	1	24.50
		Total Expenses		27.30
		Total for this Invoice		4,377.30

Client Statement of Account

As of 12-30-2020

Matter		Balance Due
Fore Stars vs Omerza		4,377.30
	Total Amount to Pay	**4,377.30**

Fore Stars vs Omerza

Transactions

Date	Transaction	Applied	Invoice	Amount
10-28-2020	Previous Balance			15,016.70
11-03-2020	Payment Received - Reference 1910			(15,016.70)
12-11-2020	Invoice 225			4,377.30
			Balance	**4,377.30**

Open Invoices and Credits

Date	Transaction	Amount	Applied	Balance
05-15-2020	Payment	(15,000.00)		(15,000.00)
09-25-2020	Invoice 195	22,152.70		22,152.70
10-28-2020	Invoice 207	7,864.00		7,864.00
11-03-2020	Payment	(15,016.70)		(15,016.70)
12-11-2020	Invoice 225	4,377.30		4,377.30
			Balance	**4,377.30**

Elizabeth Ham
Fore Stars

December 11, 2020

The Law Offices of Kristina Wildeveld & Associates
500 E Charleston Blvd., Suite A
Las Vegas, NV 89104

Invoice Number: 225
Invoice Period: 10-29-2020 - 12-11-2020

REMITTANCE COPY

RE: Fore Stars vs Omerza

Fees	4,350.00
Expenses	27.30
Total for this Invoice	4,377.30

Matter	Balance Due
Fore Stars vs Omerza	4,377.30
Total Amount to Pay	**4,377.30**

Open Invoices and Credits

Date	Transaction	Matter	Amount	Applied	Balance
05-15-2020	Payment	Fore Stars vs Omerza	(15,000.00)		(15,000.00)
09-25-2020	Invoice 195	Fore Stars vs Omerza	22,152.70		22,152.70
10-28-2020	Invoice 207	Fore Stars vs Omerza	7,864.00		7,864.00
11-03-2020	Payment	Fore Stars vs Omerza	(15,016.70)		(15,016.70)
12-11-2020	Invoice 225	Fore Stars vs Omerza	4,377.30		4,377.30
				Balance	**4,377.30**

EXHIBIT 2

EXHIBIT 2

Code	Billing Date	Attorney	Hours	Rate	Total	Explanation for why entry should be denied its entirety
A	3/15/2018	Schreck	0.9	875	$787.50	Billing occurred before anti-SLAPP motion, Schreck should also not be billed at all
A	3/19/2018	Schreck	3.4	875	$2,975.00	Schreck should not be billed for providing factual information
A	3/19/2018	M. Langberg	3.5	655	$2,292.50	Blockbilled, includes information not necessary for anti-SLAPP, additionally duplicative, excessive and contradicted by later billing which stated he didn't begin research until later
A	3/20/2018	Schreck	2.8	875	$2,450.00	Schreck should not be billed for providing factual information
A.	3/21/2018	Schreck	0.8	875	$700.00	Schreck should not be billed for providing factual information. Excessive
A.	3/29/2018	Schreck	1	875	$875.00	Schreck should not be billed for providing factual information. Excessive. Duplicative and redundant, Langberg charges for same meeting. Blockbilled. Little or nothing to do with anti-SLAPP motion
A.	3/29/2018	M. Langberg	3.7	655	$2,423.50	Charges for same meeting with clients. Blockbilled. Nothing to do with anti-SLAPP motion
A.	3/30/2018	Schreck	1.2	875	$1,050.00	Schreck should not be billed for providing factual information. Excessive
B.	4/1/2018	Hughes	5.2	485	$2,522.00	Unrelated to anti-SLAPP motion, duplicative, redundant
B.	4/3/2018	Hughes	6.1	485	$2,958.50	Spent on researching striking the complaint, not on the anti-SLAPP motion Excessive, redundant, duplicative.
B.	4/4/2018	Hughes	8.4	485	$4,074.00	Blockbilled, does not distinguish between time spent researching for anti-SLAPP and time spent researching for 12(b)(5) motion to

						dismiss. Excessive, redundant, duplicative.
B.	4/6/2018	Hughes	4.8	485	$2,328.00	Blockbilled, does not distinguish between time spent on anti-SLAPP Motion and time spent researching on 12(b)(5) Motion to dismiss. Excessive, redundant, duplicative.
B.	4/7/2018	Hughes	4.6	485	$2,231.00	Blockbilled, does not distinguish between time spent on anti-SLAPP Motion and time spent researching on 12(b)(5) Motion to dismiss. Excessive, redundant, duplicative.
B.	4/9/2018	Hughes	4.9	485	$2,376.50	Blockbilled, does not distinguish between time spent on anti-SLAPP Motion and time spent discussing 12(b)(5) Motion on during telephone conference. Excessive, redundant, duplicative.
B.	4/9/2018	Lee	2.5	450	$1,125.00	Blockbilled, does not distinguish between time spent on anti-SLAPP Motion and time spent on 12(b)(5) Motion. Excessive, duplicative, redundant.
B.	4/10/2018	Hughes	5.8	485	$2,813.00	Blockbilled, does not distinguish between time spent on anti-SLAPP Motion and 12(b)(5) Motion. Excessive, duplicative, redundant.
B.	4/10/2018	Lee	0.2	450	$90.00	Blockbilled, does not distinguish between time spent on anti-SLAPP Motion and 12(b)(5) Motion.
B.	4/10/2018	Lee	7.3	450	$3,285.00	Blockbilled, does not distinguish between time spent on anti-SLAPP Motion and 12(b)(5) Motion. Excessive, duplicative, redundant.

B.	4/11/2018	Hughes	4.30	485	$2,085.50	Blockbilled, does not distinguish between time spent on anti-SLAPP Motion and time spent analyzing Binion action. Excessive, redundant, duplicative
B.	4/11/2018	Lee	3.7	450	$1,665.00	Blockbilled, does not distinguish between time spent on anti-SLAPP Motion and 12(b)(5) Motion. Excessive, duplicative, redundant.
B.	4/12/2018	M. Langberg	3.2	655	$2,096.00	Blockbilled, does not distinguish between time spent on anti-SLAPP Motion and 12(b)(5) Motion.
B.	4/12/2018	Hughes	7.2	485	$3,492.00	Blockbilled, does not distinguish between time spent on anti-SLAPP Motion and 12(b)(5) Motion.
B.	4/13/2018	Schreck	2.3	875	$2,012.50	Schreck should not be billing for providing factual information. Double billed for same meeting as Langberg. Redundant, duplicative, and excessive. Does not distinguish between anti-SLAPP Motion and 12(b)(5) Motion
B.	4/13/2018	M. Langberg	2.00	655	$1,310.00	Blockbilled, does not distinguish between time spent meeting clients and time spent on anti-SLAPP Motion. Additionally, double billing for same meeting as Mr. Schreck. Excessive and redundant.
B.	4/13/2018	Hughes	4.1	485	$1,988.50	Blockbilled, does not distinguish between time spent on anti-SLAPP Motion and 12(b)(5) Motion. Excessive, duplicative, redundant.
B.	4/13/2018	Lee	3.2	450	$1,440.00	Blockbilled, does not distinguish between time spent on anti-SLAPP Motion and 12(b)(5) Motion. Excessive, duplicative, redundant.

B.	4/13/2018	Lee	2.4	450	$1,080.00	Blockbilled, does not distinguish between time spent preparing requests for judicil notice and compiling exhibits anti-SLAPP Motion and 12(b)(5) Motion. Research is excessive, redundant, and duplicative
C.	4/24/2018	Lee	1.6	450	$720.00	Does not distinguish between anti-SLAPP Motion and 12(b)(5) Motion
D.	5/7/2018	Schreck	1.7	875	$1,487.50	Schreck should not be billing for providing factual information. Double-billed for same conversation with M. Langberg. Excessive, redundant, duplicative. Does not distinguish between time spent on anti-SLAPP and time spent on 12(b)(5) Motion, which Plaintiffs filed their opposition to on the same day
D.	5/7/2018	M. Langberg	1.8	655	$1,179.00	Double-billed for same conversation with Mr. Schreck. Excessive, redundant, duplicative. Does not distinguish between time spent on anti-SLAPP and time spent on Plaintiffs' Opposition to 12(b)(5) Motion
D.	5/8/2018	Schreck	1.6	875	$1,400.00	Schreck should not be billing for providing factual information. Excessive.
D.	5/8/2018	Hughes	12.6	485	$6,111.00	Blockbilled, does not distinguish between time spent on anti-SLAPP reply and time spent on 12(b)(5) reply. Work on Reply is excessive, duplicative, and redundant
D.	5/8/2018	Lee	5.2	450	$2,340.00	Pertains solely to 12(b)(5) reply, unrelated to anti-SLAPP Motion
D.	5/8/2018	Lee	0.3	450	$135.00	Blockbilled, does not distinguish between time spent discussing anti-SLAPP Reply and time spent discussing 12(b)(5) Reply.

D.	5/8/2018	Lee	0.8	450	$360.00	Blockbilled, does not distinguish between time spent on anti-SLAPP request and time spent on 12(b)(5) request
D.	5/8/2018	Lee	3.7	450	$1,665.00	Blockbilled, does not distinguish between time spent on anti-SLAPP reply and 12(b)(5) reply. Work on Reply is excessive, redundant, and duplicative
D.	5/9/2018	M. Langberg	1.7	655	$1,113.50	Blockbilled, does not distinguish between time spent on anti-SLAPP reply and time spent on 12(b)(5) reply. Work on Reply is excessive, duplicative, and redundant
D.	5/9/2018	Hughes	12.7	485	$6,159.50	Blockbilled, does not distinguish between time spent on anti-SLAPP reply and time spent on 12(b)(5) reply. Work on Reply is excessive, duplicative, and redundant
D.	5/9/2018	Lee	7.5	450	$3,375.00	Blockbilled, does not distinguish between time spent on anti-SLAPP reply and time spent on 12(b)(5) reply. Work on Reply is excessive, duplicative, and redundant
E.	5/14/2018	Schreck	2.5	875	$2,187.50	Double billed for attending same hearing as M. Langberg. Schreck should not be billing for providing factual information. Only Langberg billed for preparing for the hearing. Entry is excessive, redundant, and duplicative
F.	5/14/2018	Hughes	2.4	485	$1,164.00	Blockbilled, does not distinguissh between time spent reviewing and discussing the anti-SLAPP Motion and the 12(b)(5) Motion
F.	5/19/2018	Schreck	1.8	875	$1,575.00	Schreck should not be billing for providing factual information. Excessive.

F.	5/22/2018	Schreck	2.6	875	$2,275.00	Schreck should not be billing for providing and reviewing factual information. Double billing for same telephone conference with Langberg. Excessive, duplicative, redundant.
F.	5/25/2018	M. Langberg	2.3	655	$1,506.50	Defendants should not receive fees for this meritless Motion to Strike Plaintiff's Supplement in Support of Opposition to Defendants' Special Motion to Dismiss or in the Alternative for Further Supplemental Briefing. Motion was never actually heard by the Court
F.	5/25/2018	Lee	0.4	450	$180.00	Defendants should not receive fees for this meritless Motion to Strike. Motion was never actually heard by the Court
H.	6/5/2018	Lee	6.3	450	$2,835.00	Research of obtaining writ for denial of 12(b)(5) Motion to Dismiss
H.	6/6/2018	M. Langberg	1.3	655	$851.50	"Review research re writ relief for denial of *regular* motion to dismiss," not related to anti-SLAPP
H.	6/6/2018	Lee	1.8	450	$810.00	Research regarding motion to dismiss, not related to anti-SLAPP, even if it was, blockbilled and does not distinguish between time spent on 12(b)(5) Motion and time spent on anti-SLAPP
H.	6/6/2018	Lee	1.9	450	$855.00	Research of writ proceedings for orderss denying motions to dismiss, not related to anti-SLAPP, even if it was, blockbilled and does not distinguish between time spent on 12(b)(5) Motion and time spent on anti-SLAPP Motion
G.	6/6/2018	Lee	4.8	450	$2,160.00	Motion to Strike Notice of Early Case Conference was never filed. Defendants would never accept billing for this

G.	6/7/2018	M. Langberg	1.8	655	$1,179.00	Block-billed, Motion to Strike Notice of Early Case Conference was never filed. Excessive, Defendants would never accept billing for this
H.	6/7/2018	Hughes	1.4	485	$679.00	Unclear narrative, however, based on task code and timing likely involved the 12(b)(5) Motion and doesn't explain how much time if any was spent on anti-SLAPP Motion. Additionally, excessive, redundant, duplicative
G.	6/7/2018	Lee	4.2	450	$1,890.00	Motion to Strike Notice of Early Case Conference was never filed.Excessive, Defendants would never accept billing for this
H.	6/11/2018	Hughes	4.6	485	$2,231.00	Involves appeal of 12(b)(5) denial, unrelated to anti-SLAPP. Additionally, excessive, redundant, duplicative
H.	6/11/2018	Lee	1.8	450	$810.00	Involves appeal of 12(b)(5) denial, unrelated to anti-SLAPP. Additionally, excessive, redundant, duplicative
H.	6/11/2018	Lee	0.2	450	$90.00	Does not distinguish between time spent on strategy for 12(b)(5) appeal and time spent on anti-SLAPP appeal. Additionally, excessive, redundant, duplicative
H.	6/12/2018	Hughes	5.5	485	$2,667.50	Involves appeal of 12(b)(5) denial, unrelated to anti-SLAPP. Additionally, excessive, redundant, duplicative
H.	6/13/2018	Hughes	6.1	485	$2,958.50	Involves appeal of 12(b)(5) denial, unrelated to anti-SLAPP. Additionally, excessive, redundant, duplicative
H.	6/14/2018	Hughes	7.2	485	$3,492.00	Involves appeal of 12(b)(5) denial, unrelated to anti-SLAPP. Additionally, excessive, redundant, duplicative
H.	6/15/2018	Hughes	6.5	485	$3,152.50	Involves appeal of 12(b)(5) denial, unrelated to anti-SLAPP.

						Additionally, excessive, redundant, duplicative
H.	6/18/2018	Hughes	2.5	485	$1,212.50	Involves appeal of 12(b)(5) denial, unrelated to anti-SLAPP. Additionally, excessive, redundant, duplicative
H.	6/24/2018	Hughes	5.1	485	$2,473.50	Involves appeal of 12(b)(5) denial, unrelated to anti-SLAPP. Additionally, excessive, redundant, duplicative
H.	6/25/2018	Hughes	6.4	485	$3,104.00	Involves appeal of 12(b)(5) denial, unrelated to anti-SLAPP. Additionally, excessive, redundant, duplicative
H.	6/26/2018	Langberg	0.8	655	$524.00	Involves appeal of 12(b)(5) denial, unrelated to anti-SLAPP. Excessive
H.	6/26/2018	Hughes	2.8	485	$1,358.00	Involves appeal of 12(b)(5) denial, unrelated to anti-SLAPP. Excessive
H.	6/27/2018	Langberg	2.1	655	$1,375.50	Blockbilled, does not distinguish between time spent on appeal of 12(b)(5) denial and time spent on notice of appeal for anti-SLAPP Motion
H.	6/27/2018	Hughes	2.4	485	$1,164.00	Involves appeal of 12(b)(5) denial, possibly double billing same conferral with Langberg regarding revisions
H.	6/27/2018	Lee	3.5	450	$1,575.00	Involves appeal of 12(b)(5) denial, unrelated to anti-SLAPP.
H.	6/28/2018	M. Langberg	1.5	655	$982.50	Involves appeal of 12(b)(5) denial, unrelated to anti-SLAPP
H.	6/28/2018	Lee	0.4	450	$180.00	Involves appeal of 12(b)(5) denial, unrelated to anti-SLAPP
H.	6/29/2018	Hughes	0.5	485	$242.50	involves appeal of 12(b)(5) denial, unrelated to anti-SLAPP
H.	6/29/2018	Lee	5.4	450	$2,430.00	Involves appeal of 12(b)(5) denial, unrelated to anti-SLAPP
H.	7/5/2018	M. Langberg	0.6	655	$393.00	Redacted narrative, however, based on timing and task code likely involves appeal of 12(b)(5) denial, unrelated to anti-SLAPP

H.	7/9/2018	M. Langberg	1.1	655	$720.50	Unclear narrative, however, based on task code and timing likely involved the 12(b)(5) Motion and doesn't explain how much time if any was spent on anti-SLAPP Motion.
H.	7/25/2018	M. Langberg	0.6	655	$393.00	Involves appeal of 12(b)(5) denial, unrelated to anti-SLAPP
H.	7/25/2018	Lee	0.2	450	$90.00	Involves appeal of 12(b)(5) denial, unrelated to anti-SLAPP
G.	10/5/2018	Hughes	1.5	485	$727.50	Doesn't distinguish between how much time was spent discussing 12(b)(5) appeal and how much time, if any, was spent discussing anti-SLAPP matters
I.	1/23/2020	M. Langberg	2.4	690	$1,656.00	Meritless Petition for Rehearing was denied, entries should be denied in their entirety.Additionally excessive, duplicative, and redundant
I.	1/24/2020	M. Langberg	2.3	690	$1,587.00	Meritless Petition for Rehearing was denied, entries should be denied in their entirety.Additionally excessive, duplicative, and redundant
I.	1/25/2020	Nobriga	0.9	340	$306.00	Review of Opening Brief should be denied in its entirety, redundant and review was part of denied Petition for Rehearing
I.	1/28/2020	Nobriga	1.9	340	$646.00	Meritless Petition for Rehearing was denied, entries should be denied in their entirety.Additionally excessive, duplicative, and redundant
I.	1/29/2020	Nobriga	2	340	$680.00	Meritless Petition for Rehearing was denied, entries should be denied in their entirety.Additionally excessive, duplicative, and redundant
I.	1/30/2020	Nobriga	0.7	340	$238.00	Meritless Petition for Rehearing was denied, entries should be denied in their entirety.Additionally excessive, duplicative, and redundant

I.	1/31/2020	M. Langberg	2	690	$1,380.00	Meritless Petition for Rehearing was denied, entries should be denied in their entirety.Additionally excessive, duplicative, and redundant
I.	2/4/2020	M. Langberg	1.3	690	$897.00	Meritless Petition for Rehearing was denied, entries should be denied in their entirety.Additionally excessive, duplicative, and redundant
I.	2/5/2020	M. Langberg	3.4	690	$2,346.00	Meritless Petition for Rehearing was denied, entries should be denied in their entirety.Additionally excessive, duplicative, and redundant
I.	2/10/2020	M. Langberg	4.2	690	$2,898.00	Meritless Petition for Rehearing was denied, entries should be denied in their entirety.Additionally excessive, duplicative, and redundant
I.	2/27/2020	M. Langberg	0.5	690	$345.00	Billing for reviewing Nevada Supreme Court's denial of Petition for Rehearing should be denied
J.	6/7/2020	M. Langberg	1.5	690	$1,035.00	Writ was never pursued, Defendants would never accept billing for this if they were paying
M.	10/14/2020	M. Langberg	5.4	690	$3,726.00	Blockbilled, does not distinguish between time spent reviewing supplemental brief and time spent on Motion to Strike. Failed Motion to Strike was meritless and a tactic to obstruct discovery and raise fees. Defendants should not be compensated
M.	10/15/2020	M. Langberg	2.2	690	$1,518.00	Failed Motion to Strike was meritless and a tactic to obstruct discovery and raise fees. Defendants should not be compensated
M.	10/20/2020	M. Langberg	0.5	690	$345.00	Failed Motion to Strike was meritless and a tactic to obstruct discovery and raise fees. Defendants should not be compensated

M.	10/21/2020	M. Langberg	0.5	690	$345.00	Failed Motion to Strike was meritless and a tactic to obstruct discovery and raise fees. Defendants should not be compensated
				TOTAL:	$155,014.00	

EXHIBIT 3

EXHIBIT 3

Code	Billing Date	Attorney	Hours	Rate	Total	Explanation for why entry should be reduced
A	3/27/2018	M. Langberg	3.40	655	$2,227.00	Excessive, duplicative, and redundant. Additionally, this is where he once again claims to "begin" research for anti-SLAPP motion. Plaintiffs billed for 39 attorney hours for opposition to anti-SLAPP Motion, Defendants billed 116.2 hours for anti-SLAPP Motion, much of it blockbilled
B	4/2/2018	M. Langberg	2.70	655	$1,768.50	Excessive, redundant, duplicative
B.	4/2/2018	Hughes	7.10	485	$3,443.50	Excessive, redundant, duplicative
B.	4/4/2018	M. Langberg	1.50	655	$982.50	Excessive, redundant, duplicative
B.	4/4/2018	Lee	5.00	450	$2,250.00	Excessive, redundant, duplicative
B.	4/5/2018	M. Langberg	2.40	655	$1,572.00	Excessive, redundant, duplicative
B.	4/5/2018	Lee	6.50	450	$2,925.00	Excessive, redundant, duplicative
B.	4/6/2018	Lee	2.00	450	$900.00	Excessive, redundant, duplicative
B.	4/10/2018	M. Langberg	4.30	655	$2,816.50	Excessive, redundant, duplicative
D.	5/4/2018	M. Langberg	1.20	655	$786.00	Work on Reply is excessive, redundant, and duplicative. Plaintiffs only billed for 39 hours for anti-SLAPP Opposition, Defendants bill 91.7 total, with entries blockbilled with unrelated matters and should be struck in its entirety. Moreover, billing for review of Opposition is excessive, redundant and duplicative.
D.	5/4/2018	Hughes	2.60	485	$1,261.00	Work on Reply is excessive, redundant, and duplicative.Billing for review of Opposition is excessive, redundant and duplicative.
D.	5/5/2018	Hughes	4.20	485	$2,037.00	Work on Reply is excessive, redundant, and duplicative.Billing for review of Opposition is excessive, redundant and duplicative.
D.	5/5/2018	Lee	3.80	450	$1,710.00	Work on Reply is excessive, redundant, and duplicative. Billing for review of Opposition is excessive, redundant and duplicative.

D.	5/6/2018	Hughes	5.80	485	$2,813.00	Work on Reply is excessive, redundant, and duplicative.
D.	5/6/2018	Lee	1.20	450	$540.00	Work on Reply is excessive, redundant, and duplicative.
D.	5/7/2018	Hughes	7.40	485	$3,589.00	Work on Reply is excessive, redundant, and duplicative.
D.	5/7/2018	Lee	8.10	450	$3,645.00	Work on Reply is excessive, redundant, and duplicative.
D.	5/8/2018	M. Langberg	1.60	655	$1,048.00	Work on Reply is excessive, redundant, and duplicative.
D.	5/11/2018	M. Langberg	0.80	655	$524.00	Billing 0.80 hours for review of 27 pages of supplement, which included exhibit cover pages and pictures is excessive
D.	5/11/2018	Hughes	0.80	485	$388.00	Coincidentally billing 0.80 hours for the review of the same 27 pages of supplemental filing is excessive and duplicative
F.	5/15/2018	M. Langberg	2.00	655	$1,310.00	Billing for Supplemental Brief is excessive. Defendants billed for 23.4 hours, Plaintiffs only billed 9.8 hours.
F.	5/18/2018	M. Langberg	1.40	655	$917.00	Billing for Supplemental Brief is excessive. Defendants billed for 23.4 hours, Plaintiffs only billed 9.8 hours.
F.	5/21/2018	M. Langberg	1.30	655	$851.50	Billing for Supplemental Brief is excessive. Defendants billed for 23.4 hours, Plaintiffs only billed 9.8 hours.
F.	5/22/2018	M. Langberg	3.40	655	$2,227.00	Billing for Supplemental Brief is excessive. Defendants billed for 23.4 hours, Plaintiffs only billed 9.8 hours.
F.	5/23/2018	M. Langberg	5.80	655	$3,799.00	Billing for Supplemental Brief is excessive. Defendants billed for 23.4 hours, Plaintiffs only billed 9.8 hours.

I.	11/29/2018	M. Langberg	3.50	655	$2,292.50	Review and analysis of Plaintiffs' Answer Brief is excessive, redundant, and duplicative. Plaintiffs billed for 4.3 hours of review and analysis of Opening Brief, Defendants bill for 32.7 hours to review and analyze Answer Brief
I.	11/29/2018	Hughes	1.60	485	$776.00	Review of Plaintiffs' Answer Brief is excessive, redundant, and duplicative
I.	11/30/2018	Hughes	5.10	485	$2,473.50	Review of Plaintiffs' Answer Brief is excessive, redundant, and duplicative
I.	12/3/2018	Hughes	3.50	485	$1,697.50	Review of Plaintiffs' Answer Brief is excessive, redundant, and duplicative
I.	12/10/2018	Hughes	4.40	485	$2,134.00	Review of Plaintiffs' Answer Brief is excessive, redundant, and duplicative
I.	12/11/2018	Hughes	5.10	485	$2,473.50	Review of Plaintiffs' Answer Brief is excessive, redundant, and duplicative
I.	12/12/2018	Hughes	4.20	485	$2,037.00	Review of Plaintiffs' Answer Brief is excessive, redundant, and duplicative
I.	12/13/2018	Hughes	3.80	485	$1,843.00	Review of Plaintiffs' Answer Brief is excessive, redundant, and duplicative
I.	12/14/2018	Hughes	4.90	485	$2,376.50	Review of Plaintiffs' Answer Brief is excessive, redundant, and duplicative
D.	4/29/2020	M. Langberg	1.40	690	$966.00	Langberg charges for 1.40 hours for status check, Plaintiffs' counsel charges 1 hour for same status check
J.	5/8/2020	M. Langberg	0.40	690	$276.00	0.40 hours for review of Plaintiffs' 6 page Brief is excessive
J.	5/29/2020	M. Langberg	1.70	690	$1,173.00	Langberg charges 1.70 hours for reviewing Court Order, Plaintiffs' counsel only charges for 0.10 hours. Langberg blockbills his request for clarification

L	6/26/2020	M. Langberg	1.80	690	$1,242.00	Langberg charges 1.80 hours for meet and confer, Plaintiffs' counsel charges 0.20 for same meet and confer. Langberg includes 1.6 hours for "preparation" for met and confer
L	7/13/2020	M. Langberg	2.00	690	$1,380.00	Lisa charges for 1.70 hours for the hearing on the Motion for Protective Order, Langberg charges for 2 hours
L.	7/30/2020	M. Langberg	0.40	690	$276.00	Time spent reviewing, producing, and responding to amended requests are excessive in light of the documents actually produced
K.	8/6/2020	M. Langberg	0.80	690	$552.00	Time spent reviewing, producing, and responding to amended requests are excessive in light of the documents actually produced
K.	8/10/2020	M. Langberg	1.30	690	$897.00	Time spent reviewing, producing, and responding to amended requests are excessive in light of the documents actually produced
	8/14/2020	M. Langberg	0.40	690	$276.00	Time spent reviewing, producing, and responding to amended requests are excessive in light of the documents actually produced
	8/17/2020	M. Langberg	1.10	690	$759.00	Time spent reviewing, producing, and responding to amended requests are excessive in light of the documents actually produced
	8/21/2020	M. Langberg	2.20	690	$1,518.00	Time spent reviewing, producing, and responding to amended requests are excessive in light of the documents actually produced
				TOTAL:	$73,749.00	

IN THE SUPREME COURT OF THE STATE OF 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, Appellees, vs. DANIEL OMERZA, DARREN BRESEE, STEVE CARIA, and DOES 1-1000, Appellants,	Case No: 82338 (lead case) Consolidated With: 82880 (same caption)

JOINT APPENDIX SUBMITTED BY APPELLANTS AND APPELLEES

VOLUME 11 (Pages 1592-1815)

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Attorneys for Appellees Fore Stars, 180 Land Co, and Seventy Acres

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Facsimile: 702.382.8135

JOINT APPENDIX INDEX

Vol.	Description	Date	Bates No.
1	Complaint with Exhibits	3/15/18	**1-95**
2	Request for Judicial Notice in Support of Special Motion to Dismiss	4/13/18	**96-147**
2	Motion to Dismiss 12(b)(5)	4/13/18	**148-162**
2	Special Motion to Dismiss	4/13/18	**163-197**
2	Opposition to Special MTD	5/4/18	**198-219**
2	Opposition to MTD 12(b)(5)	5/7/18	**220-235**
2	Reply to Special Motion to Dismiss	5/9/18	**236-251**
2	Reply to MTD 12(b)(5)	5/9/18	**252-262**
2	Request for Judicial Notice in support of Reply to Special MTD	5/9/18	**263-300**
2	Plaintiff's First Supplement to their Opposition to Special MTD	5/11/18	**301-305**
3	Plaintiff's Second Supplement to their Opposition to Special MTD	5/11/18	**306-327**
3	Defendants' Supplement in Support of MTD	5/23/18	**328-365**
3	Plaintiff's Supplement in Support of Opposition to Special MTD	5/23/18	**366-425**
4	Plaintiffs' Errata to Complaint	6/11/18	**426-523**
4	Findings of Fact, Conclusion of Law denying Motion to Dismiss	6/20/18	**524-537**
4	Notice of Appeal to FFCOL	6/27/18	**538-572**
5	Plaintiffs' Motion for an Order Permitting Discovery	9/14/18	**573-631**
5	Defendants' Opposition to Mtn for Discovery	10/1/18	**632-639**

5	Plaintiffs' Reply to Mtn for Discovery	10/12/18	**640-664**
5	Plaintiffs' Supplemental Exhibit in Further Support of Discovery Mtn	10/17/18	**665-670**
5	Defendants' Supplemental Exhibits in Further Support of Opposition to Mtn for Discovery	10/18/18	**671-679**
5	Minutes and Order from Discovery Commissioner	10/19/18	**680-681**
5	Defendants' Objections to the Discovery Commissioner's Report and Recommendation	1/3/19	**682-688**
5	Plaintiffs' Response to Objections to R&R	1/30/19	**689-712**
5	Order Denying Mtn for Discovery	4/11/19	**713-715**
5	Nevada Supreme Court Order on remand	1/23/20	**716-728**
6	Nevada Supreme Court Order on Rehearing	2/27/20	**729-730**
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6	Opposition to request for discovery	5/11/20	**738-748**
6	May 29, 2020, Minute Order		**749**
6	Defendants' Request for Clarification	5/29/20	**750-752**
6	Minute Order on Request for Clarification	6/5/20	**753**
6	Defendants' Motion for protective order	7/2/20	**754-799**
6	Plaintiff' response to motion for protective order	7/7/20	**800-815**
6	Reply in support of protective order	7/9/20	**816-821**
6	July 21. 2020 Minute order	7/21/20	**822**

6	Order granting protective order	8/3/20	**823-829**
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8	Plaintiffs' Supplemental Opposition to Motion to Dismiss (PART 2)	10/14/20	**996-1216**
9	Errata to Supplemental Opposition to Motion to Dismiss	10/14/20	**1217-1222**
9	Defendants' Supplemental Reply to Motion to Dismiss	10/30/20	**1223-1254**
9	Declaration of Mitchell Langberg in Support of Supplemental Brief (Reply) to Special MTD	10/30/20	**1255-1257**
9	November 9, 2020, Minute Order	11/9/20	**1258-1259**
9	Findings of Fact and Conclusions of Law granting Motion to Dismiss	12/3/20	**1260-1272**
9	Plaintiffs' Objections to Proposed Findings of Fact, Conclusions of Law as Proposed by Plaintiff	12/3/20	**1273-1286**
9	Notice of Entry of Order on FF, COL and Order granting Special MTD	12/10/20	**1287-1302**
9	Motion to Reconsider Order Granting Special MTD	12/24/20	**1302-1356**
9	Motion for Attorneys Fees and Costs	12/31/20	**1357-1420**
10	Defendants' Opposition to MTN to Reconsider Order Dismissing	1/7/21	**1421-1428**
10	Plaintiffs' Reply to Mtn to Reconsider	1/14/21	**1429-1440**
10	Errata to Reply to Mtn Reconsider	1/14/21	**1441-1477**
10	Opposition to Motion for Attorney's Fees and Costs	1/22/21	**1478-1591**
11	Minute Order Denying Motion to Reconsider	1/25/21	**1592**

11	Mtn to Reconsider Minute Order dated 1/25/21	2/2/21	**1593-1596**
11	Order Denying Mtn to Reconsider Order Dismissing	2/4/21	**1597-1604**
11	Declaration of Lisa Rasmussen submitted as Supplement to Mtn for Attorney's Fees	2/12/21	**1605-1607**
11	Reply in support of Motion for Attorney's Fees and Costs	2/12/21	**1608-1614**
11	Order Granting Motion for Attorney's Fees and Costs	4/16/21	**1615-1620**
11	Notice of Appeal Case No. 82338	1/8/21	**1621-1639**
11	Notice of Appeal Case No. 82880	5/5/21	**1640-1650**
11	Reporter's Transcript of Proceedings on SLAPP Motion to Dismiss	5/14/18	**1651-1712**
11	Reporter's Transcript of Discovery Commissioner Proceedings	10/19/18	**1713-1728**
11	Reporter's Transcript of Post Remand Hearing	4/29/20	**1729-1744**
11	Reporter's Transcript of Proceedings, Discovery/Protective Order Hearing	7/13/20	**1745-1775**
11	Reporter's Transcript of Proceedings, Discovery/Protective Order Hearing	7/29/20	**1776-1781**
11	Reporter's Transcript of Proceedings, on Special Motio to Dismiss, Post Remand	11/9/20	**1782-1792**
11	Reporter's Transcript of Proceedings on Motion for Attorney's Fees	3/31/21	**1793-1815**

A-18-771224-C

DISTRICT COURT
CLARK COUNTY, NEVADA

Other Civil Matters	**COURT MINUTES**	**January 25, 2021**

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

January 25, 2021 **3:00 AM** **Motion For Reconsideration**

HEARD BY: Eller, Crystal **COURTROOM:** Chambers

COURT CLERK:
Dauriana Simpson

JOURNAL ENTRIES

- The Court DENIES Plaintiffs' Motion for Reconsideration for lack of jurisdiction.

