

**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,

Electronically Filed  
Case No. 82338  
Oct 12, 2021 11:54 a.m.  
Elizabeth A. Brown  
(lead clerk)  
Clerk of Supreme Court

Consolidated With:

82880

(same caption)

**JOINT APPENDIX SUBMITTED BY APPELLANTS AND APPELLEES**

**VOLUME 5 (Pages 573-728)**

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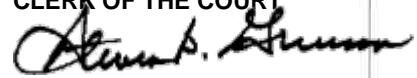
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**MOT**

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**DISTRICT COURT  
CLARK COUNTY, NEVADA**

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

Plaintiffs,

vs.

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

Defendants.

Case No.: A-18-771224-C

Dept. No.: II

**PLAINTIFFS' MOTION FOR ORDER  
ALLOWING COMMENCEMENT OF  
DISCOVERY**

**(DISCOVERY COMMISSIONER)**

**DATE OF HEARING:  
TIME OF HEARING:**

Plaintiffs, Fore Stars, LTD. (hereinafter "Fore Stars"), 180 Land Company LLC (hereinafter "180 Land Company"), and Seventy Acres, LLC (hereinafter "Seventy Acres") (collectively "Land Owners" or "Plaintiffs"), by and through their undersigned counsel, James J. Jimmerson, Esq. and James M. Jimmerson, Esq., of THE JIMMERSON LAW FIRM, P.C., hereby move this Honorable Court for an Order allowing the commencement of discovery in this matter in order to ready the case for Trial. This Motion is necessitated because Defendants Daniel Omerza (hereinafter "Omerza"), Darren Bresee ("Bresee"), and Steve Caria ("Caria") (collectively "Homeowners" or "Defendants") have refused to participate in an early case conference (ECC) or any discovery whatsoever, and the parties

1 have been unable to resolve the dispute notwithstanding good faith efforts to do so.  
2 Compliance with EDCR 2.34 has been accomplished, as evidenced by the numerous  
3 emails exchanges between the parties' counsel, which are attached hereto as **Exhibits B,**  
4 **C and D.**

5 This Motion is made and based on the following Memorandum of Points and  
6 Authorities, the attached Declaration of James M. Jimmerson, Esq., **Exhibit A** hereto,  
7 the pleadings and papers on file in this matter, as well as any oral argument the Court  
8 may consider.  
9

10 DATED this 14<sup>th</sup> day of September, 2018.

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

12  
13 By: /s/ James J. Jimmerson, Esq.  
14 JAMES J. JIMMERSON, ESQ.  
15 Nevada Bar No. 000264  
16 415 S. 6<sup>th</sup> Street, #100  
17 Las Vegas, Nevada 89101  
18 *Attorneys for Plaintiffs*  
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**NOTICE OF MOTION**

To: DANIEL OMERZA, DARREN BRESEE, STEVE CARIA, Defendants;  
MITCHELL LANGBERG, ESQ., Counsel for Defendants

PLEASE TAKE NOTICE that the undersigned will bring the foregoing  
PLAINTIFFS' MOTION FOR ORDER ALLOWING COMMENCEMENT OF DISCOVERY  
on for hearing before the above-entitled Court on the 19 day of OCTOBER,  
2018, at the hour of 9:00A, \_\_.m. of said date, before the Discovery Commissioner,  
located at the at 200 Lewis Avenue, Las Vegas, Nevada, or as soon thereafter as counsel  
may be heard.

Dated this 14<sup>th</sup> day of September, 2018.

THE JIMMERSON LAW FIRM, P.C.

/s/ James J. Jimmerson, Esq.

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**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. INTRODUCTION.**

This case involves certain homeowners' unjust efforts to prevent the development of land adjacent to their common interest community in Queensridge. The Land Owners were forced to initiate this lawsuit because the Defendants' conduct has gone far beyond mere participation in the political process to being unlawful and causing significant harm to the Land Owners and their livelihood. Defendants filed a "special" motion to dismiss (anti-SLAPP motion) the Land Owners' Complaint pursuant to NRS 41.635 *et seq.*, and a motion to dismiss pursuant to NRCP 12(b)(5), both of which were denied by the Honorable Court. *See* Order Denying Motion filed June 20, 2018, attached hereto as **Exhibit E.** Defendants subsequently appealed the Order denying their special motion and filed a petition for an extraordinary writ challenging the District Court's denial of their motion to dismiss pursuant to NRCP 12(b)(5). Now Defendants have refused to participate in an early case conference (ECC) or any discovery whatsoever, purportedly on the basis that the appeal of the Court Order denying Defendant's motion to dismiss regarding Anti-SLAPP somehow deprives this Court of continuing subject matter jurisdiction over the balance of the case and claims. The claims in this case allege torts that are well-pled and for which Plaintiffs seek to commence discovery, complete the same, and set this matter for trial on the merits. The Appeal filed by Defendants does not deprive this Court of jurisdiction to continue the case forward to trial and no stay has been applied for or issued by any Court that would interrupt the natural, just, speedy, and inexpensive progression of the case in accordance with NRCP 1.

Because Nevada's anti-SLAPP statute does not apply to intentional torts, discovery is not stayed as a matter of law as to the Land Owners' Second (Intentional Interference with Prospective Economic Advantage), Fourth (Conspiracy), and Fifth (Intentional Misrepresentation (Fraud)) Claims for Relief. The Court should allow discovery accordingly.

1     **II.     RELEVANT FACTS.**

2             **A.     Background.**

3             The Land Owners are developing approximately 250 acres of land they own and  
4     control in Las Vegas, Nevada formerly known as the Badlands Golf Course property  
5     (hereinafter the "Land"). *See* Comp. at ¶ 9. They have the absolute right to develop the  
6     Land under its present RDP 7 zoning, which means that up to 7.49 dwelling units per acre  
7     may be constructed on it. *See* Comp. at ¶ 29, Ex. 2 at p. 18. The Land is adjacent to the  
8     Queensridge Common Interest Community (hereinafter "Queensridge") which was  
9     created and organized under the provisions of NRS Chapter 116. *See* Comp. at ¶ 10. The  
10    Defendants are certain home owners within Queensridge who strongly oppose any  
11    redevelopment of the Land because some have enjoyed golf course views, which views  
12    they don't wish to lose even though they are not entitled to those views. *See* Comp. at ¶¶  
13    23-30. Rather than properly participate in the political process, however, the Defendants  
14    are using unjust and unlawful tactics to harm the Land Owners with the goal of and  
15    ultimately prevent any development of the Land. *See id.* They are doing so despite having  
16    acknowledged receipt of prior, express written notice that, among other things, the Land  
17    is developable and any views or location advantages they have enjoyed are not guaranteed  
18    and that they, in fact, may be obstructed by future development. *See* Comp. at ¶¶ 12-22.

19             **B.     The Land Owners' Complaint.**

20             Among other claims, the Land Owners allege three intentional torts: Intentional  
21    Interference with Prospective Economic Advantage (Second Claim for Relief), Conspiracy  
22    (Fourth Claim for Relief), and Intentional Misrepresentation (Fraud) (Fifth Claim for  
23    Relief). *See* Comp. at ¶¶ 39-47, 56-65. According to the Complaint, the Defendants  
24    executed purchase agreements when they purchased their residences within the  
25    Queensridge Common Interest Community which expressly acknowledged their receipt  
26    of, among other things, the following: (1) Master Declaration of Covenants, Conditions,  
27    Restrictions and Easements for Queensridge (Queensridge Master Declaration), which  
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1 was recorded in 1996; (2) Notice of Zoning Designation of Adjoining Lot which disclosed  
2 that the Land was zoned RPD 7; (3) Additional Disclosures Section 4 – No Golf Course or  
3 Membership Privileges which stated that they acquired no rights in the Badlands Golf  
4 Course; (4) Additional Disclosure Section 7 – Views/Location Advantages which stated  
5 that future construction in the planned community may obstruct or block any view or  
6 diminish any location advantage; and (5) Public Offering Statement for Queensridge  
7 Towers which included these same disclaimers. *See Comp. at ¶¶ 10-12, 15-20.* The  
8 Complaint further alleges that the deeds to the Defendants’ respective residences “are  
9 clear by their respective terms that they have no rights to affect or control the use of  
10 Plaintiffs’ real property.” *Comp. at ¶ 21.* The Defendants nevertheless prepared,  
11 promulgated, solicited, circulated, and executed the following declaration to their  
12 Queensridge neighbors in March 2018:

13 TO: City of Las Vegas

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

16 The undersigned made such purchase in reliance upon the fact that the open  
17 space/natural drainage system could not be developed pursuant to the  
18 City’s Approval in 1990 of the Peccole Ranch Master Plan and subsequent  
19 formal actions designating the open space/natural drainage system in its  
20 General Plan as Parks Recreation – Open Space which land use designation  
21 does not permit the building of residential units.

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

25 Comp., Ex. 1.

26 The Defendants did so despite having received prior, express written notice that  
27 the Queensridge Master Declaration does not apply to the Land, the Land Owners have  
28 the absolute right to develop it based solely on the RPD 7 zoning, and any views and/or  
locations advantages they enjoyed could be obstructed in the future. *See gen., Comp.,*  
Exs. 2, 3, and 4. In preparing, promulgating, soliciting, circulating, and executing the  
declaration, the Defendants also disregarded District Court Orders which involved their  
similarly situated neighbors in Queensridge, which are public records attached to the

1 Complaint, and which expressly found that: (1) the Land Owners have complied with all  
2 relevant provisions of NRS Chapter 278 and properly followed procedures for approval of  
3 a parcel map over their property; (2) Queensridge Common Interest Community is  
4 governed by NRS Chapter 116 and not NRS Chapter 278A because there is no evidence  
5 proving that the Land is within a planned unit development; (3) the Land is not subject  
6 to the Queensridge Master Declaration, and the Land Owners' applications to develop the  
7 Land are not prohibited by, or violative of, that declaration; (4) Queensridge residents  
8 have no vested rights in the Land; (5) the Land Owners' development applications are  
9 legal and proper; (6) the Land Owners have the right to close the golf course and not water  
10 it without impacting the Queensridge residents' rights; (7) the Land is not open space  
11 and drainage because it is zoned RPD 7; and (8) the Land Owners have the absolute right  
12 to develop the Land because zoning – not the Peccole Ranch Master Plan – dictates its  
13 use and the Land Owners' rights to develop it. *See id.*; *see also* Comp., Ex. 2 at ¶¶ 41-42,  
14 52, 56, 66, 74, 78-79, and 108; Ex. 3 at ¶¶ 8, 12, 15-23, 26, 61, 64-67, and 133. The  
15 Defendants further ignored another District Court Order dismissing claims based on  
16 findings that similarly contradicted the statements in the Defendants' declaration. *See*  
17 Comp., Exs. 1, 4.

18 In sum, the Complaint alleges that the Defendants fraudulently procured  
19 signatures of Queensridge residents by picking and choosing the information they shared  
20 with their neighbors in order to manipulate them into signing the declaration, and that  
21 certain representations within the proposed declarations were false. *See id.*; *see also*  
22 Comp., Exs. 2 and 3. They simply ignored or disregarded known, material facts that  
23 directly conflicted with the statements in the declaration and undermined their plan to  
24 present a false narrative to the City of Las Vegas and mislead council members into  
25 delaying, and ultimately, improperly, denying the Land Owners' development  
26 applications. *See id.*; *see also* Comp., Ex. 1.

1           **C. Defendants' Motions To Dismiss.**

2           On April 13, 2018, Defendants filed a special motion to dismiss (anti-SLAPP  
3 motion) the Land Owners' Complaint pursuant to NRS 41.635 *et seq.* See Def. Spec. Mot.  
4 at pp. 4-21. The Defendants concurrently filed a motion to dismiss pursuant to NRCP  
5 12(b)(5), claiming to "have no understanding that any of [the statements in the  
6 declaration] are false." See Def. Spec. Mot., Exs. 1, 2, and 3 at ¶¶ 13, respectively.  
7 Following a hearing on the matter, the Court denied Defendants' motions in their entirety.  
8 See James. M. Jimmerson, Esq. Declaration, **Ex. A**. In written findings of fact and  
9 conclusions of law ("June 20, 2018 Dismissal Order"), the Court concluded that the Land  
10 Owners' Complaint "stated valid claims upon which relief can be granted" and that NRS  
11 41.635 *et seq.* "does not apply to fraudulent conduct." See James. M. Jimmerson, Esq.  
12 Declaration, **Ex. A** at 5, 10, 13. See, also, the District Court's Order Denying Motion to  
13 Dismiss, **Exhibit E** hereto. In doing so, the Court recognized that Nevada's anti-SLAPP  
14 statute "does not overcome intentional torts or claims based on wrongful conduct." See  
15 James. M. Jimmerson, Esq. Declaration, **Ex. A** at 7-8.

16           **D. Appellate Proceedings.**

17           On June 27, 2018, Defendants filed a notice of appeal from that portion of the June  
18 20, 2018 Dismissal Order denying their anti-SLAPP motion as allowed by NRS 41.670.  
19 See James. M. Jimmerson, Esq. Declaration, **Ex. A**. The Court's Order denying  
20 Defendants' NRCP 12(b)(5) Motion to Dismiss is not appealable. Thus, Defendants filed  
21 a petition for extraordinary writ in the Nevada Supreme Court, challenging the Court's  
22 denial of their motion to dismiss pursuant to NRCP 12(b)(5). *Id.* Both are pending, but  
23 the Defendants have not sought a stay of proceedings in this Court or the Nevada Supreme  
24 Court.

25           **E. The Parties' Discovery Dispute.**

26           Shortly after the Court denied the Defendants' motions to dismiss, the Land  
27 Owners served Defendants with a notice of early case conference. See James. M.  
28

1 Jimmerson, Esq. Declaration, **Ex. A**. *See, also*, email exchange attached hereto as  
2 **Exhibit B**. They did so to commence discovery in this case for the purpose of ascertaining  
3 facts and evidence of Defendants' fraudulent and wrongful conduct and because NRC  
4 16.1 does not prohibit the setting of an early case conference prior to the filing of an  
5 answer. *Id.*; *see also* NRC 16.1(b)(1) (attendance at early case conference).

6 After their initial response, the Defendants suddenly refused to participate,  
7 asserting that a party's appearance at an early case conference is triggered solely "by the  
8 service of an answer." *See* James. M. Jimmerson, Esq. Declaration, **Ex. A**; *See, also*,  
9 email exchange between counsel attached hereto as **Exhibit C**. The Defendants further  
10 asserted that their interlocutory appeal divested the District Court of jurisdiction. *Id.* In  
11 response, the Land Owners pointed out that there is no rule prohibiting the setting of an  
12 Early Case Conference prior to the filing of an answer, where an appearance has been  
13 made, and that the Appeal on a single issue (anti-SLAPP) does not divest the district court  
14 of jurisdiction over the balance of the case (as Land Owners' Complaint alleges three  
15 intentional torts which are beyond the purview of Nevada's anti-SLAPP statutes, and  
16 therefore any stay of proceedings triggered by Defendants' interlocutory appeal pursuant  
17 to NRS 41.635 *et seq.* does not impact the Land Owners' intentional tort claims.) *Id.* The  
18 parties held an EDCR 2.34 discovery dispute conference on June 11, 2018, between James  
19 M. Jimmerson, Esq. and Mitchell Langberg, Esq., during which the Land Owners agreed  
20 to delay the early case conference for approximately thirty days. *See* Declaration of James  
21 M. Jimmerson, Esq., **Ex. A**; *See, also*, email exchanges attached hereto as **Exhibit D**.

22 Despite the professional courtesy extended them by the Land Owners, the  
23 Defendants subsequently refused to attend the scheduled early case conference on July  
24 20, 2018, or otherwise participate in any discovery whatsoever. *See id.* The parties are  
25 at an impasse, and the Land Owners seek the Court's intervention to open discovery  
26 related to their intentional tort claims. *See id.*  
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III. ARGUMENT.

A. There Is No Stay Of Discovery As To The Land Owners' Intentional Tort Claims Because Nevada's Anti-SLAPP Statutes Do Not Apply To Them As A Matter Of Law.

Nevada's anti-strategic lawsuit against public participation (SLAPP) statutes, codified in NRS Chapter 41.635 *et seq.*, provide for an interlocutory appeal from the denial of a special motion to dismiss as well as a stay of discovery pending the disposition of that appeal by the Nevada Supreme Court. *See* NRS 41.660(3)(e)(2) (stay of discovery pending appeal); NRS 41.670(4) (interlocutory appeal to Nevada Supreme Court). Importantly, however, Nevada's anti-SLAPP statutes do not apply to intentional torts or claims based on wrongful conduct and only protect from civil liability those citizens who engage in good-faith communications. *See* NRS 41.637 (good faith communication defined); NRS 41.650 (good faith communication immune from liability); *see also John v. Douglas Cnty. Sch. Dist.*, 125 Nev. 746, 753, 219 P.3d 1276, 1281 (2009), *superseded by statute as stated in Shapiro v. Welt*, 133 Nev. \_\_\_, 389 P.3d 262, 266 (2017). This is because the First Amendment does not overcome intentional torts. *See Bongiovi v. Sullivan*, 122 Nev. 556, \_\_\_, 138 P.3d 433, 445 (2006) (No special protection is warranted when "the speech is wholly false and clearly damaging to the victim's business reputation.") (*quoting Dun & Bradstreet, Inc. v. Greenmoss Builders*, 472 U.S. 749, 762, (1985)); *see also Holloway v. Am. Media, Inc.*, 947 F.Supp.2d 1252, 1266-67 (N.D. Ala. 2013) (First Amendment does not overcome intentional infliction of emotional distress claim); *Gibson v. Brewer*, 952 S.W.2d 239, 248-49 (Mo. 1997) (First Amendment does not protect against adjudication of intentional torts). Given that Nevada's anti-SLAPP statutes do not apply to intentional torts or claims based on wrongful conduct, the stay of discovery provided for in NRS 41.660 cannot apply to them **as a matter of law**. *See* NRS 41.637; NRS 41.650; NRS 41.660(3)(e)(2). As a result, Defendants' Notice of Appeal filed pursuant to NRS 41.670 does not impact the Land Owners' intentional tort claims: Intentional Interference with Prospective Economic Advantage (Second Claim for Relief), Conspiracy (Fourth Claim for

1 Relief), and Intentional Misrepresentation (Fraud) (Fifth Claim for Relief). *See* Comp. at  
2 ¶¶ 39-47, 56-65.

3 Indeed, the Land Owners allege in the Complaint that the Defendants have  
4 intentionally and/or negligently participated in multiple concerted actions such as  
5 “preparation, promulgation, circulation, solicitation and execution” of false statements  
6 and/or declarations for the purpose of conjuring up sham opposition to the  
7 redevelopment of the Land. *See* Comp. at ¶¶ 23-28. The Complaint further alleges that  
8 the Defendants are doing so with the intent to deliver such false statements and/or  
9 declarations to the City of Las Vegas for the improper purpose of presenting a false  
10 narrative to council members, deceiving them into denying the Land Owners’ applications  
11 and, ultimately, sabotaging the Land Owners’ development rights and their livelihoods.  
12 *See id.*

13 In the June 20, 2018 Dismissal Order, the Court recognized that Nevada’s anti-  
14 SLAPP statutes do not apply to intentional torts or claims based on wrongful conduct and  
15 thus do not protect the Defendants’ actions in this case. *See* James. M. Jimmerson, Esq.  
16 Declaration, **Ex. A** at 7-8; *see also* NRS 41.635 *et seq.* Given that the Land Owners’  
17 intentional tort claims are beyond the purview of Nevada’s anti-SLAPP statutes, the  
18 Defendants’ Notice of Appeal from the Court’s Order denying Defendants’ anti-SLAPP  
19 Motion to Dismiss does not impact the Land Owners’ intentional tort claims as a matter  
20 of law. *See* NRS 41.637 (good faith communication defined); NRS 41.650 (good faith  
21 communication immune from liability); NRS 41.660(3)(e)(2) (stay of discovery pending  
22 appeal); NRS 41.670(4) (interlocutory appeal to Nevada Supreme Court). As such, the  
23 Land Owners are entitled to commence discovery on these claims and the Court should  
24 grant this motion. *See also* *John v. Douglas Cnty. Sch. Dist.*, 125 Nev. 746, 753, 219 P.3d  
25 1276, 1281 (2009), *superseded by statute as stated in* *Shapiro v. Welt*, 133 Nev. \_\_\_, 389  
26 P.3d 262, 266 (2017); *Bongiovi v. Sullivan*, 122 Nev. 556, \_\_\_, 138 P.3d 433, 445 (2006)



**B. Defendants' Writ Petition Does Not Stay Proceedings Automatically and They Have Not Sought A Stay From This Court Or The Appellate Court; The Court Maintains Jurisdiction to Commence Discovery.**

With respect to the Court's denial of their motion to dismiss pursuant to NRCP 12(b)(5), the Defendants have filed a petition for an extraordinary writ but have not sought a stay of proceedings pending the Nevada Supreme Court's resolution of Defendants' writ petition. *See* NRCP 62; NRAP 8 (stay of proceedings); NRAP 21 (extraordinary writs). A stay in these circumstances is not automatic, and a party must ordinarily move first in the district court for such a stay of proceedings. *See* NRAP 8(a)(1)(A). A motion for a stay may be made to the appellate courts if the district court denies the motion or upon a showing that moving first in the district court would be impracticable or futile. *See* NRAP 8(a)(2). Not only have the Defendants done neither in this case, but writ petitions are discretionary and those challenging the denial of a dispositive motion are rarely reviewed. *See State ex. Rel. Dep't of Transp. v. Thompson*, 99 Nev. 358, 362, 662 P.2d 1338, 1340 (1983) (judicial economy and sound judicial administration militate against the utilization of writ petitions to review orders denying motions to dismiss). Given that proceedings – including discovery – are not automatically stayed when a party files a petition for an extraordinary writ, and the Defendants haven't sought a stay pending the Nevada Supreme Court's resolution of their writ petition in this case, discovery should commence in this matter. Moreover, any such request for stay should be firmly denied, as there is no meritorious basis to grant such a stay. *See NRAP 8*. This Court should grant the Land Owners' motion to allow commencement of discovery accordingly.