"[A] timely notice of appeal divests the district court of jurisdiction to act and vests jurisdiction in [the Supreme Court]." Rust v. Clark Cty. Sch. Dist., 103 Nev. 686, 688 (1987). However, "where the issue is 'entirely collateral to and independent from that part of the case taken up by appeal, and in no way affected the merits of the appeal,'" this Court may proceed with hearing the matter. Kantor v. Kantor, 116 Nev. 886, 895 (2000). Here, Plaintiffs seek reconsideration of this Court's December 10, 2020 Order. However, on January 8, 2021, Plaintiffs appealed that very same Order to the Nevada Supreme Court. As the matters in Plaintiffs' motion and on appeal are identical, and neither "collateral to" not "independent from" each other, this Court lacks jurisdiction to hear Plaintiffs' motion.

Defendant shall prepare and submit the Order, pursuant to the electronic submission requirements of AOs 20-17 and 20-24.

CLERK'S NOTE: This Minute Order was electronically served by Courtroom Clerk, Dauriana Simpson, to all registered parties for Odyssey File and Serve. 1/29/2021/ds

Electronically Filed
2/2/2021 5:18 PM
Steven D. Grierson
CLERK OF THE COURT

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Attorneys for Plaintiffs

DISTRICT COURT

CLARK COUNTY, NEVADA

FORE STARS, LTD., a Nevada limited liability company; 180 LAND CO., LLC; A NEVADA LIMITED LIABILIITY COMPANY; SEVENTY ACRES, LLC, a Nevada limited liability company, Plaintiffs, vs. DANIEL OMERZA, DARREN BRESEE, STEVE CARIA, and DOES 1 THROUGH 100, Defendants.	Case No.: A-18-771224-C Dept: XIX **MOTION TO RECONSIDER MINUTE ORDER RULING RE: MOTION TO RECONSIDER (ANTI-SLAPP)** **HEARING NOT REQUESTED**

COME NOW the Plaintiffs, Fore Stars, Ltd., 180 Land Co., LLC and Seventy Acres, LLC, by and through their counsel, Lisa A. Rasmussen, Esq., and ask this Court to reconsider the minute order ruling it entered on January 25, 2021 and filed and served on January 29, 2021. The basis

for this Motion is as follows:

The Minute Order states that this Court denies the Plaintiffs' Motion for Reconsideration for "lack of jurisdiction." It references a 1987 case and a 2000 case (Rust v. Clark Cty School District, 103 Nev. 686, 688 (1987) and Kantor v. Kantor, 116 Nev. 886, 895 (2000) respectively. Further, the Defendant was prepared to prepare the order.

In January 2019, the Nevada Rules of Civil Procedure and the Nevada Rules of Appellate Procedure were revised.

NRCP Rule 62.1 states:

Indicative Ruling on a Motion for Relief that is Barred by a Pending Appeal

(a) **Relief Pending Appeal.** If a timely motion is made for relief that the court lacks authority to grant because of an appeal that has been docketed and is pending, the court may:

(1) defer considering the motion;

(2) deny the motion; or

(3) state either that it would grant the motion if the appellate court remands for that purpose or that the motion raises a substantial issue.

(b) **Notice to the Appellate Court.** The movant must promptly notify the clerk of the supreme court under NRAP 12A if the district court states that it would grant the motion or that the motion raises a substantial issue.

(c) **Remand.** The district court may decide the motion if the appellate court remands for that purpose.

The advisory committee notes to this 2019 amendment state that the new rule was modeled after FRCP 62.1 and works in conjunction with the new NRAP 12A. The notes further state that Rule 62.1 does not attempt to define the circumstances in which a pending appeal limits or defeats the district court's authority to act. Rather, the amendment was intended to provide a procedure to follow when a party seeks relief in the district court from an order or judgment that the district

court has lost jurisdiction over due to a pending appeal of the order or judgment, consistent with Huneycutt v. Huneycutt, 94 Nev. 79 (1978) and its progeny.

Nevada Rule of Appellate Procedure Rule 12A is the corollary to this amendment. It states:

Remand After an Indicative Ruling by the District Court on a Motion for Relief That is Barred by a Pending Appeal.

(a) **Notice to the Appellate Court.** If a timely motion is made in the district court for relief that it lacks authority to grant because of an appeal that has been docketed and is pending, the movant must promptly notify the clerk of the Supreme Court if the district court states either that it would grant the motion or that the motion raises a substantial issue.

(b) **Remand After an Indicative Ruling.** If the district court states that it would grant the motion or that the motion raises a substantial issue, the Supreme Court or the Court of Appeals may remand for further proceedings but the appellate court retains jurisdiction unless it expressly dismisses the appeal. If the appellate court remands but retains jurisdiction, the parties must promptly notify the clerk of the Supreme Court when the district court has decided the motion on remand.

This Court's minute order simply states that it lacks jurisdiction. The newly enacted rules provide the district court the ability to (1) defer considering the motion; (2) deny the motion; or (3) state that it would grant the motion if the appellate court remanded for that purpose or that the motion raises a substantial issue. For the purpose of the pending appeal, it would be helpful to both parties if this Court entered a determination based upon one of the available options under NRCP 62.1, rather than stating simply that it lacks jurisdiction. This would help avoid additional appellate issues based merely on a procedural misunderstanding that this Court did not likely intend.

For each of these reasons, it is respectfully requested that this Court reconsider its January

29, 2021 minute order and make its determination in a manner consistent with the available options under NRCP 62.1. Rule 62.1 indeed provides discretionary options for the district court, but for the purpose of appeal, the undersigned believes it would be best to frame this Court's ultimate decision within that framework.

Dated this 2nd day of February 2021.

The Law Offices of Kristina Wildeveld & Associates,

/s/ Lisa Rasmussen

_____

LISA A. RASMUSSEN, ESQ.
Nevada Bar No. 7491
Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I served a copy of the foregoing Motion to Reconsider, upon all persons registered for Electronic Service in the above-entitled case, upon the following persons on this 2nd day of February 2021:

Mr. Mitchell Langberg, Esq.

/s/ Lisa A. Rasmussen

_____

LISA A. RASMUSSEN, ESQ.

Electronically Filed
2/4/2021 1:24 PM
Steven D. Grierson
CLERK OF THE COURT

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.

. . .

. . .

. . .

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

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
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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

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

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

Electronically Filed
02/04/2021 12:30 PM
CLERK OF THE COURT

ORDR

MITCHELL J. LANGBERG, ESQ., Bar No. 10118
mlangberg@bhfs.com
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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.

. . .

. . .

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

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
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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

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

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DISTRICT COURT
CLARK COUNTY, NEVADA

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

AUTOMATED CERTIFICATE OF SERVICE

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EIGHTH JUDICIAL 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 THROUGH 100, Defendants.	DC Case No.: A-18-771224-C Dept No. XIX **DECLARATION OF LISA RASMUSSEN IN SUPPLEMENT TO PLAINTIFFS' OPPOSITION TO MOTION FOR ATTORNEY'S FEES**

I, LISA A. RASMUSSEN, hereby declare, under penalty of perjury of the laws of the State of Nevada as follows:

1. I am counsel of record for Plaintiffs in the above-entitled case and I am an attorney admitted to practice in all courts in the States of California and Nevada.

Case Number: A-18-771224-C

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2. I write this Declaration because opposing counsel brought to my attention what he believes in an inconsistency in my hourly rate and I made this declaration to clarify that issue.

3. Plaintiffs filed their Supplemental Opposition to the Defendant's Motion to Dismiss (Anti-SLAPP) in October 2020. Almost immediately thereafter, Defendants filed a Motion to Strike the Supplement averring that it somehow veered outside the confines of what they believed the court "allowed" in a Supplement.

4. In response to that Motion to Strike, which I believed was inappropriately filed, I filed an Opposition and at the end of that opposition I noted that I had spent five hours on the Opposition and that Plaintiffs should be compensated for having to respond to the Motion to Strike, which I believed was improperly filed and lacking in merit.

5. In that Opposition, I not only noted that I had spent five hours devoted to the Opposition, but I also asked that the Court award attorney's fees for my time writing that opposition and stated "at the undersigned's hourly rate of $600 for a total amount of $3,000."

6. The Court did not grant the Defendants' Motion to Strike, noted that there was in fact no limitation to the Supplement Plaintiffs were permitted to file, but declined to award attorney's fees to Plaintiffs as requested.

7. In the Plaintiffs' Opposition to Defendants' Motion for Attorney's Fees, it is clear that the undersigned's hourly rate in this case is $500 per hour based on the billing statements the undersigned's office attached to that Opposition. We also discussed my $500 per hour billing rate in the substantive comparisons in the Opposition.

8. My current default billing rate is, and was in October 2020, $600 per hour. In this case, however, and pursuant to negotiation with this/these clients, I have billed at a rate of $500 per hour. That is evident in the pleadings submitted and the billing statements my law firm attached to the Opposition to the Motion for Attorney's Fees. As is often the case for most law firms, we reserve the right to bill an hourly rate on a case by case basis and there are often times when, based on prior relationships with clients, we bill a different rate.

9. Additionally, the undersigned takes appointments in indigent defendant cases and those rates are also different than the undersigned's default hourly rate of $600. For example, the State of Nevada pays $100 per hour for non-capital cases and $125 per hour for capital cases, while the federal CJA rates are presently $155 per hour (effective January 4, 2021) in appointed cases.

10. Thus, I bill at a variety of rates depending on the case. My default rate is $600 per hour, my hourly rate in this case is $500 per hour, and I have certain cases where I bill at substantially less than that because the rates are governed by prior contract, by NRS 7.125 or by 18 USC 3006A, the Criminal Justice Act of 1964.

Executed in Las Vegas, Nevada on this 12th day of February, 2021.

/s/ Lisa A. Rasmussen

LISA A. RASMUSSEN, ESQ.
NV Bar No. 7491

CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the foregoing DECLARATION OF LISA A. RASMUSSEN, SUBMITTED AS A SUPPLEMENT TO THE PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION FOR ATTORNEY'S FEES via this court's EFile and Serve program on all parties receiving service in this case on this 12th day of February 2021, including but not limited to:

Mr. Mitchell Langberg, Esq.

/s/ Lisa A. Rasmussen

Lisa A. Rasmussen, Esq.

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

DISTRICT COURT

CLARK COUNTY, NEVADA

FORE STARS, LTD., a Nevada limited liability company; 180 LAND CO., LLC; a Nevada limited liability company; SEVENTY ACRES, LLC, a Nevada limited liability company, Plaintiffs, v. DANIEL OMERZA, DARREN BRESEE, STEVE CARIA, and DOES 1 THROUGH 100, Defendants.	CASE NO.: A-18-771224-C DEPT. NO.: II **DEFENDANTS' REPLY TO PLAINTIFFS' RESPONSE IN OPPOSITION TO MOTION FOR ATTORNEYS' FEES AND ADDITIONAL MONETARY RELIEF PURSUANT TO NRS 41.670 AND NRS 18.010(2)**

Defendants DANIEL OMERZA, DARREN BRESEE, and STEVE CARIA (collectively "Defendants"), by and through its counsel of record Mitchell J. Langberg, Esq. of the law office of Brownstein Hyatt Farber Schreck, LLP, hereby submit this Reply to Plaintiffs' Response in Opposition to Motion for Attorneys' Fees and Additional Monetary Relief Pursuant to NRS 41.670 and NRS 18.010(2).

. . .

. . .

. . .

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Case Number: A-18-771224-C

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiffs opposition reads as if they did not review Defendants' moving papers. For instance, they argue things that are already acknowledged in the moving papers.[1] As another example, they cite to out-of-state authority to contradict rules for which there is binding Nevada authority (cited in the moving papers) right on point. Plaintiffs' "throw everything at the wall and see what sticks" practice of pleading their complaint, preparing briefs, and litigating this case required extra work—a lot of extra work—in response. They should not be allowed to avoid paying for the extra expense they caused.

Plaintiffs seem to forget that ***they*** filed a lawsuit that the Court deemed to be meritless, ***they*** tried to initiate discovery when there was a statutory stay in place, ***they*** requested extra briefing after the Nevada Supreme Court reversed the initial ruling on this case, ***they*** demanded discovery, after the Court granted limited discovery ***they*** exceeded the permissible scope which required even more briefing, ***they*** filed a motion for reconsideration, and so much more.

Almost everything Defendants counsel did in this case was in response to what ***Plaintiffs*** did to run up the litigation costs in this case. That was their intent. Plaintiffs goal was to beat defendants into submission. Now, after Plaintiffs called on competent experienced counsel to defend them, Defendants want to avoid the statutory consequences of their meritless lawsuit.

Perhaps worse than all of that, Plaintiffs' opposition is misleading on two critical issues are outcome determinative:

Reasonable rates – The opposition trumpets an argument that Ms. Rasmussen's rate is only $500 per hour. The moving papers showed that lead Mr. Langberg's rates ($655-$690) were similar to the rate Ms. Rasmussen previously told this court she charged in this case ($600) and the marginal difference was justified by Mr. Langberg's experience in the relevant areas of law. The opposition and Ms. Rasmussen's supplemental declaration prove that her regular rate is $600

[1] For example, they argue that there should be no fee enhancement on fees for work performed ***after*** the anti-SLAPP motion was granted (Opposition, 11:8-13) even though the moving papers cited that very point and authority noting that there is no fee enhancement for the work on this motion (Motion, 17:21-23).

(though she now explains she reduced based on prior relationship with these Plaintiffs) and ***initial lead counsel's rate in this case*** was $595 per hour. Unless those attorneys are admitting that they charge unreasonable rates, these facts are dispositive of the issue. Similarly, the opposition shows that initial lead counsel was support by a class of 2012 attorney who billed at $400 per hour. So, rates of $485 for a class of 1990 attorney and $450 for a class of 2004 attorney are also not out-of-line with the reasonable rates Plaintiffs were being charged.

Reasonable hours – Plaintiff again are misleading. The Court will note that Plaintiffs' in-house counsel, Elizabeth Ham, is also of record in this case. The Court will also note that the billing records submitted with the opposition show that Ms. Ham was actively involved in the case. References on 4/23/18, 5/4/18, 9/10/18, and 11/26/18 show that Ms. Ham was involved in drafting all of the substantive briefs on the anti-SLAPP and appeal. Moreover, Ms. Ham attended and, in part, ***conducted*** some of the depositions in this case. She also participated in hearings. ***Yet, not one hour of her time is accounted for.*** Of course, in-house counsel does not bill her client. But, in an exercise of comparing the number of hours each side devoted to this case (Opposition, 20:9-13) in order to evaluate the reasonableness of the hours, it amounts to an inexcusable breach of the duty of candor to leave out the substantial work performed by an attorney with 20 years of experience. More on the reasonableness of hours is below.

II. ARGUMENT

The moving papers address nearly everything Plaintiffs argue. Therefore, Defendants will not re-address every item set out in the opposition. But, several points merit response.

A. The Nevada Supreme Court Acknowledges That Fee Enhancements May Be Awarded In Contingency Cases

Writing off California cases allowing for fee enhancements in anti-SLAPP cases, "Plaintiffs find the United States Supreme Court's precedent more persuasive." Opposition, 5:20. They then cite to a United States Supreme Court case rejecting enhancement for contingency fees for fee awards under a federal statute.

What Plaintiffs find persuasive is of no moment. Binding Nevada Supreme Court authority makes clear that, in Nevada, in considering fees using the lodestar method:

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> the district court must first multiply the number of hours reasonably spent on the case by a reasonable hourly rate. Following determination of this "lodestar" amount, we leave it to the sound discretion of the district court to adjust this fee award based upon…(6) whether the fee is fixed or contingent….

Hsu v. Cty. of Clark, 123 Nev. 625, 637 (2007). Rule of Professional Conduct 1.5 is in accord, expressly stating that whether a fee is fixed or contingent is one of the factors to consider when determining whether a fee is reasonable.

Therefore, it is within this Court's discretion to determine whether a firm that takes on the ***defense*** of a case brought by a powerful and wealthy developer to silence its three individuals who were exercising the First Amendment rights of free speech and petition deserves to be compensated for the risk it took on by making fees contingent.

B. The Rates Are Reasonable

As shown in detail above, the rates charged by Defendants' counsel are inline with those charged by initial lead counsel and the regular hourly rate current counsel charges. They are certainly not permitted to charge their clients an unreasonable fee. Therefore, both counsel and their client have effectively admitted that the rates in this case are reasonable. "What is good for the goose…" is a fair consideration in this case. That Plaintiffs should be willing to pay their lead attorney $595 per hour but then complaint that Defendants paid their attorney only slightly more is the epitome of chutzpah.

C. The Complaint About Block Billing Is Unmeritorious

Plaintiffs claim that the nature of Defendants' counsel's work is "oblique" because of improper block billing. Defendants have provide extensive detail and analysis of the work performed. Billing records are not even required. *Katz v. Incline Vill. Gen. Improvement Dist.*, 452 P.3d 411 (Nev. 2019)(unpublished), cert. denied, 141 S. Ct. 253, 208 L. Ed. 2d 26 (2020). "In determining the amount of fees to award, the court is not limited to one specific approach." *Shuette v. Beazer Homes Holdings Corp.*, 121 Nev. 837, 864 (2005).

Here, the Court has the time sheets, the description of the work done, and a categorization by tasks. This is sufficient.

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D. Defendants Are Entitled To Fees For All Work Done On The Case

Defendants will not repeat the authority in the moving papers that makes clear that when Defendant is successful at dismissing the entire case, ***fees for the entire case are awardable***.

Beyond that, Plaintiffs correctly note a difference in the statutory language between the California and Nevada anti-SLAPP statute. In California, "a prevailing defendant on a special motion to strike shall be entitled to recover his or her attorney's fees and costs." Cal. Civ. Proc. Code § 425.16 (emphasis added). The statute only makes reference to the special motion to strike. On the other hand, in Nevada, NRS 41.670(1)(a) provides that "If the court grants a special motion to dismiss filed pursuant to NRS 41.660 … [t]he court shall award reasonable costs and attorney's fees to the person ***against whom the action was brought***." (emphasis added). The clear statutory language suggests that fees are awarded for the entire action.

E. The Number Of Hours Worked Are Reasonable

Again, it is absurd that Plaintiffs challenge the number of hours worked by Defendants counsel in light of their own admissions. Plaintiffs admit that their counsel spent 481.50 hours on this case. They compare that to 650 hours Defendants billed. Of course, this representation is ***dishonest*** because they do not include any of the hours Ms. Ham worked. They also complain about the number of attorneys working on the case. Yet, they ignore that the billing statements they submitted reveal that as many as four attorneys (plus Ms. Ham) worked on various aspects of the case. Those records also show that, sometimes, two attorneys (not including Ms. Ham) appeared a hearings. Yet the complaint about the same thing.

What they also do not tell the Court is that for the critical work, Defendants had to submit more briefs than Plaintiffs. For the initial anti-SLAPP motion, Defendants filed moving papers AND a reply. On appeal, Defendants filed an opening brief AND a reply. Remarkably, the hours spent on those two briefs almost exactly match the difference between the total hours billed by Plaintiffs' counsel and the hours billed by Defendants' counsel. In other words, the hours are roughly equivalent in light of the additional briefing required of Defendants.

F. The Additional Award To Defendants Is Appropriate

The fee award will compensate the law firm for its investment. But the additional

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monetary award is appropriate to partially compensate Defendants for being subjected to 2 1/2 years of harassing litigation. It is well-known in the community that Plaintiffs have pursued vindictive litigation against judges, the City, and individuals. The way this lawsuit was litigated reflected a complete disregard for these individual Defendants. They are entitled to compensation.

III. POST ANTI-SLAPP FEES

Defendants' counsel has been required to work on this motion and to oppose Plaintiffs reconsideration motion. Total fees for these motions are $23,467. These fees should be added to the overall fee award. No enhancement is appropriate for these fees.

IV. CONCLUSION

Because Defendants prevailed on their anti-SLAPP motion and because the fees requested are reasonable, Defendants respectfully request that this Court award all requested fees and the additional monetary amounts allowed by the anti-SLAPP statute.

DATED this 12th day of February, 2021.

BROWNSTEIN HYATT FARBER SCHRECK, LLP

BY: */s/Mitchell J. Langberg*

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of Brownstein Hyatt Farber Schreck, LLP, and pursuant to NRCP 5(b), EDCR 8.05, Administrative Order 14-2, and NEFCR 9, I caused a true and correct copy of the foregoing **DEFENDANTS' REPLY TO PLAINTIFFS' RESPONSE IN OPPOSITION TO MOTION FOR ATTORNEYS' FEES AND ADDITIONAL MONETARY RELIEF PURSUANT TO NRS 41.670 AND NRS 18.010(2)** be submitted electronically for filing and/or service with the Eighth Judicial District Court via the Court's Electronic Filing System on the 12th day of February, 2021, to the following:

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

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

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DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

v.

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

Defendants,

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

ORDER RE: DEFENDANTS' MOTION FOR ATTORNEYS' FEES AND ADDITIONAL MONETARY RELIEF PURSUANT TO NRS 41.670 AND NRS 18.010(2)

Defendants' Motion for Attorneys' Fees and Additional Monetary Relief Pursuant To NRS 41.670 and NRS 18.010(2) ("Motion") came on for hearing before this Court on March 31, 2021.

Having considered the Motion, the opposition and reply thereto, all papers related thereto, oral argument, and the papers and pleadings on file herein, the Court find:

1 Defendants' anti-SLAPP Motion to Dismiss filed pursuant to NRS 41.635, et. seq. was granted in full and all of Plaintiffs' claims were dismissed by way of the Findings of Fact, Conclusions of Law, and Order entered on December 10, 2020;

2. Defendants' filed a timely motion seeking attorneys' fees and additional monetary relief pursuant to NRS 41.670 and NRS 18.010(2);

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3. Plaintiffs filed a timely opposition to the Motion and Defendants filed a timely reply;

4. In the Motion, Defendants seek attorneys' fees based on the Lodestar method (rate multiplied by hours) in the amount of and an enhancement because Defendants' counsel agreed to prosecute the anti-SLAPP motion on a contingency basis;

5. Defendants also seek an additional monetary award of $10,000 per Defendant pursuant to NRS 41.670;

6. For the reasons stated by the Court on the record (NRCP 52(a)(3)), the Court finds that the hourly rates and the hours requested by Defendants for attorneys' fees are reasonable and that the Lodestar fees based on those reasonable rates and hours are $363,244.00;

7. For the reasons stated by the Court on the record, the Court also finds that a fee enhancement, as requested by Defendants, is not appropriate in this matter;

8. For the reasons stated by the Court on the record, the Court also finds that an additional monetary award to Defendants pursuant to NRS 41.670 is not appropriate in this matter,

Therefore, it is hereby ORDERED, ADJUDGED AND DECREED that:

1. Defendants' Motion is GRANTED; and

2. Plaintiffs are hereby jointly and severally ORDERED to pay to Defendants attorneys' fees in the amount of $363,244.00.

IT IS SO ORDERED

Dated: _____

Dated this 16th day of April, 2021

DISTRICT COURT JUDGE

8B9 93E EFF3 0F62
Crystal Eller
District Court Judge

- SIGNATURES ON NEXT PAGE -

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Respectfully Submitted By:

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Approved as to form:

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Cosby, Wendy C.

From: Lisa Rasmussen <Lisa@Veldlaw.com>
Sent: Friday, April 16, 2021 8:55 AM
To: Langberg, Mitchell
Subject: RE: Draft order re fees

Okay to add my signature.

Lisa

Sent from Mail for Windows 10

From: Langberg, Mitchell
Sent: Friday, April 16, 2021 7:22 AM
To: Lisa@Veldlaw.com
Subject: Draft order re fees

Lisa,

Attached is a draft order regarding fees. Please let me know if I may /s/ sign for you.

Thanks,

Mitch

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DISTRICT COURT
CLARK COUNTY, NEVADA

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

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:

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Attorneys for Plaintiffs

DISTRICT COURT

CLARK COUNTY, NEVADA

FORE STARS, LTD., a Nevada limited liability company; 180 LAND CO., LLC; A NEVADA LIMITED LIABILIITY COMPANY; SEVENTY ACRES, LLC, a Nevada limited liability company, Plaintiffs, vs. DANIEL OMERZA, DARREN BRESEE, STEVE CARIA, and DOES 1 THROUGH 100, Defendants.	Case No.: A-18-771224-C Dept: II **NOTICE OF APPEAL**

The Plaintiffs, Fore Stars, Ltd., 180 Land Co., LLC and Seventy Acres, LLC, by and through their counsel, hereby file this Notice of Appeal to the District Court's Order granting the Defendants' Special Motion to Dismiss pursuant to NRS 41.635, et seq., entered on December 10, 2020, the Notice of Entry of Order having been entered

the same date. A true and correct copy of the Notice of Entry of Order, which includes the order itself, is attached hereto as Exhibit 1.

DATED: January 8, 2021. Respectfully submitted,

THE LAW OFFICES OF KRISTINA WILDEVELD & ASSOCIATES,

/s/ Lisa A. Rasmussen
LISA A. RASMUSSEN, ESQ.
NEVADA BAR NO. 7491
ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the foregoing via this court's Efile and Serve program on all parties receiving service in this case on this 8th day of January, 2021, including, but not limited to:

Mr. Mitchell Langberg, Esq.
Counsel for the Defendants

/s/ Lisa A. Rasmussen
Lisa A. Rasmussen, Esq.

Exhibit 1

Exhibit 1

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

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

v.

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

Defendants,

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

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.

. . .

. . .

. . .

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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*

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of Brownstein Hyatt Farber Schreck, LLP, and pursuant to NRCP 5(b), EDCR 8.05, Administrative Order 14-2, and NEFCR 9, I caused a true and correct copy of the foregoing **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:

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Attorneys for Plaintiffs
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/s/ DeEtra Crudup
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DANIEL OMERZA, DARREN BRESEE,
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DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

v.

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

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("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

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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

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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.

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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

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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.

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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."

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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

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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”

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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-

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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

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

DATED: _____

DISTRICT COURT JUDGE

Respectfully Submitted:

DATED this 2nd day of December, 2020.

BROWNSTEIN HYATT FARBER SCHRECK, LLP

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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.

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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:

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DISTRICT COURT

CLARK COUNTY, NEVADA

FORE STARS, LTD., a Nevada limited liability company; 180 LAND CO., LLC; A NEVADA LIMITED LIABILIITY COMPANY; SEVENTY ACRES, LLC, a Nevada limited liability company, Plaintiffs, vs. DANIEL OMERZA, DARREN BRESEE, STEVE CARIA, and DOES 1 THROUGH 100, Defendants.	Case No.: A-18-771224-C Dept: XIX **NOTICE OF APPEAL**

The Plaintiffs, Fore Stars, Ltd., 180 Land Co., LLC and Seventy Acres, LLC, by and through their counsel, hereby file this Notice of Appeal to the District Court's Order granting the Defendants' Motion for Attorney's Fees and Costs, entered on April 16, 2021.