Finally, a district court is free to rule upon collateral issues that do not affect the merits of a pending appeal. *See Mack-Manley v. Manley*, 122 Nev. 849, 855, 138 P.3d 525, 529-30 (2006). Here, the merits of the Defendants' interlocutory appeal are not affected by the instant motion, and the Court may order discovery to commence as to the Land Owners' intentional tort claims, which are collateral to, and not part of, the sole

1 issue on Appeal, the denial of Defendant's special motion to dismiss. *See id.* For the  
2 reasons set forth hereinabove, this Court should allow discovery to commence so that the  
3 case may proceed to final determination, in accordance with the Nevada Rules of Civil  
4 Procedure.

5 **IV. CONCLUSION.**

6 Based on the foregoing, the Court should grant this motion in its entirety.

7 DATED this 14<sup>th</sup> day of September, 2018.

8  
9 **THE JIMMERSON LAW FIRM, P.C.**

10  
11 By: /s/ James J. Jimmerson, Esq.  
12 JAMES J. JIMMERSON, ESQ.  
13 Nevada Bar No. 000264  
14 415 S. 6<sup>th</sup> Street, #100  
15 Las Vegas, Nevada 89101  
16 *Attorneys for Plaintiffs*  
17  
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**CERTIFICATE OF SERVICE**

I hereby certify that on the 14<sup>th</sup> day of September, 2018, I caused a true and correct copy of the foregoing **PLAINTIFFS' MOTION FOR AN ORDER ALLOWING COMMENCEMENT OF DISCOVERY** to be submitted electronically for filing and service with the Eighth Judicial District Court via the Electronic Filing System to the following:

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

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

# EXHIBIT A

# EXHIBIT A

**DECLARATION OF JAMES M. JIMMERSON, ESQ. PURSUANT TO EDCR**  
**2.34 IN SUPPORT OF PLAINTIFFS' MOTION TO COMPEL/OPEN**  
**DISCOVERY**

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

1. I am counsel of record in the above-captioned matter. I am over eighteen years of age, an attorney duly-licensed to practice law in the State of Nevada, and an Associate at THE JIMMERSON LAW FIRM, P.C. I make this Declaration in support of Plaintiffs' Motion for an Order Allowing Commencement of Discovery.

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

3. On June 20, 2018, the Court entered written findings of fact and conclusions of law ("June 20, 2018 Dismissal Order") denying Defendants' special motion to dismiss (anti-SLAPP motion) and motion to dismiss pursuant to NRCP 12(b)(5). A true and correct copy of the June 20, 2018 Dismissal Order is maintained within our office's files and attached hereto as **Exhibit E**.

4. On June 27, 2018, the Defendants filed a notice of appeal to the Nevada Supreme Court from the June 20, 2018 Dismissal Order.

5. On July 2, 2018, the Defendants filed a petition for an extraordinary writ in the Nevada Supreme Court, challenging the Court's denial of their motion to dismiss pursuant to NRCP 12(b)(5).

6. On May 30, 2018, the Land Owners served Defendants with a notice of early case conference. They did so to commence discovery in this case for the purpose of ascertaining facts and evidence related to their intentional tort claims, and because NRCP 16.1 does not prohibit the setting of an early case conference prior to the filing of an answer. A true and correct copy of that notice is maintained within my office's files and attached to Exhibit B hereto.

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

APP 0589

# EXHIBIT B

# EXHIBIT B

## Shahana Polselli

---

**From:** Langberg, Mitchell <mlangberg@bhfs.com>  
**Sent:** Wednesday, May 30, 2018 10:52 AM  
**To:** James J. Jimmerson, Esq.  
**Cc:** Shahana Polselli; Kim Stewart; James M. Jimmerson, Esq.; Todd Davis (EHB Companies); Elizabeth Ham (EHB Companies)  
**Subject:** Re: Fore Stars / Omerza ECC

Thank you for your email. As you might imagine, we will be filing a notice of appeal once an order is in place. I will get back to you on the ECC. But, I expect the case will be stayed before it happens.

**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

...

On May 30, 2018, at 10:49 AM, James J. Jimmerson, Esq. <[jjj@jimmersonlawfirm.com](mailto:jjj@jimmersonlawfirm.com)> wrote:

Mitch:

In light of your decision not to withdraw your Motion to Strike, we will begin preparing an Opposition as required by our rules of civil procedure.

Attached is a Notice of Early Case Conference being filed today. We have noticed and set it to occur two (2) weeks from now which will give us enough time to finalize the Court's Order, and for your office to coordinate with your calendar. If the specific date and time we have selected of June 13, 2018, at 9:00 am, does not work for your schedule, please let us know which day and time during that week that would work, and we will do our best to accommodate you.

Presently I am only sending emails to you at your firm at this time. However, if there is a second person there that you would want us to copy on email communications to you, just let us know and we will add that person to our email communications with you. Here at our firm, due to the large daily volume, I do not read my emails on any regular basis, which is why my official email address in this case and in the legal directories is [ks@jimmersonlawfirm.com](mailto:ks@jimmersonlawfirm.com) (my secretary Kimberly Stewart), with copies as it relates to this particular case to my Son James and my paralegal Shahana Polselli. So if you want us to add someone, just let us know.

JJJ

James J. Jimmerson, Esq.  
Member, National Trial Lawyers Top 100 Lawyers  
Martindale-Hubbell "AV" Preeminent Lawyers  
Super Lawyers Business Litigation  
Stephen Naifeh "Best Lawyers"  
Recipient of the prestigious Ellis Island Medal of Honor, 2012



Fellow, American Academy of Matrimonial Lawyers  
Diplomat, American College of Family Trial Lawyers  
Family Law Specialist, Nevada State Bar  
[WWW.JIMMERSONLAWFIRM.COM](http://WWW.JIMMERSONLAWFIRM.COM)  
415 South Sixth Street, Suite 100  
Las Vegas, NV 89101  
P: (702) 388-7171  
F: (702) 380-6422

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**NOTC**

JAMES J. JIMMERSON, ESQ.  
Nevada State Bar No. 00264  
[ks@jimmersonlawfirm.com](mailto:ks@jimmersonlawfirm.com)  
JAMES M. JIMMERSON, ESQ.  
Nevada State Bar No. 12599  
[jmj@jimmersonlawfirm.com](mailto:jmj@jimmersonlawfirm.com)  
THE JIMMERSON LAW FIRM, P.C.  
415 South Sixth Street, Suite 100  
Las Vegas, Nevada 89135  
Telephone: (702) 388-7171  
Facsimile: (702) 367-1167

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

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

Plaintiffs,  
vs.

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

Case No.: A-18-771224-C


Dept. No.: II

**NOTICE OF EARLY CASE  
CONFERENCE**

TO: Daniel Omerza, Darren Bresee, and Steve Caria, Defendants.  
TO: Mitchell Langberg, Esq. of BROWNSTEIN HYATT FARBER &  
SCHRECK LLP, counsel for Defendants

PLEASE TAKE NOTICE that, pursuant to NRCP 16.1(a) and (b), an Early  
Case Conference has been set for June 13, 2018 at 9:00 a.m. at the offices of The  
Jimmerson Law Firm, P.C., 415 South Sixth Street, Suite 100, Las Vegas, Nevada  
89101.

THE JIMMERSON LAW FIRM, P.C.

  
JAMES J. JIMMERSON, ESQ.,  
Nevada Bar No. 000264  
415 South Sixth Street, Suite 100  
Las Vegas, Nevada 89135

**CERTIFICATE OF SERVICE**

I hereby certify that on the 3<sup>rd</sup> day of May, 2018, I caused a true and correct copy of the foregoing **NOTICE OF EARLY CASE CONFERENCE** to be submitted electronically for filing and service with the Eighth Judicial District Court via the Electronic Filing System to the following:

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



Employee of The Jimmerson Law Firm, P.C.

# EXHIBIT C

# EXHIBIT C

## Shahana Polselli

---

**From:** James M. Jimmerson, Esq.  
**Sent:** Monday, June 04, 2018 4:07 PM  
**To:** Langberg, Mitchell; James J. Jimmerson, Esq.  
**Cc:** Elizabeth Ham (EHB Companies); Kim Stewart; Shahana Polselli  
**Subject:** RE: Fore Stars / Omerza ECC

Mr. Langberg,

As you know my father is out of town, however, he wanted me to respond to your emails. We believe you have missed the point of our email. A suggestion that we could set the ECC the day after you serve a complaint is an absurd interpretation of our email, and not at all what we have suggested. The *O'Lane* decision has nothing to do with discovery deadlines, nor does it speak to any permissible delay to the commencement of discovery. We stand by our original request to conduct discovery in a reasonably diligent manner. We can agree to disagree and allow the Court to resolve the issue if that is your desire, but we believe you are reacting to the loss of your Motions, rather than cooperatively, as required by NRCP 1 and the Nevada Rules of Professional Conduct. We urge you to reconsider.

Sincerely,

James M. Jimmerson, Esq.  
Associate  
The Jimmerson Law Firm, P.C.  
415 South 6th Street, Suite 100  
Las Vegas, Nevada 89101  
(702) 388-7171 (Office)  
(702) 380-6422 (Facsimile)  
[jmj@jimmersonlawfirm.com](mailto:jmj@jimmersonlawfirm.com)

---

**From:** Langberg, Mitchell [mailto:[mlangberg@bhfs.com](mailto:mlangberg@bhfs.com)]  
**Sent:** Friday, June 01, 2018 8:05 PM  
**To:** James J. Jimmerson, Esq. <[jjj@jimmersonlawfirm.com](mailto:jjj@jimmersonlawfirm.com)>  
**Cc:** James M. Jimmerson, Esq. <[jmj@jimmersonlawfirm.com](mailto:jmj@jimmersonlawfirm.com)>; Elizabeth Ham (EHB Companies) <[EHam@ehbcompanies.com](mailto:EHam@ehbcompanies.com)>; Kim Stewart <[ks@jimmersonlawfirm.com](mailto:ks@jimmersonlawfirm.com)>; Shahana Polselli <[sp@jimmersonlawfirm.com](mailto:sp@jimmersonlawfirm.com)>  
**Subject:** Re: Fore Stars / Omerza ECC

I left off the relevant case authority in error. Please see *O'Lane v. Spinney*, 110 Nev. 496, 498 (1994), for the Nevada Supreme Court's interpretation of "within" language in a statute. Clearly, Rule 16.1 defines a period that begins with the filing of the Answer and ends 30 days thereafter (within 30 days after the filing of the answer).

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

...

On Jun 1, 2018, at 7:28 PM, Langberg, Mitchell <[mlangberg@bhfs.com](mailto:mlangberg@bhfs.com)> wrote:

Mr. Jimmerson,

Perhaps you overlooked NRCP 16.1(b)(1)'s express language that a case conference must occur:

"Unless the case is in the court annexed arbitration program or short trial program, within 30 days AFTERL filing of an ANSWER by the first answering defendant, ..." (emphasis added).

Of course, this only makes sense because the topics to be discussed include matters that are revealed by the answer, including the defenses asserted in the case. There is no order yet on the motions (I am awaiting your draft). So, there is no deadline to answer.

Your interpretation of the rule suggests you could set the ECC the day after you serve a complaint. That is nonsense.

We need not debate this further. If you do not withdraw the notice, I am happy to seek Court intervention.

On Jun 1, 2018, at 7:11 PM, James J. Jimmerson, Esq. <[jjj@jimmersonlawfirm.com](mailto:jjj@jimmersonlawfirm.com)> wrote:

Mr. Langberg,

We will not be withdrawing the notice of early case conference. We believe your request is unreasonable and not in accordance with our rules of civil procedure. Under the rules, and relevant case law, your clients have clearly made an appearance as that term is used regarding the setting and holding of an early case conference. See NRCP 16.1(b)(1).

The Court has issued its minute order denying both motions to dismiss. We will have that Order for your review next week. We know of no rule that prohibits the setting of an early case conference prior to the filing of an Answer. In fact, the opposite is true: An early case conference may be set at any reasonable time, but it should be set and held no later than 30 days after the filing of an Answer. Further, this case is not stayed, and thus we have every right to proceed with discovery. Indeed, the Court's minute order can only reasonably be read as allowing - even mandating - appropriate discovery. Should you seek to impede our efforts at lawful discovery or to further delay this matter, we will be forced to seek relief from the Court.

We look forward to your appearance at our early case conference on June 13, 2018 at 9:00 am at our offices.

Thank you.

JJJ

James J. Jimmerson, Esq.  
Member, National Trial Lawyers Top 100 Lawyers  
Martindale-Hubbell "AV" Preeminent Lawyers  
Super Lawyers Business Litigation  
Stephen Naifeh "Best Lawyers"  
Recipient of the prestigious Ellis Island Medal of Honor, 2012  
Fellow, American Academy of Matrimonial Lawyers  
Diplomat, American College of Family Trial Lawyers  
Family Law Specialist, Nevada State Bar  
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F: (702) 380-6422

**PLEASE BE ADVISED** that due to my Court schedule and the volume of emails I receive daily, I am unable to read the majority of my emails on a daily basis. Therefore, your email is not deemed by our firm as being "received" by me unless I respond to the same, nor does it constitute service on, or notification to, our firm. Unless your email is of a personal/private nature to me, please copy my Legal Assistant, Kim Stewart, at [ks@jimmersonlawfirm.com](mailto:ks@jimmersonlawfirm.com) AND any other Associates or Paralegals at our firm associated with your case on all emails to ensure receipt. For personal emails, a follow up by telephone may be appropriate and necessary. I apologize for this inconvenience. Thank you for your cooperation.

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the draft email in response:

---

**From:** Langberg, Mitchell [<mailto:mlangberg@bhfs.com>]  
**Sent:** Friday, June 01, 2018 9:33 AM  
**To:** James J. Jimmerson, Esq. <[jjj@jimmersonlawfirm.com](mailto:jjj@jimmersonlawfirm.com)>  
**Cc:** Shahana Polselli <[sp@jimmersonlawfirm.com](mailto:sp@jimmersonlawfirm.com)>; Kim Stewart <[ks@jimmersonlawfirm.com](mailto:ks@jimmersonlawfirm.com)>; James M. Jimmerson, Esq. <[jmi@jimmersonlawfirm.com](mailto:jmi@jimmersonlawfirm.com)>; Todd Davis (EHB Companies) <[tdavis@ehbcompanies.com](mailto:tdavis@ehbcompanies.com)>; Elizabeth Ham (EHB Companies) <[EHam@ehbcompanies.com](mailto:EHam@ehbcompanies.com)>  
**Subject:** Re: Fore Stars / Omerza ECC

Mr. Jimmerson,

It occurs to me that an ECC is premature. No answer has been filed. No answer will be filed pending appeal. Therefore, please confirm that your notice of EVC will be withdrawn.

Thank you.

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

...

On May 30, 2018, at 10:49 AM, James J. Jimmerson, Esq. <[jjj@jimmersonlawfirm.com](mailto:jjj@jimmersonlawfirm.com)> wrote:

Mitch:

In light of your decision not to withdraw your Motion to Strike, we will begin preparing an Opposition as required by our rules of civil procedure.

Attached is a Notice of Early Case Conference being filed today. We have noticed and set it to occur two (2) weeks from now which will give us enough time to finalize the Court's Order, and for your office to coordinate with your calendar. If the specific date and time we have selected of June 13, 2018, at 9:00 am, does not work for your schedule, please let us know which day and time during that week that would work, and we will do our best to accommodate you.

Presently I am only sending emails to you at your firm at this time. However, if there is a second person there that you would want us to copy on email communications to you, just let us know and we will add that person to our email communications with you. Here at our firm, due to the large daily volume, I do not read my emails on any regular basis, which is why my official email address in this case and in the legal directories is [ks@jimmersonlawfirm.com](mailto:ks@jimmersonlawfirm.com) (my secretary Kimberly Stewart), with copies as it relates to this particular case to my Son James and my paralegal Shahana Polselli. So if you want us to add someone, just let us know.

JJJ

James J. Jimmerson, Esq.  
Member, National Trial Lawyers Top 100 Lawyers  
Martindale-Hubbell "AV" Preeminent Lawyers  
Super Lawyers Business Litigation  
Stephen Naifeh "Best Lawyers"  
Recipient of the prestigious Ellis Island Medal of Honor, 2012  
Fellow, American Academy of Matrimonial Lawyers  
Diplomat, American College of Family Trial Lawyers  
Family Law Specialist, Nevada State Bar  
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# EXHIBIT D

# EXHIBIT D

## Shahana Polselli

---

**From:** James J. Jimmerson, Esq.  
**Sent:** Wednesday, July 25, 2018 6:42 PM  
**To:** 'Langberg, Mitchell'  
**Cc:** Shahana Polselli; James M. Jimmerson, Esq.; Kim Stewart; 'Elizabeth Ham (EHB Companies)'; 'Todd Davis (EHB Companies)'  
**Subject:** RE: Fore Stars / Omerza ECC

Mr. Langberg:

Reference is made to your last email of 11:48 pm of July 23, 2018, which regrettably requires a brief response.

Your statement therein that "...I can only conclude that your intent is not based on a good faith belief you have a tenable position" is, in my judgment, contrived. To the contrary, our debate and substantial number of emails exchanged evidence that both of us have debated these issues in good faith and with a high level of academic and intellectual analysis. I urge you not to descend to the depths of threats and intimidation, which have no room in this case.

JJJ

James J. Jimmerson, Esq.  
Member, National Trial Lawyers Top 100 Lawyers  
Martindale-Hubbell "AV" Preeminent Lawyers  
Super Lawyers Business Litigation  
Stephen Naifeh "Best Lawyers"  
Recipient of the prestigious Ellis Island Medal of Honor, 2012  
Fellow, American Academy of Matrimonial Lawyers  
Diplomat, American College of Family Trial Lawyers  
Family Law Specialist, Nevada State Bar  
WWW.JIMMERSONLAWFIRM.COM  
415 South Sixth Street, Suite 100  
Las Vegas, NV 89101  
P: (702) 388-7171  
F: (702) 380-6422

**PLEASE BE ADVISED** that due to my Court schedule and the volume of emails I receive daily, I am unable to read the majority of my emails on a daily basis. Therefore, your email is not deemed by our firm as being "received" by me unless I respond to the same, nor does it constitute service on, or notification to, our firm. Unless your email is of a personal/private nature to me, please copy my Legal Assistant, Kim Stewart, at [ks@jimmersonlawfirm.com](mailto:ks@jimmersonlawfirm.com) AND any other Associates or Paralegals at our firm associated with your case on all emails to ensure receipt. For personal emails, a follow up by telephone may be appropriate and necessary. I apologize for this inconvenience. Thank you for your cooperation.

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

## Shahana Polselli

---

**From:** Langberg, Mitchell <mlangberg@bhfs.com>  
**Sent:** Monday, July 23, 2018 11:48 PM  
**To:** James J. Jimmerson, Esq.  
**Cc:** Shahana Polselli; James M. Jimmerson, Esq.; Kim Stewart; Elizabeth Ham (EHB Companies); Todd Davis (EHB Companies)  
**Subject:** Re: Fore Stars / Omerza ECC

**Follow Up Flag:** Follow up  
**Flag Status:** Completed

I don't know how the final judgment rule or related rules impacts this issue. The court has issued no judgment to be stayed or not stayed. It has denied a special motion to dismiss pursuant to a statute that provides an immediate appeal right. The general rule is that an appeal divests the district court of jurisdiction. You have offered no contrary authority. Indeed, if you review the California authority - on which this statute is identical in all relevant ways - the authority is clear on this point. So, between the appellate rule re divested jurisdiction, you lack of contrary authority, and the related authority from a persuasive jurisdiction, I can only conclude that your intent is not based on a good faith belief you have a tenable position. That is your prerogative. But, if you force an opposition to an improper motion, I will, unfortunately, have to seek sanctions.

On Jul 23, 2018, at 8:36 PM, James J. Jimmerson, Esq. <[jjj@jimmersonlawfirm.com](mailto:jjj@jimmersonlawfirm.com)> wrote:

Mitchell:

I believe we understand each other.

We have a fundamental, good faith difference of opinion regarding the law and its application to this case. You think the mere filing of your notice of appeal divests the District Court of subject matter jurisdiction on all issues remaining before the Court. Under the facts and law of this case, we respectfully disagree. See also NRCP 54(b).

Have a pleasant evening and thank you.

JJJ

James J. Jimmerson, Esq.  
Member, National Trial Lawyers Top 100 Lawyers  
Martindale-Hubbell "AV" Preeminent Lawyers  
Super Lawyers Business Litigation  
Stephen Naifeh "Best Lawyers"  
Recipient of the prestigious Ellis Island Medal of Honor, 2012  
Fellow, American Academy of Matrimonial Lawyers  
Diplomat, American College of Family Trial Lawyers  
Family Law Specialist, Nevada State Bar  
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F: (702) 380-6422

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---

**From:** James J. Jimmerson, Esq.  
**Sent:** Monday, July 23, 2018 11:37 PM  
**To:** 'Langberg, Mitchell' <[mlangberg@bhfs.com](mailto:mlangberg@bhfs.com)>  
**Cc:** Shahana Polselli <[sp@jimmersonlawfirm.com](mailto:sp@jimmersonlawfirm.com)>; James M. Jimmerson, Esq. <[jmi@jimmersonlawfirm.com](mailto:jmi@jimmersonlawfirm.com)>; Kim Stewart <[ks@jimmersonlawfirm.com](mailto:ks@jimmersonlawfirm.com)>; Elizabeth Ham (EHB Companies) <[EHam@ehbcompanies.com](mailto:EHam@ehbcompanies.com)>; Todd Davis (EHB Companies) <[tdavis@ehbcompanies.com](mailto:tdavis@ehbcompanies.com)>  
**Subject:** RE: Fore Stars / Omerza ECC

Mitchell:

I believe we understand each other.

We have a fundamental, good faith difference of opinion regarding the law and its application to this case. You think the mere filing of your notice of appeal divests the District Court of subject matter jurisdiction on all issues remaining before the Court. Under the facts and law of this case, we respectfully disagree. See also NRCP 54(b).

Have a pleasant evening and thank you.

JJJ

James J. Jimmerson, Esq.  
Member, National Trial Lawyers Top 100 Lawyers  
Martindale-Hubbell "AV" Preeminent Lawyers  
Super Lawyers Business Litigation  
Stephen Naifeh "Best Lawyers"  
Recipient of the prestigious Ellis Island Medal of Honor, 2012  
Fellow, American Academy of Matrimonial Lawyers  
Diplomat, American College of Family Trial Lawyers  
Family Law Specialist, Nevada State Bar  
[WWW.JIMMERSONLAWFIRM.COM](http://WWW.JIMMERSONLAWFIRM.COM)  
415 South Sixth Street, Suite 100  
Las Vegas, NV 89101  
P: (702) 388-7171  
F: (702) 380-6422

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personal/private nature to me, please copy my Legal Assistant, Kim Stewart, at [ks@jimmersonlawfirm.com](mailto:ks@jimmersonlawfirm.com) AND any other Associates or Paralegals at our firm associated with your case on all emails to ensure receipt. For personal emails, a follow up by telephone may be appropriate and necessary. I apologize for this inconvenience. Thank you for your cooperation.

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---

**From:** Langberg, Mitchell [<mailto:mlangberg@bhfs.com>]

**Sent:** Monday, July 23, 2018 11:19 PM

**To:** James J. Jimmerson, Esq. <[jjj@jimmersonlawfirm.com](mailto:jjj@jimmersonlawfirm.com)>

**Cc:** Shahana Polselli <[sp@jimmersonlawfirm.com](mailto:sp@jimmersonlawfirm.com)>; James M. Jimmerson, Esq. <[jmi@jimmersonlawfirm.com](mailto:jmi@jimmersonlawfirm.com)>; Kim Stewart <[ks@jimmersonlawfirm.com](mailto:ks@jimmersonlawfirm.com)>; Elizabeth Ham (EHB Companies) <[EHam@ehbcompanies.com](mailto:EHam@ehbcompanies.com)>; Todd Davis (EHB Companies) <[tdavis@ehbcompanies.com](mailto:tdavis@ehbcompanies.com)>

**Subject:** Re: Fore Stars / Omerza ECC

There is an appeal pending. It is an APPEAL (not writ) provided for by statute. An appeal divests the district court of any jurisdiction to act. If you think this basic appellate rule does not apply, you should provide some authority. If you make a motion, I will request sanctions pursuant to EDCR 7.60(b)(1) and (3).

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

...

On Jul 23, 2018, at 7:44 PM, James J. Jimmerson, Esq. <[jjj@jimmersonlawfirm.com](mailto:jjj@jimmersonlawfirm.com)> wrote:

Mitchell:

As we advised you, we documented Defendants' failure to appear last Friday's morning, July 20, 2018, at the ECC.

Your clients have neither sought, nor obtained a stay. In our opinion, the District Court maintains subject matter jurisdiction over the case except for those specific issues which are on Appeal. If you have authority that says otherwise, which you reference, it would be appreciated if you would please provide the same.

We intend on helping the Court regarding this matter, and thus we will be filing a Motion to Confirm Continuing Subject Matter Jurisdiction in the days ahead so we can, together, aid the Court to resolve this matter about which we disagree.

Thank you.

JJJ

---

**From:** Langberg, Mitchell [mailto:[mlangberg@bhfs.com](mailto:mlangberg@bhfs.com)]

**Sent:** Thursday, July 19, 2018 8:43 PM

**To:** James J. Jimmerson, Esq. <[jjj@jimmersonlawfirm.com](mailto:jjj@jimmersonlawfirm.com)>

**Cc:** James M. Jimmerson, Esq. <[jmj@jimmersonlawfirm.com](mailto:jmj@jimmersonlawfirm.com)>; Shahana Polselli <[sp@jimmersonlawfirm.com](mailto:sp@jimmersonlawfirm.com)>; Elizabeth Ham (EHB Companies) <[EHam@ehbcompanies.com](mailto:EHam@ehbcompanies.com)>; Kim Stewart <[ks@jimmersonlawfirm.com](mailto:ks@jimmersonlawfirm.com)>; Lee, Nancy M. <[nlee@bhfs.com](mailto:nlee@bhfs.com)>; Hughes, Van Aaron <[vhughes@bhfs.com](mailto:vhughes@bhfs.com)>; Crudup, DeEtra <[DCrudup@bhfs.com](mailto:DCrudup@bhfs.com)>

**Subject:** Re: Fore Stars / Omerza ECC

I don't agree with that. We moved to dismiss your case. That is on appeal by statute. The court has no jurisdiction right now. This appeal is no different than any other appeal the pertains to the entire case. While there is no NV authority on it (because the issue appears never to have been raised) there is plenty of CA authority right on point based on the same statutory provisions.

On Jul 19, 2018, at 8:36 PM, James J. Jimmerson, Esq. <[jjj@jimmersonlawfirm.com](mailto:jjj@jimmersonlawfirm.com)> wrote:

Mitchell:

We understand your position.

Perhaps we could jointly agree that we broef the issue and approach the trial court by motion.

JJJ.

Sent from my iPhone

On Jul 19, 2018, at 5:58 PM, Langberg, Mitchell <[mlangberg@bhfs.com](mailto:mlangberg@bhfs.com)> wrote:

The filing of an anti-SLAPP motion stays all discovery. That is the issue being appealed. So, we disagree. Not to mention the fact that there is no answer on file. We will not attend.

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

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---

**From:** James M. Jimmerson, Esq. [mailto:[jmj@jimmersonlawfirm.com](mailto:jmj@jimmersonlawfirm.com)]

**Sent:** Thursday, July 19, 2018 9:57 AM

**To:** Langberg, Mitchell; Shahana Polselli

**Cc:** James J. Jimmerson, Esq.; Elizabeth Ham (EHB Companies); Kim Stewart; Lee, Nancy M.; Hughes, Van Aaron; Crudup, DeEtra

**Subject:** RE: Fore Stars / Omerza ECC

Mr. Langberg,

We do intend on conducting an early case conference tomorrow as we do not believe that the appeal divests the district court of jurisdiction over the rest of the case. I understand that you may disagree and that you would register your objection tomorrow.

James M. Jimmerson, Esq.  
Associate  
The Jimmerson Law Firm, P.C.  
415 South 6th Street, Suite 100  
Las Vegas, Nevada 89101  
(702) 388-7171 (Office)  
(702) 380-6422 (Facsimile)  
[jmj@jimmersonlawfirm.com](mailto:jmj@jimmersonlawfirm.com)

---

**From:** Langberg, Mitchell [<mailto:mlangberg@bhfs.com>]  
**Sent:** Thursday, July 19, 2018 8:14 AM  
**To:** James M. Jimmerson, Esq. <[jmj@jimmersonlawfirm.com](mailto:jmj@jimmersonlawfirm.com)>; Shahana Polselli <[sp@jimmersonlawfirm.com](mailto:sp@jimmersonlawfirm.com)>  
**Cc:** James J. Jimmerson, Esq. <[jjj@jimmersonlawfirm.com](mailto:jjj@jimmersonlawfirm.com)>; Elizabeth Ham (EHB Companies) <[EHam@ehbcompanies.com](mailto:EHam@ehbcompanies.com)>; Kim Stewart <[ks@jimmersonlawfirm.com](mailto:ks@jimmersonlawfirm.com)>; Lee, Nancy M. <[nlee@bhfs.com](mailto:nlee@bhfs.com)>; Hughes, Van Aaron <[vhughes@bhfs.com](mailto:vhughes@bhfs.com)>; Crudup, DeEtra <[DCrudup@bhfs.com](mailto:DCrudup@bhfs.com)>  
**Subject:** RE: Fore Stars / Omerza ECC

Messrs. Jimmerson,

The amended ECC notice set it for tomorrow. I assume we can agree that it will not go forward while the appeal is pending. Yes?

Thank you,

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](mailto:mlangberg@bhfs.com)

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**From:** James M. Jimmerson, Esq. [<mailto:jmj@jimmersonlawfirm.com>]  
**Sent:** Monday, June 11, 2018 1:15 PM  
**To:** Langberg, Mitchell; Shahana Polselli  
**Cc:** James J. Jimmerson, Esq.; Elizabeth Ham (EHB Companies); Kim Stewart; Lee, Nancy M.; Hughes, Van Aaron; Crudup, DeEtra  
**Subject:** RE: Fore Stars / Omerza ECC

Mitch,

Thank you for speaking with me earlier this morning and just now. As discussed, we will withdraw the notice of early case conference set for this week and serve an amended notice setting the case conference for approximately 30 days from now, presuming the district court then has jurisdiction over this matter. As agreed, in the event that you file an answer before that time, you agreed to conducting a case conference three business days after you file and serve the answer.

Sincerely,

James M. Jimmerson, Esq.  
Associate  
The Jimmerson Law Firm, P.C.  
415 South 6th Street, Suite 100  
Las Vegas, Nevada 89101  
(702) 388-7171 (Office)  
(702) 380-6422 (Facsimile)  
[jmj@jimmersonlawfirm.com](mailto:jmj@jimmersonlawfirm.com)

---

**From:** Langberg, Mitchell [<mailto:mlangberg@bhfs.com>]  
**Sent:** Monday, June 11, 2018 10:15 AM  
**To:** Shahana Polselli <[sp@jimmersonlawfirm.com](mailto:sp@jimmersonlawfirm.com)>  
**Cc:** James J. Jimmerson, Esq. <[jjj@jimmersonlawfirm.com](mailto:jjj@jimmersonlawfirm.com)>; James M. Jimmerson, Esq. <[jmj@jimmersonlawfirm.com](mailto:jmj@jimmersonlawfirm.com)>; Elizabeth Ham (EHB Companies) <[EHam@ehbcompanies.com](mailto:EHam@ehbcompanies.com)>; Kim Stewart <[ks@jimmersonlawfirm.com](mailto:ks@jimmersonlawfirm.com)>; Lee, Nancy M. <[nlee@bhfs.com](mailto:nlee@bhfs.com)>; Hughes, Van Aaron <[vhughes@bhfs.com](mailto:vhughes@bhfs.com)>; Crudup, DeEtra <[DCrudup@bhfs.com](mailto:DCrudup@bhfs.com)>  
**Subject:** Re: Fore Stars / Omerza ECC

Thank you.

On Jun 11, 2018, at 10:10 AM, Shahana Polselli <[sp@jimmersonlawfirm.com](mailto:sp@jimmersonlawfirm.com)> wrote:

Mr. Langberg:

It was received back after 4 pm on Friday and processed. If it did not go out Friday evening then it was delivered this morning.

*Shahana*

Shahana M. Polselli  
**Senior Case Manager / Senior Paralegal**  
The Jimmerson Law Firm, P.C.  
415 South 6th Street, Suite 100  
Las Vegas, Nevada 89101  
(702) 388-7171 x 313 (Office)  
(702) 380-6413 (Facsimile)  
[sp@jimmersonlawfirm.com](mailto:sp@jimmersonlawfirm.com)

[WWW.JIMMERSONLAWFIRM.COM](http://WWW.JIMMERSONLAWFIRM.COM)

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---

**From:** Langberg, Mitchell [<mailto:mlangberg@bhfs.com>]  
**Sent:** Monday, June 11, 2018 9:53 AM  
**To:** Shahana Polselli  
**Cc:** James J. Jimmerson, Esq.; James M. Jimmerson, Esq.; Elizabeth Ham (EHB Companies); Kim Stewart;



Lee, Nancy M.; Hughes, Van Aaron; Crudup, DeEtra  
**Subject:** Re: Fore Stars / Omerza ECC

Was the order submitted Friday?

**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

...

On Jun 11, 2018, at 9:50 AM, Shahana Polselli <[sp@jimmersonlawfirm.com](mailto:sp@jimmersonlawfirm.com)> wrote:

Mr. Langberg:

We can have the 2.34 Conference at 11 am today if that still works for you. Please confirm. We will call you.

*Shahana*

Shahana M. Polselli  
**Senior Case Manager / Senior Paralegal**  
**The Jimmerson Law Firm, P.C.**  
415 South 6th Street, Suite 100  
Las Vegas, Nevada 89101  
(702) 388-7171 x 313 (Office)  
(702) 380-6413 (Facsimile)  
[sp@jimmersonlawfirm.com](mailto:sp@jimmersonlawfirm.com)

[WWW.JIMMERSONLAWFIRM.COM](http://WWW.JIMMERSONLAWFIRM.COM)

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---

**From:** Langberg, Mitchell [<mailto:mlangberg@bhfs.com>]  
**Sent:** Friday, June 08, 2018 11:35 AM  
**To:** Shahana Polselli  
**Cc:** James J. Jimmerson, Esq.; James M. Jimmerson, Esq.; Elizabeth Ham (EHB Companies); Kim Stewart;  
Lee, Nancy M.; Hughes, Van Aaron; Crudup, DeEtra  
**Subject:** Re: Fore Stars / Omerza ECC

I am available anytime on Monday.

On Jun 8, 2018, at 11:24 AM, Shahana Polselli <[sp@jimmersonlawfirm.com](mailto:sp@jimmersonlawfirm.com)> wrote:

Mr. Langberg:

I spoke with Mr. Jimmerson (James) and he is not available today, but can have the conference with you on either Monday or Tuesday, any time after 10:30 am. Please let us know what time works for your schedule. Does 11 am work?

*Shahana*

Shahana M. Polselli  
**Senior Case Manager / Senior Paralegal**  
The Jimmerson Law Firm, P.C.  
415 South 6th Street, Suite 100  
Las Vegas, Nevada 89101  
(702) 388-7171 x 313 (Office)  
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**From:** Langberg, Mitchell [<mailto:mlangberg@bhfs.com>]  
**Sent:** Thursday, June 07, 2018 4:01 PM  
**To:** Shahana Polselli; James J. Jimmerson, Esq.  
**Cc:** James M. Jimmerson, Esq.; 'Elizabeth Ham (EHB Companies)'; Kim Stewart; Lee, Nancy M.; Hughes, Van Aaron; Crudup, DeEtra  
**Subject:** RE: Fore Stars / Omerza ECC

Thank you for your response. To give you time to get in touch with the attorneys, I can speak tomorrow between 12 and 1:30. I will be away from the office but still available by phone.

thanks.

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

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**From:** Shahana Polselli [<mailto:sp@jimmersonlawfirm.com>]  
**Sent:** Thursday, June 07, 2018 3:59 PM  
**To:** Langberg, Mitchell; James J. Jimmerson, Esq.  
**Cc:** James M. Jimmerson, Esq.; 'Elizabeth Ham (EHB Companies)'; Kim Stewart; Lee, Nancy M.; Hughes, Van Aaron; Crudup, DeEtra  
**Subject:** RE: Fore Stars / Omerza ECC  
**Importance:** High

Mr. Langberg:

I have downloaded this email requesting a conference either in 30 minutes from now, or tomorrow morning. However, I will not be able to speak to any of the attorneys or bring it to their attention until tomorrow. Once I am able to do so, we can respond and coordinate the scheduling of your requested conference. I did, earlier, get feedback on your requested revisions to the FFCOL and will be sending that shortly.

Thank you,

*Shahana*

Shahana M. Polselli  
**Senior Case Manager / Senior Paralegal**  
The Jimmerson Law Firm, P.C.  
415 South 6th Street, Suite 100  
Las Vegas, Nevada 89101  
(702) 388-7171 x 313 (Office)  
(702) 380-6413 (Facsimile)  
[sp@jimmersonlawfirm.com](mailto:sp@jimmersonlawfirm.com)

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---

**From:** Langberg, Mitchell [<mailto:mlangberg@bhfs.com>]  
**Sent:** Thursday, June 07, 2018 3:28 PM  
**To:** James J. Jimmerson, Esq.  
**Cc:** James M. Jimmerson, Esq.; 'Elizabeth Ham (EHB Companies)'; Kim Stewart; Shahana Polselli; Lee, Nancy M.; Hughes, Van Aaron; Crudup, DeEtra  
**Subject:** RE: Fore Stars / Omerza ECC

Mssrs. Jimmerson,

We have a discovery dispute with respect to the Early Case Conference. It is our intent to file a motion to strike your notice. However, in compliance with the EDCRs, we would like to meet and confer in an effort to resolve the matter. As you know, the rules require that we speak about this live. So, I propose a telephone conference wither today at 4:30 pm or tomorrow at 9:30 am.

Please let me know which you prefer.

Thank you,

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](mailto:mlangberg@bhfs.com)

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**From:** Langberg, Mitchell  
**Sent:** Monday, June 04, 2018 4:20 PM  
**To:** 'James J. Jimmerson, Esq.'  
**Cc:** James M. Jimmerson, Esq.; 'Elizabeth Ham (EHB Companies)'; Kim Stewart; Shahana Polselli; Lee, Nancy M.; Hughes, Van Aaron; Crudup, DeEtra  
**Subject:** RE: Fore Stars / Omerza ECC

Mr. Jimmerson,

As I was preparing my motion for protective order, I realized that you (presumably mistakenly) were operating under the **former** language of NRC 16.1. I attach the **current** version from Westlaw and the Nevada Supreme Court order adopting it. As you will see, with respect to Early Cases Conferences, your reference to an "appearance" is nowhere to be found. It is triggered by the service of an answer, and must take place within 30 days **after** service of the answer, subject to extension, but in no case later than 180 days after the service of the answer.