A true and correct copy of the Notice of Entry of Order, which includes the order itself, is attached hereto as Exhibit 1.

DATED: May 5, 2021. Respectfully submitted,

THE LAW OFFICES OF KRISTINA WILDEVELD & ASSOCIATES,

/s/ Lisa A. Rasmussen
LISA A. RASMUSSEN, ESQ.
NEVADA BAR NO. 7491
ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the foregoing Notice of Appeal via this court's Efile and Serve program on all parties receiving service in this case on this 5th day of May, 2021, including, but not limited to:

Mr. Mitchell Langberg, Esq.
Counsel for the Defendants

/s/ Lisa A. Rasmussen
Lisa A. Rasmussen, Esq.

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DISTRICT COURT

CLARK COUNTY, NEVADA

FORE STARS, LTD., a Nevada limited liability company; 180 LAND CO., LLC; a Nevada limited liability company; SEVENTY ACRES, LLC, a Nevada limited liability company, Plaintiffs, v. DANIEL OMERZA, DARREN BRESEE, STEVE CARIA, and DOES 1 THROUGH 100, Defendants,	CASE NO.: A-18-771224-C DEPT NO.: 19 **NOTICE OF ENTRY OF ORDER RE: DEFENDANTS' MOTION FOR ATTORNEYS' FEES AND ADDITIONAL MONETARY RELIEF PURSUANT TO NRS 41.670 AND NRS 18.010(2)**

PLEASE TAKE NOTICE that the Order Re: Defendants' Motion for Attorneys' Fees and Additional Monetary Relief Pursuant to NRS 41.060 and NRS 18.010(2) was entered on April 16, 2021.

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

DATED this 16th day of April, 2021.

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BY: */s/ Mitchell J. Langberg*

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of Brownstein Hyatt Farber Schreck, LLP, and pursuant to NRCP 5(b), EDCR 8.05, Administrative Order 14-2, and NEFCR 9, I caused a true and correct copy of the foregoing **NOTICE OF ENTRY OF ORDER RE: DEFENDANTS' MOTION FOR ATTORNEYS' FEES AND ADDITIONAL MONETARY RELIEF PURSUANT TO NRS 41.670 AND NRS 18.010(2)** be submitted electronically for filing and/or service with the Eighth Judicial District Court via the Court's Electronic Filing System on the 16th day of April, 2021, to the following:

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/s/ Wendy Cosby
an employee of Brownstein Hyatt Farber Schreck, LLP

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DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

v.

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

Defendants,

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

ORDER RE: DEFENDANTS' MOTION FOR ATTORNEYS' FEES AND ADDITIONAL MONETARY RELIEF PURSUANT TO NRS 41.670 AND NRS 18.010(2)

Defendants' Motion for Attorneys' Fees and Additional Monetary Relief Pursuant To NRS 41.670 and NRS 18.010(2) ("Motion") came on for hearing before this Court on March 31, 2021.

Having considered the Motion, the opposition and reply thereto, all papers related thereto, oral argument, and the papers and pleadings on file herein, the Court find:

1 Defendants' anti-SLAPP Motion to Dismiss filed pursuant to NRS 41.635, et. seq. was granted in full and all of Plaintiffs' claims were dismissed by way of the Findings of Fact, Conclusions of Law, and Order entered on December 10, 2020;

2. Defendants' filed a timely motion seeking attorneys' fees and additional monetary relief pursuant to NRS 41.670 and NRS 18.010(2);

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3. Plaintiffs filed a timely opposition to the Motion and Defendants filed a timely reply;

4. In the Motion, Defendants seek attorneys' fees based on the Lodestar method (rate multiplied by hours) in the amount of and an enhancement because Defendants' counsel agreed to prosecute the anti-SLAPP motion on a contingency basis;

5. Defendants also seek an additional monetary award of $10,000 per Defendant pursuant to NRS 41.670;

6. For the reasons stated by the Court on the record (NRCP 52(a)(3)), the Court finds that the hourly rates and the hours requested by Defendants for attorneys' fees are reasonable and that the Lodestar fees based on those reasonable rates and hours are $363,244.00;

7. For the reasons stated by the Court on the record, the Court also finds that a fee enhancement, as requested by Defendants, is not appropriate in this matter;

8. For the reasons stated by the Court on the record, the Court also finds that an additional monetary award to Defendants pursuant to NRS 41.670 is not appropriate in this matter,

Therefore, it is hereby ORDERED, ADJUDGED AND DECREED that:

1. Defendants' Motion is GRANTED; and

2. Plaintiffs are hereby jointly and severally ORDERED to pay to Defendants attorneys' fees in the amount of $363,244.00.

IT IS SO ORDERED

Dated: _____

Dated this 16th day of April, 2021

DISTRICT COURT JUDGE

8B9 93E EFF3 0F62
Crystal Eller
District Court Judge

- SIGNATURES ON NEXT PAGE -

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Respectfully Submitted By:

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Cosby, Wendy C.

From: Lisa Rasmussen <Lisa@Veldlaw.com>
Sent: Friday, April 16, 2021 8:55 AM
To: Langberg, Mitchell
Subject: RE: Draft order re fees

Okay to add my signature.

Lisa

Sent from Mail for Windows 10

From: Langberg, Mitchell
Sent: Friday, April 16, 2021 7:22 AM
To: Lisa@Veldlaw.com
Subject: Draft order re fees

Lisa,

Attached is a draft order regarding fees. Please let me know if I may /s/ sign for you.

Thanks,

Mitch

Mitchell J. Langberg
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CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

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

AUTOMATED CERTIFICATE OF SERVICE

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DISTRICT COURT

CLARK COUNTY, NEVADA

* * * * *

FORE STARS, LTD., SEVENTY ACRES, LLC, 180 LAND CO., LLC, Plaintiffs, vs. DANIEL OMERZA, DARREN BRESEE, STEVE CARIA, Defendants.	CASE NO. A-18-771224 DEPT. NO. II **Transcript of Proceedings**

BEFORE THE HONORABLE RICHARD F. SCOTTI, DISTRICT COURT JUDGE

ALL PENDING MOTIONS

MONDAY, MAY 14, 2018

APPEARANCES:

For the Plaintiff: JAMES J. JIMMERSON, ESQ.
ELIZABETH GHANEM HAM, ESQ.

For the Defendants: MITCHELL J. LANGBERG, ESQ.

RECORDED BY: DALYNE EASLEY, DISTRICT COURT
TRANSCRIBED BY: KRISTEN LUNKWITZ

Proceedings recorded by audio-visual recording, transcript produced by transcription service.

Case Number: A-18-771224-C

MONDAY, MAY 14, 2018 AT 9:59 A.M.

THE COURT: *Daniel Omerza*, A771224. All right. All right. Go ahead and state your appearances for the record.

MR. LANGBERG: Good morning, Your Honor. Mitchell Langberg, Brownstein, Hyatt, Farber, Schreck, for the defendants and the moving parties.

THE COURT: All right. Hello, Mr. Langberg.

MR. JIMMERSON: Good morning, Your Honor. Jim Jimmerson and Elizabeth Ham on behalf of the plaintiff, Fore Stars -- or the plaintiffs, and 180 Land Company, LLC, and Seventy Acres, LLC. Ms. Ham is also in-house counsel for the company and our firm is the Jimmerson Law Firm, bar number 264.

THE COURT: Great. Mr. Langberg, let's see. You --

MR. JIMMERSON: We'd also like to note the appearance of Mr. Johan Lloyd [phonetic], principal indirectly to the plaintiffs.

THE COURT: Very good. Mr. Langberg, it's your client who filed the Motion to Dismiss, pursuant to the SLAPP suit statute.

MR. LANGBERG: Yes, Your Honor.

THE COURT: So, why don't you go first?

MR. LANGBERG: I'll note, for the record --

THE COURT: Let's just deal with that issue first --

MR. LANGBERG: Yes, sir.

THE COURT: Rather than the second Motion to Dismiss.

MR. LANGBERG: Thank you, Your Honor. And most of my clients are here in court, too, for the record, Your Honor.

THE COURT: All right.

MR. LANGBERG: Your Honor, it's -- it is no coincidence but it is ironic, I think, that the people who developed the idea of Anti-SLAPP statutes, some professors in Colorado, did it first to address the fact that developers were suing protestors against developments in an effort to quash their speech. And that's where we find ourselves today. And, uniquely, I think -- maybe not uniquely but particularly important with Anti-SLAPP statutes is procedure is reflective of merits. So, we've briefed this extensively, Your Honor, and I don't intend to regurgitate everything. I will, of course, answer your questions. But a lot has happened that isn't fully addressed in the papers. The -- this whole case is about a refusal to follow the rules.

And the refusal to follow the rules as it relates

to this Anti-SLAPP Motion, and the Opposition to it, that reflects on what's really going on here, which is the weaponization of litigation in order to quash First Amendment rights. That's exactly what's going on here.

The Legislature in Nevada, like in many states, thought that lawsuits that arise out of the exercise of First Amendment rights are so important that, in Nevada, they've said that a Court should resolve these special motions within 20 days. Now, we've had extensions by cooperation but that's important because I want to point out, Your Honor, that counsel -- the opposing party had 18 days to file their Opposition, almost the entire period that the Legislature envisioned for resolution of the Motion in full, yet on Friday, after the close of business, without any prior authorization from the Court, filed fugitive papers, a sur reply of a bunch of evidence that they clearly had before they even filed this lawsuit in a clear sandbag.

And I'm not -- we're not afraid of the evidence itself, but it reflects on what's going on here with the -- this is exactly what these motions are designed to protect against. And when we talk about following the procedural rules, again, the Opposition is silent to evidence, to meet the burden that is on them, once it is proven that the lawsuit arises from the legitimate exercise of First

Amendment rights.

So, let's talk about that, Your Honor. What an Anti-SLAPP Motion says is when somebody is sued for something that arises out of the good faith exercise of their First Amendment rights -- as defined by statute, not what you and I think of is good faith, it’s specifically defined.

THE COURT: All right.

MR. LANGBERG: We’re so concerned about the way that than can quash those First Amendment rights that we’re going to have a special motion that’s designed to put the plaintiff to the test of their proof. And if they don’t have admissible evidence on each and every element of their claim, then it’s deemed to be meritless and disposed of.

THE COURT: It’s kind of like a summary judgment standard. Right?

MR. LANGBERG: Yeah. But the California Supreme Court, I think, has called it a summary judgment motion on steroids. Right? Because you have no absolute right to discovery. There's a -- in fact, an automatic stay on discovery, unless the opposing party comes in before they oppose and says, on proof: Judge, we need evidence. There is evidence necessary to oppose this motion that is not in our possession and is only in the possession of third parties and we can't meet our burden without getting that

evidence. And, then, the Court can decide if there's good cause to allow discovery. To do that first, they have to show that they're going to meet all the other elements of their claim.

So, in a case --

THE COURT: Isn't that kind of what Mr. Jimmerson is arguing here? That they need some limited discovery with respect to this petitioning conduct to see if it can satisfy the elements of the various claims?

MR. LANGBERG: That's what he's trying to do. Yes, Your Honor. But it has nothing to do with the statute. And he doesn't meet any burden to do it and he should have done it before the time to oppose the Motion. But let's just go to the substance of it, Your Honor. Right?

So, let's take a what they call a classic case. We know these come up in defamation cases all the time. So, public figure defamation case has elements: Falsity, not privileged, and knowledge of falsity or reckless disregard for truth, damages, some other elements. So, it's typical when a high-profile person is suing a newspaper that they don't have the evidence that's going to show actual malice. And a Court might grant what we call editorial process discovery, saying: You can look in the editorial process and see what they knew and didn't know.

But first, you're going to have to show that you're going to be able to meet the elements of stuff you don't need that discovery for, like falsity, like not privileged, because I'm not going to let you go and do the very thing that the statute's designed to protect against, which is the expense of litigation of discovery, unless what you find is going to save your case. And if you can't meet the other elements, then I'm not going to let you do discovery on one individual element.

So, the request that's being made is really a non sequitur to the claims. Why? One is -- first is on the first prong. The question is: First, is this the kind of First Amendment speech that's governed by the Anti-SLAPP statute? Clearly, it is. It is both petitioning speech, petitioning activity, and free speech under the First Amendment.

So, then, is: Is it a good faith communication? Which just means was it made -- was it truthful or made without knowing that it was false? Well, what are these people alleged to be doing? They're alleged to be having -- handing out draft declarations as statements to submit to the Las Vegas City Council. They aren't making an assertion. It's like me coming up to you and saying: I think pit bulls should be banned, here's a draft declaration that says I've had bad experiences with pit

bulls, please sign this if you agree with it.

THE COURT: Well, the statement could be viewed as an affirmative statement of the person who is presenting the stipulation and just -- or the petition, just asking other people to agree with it. I mean, I could see -- that argument doesn't seem frivolous to me.

MR. LANGBERG: That -- well, Your Honor, if -- let's look. The California -- I keep -- so, I keep turning to the California courts --

THE COURT: Okay.

MR. LANGBERG: -- because our Anti-SLAPP statute is specifically modeled after the California statute and the case authority that they cite says we look to California cases. Right?

THE COURT: Right.

MR. LANGBERG: So, what the California courts say is that first prong is closely related to the same consideration that you would give under the litigation privilege because they're very similar. And you wouldn't say that, Your Honor, if we were talking about the litigation privilege. You wouldn't say that going to -- we all know that an attorney going to speak to potential witnesses is protected by the absolute litigation privilege. And if I go to a witness and I say: Hey, you know, I know that you were there, I'm looking to -- for

anybody that says that they saw the light was green, can you say that the light was green? Right? He says yes or he says no. I am not making an assertion of fact. When I give -- when my clients give draft declarations and say, take a look at this and if you agree with it, send it on, which is effectively what's being done, they're not making an assertion of fact there. They're looking for witnesses, they're looking for witness statements. So --

THE COURT: Yeah. But in that situation, the information is going from the client to the attorney. Here, you have information going from the petitioner to the homeowner.

MR. LANGBERG: Well, Your Honor, --

THE COURT: Because I see that distinction there.

MR. LANGBERG: Well, again, you need to -- I think the Court needs to look at the statements.

THE COURT: Okay.

MR. LANGBERG: The statements are addressed on the front of them, they say: To the Las Vegas City Council. So, they're collecting potential witness statements to gather together and deliver to the Las Vegas City Council. That’s the purpose of it. That is the purpose. No different than a party to litigation going out and finding witnesses that they’d like to bring to court. There's no difference. These are the people who are going to be

opposing the application in the City Council. They are, for intents and -- all intents and purposes in this quasi-judicial proceeding, interested parties. They're gathering statements from potential witnesses. This is pure.

I mean, this is a -- you know, other than beating people up in order to get on ships to throw tea overboard, which they didn't do, this is as close as you can get. I'm going to stand on -- and by the way, Your Honor, usually I'm on the other side. I do a lot of plaintiffs' defamation work.

THE COURT: Okay.

MR. LANGBERG: Right? So, I navigate this and I'm usually trying to find the exceptions, but I'm going to get on my First Amendment soap box because this is -- you know, all politics is local. This is quintessential petitioning activity, people coming together, looking for people to support them in a cause before the City Council.

Now, what plaintiff wants to do in this Motion is they want to litigate the very thing that's before the City Council. They don't want to have people, the opposition, give their statements, what their opinions are, what their expectations, beliefs, whatever, submit it to the City Council and, then, go to the City Council themselves and say: No, I don't agree with what they say, look at these deeds. They made these representations. They want to

litigate that all here today. But, guess what, Your Honor? They didn't even try to do that. They've got this Complaint, and in this Complaint, they make allegations. It's not admissible evidence, the allegations of the Complaint. They needed to come here. They were put to the test just like on a summary judgment motion, Your Honor, to come up with admissible evidence to support the prima facie elements of their Complaint.

So, where are we? First prong. By the way, Your Honor, --

THE COURT: Yes.

MR. LANGBERG: -- I should go back. Even if one were to say that they were making some assertion of fact that could be either true or known to be false, and you accept, I hope, that I don't agree that that's an assertion of fact.

THE COURT: I understand.

MR. LANGBERG: But even if you do, Your Honor, when a judge -- when Judge Crockett, in an Order -- or, sorry. In a transcript, says the very thing that's said in the declarations, that a bunch of these people relied on the master plan when they bought, you can't be said to be knowing that it's false when you're asking people whether they agree with that or not.

These papers tried to confuse two things. And

counsel will get up -- I can see it. He's going to try to litigate the merits of all of this, and he's going to point, as he has in his papers, to a prior proceeding that was very different. And we've addressed it in the papers but if the Court -- if the -- I'm going to highlight it now because it's very important because I really believe it's a red herring and a distraction from the key quintessential First Amendment issues here.

So, what happened was, Queen -- so what do we have? We have Queensridge, which has a master declaration of CC&Rs. Then, we have Peccole Ranch, which is under a master plan. And, then, we have the general plan for the City. So, a resident, not these residents, a resident tried to challenge the Badlands Golf Course redevelopment, I'll call it, by saying that it would violate the master declaration of CC&Rs. And what the judge said in that case was: No, that property is not part of the development that's under the CC&Rs. And, by the way, when you signed your stuff to the developer, you basically said you weren't relying on anything from them about views and whether they might go away or not go away. And they don't give it to you because they don't want you to see it. But there's even a statement that says: I'm relying on my own interpretation or understanding of zoning or master something. Right? Great. That was a decision that was

made; that had to do with the CC&Rs.

So, what happens? After that lawsuit, they go, they prevail at the City Council in being able to change from an open space zoning to something else. That gets challenged as an abuse of discretion in Judge Crockett's court. And it doesn't get challenged as, look, it violates the CC&Rs, they come in and say: Look, there's something bigger than the CC&Rs. Right? The CC&Rs can be more restrictive than the master plan but they can't override the master plan and be broader, there's something bigger. And what does the judge say? The judge says, Judge Crockett says: Sorry, City, you did this wrong, you need to require an application for a major modification to the master plan -- we're outside of Queensridge now, you need to go make that application. And Judge Crockett said -- and you saw from the transcript, I'm sure, there's people in here that bought in reliance on this open spaces designation in the master plan. So, we're not talking about the CC&Rs and deeds, we're just talking about a generalized: Hey, here's something there and I'm paying land premiums and I care about this.

So, they go and they -- in addition to an appeal, I think, in addition to suing Judge Crockett, they go and they make a -- actually, they apply for a modification or a change to the general plan, all in an effort to get this

Badlands former golf course that they shut down, that's designated as open space, to be designated as something else. Okay?

Now, they're going to debate what the -- what they're asking for, and whether they have to, and whether it's an R-PD7, and I could debate all of those things with Your Honor but it doesn't matter for -- because we're getting -- I'm sorry for the long windedness --

THE COURT: It's all right.

MR. LANGBERG: I presume this is why we went last. I'm getting to the First Amendment issue here.

So, the City Council, in deciding a change not to the CC&Rs, they don't control CC&Rs, but to either the master development plan or the general plan, they have to consider the interests of lots of people, including the people who might be affected by it.

So, these people are soliciting declarations from other interested people who might agree with them, that says: We're not saying that you're not allowed to do this -- you're not allowed to apply for a change to the master plan. We're saying: Hey, City, when you consider whether you're going to change the designation for this, please consider the fact that when we bought this, the master plan said this is open space and we paid a lot of extra for a view of this golf course and this is going to affect our

land values. And we relied on that stuff. And this is just what Judge Crockett said and that's what they're saying to the City. And the City will weigh that with everything else. It's just testimony. It's evidence. The City will exercise whatever burden of consideration they have and decide which evidence to consider. That's it.

If this process of seeking witnesses to submit statements to plead with the City to not allow a change is not quintessential First Amendment speech that's in good faith because, first, they're not making a statement and, second, because Judge Crockett said the exact same words, so somebody might be able to disagree with it but you can't say it was done knowing it was false, if this is not the quintessential First Amendment speech that is protected by the Anti-SLAPP statute, I do not know -- by the way, Your Honor, as the guy who drafted the 2015 version for the proponents and compromised with the opposition, I do not know what is protected. And there's a lot of stuff that's protected.

And once we get past that prong, then they lose on the elements. They can't meet the elements. First, they didn't even try, and they don't get to push this out more than 20 days again without having asked you. And, second, we can go through each cause of action and see why they're not supported. But just based on the Court's interactions

just as I've been watching, I'm presuming that the concern has been on prong one more than prong two. Do you want me to talk more about prong two?

THE COURT: Well, I have the greatest concern, actually, with prong two.

MR. LANGBERG: Okay.

THE COURT: And I'll give you the last word but we need to hear from Mr. Jimmerson on that one as well.

MR. LANGBERG: Yes, Your Honor.

THE COURT: So, Mr. Jimmerson, it seems like you do have a pretty high hurdle to meet in order to show that the petitioning conduct here is not protected by the First Amendment. I'll let you have the floor, sir.

MR. JIMMERSON: Thank you, Your Honor. May it please the Court?

It depends on how you view the facts that surround this litigation. Respectfully, I believe the Court's question -- the question is erroneous. I think the evaluation of the facts that are set forth in the complaint is what is being complained of? What is the actions of these defendants for which this lawsuit was filed?

Opposing counsel says: This is a classic case of someone being sued for exercising their First Amendment rights. Nothing could be further from the truth. And, in fact, that type of hyperbole and distortion is, I think,

evidence of the weakness of the defendants' position.

What occurred in this situation, as attested to in the Complaint, is the individual defendants, one or more of them, were -- had prior knowledge by five prior documents that they, each individually would have been given as part of their purchase of their home years ago and not in recent times, which would reveal to them that there was the right on a part of the developer and successor in interest to the declarant, should be able to develop its property. And, in fact, in the CC&Rs, which are a part of this record, are very clear that there is the right to develop. Each of the defendants signed a document when they purchased their home acknowledging the existing zoning that was in place of R-PD7, 7.49 units per acre. Each of the parties acknowledged as part of their purchase agreement and Exhibit 1 to the purchase agreement that they understood that their views were not guaranteed and that they are -- further understood that there could be development in the property adjoining where they were behind their home. And in the affidavit that you see in response to the Motion -- to our Complaint in the Motion to Dismiss for Anti-SLAPP, the first paragraph of each of the three defendants' affidavits says: We recognize that the property owned by the plaintiffs is not governed by the CC&Rs of the Queensridge master plan.

What you're being given is a lot of loose

communication without a lot of precision or care. There is a difference between the Queensridge master plan, which is what was developed here, which is memorialized by and called a master declaration in CC&Rs in which you are quite familiar, which is governed by NRS 116, and which was utilized by the Peccole family and developed in this project in the mid-1990s. It's something very different than what they're now claiming, which is a Peccole conceptual master plan, six years earlier of which was abandoned in favor of the Queensridge CC&Rs of 1996.

So, what you have here is the knowledge, at least in terms of the Complaint. We believe we can establish that each of the defendants had five individual documents that they were given as part of the purchase agreement that outlined -- that what that they were now trying to promulgate, solicit, and issue, to neighbors was false. And knowing -- known by them to be false at the time that they were undertaking that work.

So, to answer Your Honor's question directly, this lawsuit has nothing to do with abridging or enjoining First Amendment rights, not whatsoever. There's no claim for defamation in this case, there's no claim within the Complaint that their actions to petition the City Council or the City Planning Commission is not something that would be appropriate. None of that is referenced here. The

claim is that these individuals are engaging in intentionally fraudulent behavior with the intent of harming the defendants to delay or deny their right to develop their property, which they know, conceded by opposing counsel in his opening remarks, is the right to develop and the zoning that existed --

THE COURT: But the --

MR. JIMMERSON: -- and that the CC&Rs do not apply to the plaintiffs' property.

I'm sorry, Your Honor. I don't mean to --

THE COURT: No. But the fraudulent behavior that -- the behavior that you believe is fraudulent is the presentment of petitions to get signed to be submitted to a municipal authority and to rely upon those petitions.

MR. JIMMERSON: In part. It's the manipulation. You're absolutely right, Judge. I would just say it's manipulation of neighbors, presenting to them and making representations to them that are false and are being intentionally made with a view that they --

THE COURT: Right. So, doesn't --

MR. JIMMERSON: -- the person they're speaking to would definitely rely upon them, sign, and, then, somehow give a false impression of some sort of knowing recognition to affect is untrue.

THE COURT: I understand. I understand all that.

But doesn't that -- doesn't this test put the burden on you to prove at least that there is some evidence of each of your -- of some evidence on each of the elements of your fraud claim?

MR. JIMMERSON: And my answer to you is it depends.

THE COURT: Okay.

MR. JIMMERSON: You have read the Anti-SLAPP statute, I have too, we all have. It's very short in nature. 41.360 tells us that the first burden of proof is upon the defendant. They have to prove by a preponderance of the evidence that this involves protected communications. I would submit to Your Honor that this case does not involve communications whatsoever; it involves behavior, actions, that are tortious against the plaintiffs here, for which this Complaint was filed.

Now, to answer Your Honor's question -- and that's why I say it depends. If you, through this presentation and the limited evidence you've been presented to so far, came to the conclusion, well: Mr. Jimmerson, I really disagree, I think maybe it's a mixture of something. There's bad acts on the part of the defendants but maybe it involves communications, I see that the document that is soliciting was ultimately somehow to be given or mailed to the City Council. So, it does, then, under the statute,

shift to you, the burden, of demonstrating a preponderance of the evidence, that your case is likely to be successful at the time of hearing or trial under the statute. So -- and that's Your Honor's question.

So, I would say to you, respectfully, that this case, when you look at the surrounding facts of the case, it does not involve communications as the Anti-SLAPP statute was meant to protect.

THE COURT: I'm just having trouble --

MR. JIMMERSON: The Anti-SLAPP statute does not apply to intentional torts. I mean, right from the start, we know that the statute does not apply because it does not apply to intentional interference with respect to economic advantage or conspiratorial acts in furtherance thereof by its own definition and by the Nevada Supreme Court's decisions that we cited four you.

So, I simply want to say, I will certainly answer Your Honor's question. I just would like to state to you --

THE COURT: Well, you clarified.

MR. JIMMERSON: I don't concede that the burden has shifted to the defendant because the nature of the [indiscernible] of the action.

Now, if you have found -- or if you direct, it's not clear to me, Mr. Jimmerson, so I'm going to ask you,

what can you do to demonstrate the preponderance of the evidence of the merits of your case, my response to you is that we would provide it to you, challenge directly to the lack of credibility of these three defendants. Because if you read the affidavits of the three defendants, they say a couple of things. Number one, we don't even own the words. We don't say who prepared these words. We don't even acknowledge that the words are even true. Okay? But in a videotape communication between Mr. Omerza, defendant Omerza particularly, with Johan Lloyd [phonetic], present in court, you will see the transcript where he makes an assertion, Mr. Omerza: I've done my homework. The lawyers have told me there's a master plan that's within the CC&Rs. He uses the word HOAs. It's within the HOAs. Well, that impeaches his affidavit on the face of it, in terms of what was his motivation, what was his intent, and whether it satisfies the claims of intentional misrepresentation and intentional interference with respect of economic advantage.

In addition, you have the statement of Mr. Bresee, defendant Bresee, which models the statement of Omerza. But we have provided to you in response to a former request, a letter written by Mr. Bresee where he supported his project, in writing to each of the City Councilmembers, but asked that the developer satisfy a $5 million

improvement to the Queensridge Homeowners Association, which we attached as an exhibit.

So, the evidence we have in those two instances calls into question the sincerity or truthfulness of the affidavits of the two defendants in question here. And a third defendant, Caria, signed this petition and he signs that he relied upon the Peccole master plan. Okay? Which would be most difficult -- I'm not going to say impossible, most difficult since it was never recorded, it was never part of the title report, and was never handed out or discussed in anything, and it's not referenced in the CC&Rs. Mr. Caria will be given, hopefully, the opportunity with your permission, to answer some questions regarding why he felt he relied upon this.

And the other disingenuous part of this, as you have picked up on, was Judge Crockett's ruling in his March of 2018. These homes were purchased years before that. They couldn't be relying upon a transcript that was not filed with a court, that has not deemed official -- at least the one I was given and one you were given, to have made and relied upon in order to buy their homes. And they -- the things are stated to that statement in the paragraph that they are not forcing upon their neighbors.

So, respectfully, that's where NRS 41.460 comes into play, which is the parties are allowed to ask the

Court for limited discovery, which we have as a cautionary report requested. We don't believe you get there because we don't believe you can get to the area involving communications in the first place. They don't satisfy the first prong and they don't satisfy this part of that prong which is what? Good faith communications. They have the burden to demonstrate by a preponderance of the evidence their good faith. I would suggest, respectfully, on the record you have before you, you could not make the determination of good faith because they were given the actual prior knowledge that there was no Peccole master plan upon which they would rely to buy their home.

THE COURT: How do I assess whether there was good faith or not good faith? That requires assessment of credibility, of balancing of the evidence, --

MR. JIMMERSON: We concur.

THE COURT: -- it's not just a question of law, it's a mixed question of law and fact.

MS. HAM: Yes.

MR. JIMMERSON: I agree. Opposing counsel says that it's only a matter of law. I disagree. I think that you have to -- you're like a gate keeper. And I look at this statute much like you do, in fact, opposing counsel does as well. It's akin to a summary judgment motion without being called it. At the same time, it's very -- I

think it's more akin to a Rule 56(f) statute because what it calls for is the ability to make application for either side to seek to have limited discovery. And --

THE COURT: I guess -- I'm sorry to interrupt you.

MR. JIMMERSON: That's okay.

THE COURT: I probably anticipate that your opponent is going to say, well, good faith as defined in this statute, is simply the act of obtaining -- it's the petition -- if it's pure petitioning conduct itself, then it's good faith. He's probably going to explain -- or that's that probably going to be his position.

MR. JIMMERSON: Well, if he did, he'd be misleading the Court and I don't know that he would want to mislead the Court in that instance because it has to be truthful, too. It has to be truthful, too.

THE COURT: Okay.

MR. JIMMERSON: It's just not the statute. The statute says it has to be truthful and that's why you don't have Anti-SLAPP applying to intentional torts whatsoever. Because you have an intentional misbehavior on the part of these defendants to harm the defendants' ability to develop their property. The plaintiffs had 72 meeting with homeowners, including, we believe, some or all of the three defendants. There was the availability to purchase lots as part of the original discussion. There was discussions

about people making offers, or having negotiations, or conversations with the plaintiffs, all of which are known to the defendants -- or should have been known to the defendants, by virtue of the documents they've been provided, and the act of participation that the plaintiffs have had in trying to work their neighbors throughout this process. The last thing in the world that the plaintiffs want to be is in court.

THE COURT: So, under your --

MR. JIMMERSON: Plaintiffs wish to develop their case.

THE COURT: Under your interpretation of the application of the, you know, good faith term and the Anti-SLAPP suit statute, how would a Court ever be able to grant a kind of summary resolution. We -- I guess what I'm trying to say is the whole purpose behind the Anti-SLAPP suit statute is to eliminate claims at the inception of litigation.

MR. JIMMERSON: Agreed.

THE COURT: All right. How can that be done if the Court, in all instances, have to assess the truthfulness or untruthfulness of a statement made as part of this petitioning conduct.

MR. JIMMERSON: I don't think it can be and that shy you have 41.460 allowing limited discovery. I think,

though --

THE COURT: And how limited?

MR. JIMMERSON: -- and your sentiment is correct. I think that you're the gate keeper, if I referenced you before, you're the gate keeper. You know, you can kind of smell out a case that should be stopped by virtue of violating the Anti-SLAPP statutes. That's your role as a trier of law. Okay? And I think that that is an important role you play here. But that -- but this is not a case where you have, as they claim, okay, somebody who is protesting and, then you sued for protesting. That's not this case. This case has got nothing to do with the First Amendment rights by these defendants. It has nothing to do with communications. We would say it has to do with their intentional misbehavior of trying to interfere with our prospective economic advantage --

THE COURT: But, then, misbehaving --

MR. JIMMERSON: -- and that's what this is about.

THE COURT: The conduct that you said constitutes the misbehavior is the conduct of trying to get signatures, basically.

MR. JIMMERSON: Not. That's not correct.

THE COURT: But isn't it really that --

MR. JIMMERSON: I would concede that that's the conduct at all. Yes, there certainly is part of the

methodology is to get a signature --

THE COURT: Well, their state of mind.

MR. JIMMERSON: -- but it is an intentional misrepresentation of fact to obtain a signature. You know, it is a tort being committed of fraud to obtain a signature. That's not protected behavior under an Anti-SLAPP statute at all. Anti-SLAPP, in our judgment, doesn't even come into play. Raising it is a red herring because we're not talking about in trying to curtail or chill First Amendment rights here. No one is suggesting that you don't have the right to talk to your neighbor. No one's suggesting that you can't go to City Hall and make your presentation, none. We've never suggested that.

THE COURT: Isn't there -- their ultimate goal here, though, is to have influence on the decision that's going to be made by the City?

MR. JIMMERSON: That may very well be --

THE COURT: That's their ultimate goal.

MR. JIMMERSON: That may very well be their ultimate goal and the methodology, their behavior to get there, is what is tortious and what is not protected by the Anti-SLAPP.

THE COURT: So, whether it's protected by the First Amendment terms on their actual state of mind?

MR. JIMMERSON: No. It has to do with the

truthfulness of what they're doing, their good faith --

THE COURT: Right.

MR. JIMMERSON: -- and certainly state of mind would be relevant.

THE COURT: Yeah.

MR. JIMMERSON: I would not suggest otherwise. But, certainly, their behavior is what is being examined here, not their words. This is not a defamation case. Nobody is claiming -- this is not something where they said something ill about the plaintiffs.

THE COURT: Right. So, focus for me please, help me to make sure I'm following your argument. What specific conduct do you say is relevant here in taking this out of the realm of protected First Amendment speech? And let's don't talk about their state of mind, let's don't talk about the actual conduct of presenting a petition and seeking a signature on a petition. What specific conduct do you believe occurred here that is not protected First Amendment conduct?

MR. JIMMERSON: I believe the three defendants, along with others who are unnamed, engaged into a conspiracy, they reached an agreement for an unlawful motive, which is plead specifically within the 16-page Complaint in great detail, to find a method upon which to seize upon Judge Crockett's ruling that came on March 15 of

2018. And to -- in their conversations and in their agreement, to then try to fool or confuse adjoining homeowners to sign petitions that would suggest that they relied upon something that would be impossible to have relied upon, the Peccole master plan of 20 years ago.

THE COURT: Okay. I understand better your position. Thank you.

MR. JIMMERSON: Thank you. And, so, let me just complete my remarks. I hope I have --

THE COURT: No. Please. Take as much time as you need.

MR. JIMMERSON: Well, if I'm taking that much time, I may be losing the argument and that’s something -- that shouldn’t meddle the case.

I want to just complete the thought that the behavior of these individuals of an intentional interference has never been applied, an Anti-SLAPP statute, to that kind of a tort. And, in fact, Anti-SLAPP by the Nevada Supreme Court has not been applied to intentional tortious behavior of this nature. And, so, respectfully, I don’t believe the statute applies. But if we are allowed the limited discovery as I believe you are sort of commanded to -- again, I think you have a gate keeper responsibility, you could say: This just doesn’t cut it and I'm not allowing it. I have no doubt that you have the

authority to do so whether that be an abuse of discretion or not. What I'm saying is that the statute makes discovery mandatory if you find a threshold qualification or satisfaction is present here. And I believe in this case where you have a mixed law and mixed fact issues, that certainly is satisfied. The statute under .660 makes it clear that you should allow limited discovery.

And there's no prejudice to defendants because, under .670, the next statute, gives the ability of you to award reasonable attorney fees and costs, in addition, a fine of $10,000 above that. If you found either parties, not just the plaintiff, the defendant can be assessed $10,000 in fines and attorney fees and costs if their Motion being brought forward here is vexatious or without legitimate basis. And we can improve to you by a preponderance of the evidence only, not by clear and convincing or a preponderance without that there was a premeditated agreement reached and behavior engaged upon to try to accomplish that agreement, which was unlawful.

And, so, I'm just suggesting to the Court that by taking these three defendants' deposition, you could limit that scope in time. You can say two hours each, three hours each, something reasonable. We could get this knocked out in a week or two weeks' time.

What is not the truth, opposing counsel said: And

the plaintiffs should have come to court before the filed the Opposition and asked for an order. Well, the statute doesn't say that all. There's no requirement of that and that's made-up hooie on the part of the defense counsel with regard to having to do that. We filed an Opposition, we filed with it a competent affidavit, we gave you the five or six subject matters that the discovery would speak to, and, we then, provided to you, without argument, without supplementation in terms of argument, but to give you the facts and evidence of how these plaintiffs have -- excuse me. These defendants have misrepresented to you through their sworn affidavits with regard to what they were actually doing and what they actually did in the presence, recorded by Mr. Lloyd [phonetic], which we then also attached the thumb drive. And that certainly meets the requirements of NRS 41.460 and .450 that allows you to allow the discovery to occur.

I respectfully would suggest to the Court that you don't get to the idea of burden shifting or requirements to demonstrate this for the reason that you have the actions on the part of the defendants that are not involving communications, that are intentionally aimed at harming the defendants' property rights, which have been well-established, in which documentation today they're aware of because we were physically handed it and signed for it when

they bought their home.

In addition to, without reference to Judge Smith's ruling, which is now final on the merits, the appeal having been dismissed, and finds particularly in findings 51 through 57 and 73 and 74, which make it clear that not only do the CC&Rs have no application to our clients' plaintiffs' property, but that there is the right to build an that the Peccole master plan does not play a role in our clients' rights. In addition to the master plan that ultimately was placed in place with the Queensridge master plan, not the Peccole master plan. And, therefore, the reliance upon the preponderance of the Peccole master plan isn't there.

Now, that's what the case law says and that's what they were given by virtue of prior mailings, and that's what we believe the evidence will show. But that, obviously, will depend upon how the evidence turns.

But, Judge, this is not a situation where we are seeking in any way to restrain or constrain the words of any of these defendants. They could have at it. They've already communicated in the past. Mr. Bresee contradicts himself because he wrote in the past: I support this development. Of course, they can have their right to speak to City Council and the like. And that is in Queensridge judicial proceeding, which we certainly acknowledge. But

you can't go about it by harming somebody's prospective economic advantage or to fraudulently hurt somebody but your intentionally knowing misrepresentation of fact, not protected by Anti-SLAPP and not protected by any privilege, absolute or conditional. Thank you.

THE COURT: So, you say that, you know, you're not intending to chill the words --

MR. JIMMERSON: Absolutely.

THE COURT: But it also sounds like you're suggesting that anytime you allege an intentional tort, that that could eliminate the application of the Anti-SLAPP statute. You can merely say that: Well, this petitioning conduct constitutes an intentional tort, it was conspiratorial in nature --

MR. JIMMERSON: I don't agree with that.

THE COURT: -- that the petitioners were conspiring, you know, to mislead the homeowners, to mislead the City, to mislead whoever it's -- can you -- I'm assuming you're not saying that you can just allege an intentional tort and, then, get around the statute.

MR. JIMMERSON: Of course not. I don't agree with that all what you just said.

THE COURT: Okay.

MR. JIMMERSON: I think what you really, the devil's advocate, you're saying is correct. I think you

need to look to the gravamen of the behavior. I don't -- I can call it, you know, intentional or infliction of emotional distress, I can call it whatever you want, it's what the facts support. And, so, somebody mislabeling a cause of action can escape your scrutiny under Anti-SLAPP at all.

THE COURT: All right.

MR. JIMMERSON: I think that you are have the obligation as judge jurist to look at the underlying facts and see whether or not it falls under the purview of Anti-SLAPP. And, if it does, then to comply with these requirements, including allowing the certain discovery.

But, here, I'm simply going to say to you that this Complaint was not filed because Mr. Omerza was seeking to have sent a letter to the City Council. This was filed because Mr. Omerza intentionally misrepresented facts with the intent of harming the plaintiffs.

THE COURT: I understand.

MR. JIMMERSON: Thank you.

THE COURT: Thank you. Thank you for answering my question.

All right. Last word.

MR. LANGBERG: I think it's going to be the last several words, Your Honor.

THE COURT: Well, that's fine. We got -- we have

a couple people that showed up for the 10:30 calendar but I won't constrain your argument.

MR. LANGBERG: First, I -- with respect to counsel, I need to ask the Court a question, which is: How does the Court view evidence that's submitted without authority after business hours on Friday for a Monday hearing? Because that's a lot of what was discussed here today. And --

THE COURT: Well, how I view it is you need to tell me if you've had an adequate opportunity to be heard with respect to that new evidence. Or if you want an extension of time so you can have that opportunity.

MR. LANGBERG: I think I -- where I'd like to leave it, Your Honor, is that counsel's representations about things that are behind evidence that he submitted untimely is not evidence, and this is an evidentiary motion.

So, there's several different things. I know that counsel would not want to say something untruthful to the Court, but he did. So, let's look -- it's very important to look at the statute on this discovery issue, Your Honor.

THE COURT: All right.

MR. LANGBERG: And it's -- I'm on NRS 41.660 and the discovery section, which is sub 660(f)4. Notice that is says:

Upon a showing by a party that information necessary to meet or oppose the burden pursuant to paragraph b of subsection 3.

Paragraph 3 of subsection 3, if you look up, is the second prong. There's no right to discovery on prong one. There's no room for discovery. Discovery is not permitted on prong one. That is Section --

THE COURT: Well, let me -- you know what? This is so important, I need to make sure I have the statute in front of me.

MR. LANGBERG: Yes, Your Honor.

THE COURT: So, I'm going to have my Law Clerk go find NRS Chapter 41, plus I have the book back in my chambers.

MR. LANGBERG: Okay.

THE COURT: So, give us -- well, why he’s getting it --

MS. HAM: Well, Your Honor, we have it here if you’d like to have a copy.

THE COURT: Well, that would be very helpful. Thank you.

MS. HAM: Okay.

THE COURT: Marshal, you can have -- approach. Or --

MR. LANGBERG: Is it the 2017 -- I saw your 2015

amendment. Okay.

MR. JIMMERSON: May I approach, Your Honor?

THE COURT: I think I might have had the book back in my chambers. Thank you. I'll follow along better with this. Thank you. You may proceed.

MR. LANGBERG: Okay, Your Honor. I prefer to stand during argument --

THE COURT: You may.

MR. LANGBERG: -- but may I sit for this part?

THE COURT: Either way.

MR. LANGBERG: Okay. Thank you, Your Honor. So, we're at 41.660 and, so, let's just -- just to break it out, subsection b has -- sorry. Paragraph b of subsection 3. Subsection 3 talks about the prongs of the Special Motion to Dismiss. A is whether I've met my burden to show that it's First Amendment speech, a good faith communication in furtherance of First Amendment of speech. In subsection b is the burden shifting to the other side to show the elements of their claims. Okay? So, it's 3(a) and 3(b), we call prong one and prong two.

If we go down to subsection 4, Your Honor, it says:

> Upon a showing by a party that information necessary to meet or oppose the burden pursuant to paragraph b, subsection --

Sorry. Paragraph b of subsection 3, which is just prong two:

> Is in the possession of another party and not reasonably available without discovery, then you can allow limited discovery.

THE COURT: Yeah. No. I get that. You get -- the Court has discretion to grant discovery as to the second prong, not the first prong.

MR. LANGBERG: Right. So --

THE COURT: I understand your argument.

MR. LANGBERG: So, when we're talking about -- so, one of the problems, Your Honor -- and, you know, one of the problems is that --

THE COURT: Thank you.

MR. LANGBERG: -- you heard a lot of attestation by counsel on so many things, on both prongs, that is not submitted as admissible evidence in the Opposition. And this is not a you get -- you try once and you get a second bite of the apple, this is not a Motion to Dismiss under 12(b) and you can get leave to amend. This is the equivalent of a summary judgment where if you don't get it right, you're wrong and you lose.

And, so, there's several things that he said. First, he says: There's no communications here. This is pertaining to activity. Well, you got on it, Your Honor.

First, if that were -- if you take his argument at face value, then there's no truth or falsity, just as I was saying. It's a submission of a declaration to somebody to consider and there's no truth or falsity at issue. But let's -- I mean, we do need to focus on what the statute is protecting, which is a communication -- a written or oral statement -- we're -- now, I'm sorry. I'm at 41 --

THE COURT: I'm following you. I know where we are.

MR. LANGBERG: Yeah. it's -- we're on all four of them but let's look:

> A written or oral statement made in direct connection with an issue under consideration by various governmental bodies or any other official proceeding authorized by law.

A written or oral statement. Everything involved here is a written or oral statement. And if you want to throw in freedom of association under the Frist Amendment because people got together to gather these things, then we can talk about that, too.

So, really, we're at the issue of good faith. Did they know it was false? It's either truthful or did they know it was false? It either wasn't an assertion, we're beyond that, or counsel tells you all this stuff about there is -- as if there's no Peccole master plan. Right?

He -- there's the master declaration of CC&Rs for the association -- for the homeowners association. Right? And, then, there's the master plan for Peccole Ranch. And look at what he says, again, with no evidence, that -- he says that the declarant in the CC&Rs -- he starts arguing the CC&Rs, the declarants in the CC&Rs. His guys are not the declarant in the CC&Rs. They're outside of the development, they've said it themselves. They're outside of Queensridge. The Badlands Golf Course is not part of it and not under the CC&Rs. They bought it from the developer. So, they're not -- they have nothing to do with the CC&Rs, that's what Judge Smith found. What Judge Crockett found is there is a Peccole Ranch master plan and that master plan doesn't let you do this development. He says they have the right to development. The master plan doesn't let you do this development unless you go and get a major modification of the master plan. That's what Judge Crockett said.

It's very important, not because of whether they relied on the master plan when they bought the house or not, but when they made the statement that they are alleging was knowingly false, whether or not they knew it was false. And if you have a judge of this court saying to the world and publicized in the news, by the way, that residents relied on the Peccole Ranch master plan, then you

cannot possibly be said to know that it's false if you put it in a declaration, even if it was relevant because of litigation privilege. You can't. And --

THE COURT: I don't know if I agree with that.

MR. LANGBERG: Well, then let's at least --

THE COURT: Just because one judge says it's so doesn't mean it's so.

MR. LANGBERG: Well -- no. Just because one judge says it's so doesn't mean it's so. But when a judge makes that as an order on a disputed matter, then you can at least rely on it in saying: I don't know it to be false. You can say: This is what the judge determined and I want you guys who also relied on this to tell the City Council. But it matters not because what they were required to do, Your Honor, is give you admissible evidence that my client -- once -- so, we gave you a case that said the burden is met once somebody declares that they didn't know it was false. Okay?

So, it becomes -- and, by the way, the City didn't appeal Judge Crockett's Order. So, they -- see, I got some help and I lost my train of thought.

THE COURT: It's okay.

MR. LANGBERG: I'm sorry, Your Honor.

The -- oh. The prior case from Judge Smith talked about the Queensridge master declaration for the CC&Rs.

You can see it in his Order all over the place. And he talked about whether these people, based on that, could claim that their reliance on anything prevented the development of the golf course, the open space that was outside of the development. And he said: No. He did not find and you will not find them saying that he -- that the developer, the new developer, had the right to develop outside. Right? It's designated as open space. They went to the City Council to try to get it changed, the City Council let them change it. The -- Judge Crockett said: Nope, you can't do it that way, you need to make an application. Okay? They're just opposing that.

Everything they say about Judge Smith is irrelevant. Everything they say about the CC&Rs is irrelevant. Despite the fact that it's not supported by any admissible evidence. I'd have to keep coming, this is an evidentiary motion. They did not meet their burden of even providing evidence. When he says, the Complaint says and we think we can prove, today was the day. Not today. Not Friday. The 4th or the 9th when their Opposition was due. That was the day to come forward with their admissible evidence.

THE COURT: Well, you would agree that a lot of this information that they need wouldn't be in their possession?

MR. LANGBERG: No, Your Honor. I wouldn't agree. I would not agree for -- the only thing that might not be in their possession -- no. There is no -- nothing. Because once we're into the second prong where you're allowed to have discovery, right, that's the only prong, the second prong. There is nothing because then we're -- then we are talking about the absolute litigation privilege.

Can I back up, Your Honor?

THE COURT: You may.

MR. LANGBERG: First, I do not know -- what is it? Poppycock hogwash? The poppycock or hogwash is that the Anti-SLAPP statute doesn't apply to intentional torts.

First, every defamation case on a matter of public concern like this is an intentional tort because you have to prove knowledge of falsity or constitutional malice.

Second, I've provided you with a plethora of cases, many of them from California because it's not litigated a lot here, that showed intentional interference claims, misrepresentation claims. Oh, and conspiracy to suborn perjury, also governed by the Anti-SLAPP action. There might be penalties if somebody did that. There's criminal penalties. Right? But just as we don't have a civil action for malicious prosecution in Nevada, we do not have a civil action even if somebody's suborning perjury.

It is absolutely privileged; it's the *Fink* case that we cited, Your Honor.

So, going back to the second prong. The only place where you consider discovery, not on the first prong, the absolute litigation applies. The proceedings in the City Council are quasi-judicial. We briefed it in our opening brief, they didn't oppose it, and now we've given you a transcript from the City Council's website where their council says --

THE COURT: I have all that.

MR. LANGBERG: Okay.

THE COURT: So, let's just address anything further that you heard from Mr. --

MR. LANGBERG: So, once you have a quasi-judicial proceeding, it doesn't matter what you call it. These guys could have been lying through their teeth. They weren't. It is absolutely privileged. The *Fink* case says that any statement that's made in -- even in anticipation of a judicial proceeding, even if it hasn't been filed yet, any statement that's made in relation to that, particularly getting witness statements, which is what the case is about, is absolutely privileged, even if you know that it's false, intend to do harm, intend to mislead people and have them rely on it. There's not -- there's no -- there's not even an inch of error on the absolute litigation of

privilege when it applies. So, that defeats all of their causes of action on the second prong.

Because it does, unless they can overcome it, they don't need to know what people's mental state was, which would be the only thing that you would give discovery for on the second prong. They don't need to know it because it's absolutely privileged. Their mental state could be the worst in the world and they would still lose. I'll shut up --

THE COURT: Well --

MR. LANGBERG: -- unless the Court ask questions.

THE COURT: You make that statement because state of mind has nothing to do with whether the action was in good faith?

MR. LANGBERG: No. We're -- I was talking about the second prong, Your Honor.

THE COURT: Oh, the second prong on here.

MR. LANGBERG: Because that's the only prong where discovery can be allowed. So, what we have on the first prong, Your Honor, is you have the declarations of these people --

THE COURT: Well, good faith and state of mind is relevant to fraud claim. And, so, that's --

MR. LANGBERG: But it's -- but when the claim arises from communications that relate even marginally to a

judicial or quasi-judicial proceeding, then the absolute litigation privilege applies. The absolute litigation privilege doesn't care whether it's a claim for defamation, fraud, intentional misrepresentation, conspiracy. Once the absolute litigation privilege applies, once you're talking to potential witnesses, standing up in court and addressing the Court, state of mind is irrelevant, truth and falsity is irrelevant.

THE COURT: I don't know that I agree with all that but I -- I'll take a look at your -- because it doesn't say anything about absolute litigation privilege here in NRS 41.

MR. JIMMERSON: Correct.

MR. LANGBERG: No. Because, now, we're -- okay. I'm sorry, Your Honor. Can I back up?

THE COURT: No. I've heard enough. I got to move on. Okay?

MR. LANGBERG: Okay.

THE COURT: Is it in your brief? It is, so I'll review.

MR. LANGBERG: It is. But we're -- I just want to say real quick, it's --

THE COURT: We got to go.

MR. LANGBERG: -- we're not talking about the SLAPP statute now. Now, we're talking about the elements

of his claims and whether he can meet that.

THE COURT: All right. All right. All right.

MR. JIMMERSON: May I --

THE COURT: If there's anything more, you guys want to say, you put --

MR. JIMMERSON: Just two -- okay.

THE COURT: All right.

MR. JIMMERSON: If I can just have two minutes up here?

THE COURT: You guys just get 30 seconds more.

MR. JIMMERSON: All right. Thank you. Opposing counsel inadvertently misstated Judge Smith's ruling when he said that there was no relationship between the plaintiffs and the declarant. And finding 39 of the ruling that's attached to the Complaint part of the evidence of Judge Smith, from November 30th, 2016, which states:

> The developer defendants of the successors in interest to the rights, interest, and title in the Badlands Golf Course formally held by Peccole 1982 Trust, Dated February 15th 1982, the William, Peter, and Wanda Ruth Peccole family under the partnership, and Nevada Legacy 14, LLC.

Number one. And, number two, the absolute privilege, the absolute privilege that's been referenced gives it against a defamation claim. When you talk about

Fink, that is Mr. Oshin's claim that Mr. Fink was a thief and the lawsuit gave absolute protection because it was part of judicial proceedings and denied absolute protection as it relates to Mr. Oshin's remarks to a doctor named Lewin. Okay. You have to read the case. It doesn't apply to the facts of this case or to Anti-SLAPP whatsoever.

Furthermore --

THE COURT: Well, I'll figure that out.

MR. JIMMERSON: Okay. And, then, the last thing I wanted to say is that this suggestion, this falsity that you're not allowed discovery into the prong one, is completely wrong. Because the burden, first, is with the defendants to demonstrate truthfulness and good faith. And, here, we have already shown you, through the videotaped communication between Mr. Lloyd [phonetic] and Mr. Omerza, his contradiction of his sworn statement.

If Mr. Langberg's representation were accurate, then anyone could come in and say, I had no intent of harming anyone, I don't know what's true or not, and that would be all that you're required to go to. Not hardly. What you have here is a failure on the part of the defendants to even own their words that are in their handwritten document where they say: I relied upon the Peccole master plan. They don't even acknowledge this and don't even fight for its truthfulness because they

recognize that it's not true and they don't tell you where it came from or how it came to be, even though they're the ones that's promulgating it, soliciting it, and causing it to be foisted upon --

THE COURT: All right.

MR. JIMMERSON: -- next door neighbors. Thank you, Judge.

THE COURT: But I don't know if I agree with everything that you just said because I don't see how truthfulness or untruthfulness of the speech is relevant in determining whether the good faith aspect of 41.631 is satisfied.

MR. JIMMERSON: I think that some of --

THE COURT: But I'll look at that again --

MR. JIMMERSON: I do think it's mixed issue.

THE COURT: And, also, I didn't --

MR. JIMMERSON: I'm sorry, Judge.

THE COURT: Yes, sir. And I also think the statute at least suggests, at least upon my initial reading -- and I should say this is my third or fourth reading, that discovery relates to the second prong, not the first prong. I'm going to look at this again more carefully. You guys put a lot of your briefs, game me a lot of material to read.

MR. JIMMERSON: Even if it only related to the

second prong, which I don't agree with, we certainly are entitled to it, Judge.

THE COURT: No. I get that.

MR. JIMMERSON: We will respond and be back here within two weeks' time --

THE COURT: Yeah.

MR. JIMMERSON: -- with some short depositions of the defendants. If you allow it, of course.

THE COURT: I might. Let me think about that some more.

Let me ask this. Is there any additional briefing that either of you think would be helpful? I don't think so. I don't think that there's anything more I need from either of you. But if you think you heard your opponent say something that is blatant -- a blatant misrepresentation of the fact or the law, I would give you each maybe a chance to submit at two-page brief on that point. I don't know that it's warranted but I wanted to give you both that opportunity.

MR. JIMMERSON: Well, if we did -- Thursday okay Mitch? Or Friday?

MR. LANGBERG: Well, I think they're asking if there's a particular point. You're not asking -- you're not giving free reign.

THE COURT: I don't want re-argument --

MR. LANGBERG: Right.

THE COURT: -- just if you heard some blatant misstatement, let's not call it a -- let's just call it a misstatement of law or fact, that you think is key to the Court's analysis and you want to, you know, drive that point home, I'll give you a chance to submit a two-page memo. But --

MS. HAM: Your Honor, may I ask you a question about that?

THE COURT: Yeah.

MS. HAM: To the extent that you're going to consider the unfounded assertions by counsel with the Peccole Ranch Master Plan exists, and dominates over the CC&Rs, and all of that, then we would ask for briefing. If you're not going to consider that and prefer to consider the law and facts of this case, then we would say we don't need it.

THE COURT: Good point. Although I'm not going to tell you right now what I'm going to consider and not consider.

MS. HAM: Okay. Yeah. Because that's fair. This has been going on for three years --

THE COURT: I understand.

MS. HAM: -- that's very important, making statements such as, you know, the City Council didn't

appeal it but yet they set -- put on the record it was a legally and proper decision by the judge, all those things, I don't think they come into play here. But to the extent you're going to consider them, we would like that opportunity to give you the accurateness of it.

MR. JIMMERSON: There's also no evidence of that. Mr. Langberg did not attach any documents to support that.

THE COURT: Well, let's --

MR. LANGBERG: May I make a request?

THE COURT: I didn't mean to -- sorry. I didn't mean to open this up for a much --

MS. HAM: Yeah.

THE COURT: -- a lot more argument right now.

MR. LANGBERG: Can you close it down, Your Honor?

My request to Your Honor is that you rule just on the briefing and argument that you've had today. We -- you know, they -- I think that they've been put to the task, we've answered it, I'm sure we could both find ways to write another 20 pages of brief.

THE COURT: No. We're not going to do that.

MR. LANGBERG: Right. I prefer, Your Honor, that we just leave things where they are and let the Court decide based on what it has before it.

MR. JIMMERSON: Our response would be that I'd like to have a chance to look at today's argument. I think

it's very well-briefed --

THE COURT: Well --

MR. JIMMERSON: -- for the reasons that both opposing counsel and myself have indicated. I think the ruling is in favor of the plaintiffs but --

THE COURT: Well, it's --

MR. JIMMERSON: -- to allow us maybe 48 hours so that we could look at it.

THE COURT: It's a difficult issue, difficult case, it affects a lot of different people here.

MR. JIMMERSON: And a fair amount of the representations by both sides, mostly I say defendant but both sides, I'm going to say a neutral point, is not in the record.

THE COURT: Well, the only way you could review the record would be to get a copy of the CD because we certainly wouldn't be transcribed for another 30 days.

MR. JIMMERSON: Understood.

THE COURT: What I'll allow is each side to order a copy of the CD. I think you can get it the same day. You can get it today. Right?

MR. JIMMERSON: You guys have been great.

THE COURT: You can get it by the end of the day. You look -- listen to it yourself. I'll give each side a chance to submit just no more than two-page supplemental

brief. If you think that there is something glaringly incorrect as to the law or the facts by your opponent. All right.

MR. JIMMERSON: All right.

MR. LANGBERG: Well, if -- I'm sorry. I'm not trying to extend this Your Honor. But if you're going to do that, Your Honor, I think it would be -- since -- I don't need to say anything else on the first prong. The second prong, they have the burden. They've already thrown additional evidence at me.

THE COURT: Right.

MR. LANGBERG: I should at least be able to do what I would normally do. If they're going to do it, they can have a couple days and, then, I have a couple days to respond in what would be a Reply brief or a sur sur reply.

THE COURT: Well, because you didn't -- you got all that new stuff Friday. You did get all the new stuff at the last minute.

MR. JIMMERSON: My only response to that is like anything else, the sandbagging in this case was in the Reply by the defense. They didn't put a lot of what's in the Reply in their opening statements. So, it depends how you view the case. I'm just saying to you for both sides.

THE COURT: Yeah.

MR. JIMMERSON: So, he's looking for the last word

but with the power pack situation of raising new points, then we wouldn't have the opportunity to respond to. That's why I like the blind briefing as appropriate.

THE COURT: Well --

MR. JIMMERSON: And Your Honor's suggestion was correctly. But it's your discretion, Judge.

THE COURT: I think the best way to do this is just each side give me your two pages, same time. If -- again, I'll tell the movant here, if you believe that there is, you know, a lot of new stuff that's been submitted, you can do a Motion to Strike. Right? Or you can do a Motion to Reopen the Hearing. There's remedies if you think that there's new stuff. All right? I'm not -- the purpose of this extra briefing is not to give me new stuff, it's just to say: Hey, my opponent said this, this is incorrect, here's the truth, see A, B, and C, which I already gave you.

MR. JIMMERSON: Very good.

THE COURT: That's the only thing that I'm looking for.