My interpretation is neither novel nor controversial. Indeed, it is the very interpretation included in the Nevada Civil Practice Manual, for which you serve as one of the editors. Section 13.03(2) makes clear that the "service of an answer of the first answering defendant **triggers** the timing for the parties' early case conference."

I understand that you wish to deprive Defendants of their statutory right to appeal before discovery commences by delaying on providing a draft order so as to prevent the filing of a notice of appeal. However, the rules do not allow that.

In light of the **actual** provisions of NRC 16.1, as confirmed by your own treatise, please confirm that you will withdraw your ECC notice. Otherwise, I will be filing a motion to strike the notice and for the Court to consider whether Plaintiffs have unnecessarily multiplied the proceedings as contemplated by EDCR 7.60.

Mitch Langberg

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

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---

**From:** James J. Jimmerson, Esq. [<mailto:jjj@jimmersonlawfirm.com>]  
**Sent:** Friday, June 01, 2018 7:11 PM  
**To:** Langberg, Mitchell

**Cc:** James M. Jimmerson, Esq.; 'Elizabeth Ham (EHB Companies)'; Kim Stewart; Shahana Polselli  
**Subject:** FW: Fore Stars / Omerza ECC

Mr. Langberg,

We will not be withdrawing the notice of early case conference. We believe your request is unreasonable and not in accordance with our rules of civil procedure. Under the rules, and relevant case law, your clients have clearly made an appearance as that term is used regarding the setting and holding of an early case conference. See NRCPC 16.1(b)(1).

The Court has issued its minute order denying both motions to dismiss. We will have that Order for your review next week. We know of no rule that prohibits the setting of an early case conference prior to the filing of an Answer. In fact, the opposite is true: An early case conference may be set at any reasonable time, but it should be set and held no later than 30 days after the filing of an Answer. Further, this case is not stayed, and thus we have every right to proceed with discovery. Indeed, the Court's minute order can only reasonably be read as allowing - even mandating - appropriate discovery. Should you seek to impede our efforts at lawful discovery or to further delay this matter, we will be forced to seek relief from the Court.

We look forward to your appearance at our early case conference on June 13, 2018 at 9:00 am at our offices.

Thank you.

JJJ

James J. Jimmerson, Esq.  
Member, National Trial Lawyers Top 100 Lawyers  
Martindale-Hubbell "AV" Preeminent Lawyers  
Super Lawyers Business Litigation  
Stephen Naifeh "Best Lawyers"  
Recipient of the prestigious Ellis Island Medal of Honor, 2012  
Fellow, American Academy of Matrimonial Lawyers  
Diplomat, American College of Family Trial Lawyers  
Family Law Specialist, Nevada State Bar  
[WWW.JIMMERSONLAWFIRM.COM](http://WWW.JIMMERSONLAWFIRM.COM)  
415 South Sixth Street, Suite 100  
Las Vegas, NV 89101  
P: (702) 388-7171  
F: (702) 380-6422

**PLEASE BE ADVISED** that due to my Court schedule and the volume of emails I receive daily, I am unable to read the majority of my emails on a daily basis. Therefore, your email is not deemed by our firm as being "received" by me unless I respond to the same, nor does it constitute service on, or notification to, our firm. Unless your email is of a personal/private nature to me, please copy my Legal Assistant, Kim Stewart, at [ks@jimmersonlawfirm.com](mailto:ks@jimmersonlawfirm.com) AND any other Associates or Paralegals at our firm associated with your case on all emails to ensure receipt. For personal emails, a follow up by telephone may be appropriate and necessary. I apologize for this inconvenience. Thank you for your cooperation.

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the draft email in response:

---

**From:** Langberg, Mitchell [mailto:[mlangberg@bhfs.com](mailto:mlangberg@bhfs.com)]  
**Sent:** Friday, June 01, 2018 9:33 AM  
**To:** James J. Jimmerson, Esq. <[jjj@jimmersonlawfirm.com](mailto:jjj@jimmersonlawfirm.com)>  
**Cc:** Shahana Polselli <[sp@jimmersonlawfirm.com](mailto:sp@jimmersonlawfirm.com)>; Kim Stewart <[ks@jimmersonlawfirm.com](mailto:ks@jimmersonlawfirm.com)>; James M. Jimmerson, Esq. <[jmj@jimmersonlawfirm.com](mailto:jmj@jimmersonlawfirm.com)>; Todd Davis (EHB Companies) <[tdavis@ehbcompanies.com](mailto:tdavis@ehbcompanies.com)>; Elizabeth Ham (EHB Companies) <[EHam@ehbcompanies.com](mailto:EHam@ehbcompanies.com)>  
**Subject:** Re: Fore Stars / Omerza ECC

Mr. Jimmerson,

It occurs to me that an ECC is premature. No answer has been filed. No answer will be filed pending appeal. Therefore, please confirm that your notice of EVC will be withdrawn.

Thank you.

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

...

On May 30, 2018, at 10:49 AM, James J. Jimmerson, Esq. <[jjj@jimmersonlawfirm.com](mailto:jjj@jimmersonlawfirm.com)> wrote:

Mitch:

In light of your decision not to withdraw your Motion to Strike, we will begin preparing an Opposition as required by our rules of civil procedure.

Attached is a Notice of Early Case Conference being filed today. We have noticed and set it to occur two (2) weeks from now which will give us enough time to finalize the Court's Order, and for your office to coordinate with your calendar. If the specific date and time we have selected of June 13, 2018, at 9:00 am, does not work for your schedule, please let us know which day and time during that week that would work, and we will do our best to accommodate you.

Presently I am only sending emails to you at your firm at this time. However, if there is a second person there that you would want us to copy on email communications to you, just let us know and we will add that person to our email communications with you. Here at our firm, due to the large daily volume, I do not read my emails on any regular basis, which is why my official email address in this case and in the legal directories is [ks@jimmersonlawfirm.com](mailto:ks@jimmersonlawfirm.com) (my secretary Kimberly Stewart), with copies

as it relates to this particular case to my Son James and my paralegal Shahana Polselli. So if you want us to add someone, just let us know.

JJJ

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<Notice of ECC.pdf>

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# EXHIBIT E

# EXHIBIT E



**NOTC**

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**DISTRICT COURT  
CLARK COUNTY, NEVADA**

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

Plaintiffs,  
vs.

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

Defendants.

Case No.: A-18-771224-C


Dept. No.: II

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

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

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

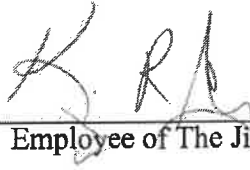
THE JIMMERSON LAW FIRM, P.C.

  
JAMES J. JIMMERSON, ESQ.,  
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CERTIFICATE OF SERVICE

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

Mitchell Langberg, Esq.  
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100 North City Parkway  
Suite 1600  
Las Vegas, Nevada 89106  
*Attorneys for Defendants*



Employee of The Jimmerson Law Firm, P.C.



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7 **DISTRICT COURT**

8 **CLARK COUNTY, NEVADA**

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

12 *Plaintiffs,*

13 *v.*

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

17 *Defendants,*

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

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

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

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

**JUN 12 2018**

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

#### FINDINGS OF FACT

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

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

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

4. Plaintiffs' Complaint alleged the following facts:

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

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

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

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

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

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

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

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

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

TO: City of Las Vegas

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

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

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

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

8 *See Comp., Ex. 1.*

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

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

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

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

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

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

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

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

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

#### 20 CONCLUSIONS OF LAW

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

1           9. Nevada's anti-SLAPP statute is predicated on protecting 'well-  
2 meaning citizens who petition the government and then find themselves hit with  
3 retaliatory suits known as SLAPP[] [suits]." *John v. Douglas Cnty. Sch. Dist.*, 125  
4 Nev. at 753, 219 P.3d at 1281. (citing comments by State Senator on S.B. 405 Before  
5 the Senate, 67th Leg. (Nev., June 17, 1993)).  
6

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

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

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

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

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

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

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

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



1           NRS 41.637

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

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

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

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

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

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

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

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

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

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

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

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

14           25. The qualified or conditional privilege alternatively sought by the  
15 Defendants only applies where "a defamatory statement is made in good faith on  
16 any subject matter in which the person communicating has an interest, or in  
17 reference to which he has a right or a duty, if it is made to a person with a  
18 corresponding interest or duty." *Bank of America Nevada v. Bordeaux*, 115 Nev. at  
19 266-67, 982 P.2d at 476 (statements made to FDIC investigators during  
20 background check of employee are subject to conditional privilege). As a party  
21 claiming a qualified or conditional privilege in publishing a defamatory statement,  
22 the Defendants must have acted in good faith, without malice, spite or ill will, or  
23 some other wrongful motivation, and must believe in the statement's probable  
24 truth. *See id.*; see also *Pope v. Motel 6*, 121 Nev. 307, 317, 112 P.3d 277, 284 (2005)  
25 (statements made to police during investigation subject to conditional privilege).  
26  
27  
28

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

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

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

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

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

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

4           31. A complaint will not be dismissed for failure to state a claim “unless  
5 it appears beyond a doubt that the plaintiff could prove no set of facts which, if  
6 accepted by the trier of fact, would entitle him [or her] to relief.” *See Breliant*, 109  
7 Nev. at 846, 858 P.2d at 1260 (quoting *Edgar v. Wagner*, 101 Nev. 226, 228, 699  
8 P.2d 110, 112 (1985) (citation omitted)).

9           32. *LT Intern. Ltd. v. Shuffle Master, Inc.*, 8 F.Supp.3d 1238, 1248 (D.  
10 Nev. 2014) provides that allegations of tortious interference with prospective  
11 economic relations need not plead the existence of a valid contract and must only  
12 raise plausible claim for relief under NRCP 8 to avoid dismissal.

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

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

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

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

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

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

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

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

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

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

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

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

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

THE JIMMERSON LAW FIRM, P.C.  
415 South Sixth Street, Suite 100, Las Vegas, Nevada 89101  
Telephone (702) 388-7171 • Facsimile (702) 387-1157

**ORDER**

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

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

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

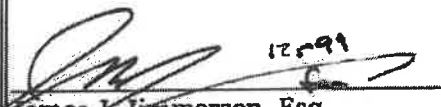
IT IS FURTHER ORDERED that Plaintiffs shall prepare the proposed Order adding appropriate context and authorities.

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

  
DISTRICT COURT JUDGE

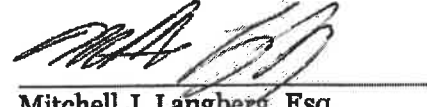
Respectfully Submitted:

THE JIMMERSON LAW FIRM, P.C.

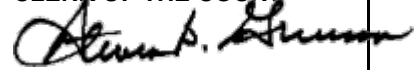
  
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**OPPM**

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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 ORDER  
ALLOWING COMMENCEMENT OF  
DISCOVERY  
AND  
DEFENDANTS REQUEST FOR  
SANCTIONS PURSUANT TO EDCR  
7.60(b)**

Hearing Date: October 19, 2018

Hearing Time: 9:00 a.m.

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 Order Allowing  
Commencement of Discovery ("Motion"); further, Defendants hereby request sanctions pursuant  
to EDCR 7.60(b), because the Motion lacks any colorable basis and was brought in defiance of  
the plain language of NRS 41.660(3)(e)(2).

///

///

1     **I. INTRODUCTION**

2             Not only does Plaintiffs' motion lack any legal basis, the relief it seeks is in violation of  
3     express statutory provisions of Nevada law. NRS 41.660(3)(e)(2) mandates a stay of all  
4     discovery during the pendency of an appeal after the denial of an anti-SLAPP motion.

5             Plaintiffs' motion is nothing more than an attempt to bully Defendants and cause them  
6     undue expense. As was their right, Defendants moved to dismiss this action as a "Strategic  
7     Lawsuit Against Public Participation" (a "SLAPP suit") pursuant to NRS 41.660. The Court  
8     denied the anti-SLAPP motion, and Defendants have appealed as a matter of right pursuant to  
9     NRS 41.670. NRS 41.660(3)(e)(2) expressly provides that in those circumstances the Court shall  
10    "stay discovery pending ... [t]he disposition of any appeal from the ruling on the motion."

11            Remarkably, without any legal basis and in violation of EDCR 7.60, Plaintiffs bring their  
12    motion asking the Court to disregard the plain language of that statute, without offering the Court  
13    any support whatsoever for doing that. Plaintiffs' rationalization for ignoring the statute, that they  
14    do not believe the anti-SLAPP statute applies to their claims, is nonsensical. Any time an anti-  
15    SLAPP motion to dismiss is denied, the plaintiff would naturally contend that the anti-SLAPP  
16    statute does not apply. The self-evident purpose of NRS 41.660(3)(e)(2) is to stay discovery  
17    while the Nevada Supreme Court considers such an argument. To allow discovery while such an  
18    appeal is pending would render NRS 41.660(3)(e)(2) entirely meaningless. Plaintiffs' motion is  
19    also premature because this case is not yet even at issue.

20            Plaintiffs attempt to justify their actions by asserting, without support, that they have the  
21    absolute right to build residential units on the golf course. Not only is it of no moment (because  
22    the legal current issue relates only to the statutory discovery stay), it is also false. Indeed, the  
23    decision-making bodies that matter say something very different than what Plaintiffs say. While  
24    Plaintiffs did prevail in a matter that challenged whether Plaintiffs' building plans were prohibited  
25    by the Queensridge CC&Rs, Judge Crockett ruled that such development was prohibited by the  
26    Peccole Ranch Master Plan, the City's General Plan and the Las Vegas Municipal Code. Judge  
27    Crockett found that there had never been any residential units permitted on the Badlands Golf  
28    Course since the City Council's approval of the Peccole Ranch Master Development Plan-Phase

1 II on April 4, 1990. After that decision, the Las Vegas City Council declined to appeal or seek a  
2 stay of Judge Crockett's Decision. Like Defendants in this case, both Judge Crockett and the City  
3 Council have been sued by Plaintiffs merely for daring to defy Plaintiffs' wishes.

4 Because Plaintiffs' Motion lacks any good faith basis, the Court should enter sanctions  
5 against Plaintiffs under EDCR 7.60(b).

## 6 **II. BACKGROUND**

7 Defendants brought their anti-SLAPP motion to dismiss on April 13, 2018, seeking to  
8 dismiss Plaintiffs' entire action. The Court entered its findings of fact and conclusions of law  
9 denying the motion on June 20, 2018. Defendants then timely filed their Notice of Appeal, as  
10 expressly authorized by NRS 41.670.<sup>1</sup> In a series of communications since then, Plaintiffs'  
11 counsel has repeatedly requested that the parties participate in an Early Case Conference and  
12 begin discovery. Defendants' counsel has consistently responded that an Early Case Conference  
13 would be premature, since the case is not yet at issue, and that discovery is stayed pursuant to  
14 NRS 41.660(3)(e)(2). Despite several requests, Plaintiffs' counsel has provided no authority to  
15 support their view that NRS 41.660(3)(e)(2) somehow does not stay discovery here.

16 Although their Motion turns entirely on the procedural status of the case, Plaintiffs devote  
17 most of their Motion to their one-sided (and false) summary of their own view of the factual  
18 background, contending that Defendants have not merely exercised their First Amendment rights  
19 but have improperly and tortiously sought to interfere with Plaintiffs' well-established right to  
20 build residential units on the former site of the Badlands Golf Course. *See* Motion, at 2-6.  
21 Defendants need not and will not respond point by point to this irrelevant screed. It suffices to  
22 note Plaintiffs' insistence that they have an incontrovertible right to proceed with their  
23 development is impossible to square with Judge Crockett's decision in Case No. A-17-752344-J  
24 that the City of Las Vegas abused its discretion in approving Plaintiffs' plans without first  
25

---

26 <sup>1</sup> Defendants concurrently brought a motion to dismiss under NRCP 12(b)(5), which the Court  
27 also denied, and have submitted a writ to the Supreme Court seeking review as to the 12(b)(5)  
28 motion. Plaintiffs devote much of their Motion to arguing this writ does not automatically stay  
discovery. *See* Motion at 9-10. Defendants do not contend that it does and never have.

1 approving a major modification of the Master Development Plan. As noted above, the City has  
2 not appealed that ruling, and Plaintiffs have responded by bringing suit against the City and  
3 against Judge Crockett. Needless to say, Plaintiffs' baseless sense of entitlement should play no  
4 role in the instant discovery dispute.

5 **III. ARGUMENT**

6 The Court should deny Plaintiffs' motion and should enter sanctions against Plaintiffs for  
7 pursuing a motion plainly contrary to law.

8 **A. THE COURT SHOULD DENY THE MOTION.**

9 Plaintiffs' motion is directly at odds with NRS 41.660(3)(e)(2); moreover, discovery is  
10 premature because the case is not at issue.

11 **1. Defendants' Motion Is Directly Contrary to NRS 41.660(3)(e)(2).**

12 Discovery in this action is automatically stayed under NRS 41.660:

13 (3) If a special motion to dismiss is filed pursuant to subsection 2, *the*  
14 *court shall*:

15 \* \* \*

16 (e) Except as otherwise provided in subsection 4, *stay discovery pending*:

17 (1) A ruling by the court on the motion; and

18 (2) *The disposition of any appeal from the ruling on the motion.*

19 NRS 41.660 (emphasis added). There can be no dispute that Defendants filed an anti-SLAPP  
20 motion challenging *every* cause of action asserted by Plaintiffs. There is also no question that  
21 Defendants have appealed the District Court's decision denying their anti-SLAPP motion as to  
22 every cause of action. The statute very plainly stays discovery during that appeal. Discovery is  
23 stayed by operation of law.

24 The plain language of the statute should be enough. But case authority further proves the  
25 point. While Defendants are unable to find any Nevada decisions where a plaintiff has had the  
26 audacity to argue otherwise, in applying the anti-SLAPP statute on which Nevada modeled its  
27 law, California courts have squarely held that proceedings before the trial court, including  
28 discovery, are stayed pending an appeal of an order denying an anti-SLAPP motion. *See, e.g.,*

1 *Newport Harbor Ventures, LLC v. Morris Cerullo World Evangelism*, 413 P.3d 650, 655, 4 Cal.  
2 5th 637, 645 (2018) (holding that all discovery proceedings were stayed upon the filing of an anti-  
3 SLAPP motion through appeal); *Varian Med. Sys., Inc. v. Delfino*, 106 P.3d 958, 966-68, 35 Cal.  
4 4th 180, 192-94 (2005) (holding that an appeal from the denial of an anti-SLAPP motion  
5 automatically stays proceedings before the trial court). This is consistent with the fundamental  
6 purposes underlying the anti-SLAPP statute. *Mattel, Inc. v. Luce, Forward, Hamilton & Scripps*,  
7 99 Cal. App. 4th 1179, 1190, 121 Cal. Rptr. 2d 794, 801 (2002) ("not only did the Legislature  
8 desire early resolution [of anti-SLAPP motions] to minimize the potential costs of protracted  
9 litigation, it also sought to protect defendants from the burden of traditional discovery pending  
10 resolution of the motion"). Plaintiffs cite no authority to the contrary.

11 Plaintiffs attempt to avoid the automatic stay of NRS 41.660(3)(e)(2) by arguing that the  
12 anti-SLAPP statute does not apply to their tort claims. *See* Motion, at 7-8. But Defendants  
13 moved to dismiss this action in its entirety, even as to tort claims, and have appealed the denial of  
14 that motion. The appeal goes not to a portion of the case but to Plaintiffs' entire Complaint.  
15 Whether certain of Plaintiffs' claims are somehow exempt from the reach of the anti-SLAPP  
16 statute in Nevada (unlike in California) is one of the issues the Supreme Court will necessarily  
17 decide. The fact that Plaintiffs have an argument by which they hope to persuade the Supreme  
18 Court that the anti-SLAPP statute does not apply to all of their claims is meaningless—  
19 presumably every appellee has some such argument to make, or the district court would never  
20 have ruled in its favor. But NRS 41.660(3)(e)(2) on its face applies to all appeals, not just  
21 appeals that the appellee concedes it is bound to lose. If Plaintiffs' assertion of their own  
22 argument on appeal were sufficient to prevent application of NRS 41.660(3)(e)(2), the statute  
23 would be rendered entirely meaningless. Every plaintiff has some reason to proffer why it  
24 believes its claims are not subject to the anti-SLAPP statute; that has nothing to do with the  
25 automatic stay pending appeal while the Supreme Court decides if the plaintiff is right.