MR. JIMMERSON: And I accept that, Your Honor.

THE COURT: All right.

MR. JIMMERSON: And I'll live by that, certainly.

THE COURT: All right. Thursday by close of business.

MR. JIMMERSON: Yes, Your Honor. We'll have a Thursday copy by both sides to -- each side is --

MR. LANGBERG: I'm not capable of doing that, Your Honor. I'm sorry. I just -- my schedule is not --

THE COURT: Yeah. But if I were to give you just 10 minutes right now, five minutes right now, is there -- what --

MR. LANGBERG: Your Honor, I'm involved in stuff involving the Massachusetts and Nevada Gaming Commission for the next three days.

THE COURT: So, what do you want, then? Do you want just to not do anything or to extend it out further? Or just reserve your right to respond if his response has something materially incorrect? What do you want?

MR. LANGBERG: My preference would be, since, again, it was Motion, Opposition, Reply, the statute sets it out that way, is to have him do something and for me to do something a couple days later. But if we're going to do it at the same time, we need to push it into Tuesday or Wednesday of next week.

THE COURT: All right. I'll give you that.

MR. LANGBERG: Okay, Your Honor. Thank you, Your Honor.

THE COURT: I mean, I'm just trying to do what's fair to both sides. I mean, if you really want to have an

opportunity to respond to any supplemental brief by Mr. Jimmerson, then maybe I'll set a date, Tuesday, for each side to give me their supplement and, then, three days after that, to each side to do a Reply? Is that what you're asking for?

MR. LANGBERG: I'm not trying to make you do more work, Your Honor. I just -- we'll do it at the same time.

THE COURT: Okay.

MR. LANGBERG: I think the statute has burden shifting in it --

THE COURT: I understand that.

MR. LANGBERG: -- and that's why I get the Reply and he has the initial burden on the facts, on the elements. And, so, I do believe, respectfully, that the Court is re-shifting some of that burden, not by intent but by what I expect based on what counsel has said. So --

THE COURT: Well, you're the movant. You have the initial burden of proving that prong one has been satisfied.

MR. LANGBERG: Yes.

THE COURT: All right.

MR. LANGBERG: That's true.

MR. JIMMERSON: By a preponderance of the evidence. Yes. That's correct.

THE COURT: And, so, you have -- you do have some

burden first.

MR. LANGBERG: That's true. But they --

THE COURT: All right. So --

MR. LANGBERG: Okay. I'm not going to argue. If we could have until Tuesday or Wednesday of next week to mutually exchange, then that's fine.

THE COURT: Okay. All right. And I appreciate the fact that you're extremely busy and, so, I'll be glad to give you that extra time.

MR. LANGBERG: Okay.

THE COURT: So, let's say close of business Wednesday is the deadline for any supplemental two-page maximum briefs by the parties.

THE CLERK: And that's May 23rd.

MR. JIMMERSON: And that would be May 23rd.

THE COURT: May 23rd.

MR. LANGBERG: Thank you, Your Honor.

THE COURT: All right.

MR. JIMMERSON: Thank you for your time and your staff for your time.

THE COURT: And, so -- and I'm going to just put this down, continue it to the -- let's just keep it on Wednesday, close of business, for in chambers status check regarding this case. All right. Yes. In chambers status check on this case.

MR. LANGBERG: Thank you, Your Honor.

MR. JIMMERSON: Thank you, Your Honor.

THE COURT: Thank you both for your great argument and I got to restudy everything before I can make a ruling.

MR. JIMMERSON: And, just one other thought, I'm not trying to complicate matters. If you were to allow discovery -- now, hear me out, we could get it done by next Wednesday, the 23rd. That's what I'm just suggesting --

THE COURT: Well --

MR. JIMMERSON: -- as opposed to then awaiting you to perhaps grant the discovery or if you find that the defendants have met their initial burden, and, then, going on. We're not here to delay this.

THE COURT: No. I understand.

MR. JIMMERSON: We don't --

THE COURT: I just --

MR. JIMMERSON: This case does not have a thing to do with First Amendment, not one thing.

THE COURT: I mean, I think the discovery you're asking for is a couple hour depositions --

MR. JIMMERSON: That's it.

THE COURT: -- of each of the -- so, I mean, I don't know that necessarily that would be able to get done within a few weeks. It depends on their availability. But I don't want to reach that issue right now.

MR. JIMMERSON: All right.

THE COURT: All right.

MR. LANGBERG: Thank you, Your Honor.

THE COURT: All right. Thank you.

MR. JIMMERSON: Thank you, Your Honor.

PROCEEDING CONCLUDED AT 11:08 A.M.

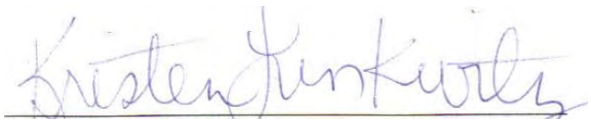
* * * * *

CERTIFICATION

I certify that the foregoing is a correct transcript from the audio-visual recording of the proceedings in the above-entitled matter.

AFFIRMATION

I affirm that this transcript does not contain the social security or tax identification number of any person or entity.



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DISTRICT COURT

CLARK COUNTY, NEVADA

FORE STARS, LTD., ET AL., Plaintiffs, vs. DANIEL OMERZA, ET AL., Defendants.	CASE NO.: A-18-771224 DEPT. II

BEFORE THE HON. ERIN LEE TRUMAN,
FOR DISCOVERY COMMISSIONER BONNIE BULLA
FRIDAY, OCTOBER 19, 2018

RECORDER'S TRANSCRIPT OF HEARING
PLAINTIFFS' MOTION FOR ORDER ALLOWING COMMENCEMENT OF DISCOVERY

APPEARANCES:

For the Plaintiffs: JAMES J. JIMMERSON, ESQ.
JAMES M. JIMMERSON, ESQ.

For the Defendants: MITCHELL J. LANGBERG, ESQ.

RECORDED BY: FRANCESCA HAAK, COURT RECORDER

Las Vegas, Nevada, Friday, October 19, 2018

* * *

[Case called at 9:00 a.m.]

COMMISSIONER TRUMAN: Case number A-18-771224-C, Fore Stars, Ltd. Versus Daniel Omerza and Darren Bresse, et al.

Good morning, counsel. Would you please state your names for the record?

MR. JAMES J. JIMMERSON: Well, Your Honor, thank you. Good morning. Jim Jimmerson, on behalf of the Plaintiff Fore Stars, and my son, James M. Jimmerson, also present.

MR. LANGBERG: Good morning, Your Honor. Mitchell Langberg, Brownstein Hyatt Farber Schreck, on behalf of the Defendants.

COMMISSIONER TRUMAN: All right. This is on for Plaintiffs' motion for order allowing commencement of discovery. There's been a little action in the case this week I see from the Supreme -- or from the, yeah, from the Supreme Court.

MR. JAMES J. JIMMERSON: Yes, Your Honor.

COMMISSIONER TRUMAN: Counsel, why don't you begin.

MR. JAMES J. JIMMERSON: All right. Thank you, Judge. I know the Court has reviewed the pleadings and papers on both sides, so I will hit I think the central points in the case.

The Court needs to be conversant with Judge Scotti's rulings from June 20th, 2018, and the findings. Within those findings the Court specifically found that the Defendant's anti-SLAPP motion did not apply

to the intentional torts that were plead well by the Plaintiffs in the case and specifically denied the motion to dismiss on the basis of anti-SLAPP.

Under the statute that you've seen, there is an immediate right to appeal as opposed to waiting to the end of the case, which the Defendants have availed themselves to.

We then had a disagreement with opposing counsel when we attempted to schedule an ECC, and rather than taking the sort of I would say the unilateral action of filing the UCC and the notice of depositions, we now return before you for an order that we can go forward and begin discovery.

The Defendant has also failed to take -- to file an answer. We're not intending to default them, but we do want have permission to begin discovery.

The case law in Nevada and California and in the Federal Courts all support our position. It is very clear that the causes of action that are plead by the Plaintiffs for intentional misrepresentation and intentional interference with respect to economic advantage and conspiracy are claims for intentional tort that, by their definition and by case law, are not covered by the anti-SLAPP statute.

The further point is that the both the California Appellate Court and Supreme Court and Federal Courts have held that the anti-SLAPP only applies to claims that are much akin to defamation where there is public policy issues here.

Here the Defendants are engaged in intentional

misrepresentation to private parties and in efforts to gather support to defeat the Plaintiffs' development plans and rights to develop, and that was carefully and lengthily argued before Judge Scotti in a spirited argument by opposing counsel and myself, which resulted in these detailed findings, which I do call upon the Court to be familiar with.

Specifically, the trial Court found that the intentional torts plead by the Plaintiffs were not covered by the anti-SLAPP statute and the motion to dismiss was denied.

The Defendants blinked in the case because, in addition to taking the appeal, they then filed a petition for *writ of mandamus*, attempting to compel the Supreme Court to reverse Judge Scotti's denial of their Rule 12(b)(5) motion for failure to state a claim, which the Court found was also baseless, and as you saw two days ago, the Nevada Supreme Court dismissed the petition on the grounds there was no extraordinary basis now for the Court to intervene to otherwise go forward.

So what you have here is clearly the posture of the case that needs to go forward and begin discovery. I will also say that the Defendant has another remedy. If it were a close call, if -- and for Judge Scotti it wasn't a close call, as you can tell by the findings, but if the Supreme Court were to see it differently, were to see it as a close call -- and I would submit that that's not likely in light of their denial of the petition for writ because they raised the same issues before the Supreme Court in the petition -- then there is a right under Rule 8 of the Nevada Rules of Procedure to seek a stay of the discovery before the

Supreme Court. They would say, listen, this is a close call. You need to make a determination, and that would be the basis. That would be something available to them. They've chosen not to do that.

Instead, they're attempting to circumvent Judge Scotti's orders through Judge Truman by coming here today and asking you to find a -- make a contrary finding from what Judge Scotti found, make a contrary finding that intentional torts do not apply to anti-SLAPP motions and to otherwise attempt to reverse Judge Scotti's specific findings which were well briefed, a pile of documents, and the like.

I also would just conclude by indicating that there is prejudice to the Plaintiffs if they're not allowed to go forward with their case. This case is no different than any other. The mischief of the Defendants in this case is apparent. If you were to accept the Defendants' argument, then you file a complaint for divorce, you file a complaint for medical malpractice, you file construction defect. I filed a motion for anti-SLAPP, clearly not covered by the cause of action. The motion to dismiss is denied. I take an appeal, and I stay all discovery for two years while the Nevada Supreme Court or the Appellate Court reviews and makes a ruling. That's not proper, and that's not the rules in Nevada, or California, or the Federal Courts that we have. We are the best of it, Judge. We're permitted to begin discovery, and I thank you for that order.

COMMISSIONER TRUMAN: All right. Counsel.

MR. LANGBERG: Good morning, Your Honor. Listening to counsel's argument, you would think that they won an appeal that is

challenging the underlying order denying the anti-SLAPP motion on the very grounds that he asserts the discovery should commence, that is whether or not the anti-SLAPP statute applies to the tort causes of action that they assert.

Were his position accurate as far as how a discovery stay works, then, of course, every time somebody filed an appeal from an anti-SLAPP motion it means that the Plaintiff won below that has resisted the anti-SLAPP motion below and would mean that they think that the anti-SLAPP statute doesn't apply.

But let me clear up a couple of things before I get into the substance, Your Honor. First, the *writ of mandamus* was not brought on the same grounds as the anti-SLAPP. We filed the *writ of mandamus* because there were issues under 12(b) that we thought -- 12(b)(5) that we thought could be considered along with the anti-SLAPP and because the Court was going to have to decide the anti-SLAPP we offered them the opportunity to decide a privilege issue alongside it; they declined, they didn't rule on the merits, so it means nothing.

So we have to start with the statute here. The statute says that if a motion is filed, if an anti-SLAPP motion is filed, that discovery has to be stayed pending an appeal that's -- doesn't have to -- it is stayed pending an appeal on the ruling of the motion. The very issue in dispute here is whether or not the motion was properly denied because the issue presented by the motion was that each of the causes of action arose out of Defendants' petitioning activities, and whether you characterize them as fraud, or intentional interference, or conspiracy, the

petitioning activities fall squarely within the definition set in the anti-SLAPP statute. The Court disagreed.

What else did the Court do? If you look at the docket, Your Honor, the Court has set a status check pending this appeal several months from now, so the Court, Judge Scotti, thinks that this Court is stayed. The statute says that this Court is stayed. And, more importantly, Your Honor, there is no authority that they have cited that stands for the proposition that a cause of action that has been challenged by the anti-SLAPP -- by an anti-SLAPP motion somehow can be litigated, let alone have discovery conducted on it, while discovery is pending.

Each of the cases they cited -- and I'm happy to address any one of them. Each of the cases they cited deal with cases where a particular cause of action was not challenged by an anti-SLAPP motion, and the Courts usually in California determined that that cause of action could proceed pending an appeal because it was tangential, it was separate. But where, as their own case says -- it was a great cite -- the Mangine case they cite: An appeal stays all further trial Court proceedings upon the matters embraced or affected by the appeal.

Well, the matters embraced by this appeal are every cause of action. So counsel wants to make a policy argument in the face of the express language of the statute. I mean, the statute is clear on its face, but his policy argument also fails. He says, well, in a divorce case, or a construction defect case, any Defendant will file an anti-SLAPP motion. They might, but the anti-SLAPP statute the Legislature decided also has

a provision that says if you file a frivolous anti-SLAPP motion, the Court can award attorney's fees against you, and, of course, if you appeal the denial of an anti-SLAPP motion frivolously, the Supreme Court has the ability to issue sanctions for that. So the Legislature has covered all ends. There are remedies for frivolous appeals that will stop somebody in a divorce case from filing an anti-SLAPP motion where it doesn't even apply. But they've also protected Defendants like my clients who asserted that they have been sued based on an exercise of their First Amendment rights, and one of the protections is if you think that the District Court got it wrong in determining whether the anti-SLAPP statute applies or a motion should be granted, you can appeal and discovery will be stayed. We have to defer to the Legislature.

Thank you, Your Honor.

COMMISSIONER TRUMAN: Okay. Anything further, Mr. Jimmerson?

MR. JAMES J. JIMMERSON: Yes, Your Honor. This is a two-process analysis that Judge Scotti has made and that you are asked to confirm. First, you have to decide whether or not the claim is within the scope of the anti-SLAPP statute, and specifically the first words of the statute, paragraph 1 of 41.660 says: If an action is brought against a person based upon a good faith communication in furtherance of their right or petition or their right to free speech in direct connection with an issue of public concern. And then it goes forward.

Judge Scotti found that that was not what the facts would support a factual issue in this case related and that this statute did not

apply, and the Defendants did not meet their burden of proof to inject themselves to their protections of the anti-SLAPP motion, and that's specifically found within paragraph 17, finding paragraph 17, page 7, of the Court's order. Quote, the First Amendment does not overcome intentional torts, see Bongiovi versus Sullivan, Nevada Supreme Court decision, no special protection is warranted when the free speech is wholly false and clearly damaging to the victim's business reputation, and quoting four other cases. That's the issue in this case.

The burden is on the Defendant. They have failed in their burden, and if they thought it was a close call, they could seek their remedy from the Nevada Supreme Court because otherwise -- and may I indicate in this kind of a case an award of attorney's fees is not much of a deterrent. From the Defendants' perspective it's delay, delay, delay, keep this developer from developing the Badlands Golf Course. That's their goal, even when they engage in intentional misrepresentation and conspiracy.

Thank you, ma'am.

COMMISSIONER TRUMAN: All right. Based on the Supreme Court's denial of the petition for writ, it looks like at this stage of the game this case is ready to be answered and 16.1 should be complied with, and --

MR. LANGBERG: May I interject just for a second, Your Honor?

COMMISSIONER TRUMAN: Certainly.

MR. LANGBERG: I'm sorry.

There's an appeal still pending. There was a writ as to the denial of the 12(b)(5) motion because there's no appeal from that.

There's an automatic appeal from the denial of an anti-SLAPP motion, and that is still pending. As a matter of fact, the opening brief is due on Monday.

MR. JAMES J. JIMMERSON: We concur.

MR. LANGBERG: So there's an appeal of the anti-SLAPP motion still pending that is brought under this very statute.

MR. JAMES J. JIMMERSON: We concur, Your Honor. There is an appeal pending.

COMMISSIONER TRUMAN: Okay. But at this stage of the game I think that -- are there any -- first of all, are there any exigent circumstances that would warrant discovery at this point before 16.1 is complied with?

MR. JAMES J. JIMMERSON: No.

COMMISSIONER TRUMAN: Okay.

MR. JAMES J. JIMMERSON: And we did not do so. When they failed to appear, we scheduled it, we came to you as opposed to taking that type of tactic. With your permission, there will commence 16.1, and we'll have that report filed, and then, only then, discovery will begin.

COMMISSIONER TRUMAN: Okay.

MR. JAMES J. JIMMERSON: Just in accordance with the rules.

COMMISSIONER TRUMAN: All right. Given the -- okay, well,

given the fact that the appeal is still pending, and that an answer then is not yet required, then there's no -- I find no reasonable basis to allow discovery to go forward at this point, and we'll wait until the Supreme Court does hear the issue. But following that, then the case will just get rolling with the answer being due and 16.1 will be complied with, but I see no reason to begin discovery at this point while the appeal is pending.

MR. JAMES J. JIMMERSON: Judge, it'll be an 18-month to two-year delay when the Court has made a -- respectfully, you were on the right track before you were -- you heard opposing counsel. The issue for you, the issue for the Defendant, is whether or not their pendency of the appeal stays the action, and the answer is no because the appeal only applies to causes of action that are covered by the anti-SLAPP motion.

Here you have a trial Court specifically finding that the causes of action that the Plaintiff has brought forth are not covered by anti-SLAPP and anti-SLAPP does not apply. They have taken appeal of the ruling, which is their right under the statute, but in terms of the beginning of discovery, that's our right, and if they thought it was such a close call, they could either ask you for a stay, or Judge Scotti for a stay, or they could ask the Supreme Court for a stay; they have asked neither for a stay. They believe that just by filing the notice of appeal that the Court is deprived of jurisdiction to go forward with the case. And, as you've indicated, the Nevada Supreme Court has made it very clear two days ago that's not the situation at all.

COMMISSIONER TRUMAN: Counsel?

MR. LANGBERG: I'm just -- I'm just going to read the statute: If an action is brought against the person based upon a good faith communication in furtherance --

MR. JAMES J. JIMMERSON: Right.

MR. LANGBERG: -- of their right to petition --

MR. JAMES J. JIMMERSON: I just read it.

MR. LANGBERG: -- or the rights of free speech in direct connection with an issue of public concern -- which is in dispute, that is the Court found it was not, we contend it was, and that's what we assert on appeal, so if such an action is filed, then the person against whom the action is brought may file a special motion to dismiss. -- except as otherwise provided in subsection 4, which doesn't apply here, the Court must stay discovery pending the disposition of any appeal from the ruling on the motion.

Now, of course, there's two ways to appeal a ruling on a motion. If the motion is granted, it means the case was completely dismissed and so they would be appealing and there'd be no discovery because the case was dismissed. The only time that the stay would apply is if an anti-SLAPP motion was denied, and I, the loser, who's saying their case should have been dismissed, is on appeal.

What they want to do is they want to say the Court got it right, and, therefore, discovery should commence.

MR. JAMES J. JIMMERSON: But, Judge --

MR. LANGBERG: The whole purpose --

MR. JAMES J. JIMMERSON: I'm sorry.

MR. LANGBERG: -- of what the Supreme Court is doing is to decide whether the Court got it right. So they don't get to pick and choose. They have the reverse order as far as where to go. They shouldn't -- it is not appropriate to come to the Discovery Commissioner to say please disregard the Legislature's statement that the case should be stayed while the Supreme Court is considering an anti-SLAPP motion on appeal because we and the District Court thought that the anti-SLAPP motion was not appropriately filed because it doesn't apply in this case. That's exactly what the Supreme Court's going to decide. That's exactly why the Legislature has granted the stay.

MR. JAMES J. JIMMERSON: The tip-off in this case to the Court and to Judge Bare that there was not a good faith basis to believe that the claims by the Plaintiff were somehow covered by the anti-SLAPP statute was that the Plaintiffs -- or the Defendants also filed a motion to dismiss under Rule 12(b)(5), which was denied, and as you've indicated, the Supreme Court has also denied their writ with regard to that.

If they thought that the anti-SLAPP motion stopped the entire case, they would never have filed a motion to dismiss under 12(b)(5), they would have never seen a writ before the Nevada Supreme Court. They know that the anti-SLAPP appeal only applies to claims that fall within the anti-SLAPP -- I've read you the first sentence of the statute. The Court has made a specific finding that the claims brought by the Plaintiff do not fall within the anti-SLAPP statute, do not constitute an

attack upon good faith communications, but have everything to do with intentional behavior, misrepresentation of fact, and conspiracy to harm the Plaintiff from developing their property.

The burden is on the Defendants to seek a stay from the trial Court or from the Appellate Court if they're going to attempt to delay discovery, and that's, respectfully, the proper ruling in this case based upon our review of all the case law. They haven't cited you a single case that would say the Nevada statute, in the face of a trial Court finding, that says this claims of the Plaintiff do not fall within the coverage of the anti-SLAPP statute, nonetheless, should be delayed until there's been a ruling by the Appellate Court. If that were the case, anybody could file an appeal, regardless of sanctions, and stay a case for three years. That's not the law.

COMMISSIONER TRUMAN: Okay. Counsel, I don't believe the case is currently stayed under the authority you cited. The Court has determined that the -- that it doesn't apply to the causes of actions, and so, therefore, 16.1 needs to be complied with, discovery needs to go forward, and I think that within thirty days the two of you should comply with 16.1 and the filing of a JCCR.

MR. JAMES J. JIMMERSON: Will do so.

MR. LANGBERG: Can you extend that time, Your Honor, so that we have time to object to the Report and Recommendation?

COMMISSIONER TRUMAN: Well, I'm going to ask Mr. Jimmerson to prepare that within ten days, and then you would have ten days to object, so --

MR. LANGBERG: So the 30 days will be stayed?

COMMISSIONER TRUMAN: The 30 days --

MR. LANGBERG: Talking about stays.

COMMISSIONER TRUMAN: The 30 days would, I think, give you enough time.

MR. JAMES J. JIMMERSON: It would be -- listen, there's no stay being entered, but I agree with opposing counsel, if he wants to do that, I won't notice a deposition before he has a chance to have Judge Scotti rule on this --

COMMISSIONER TRUMAN: How 'bout 30 days from the day that Judge Scotti rules on the pending objection or the soon-to-be pending objection?

MR. JAMES J. JIMMERSON: Could I --

MR. LANGBERG: Sounds good.

MR. JAMES J. JIMMERSON: Could I then just ask though -- I have no problem with that, but don't allow them to delay it forever. They need to bring it right away is what I'm saying to you.

COMMISSIONER TRUMAN: Okay.

MR. LANGBERG: Well, I only have ten days.

COMMISSIONER TRUMAN: Well, he has ten days under the rule. He doesn't have more than ten days to object.

MR. JAMES J. JIMMERSON: Right.

COMMISSIONER TRUMAN: But the 16.1 needs to be complied with within 60 days -- I'm sorry, within 30 days of Judge Scotti's ruling on --

MR. JAMES J. JIMMERSON: Very good.

COMMISSIONER TRUMAN: -- what sounds to be like a forthcoming objection.

MR. LANGBERG: Thank you.

MR. JAMES J. JIMMERSON: I'll prepare the recommendations and submit it to opposing counsel.

COMMISSIONER TRUMAN: Thank you.

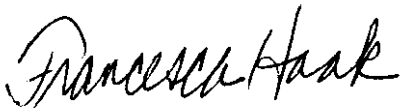
MR. JAMES J. JIMMERSON: Thank you, Judge.

MR. LANGBERG: Thank you, Your Honor.

[Hearing concluded at 9:20 a.m.]

* * * * * * *

ATTEST: I do hereby certify that I have truly and correctly transcribed the audio-video recording of this proceeding in the above-entitled case.



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CLERK OF THE COURT

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DISTRICT COURT

CLARK COUNTY, NEVADA

FORE STARS, LTD., et al, Plaintiffs, vs. DANIEL OMERZA, et al, Defendants.	CASE#: A-18-771224-C DEPT. II

BEFORE THE HONORABLE RICHARD F. SCOTTI, DISTRICT COURT JUDGE

WEDNESDAY, APRIL 29, 2020

RECORDER'S TRANSCRIPT OF VIDEO CONFERENCE HEARING
STATUS CHECK: SUPREME COURT APPEAL

APPEARANCES (via BlueJeans):

For the Plaintiff:	LISA RASMUSSEN, ESQ. ELIZABETH M. GHANEM, ESQ.
For the Defendant:	MITCHELL J. LANGBERG, ESQ.

RECORDED BY: BRITTANY AMOROSO, COURT RECORDER

Las Vegas, Nevada, Wednesday, April 29, 2020

[Case called at 9:32 a.m.]

THE COURT: -- which is Fore Stars versus Daniel Omerza, A771224. All right, let's see if -- oh, this is the one with Ms. Rasmussen was here and this is Fore Star's counsel, I believe; is that correct?

MS. RASMUSSEN: Yes, Your Honor, that's correct. Good morning, Lisa Rasmussen.

THE COURT: Great, and you substituted in in place of Jimerson [phonetic]; is that correct?

MS. RASMUSSEN: I didn't substitute in. I think he's previously already withdrawn. So I just filed a notice of appearance. And I believe that Ms. Ham [sic] is also on the line.

MS. GHANEM: Good morning, Your Honor, Elizabeth Ghanem, bar number 7987. Yes, I'm on the line as well.

THE COURT: And who do you represent?

MS. GHANEM: I'm in-house counsel for Fore Stars, 180 Land, and been associated into the case some time ago during Mr. Jimerson's representation.

THE COURT: All right, very good. And then, who do we have representing Daniel Omerza?

MR. LANGBERG: Good morning, Your Honor, Mitchell Langberg from Brownstein Hyatt Farber Schrek on behalf of all the Defendants.

THE COURT: Very good. And so, let me look at the status

here. It looks like this is the really complex anti-SLAPP suits case. Well, there was an anti-SLAPP motion to dismiss filed by your client, Daniel Omerza.

And the Court denied that motion to dismiss. And then, I think Defendants appealed that denial of the motion to dismiss.

And looks like Fore Stars wanted discovery. They did a motion to commence discovery. And the Court denied the Plaintiff's motion for commencement of discovery, believing that under the anti-SLAPP suit statute, Defendants were entitled to a stay of discovery, pending decision by the supreme court on the denial of the motion to dismiss.

I think that's where we were. Counsel?

MR. LANGBERG: This is Mitch Langberg. Can I set the table a little bit more?

THE COURT: Yes, please.

MR. LANGBERG: Because the -- I'd like to, because there's two different aspects to discovery and one of them is relevant to the remand from the supreme court. And --

THE COURT: Okay.

MR. LANGBERG: -- you're correct, this was a complicated anti-SLAPP motion that the Court -- the supreme court had much less published anti-SLAPP jurisprudence at the time we were first debating the issues.

So you and I just disagreed on some of the issues and the Court has the benefit -- we now have the benefit of hindsight of lots and lots of cases.

The motion to commence discovery that you just referred to, I don't think that that itself was at issue. You -- that was just the Plaintiff's desire to commence discovery in the overall case while the appeal was pending in this Court, Your Honor.

I -- you then correctly found that the stay continued in place until such time as the supreme court ruled. So that's kind of a compartmentalized issue that's no longer relevant.

But the supreme court in its decision did determine, contrary to this Court's best efforts initially, that the Defendant did meet the first prong on the anti-SLAPP statute, that the activity related to matters of First Amendment import, and therefore, the SLAPP statute applied.

And it also found that the Defendant -- I'm sorry, the Plaintiff did not meet their prong 1 burden of making a prima facie showing to support the elements of each of their claims.

However, rather than just reversing and entering judgment, the supreme court noted that in the initial briefing on the anti-SLAPP motion, the Plaintiffs had made a request for discovery.

As Your Honor probably knows, the anti-SLAPP statute, while it stays discovery during the pending motion, allows a party to seek limited discovery if it's necessary to meet their burden on the second prong.

And the supreme court noted that they have made that request. Your Honor has not ruled on that request because you have not passed the first prong. You have found that we didn't meet the first prong, which the supreme court has reversed.

And so, the supreme court remanded, so that Your Honor could

consider whether discovery ought to have been granted or not before Plaintiff had to make their second prong prima facie showing.

And so, it's our belief that the only issue that remains is whether, as if this was still a pending anti-SLAPP motion, and Plaintiff was making a discovery request, whether they meet the criteria for obtaining discovery in the limited circumstances that the statute allows. We think they don't.

And, by the way, we believe that that issue has been briefed. Your Honor may recall that there was the anti-SLAPP motion opposition reply. And also, the Court asked for supplemental briefing after the oral argument where this discovery issue was further briefed.

THE COURT: Right.

MR. LANGBERG: I think that accurately sets the table.

THE COURT: Right. Thank you very much for recounting all that. You did help refresh my memory. I appreciate that.

So before -- let me go back to the Plaintiff, Ms. Rasmussen. First of all, is that a correct statement of the procedural history in this case?

MS. RASMUSSEN: Well, Your Honor, I think it's largely correct, but it is our position that this is the time that we would be requesting discovery based on -- specifically on the [indiscernible] the Nevada Supreme Court. And based on this Court's prior rulings, the discovery should be stayed because the case was pending on appeal.

So it is our position that Plaintiff is entitled now to do discovery, the discovery that was previously requested --

THE COURT: Hold on, hold on.

MS. RASMUSSEN: -- which the Court didn't address.

THE COURT: Hold on, hold on, hold on. Yeah, I didn't ask for argument yet. I'm wanted to compartmentalize this first before we get to the --

MS. RASMUSSEN: Right.

THE COURT: Right, so all I wanted to know is, procedurally, is that correct how counsel explained it? Is the issue --

MS. RASMUSSEN: Yes.

THE COURT: The issue is still pending on whether Plaintiff is entitled to discovery, that limited discovery, that might be necessary to allow you to oppose the motion to dismiss? That's the issue that's still pending in your mind, correct?

MS. RASMUSSEN: That's correct.

THE COURT: Okay, but everything else is pretty much largely correct as Mr. Hyatt has -- I'm sorry, Mr. Landers? Mr. Langberg, sorry.

MR. LANGBERG: I [indiscernible], Your Honor.

MS. RASMUSSEN: Yes, Your Honor.

THE COURT: Pardon me?

MR. LANGBERG: I'll happily respond to any name that starts with an "L".

THE COURT: Okay. So I guess what I would need to know then, I know there was extensive briefing on this, Ms. Rasmussen, I guess I need to know from you then whether there is anything new from the supreme court's decision that you would need to brief as relating to your

request for limited discovery or if I should just rule on the motions or the briefing that I already have?

Do you think the supreme court decision necessitates some additional briefing on the issue whether you're entitled to limited discovery?

MS. RASMUSSEN: Your Honor, I think it does. And I'd like the opportunity to brief the additional limited discovery that we would request that the Court permit us to do.

THE COURT: Mr. Langberg, what's your position on that and whether you think any additional briefing might be necessary in light of the supreme court's decision?

MR. LANGBERG: I don't think so for two reasons, Your Honor. Number one, our initial -- this is supposed to be an expedited process. And our motion was first filed almost two years to the day, just a few more days before two years.

And if they wanted discovery, they were put to the task to request that before the Court ruled on the motion. And they did make the request. We think that it was not sufficient to meet their burden, but they made their request.

And so, I don't think anything that happened for my first point changed that they have their opportunity to request it. They made their request. And the Court should rule as if this motion were pending since the supreme court merely remanded because you -- the Court has not ruled.

Second, the supreme court confirmed that we met the first

prong, because of the official proceedings that were at issue that these related to.

And, therefore, the supreme court confirms what we said in our existing pleadings, which is that the litigation privilege applies. And as we briefed, when the litigation privilege applies, no amount of discovery could possibly let you get past that.

And so, since these issues have been briefed and the supreme court has merely confirmed what we contended, I don't see any reason why they should get yet another round of briefing to debate this issue even further, when my clients have had hanging over their head what they contend is a meritless lawsuit for over two years under a statute that's supposed to have these things resolved very quickly.

THE COURT: Thank you very much, Mr. Langberg.

All right, last word on this, Ms. Rasmussen, on whether you need additional briefing and why.

MS. RASMUSSEN: Well, thank you, Your Honor. I think that Mr. Langberg's describes -- establishes precise --

[Ms. Rasmussen's video connection freezes]

THE COURT: Go ahead. Yeah, sorry.

MS. RASMUSSEN: -- of what discovery would have requested and why.

THE COURT: All right, you cut out for a second. That's what makes this -- all of these --

MS. RASMUSSEN: Yeah.

THE COURT: -- BlueJeans hearings a little bit difficult, a little

bit frustrating. You cut out --

MS. RASMUSSEN: Okay.

THE COURT: -- for a moment. Can you get ahead and restate that, please?

MS. RASMUSSEN: I can. And thank you for your patience.

THE COURT: That's okay.

MS. RASMUSSEN: So I think that the response from Defendants illustrates exactly why additional briefing is needed.

They started telling you about what the supreme court had ruled. So, yes, there was an initial request made by Plaintiff by my -- by Plaintiffs, my clients, for discovery, but 100 things have happened since that time.

So I think just to obtain that for the Court, allow the Court to make an educated decision, an informed decision, based on everything that's happened since that initial request for discovery is appropriate.

Let me do some additional briefing just on what discovery is requested, why it's relevant, and how it comports with the Nevada Supreme Court's ruling.

THE COURT: Give me two examples of these 100 things that have happened that you just mentioned?

MS. RASMUSSEN: Well, okay, so this Court made its ruling denying the motion to dismiss. And then, the notice of appeal was filed.

And then, there was a motion for discovery made after that happened. That went to the Discovery Commissioner, was litigated there.

And then, Defendants objected to that. They filed objections.

And then this Court made a ruling on it.

And then, the Nevada Supreme Court litigation ensued and then the Nevada Supreme Court order.

So I think some supplemental briefing on why the discovery is necessary, how it comports to the Nevada Supreme Court order, and why this Court should allow it would be beneficial to the Court.

THE COURT: So it's supposed to be an expedited process and I have a lot of briefing now. I will look at and study very carefully the supreme court decision.

And I will look at and read very carefully the briefs that were submitted to the supreme court. And I'll re-read all the briefing that was done on the discovery issues leading up to this point.

I don't think I'm going to need much more than that, but I will give you a very, very limited opportunity to provide me with anything else that you think I might need to know on this, Ms. Rasmussen, but I'm only -- it's supposed to be expedited. I'm only give you a week and five pages.

If you think there's something critical that I need to know before I rule on this issue of giving you limited discovery, you need to get it to me within a week.

And I'll give you five pages. And then, I'll give two days -- well, how much time, Mr. Langberg, would you want to respond to that? Two days, five days?

MR. LANGBERG: I'm not going to tell you that I have a -- I'm not going to tell you that I have long planned, uncancellable vacation, but

if she's -- if I have a motion in another case on anti-SLAPP, Your Honor.

I have a petition due on the 8th, sorry, after the 11th. So then I have the weekend if she's going to be turning it in on the 6th.

THE COURT: Very good. So on the 6th then. That's about one week from today is the deadline for Plaintiff to provide this Court with supplemental briefing on why limited discovery should be allowed in connection with the opposition to Defendant's special motion to dismiss.

Defendant's opposition to that motion will be due on the 11th. And I don't think I would need a reply brief from the Plaintiff. If you feel it's necessary, I'll give you two days to get in a reply brief.

Do you want that opportunity, Ms. Rasmussen?

MS. RASMUSSEN: Your Honor, I don't know that I need it, but let's just keep it as an option.

THE COURT: All right. Well, I'll go ahead and give you the right to file a reply. And that'll be two days after the 11th.

What day of the week is the 11th?

MR. LANGBERG: It's a Monday, Your Honor.

THE COURT: All right, so Wednesday, the 13th is the deadline for a reply. And then, I'll have my decision the following Monday.

So 13th, 14, 15, 16, 17. 8 -- I think that's the 18th?

THE CLERK: 18th.

THE COURT: All right, the 18th will be my decision. I don't need any further argument on this, but May 18th will be my decision on the motion for limited discovery.

If I were to deny the request for limited discovery, are there any

issues that the supreme court has still left for me to resolve on the motion to dismiss?

Mr. Langberg, let me hear from you on that?

MR. LANGBERG: No, Your Honor, I believe that if she's the denied the motion for discovery, all that would be left for you to do is essentially an order presenting the anti-SLAPP motion in an order of dismissal, such as post-judgment motions for attorneys' fees.

THE COURT: Right. I -- that was my initial feeling, but Ms. Rasmussen, is there anything else that you think the supreme court left for me to decide, other than whether you have a right to limited discovery?

MS. RASMUSSEN: Your Honor, you cut out for a minute. Can you say that again? I'm sorry.

THE COURT: Yes, is there anything that the supreme court left for me to decide, other than whether you get limited discovery? Because if you do get limited discovery, then I would assume -- well, I know that after that discovery period, then I need to re-look at the motion to dismiss.

If you don't get limited discovery --

MS. RASMUSSEN: Your Honor --

THE COURT: If you don't get limited discovery, then I think I just need to move forward in issuing the -- granting the motion to dismiss. I don't think anything would be left for me to resolve. What do you think on that?

MS. RASMUSSEN: Your Honor, I actually don't think that's accurate. I think that the supreme court opinion discusses the context in which this Court made its prior ruling, which focused on one prong and not

the other prongs.

So I think that there are additional things that this Court needs to address. So I don't know if you want briefing on that.

I mean I -- should we just get through this discovery matter and then have a status check after that? I mean, I don't agree that the supreme court sent it back for you to decide whether or not discovery was appropriate only.

I think the supreme court sent it back because they thought that the analysis should be more wholesome than focusing on a single prong.

THE COURT: Seems that they may --

MR. LANGBERG: Can I respond, Your Honor?

THE COURT: Very, very briefly, because I'm looking at this and it seems like they made some affirmative rulings that establish the law of the case. And I thought they addressed more than just the first prong, but go ahead, Mr. Langberg.

MR. LANGBERG: Yeah, I was just going to read from the penultimate issue they said. They said that, and apologies, Your Honor, that we therefore conclude that the District Court erred in determining that Respondents met their two-step burden of demonstrating the prima facie evidence of probability of prevailing on their claim.

THE COURT: Right.

MR. LANGBERG: So Your Honor's correct. That is law of the case and that somehow they can make a showing that this is one of the unusual cases where discovery is allowed, and as a result of such unusually allowed discovery, they can somehow create a prima facie

showing. Barring that --

THE COURT: Yeah.

MR. LANGBERG: -- if you deny discovery, the supreme court has directed what should happen.

THE COURT: So I -- what I'm going to do is, in the event I deny limited discovery, I am going to simply move forward in ruling on the motion to dismiss. I'll do that expeditiously.

In the event that I find that I need additional briefing on the motion to dismiss, then I'll go ahead and request it. But at this point, don't anticipate that I will need additional briefing. I may just go forward and resolve the motion to dismiss in the event I deny limited discovery. All right?

MR. LANGBERG: Thank you, Your Honor.

THE COURT: That's my plan.

And so, the date again, Madam Clerk, for my resolution?

THE CLERK: That's May 18th at 9 a.m.

THE COURT: May 18th at 9 a.m. and then again in the event I deny limited discovery, let's say that my decision on the motion to dismiss will be issued one week after that?

THE CLERK: It is May 25th.

THE COURT: May 25th is the date for that decision. Now --

THE CLERK: In chambers.

THE COURT: That will be chambers unless further indicated. Now in the event -- here, I'll leave it to the parties to decide if there's -- if you want to make an emergency request for additional briefing, I'll at least

consider that, all right, Ms. Rasmussen? If I --

MS. RASMUSSEN: Okay, thank you, Your Honor.

THE COURT: So what I'm saying is if I am going to deny your request for limited discovery, you will know by whatever is the date you get the minute order on that.

And then, in the event that you think and have a good compelling reason that you need to brief something further, I will consider that request, but you'd have to get it into me before or the date that I gave you for my ruling. Do you understand?

MS. RASMUSSEN: Understood. Thank you so much.

THE COURT: All right, I just want to move this quickly.

All right, Mr. Langberg, anything further from you, sir?

MR. LANGBERG: No, thank you, Your Honor.

THE COURT: All right, then, we'll move forward with some resolutions on this. Thank you, counsel for your patience and sorry for the -- any difficulty you had hearing me through this system. All right.

MS. RASMUSSEN: Thank you so much. I'm sorry, too, Your Honor.

THE COURT: No problem. All right, have a good day, counsel.

MS. RASMUSSEN: Okay.

MS. GHANEM: Thank you, Your Honor.

THE COURT: Thank you.

[Proceedings concluded at 9:55 a.m.]

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ATTEST: I do hereby certify that I have truly and correctly transcribed the audio/video proceedings in the above-entitled case to the best of my ability.

Chris Hwang
Transcriber

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DISTRICT COURT

CLARK COUNTY, NEVADA

FORE STARS, LTD, Plaintiff, vs. DANIEL OMERZA, Defendant,	CASE#: A-20-771224-C DEPT. II

BEFORE THE HONORABLE RICHARD F. SCOTTI,

DISTRICT COURT JUDGE

MONDAY, JULY 13, 2020

RECORDER'S TRANSCRIPT OF HEARING:
DEFENDANT'S MOTION FOR PROTECTIVE ORDER LIMITING DISCOVERY ON ORDER SHORTENING TIME

APPEARANCES: [All appearances via videoconference]

For the Plaintiff: LISA A. RASMUSSEN, ESQ.

For the Defendant: MITCHELL J. LANGBERG, ESQ.

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RECORDED BY: BRITTANY AMOROSO, COURT RECORDER

Las Vegas, Nevada, Monday, July 13, 2020

[Case called at 9:47 a.m.]

THE COURT: A771224. Who do we have appearing on behalf of the plaintiff?

MS. RASMUSSEN: Good morning, Your Honor, Lisa Rasmussen on behalf of plaintiff.

THE COURT: All right. Hello, Ms. Rasmussen. All right then, who do we have appearing on behalf of the defendants?

MR. LANGBERG: Good morning, Your Honor, Mitchell Langberg on behalf of the defendants. And just a technical note, Your Honor.

THE COURT: Yes.

MR. LANGBERG: I think we just see -- I don't know that it matters that much, but we just see ourselves on your screen instead of you.

THE COURT: Oh.

MR. LANGBERG: It looks like you've got screen sharing on I think.

THE COURT: Well, I don't know how that works. Do they normally see me?

THE RECORDER: It's because when I put it on video, so I can get them on JAVS for the recording.

THE COURT: Okay. Do they normal -- normally see me when we do this?

THE RECORDER: I don't know if it's --

MS. RASMUSSEN: Sometimes --

THE RECORDER: Yeah.

MS. RASMUSSEN: When you're talking, yeah.

THE COURT: Sometimes I think you do, yeah. Well, all right.

MR. LANGBERG: We'll survive.

THE COURT: Okay. I don't know what's going on with that. I don't handle the technical part of it. But we'll look into that for the future, so thank you.

So first -- oh hold on. You need to ask me a question, no? Okay. So let's deal with the procedural aspect of this first. So I know this is a defendant's motion for protective order. The procedural aspect is in plaintiff's response to the motion for a protective order they express concern that this Court had issued a minute order providing clarification to its prior discovery order before having had a chance to receive and review the plaintiff's response to defendant's written request for clarification.

And let me take a look here. Yeah, right so this matter came back in front of me after a remand from the Nevada Supreme Court where it appeared to the Nevada Supreme Court -- or it appeared to me that the Nevada Supreme Court had resolved Prong 1 and was remanding back to this Court for appropriate proceedings regarding Prong 2 with a request to this Court that this Court consider whether discovery should be allowed on Prong 2.

There was some ambiguity from the Supreme Court's order on whether they had resolved the issue of the litigation privilege. And I noticed that there was some petition for a rehearing filed by the defendant to the Nevada Supreme Court asking for a clarification. I think the Nevada Supreme Court denied the rehearing but did indicate that they had not -- didn't intend to resolve the issue of the litigation privilege and that this Court was to resolve the issue of the litigation privilege and also to decide whether limited discovery should go forward.

This Court in a minute order on May 29th, 2020, did grant plaintiff's request for limited discovery and granted it in part and denied it in part. It looks like in this minute order I didn't make a specific finding with respect to the litigation privilege. After that minute order, which I don't believe was transformed into an official order. I didn't see an official order relating to my May 29, 2020 minute order. I'll give you both a chance to correct any of these facts if I'm wrong.

In any event, after that minute order I received a written request from the defendant for clarification. And that written request is considered or was considered by the plaintiff to be in the nature of a formal motion and they believe that they had an opportunity -- they deserved and opportunity to formally respond in writing and that this Court should have entertained that response in writing before making its next minute order which was on June 5th, 2020.

And in my June 5th, 2020 minute order I granted in part and denied in part -- I'm sorry, I issued a clarification to my prior minute order where I granted in part and denied in part plaintiff's request for limited discovery. And in that minute order of June 5th 2020, I stated as follows: The discovery permitted by the prior order must relate to the second prong of the anti-SLAPP analysis and is limited to the matters identified in plaintiff's papers or the matters identified by the plaintiff at the April 29th hearing.

All right. In light of plaintiff's well founded point that it was important and it should be important to this Court to consider their written response to defendant's motion for clarification, I'm doing two things. Number one, I'm vacating the June 5th, 2020 minute order for of clarification. Number two, I am considering the plaintiff's response to the motion for protective order as their opposition to the defendant's request or motion for clarification. I'm going to entertain argument on the extent to which there should be clarification and what that clarification should be and whether my initial minute order of June 5th, 2020 is correct. And at the same time I'm going to entertain argument on defendant's motion for a protective order.

So basically what I'm doing is I'm opening up for both parties to argue the merits of the scope of permissible discovery as well as the extent to which this Court should limit that discovery and grant the protective order. So that's the procedural aspect. I wanted to make sure we had that all on the record.

Before I turn this over to the defendants, Ms. Rasmussen, did you need to clarify anything that I said with respect to the procedural status?

MS. RASMUSSEN: No, Your Honor, I didn't. But I -- you know, I think I could say a couple things now that would help guide us and narrow the issues. So I included -- I had started to prepare and was actually ready to file a response to the request for clarification, which I -- you know, deemed to essentially to be a motion and the defendant's attempt to further narrow what I was permitted to ask in discovery.

And in that response that I was drafting that I ended up not filing because the order came out, I had pointed out that was by papers were the supplemental brief, the original request for discovery that was filed by my predecessor counsel on behalf of plaintiffs. And that the complaint was part of my papers because Prong 2 requires an analysis of prima facie evidence of likelihood of succeeding on the merits. And so when the clarification order came out from Your Honor, I felt that it was consistent with what I believed I was able to ask. And I don't know if it gave any clarification or not to the defendant, so I'll let them speak for themselves.

THE COURT: Okay.

MS. RASMUSSEN: I think that --

THE COURT: Thanks, I just wanted --

MS. RASMUSSEN: So I was fine with it. I was okay with it. I just I pointed out in my response here, because I don't think I

elaborated on what I deemed my papers to be. And my paper and my papers was a term coined by defendants that I should be limited to what's in my papers. This was their idea, but they didn't specify what my papers are. Now they have a different idea of what my papers are. So I kind of think that's where the little bit of a rub is here. And then so, you know, I was okay with the clarification order. I'm just pointing out that maybe we need to be specific about what my papers are, because this was their concept.

THE COURT: Right, no I understand that and the minutes of June 5th 2020 were never actually transformed into a formal written order, so this Court never had a chance to, in that order, specifically identify what this Court meant by the word papers.

And everyone knows a minute order is actually not an official order of the Court that anybody can rely upon. Supreme Court has said several times that basically a minute order is of no value or no weight in terms of any document the parties can rely upon until there's actually a formal written order signed by the Judge and dated. That's why it's always important for parties to get in a draft order for the Court to review after minute orders are prepared. Minute orders are prepared by the Court Clerk either based upon comments from the court or based upon comments from the Court to the Court Clerk after a hearing. But it's always important to have a written -- formal written order.

In any event, that's the procedural status. Let me go

ahead now and hear from the plaintiff and I'd like to hear from the plaintiff as to three things. Number one, does the Court need to make formal findings on the litigation privilege? Number two, what is your position on the papers that should guide the scope of permissible discovery? And then number three, assuming your interpretation of the papers that limit the discovery is correct, whether the plaintiff has exceeded that scope in its outstanding discovery request which is the subject of your motion for protective order? So let me go ahead and hear from Mr. Langberg.

MR. LANGBERG: Thank you, Your Honor. You said plaintiff, but --

THE COURT: Oh.

MR. LANGBERG: -- just to clarify, defense.

THE COURT: Yes.

MR. LANGBERG: So --

THE COURT: Well plaintiff's papers, yes.

MR. LANGBERG: Thank you.

THE COURT: Yes, thank you.

MR. LANGBERG: Yes, yes. And let me apologize, Your Honor, because in hindsight, probably I should have raised the issue for clarification in a different manner. At the time, discovery shows a lack of -- commenced discovery immediately. And the Court -- the law clerk had indicated that if your order still presented issues then we could set a status conference. And I think that candidly counsel perceived it from her perspective and I perceived it

from my perspective. And so until the discovery was served many weeks later we didn't realize that we had a disagreement, so --

THE COURT: Okay, not a problem.

MR. LANGBERG: -- I appreciate the Court's --

THE COURT: Thank you though.

MR. LANGBERG: -- patience with this process.

THE COURT: Of course.

MR. LANGBERG: So, before -- so I don't think that the Court -- I raised the litigation privilege with the Court and with the Supreme Court in the context of whether discovery should be allowed or not. The argument that I made and that has been accepted by courts in other jurisdictions, particularly in California, is that if the litigation privilege applies, and the Court will recall that the litigation privilege is absolute. It doesn't matter whether you were making knowingly false statements or not. Doesn't matter what your intent was or isn't. If the litigation privilege applies, then no discovery could be done that would alter the outcome of Prong 2. And therefore, discover ought not be permitted at all.

Because the standard under 41.660(4) is that the plaintiff show that discovery is necessary to oppose the anti-SLAPP motion. So the Court considered the discovery motion but didn't address the anti-SLAPP or sorry, the absolute privilege. So perhaps the Court decided to leave the absolute litigation privilege until later when it reconsiders Prong 2, or perhaps the Court thought it doesn't apply.

I still think that the most prudent, given since we're

reopening this, Your Honor, given the purpose of anti-SLAPP statute, which is to provide an expeditious resolution for defendants before they incur the burden and expense of discovery in cases that implicate First Amendment Rights, which the Supreme Court's already decided on Prong 1. Since the goal is to avoid discovery if there's no merit to the claim, I think it's appropriate for the Court, frankly, before allowing discovery to consider whether the absolute litigation privilege applies because if it does, then this discovery process is just kind of a futile process.

But for the moment, unless the Court's going to start with that, let's I guess I should continue onto what is the proper scope of discovery.

THE COURT: Yes, please continue.

MR. LANGBERG: Yes. And so again, and I don't want to belabor the point, but I don't want to be unnecessarily lengthy, but I think that is important to state, remember that we're in the context of the anti-SLAPP statute. By law, by statute, there is no discovery when an anti-SLAPP motion has been filed unless the plaintiff makes the showing required in (4) of 41.660. So the default is no discovery. Then they need to make a showing that discovery is appropriate.

And they have to show three things as we said in our papers. One is that there's information that's necessary to oppose the motion. That two, it is only in the possession of third-party, so they don't have it. And three, they only get discovery that would

allow them to uncover that information and only that information. And it's only allowed with respect to Prong 2, Your Honor. The code specifically notes that it's only for (b), which is the Prong 2 analysis.

So that means that plaintiff is put the task of identifying what discovery is necessary to oppose the motion and outside of their control. So it can't possibly be we get to do discovery on our complaint because it's one of the papers, because that would just be full blown Rule 26 discovery. And how ironic would it be, Your Honor, if a statute that's designed to protect defendants actually allows plaintiffs to do discovery by themselves on the whole case?

THE COURT: Yeah, Prong 2 is pretty broad though, right?

MR. LANGBERG: Well Prong 2 is they -- Prong 2 requires them to show prima facie evidence of each element of their claim. But they don't get discovery on Prong 2. They get discovery on Prong 2 to the extent that information that's necessary to meet their burden is only in the control of third parties. But then -- so there's the substantive issue, Your Honor.

And then there's also how we got here. Because, you know, just -- for the very same reason, Your Honor, that you're concerned about their ability to respond to our clarification that has you reopen up this, we were put in a similar position. Counsel told Your Honor, pleaded for additional -- you'll recall at our last hearing.

THE COURT: Uh-huh.

MR. LANGBERG: I think the Court's tone was suspicious that it needed any additional briefing. But counsel said just let me give you a brief on just what discovery we need and how it's relevant, right.

THE COURT: Uh-huh, right.

MR. LANGBERG: And, Your Honor, that's what I opposed.

THE COURT: Right.

MR. LANGBERG: It's not fair in the -- for the same vain for where they have the burden to show the need to say all we need is these three things. And that's literally what it said. We quoted, Your Honor, we should be given discovery on some things they relied on. That's my paraphrase. That's what we opposed. We think it's unnecessary because of the litigation period -- privilege. But that's what they ask for. They can't get more than they asked for, any more than if they had drafted 10 interrogatories and not an interrogatory for the 11th issue on a motion to compel they can't ask me to be responding to something they never asked.

And so they didn't ask for it. They got the extra briefing that they requested from Your Honor. In the briefing they said what they wanted. They got that from Your Honor. This -- in this process that's supposed to be expedited with so many briefs that we've written, it cannot be that they just get to point to their complaint and say we get to do discovery on any of these issues.

The limitation set forth in 41.660(4) is not a limitation in

quantity. It's a limitation in scope. Information necessary to meet their burden that's only in the possession of third parties. So they go what they asked for. Their requests exceed that because their requests go far beyond just what information did you rely on in making statements. And in deed their request on the face of it even say sometimes that they're request in their argument that they're trying to go for Prong 1, which explicitly not allowed. So I've said a lot, Your Honor, and hopefully --

THE COURT: No, that's good.

MR. LANGBERG: -- it's articulate.

THE COURT: Let's take a look while you're -- while you're here on the floor. Let's take a look at their statement of what they actually wanted to do in discovery, their supplemental brief. Do you have that handy and can you read for us what it is they said they wanted?

MR. LANGBERG: Yes. Standby, Your Honor.

THE COURT: Was there a -- go ahead.

MR. LANGBERG: I thought I'd highlighted it in here.

THE COURT: You might have. I'm just wanted to take a look at it again. Yeah, that would be on their brief you attached, I think it's page -- that's page 5 of the Exhibit 2 to your brief, right?

MR. LANGBERG: Right. And --

THE COURT: Well here's --

MR. LANGBERG: So there --

THE COURT: Go ahead.

MR. LANGBERG: Yes, go ahead, Your Honor.

THE COURT: No, you go ahead. That's okay.

MR. LANGBERG: So what they said in their brief is: Plaintiff's must be able to ask the defendants what documents they are relying on, what information they are relying on or if that information was provided to them by third-parties. That was the only specific that was in their brief at all, topically or specifically. Hopefully that answers your question.

THE COURT: Right, and then right after that then they say the Court will have to make a credibility determination on whether it believes the testimony of the defendants proffered so far.

MR. LANGBERG: Now that's legally incorrect, Your Honor. Because the -- on Prong 1 the Supreme Court's already noted that we met our burden by proving by a preponderance of the evidence that the statements were either truthful or not made knowingly false. On Prong 2, they just need to make a prima facie case of their elements. So that means that they have evidence, which if taken on their own is sufficient to meet their burden. And so there's no credibility weighing that goes on Prong 2. Cases that say anything about that refer to the former statute that had a much higher burden on Prong 2.

And so if the Court -- though I disagreed with the Court on granting discovery because of the litigation privilege, the subject matter that they're talking about in their papers makes sense if discovery is going to be allowed. That is, they've made these

declarations that the other side says are false. What were my clients relying on when they made these declarations that the other side says is false? As far as whether they're true or false, obviously that's information that's in their control. They don't need it from third parties.

THE COURT: But if you have affidavits of your clients that you are having me consider with respect to Prong 2, I have to decide whether I believe the statements of your clients and how much weight to give those statements, right?

MR. LANGBERG: I don't -- I don't agree that my -- other than my clients -- other than a legal defense, that being the litigation privilege, I think you're like -- this is like summary judgment, Your Honor, and the cases say it. So they got the evidence, which taken by itself would meet the claims, then my clients can be saying they disagree all they want but --

THE COURT: Right.

MR. LANGBERG: -- it's -- the case moves forward.

THE COURT: And so it's like a summary judgment standard, I draw all reasonable inferences in favor of the plaintiff in determining whether they've met a prima facie case to satisfy Prong 2?

MR. LANGBERG: That is correct.

THE COURT: Is that essentially the standard?

MR. LANGBERG: That is essentially the standard, Your Honor. So you'll -- at that time, from us, you'll have to consider if

you don't do it before, the litigation privilege issue. Because that's a legal defense just like in a summary judgment motion. But other than that, they just need to put on their prima facie claims, the elements of the prima facie evidence that support the elements of their claims.

And the statute says okay we understand -- the Legislature says we're putting a freeze on discovery. We understand that sometimes there's information that's only in the possession of the opposing party that you couldn't possibly know. For example, Your Honor, in a defamation case, if the defendant knew the statement was false or not. And so that's what you would -- the Court would typically limit the plaintiff to is that evidence that they show is necessary but not in their possession. And then we get beyond the statute because they've only made a showing, if they made a showing at all, they couldn't make a showing on anything other than what they specifically requested.

What the discovery requests reflect, Your Honor, is that they think that the Court saying you get four -- three depositions, 12 hours of depositions and 15 RFPs, that is the limitation and now they get to go hog wild on anything that relates to Prong 2, ignoring the provisions of the statute that only allow discovery for stuff that's only in the possession or knowledge of third parties.

THE COURT: All right. All right, no, I get that. And so I mean, I could actually ignore any evidence submitted by the defendants here and focus just what's on proffered by the plaintiff to

determine if they met their prima facie case.

MR. LANGBERG: On Prong 2 --

THE COURT: Yeah, Prong 2.

MR. LANGBERG: -- Your Honor? Yeah, with the exception of the legal defense, that is --

THE COURT: Right, with the exception of the legal defense, got it. All right. Great, all right. Ms. Rasmussen, may I hear from you please. And it looks like the --

MS. RASMUSSEN: All right. Thank you, Your Honor.

THE COURT: -- the reason I -- we're doing this is the Supreme Court basically ruled that you had failed to meet your burden of demonstrating with prima facie evidence a probability of prevailing on your claims. And Supreme Court remanded for me to decide if you get to discovery to see if you can meet your prima facie burden. And I granted some discovery, and so let's -- let me hear from you on why you need more than just what was stated on page 5 of your brief.

MS. RASMUSSEN: Thanks, Your Honor. Okay, so first, I -- for some reason I don't know why, but every time I listen to Mr. Langberg, with all due respect to him, explain what he thinks we're entitled to do, it's very little and nothing and we shouldn't be here at all.

So here's what the Supreme Court said -- and basically this case, you ruled in favor of plaintiffs and they appealed to the Nevada Supreme Court. So what the Nevada Supreme Court

recognized was that nobody was really talking about Prong 2. It's not that we had failed to meet a burden. It's that no one got to that analysis because you granted a ruling that didn't -- that had the defendants not getting past Prong 1. And so no one really got to Prong 2.

So here's what the Nevada Supreme Court said. And I'm going to go kind of back and forth between their order and the statute. So in their order they say absent evidence that clearly and directly overcomes such declarations -- that's the defendant's declarations -- the sworn declarations are sufficient for the purpose of step one. So they're allowing for the fact that there could be evidence that overcomes those declarations that were submitted to you for the purpose of step one, which are the declarations that say -- or they -- that say, you know, we believed that we were acting in good faith. So I disagree with defense counsel that Prong 1 is completely foreclosed. So that's one issue.