26 Plaintiffs emphasize that the District Court ruled in their favor on Defendants' anti-SLAPP  
27 motion (Motion at 8), but again, that will always be true in every case subject to NRS  
28 41.660(3)(e)(2). Whenever a party appeals from a court's order on an anti-SLAPP motion, the

1 court has ruled against that party, else there would be nothing to appeal. Plaintiffs' position  
2 would literally prevent NRS 41.660(3)(e)(2) from ever being applied.

3 NRS 41.660(3)(e)(2) on its face stays discovery pending Defendants' appeal of the denial  
4 of their motion to dismiss.

5 **2. Discovery Is Premature Because No Answer Has Been Filed.**

6 Even setting aside NRS 41.660(3)(e)(2), Plaintiffs' motion is premature because this case  
7 is not yet at issue. NRCP 16.1 details the timing of and sequence of pretrial discovery. The  
8 process begins with an Early Case Conference at which certain documents are exchanged and a  
9 plan for additional discovery discussed, which the parties then propose to the Court in a Case  
10 Conference Report. The rule requires parties' attorneys to attend the Early Case Conference  
11 "[w]ithin 30 days after service of the answer." NRCP 16.1(a). Here, no answer has been served,  
12 because Defendants moved to dismiss under Rule 12 and the anti-SLAPP statute. As a matter of  
13 right Defendants have pursued an appeal before the Nevada Supreme Court. The discovery  
14 process will begin if and when the anti-SLAPP motion is finally resolved.

15 In conferrals before Plaintiffs filed their motion, Plaintiffs' counsel insisted that the  
16 requirement for conducting an Early Case Conference is instead triggered by the appearance of a  
17 party's counsel. *See* Motion, Exhibit D, at 11. That is contrary to the plain terms of the rule, as  
18 explained the *Nevada Civil Practice Manual* (on which Plaintiffs' counsel serves as an editor), at  
19 Section 13.03(2): "[S]ervice of an answer of the first answering defendant triggers the timing for  
20 the parties' early case conference." Defendants are not obliged to incur the expense of discovery  
21 before then.

22 **B. THE COURT SHOULD AWARD SANCTIONS AGAINST PLAINTIFFS.**

23 In this Opposition, Defendants are called upon to argue why discovery should be stayed  
24 pending their appeal of the Court's denial of their anti-SLAPP motion. This is an argument that  
25 should never have been necessary—the operative statute unambiguously provides that discovery  
26 is stayed pending disposition of Defendants' appeal. Plaintiffs have offered no colorable basis for  
27 their motion, and Defendants submit that it is frivolous under NRCP 11 and EDCR 7.60(b).

28 EDCR 7.60(b) authorizes the Court to impose attorneys' fees and other sanctions when a

1 party "(1) Presents to the court a motion or an opposition to a motion which is obviously  
2 frivolous, unnecessary or unwarranted.... [or] (3) So multiplies the proceedings in a case as to  
3 increase costs unreasonably and vexatiously." In this context, a motion is "frivolous" if it lacks  
4 any "credible evidence or reasonable basis" at the time of filing. *Rivero v. Rivero*, 125 Nev. 410,  
5 441, 216 P.3d 213, 234 (2009). Defendants cannot conceive a motion more frivolous than the  
6 motion at hand, which without any support seeks to require discovery that is expressly and  
7 automatically stayed by statute. Plaintiffs' rationalization for their position, which amounts to the  
8 notion that NRS 41.660(3)(e)(2) does not apply to appeals when the district court ruled against  
9 the appellant (*i.e.*, all appeals), is transparently absurd. Moreover, not only does the filing of this  
10 Motion serve to increase Defendants' costs in this action, there can be little doubt that this was the  
11 very purpose for Plaintiffs filing their Motion. Certainly it could not have been brought in the  
12 expectation that the Court is in the habit of ignoring Nevada statutes.

13 The Court should not tolerate this sort of litigation conduct. Therefore, Defendants  
14 request that the Discovery Commissioner order an award of attorneys' fees and costs related to  
15 Plaintiffs improper demand for discovery and this motion according to proof to be submitted after  
16 ruling on this motion.

17 **IV. CONCLUSION**

18 For all of the foregoing reasons, Plaintiffs' Motion should be denied and sanctions  
19 awarded against Plaintiffs.

20 DATED this 1st day of October, 2018.

21 BROWNSTEIN HYATT FARBER SCHRECK, LLP

22 BY: /s/ Mitchell J. Langberg

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

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Counsel for Defendants

DANIEL OMERZA, DARREN BRESEE, and

STEVE CARIA

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I am an employee of Brownstein Hyatt Farber Schreck, LLP, and pursuant to NRCP 5(b), EDCR 8.05, Administrative Order 14-2, and NEFCR 9, I caused a true and correct copy of the foregoing **DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTION FOR ORDER ALLOWING COMMENCEMENT OF DISCOVERY AND DEFENDANTS REQUEST FOR SANCTIONS PURSUANT TO EDCR 7.60(b)** be submitted electronically for filing and/or service with the Eighth Judicial District Court via the Court's Electronic Filing System on the 1st day of October, 2018, to the following:

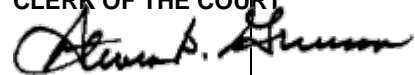
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/s/ DeEtra Crudup  
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**RPLY**

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*Attorneys for Plaintiffs*

**DISTRIC COURT  
CLARK COUNTY, NEVADA**

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

Plaintiffs,

vs.

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

Defendants.

Case No.: A-18-771224-C

Dept. No.:

**PLAINTIFFS' REPLY IN FURTHER  
SUPPORT OF THEIR MOTION TO  
COMPEL/OPEN DISCOVERY**

Plaintiffs, Fore Stars, LTD. (hereinafter "Fore Stars"), 180 Land Company LLC (hereinafter "180 Land Company"), and Seventy Acres, LLC (hereinafter "Seventy Acres") (collectively the "Land Owners" or "Plaintiffs"), by and through their undersigned counsel, James J. Jimmerson, Esq., of THE JIMMERSON LAW FIRM, P.C., hereby submit this Reply in Further Support of Their Motion to Compel/Open Discovery (the "Reply").

///

///

///

1 This Reply is made and based on the following Memorandum of Points and Authorities,  
2 the exhibits attached hereto, and any oral argument the Court may consider.

3 DATED this 12th day of October, 2018.

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

5  
6 By: /s/ James J. Jimmerson, Esq.

7 JAMES J. JIMMERSON, ESQ.

8 Nevada Bar No. 000264

9 415 S. 6<sup>th</sup> Street, #100

Las Vegas, Nevada 89101

*Attorneys for Plaintiffs*

10 **MEMORANDUM OF POINTS AND AUTHORITIES**

11 **I. INTRODUCTION**

12 Despite this Court's finding that Nevada's anti-SLAPP statute does not apply to the Land  
13 Owners' claims based on Defendants' intentional, wrongful, and/or fraudulent conduct,  
14 Defendants are steadfastly refusing to commence discovery in this action (and are refusing to  
15 answer the Complaint). This has forced the Land Owners to file their Motion for Order Allowing  
16 Commencement of Discovery (the "Motion").

17 Citing to the provision of Nevada's anti-SLAPP statute that provides for a certain stay of  
18 discovery pending appeal, Defendants would have this Court find that claims that have been found  
19 to not be subject to the anti-SLAPP statute are still subject to the provisions of the anti-SLAPP  
20 statute. That position is without basis and, were it the law, it would invite rampant abuse and  
21 force litigants to suffer needless delay and expense. In effect, it would cause the very problems  
22 it was designed to solve. Under Defendants' distorted view of the law, every defendant who  
23 wanted to halt litigation could do so by filing an anti-SLAPP special motion to dismiss, regardless  
24 of its application to the case at hand. Nevada law does not countenance the application and  
25 enforcement of statutes to reach such absurd results. Defendants' position should be rejected (as  
26  
27  
28

1 it has been by various California state and federal courts) and the Court should order discovery to  
2 commence forthwith.

3 Alternatively, were the Court to be hesitant to order discovery immediately, the Court  
4 should certify this issue pursuant to *Honeycutt*, and indicate to the Nevada Supreme Court that it  
5 would be inclined to order the commencement of discovery. This would allow the Land Owners  
6 to request that the case be remanded back to the district court on this issue. Defendants'  
7 Opposition to the Motion for Order Allowing the Commencement of Discovery (the  
8 "Opposition")<sup>1</sup> does not dispute the merits of this alternative request for relief and, thus the Court  
9 should grant the same if it does not issue an order commencing discovery immediately.  
10

11 Finally, Defendants' request for an award of sanctions is outrageous and should be denied.  
12 Not only have the Land Owners provided substantial authority supporting all of their requested  
13 relief, from Nevada and elsewhere, Defendants' own case law is supportive of the Land Owners'  
14 position. Furthermore, Defendants have not disputed the merits of the Land Owners' alternative  
15 request for relief under *Honeycutt*. Defendants cannot credibly maintain a request for sanctions  
16 when they are not even disputing the merits of wholesale portions of the Motion. Sanctions are  
17 inappropriate under these circumstances and Defendants' request should be denied.

## 18 **II. ARGUMENT**

### 19 **A. There Is No Stay Of Discovery As To The Land Owners' Intentional** 20 **Tort Claims Because Nevada's Anti-SLAPP Statutes Do Not Apply To** 21 **Them As A Matter Of Law**

22 In issuing its decision on the special motion to dismiss, the Court held that Nevada's anti-  
23 SLAPP statute, "does not overcome intentional torts or claims based on wrongful conduct."  
24 Findings of Fact, Conclusions of Law, and Order, June 20, 2018, at ¶ 18. The Court further held  
25 that "Nevada's anti-SLAPP statute does not apply to fraudulent conduct, which Plaintiffs have  
26 alleged." *Id.* at ¶ 28. As a result, any stay of proceedings triggered by Defendants' interlocutory

---

27 <sup>1</sup> The Opposition is cited to herein as, "Opp. at \_\_\_\_."  
28

1 appeal does not impact the Land Owners' intentional tort claims: Intentional Interference with  
2 Prospective Economic Advantage (Second Claim for Relief), Conspiracy (Fourth Claim for  
3 Relief), and Intentional Misrepresentation (Fraud) (Fifth Claim for Relief). *See* Comp. at ¶¶ 39-  
4 47, 56-65. Likewise, the stay of discovery contemplated by NRS 40.660(3)(e)(2), is inapplicable  
5 to these causes of action.

6 Defendants would have the Court deny the Motion based upon an improper construction  
7 of NRS 41.660. While NRS 41.660(3)(e)(2) does provide for a stay of discovery pending appeal,  
8 the scope of the anti-SLAPP statute provides the outer boundary for what claims would be subject  
9 to this restriction on discovery. In their Opposition, Defendants were quick to cite to the portion  
10 of the statute referencing the stay of discovery, but they noticeably omitted the very first portion  
11 of the statute, which governs its overall application. They did so because **the stay of discovery**  
12 **provided for in the anti-SLAPP statute cannot apply to claims that are not subject to the**  
13 **anti-SLAPP statute.** Indeed, the first clause of the statute confirms the same. When all of the  
14 pertinent parts of NRS 41.660 are read together, the statute provides as follows:

15  
16 1. **If an action is brought against a person based upon a good**  
17 **faith communication in furtherance of the right to petition or**  
18 **the right to free speech in direct connection with an issue of**  
19 **public concern:**

20 (a) The person against whom the action is brought may file a  
21 special motion to dismiss...

22 3. If a special motion to dismiss is filed pursuant to subsection 2,  
23 the court shall:

24 (e) Except as otherwise provided in subsection 4, stay discovery  
25 pending:

26 (1) A ruling by the court on the motion; and

27 (2) The disposition of any appeal from the ruling on the  
28 motion;

29 *Id.* (emphasis supplied).

30 Defendants would have this Court ignore the statutory limitation of the stay of discovery—  
31 applicable only to claims covered in the anti-SLAPP statute—and instead allow for a stay of  
32 discovery for any claim, regardless of its relationship to NRS 41.660, so long as a special motion

1 to dismiss is filed against it. In other words, claims having nothing to do with the right to petition  
2 or free speech, such as medical malpractice, construction defect, and divorce, could all be placed  
3 on hold pending an appeal of a special anti-SLAPP motion to dismiss. Such a position is non-  
4 sensical and without proper legal basis.<sup>2</sup>

5 Nevada's anti-SLAPP statute was designed to provide an expedient procedure to resolve  
6 certain litigation. As Genie Ohrenschall stated during the legislature's debate about Nevada's  
7 anti-SLAPP statute, "the intent behind the bill was to make the procedure in SLAPP suits more  
8 expedient and less costly..." Assembly Committee on Judiciary, AB 485, June 13, 1997, page  
9 7.<sup>3</sup> To prohibit discovery into any and all claims that a defendant moved to dismiss pursuant to  
10 NRS 41.660, regardless of the statute's application to the same, would provide a sure-fire  
11 mechanism to stall litigation and would do the exact opposite of the statute's purpose. Courts will  
12 not interpret a statute to defeat its own purpose or to achieve an absurd result. *See Gen. Motors*  
13 *v. Jackson*, 111 Nev. 1026, 1029, 900 P.2d 345, 348 (1995) ("A statute should always be construed  
14 to avoid absurd results."); *Nat'l Fed'n of Indep. Bus. v. Sebelius*, 567 U.S. 519, 646, 132 S. Ct.  
15 2566, 2642 (2012) (the Court's "endeavor must be to conserve, not destroy, the legislature's  
16 dominant objective.") (J. Ginsburg, concurring).

17  
18 Attempting to salvage their argument, Defendants cite to various California decisions  
19

---

20  
21 <sup>2</sup> Defendants argue that "Plaintiffs' have provided no authority to support their view that NRS  
22 41.660(3)(e)(2)... does not stay discovery here." Opp. at 3. However, Defendants curiously ignore the  
23 correspondence between counsel on this very point. On September 24, 2018, Land Owners' counsel  
24 explained, "The Anti-SLAPP statute in its entirety is the authority necessary to respond to your arguments.  
25 The scope of the statute is what is at issue... Claims outside the statute are not stayed simply because a  
26 special motion to dismiss is filed. If that were the case, the easiest way to delay discovery would be to file  
a special motion to dismiss regardless of the Anti-SLAPP's statute's application. That is not the law, nor  
is that good public policy." Not only did Defendants' counsel fail to respond to this position (despite his  
three hostile emails earlier that afternoon), the Opposition does not address it at all. *See* Reply Exhibit 1,  
a true and accurate copy of the email chain between Defendants' counsel and Land Owners' counsel on  
September 24, 2018, attached hereto.

27 <sup>3</sup> Attached hereto as Reply Exhibit 2 is a true and accurate copy of the June 13, 1997 Minutes of the  
28 Assembly Committee on Judiciary concerning AB 485.

1 purportedly to support the contention that, “proceedings before the trial court, including discovery,  
2 are stayed pending an appeal of an order denying an anti-SLAPP motion.” Opp. at 4. One of the  
3 decisions cited by Defendants is *Varian Med. Sys., Inc. v. Delfino*, 35 Cal. 4th 180, 106 P.3d 958,  
4 (Cal. 2005). However, *Varian* actually supports the Land Owners’ position. While the *Varian*  
5 Court did find that an appeal would stay certain proceedings subject to the anti-SLAPP statute,  
6 the court likewise held, “**Such an appeal does not, however, stay proceedings relating to**  
7 **causes of action not affected by the motion.**” *Id.*, 35 Cal. 4th at 195 n. 8. (emphasis supplied).  
8 Here, the Court has found that the Land Owners’ claims based upon intentional, fraudulent, and/or  
9 wrongful conduct are not subject to the anti-SLAPP statute. Therefore, the stay of discovery  
10 contained therein likewise does not apply to the same. *See, e.g., SPG Artist Media, LLC v.*  
11 *Primesites, Inc.*, No. 69078, 2017 WL 897756, at \*1, 390 P.3d 657 (Nev. Feb. 28, 2017) (“whether  
12 the communication at issue here should be afforded the protections of NRS 41.660 depends upon  
13 whether the form of communication was such that it would procure action from the judiciary.”).

14  
15 Several California courts have declined to stay proceedings pending an anti-SLAPP appeal,  
16 particularly where there are claims that are not subject to the anti-SLAPP statute. *See, e.g.,*  
17 *Shanker v. Shoffner*, No. B255399, 2015 WL 1934620, at \*3 (Cal. App. April 29, 2015)  
18 (permitting discovery into malicious prosecution claim) *Mangine v. Steier*, No. B219022, 2011  
19 WL 3506159, at \*6 (Cal. App. Aug 9, 2011) (allowing claim on bad faith retention of security  
20 deposit to proceed); *Faro De Luz, Inc. v. Morales*, No. B223488, 2011 WL 5429470, at \*3 (Cal.  
21 App. Nov. 9, 2011) (permitting attorney’s fees motion); *Dinaali v. Equity Title Company*,  
22 No.B241381, 2014 WL 461851, at \* (Cal. App. Feb. 5, 2014) (continuation of trial court  
23 proceedings during appeal).

24 Federal courts have held the same and have refused to stay proceedings when there are  
25 certain claims that will survive regardless of the result of the appeal. *See, e.g., Planned*  
26 *Parenthood Federation of America, Inc. v. Center for Medical Progress*, No. 16-cv-236, 2016  
27 WL 8607505, at \*1 (N.D. Cal. Dec. 22, 2016) (denying motion to stay RICO and wiretapping  
28

1 claim even though “there is an overlap between the RICO claim and the state law claims...”);  
2 *Makaeff v. Trump University, LLC*, No. 10-cv-940, 2011 WL 613571, at \*3 (S.D. Cal. Feb. 11,  
3 2011) (“[N]o possible finding on Plaintiffs’ allegations will address Makaeff’s allegedly  
4 defamatory statements that Trump University engaged in “brainwashing,” teaching criminal  
5 behavior, or any acts of criminality beyond those underlying Plaintiffs’ claims. Thus, the Court  
6 need not stay Plaintiffs’ claims pending the appeal.”); *Tanedo v. East Baton Rouge Parish School*  
7 *Board*, No. CV10-1172, 2012 WL 12920642, at \*3 (C.D. Cal. March 30, 2012) (allowing claims  
8 for wire fraud, mail fraud, RICO, and TVPA violations to proceed despite anti-SLAPP appeal);  
9 *Breazeale v. Victim Services, Inc.*, No. 14-cv-5266, 2015 WL 13687730, at \* (N.D. Cal. Sept. 14,  
10 2015) (claims for FDCPA violation and negligent misrepresentation allowed to proceed despite  
11 anti-SLAPP appeal); *Exeltis USA, Inc. v. First Databank, Inc.*, No. 17-cv-4810, 2018 WL  
12 1989522, at \* (N.D. Cal. March 5, 2018) (motion for stay denied and Lanham Act claim allowed  
13 to proceed despite anti-SLAPP appeal).  
14

15 Defendants erroneously argue that “Plaintiffs’ position would literally prevent NRS  
16 41.660(3)(e)(2) from ever being applied.” Opp. at 6. Instead of addressing the Land Owners’  
17 true position—that this Court’s finding that three claims wholly fall outside the scope of NRS  
18 41.660, thus preventing the application of the statute’s clause providing for a stay of discovery—  
19 Defendants crudely attempt to mischaracterize and misrepresent Plaintiff’s position as being  
20 nothing more than “the District Court rule[d] in their favor...” and thus there should be no stay of  
21 discovery. *Id.* at 5; *see, also id.* at 7 (“Plaintiffs’ rationalization for their position, which amounts  
22 to the notion that NRS 41.660(3)(e)(2) does not apply to appeals when the district court ruled  
23 against the appellant...”). Defendants are wrong. What is significant about the Court’s ruling is  
24 not just that it found in the Land Owners’ favor, it is the specific findings that certain claims were  
25 not subject to the anti-SLAPP statute. If the Court found that the claims were subject to the statute,  
26 but that the factual issues prevented granting the special motion to dismiss, the provisions of NRS  
27 41.660 would govern, including the stay of discovery. But the Court did not; which is why there  
28

1 should be no stay of discovery as to those claims. Defendants' failure to address this particular  
2 point combined with their desperate attempt to falsely portray the Land Owners' position are self-  
3 inflicted wounds and further demonstrate the frailty of Defendants' arguments. *See Budget Rent-*  
4 *A-Car Sys., Inc. v. Consol. Equity LLC*, 428 F.3d 717, 718 (7th Cir. 2005) ("Budget's  
5 mischaracterization further undermines the credibility of its submissions.").<sup>4</sup>  
6

7 Finally, Defendants' decision to petition for an extraordinary writ for the denial of their  
8 NRCP 12(b)(5) motion to dismiss further belies their position and demonstrates that no stay of  
9 proceedings is appropriate for the claims that are outside the scope of NRS 41.660. Indeed, if  
10 Defendants believed that discovery was completely stayed pending the appeal, Defendant would  
11 have no reason to petition for a writ of mandamus on a denial of a NRCP 12(b)(5) motion.  
12 Defendants know well that petitions for extraordinary writs in response to denials of motions to  
13 dismiss are rarely granted. *See, e.g., Int'l Game Tech., Inc. v. Second Judicial Dist. Court ex rel.*  
14 *County of Washoe*, 124 Nev. 193, 197, 179 P.3d 556, 558 (2008) ("because an appeal from the  
15 final judgment typically constitutes an adequate and speedy legal remedy, we generally decline  
16 to consider writ petitions that challenge interlocutory district court orders denying motions to  
17 dismiss."). In the face of such a low probability of success, the only conceivable justification for  
18 submitting the writ petition would be to provide an alternative basis to seek a stay of the action.  
19 Such frivolous litigation tactics should not be rewarded. Not only should the petition be denied,  
20 the Court should permit discovery to proceed as appropriate.  
21

---

22  
23  
24 <sup>4</sup> Defendants' last ditch effort to avoid discovery is based upon their failure to answer the Complaint. Opp.  
25 at 6. Notwithstanding that discovery is not solely triggered by the filing of an answer (early case  
26 conferences take place prior to the filing of an answer with great frequency), Defendants should not be  
27 able to avoid discovery by failing to join issue. Should the Court grant the Motion and Defendants continue  
28 to refuse to commence discovery on the basis that an answer has not been filed, the Court should likewise  
order Defendants to file an answer or face a default. The appeal does not divest the Court of jurisdiction  
over matters not subject to appeal. *See Mack-Manley v. Manley*, 122 Nev. 849, 855, 138 P.3d 525, 529-  
30 (2006).