Prong 2 is whether the moving -- or if the Court determines the moving party has met the burden of paragraph A, which is Prong 1, then the Court must determine whether the plaintiff has demonstrated with prima facie evidence a probability of prevailing on a claim or the claim.

Okay, so now we got to look at the claims in this case. The claims in this case are that the defendants, homeowner residence in Queensridge gathered declaration, wrote declarations, encouraged other people to write declarations suggesting that

somehow they had some property right that they don't have. And I'm just simplifying it for the purpose of this argument.

So when it's pointed out that they were saying something that wasn't true and submitting it to the City of Las Vegas, they then say in their declarations that are submitted to this Court, we believed the information to be true. So at a minimum I ought to be able to ask and this is what I said in my supplemental brief, what they were relying on when they made those statements, both the declarations and the statements to this Court, why they believed them to be true.

But this also goes to Prong 2 because it's the merits of our case. So in our claims, in our complaint there's a negligent misrepresentation claim and there's an intentional misrepresentation claim. Now there's also, you know, other elements are that it caused damage to us. I certainly have that information. I'm not relying on them to provide that.

But the issue is whether or not these were intentional misstatements or whether they were negligent misstatements, these are the kinds -- so in the request for production, I asked 15 questions total. Some of them overlapped that I -- you know, I think all three defendants did three questions. There was some additional questions to Omerza and one additional question to Caria. But all of those questions go to those issues. What information did you have? When did you have it? And who provided it to you? It's asking for documents that were provided to

them so that you can make an assessment, so I can come back to you and say I don't think this could have possibly been truthful on their part or maybe you'll decide that it was truthful. You know, it's basically asking -- and these are just requests for production. They're not interrogatories. What documents were you provided? What are you relying on? So that is what comes out in my supplemental brief.

But when -- you know, in this attempt to limit everything. It's like I'm already very limited and I've accept the Court's order. I'm not the one that's filing motions for clarification. I'm not the ones -- you know, the one filing motion to expand discovery. They're filing a motion for protective order. I'm responding to all of it. But I think the questions that I asked are -- and if you just look at the 8 that they -- you know, that they attached to their moving papers, all go to those issues.

So part of what's in my papers is what's in the complaint. Because in order to do a Prong 2 analysis, you have to look at whether or not my claims have merit. And so determining whether my claims have merit also depends on you making a determination as to whether these people, these defendants made truthful statements in their declarations and in their affidavit that they submitted to the Court that was attached to their anti-SLAPP motion.

So I think it's pretty simple. And Mr. Langberg has an eloquent way of making it very complicated when it shouldn't be.

THE COURT: Well let me ask this.

MS. RASMUSSEN: These are simple questions.

THE COURT: Yeah. Obviously under an anti-SLAPP case like this, it's supposed to be an expeditious resolution. The Supreme Court allows only limited discovery. What's your understanding of the limit? Because if there is no limit, why even have in the statute 41.660(4) that there is a limit if you're allowed to do discovery on anything that's raised in the complaint? What's your view on what is the limitation over this discovery that you're allowed to do? What's your view then? Because it can't --

MS. RASMUSSEN: My view --

THE COURT: -- you can't do discovery on everything right?

MS. RASMUSSEN: Right, I'm not asking them for their tax returns. I'm not asking them for things I would ask in the normal course of litigation. I'm not asking for everything. I'm asking very narrow questions that go to the claims in this case. The fact that they go to the claims in this case doesn't mean that they're not limited. I don't even understand the defendant's argument there. You know, I don't understand his kitchen sink argument.

I've asked very narrow questions about where they got their information, what they were relying on, what makes them think that they're statements were truthful. What makes them think that their -- that they made truthful statements at all. Because the statements in fact weren't truthful, so okay so now we have an

issue of maybe they didn't know they weren't truthful. But I don't know that. So that's --

THE COURT: Well that's --

MS. RASMUSSEN: -- what I'm asking about.

THE COURT: -- that's your whole case. I mean, that's everything that's in your complaint. It doesn't sound like there's any limitation then. It sounds like what you want is discovery on all elements of your claims in your complaint.

MS. RASMUSSEN: Well I didn't ask in my discovery request about all elements of my complaint. I asked about a few elements in my complaint because I was limited to 15 across three defendants. So I asked very limited questions, Your Honor.

And I -- I mean, why would I not be able to ask questions about what's in my complaint? You know, that's the Prong 2 analysis is whether I'm likely to prevail on the merits. So, you know, I don't -- this is why I say Mr. Langberg is making a circular argument that somehow if I ask something about something that's in the complaint I'm --

THE COURT: Well so --

MS. RASMUSSEN: -- doing full blown discovery. I don't think that's true.

THE COURT: So let me try again. Under Prong 2, is it your understanding that you're allowed to conduct any discovery that would otherwise be allowed under Rule 26?

MS. RASMUSSEN: No. Because there is -- there are

elements in Prong 2 that I have -- I have the information. For example, damages are an element.

THE COURT: Okay.

MS. RASMUSSEN: The fact that my client had a business contract is an element. I don't need discovery on that. I can establish that without going to third parties. You know, that's the stuff that's in my possession.

THE COURT: Okay.

MS. RASMUSSEN: What was in the defendant's head when they were making these declarations is the part I don't have. And frankly a request for production may not get to what was in their head. I think that the deposition does that perhaps. But at least knowing what documents they're relying on, because when I go to take a deposition if they say well I had this document and that and I don't have it. I mean, I'm just trying to get what I perceive to be basic documents that they might have been relying on. Like what documents did they get? What were the disclosures when they bought the house?

THE COURT: Right, and I thought --

MS. RASMUSSEN: And that's one of the questions.

THE COURT: Yeah, and I thought that I had allowed all that. And I just assumed you'd get their information, get all the documents they relied upon and you would have that before you took the depositions, but --

MS. RASMUSSEN: Well I -- that's -- I thought that I was

entitled to get that and then here we are on this motion for protective order.

THE COURT: Okay. Well very good. Thank you. Anything else that you would like to add?

MS. RASMUSSEN: No, Your Honor. I will tell you though that we set some depositions for later this week. And I think because of this motion being filed by the defendants, we're going to kick them out a little bit and then we anticipated prevent -- providing the Court with a stipulation to extend the deadlines from this Court's minute order.

THE COURT: All right. Thank you. I wouldn't have a problem with accepting whatever stipulation the parties had on that.

All right. So let's go back to Mr. Langberg for a reply, sir.

MR. LANGBERG: Thank you, Your Honor, just a few points. I will say that whatever the Court -- whatever the Court decides on the scope of discovery, I think it would be worthwhile considering whether to resolve the litigation privilege issue before any discovery is done so that if the Court finds the litigation privilege applies, we're not sitting here doing a bunch of discovery when it's not needed. But in any event, --

THE COURT: Of course.

MR. LANGBERG: -- I think we're coming. We'll come back to that in a minute. Do I need to address the issue about whether the Supreme Court left open Prong 1 or whether that's not part of the remand? Counsel keeps coming back to the Prong 1

issue, which I think is clearly resolved by the Supreme Court and the remand issue is very specific to discovery on Prong 2.

THE COURT: Yeah. I'm not a hundred percent convinced that Prong 1 was completely and finally disposed of by the Nevada Supreme Court after hearing Ms. Rasmussen's paraphrasing of some of the things that are in this order. So I need to go back and take a look at the Supreme Court order, the 12 pages --

MR. LANGBERG: Then I'll address that real --

THE COURT: -- I want to see --

MR. LANGBERG: -- briefly, Your Honor, if I --

THE COURT: Yeah, just --

MR. LANGBERG: I'm so sorry.

THE COURT: -- briefly though, just briefly.

MR. LANGBERG: Yeah. So one is most important, they say specifically in the last paragraph that for the reasons set forth above they vacate the Court's denying the anti-SLAPP motion and remand to the District Court for its determine -- for it to determine whether respondents are entitled to discovery under 41.660(4). And as we've discussed 41.660(4) only allows discovery on Prong 2, not Prong 1.

So if the Court was expecting Your Honor to do anything on Prong 1, it would have been something other than discovery since they can't. And I think the Court makes pretty clear that what they're saying is because the other side didn't have any counter

declarations on Prong 1, then they didn't have anything to stop us from muting our Prong 1 burden. But I trust that the Court will --

THE COURT: All right. I understand. Thank you.

MR. LANGBERG: -- see that in the review.

So the reason that I didn't file -- right, so the typical way of if somebody thinks that discovery has been ordered that ought not be ordered is to at least try to get a writ from the Nevada Supreme Court. The reason that I didn't, Your Honor, is because admittedly begrudgingly because of the litigation privilege, I understood that the Court was just allowing discovery on what counsel said now and said in her papers, documents and information about what they were relying upon.

But that's not -- that's not a -- those would be pretty easy RFPs. Please produce all documents you relied upon in drafting your declaration or this affidavit. That is a far cry from produce all documents by and between you and any other individual concerning the land upon which the Badlands Golf Course was previously operated, et cetera, and so forth. It is a -- it's a big difference from all title and escrow documents concerning or related to your purchase.

So I understand in a broad Rule 26 discovery, you -- if you're hunting for what information we had, you might say give me all the documents. But in an anti-SLAPP discovery when the Court says that you're entitled to find out what they relied upon, they don't get to go through the whole file and decide what they had and didn't

have. They get to ask the simple question. What did you rely upon? You can do that at document request. You can do that in the depositions. Because what they're trying to do is, as she said, prove what my client knew and didn't know, my clients knew or didn't know.

So we're happy to live with what they asked for, mindful that we think that the Court might be -- it might be more efficient to resolve the litigation privilege issue first.

THE COURT: All right. Thank you. Has everyone been heard to their satisfaction at this point?

MS. RASMUSSEN: Your Honor, --

MR. LANGBERG: Yes, sir.

MS. RASMUSSEN: Your Honor, I don't know that I responded to the litigation privilege. I think that that is an issue that the Court decides after the limited discovery. They keep saying it and I don't know that they're accurate on it.

But this is again, just so the Court is aware of it, another attempt by Mr. Langberg to make sure that no discovery can be done. I don't think that I am -- have to word my discovery requests exactly the way that Mr. Langberg wants me to word them. I've been doing this for a really long time and I think I wrote reasonable requests.

THE COURT: All right. Thank you. And I think it was the Nevada Supreme Court that said in its order of February 27, 2020 that they weren't intending to resolve the litigation privilege issue

themselves, that they said the Court should consider whether the litigation privilege would foreclose any discovery at this point in time. And I know that that's been fulling briefed by the parties and I don't know that I specifically addressed it yet. I should probably make some findings on that after I think about this further.

I don't think I need anymore briefing on that, do you Ms. Rasmussen?

MS. RASMUSSEN: Well, Your Honor, I really don't -- unless my predecessors briefed it substantially, I don't believe I have post-remand briefed the litigation privilege issue. They -- I did my supplemental brief. They responded with their supplemental brief and said that they thought the litigation privilege applies. And I don't believe that I have substantially personally briefed the litigation issue.

So if you want to make that decision first, then I would request an opportunity to brief the Court on the litigation privilege and then we need to stay these, you know, depositions that we have scheduled and the Court's decision on the request for production. Because the -- what's happened here is the defendants keep throwing out in the context of whether or not we should have limited discovery litigation privilege. So --

THE COURT: Well, right, yeah.

MS. RASMUSSEN: -- I don't believe that I have briefed it.

THE COURT: Well they had -- basically they asked the

Nevada Supreme Court for the Nevada Supreme Court to clarify its ruling. And they came back and said well we're denying your request to clarify. We think it's clear. We didn't resolve litigation privilege yet. And so the Supreme Court is looking to me now to make that decision. I thought it was adequately briefed. But let me do this. Let me take a look and see if you've had a full and fair opportunity to oppose the defendant's position on litigation privilege. If you didn't have a full and fair opportunity to do that, then I'll ask for supplemental briefing. I don't want the briefing to keep going on in this case where it's not necessary. But I want to make sure you've had a fair chance to do that.

Mr. Langberg, what --

MR. LANGBERG: Yeah, may I --

THE COURT: Just very briefly.

MR. LANGBERG: No argument. Just to assist the Court and I know you'll make your own judgment once you review it. But I think if you -- if the Court goes to the initial SLAPP briefing, so our SLAPP motion their response and our reply, there was extensive briefing on the litigation privilege.

THE COURT: Was that Jimmerson's office before --

MR. LANGBERG: I'm not suggesting --

THE COURT: Was that Jimmerson's Office --

MR. LANGBERG: Correct, Your Honor.

THE COURT: -- before Rasmussen got involved. Okay. All right.

MR. LANGBERG: Yes, Your Honor.

THE COURT: Well let me take a look at it.

Thank you, counsel. I'm going to take this under advisement. There's a lot here. I know you have discovery -- some depos sent for the end of this week. Today is Monday. I can --

MR. LANGBERG: We've been able to work together, Your Honor, --

THE COURT: I can't --

MS. RASMUSSEN: Why don't we just stay -- yeah we -- I mean, I'm comfortable with you staying the discovery order and timelines for right now until you -- if you want to look at the litigation privilege and issue a minute order. And certainly anything that Mr. Jimmerson filed would be considered something that I filed, so I don't have any issue with that. I'm just not -- he did not me, so I don't have it all in my head.

THE COURT: And I don't have it all in my head either. That was pre-appeal. That was some time ago.

MS. RASMUSSEN: Right.

THE COURT: All right. So let's do this, let me take it under advisement. I'll tell the Clerk to docket that I'll have a decision by this Friday. And discovery is stayed pending my ruling on the motion for protective order. And if I need additional briefing I'll let the parties know by minute order. Does that -- does that work at least up to this point?

MS. RASMUSSEN: Yes.

MR. LANGBERG: Yes. And when we all retire we can write a book on anti-SLAPP procedure together.

THE COURT: Thank you. Yes. This is the third one I've had in almost 6 years. Actually -- I had a really big anti-SLAPP case when I worked for Mort Galane about 20 years ago. All right, guys, thank you very much. I'll --

MR. LANGBERG: Thank you, Your Honor.

THE COURT: I'll get back to you with a minute order on this by the end of this week, the hearing is over. Thank you.

MS. RASMUSSEN: Thank you, Your Honor.

MR. LANGBERG: Thanks for your time and attention, Your Honor.

[Hearing concluded at 10:35 a.m.]

ATTEST: I do hereby certify that I have truly and correctly transcribed the audio/video proceedings in the above-entitled case to the best of my ability.

Jessica Kirkpatrick

Jessica Kirkpatrick
Court Recorder/Transcriber

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DISTRICT COURT

CLARK COUNTY, NEVADA

FORE STARS, LTD, Plaintiff, vs. DANIEL OMERZA, Defendant,	CASE#: A-20-771224-C DEPT. II

BEFORE THE HONORABLE RICHARD F. SCOTTI,

DISTRICT COURT JUDGE

WEDNESDAY, JULY 29, 2020

RECORDER'S TRANSCRIPT OF HEARING:
DEFENDANT'S MOTION TO DISMISS

APPEARANCES: [All appearances via videoconference]

For the Plaintiff: LISA A. RASMUSSEN, ESQ.

For the Defendant: MITCHELL J. LANGBERG, ESQ.

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RECORDED BY: BRITTANY AMOROSO, COURT RECORDER

Las Vegas, Nevada, Wednesday, July 29, 2020

[Case called at 10:07 a.m.]

THE COURT: A771224, who do we have -- do we have Ms. Rasmussen on the line. I think you had checked in.

MS. RASMUSSEN: Yes, Your Honor, I'm here. Good morning.

THE COURT: Good morning. And then do we have -- who do we have as counsel for the defendants?

MR. LANGBERG: Mitchell Langberg, Your Honor.

THE COURT: Pardon, oh.

MR. LANGBERG: Mitchell Langberg.

THE COURT: Yes, Mr. Langberg, hello. So counsel, this was set for continued hearing on the motion to dismiss. I'm assuming given the discovery issues that we all had that you want this continued. But Mr. Langberg, why don't you tell me what the status is.

MR. LANGBERG: Your Honor, I believe it was on the 21st Your Honor, issued the minute order on our motion for protective order basically defining the scope of discovery that the Court was going to allow. This hearing currently set was set back when you had issued prior discovery orders before we litigated those more before, Your Honor. I think that -- I think that what we need to do is conduct the discovery that you've ordered. And that's when Ms. Rasmussen would file her supplemental opposition to the

anti-SLAPP motion and we would file our supplemental reply so that you could consider the anti-SLAPP motion. Unless there was some other issue that the court wanted to address before discovery was conducted.

THE COURT: I do want to make sure that you are of course cooperating in providing the discovery that I did say you have to provide. Right?

MR. LANGBERG: Yes, Your Honor, --

THE COURT: You're --

MR. LANGBERG: -- we're working on -- we've been going back and forth on a form of order. I'm not sure whether we're going to have an agreed form or we're going to have to submit different forms in the dispute. I think we're both clear about -- and Ms. Rasmussen I'm sure -- an invite her to correct me if I'm saying anything for her that she could -- that isn't correct. I don't think we have any dispute about what the Court has ordered to occur. But there's a little bit of disagreement right now in kind of the findings that led to that order that decision. So we probably have another round or two or emails to go back and forth to see whether we can reach an agreed order. And if not we'll submit our dueling orders. But in the meantime, as I said, I think we agree what the scope is and we've even agreed on a timeline for that to occur and a briefing schedule to follow it.

THE COURT: Sure and I'll give Ms. Rasmussen a moment but first it would be my preference that you -- if possible

you work this out by decreasing the number of findings and just get to the heart of the matter on the scope of discovery. The -- you know, the actual findins and the wording of the findings are not as critical as let's move forward to get the discovery done.

MR. LANGBERG: Well we may be able to resolve things pretty easily that when then, Your Honor. That would be my -- I'd be responsible for that hang up then. So I'll get with Ms. Rasmussen and see if we can --

THE COURT: Yeah.

MR. LANGBERG: -- short circuit that --

THE COURT: It may be and I'm not -- I'm not foreclosing the possibility of putting any essential finding in there. Perhaps Ms. Rasmussen has some important reason why any particular finding has to be in there. But I would prefer that the findings be minimized to avoid the disputes so we can all move forward on this case. Ms. Rasmussen, may I hear from you please?

MS. RASMUSSEN: Yes, Your Honor. So I think minimizing the findings in the proposed order will probably resolve all of our issues. I think we could probably get the proposed order over to you today. I had actually taken a lot of stuff out in my revisions so -- like I said, I think that resolves a lot of the problems. And then we did our own proposed briefing schedule which basically I think takes -- I don't have it in front of me but it gives me two weeks after written discovery responses to do the depositions. And then it gives us appropriate staggered supplemental briefing

and then allows you to set a hearing. And then I think it takes it out into October. So that was our proposed briefing and then you could just fill in the dates, Your Honor, on when you want to have another hearing.

THE COURT: All right. I'll do that. And perhaps I'll have my JEA contact both of you to try to coordinate a date that will work for the continued hearing. So --

MS. RASMUSSEN: Okay.

THE COURT: -- we'll see. If I -- if we can't work something out I'll just put in some date and then anybody who has a conflict with that could contact my JEA and we'll see what we can do to help you.

All right, is there anything else on this case we need to discuss right now?

MS. RASMUSSEN: No, thank you, Your Honor.

THE COURT: All right, so --

MR. LANGBERG:

THE COURT: -- the record will show -- and anything else, Mr. Langberg?

MR. LANGBERG: No, no, thank you, Your Honor.

THE COURT: All right so for the clerk's benefit we are continuing the hearing on the motion to dismiss to a date to be determined. And just so we don't lose track of this case, let's set this down for an in-chambers status check in 60 days.

THE CLERK: September 28th.

THE COURT: And Kelly, leave the hearing date open like that under the new -- new guidelines. Have -- we don't need to set an actual date now for the motion.

THE CLERK: So…their paperwork…You guys can…

THE COURT: Okay. Very good. All right, counsel, thank you very much.

MR. LANGBERG: Thank you, Your Honor.

MS. RASMUSSEN: Thank you so much, Your Honor. Have a great day.

THE COURT: Thank you. You too.

[Hearing concluded at 10:13 a.m.]

ATTEST: I do hereby certify that I have truly and correctly transcribed the audio/video proceedings in the above-entitled case to the best of my ability.

Jessica Kirkpatrick

Jessica Kirkpatrick
Court Recorder/Transcriber

RTRAN

DISTRICT COURT

CLARK COUNTY, NEVADA

FORE STARS, LTD, Plaintiff, vs. DANIEL OMERZA, Defendant,	CASE#: A-20-771224-C DEPT. II

BEFORE THE HONORABLE CHARLES THOMPSON,
SENIOR DISTRICT COURT JUDGE
MONDAY, NOVEBER 9, 2020

RECORDER'S TRANSCRIPT OF HEARING:
ANTI-SLAPP

APPEARANCES: [All appearances via videoconference]

For the Plaintiff: LISA A. RASMUSSEN, ESQ.

For the Defendant: MITCHELL J. LANGBERG, ESQ.
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RECORDED BY: BRITTANY AMOROSO, COURT RECORDER

Las Vegas, Nevada, Monday, November 9, 2020

[Case called at 9:36 a.m.]

MS. RASMUSSEN: Good morning, Your Honor, Lisa Rasmussen on behalf of plaintiff.

MR. LANGBERG: Good morning, Your Honor, Mitchell Langberg, Brownstein Hyatt Farber Schreck, on behalf of the defendants.

[Unrelated talking from videoconferences]

THE COURT: All right. I've had a chance to read the order from the Supreme Court and the supplemental briefs. This is the defendant's motion. Do you want to say anything to me?

MR. LANGBERG: Thank you, Your Honor. If you read the supplemental briefs I'll just emphasize a couple of points. The order from the Supreme Court makes clear that the remand was to engage in one thing and one thing only, which was decide whether discovery was appropriate under statute for anti-SLAPP, which Judge Scotti did allow.

After allowing the discovery the supplemental briefing came for the purposes of determining whether the plaintiffs could meet their second prong obligations or burdens on the anti-SLAPP motion. They hardly tried, Your Honor. There is no conspiracy claim. They don't have facts to support a conspiracy claim. It absolutely privileged under the litigation privilege, because the proceedings that these witness statements pertain to was a quasi-judicial proceeding.

And they can't meet the elements, the last of which makes this

not even have much question, which is they haven't alleged or offered any evidence of any damage nor could they because the proceeding that these witness statements were collected for never occurred. And the plaintiff who claims that this grand conspiracy caused an injury actually got the amendment to the general plan and therefore couldn't have suffered any harm. So for those reasons the limited purpose that the Supreme Court sent it back for doesn't change the outcome and the anti-SLAPP motion should be granted.

THE COURT: Okay. And, Ms. Rasmussen.

MS. RASMUSSEN: Thank you, Your Honor. First, with regard to privilege, in July of this year the Nevada Supreme Court in *Spencer v. Klementi*, that's K-L-E-M-E-N-T-I, at 466 P.3d 1241, --

THE COURT: I'm sorry.

MS. RASMUSSEN: -- expressly --

THE COURT: -- 466 what?

MS. RASMUSSEN: P.3d 1241.

THE COURT: 1241, I --

MS. RASMUSSEN: They expressly -- I'm sorry. Do you want me to say it again?

THE COURT: No, I got it. I wrote it down.

MS. RASMUSSEN: Okay. So the Nevada Supreme Court expressly determined that the privilege is not applicable to quasi-judicial proceedings such as City Council meetings unless there is a due process right that is present, such as the right to cross-examine under oath. So the privilege doesn't apply in this case.

That's clear and so I'll just kind of move on to the second argument that they're making. The second argument that they're making, or the overarching argument that they're making, is that the Nevada Supreme Court order precluded any discussion here today about prong one and whether or not the statements were truthful.

I -- we have never read the order that way. The order doesn't say that. It says, absent evidence to the contrary, plaintiffs appear to have met their burden on the first prong. It has always been our position on remand that that's a determination that the Court needs to make. And in doing so, the Court must make a credibility determination as to whether or not the plaintiff -- or the defendant's statements are truthful.

And so you'll -- I know that you're just jumping into this case and it's a little complicated, but what they did was they circulated these statements for homeowners to sign at Queensridge. And nobody seems to dispute that the statements themselves can't be truthful. And what the defendant's did then before this Court is they submitted these declarations saying we didn't knowingly make false statements. So they acknowledge that the statements were false. But then their defense was we didn't knowingly make false statements.

So when we got to do very, very limited discovery, because defense counsel kept trying to limit everything, in the depositions all three defendants admit that there's nothing that they relied on in terms of a legal document at the time they purchased their property that supported their position. Omerza kind of references that he knew about some Peccole Ranch Master Plan, but he doesn't have any document.

And of course there is no legal document that's been recorded. So the Court has to take into consideration the credibility of that testimony and whether or not it supports their underlying thesis, which was that there was no right to develop based on this Peccole Ranch Master Plan or that a major modification had to proceed.

They then say there's no evidence of a conspiracy. But in the context of the discovery that we did it's quite clear that Frank Schreck, who is also an interested homeowner, sent out these statements to be circulated through at least our three defendants in this case. That they did circulate it, at least two of the three did; that they encouraged other homeowners to sign it and to return it.

And all of -- this whole statement was concocted from an improper ruling by Judge Crocket, which has since been reversed by the Nevada Supreme Court. But the issue really is, you know, not whether they believed it after Judge Crocket said it. It's whether they believed when they purchased their home, which is what the statement says, that there could no -- not be any development on this golf course property.

And it's simply not credible based on their testimony that they believed that when they purchased it. In fact, Caria and Bresee specifically state that they didn't think any of that when they purchased their property. They also, you know, weren't really wiling to say whether they returned the statement or not.

So while counsel makes hey of the fact that we can't meet the conspiracy claim because we haven't shown damages, the damage is the lack of opportunity to develop and the lack of opportunity to go

forward based on, in part, the efforts and there are other factors as well, of these defendants.

So I believe that we have -- first of all we have defeated their prong one that was never really analyzed by this Court before, because their statements and their testimony simply isn't credible. And the Court needs to also make a determination on that because we have raised the issue and we have brought to the Court sufficient evidence for this Court to say yeah that's not really credible.

Secondly, we clearly have established that we can meet -- there are myriad claims that we alleged in the complaint. But at a minimum we can meet the elements of the conspiracy claim because it's quite clear what was going on here. And frankly was done with animus against the principal of my three corporate entities.

So I would ask the Court to find that their motion -- special motion to dismiss under the SLAPP statute fails and to deny it. The SLAPP statute is really meant to protect people who come before a court and petition the court in good faith. And that's not what happened here. What happened here was a concerted effort to thwart the ability of someone to develop land that they had every legal right to develop. Thank you.

THE COURT: Anything further Mr. Langberg?

MR. LANGBERG: Briefly, Your Honor. I guess first I'll ask is the Court reconsidering the Supreme Court's position on prong one, or do I only need to address prong two?

THE COURT: I'll go back and reread the Court's order. My

initial thought was that that order was dispositive of step one of the anti-SLAPP analysis. Ms. Rasmussen indicates that it is not, and so I will go back and reread that. It's obvious that I'll have to take this under advisement and work on this later today.

MR. LANGBERG: Yes, Your Honor. I'll address prong one then very briefly and then focus on prong two.

The Supreme Court, all the time, after somebody is supposed to make an evidentiary showing or overcome somebody else's showing, comments in their opinions that they didn't make a sufficient showing and based on the evidence before it, it wasn't sufficient. That doesn't mean that if they remand on another issue you get a second bite at the apple.

The Supreme Court order is clear. We've cited several places, Your Honor, where the Supreme Court makes clear that is made a definitive ruling on prong one. And it's remand order, the thing that guides the Court, the rule of mandate applies to the remand order. Instructs what it expects this Court to do. And the Supreme Court knows how to say what they want.

On prong two, I'm hearing things that weren't in any of the papers and I'm hearing about apparently a 4 or 5 month old case that allegedly doesn't allow the litigation privilege to apply to these circumstances, but it wasn't cited in the papers so that's a surprise. I'm hearing about other causes of action that weren't referenced in the supplemental briefing. I'm hearing about damage that was never set out in the facts.

So I just want to -- I just want to -- and I promise, Your Honor, I'll take less than two minutes. Judge Crocket was considering whether the City Council had erred by allowing this development notwithstanding challenge to zoning restrictions. Judge Crocket made a determination that a major modification to the master plan, Peccole Ranch Master Plan, was required and said that community members relied on that.

THE COURT: Didn't his decision make reference to the term Peccole Master Plan?

MR. LANGBERG: It did, Your Honor. As the Supreme Court has, as plaintiff has, over and over again you'll see in the papers.

THE COURT: Apparently it doesn't exist with that title, but it's been made reference to in a number -- by a number of documents.

MR. LANGBERG: Yeah, and by the way, we do dispute that these statements are false. And maybe it wasn't recorded, but it shows up all over the city. If you look at Judge Crocket's order, which we provided you, it talks about the numerous times the City Council and staff have relied on it. And even the Nevada Supreme Court in overruling Judge Crocket, didn't say that the Master Plan didn't exist.

But what's important, Your Honor, is that when he made that decision, he determined that a major modification of the master plan was required. And this plaintiff or these plaintiffs applied for such a modification. And my clients, in support of efforts to oppose the modification in the City Council, said -- circulated statements that people could sign saying that they relied on the master plan and the general plan and that it was all in an effort to make it so that the City Council

wouldn't allow the development. So it's a political process.

And that -- so the time when they bought their houses isn't relevant. They were relying on several things you'll see in the paper including what Judge Crocket said, including what the Supreme Court has already said they reasonably relied on. And the fact that this -- these plaintiffs were successful in appealing Judge Crocket's order doesn't mean that when these defendants were circulating these statements they didn't believe what he had said.

Most importantly, Your Honor, the Supreme Court did say that a general plan amendment was required. And the statement they're suing on says -- references both the mod -- the master plan and the general plan. So the Supreme Court acknowledged that this -- these plaintiffs didn't have some absolute right to develop without getting some change to the zoning. And so what they've done is they've hauled my clients in under a conspiracy theory that under those -- under those terms plaintiffs themselves are in conspiracies for all of the contributions that they've made and tried to get other to make to political candidates to unseat an opponent. It's ridiculous, Your Honor.

And they can't prove damages because the statements were for a proceeding that never occurred. Whatever delay there was in development had to do with the litigation that happened in Judge Crocket's court and many other City Council proceedings, but not these statements, these statements.