1           **B.     If The Court Determines That These Proceedings Are Stayed, The**  
2           **Land Owners Are Entitled To Certification Pursuant To *Honeycutt***  
3           **v. *Honeycutt***

4           Notwithstanding the foregoing, should the Court determine that it is divested of  
5 jurisdiction to enter further orders, the Land Owners respectfully request certification pursuant to  
6 *Honeycutt v. Honeycutt*, 94 Nev. 79, 80-81, 575 P.2d 585, 586 (1978). Specifically, if the district  
7 court is inclined to grant a motion, but believes it cannot due to lack of jurisdiction, *Honeycutt*  
8 allows the district court to certify its inclination to grant the motion. *See id.*<sup>5</sup> Thus, because the  
9 Court found that the torts based upon Defendants’ intentional, fraudulent, and/or wrongful  
10 conduct are not subject to Nevada’s anti-SLAPP statute, the Court should either, (1) grant the  
11 motion and permit this case to proceed as to those causes of action, or (2) issue an order certifying  
12 to the Nevada Supreme Court its inclination to grant this motion, and inviting the Nevada Supreme  
13 Court to remand the case back to this Court. To do otherwise would defeat the purpose of the  
14 statute and invite rampant abuse of the discovery stay and appellate procedure in the anti-SLAPP  
15 statute.

16           **C.     The Court Should Deny Defendants’ Request for Sanctions**

17           Defendants’ request for sanctions pursuant to NRCP 11 and EDCR 7.60 should be denied.  
18 First, the Land Owners’ Motion is meritorious. It is not a violation of NRCP 11, nor is it designed  
19 to “so multiply proceedings as to increase costs unreasonably and vexatiously.” Opp. at 7. As  
20 detailed above, Nevada’s anti-SLAPP statute does not stay the proceedings for claims that fall  
21 outside of its scope and application. Not only have state and federal courts have held the same  
22 when interpreting California’s anti-SLAPP statute, to hold otherwise would turn the explicit  
23 purpose of the statute on its head. Nevada law simply does not support Defendants’ argument  
24 and thus there is no basis for the issuance of sanctions.

---

25  
26 <sup>5</sup> Defendants do not dispute this and thereby concede the merits of the same. *See Ozawa v. Vision Airlines,*  
27 *Inc.*, 125 Nev. 556, 563, 216 P.3d 788, 793 (2009); *see also* EDCR 2.20(e) (“Failure of the opposing party  
28 to serve and file written opposition may be construed as an admission that the motion and/or joinder is  
meritorious and a consent to granting the same.”).

1 Furthermore, even if the primary relief requested in the Motion is denied, sanctions should  
2 not issue because the Land Owners' alternative request for relief, certification pursuant to  
3 *Honeycutt*, should be granted. Not only did Defendants utterly fail to dispute the request in their  
4 Opposition (thereby conceding the merits thereof), but such relief would not be inconsistent with  
5 Defendants' preferred procedural posture. If discovery will not be opened by virtue of the appeal  
6 of the denial of the special motion to dismiss, the district court should indicate to the Nevada  
7 Supreme Court its inclination to grant the motion and allow the Nevada Supreme Court remand  
8 the issue back so that this action may proceed. Sanctions should not issue when there is no dispute  
9 over the propriety of the Land Owners' alternative requested relief.  
10

11 Finally, notwithstanding that the both of the Land Owners' requests for relief are properly  
12 supported by the law (and one is not disputed by Defendants), the request for sanctions should be  
13 denied due to Defendants' unclean hands. Reply Exhibit 1 demonstrates Defendants' hostility in  
14 email communications concerning this Motion and the basis thereof. Courts do not reward such  
15 conduct and surely do not issue sanctions in favor of those doing the same. *See Chudacoff v. Univ.*  
16 *Med. Ctr.*, No. 208CV00863, 2013 WL 12314519, at \*2 (D. Nev. Feb. 14, 2013); *S. Shore*  
17 *Ranches, LLC v. Lakelands Co., LLC*, No. 1:09-CV-105, 2010 WL 2546112, at \*5 (E.D. Cal. June  
18 18, 2010) ("Both parties have a form of 'unclean hands,' and the Court will not use its inherent  
19 authority to reward one party over the other."); *Thomas v. Schwab*, No. 09-CV-13632, 2012 WL  
20 6553773, at \*1 (E.D. Mich. Dec. 14, 2012) (denying sanctions for failure to comply with Rule  
21 11's safe-harbor provision).<sup>6</sup> Therefore, even if the Land Owners are in error concerning the  
22 commencement of discovery, Defendants' misconduct serves as a bar to an award of sanctions.  
23 Defendants' request for sanctions should be denied.  
24

---

25  
26 <sup>6</sup> Defendants claim that the Land Owners' Motion was "frivolous under NRCP 11." Opp. at 6. Defendants'  
27 request for sanctions should be denied as Defendants not only failed to satisfy the safe-harbor provision of  
28 Rule 11 prior to filing the Opposition and request for sanctions, but the request for sanctions was not made  
independently as required by NRCP 11(c)(1)(A).

1 **III. CONCLUSION**

2 The Land Owners' respectfully request that the Court find that discovery is appropriate as  
3 to the claims that are not properly subject to Nevada's anti-SLAPP stature and compel  
4 commencement of the same, or, alternatively, certify this issue pursuant to *Honeycutt*.  
5

6 Dated this 12<sup>th</sup> day of October, 2018.

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

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

10 JAMES J. JIMMERSON, ESQ.

11 Nevada Bar No. 000264

12 415 S. 6<sup>th</sup> Street, #100

13 Las Vegas, Nevada 89101

14 *Attorneys for Plaintiffs*  
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Mitchell Langberg, Esq.  
BROWNSTEIN HYATT FARBER SCHRECK, LLP  
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Suite 1600  
Las Vegas, Nevada 89106  
*Attorneys for Defendants*

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# REPLY EXHIBIT 1

REPLY EXHIBIT 1

**James M. Jimmerson, Esq.**

---

**From:** James M. Jimmerson, Esq.  
**Sent:** Monday, September 24, 2018 5:42 PM  
**To:** 'Langberg, Mitchell'  
**Cc:** James J. Jimmerson, Esq.  
**Subject:** RE: your discovery motion

We continue to disagree with your analysis and conclusions. The Anti-SLAPP statute in its entirety is the authority necessary to respond to your arguments. The scope of the statute is what is at issue. The Court has every ability to render a decision as to that question. If you prevail, then you prevail, but it won't be because of the allegations made against our client or the accusations of unprofessionalism against us. We believe that there is not only a legitimate basis to file the motion, but that the motion should be granted. Claims outside the statute are not stayed simply because a special motion to dismiss is filed. If that were the case, the easiest way to delay discovery would be to file a special motion to dismiss regardless of the Anti-SLAPP's statute's application. That is not the law, nor is that good public policy.

James M. Jimmerson, Esq.  
Associate  
The Jimmerson Law Firm, P.C.  
415 South 6th Street, Suite 100  
Las Vegas, Nevada 89101  
(702) 388-7171 (Office)  
(702) 380-6422 (Facsimile)  
[jmj@jimmersonlawfirm.com](mailto:jmj@jimmersonlawfirm.com)

---

**From:** Langberg, Mitchell [<mailto:mlangberg@bhfs.com>]  
**Sent:** Monday, September 24, 2018 5:29 PM  
**To:** James M. Jimmerson, Esq. <[jmj@jimmersonlawfirm.com](mailto:jmj@jimmersonlawfirm.com)>  
**Cc:** James J. Jimmerson, Esq. <[jjj@jimmersonlawfirm.com](mailto:jjj@jimmersonlawfirm.com)>  
**Subject:** Re: your discovery motion

The motion does not belong. You have cited ZERO authority on the face of the express language of the statute. While you always speak with the time of professionalism, this frivolous motion is conduct that falls well below those standards.

...

On Sep 24, 2018, at 5:27 PM, James M. Jimmerson, Esq. <[jmj@jimmersonlawfirm.com](mailto:jmj@jimmersonlawfirm.com)> wrote:

Mitch,

The hostility is unnecessary. We can discuss the merits of our respective legal positions without the attacks. They serve no productive purpose. We disagree with your characterizations of and the allegations against our clients in their entirety and will refrain from bringing your clients' conduct into this issue. We hope you would do the same in the future. We've asked the Court to allow us to pursue discovery. You may oppose the motion. The added commentary doesn't belong.

Sincerely,

James M. Jimmerson, Esq.  
**Associate**  
**The Jimmerson Law Firm, P.C.**  
415 South 6th Street, Suite 100  
Las Vegas, Nevada 89101  
(702) 388-7171 (Office)  
(702) 380-6422 (Facsimile)  
[jmj@jimmersonlawfirm.com](mailto:jmj@jimmersonlawfirm.com)

---

**From:** Langberg, Mitchell [<mailto:mlangberg@bhfs.com>]  
**Sent:** Monday, September 24, 2018 5:15 PM  
**To:** James M. Jimmerson, Esq. <[jmj@jimmersonlawfirm.com](mailto:jmj@jimmersonlawfirm.com)>  
**Cc:** James J. Jimmerson, Esq. <[jjj@jimmersonlawfirm.com](mailto:jjj@jimmersonlawfirm.com)>  
**Subject:** Re: your discovery motion

I understand that your client tries to bully his way to accomplish what he wants, regardless of the rights of others. His counsel is supposed to be an ethical filter for that. The effort to push for discovery is as transparent as threatening people who exercise their first amendment rights, suing judges who rule against your client, and all the other disposable means your client has utilized to try to get his way.

...

On Sep 24, 2018, at 5:09 PM, James M. Jimmerson, Esq. <[jmj@jimmersonlawfirm.com](mailto:jmj@jimmersonlawfirm.com)> wrote:

Respectfully, we disagree as to your analysis and as to your allegations of bad faith. We will respond to your opposition or to any other paper as appropriate.

James M. Jimmerson, Esq.  
**Associate**  
**The Jimmerson Law Firm, P.C.**  
415 South 6th Street, Suite 100  
Las Vegas, Nevada 89101  
(702) 388-7171 (Office)  
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[jmj@jimmersonlawfirm.com](mailto:jmj@jimmersonlawfirm.com)

---

**From:** Langberg, Mitchell [<mailto:mlangberg@bhfs.com>]  
**Sent:** Monday, September 24, 2018 5:02 PM  
**To:** James M. Jimmerson, Esq. <[jmj@jimmersonlawfirm.com](mailto:jmj@jimmersonlawfirm.com)>  
**Cc:** James J. Jimmerson, Esq. <[jjj@jimmersonlawfirm.com](mailto:jjj@jimmersonlawfirm.com)>; Shahana Polselli <[sp@jimmersonlawfirm.com](mailto:sp@jimmersonlawfirm.com)>; Kim Stewart <[ks@jimmersonlawfirm.com](mailto:ks@jimmersonlawfirm.com)>  
**Subject:** Re: your discovery motion

Your response is nonsensical and in bad faith. One of the very issues being appealed is the applicability of the statute to ALL causes of action. The Supreme Court will be tasked with answering the very question which you assert. Everything is stayed. The motion violates rule 11.

...

On Sep 24, 2018, at 4:47 PM, James M. Jimmerson, Esq. <[jmj@jimmersonlawfirm.com](mailto:jmj@jimmersonlawfirm.com)> wrote:

Mitch,

We had reviewed, and re-reviewed the statute in question. As detailed in our earlier responses and in the motion itself, the statute that you have referenced, NRS 41.660(3)(e)(1) does not go as far as you suggest. While it would stay discovery of the claims that are subject to the motion and the appeal, it does not go as far as to stay all discovery for all claims, regardless of whether they are claims covered by the Anti-SLAPP statute. Indeed, claims that are not covered by the statute are exactly that, not covered by the statute, and thus any stay of discovery under the statute would not extend to such claims (e.g. conspiracy). We have had disagreements on this in the past, but we are pursuing a very conservative path here in terms of seeking discovery. We anticipate you will oppose the motion as is your right, but until we see exactly how you oppose it, we cannot respond to arguments we have not seen yet. As always, we reserve all rights in this action. Should you have any questions or concerns, please let us know.

Sincerely,

James M. Jimmerson, Esq.  
Associate  
The Jimmerson Law Firm, P.C.  
415 South 6th Street, Suite 100  
Las Vegas, Nevada 89101  
(702) 388-7171 (Office)  
(702) 380-6422 (Facsimile)  
[jmj@jimmersonlawfirm.com](mailto:jmj@jimmersonlawfirm.com)

---

**From:** Langberg, Mitchell [<mailto:mlangberg@bhfs.com>]  
**Sent:** Thursday, September 20, 2018 7:17 PM  
**To:** James J. Jimmerson, Esq. <[jjj@jimmersonlawfirm.com](mailto:jjj@jimmersonlawfirm.com)>  
**Cc:** James M. Jimmerson, Esq. <[jmj@jimmersonlawfirm.com](mailto:jmj@jimmersonlawfirm.com)>; Shahana Polselli <[sp@jimmersonlawfirm.com](mailto:sp@jimmersonlawfirm.com)>; Kim Stewart <[ks@jimmersonlawfirm.com](mailto:ks@jimmersonlawfirm.com)>  
**Subject:** Re: your discovery motion

Unreasonable deadline for considering the express language of a statute that say discovery is stayed on appeal? OK. Monday will be fine.

...

On Sep 20, 2018, at 6:00 PM, James J. Jimmerson, Esq.  
<[jjj@jimmersonlawfirm.com](mailto:jjj@jimmersonlawfirm.com)> wrote:

Mr. Langberg:

We are in receipt of your email of today,  
September 20, 2018, at 4:36 pm, about an hour  
ago.



Due to prior commitments to, and court appearances in other matters, we will not be able to meet your arbitrary, artificial, and unreasonable deadline to respond to your email tomorrow. We will, however, be able to do so on the very next business day, this Monday, September 24, 2018. We appreciate your patience.

Thank you.

JJJ

James J. Jimmerson, Esq.  
Member, National Trial Lawyers Top 100 Lawyers  
Martindale-Hubbell "AV" Preeminent Lawyers  
Super Lawyers Business Litigation  
Stephen Naifeh "Best Lawyers"  
Recipient of the prestigious Ellis Island Medal of Honor, 2012  
Fellow, American Academy of Matrimonial Lawyers  
Diplomat, American College of Family Trial Lawyers  
Family Law Specialist, Nevada State Bar  
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**PLEASE BE ADVISED** that due to my Court schedule and the volume of emails I receive daily, I am unable to read the majority of my emails on a daily basis. Therefore, your email is not deemed by our firm as being "received" by me unless I respond to the same, nor does it constitute service on, or notification to, our firm. Unless your email is of a personal/private nature to me, please copy my Legal Assistant, Kim Stewart, at [ks@jimmersonlawfirm.com](mailto:ks@jimmersonlawfirm.com) AND any other Associates or Paralegals at our firm associated with your case on all emails to ensure receipt. For personal emails, a follow up by telephone may be appropriate and necessary. I apologize for this inconvenience. Thank you for your cooperation.

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---

**From:** Langberg, Mitchell [<mailto:mlangberg@bhfs.com>]  
**Sent:** Thursday, September 20, 2018 4:36 PM  
**To:** James J. Jimmerson, Esq.  
<[jjj@jimmersonlawfirm.com](mailto:jjj@jimmersonlawfirm.com)>; James M. Jimmerson,  
Esq. <[jmj@jimmersonlawfirm.com](mailto:jmj@jimmersonlawfirm.com)>  
**Subject:** your discovery motion

Counsel,

I have your motion that requests the Discovery Commissioner to allow you to begin to conduct discovery on behalf of your client. Can you please advise why you believe you are entitled to such relief in the face of NRS 41.660(3)(e)(2) which expressly provides that the Court shall stay discovery pending "[t]he disposition of any appeal from the ruling on the [anti-SLAPP] motion?"

it appears your motion flies in the face of this statutory mandate. Please let me know by close of business tomorrow what support you have that is contrary to this express statutory language. Otherwise, I will seek the appropriate relief in the District Court and/or Supreme Court.

Thank you,

Mitch Langberg

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

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# REPLY EXHIBIT 2

# REPLY EXHIBIT 2

**MINUTES OF THE  
ASSEMBLY COMMITTEE ON JUDICIARY**

**Sixty-ninth Session  
June 13, 1997**

The Committee on Judiciary was called to order at 8:12 a.m., on Friday, June 13, 1997. Chairman Bernie Anderson presided in Room 3138 of the Legislative Building, Carson City, Nevada. Exhibit A is the Agenda. Exhibit B is the Guest List.

**COMMITTEE MEMBERS PRESENT:**

Mr. Bernie Anderson, Chairman  
Ms. Barbara Buckley, Vice Chairman  
Mr. Clarence (Tom) Collins  
Ms. Merle Berman  
Mr. John Carpenter  
Mr. Don Gustavson  
Mr. Dario Herrera  
Mrs. Ellen Koivisto  
Mr. Mark Manendo  
Mr. Dennis Nolan  
Ms. Genie Ohrenschall  
Mr. Brian Sandoval  
Mrs. Gene Segerblom

**COMMITTEE MEMBERS ABSENT:**

Mr. Richard Perkins (Excused)

**GUEST LEGISLATORS PRESENT:**

Senator Ernie Adler, Capital Senatorial District

**STAFF MEMBERS PRESENT:**

Risa L. Berger, Committee Counsel  
Juliann K. Jenson, Senior Research Analyst  
Joi Davis, Committee Secretary

had received an informal opinion from the Legislative Counsel Bureau which indicated there was no constitutional problem in developing such a standard. Ms. Berger concurred that was the opinion of the Legislative Counsel Bureau but the matter was yet to be tested in the courts. In addition, she reminded there were different standards throughout the Nevada Revised Statutes.

Chairman Anderson brought the motion back to the floor for a vote.

THE MOTION CARRIED BY A MAJORITY. ASSEMBLYMEN HERRERA AND COLLINS VOTED NO. ASSEMBLYMAN NOLAN ABSTAINED.

**ASSEMBLY BILL 485 -**      **Revises provisions governing immunity for persons engaging in communication in furtherance of right to petition.**

Ms. Jenson read from the background information of the Work Session document contained at page 3, Exhibit C indicating the bill dealt with protecting individuals from Strategic Lawsuits Against Public Participation (SLAPP) suits which resulted from individuals participating in governmental activity and public policy.

Ms. Jenson indicated there were no amendments to the bill. Mr. Anderson recalled testimony surrounding the terms "good faith" and "self-interest." Ms. Ohrenschall indicated since those terms were questions of interpretation she had asked Frank Daykin, formerly of the Legislative Counsel Bureau, to comment on such terminology. Mr. Daykin stated the term "self-interest" was self-explanatory in that it meant an individual was acting for himself. The term "good faith" meant that an individual acted in good faith if he believed what he was saying and he would not communicate in good faith if he said something that he knew to be false.

Mr. Herrera expressed concern for section 5(1) which provided for complete civil immunity for claims or communications. He explained that someone making a representation based on malice or bad faith with willful intent would be protected under this provision. He agreed with the intent of the legislation but felt complete immunity went too far.

Mr. Anderson asked Mr. Daykin if the immunity standards in the bill were uncommonly high. Mr. Daykin replied the immunity provided under A.B. 485 was exceptionally broad and asserted Mr. Herrera's concern was that the statute should not provide a broader immunity than the Constitution.

Ms. Ohrenschall acknowledged Mr. Herrera's concern and although she wanted the bill to pass as written, she had prepared an amendment that defined "in good faith" and would agree to amend the bill to include such definition if the committee wished (Exhibit D).

Mr. Collins stated he supported the bill; however, he recalled discussion to add "civil" instead of "criminal" at page 2, line 32. Some discussion was held in this regard.

Chairman Anderson turned to section 5 of the bill regarding the civil immunity provision noting that Ms. Ohrenschall's amendment would be added to that provision—adding that removal of subsection 3 thereto made the civil liability no longer applicable to the news media but would apply to persons petitioning the government. Mr. Herrera stated that Ms. Ohrenschall's amendment helped address his concerns.

Assemblywoman Buckley, speaking to the amendment (Exhibit D), commented she did not believe a definition of good faith was needed in the bill since there was a very established definition of good faith throughout case law and a new definition could cause more problems. She noted that good faith was needed in the bill but should be allowed to stand on its ordinary meaning.

Ms. Ohrenschall stated the intent behind the bill was to make the procedure in SLAPP suits more expedient and less costly and for that reason the definition should remain. Mr. Nolan added he shared the same concerns and wanted the definition of good faith to be included in the bill. However, he wanted some additions to the definition to better meet the burden of proof required in showing good faith. The additional language he proposed was "that good faith means that the communication made was based on truth and or fact and was made without knowledge of any falsehood." He asserted the definition needed that clarification and required that the communication be based on fact.

Ms. Berger, Committee Counsel, commented the definitions proposed by Ms. Ohrenschall and Mr. Nolan were standards used in defamation case. However, if good faith was not defined in the statute, it would be afforded the ordinary meaning which would not include "willful" or "malicious." Ms. Ohrenschall reiterated she did not want to amend the bill; however, if the committee wished to clarify "good faith" then she would like to see her definition included since it was a factual issue not an individual's belief. Further discussion was held regarding the definition of "good faith" as applied to A.B. 485.

ASSEMBLYWOMAN OHRENSCHALL MOVED TO AMEND & DO PASS  
A.B. 485 TO DELETE AT PAGE 2, LINES 15-16.



ASSEMBLYMAN COLLINS SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY BY THOSE PRESENT.

**ASSEMBLY BILL 497 - Prohibits person from carrying or possessing dangerous knife while on property of school.**

Ms. Jenson read from the background information from the Work Session document contained at pages 3-4, Exhibit C. She indicated there was one amendment proposed by John Riggs, contained at page 8, Exhibit C. She informed the committee that the bill had been assigned to Assemblyman Manendo who may wish to comment.

Mr. Manendo indicated he had spoken with representatives from the Carson City District Attorney's office and Carson High School officials and it was agreed to add at line 7, in section 1 of the bill "butterfly knife." Also, to add at page 2, line 1, "dangerous knife" under the definition "knife having a fixed or locking blade" and changing two inches at line 1 to two and one-half inches.

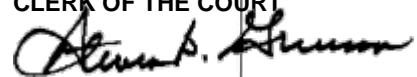
Mr. Carpenter stated he absolutely opposed the bill as it made many law-abiding citizens into criminals. He recalled the knives brought for demonstration to the committee were all over 4 inches in length.

Ms. Segerblom informed that she taught school and she would be threatened by a 2-inch knife. She stressed that the subject was education and safety in school and she did not see any need for kids to bring knives on school campus and she would prefer that the knife length remain at 2 inches.

Mr. Gustavson realized the merits of the bill were good and something was necessary to keep weapons off school grounds. However, he had a problem with the existing law and the inclusion to that law with A.B. 497. He concurred with Mr. Carpenter that the passage of the legislative measure would make law-abiding citizens into criminals just by being on school property with a hunting knife in the car.

Mr. Herrera acknowledged that the quality of education needed to be balanced with the right to bear arms and the need to protect children. Ms. Berman stated she felt impassioned about the legislative measure and especially in high school in Clark County, children needed to feel safe and secure in school.

Mr. Collins asserted the school districts in the state had the necessary regulations to suspend and control students and therefore he opposed the bill.



**SUPP**

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415 S. 6<sup>th</sup> Street, #100  
Las Vegas, Nevada 89101  
Telephone: (702) 388-7171  
Facsimile: (702) 387-1167  
Email: ks@jimmersonlawfirm.com  
*Attorneys for Plaintiffs*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

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

Plaintiffs,

vs.

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

Defendants.

Case No.: A-18-771224-C

Dept. No.: II  
Courtroom #11D

**PLAINTIFFS' SUPPLEMENTAL  
EXHIBIT IN FURTHER SUPPORT  
OF THEIR MOTION FOR ORDER  
ALLOWING COMMENCEMENT OF  
DISCOVERY**

**(DISCOVERY COMMISSIONER)**

Plaintiffs, Fore Stars, LTD. (hereinafter "Fore Stars"), 180 Land Company LLC (hereinafter "180 Land Company"), and Seventy Acres, LLC (hereinafter "Seventy Acres") (collectively the "Land Owners" or "Plaintiffs"), by and through their undersigned counsel, James J. Jimmerson, Esq., of THE JIMMERSON LAW FIRM, P.C., hereby submit this Supplemental Exhibit in Further Support of Their Motion for Order Allowing Commencement of Discovery, as follows:

///

///

1       **Reply Exhibit 3: Order Denying Petition for Writ of Prohibition or**  
2       **Mandamus, filed October 17, 2018**

3       Dated this 17<sup>th</sup> day of October, 2018.

4  
5                               **THE JIMMERSON LAW FIRM, P.C.**

6  
7                               By: /s/ James J. Jimmerson, Esq.  
8                                       JAMES J. JIMMERSON, ESQ.  
9                                       Nevada Bar No. 000264  
10                                      415 S. 6<sup>th</sup> Street, #100  
11                                      Las Vegas, Nevada 89101  
12                                      Attorneys for Plaintiffs  
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Mitchell Langberg, Esq.  
BROWNSTEIN HYATT FARBER SCHRECK, LLP  
100 North City Parkway  
Suite 1600  
Las Vegas, Nevada 89106  
*Attorneys for Defendants*

  
Employee of The Jimmerson Law Firm, P.C.

# REPLY EXHIBIT 3

# REPLY EXHIBIT 3

IN THE SUPREME COURT OF THE STATE OF NEVADA

DANIEL OMERZA; DARREN BRESEE;  
AND STEVE CARIA,  
Petitioners,

vs.

THE EIGHTH JUDICIAL DISTRICT  
COURT OF THE STATE OF NEVADA,  
IN AND FOR THE COUNTY OF  
CLARK; AND THE HONORABLE  
RICHARD SCOTTI, DISTRICT JUDGE,  
Respondents,  
and  
FORE STARS, LTD.; 180 LAND CO.,  
LLC; AND SEVENTY ACRES, LLC,  
Real Parties in Interest.

No. 76240

FILED

OCT 17 2018

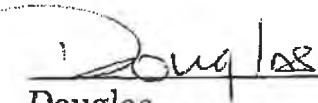
ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY  DEPUTY CLERK

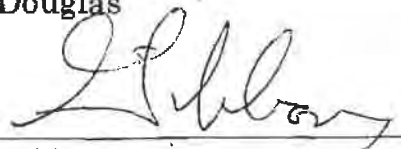
*ORDER DENYING PETITION  
FOR WRIT OF PROHIBITION OR MANDAMUS*


This original petition for a writ of prohibition or mandamus challenges a district court order denying a motion to dismiss in a tort action. Having considered the petition and appendices filed in this matter, we are not persuaded that our extraordinary and discretionary intervention is warranted. See NRS 34.160; NRS 34.320; *Smith v. Eighth Judicial Dist. Court*, 113 Nev. 1343, 1344-45, 950 P.2d 280, 281 (1997) (observing that this court generally will not consider writ petitions challenging orders denying

motions to dismiss); *Pan v. Eighth Judicial Dist. Court*, 120 Nev. 222, 228, 88 P.3d 840, 844 (2004) ("Petitioners carry the burden of demonstrating that extraordinary relief is warranted."). Accordingly, we

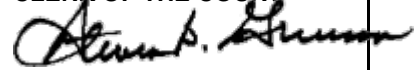
ORDER the petition DENIED.

 \_\_\_\_\_, C.J.  
Douglas

 \_\_\_\_\_, J.  
Gibbons

 \_\_\_\_\_, J.  
Stiglich

cc: Hon. Richard Scotti, District Judge  
Brownstein Hyatt Farber Schreck, LLP/Las Vegas  
EHB Companies, LLC  
The Jimmerson Law Firm, P.C  
Eighth District Court Clerk



**SUPP**

MITCHELL J. LANGBERG, ESQ., Bar No. 10118  
[mlangberg@bhfs.com](mailto:mlangberg@bhfs.com)  
BROWNSTEIN HYATT FARBER SCHRECK, LLP  
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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

**DEFENDANTS' SUPPLEMENTAL  
EXHIBITS IN FURTHER SUPPORT OF  
THEIR OPPOSITION TO PLAINTIFFS'  
MOTION FOR ORDER ALLOWING  
COMMENCEMENT OF DISCOVERY  
AND  
DEFENDANTS REQUEST FOR  
SANCTIONS PURSUANT TO EDCR  
7.60(b)**

**(DISCOVERY COMMISSIONER)**

Defendants, Daniel Omerza, Darren Bresee, and Steve Caria (hereinafter "Defendants"),  
by and through their undersigned counsel, Mitchell J. Langberg, Esq. of BROWNSTEIN HYATT  
FARBER SCHRECK, LLP hereby submit this Supplemental Exhibit In Further Support of Their  
Opposition to Plaintiffs' Motion for Order Allowing Commencement of Discovery and  
Defendants Request for Sanctions Pursuant to EDCR 7.60(b), as follows:

///

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**Opposition Exhibit 1: Order of Affirmance, filed October 17, 2018**

DATED this 18th day of October, 2018.

BROWNSTEIN HYATT FARBER SCHRECK, LLP

BY: /s/ Mitchell J. Langberg

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

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

100 North City Parkway, Suite 1600

Las Vegas, NV 89106-4614

Telephone: 702.382.2101

Facsimile: 702.382.8135

*Counsel for Defendants*

DANIEL OMERZA, DARREN BRESEE, and

STEVE CARIA

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I am an employee of Brownstein Hyatt Farber Schreck, LLP, and pursuant to NRCP 5(b), EDCR 8.05, Administrative Order 14-2, and NEFCR 9, I caused a true and correct copy of the foregoing **DEFENDANTS' SUPPLEMENTAL EXHIBITS IN FURTHER SUPPORT OF THEIR OPPOSITION TO PLAINTIFFS' MOTION FOR ORDER ALLOWING COMMENCEMENT OF DISCOVERY AND DEFENDANTS REQUEST FOR SANCTIONS PURSUANT TO EDCR 7.60(b)** be submitted electronically for filing and/or service with the Eighth Judicial District Court via the Court's Electronic Filing System on the 18th day of October, 2018, to the following:

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

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

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

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

# **OPPOSITION EXHIBIT 1**

# **OPPOSITION EXHIBIT 1**

IN THE SUPREME COURT OF THE STATE OF NEVADA

ROBERT N. PECCOLE; AND NANCY A.  
PECCOLE,  
Appellants,  
vs.

FORE STARS, LTD., A NEVADA  
LIMITED LIABILITY COMPANY; 180  
LAND CO., LLC, A NEVADA LIMITED  
LIABILITY COMPANY; SEVENTY  
ACRES, LLC, A NEVADA LIMITED  
LIABILITY COMPANY; EHB  
COMPANIES, LLC, A NEVADA LIMITED  
LIABILITY COMPANY; YOHAN LOWIE,  
AN INDIVIDUAL; VICKIE DEHART, AN  
INDIVIDUAL; AND FRANK PANKRATZ,  
AN INDIVIDUAL,  
Respondents.

ROBERT N. PECCOLE; AND NANCY A.  
PECCOLE, INDIVIDUALS,  
Appellants,  
vs.

FORE STARS, LTD., A NEVADA  
LIMITED LIABILITY COMPANY; 180  
LAND CO., LLC, A NEVADA LIMITED  
LIABILITY COMPANY; SEVENTY  
ACRES, LLC, A NEVADA LIMITED  
LIABILITY COMPANY; EHB  
COMPANIES, LLC, A NEVADA LIMITED  
LIABILITY COMPANY; YOHAN LOWIE,  
AN INDIVIDUAL; VICKIE DEHART, AN  
INDIVIDUAL; AND FRANK PANKRATZ,  
AN INDIVIDUAL,  
Respondents.

No. 72410

FILED

OCT 17 2018

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY  DEPUTY CLERK

No. 72455

*ORDER OF AFFIRMANCE*

These consolidated appeals are from district court orders  
awarding attorney fees and costs and denying NRCP 60(b) relief from a

dismissal order in a real property dispute.<sup>1</sup> Eighth Judicial District Court, Clark County; Douglas Smith, Judge.

This case arises out of a dispute appellants have with respondents, who are planning to develop property on which a golf course is presently located, and which appellants argue is subject to development restrictions under the Master Declaration of Covenants, Conditions, Restrictions and Easements (CC&Rs) for the Queensridge community in Las Vegas where appellants reside. Appellants sued respondents for injunctive relief and damages based on theories of impaired property rights and fraud. The district court dismissed appellants' complaint and then denied appellants' motion for NRCP 60(b) relief. Additionally, the district court awarded respondents a total of \$128,131.22 in attorney fees and costs. These appeals followed.

First, appellants argue that the district court abused its discretion in denying NRCP 60(b) relief by relying on an invalid amendment to the CC&Rs in concluding that the golf course property was not subject to the CC&Rs. Because the record supports the district court's determination that the golf course land was not part of the Queensridge community under the original CC&Rs and public maps and records, regardless of the amendment, we conclude the district court did not abuse its discretion in denying appellants' motion for NRCP 60(b) relief. *Cook v. Cook*, 112 Nev. 179, 181-82, 912 P.2d 264, 265 (1996) (providing that the district court has

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<sup>1</sup>Pursuant to NRAP 34(f)(1), we have determined that oral argument is not warranted in this appeal.

broad discretion in deciding whether to grant or deny an NRCP 60(b) motion to set aside a judgment, and this court will not disturb that decision absent an abuse of discretion).

Second, appellants contend that the district court violated their procedural due process rights by awarding respondents attorney fees and costs without first holding an evidentiary hearing. We disagree. An evidentiary hearing is not required before an award of attorney fees and costs. *See Pac. Harbor Capital, Inc. v. Carnival Air Lines, Inc.*, 210 F.3d 1112, 1118 (9th Cir. 2000) (providing that the requirement of “an opportunity to be heard” before sanctions may issue “does not require [the court to hold] an oral or evidentiary hearing on the issue”). Appellants had notice of respondents’ motions for attorney fees and costs and took advantage of the opportunity to respond to those requests in writing and orally. *Callie v. Bowling*, 123 Nev. 181, 183, 160 P.3d 878, 879 (2007) (recognizing that due process requires notice and opportunity to be heard). Thus, we conclude the district court did not violate appellants’ due process rights by failing to hold an evidentiary hearing before awarding respondents attorney fees and costs.

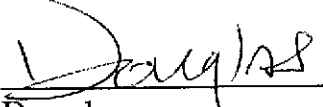
Lastly, appellants assert that appellant Robert Peccole’s preparation, research, and 55-year legal career demonstrate that the attorney fees and costs award as a sanction was improper. NRS 18.010(2)(b) permits the district court to award attorney fees to a prevailing party when the court finds that the claim “was brought or maintained without reasonable ground or to harass the prevailing party.” Additionally, EDCR 7.60(b) allows the district court to impose a sanction including attorney fees


and costs when an attorney or party “without just cause. . . [p]resents to the court a motion or an opposition to a motion which is obviously frivolous, unnecessary or unwarranted. . . [or] multiplies the proceedings in a case as to increase costs unreasonably and vexatiously.”

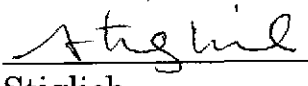
Appellants filed a complaint alleging the golf course land was subject to the CC&Rs when the CC&Rs and public maps of the property demonstrated that the golf course land was not. Further, after the district court denied appellants’ first motion for a preliminary injunction and explained its reasoning, appellants filed a second almost identical motion, a motion for rehearing of the denial of one of those motions, and a renewed motion for preliminary injunction, all of which included the same facts or argument. Additionally, the district court repeatedly warned appellants that they were too close to the issue to see it clearly or accept any of the court’s decisions and despite this warning, they continued to file repetitive and meritless motions. The district court limited the award to fees and costs incurred in defending the repetitive motions and issued specific findings regarding each of the factors set forth in *Brunzell v. Golden Gate National Bank*, 85 Nev. 345, 455 P.2d 31 (1969), and the record supports the amount awarded. See *Miller v. Wilfong*, 121 Nev. 619, 623, 119 P.3d 727, 730 (2005) (requiring the district court to consider the *Brunzell* factors when awarding attorney fees). Further, Robert’s extensive experience as an attorney is not a factor under *Brunzell* and because the district court was within its discretion to award attorney fees and costs for the repetitive and frivolous parts of the litigation, it is unclear how Robert’s extensive legal career would make the award improper. Thus, we conclude the district court did not abuse its discretion in awarding respondents attorney fees and costs. See *Edwards v. Emperor’s Garden Rest.*, 122 Nev. 317, 330, 130 P.3d 1280,

1288 (2006) (explaining that this court will not overturn a district court's decision to award attorney fees and costs as a sanction absent a manifest abuse of discretion). Accordingly, we

ORDER the judgments of the district court AFFIRMED.

  
\_\_\_\_\_, C.J.  
Douglas

  
\_\_\_\_\_, J.  
Gibbons

  
\_\_\_\_\_, J.  
Stiglich

cc: Hon. Douglas Smith, District Judge  
Ara H. Shirinian, Settlement Judge  
Peccole & Peccole, Ltd.  
The Jimmerson Law Firm, P.C  
Sklar Williams LLP  
EHB Companies, LLC  
Eighth District Court Clerk



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

October 19, 2018      09:00 AM      Plaintiffs' Motion for Order Allowing Commencement of Discovery

HEARD BY:      Truman, Erin      COURTROOM: RJC Level 5 Hearing Room

COURT CLERK: Lott, Jennifer

RECORDER:      Haak, Francesca

REPORTER:

**PARTIES PRESENT:**

James Joseph Jimmerson, ESQ	Attorney for Plaintiff
James M. Jimmerson	Attorney for Plaintiff
Mitchell J. Langberg	Attorney for Defendant

**JOURNAL ENTRIES**

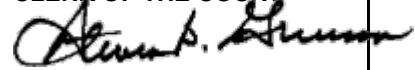
Mr. Jimmerson addressed Judge Scotti's ruling and the Court found that Defts' anti-slapp Motion did not apply to intentional torts pled by Plaintiffs in the case, and the Motion to Dismiss on the basis of anti-slapp was Denied. There is an immediate right to Appeal which Defts availed themselves to. Mr. Jimmerson attempted to file an Early Case Conference, however, counsel have returned before the Commissioner to begin discovery. Defts have failed to file an Answer, but Mr. Jimmerson doesn't intent to default Defts. The case needs to go forward and begin discovery. Argument by Mr. Jimmerson. Mr. Langberg discussed whether or not the anti-slapp Statute applies to the tort causes of action that Plaintiffs asserted. Defts filed a Writ of Mandamus, however, it was not brought on the same grounds as the anti-slapp. Mr. Langberg stated the Statute says if an anti-slapp Motion is filed, discovery is stayed pending a ruling on the Motion. Argument by Mr. Langberg.