And we cited to you the *Eikelberger* case that says how the critical issue for damages is not these alleged conspiracy which doesn't

exist there, but the injury from specific overt acts. In these papers they had a fifth opportunity, if Your Honor looks at the docket, to give the facts that support their claims and they haven't articulated one fact for damages. By itself their claims need to be dismissed on that ground. Thank you.

THE COURT: All right. I'm going to take this under advisement and I will work on it this afternoon and issue a minute order.

MS. RASMUSSEN: Your Honor, may I just make a procedural comment, not a --

THE COURT: Certainly.

MS. RASMUSSEN: I'm not the movant here. When we filed our supplemental brief, defendant's moved to strike it because it addressed things in prong one that they believed were precluded by the Nevada Supreme Court's order. We substantially briefed that and this Court determined that their position was not correct, that the Court did not limit the briefing and in that we addressed myriad issues. And I think if this Court is going to make a ruling on the motion before it today, that it ought to at least review that motion to strike our response and we -- and this Court's order on the same. Thank you, Your Honor.

THE COURT: All right. Anything further?

MR. LANGBERG: Nothing from defendants, Your Honor.

THE COURT: All right. I'll take it under advisement.

MS. RASMUSSEN: Nothing from plaintiff.

THE COURT: And I'll notify you.

MS. RASMUSSEN: Thank you.

MR. LANGBERG: Thank you for your time, Your Honor.

[Hearing concluded at 9:52 a.m.]

ATTEST: I do hereby certify that I have truly and correctly transcribed the audio/video proceedings in the above-entitled case to the best of my ability.

Jessica Kirkpatrick

Jessica Kirkpatrick
Court Recorder/Transcriber

Electronically Filed
6/7/2021 1:00 PM
Steven D. Grierson
CLERK OF THE COURT

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DISTRICT COURT

CLARK COUNTY, NEVADA

FORE STARS, LTD., Plaintiff, vs. DANIEL OMERZA, Defendant.	CASE NO. A-18-771224-C DEPT. NO. XIX

BEFORE THE HONORABLE CRYSTAL ELLER, DISTRICT COURT JUDGE

WEDNESDAY, MARCH 31, 2021

RECORDER'S TRANSCRIPT OF HEARING:

DEFENDANT'S MOTION FOR ATTORNEY'S FEES AND ADDITIONAL MONETARY RELIEF PURSUANT TO NRS 41.670 AND NRS 18.010(2)

APPEARANCES:

For the Plaintiff:	LISA A. RASMUSSEN, ESQ., (Appearing via video)
For the Defendant:	MITCHELL J. LANGBERG, ESQ., (Appearing via video)

RECORDED BY: BRITTANY AMOROSO, COURT RECORDER

Las Vegas, Nevada; Wednesday, March 31, 2021

[Hearing commenced at 9:12 a.m.]

THE CLERK: Page 1, A-18-771224-C, Fore Stars, Ltd. versus Daniel Omerza.

THE COURT: All right. Good morning, --

MS. RASMUSSEN: Good morning, Your Honor, Lisa --

THE COURT: Go ahead. Sorry.

MS. RASMUSSEN: Lisa Rasmussen, on behalf of Plaintiff.

THE COURT: All right. Good morning, Ms. Rasmussen.

MR. LANGBERG: Good morning, Your Honor, Mitchell Langberg, on behalf of Defendants.

THE COURT: Okay. Good morning. All right.

This is Defendant's motion for attorney's fees. I know I initially had this set on my chamber's calendar, but this is -- it's not a complicated issue, but it's a very important issue and we're talking about a lot of money here, so I wanted everyone to have a chance to speak. So thank you for your patience and thank you all for being here today for the -- for an oral argument. I appreciate it and I wanted you to know that I appreciate how important this is. So if, Mr. Langberg, if you would like to begin your argument.

MR. LANGBERG: Yes, Your Honor. Thank you. And I appreciate that you have taken the time and the acknowledgement of the importance to everybody in this.

Before I begin my argument I would like to say -- and I'm sorry

that I didn't notify the Court in writing of this, but the Supreme Court on March 4th issued its decision in *Smith versus Zilverberg, Z-I-L-V-E-R-B-E-R-G,* 137 Nevada Advanced Opinion 7, where the Nevada Supreme Court held in that published decision that the fees allowed on an anti-SLAPP motion fee award are for the entire case and not just those fees that are related to the motion itself. And so, I think that resolves at least one of the issues that counsel and I were debating in our papers.

You know, I try hard not to regurgitate what's in our papers so I -- I'll just summarize them to say having done more than fifty, I think, anti-SLAPP motions in my career this was one of the most work intensive ones and I've done them in very complicated cases and in very high profile cases. And it was intensive, not because of the SLAPP law itself, but because of the underlying issues, that were numerous.

Your Honor, I'm sure -- it's the first time I've had the pleasure to be before this Court, and so, but I'm sure Your Honor has taken time, obviously, to know that you wanted oral arguments, to review the papers, so you know, Your Honor, that for the single act of distributing these statements my clients were sued under various tort theories. And while I'm very knowledgeable because of my experience in the anti-SLAPP law itself, as you know, we have to litigate the merits of the claim. And we also have to -- a lot's changed in the last 2½ years, Your Honor. At the time that the anti-SLAPP motion was first argued before Judge Scotti, there was probably a third or less of the anti-SLAPP decisional law from the Nevada Supreme Court and we were relying on out-of-state laws and/or out-of-state decisions, primarily California. And

the first challenge that we faced was the question that Judge Scotti, in his best efforts, got wrong according to the Supreme Court, which is even the applicability of the anti-SLAPP statute to these kinds of claims.

So the -- frankly, the Defendants were well served by the expertise that we've built on anti-SLAPP law that merits the rates that we charge. And I think I judiciously used frankly, very, very experienced people some -- one more senior than me at lower rates to deal with the substantive issues through most of the case of litigating the substance of issues. So that's really the layman's version of what I tried to do more articulately and more legalistically in our papers.

The final thing I'd like to say is I think the most important point regarding the reasonableness of the fees is the comparison of the fees that were charged to Plaintiffs compared to those that were charged by Defendants. I think I pointed out that if you add in some of the extra briefing that is necessarily incurred or -- sorry incurred -- necessarily done because we were the moving parties, so I write an extra brief on the anti-SLAPP and an extra brief on the appeal. If you factor those in the number of hours spent on the case were almost identical without even counting Ms. Elizabeth Ham. I have no idea how many hours she spent and deferred from her outside counsel. And so, it would be unreasonable, unfair and really inconsistent with notions of fair play and substantial justice if this wealthy, powerful, developer had hired attorneys at high rates to spend lots and lots of hours, but then complains that the people who were defending the claim used basically equivalent -- I acknowledge my rate was a little bit higher; my

colleague's rates were a little bit lower -- used these equivalent attorneys working the equivalent hours. He created this mess. He not only has to pay his counsel, but he has to pay the other side's counsel and he ought not to be able to complain that we were using equivalent people. That's in sum. I can answer any questions the Court might have, but that's my summary, Your Honor.

THE COURT: Okay. I don't have any questions just yet. All right, Ms. Rasmussen.

MS. RASMUSSEN: Thank you, Your Honor.

So I want to just give the Court some background here. The statements that the Defendants made to the City were false. And the statements that they solicited from other homeowners were false. They weren't sued for defamation; they were sued for intentional interference with prospective economic contracts and other torts, which is what made this case a little more difficult and a little more complicated than an ordinary defamation SLAPP context.

Mr. Langberg seems to be making something of the fact that he's an expert in this. I've also done anti-SLAPP litigation. None of this was new to me and I honestly don't think that it was new to Mr. Jimmerson, who's my predecessor counsel for Plaintiffs. So this concept of expertise and bringing expertise to the table is, I think, it's a little bit lost on me. I don't know if it's lost on the Court, but the statements themselves were false and that's why the litigation was brought. They responded with the anti-SLAPP motion which is obviously their right per the statute.

The underlying discovery, however, metes out that it's Mr. Schreck himself, who solicited the homeowners to then circulate the statements; to gather these signatures that were making false statements from the various homeowners to present to the City council. Mr. Schreck wasn't named in the lawsuit. However, when the three homeowners that we identified through just -- one of them actually approached the principal of my client's business and asked him to sign it, and he said, do you know that I own the companies that are trying to develop. That's how we identified the homeowners that were doing it and they were sued, but Mr. Schreck wasn't because we didn't know at the time that Mr. Schreck was essentially soliciting these false statements and signatures.

Discovery later ferreted that out. Now Mr. Schreck is defending these homeowners that were sued and his firm is seeking an order for $700,000 in attorney fees from this Court. And I think the Court needs to understand that dynamic first in order to understand what's appropriate here. So it's Mr. Schreck who created the problem and now is seeking an order of $700,000 in attorney fees for defending the people who got sued when he in fact appears to have directed them to go out and solicit these false statements.

As to the merits of the attorney fee award, there's no equivalent even if you compare hourly rates. Mr. Langberg directs you to hourly rates and the fact that there's not that much difference between them. The truth is, Plaintiff's counsel accomplished all of the same things and engaged in the same litigation and incurred $132,000 in

attorney fees and they're asking you to give them $700,000 in attorney fees. In -- Ms. Ham is general counsel for the companies that I represent. She did not participate in the litigation, other than having what you would call ordinary communications as the contact person. Mr. Jimmerson first did the work, then I took over and completed it. All of that was accomplished for the $132,000 that we stated, and that is the whole case. We note that it does include -- I don't think that we made that big of a deal out of saying it's just for the motion although in many cases that is the case. These are the fees for everything. These are the fees for responding to their anti-SLAPP motion, having hearings, doing the appeal, coming back, having further hearings, this is all of it. So I disagree with their premise even that half of that is an appropriate award of attorney fees. And just -- I just want to give you some comparison because I've done these SLAPP cases too.

In one of the Federal cases that I had the Defendants filed a SLAPP motion, they prevailed.

MR. LANGBERG: Wait, Your Honor, I have to interject.

MS. RASMUSSEN: An anti-SLAPP --

MR. LANGBERG: I'm sorry, Your Honor, I'm hearing stuff that's not in any brief or declaration --

MS. RASMUSSEN: Well, I'm giving the Court some --

MR. LANGBERG: -- and that's not --

MS. RASMUSSEN: -- I'm giving the Court some --

MR. LANGBERG: Your Honor, --

MS. RASMUSSEN: -- some comparison, and I think that you

can respond to it if you'd like.

THE COURT: I'm going --

MS. RASMUSSEN: Most --

THE COURT: -- I'm going to allow --

MS. RASMUSSEN: -- because you -- you brought that up.

THE COURT: -- her to continue. It's not evidence. It's just information, so let's, you know, I'm going to let you speak again as well. Go ahead.

MS. RASMUSSEN: Thank you, Your Honor.

MR. LANGBERG: Thank you, Your Honor.

MS. RASMUSSEN: So in a normal case, which I think you know, Mr. Langberg is saying this is an abnormal case and I don't disagree with that because this went to the Supreme Court and it came back and then we had further litigation. In a normal case you'd see applications for attorney fees of $30,000 or $40,000 or something like that because they had this litigation on the motion to dismiss, the special motion to dismiss under the SLAPP -- anti-SLAPP statute. And then you would see a court award probably something less than that. That's the normal scenario than what Defendant's counsel were asking for. This case is more extended. There's no doubt about that. It went to the Supreme Court, it came back. All of the fees that we're talking about in the pleadings encompass and include all of that litigation. They include everything except this litigation, this hearing here today, the motions to -- the motion for attorney fees and the substantial litigation that we've done in response to that.

But those fees still incurred by Plaintiffs are much, much, less, less than half of what Defendants are asking you to award. So I think the Court can consider that there has been protracted litigation in an award of attorney fees, but the Court is still required to award only reasonable attorney fees. We went through and itemized as we're required to do in opposition to any attorney fee motion. The -- whether the fees were reasonable and whether they were necessary and as we -- and I don't really think I need to go through how we parsed much of that out, but they had people doing repetitive tasks. And the bottom line at the end of the day is these Defendants have not paid a dime for their lawyer.

Mr. Schreck's firm has taken on the defense on what he says is a contingency basis, so none of the Defendants have actually incurred a cost. They've not been required to pay anything. This is just Mr. Schreck's firm hoping that he can get a windfall of $700,000 all of which will go to his firm, none of which will go to the Defendants for an issue that he created in the first instance. And that's the most important thing for the Court to remember in this scenario, because in a normal scenario the Defendants would actually have hired counsel and would have paid money out of their pocket to defend themselves in this case. We don't have that here. We have Mr. Schreck saying, oh, we'll do it for you and we'll seek our own attorney fees.

So is there a value to Mr. Langberg's time? Of course, because Mr. Langberg was undoubtedly working on this case when he could have been working on other cases. Is this a situation where Mr.

Schreck created a problem because of his own conduct? Absolutely. So I think the Court needs to consider all of those factors in devising an appropriate award of attorney fees under the statute. And I think that we put it in the briefing, but I don't, you know, the statue does allow for a payment of $10,000 and I don't think that that's appropriate given the substantial amount of money and the fact that the Defendants have not paid anything out of their pocket in this case. Thank you, Your Honor.

THE COURT: Okay. Thank you. Mr. Langberg, anything further?

MR. LANGBERG: Yes, Your Honor. So in the first instance, some of what you heard is either false or there's no evidence of it. The -- whether my clients said anything that was false is -- continues to be disputed. I don't think they said anything false. The Court didn't say they said anything false. We don't need to get that far. Everything you've heard about Mr. Schreck's involvement isn't before the Court. The facts aren't before the Court. The interpretation is not accurate and in any event, it has nothing to do with this motion. This motion is what is a reasonable fee for the work in the case and we have guidance about how you determine a reasonable fee.

Let me just say, since counsel's provided examples, I will tell you the most recent example of a case on which I am working was in Federal District Court in a judgment issued on March 17th of this year, *Gunn versus Drage*. I was not the lead counsel. If the Court wants the case number I can provide it, but Judge Mahan issued $385,000 roughly of attorney's fees in a case where there was no appeal. I could tell Your

Honor about a case, unfortunately, I was on the wrong side of an anti-SLAPP motion for Mr. Wynn against a gentleman named James Chanos, where the attorney's fees award was $700,000 albeit it was a California case, so I would recognize that the rates were higher in that case.

So this comparison of case-to-case without comparing the actual facts isn't particularly relevant. I think what the Court has to -- is supposed to do under cases including *Brunzell* and its progeny is to decide whether -- is to start with the Lodestar method. Are the rates reasonable? We haven't heard anything to suggest the rates weren't reasonable. I don't think that it would be appropriate to determine if the rates weren't reasonable in light of counsel's admitted normal rate before discounts and Mr. Jimmerson's rate and the rate of my colleagues. Were the number of hours reasonable? We've identified those. We've set them out task by task, Your Honor. There wasn't any attack on any particular task, like this is too many hours. I think it's because the number of hours spent, again, pair up when you add in the extra briefing we were required to do.

By the way, the statement about Ms. Ham is absolutely false. She took -- she took parts of depositions in this case, she is not just outside counsel monitoring. The billing statements they submitted to you show that she was working on briefs. So I don't know how many hours she spent, but it wasn't zero or just what outside counsel does. In any event, once you decide the reasonable rates and the reasonable hours that gives you the Lodestar, and the question is, should there be

an enhancement? And both the cases cited in our reply brief and the State Bar rule on a reasonable fee tells the Court that in deciding whether to enhance, one of the things the Court does is decide whether the case was fixed or contingent.

Now, since we're not sticking to the record what I'll say, Your Honor, is that the case as presented to me, seemed relatively straight forward on the anti-SLAPP, on the very issues that ultimately the Supreme Court and then the prior Judge issued the decision on. We did not anticipate that it would take this long and go through this many iterations in order to do it. We wouldn't have taken -- I would not have taken this case on a contingency basis. I expected an anti-SLAPP motion that we would prevail on or if we lost on it then we would negotiate the defense of the case if we were going to defend the case. But it was not [indiscernible] me, and I don't think within the realm of ethics to take the anti-SLAPP motion on a contingency basis and then have it have to go through this rigmarole and abandon the client -- clients on that. That's what's going on here.

So this discussion about Mr. Schreck's involvement which is inaccurate in the way that it's represented isn't relevant. Rate times, hours that are reasonable and then whether there should be an enhancement, because, Your Honor, my firm, which is more than Mr. Schreck, my firm, which candidly has a committee of people that you need to pitch to before you can take a case on a contingency basis, put itself at risk. I, Your Honor, put myself at risk. I, you know, I candidly -- I envy people and wish I were brave enough to open up my own shop, but

there's lots of reasons why I haven't, but I answer to people. So this firm, this attorney, were at risk in this case, more so than we anticipated and because of the way Plaintiff's litigated this case, which the record is clear. This was not -- this was not a simple motion. There was a lot of stuff that the Plaintiffs did that frankly wasn't appropriate. We deserve the fees for the work we did. We deserve an enhancement because we were at risk. Thank you, Your Honor.

THE COURT: Okay. You said there was a second thing under the enhancement analysis, so I -- that was one of the questions I had for you. So you've explained whether it was fixed or contingent. Is there anything else you want me to consider under why your clients would be entitled to this enhancement?

MR. LANGBERG: Not that occurs to me at this moment, Your Honor, the fact that it's -- the fact that it was contingent. The fact that we may have got zero dollars of fees --

THE COURT: Mm-hmm.

MR. LANGBERG: -- if they had successfully opposed the anti-SLAPP motion and the fact that the Nevada Supreme Court has recognized the appropriateness of an enhancement in contingency matters, I think is all that I intended to highlight.

THE COURT: Okay. Now with regard to the 10,000 for each Defendant that our statute allows for, which is interesting that it's different than from the California statutes. But clearly our legislators anticipated that they wanted to compensate defendants for what they have to go through, you know, during litigation. I mean, nobody wants to

be in litigation. So it -- I don't know if it was because obviously they're getting all their attorney's fees back had they had to pay any. Why should they get the 10,000? They didn't risk any money. They didn't have to pay, you know, your firm.

MR. LANGBERG: Your Honor, I think you're right. The Legislature have -- frankly having been involved in the discussions in the legislature. The Legislature recognized that attorney's fees kind of make them -- even clients who are paying and not on a contingent basis make them whole for their out-of-pocket expenses for defending, but the Legislature clearly, you know, I'm -- sometimes I'm on the other side of this and I don't like it. But the Legislature clearly intended to compensate people in appropriate cases for what they've been put through for having had a, by definition, meritless lawsuit filed against them for the exercise of their First Amendment rights of free speech or to petition.

And in this -- if any case -- this is an appropriate case because they weren't just put at risk for, you know, the period of time of a quick motion, right, Your Honor? The statute anticipates that these motions will be quickly resolved and that appropriate cases will be quickly dismissed. But these Defendants were put through the lawsuits. They were put through the motion. They were put through the delay of appeal and they were subjected to discovery which is only allowed in extreme cases. And so for all those reasons, they deserve some compensation as authorized by the statute for having endured that.

THE COURT: Okay. I'll --

MR. LANGBERG: I would like to correct one thing though, Your Honor. I said that they should receive $10,000 each per Plaintiff. I don't think that's right. Each Defendant is entitled to a separate up to $10,000, but I -- but as I read the statute and I read the *Smith* case that came out, I think that they get $10,000 each total, not from each Plaintiff.

THE COURT: I agree. Okay. So Ms. Rasmussen, can you speak to what -- we'll go in reverse because we're already talking about the 10,000 award for the Defendants. Tell me what your thoughts are on that.

MS. RASMUSSEN: So here's my thoughts on it, and I -- and I'm well familiar with the legislative history on this. The $10,000 comes as the -- it's an ability that the Court has to penalize the plaintiff where a plaintiff has brought a case that it knew or should have known was not -- had -- didn't have merit. So if a case doesn't have merit and a plaintiff should have known that the case didn't have merit, the plaintiff should not have filed the lawsuit. The $10,000 is a tool that the Court can impose to penalize a plaintiff beyond -- or a non-prevailing party. It's not always the plaintiff because there could be a counter-claim -- to penalize the non-prevailing party for bringing the action and I think that -- I've frankly never seen the $10,000 applied in any of the cases that I've dealt with. I've always seen it requested. I've never seen it applied. In a case like this where there are substantial -- there's -- the ask here is $700,000 and these Defendant's didn't pay any money out of pocket.

Mr. Langberg wants to characterize this case as meritless, but it's not meritless. It's whether or not -- and the issues are going up on

appeal because this Court knows that. There is an appeal pending obviously based on the motion for reconsideration, which the Court has addressed. It's whether or not -- it all hinges on whether or not these Defendants had a good faith belief that the statements they were making at the time were accurate. And so the statements are false. Like there's no dispute about that and I don't know why Mr. Langberg says there's a dispute. His whole thing throughout all this litigation has been whether or not they believed at the time they made the statements that the statements were accurate, and so, that's really the gist of it. And so for this Court to decide whether it should impose $10,000 additional on top of the attorney fees on this kind of narrow issue I think is inappropriate.

I'm sure Mr. Langberg will tell you that, you know, the Court does impose that 10,000 in some of the cases that he's had. I've never seen it. I've not seen it at all and I -- it's a penalty essentially. It's there -- it exists as a penalty to deter a plaintiff from suing people when a plaintiff should not sue people. It's to punish people. It's there as a penalty. I don't think it's appropriate under the circumstances of this case.

THE COURT: Okay. And then on the enhancement, Lodestar enhancement?

MS. RASMUSSEN: On the Lodestar enhancement I feel like we fully briefed that.

THE COURT: Mm-hmm.

MS. RASMUSSEN: So I disagree with Mr. Langberg on the enhancement on the -- for the contingency fee risk that his firm took on.

First of all, these are Defendants. I don't even know that it's addible to take on a defense in a case on a contingency fee basis where you're not making a counter-claim. I didn't even address that and I'm not trying to cast dispersions on Mr. Langberg, who frankly, I have worked well with throughout this case. We have had, despite our oppositions on the issues, a good working relationship. But frankly, nobody takes a defense of a case on contingency. It happened in this case because of the relationship with Mr. Schreck and these Defendants who all happen to own property at Queen's Ridge and they all have a common interest in fighting this developer. But, you know, when Mr. Langberg refers to my client as a very wealthy developer, my client still has not developed anything. So my -- or been able to develop anything because of this litigation, other litigation that's pending. You know, you're talking about two actually, frankly, if you want to describe my client as very wealthy, so is Mr. Schreck. Mr. Schreck is a very wealthy and powerful man. Mr. Schreck took this case on contingency because of his relationship with these homeowners and because of his relationship and because the communications he had with them in soliciting these statements, that as it so happens, are false.

So, I don't think that any Lodestar enhancement is appropriate under the circumstances of this case.

THE COURT: All right. All right, Mr. Langberg, is there anything else you want to add?

MR. LANGBERG: Just two things, Your Honor. One is I will provide you with this reference because Judge Mahan in this case

where I told you I'm not lead counsel awarded an enhancement where the case was not contingent, but because of the nature of the action. So this is the case of *Gunn versus Drage*, D-R-A-G-E, and I can send the Court the opinion or if the Court wants to look on Pacer the case number is 2:19-CV-02102. There's an enhancement in that case, not contingent. We cited California cases where enhancements were given on contingent cases, so at least it's not unethical in California to do these cases on a contingency basis.

And in the *Smith* case which I cited, Your Honor, the March 4th case from the Supreme Court, that's a case where the District Court had awarded $10,000, so now Ms. Rasmussen has seen at least one, I know there are more. And the last thing, Your Honor, is I took this case on a contingency. Mr. Schreck didn't take this case on a contingency. He wasn't even involved in that decision. So, that's all, Your Honor.

THE COURT: Okay. All right. One of the Plaintiffs -- I want you to both know also that I read everything very carefully, numerous times.

MR. LANGBERG: Thank you.

THE COURT: There's a lot of detail. So one of the main items of contention on the Plaintiff's argument, specifically, individually going you know, almost line-by-line on the fees was that so many of them were not directly for the anti-SLAPP motion. So I just want to put that argument to bed. Even without the new case from March 4th this morning, it's my determination that in Nevada if the anti-SLAPP is successful and the entire case is dismissed that the award of attorney

fees under the anti-SLAPP statute covers all the work done on the entire case if it's related in any way to dismissing the case under the anti-SLAPP statute. And in this case based on my review, even though it was such a long case, and even though it went up on appeal and back down and now it's up there again, all of it is related, even the discovery is related to this anti-SLAPP motion. So, none of the fees are going to be excluded because of that.

So let's see. Regarding the Lodestar, I find that a Lodestar enhancement is not appropriate in this case. I don't think it's inappropriate or unethical to take an anti-SLAPP case on a contingent basis because of the nature of an anti-SLAPP case. It says, the statute says, you shall be awarded attorney's fees if you win the motion. So it makes sense that even though it's a Defense motion that a law firm would take it on a contingency basis. This is a rare case where a law firm would be incentivized to take a case, a defense of a case, on a contingency basis.

However, Mr. -- I want to make sure -- Mr. Langberg, sorry.

MR. LANGBERG: Yes. No problem, Your Honor.

THE COURT: I hate to get names wrong, so even though I know it in my head, I double check, okay. So Mr. Langberg, you admitted that when you first took on the case you thought it was going to be, you know, a basic certainly not simple, but a basic anti-SLAPP case, and that's the nature of contingency. You know, when you took this on you weren't initially planning on taking the risk that you ultimately took, but that was your decision, and once you're in the case you can't

abandon the clients. So that was a business decision that you made that I don't think the Plaintiffs need to pay for.

In addition to the fact that Mr. Schreck is involved, he is one of the owners of the firm and he had a -- received a benefit outside of the normal attorney's fees benefit. So there's a benefit here to him as a homeowner to be -- have his firm involved in this case. So just under the strict facts of this case, based on those two things, and just the overall facts of the case, I do not think a Lodestar enhancement is appropriate here.

With regard to the $10,000, essentially for the same reasons, I don't think the $10,000 award is -- I believe that both of your arguments are true. I think that the $10,000 that goes to the winning client, the individual Defendants, is both to compensate them for the -- for lack of a better word, stress and emotional suffering they've gone through throughout the lawsuit not knowing if they're going to win. But part of that stress often includes paying attorney fees along the way not knowing if you're going to get them back, which didn't happen -- have to happen in this case. And I think it's also for punishment, and although I haven't been involved in the case in the beginning, like I said, I've been reading and I'm not seeing a case here where Plaintiff's -- I feel like they did -- walked into this knowing that this was some sort of a questionable lawsuit and filed it anyway to try to have an outcome based on litigation that they wouldn't normally get. So I'm not finding that here. So because I think the statute is to both compensate and penalize I don't think either of those apply, so I'm not awarding the 10,000 per

Defendant.

However, the statute does require that I award attorney's fees. I reviewed the billing and based on my initial comments that we're not going to exclude anything and we're not going to limit them to only work that was directly on the anti-SLAPP motion. I'm awarding the entire amount of attorney's fees requested and the initial without the Lodestar enhancement which is $339,777.

Under the circumstances with how long this case took, with how much work went into it, how much expertise went into it, noting the normal rates of attorneys with this type of expertise and this type of law, I don't find it unreasonable the initial amount asked for prior to Lodestar calculations. So, let's see here, Mr. Langberg, will you draft the order, please?

MR. LANGBERG: I will. May I ask a question --

THE COURT: Sure.

MR. LANGBERG: -- regarding the amounts, Your Honor? In our opposition we noted that since the filing of the motion we had to deal with the motion for reconsideration which was denied twice and we identified additional fees. Do you want a separate fee motion for that work?

THE COURT: No. I'm sorry, your right, and I had that in my notes and I left it out. The -- also you're being awarded fees of 23,467 for work on this motion that's in front of the Court now and opposition to Plaintiff's motion for reconsideration. So those are being awarded as well. Sorry I left that out.

MR. LANGBERG: Thank you, Your Honor.

THE COURT: Thank you for calling that to my attention.

MR. LANGBERG: No problem. Thank you, Your Honor.

MS. RASMUSSEN: Okay. So and just so I can be sure. Okay, so we've got the 339,777 plus the 23,467, I'm doing the math on my calculator for a total of 36 --

THE COURT: Oops. I lost you.

MR. LANGBERG: She cut out on me, Your Honor, as well.

THE COURT: I know. Did you add it up Mr. Langberg?

MR. LANGBERG: I didn't, but I will.

THE COURT: I have my law clerk adding it as well so we can all come to an agreement.

MR. LANGBERG: Okay. That's fair, Your Honor.

[Colloquy between the Court and Law Clerk]

THE COURT: All right. I have 363,244.

MS. RASMUSSEN: That's what I have as well.

MR. LANGBERG: I will -- I'll take the word of your combined words.

THE COURT: Okay. Good --

MR. LANGBERG: Ms. Rasmussen and Your Honor.

THE COURT: -- cause I was going to have to do the Jeopardy music and I didn't want -- you don't want to hear me do that.

All right. Thank you both very much. I know there are other lawsuits regarding this situation going on and take care. This is --

MR. LANGBERG: Thank you, Your Honor.

MS. RASMUSSEN: Thank you so much, Your Honor. I know you -- we -- I also appreciate the time that you've taken on this. I know it's a complex issue and I appreciate it.

THE COURT: Thank you both very much.

MR. LANGBERG: Yeah, especially coming --

THE COURT: Pardon?

MR. LANGBERG: -- coming in on the back end. I think I speak for Ms. Rasmussen too. We know that coming in on the back end of this thing must have been very difficult when it came to assessing the value of the work or -- and everything. So thank you for your efforts.

THE COURT: Oh, your welcome. And I have to give a kudos to my law clerk because he's the same law clerk that was here with Judge Scotti, so he's been very helpful.

MR. LANGBERG: Well, thank you to him as well.

THE COURT: All right. Thank you.

MR. LANGBERG: All right. Thank you.

THE COURT: All right. Bye-bye.

MS. RASMUSSEN: Okay. Bye.

[Hearing concluded at 9:52 a.m.]

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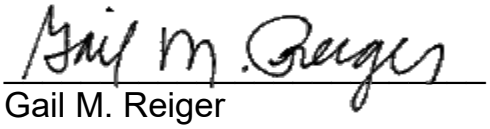
ATTEST: I do hereby certify that I have truly and correctly transcribed the audio/video proceedings in the above-entitled case to the best of my ability.



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