Commissioner stated based on the Supreme Court Denial of the Petition for Writ, the case is ready to be Answered, and 16.1 should be complied with. Mr. Langberg stated the Appeal is still pending. There was a Writ as to the Denial of the 12(b)(5) Motion because there is no Appeal from that. Mr. Langberg stated there is an automatic Appeal on Denial of an anti-slapp Motion, the Appeal is still pending, and the Opening Brief is due 10-22-18. Upon Commissioner's inquiry, Mr. Jimmerson stated there are no exigent circumstances that would warrant discovery before 16.1 is complied with.

Given the fact that the Appeal is still pending, and an Answer is not yet required, COMMISSIONER RECOMMENDED, there is no reasonable basis for discovery to go forward at this point, and counsel will wait until the Supreme Court hears the issue. Following that the Answer will be due, and 16.1 will be complied with. Mr. Jimmerson stated there will be a 18 month to 2 year delay. Arguments by counsel. Mr. Langberg read the Statute into the record.

Commissioner doesn't believe the case is stayed under the authority cited by Mr. Langberg. The Court determined that it doesn't apply to the causes of action, therefore, COMMISSIONER RECOMMENDED, motion is GRANTED IN PART; discovery needs to go forward and within 30 days of Judge Scotti's ruling on the forthcoming Objection counsel should comply with 16.1 and file the JCCR. Mr. Langberg requested an extension to object to the Report and Recommendation. Colloquy. Mr. Jimmerson to prepare the Report and Recommendations, and Mr. Langberg to approve as to form and content. A proper report must be timely submitted within 10 days of the hearing. Otherwise, counsel will pay a

contribution.



**ODCR**

Mitchell J. Langberg, Esq., Bar No. 10118

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**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' OBJECTIONS TO  
DISCOVERY COMMISSIONER'S  
REPORT AND RECOMMENDATION**

Pursuant to E.D.C.R. 2.34(f), 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 Defendants' Objections to the Discovery Commissioner's Report and Recommendations ("R&R") on Plaintiffs' Motion for Order Allowing Commencement of Discovery ("Motion").

**Objection 1:**

The R&R concludes that the automatic discovery stay pending appeal set out in NRS 41.660(3)(e)(2) does not apply when the District Court has determined that the anti-SLAPP

1 statute does not apply to the claims asserted by Plaintiffs, even though that statute expressly  
2 provides that after the filing of an anti-SLAPP motion, the Court "*shall*" stay all discovery  
3 pending "[t]he disposition of any appeal from the ruling on the motion." (emphasis added).

4 Objection 2:

5 The R&R fails to consider that there is no Answer on file and, therefore, the applicable  
6 rules do not call for the commencement of discovery.

7 These objections are based upon the attached memorandum of points and authorities, the  
8 pleadings and papers on file in this case, and any argument the Court may consider at the time of  
9 hearing on these objections.

10 DATED this 3<sup>rd</sup> day of January, 2019.

11 BROWNSTEIN HYATT FARBER SCHRECK, LLP

12 BY: /s/ Mitchell J. Langberg

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20 DANIEL OMERZA, DARREN BRESEE, and

21 STEVE CARIA

**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF OBJECTIONS**

**I. INTRODUCTION**

Plaintiffs in this case successfully opposed Defendants' anti-SLAPP motion. Pursuant to statute, Defendants' were entitled to an immediate appeal of this Court's ruling. Defendants' timely filed their notice of appeal and the matter has been fully briefed in the Supreme Court.

NRS 41.660(3)(e)(2) mandates a stay of *all discovery* during the pendency of an appeal after the denial of an anti-SLAPP motion. Yet, Plaintiffs filed a motion asking the Court to disregard the plain language of that statute, without offering the Court any support whatsoever for doing that. Plaintiffs' rationalization for ignoring the statute was merely that they do not believe the anti-SLAPP statute applies to their claims. Of course, any time an anti-SLAPP motion to dismiss is denied, the plaintiff would naturally contend that the anti-SLAPP statute does not apply. The self-evident purpose of NRS 41.660(3)(e)(2) is to stay discovery while the Nevada Supreme Court considers such an argument. To allow discovery while such an appeal is pending would render NRS 41.660(3)(e)(2) entirely meaningless.

The ADR Commissioner, sitting for the Discovery Commissioner determined that because the District Court found that the anti-SLAPP statute does not apply to allegations of intentional torts and alleged fraudulent conduct, the discovery stay pending appeal does not apply, either.

But, of course, this is the very issue being determined on appeal. The statute does not limit the discovery stay at all – applying it to any appeal of the denial of an anti-SLAPP motion. Indeed, this Court has acknowledged the stay itself by entering an appeal stay in the docket.

**II. BACKGROUND**

Defendants brought their anti-SLAPP motion to dismiss on April 13, 2018, seeking to dismiss Plaintiffs' entire action. The Court entered its findings of fact and conclusions of law denying the motion on June 20, 2018. Defendants then timely filed their Notice of Appeal, as expressly authorized by NRS 41.670. In a series of communications since then, Plaintiffs' counsel has repeatedly requested that the parties participate in an Early Case Conference and begin discovery. Defendants' counsel has consistently responded that an Early Case Conference

would be premature, since the case is not yet at issue, and that discovery is stayed pursuant to NRS 41.660(3)(e)(2).

### III. ARGUMENT

The Court should overrule the R&R because discovery is stayed pending the instant appeal.

#### A. THE COURT SHOULD OVERRULE THE R&R.

Plaintiffs' R&R is directly at odds with NRS 41.660(3)(e)(2); moreover, discovery is premature because the case is not at issue.

##### 1. Defendants' R&R Is Directly Contrary to NRS 41.660(3)(e)(2).

Discovery in this action is automatically stayed under NRS 41.660:

(3) If a special motion to dismiss is filed pursuant to subsection 2, *the court shall*:

\* \* \*

(e) Except as otherwise provided in subsection 4, *stay discovery pending*:

(1) A ruling by the court on the motion; and

(2) *The disposition of any appeal from the ruling on the motion.*

NRS 41.660 (emphasis added). There can be no dispute that Defendants filed an anti-SLAPP motion challenging every cause of action asserted by Plaintiffs. There is also no question that Defendants have appealed the District Court's decision denying their anti-SLAPP motion as to every cause of action. The statute very plainly stays discovery during that appeal. Discovery is stayed by operation of law.

The plain language of the statute should be enough. But case authority further proves the point. While Defendants are unable to find any Nevada decisions where a plaintiff has argued otherwise, in applying the anti-SLAPP statute on which Nevada modeled its law, California courts have squarely held that proceedings before the trial court, including discovery, are stayed pending an appeal of an order denying an anti-SLAPP motion. *See, e.g., Newport Harbor Ventures, LLC v. Morris Cerullo World Evangelism*, 413 P.3d 650, 655, 4 Cal. 5th 637, 645 (2018) (holding that all discovery proceedings were stayed upon the filing of an anti-SLAPP

1 motion through appeal); *Varian Med. Sys., Inc. v. Delfino*, 106 P.3d 958, 966-68, 35 Cal. 4th 180,  
2 192-94 (2005) (holding that an appeal from the denial of an anti-SLAPP motion automatically  
3 stays proceedings before the trial court). This is consistent with the fundamental purposes  
4 underlying the anti-SLAPP statute. *Mattel, Inc. v. Luce, Forward, Hamilton & Scripps*, 99 Cal.  
5 App. 4th 1179, 1190, 121 Cal. Rptr. 2d 794, 801 (2002) ("not only did the Legislature desire early  
6 resolution [of anti-SLAPP motions] to minimize the potential costs of protracted litigation, it also  
7 sought to protect defendants from the burden of traditional discovery pending resolution of the  
8 motion"). Plaintiffs cited no authority to the contrary.

9 Plaintiffs persuaded the ADR Commissioner to ignore the automatic stay of NRS  
10 41.660(3)(e)(2) by arguing that the anti-SLAPP statute does not apply to their tort claims. *See*  
11 Motion, at 7-8. But Defendants moved to dismiss this action in its entirety, even as to tort claims,  
12 and have appealed the denial of that motion. The appeal goes not to a portion of the case but to  
13 Plaintiffs' entire Complaint. Whether certain of Plaintiffs' claims are somehow exempt from the  
14 reach of the anti-SLAPP statute in Nevada (unlike in California) is one of the issues the Supreme  
15 Court will necessarily decide. The fact that Plaintiffs have an argument by which they hope to  
16 persuade the Supreme Court that the anti-SLAPP statute does not apply to all of their claims is  
17 meaningless—presumably every appellee has some such argument to make, or the district court  
18 would never have ruled in its favor. But NRS 41.660(3)(e)(2) on its face applies to all appeals,  
19 not just appeals that the appellee concedes it is bound to lose. If Plaintiffs' assertion of their own  
20 argument on appeal were sufficient to prevent application of NRS 41.660(3)(e)(2), the statute  
21 would be rendered entirely meaningless. Every plaintiff has some reason to proffer why it  
22 believes its claims are not subject to the anti-SLAPP statute; that has nothing to do with the  
23 automatic stay pending appeal while the Supreme Court decides if the plaintiff is right.

24 Plaintiffs emphasized, and the R&R adopted the argument, that the District Court ruled in  
25 their favor on Defendants' anti-SLAPP motion (Motion at 8), but again, that will always be true in  
26 every case subject to NRS 41.660(3)(e)(2). Whenever a party appeals from a court's order on an  
27 anti-SLAPP motion, the court has ruled against that party, else there would be nothing to appeal.  
28 Plaintiffs' position would literally prevent NRS 41.660(3)(e)(2) from ever being applied.

1 NRS 41.660(3)(e)(2) on its face stays discovery pending Defendants' appeal of the denial  
2 of their motion to dismiss. Thus, the R&R should be overruled.

3 **2. Discovery Is Premature Because No Answer Has Been Filed.**

4 Even setting aside NRS 41.660(3)(e)(2), Plaintiffs' motion is premature because this case  
5 is not yet at issue. NRCP 16.1 details the timing of and sequence of pretrial discovery. The  
6 process begins with an Early Case Conference at which certain documents are exchanged and a  
7 plan for additional discovery discussed, which the parties then propose to the Court in a Case  
8 Conference Report. The rule requires parties' attorneys to attend the Early Case Conference  
9 "[w]ithin 30 days after service of the answer." NRCP 16.1(a). Here, no answer has been served,  
10 because Defendants moved to dismiss under Rule 12 and the anti-SLAPP statute. As a matter of  
11 right Defendants have pursued an appeal before the Nevada Supreme Court. The discovery  
12 process will begin if and when the anti-SLAPP motion is finally resolved.

13 In conferrals before Plaintiffs filed their motion, Plaintiffs' counsel insisted that the  
14 requirement for conducting an Early Case Conference is instead triggered by the appearance of a  
15 party's counsel. *See* Motion, Exhibit D, at 11. That is contrary to the plain terms of the rule, as  
16 explained the *Nevada Civil Practice Manual* (on which Plaintiffs' counsel serves as an editor), at  
17 Section 13.03(2): "[S]ervice of an answer of the first answering defendant triggers the timing for  
18 the parties' early case conference." Defendants are not obliged to incur the expense of discovery  
19 before then.

20 **IV. CONCLUSION**

21 For all of the foregoing reasons, this Court should overrule the Report and  
22 Recommendation.

23 DATED this 3<sup>rd</sup> day of January, 2019.

24 BROWNSTEIN HYATT FARBER SCHRECK, LLP

25  
26 BY: /s/ Mitchell J. Langberg  
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27 Counsel for Defendants  
28 DANIEL OMERZA, DARREN BRESEE, and  
STEVE CARIA



**CERTIFICATE OF SERVICE**

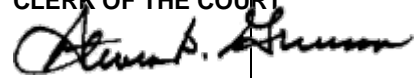
I HEREBY CERTIFY that I am an employee of Brownstein Hyatt Farber Schreck, LLP, and pursuant to NRCP 5(b), EDCR 8.05, Administrative Order 14-2, and NEFCR 9, I caused a true and correct copy of the foregoing **DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTION FOR ORDER ALLOWING COMMENCEMENT OF DISCOVERY AND DEFENDANTS REQUEST FOR SANCTIONS PURSUANT TO EDCR 7.60(b)** be submitted electronically for filing and/or service with the Eighth Judicial District Court via the Court's Electronic Filing System on the 3rd day of January, 2019, to the following:

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

/s/ Paula Kay  
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1 **RESP**

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11 **EIGHTH JUDICIAL DISTRICT COURT**  
12 **CLARK COUNTY, NEVADA**

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

18 Plaintiffs,

19 vs.

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

22 Defendants.

Case No.: A-18-771224-C

Dept. No.: II

**PLAINTIFFS' RESPONSE TO  
DEFENDANTS' OBJECTIONS TO  
DISCOVERY COMMISSIONER'S  
REPORT AND RECOMMENDATIONS**

23 Plaintiffs, Fore Stars, Ltd. (hereinafter "Fore Stars"), 180 Land Company LLC (hereinafter  
24 "180 Land Company"), and Seventy Acres, LLC (hereinafter "Seventy Acres") (collectively the  
25 "Land Owners" or "Plaintiffs"), by and through their undersigned counsel, James J. Jimmerson,  
26 Esq., of THE JIMMERSON LAW FIRM, P.C., hereby submit this Response to Defendants'  
27 Objections to Discovery Commissioner's Report and Recommendations (the "Response").

28 ///

///

///

1 This Response is made and based on the following Memorandum of Points and Authorities,  
2 the exhibits attached hereto, and any oral argument the Court may consider.

3 DATED this 30th day of January, 2019.

4 THE JIMMERSON LAW FIRM, P.C.

5  
6 By: /s/ James J. Jimmerson, Esq.

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Attorneys for Plaintiffs

10 **MEMORANDUM OF POINTS AND AUTHORITIES**

11 **I. INTRODUCTION**

12 Despite this Court's finding that Nevada's anti-SLAPP statute does not apply to the Land  
13 Owners' claims based on Defendants' intentional, wrongful, and/or fraudulent conduct,  
14 Defendants are continuing their efforts in refusing to commence discovery in this action. This  
15 has forced the Land Owners to file their Motion for Order Allowing Commencement of Discovery  
16 which was the Discovery Commissioner has recommended be granted.

17 Among other claims, Plaintiffs allege three intentional torts: Intentional Interference with  
18 Prospective Economic Advantage, Conspiracy and Intentional Misrepresentation. *See* Comp. at  
19 ¶¶ 39047, 56-55. Generally, the Complaint alleges that the Defendants fraudulently procured  
20 signatures of Queensridge residents by picking and choosing the information they shared with  
21 their neighbors in order to manipulate them into signing an untruthful declaration. *See id.*  
22 Following a hearing on the matter, this Court denied Defendants two motions to dismiss in their  
23 entirety and concluded that the Complaint "stated valid claims upon which relief can be granted"  
24 and that NRS 41.635 *et seq.* "does not apply to fraudulent conduct." *See* District Court's Order  
25 Denying Motion to Dismiss, attached hereto as Exhibit 1. This Court recognized that Nevada's  
26 anti-SLAPP statute "does not overcome intentional torts or claims based on wrongful conduct."  
27

1 *See id.* Thereafter Defendants filed a notice of appeal regarding denial of the anti-SLAPP motion  
2 and a petition for extraordinary writ challenging the Court’s denial of their other motion to dismiss  
3 pursuant to NRCP 12(b)(5). Defendants have not sought a stay in this Court nor the Nevada  
4 Supreme Court. Although Plaintiffs have attempted to commence discovery, Defendants have  
5 refused to participate asserting the same objections as provided in their objections to the  
6 Discovery Commissioners Report and Recommendations, i.e. that NRS 41.660 *et seq.* provides  
7 an automatic stay is required and that because they have not filed an answer discovery cannot  
8 commence. For the reasons set forth below, both objections fail.  
9

10 Notably, citing to the provision of Nevada’s anti-SLAPP statute that provides for a certain  
11 stay of discovery pending appeal, Defendants would have this Court find that claims that have  
12 been found to not be subject to the anti-SLAPP statute are still subject to the provisions of the  
13 anti-SLAPP statute. That position is without basis and, were it the law, it would invite rampant  
14 abuse and force litigants to suffer needless delay and expense. In effect, it would cause the very  
15 problems it was designed to solve. Under Defendants’ distorted view of the law, every defendant  
16 who wanted to halt litigation could do so by filing an anti-SLAPP special motion to dismiss,  
17 regardless of its application to the case at hand. Nevada law does not countenance the application  
18 and enforcement of statutes to reach such absurd results. Defendants’ position should be rejected  
19 (as it has been by various courts) and the Court should affirm and adopt the Discovery  
20 Commissioner’s Report and Recommendations.  
21

## 22 **II. ARGUMENT**

### 23 **A. There Is No Stay Of Discovery As To The Land Owners’ Intentional** 24 **Tort Claims Because Nevada’s Anti-SLAPP Statutes Do Not Apply To** 25 **Them As A Matter Of Law**

26 Defendants’ first and primary objection is that the anti-SLAPP statute commands a stay  
27 of discovery regardless of whether or not that statute applies to the causes of action at issue.  
28 Defendants are in error. In issuing its decision on the special motion to dismiss, the Court held  
that Nevada’s anti-SLAPP statute, “does not overcome intentional torts or claims based on

1 wrongful conduct.” Findings of Fact, Conclusions of Law, and Order, June 20, 2018, at ¶ 18.  
2 The Court further held that “Nevada’s anti-SLAPP statute does not apply to fraudulent conduct,  
3 which Plaintiffs have alleged.” *Id.* at ¶ 28. As a result, any stay of proceedings triggered by  
4 Defendants’ interlocutory appeal does not impact the Land Owners’ intentional tort claims.  
5 Likewise, the stay of discovery contemplated by NRS 40.660(3)(e)(2), is inapplicable to these  
6 causes of action.

7 Defendants would have the Court sustain their objection based upon an improper  
8 construction of NRS 41.660. While NRS 41.660(3)(e)(2) does provide for a stay of discovery  
9 pending appeal, the scope of the anti-SLAPP statute provides the outer boundary for what claims  
10 would be subject to this restriction on discovery. **The stay of discovery provided for in the**  
11 **anti-SLAPP statute cannot apply to claims that are not subject to the anti-SLAPP statute.**  
12 Indeed, the first clause of the statute confirms the same. When all of the pertinent parts of NRS  
13 41.660 are read together, the statute provides as follows:  
14

15 **1. If an action is brought against a person based upon a good**  
16 **faith communication in furtherance of the right to petition or**  
17 **the right to free speech in direct connection with an issue of**  
18 **public concern:**

19 (a) The person against whom the action is brought may file a  
20 special motion to dismiss...

21 3. If a special motion to dismiss is filed pursuant to subsection 2,  
22 the court shall:

(e) Except as otherwise provided in subsection 4, stay discovery  
pending:

(1) A ruling by the court on the motion; and

(2) The disposition of any appeal from the ruling on the  
motion;

23 *Id.* (emphasis supplied).

24 Defendants would have this Court ignore the statutory limitation of the stay of discovery—  
25 applicable only to claims covered in the anti-SLAPP statute—and instead allow for a stay of  
26 discovery for any claim, regardless of its relationship to NRS 41.660, so long as a special motion  
27 to dismiss is filed against it. **Under Defendants’ interpretation of the statute, claims having**

1 nothing to do with the right to petition or free speech, such as medical malpractice,  
2 construction defect, and divorce, could all be placed on hold pending an appeal of a special  
3 anti-SLAPP motion to dismiss. Such a position is without legal basis.

4 Nevada's anti-SLAPP statute was designed to provide an expedient procedure to resolve  
5 certain litigation. As Genie Ohrenschall stated during the legislature's debate about Nevada's  
6 anti-SLAPP statute, "the intent behind the bill was to make the procedure in SLAPP suits more  
7 expedient and less costly..." Assembly Committee on Judiciary, AB 485, June 13, 1997, page 7.  
8 To prohibit discovery into any and all claims that a defendant moved to dismiss pursuant to NRS  
9 41.660, regardless of the statute's application to the same, would provide a sure-fire mechanism  
10 to stall litigation and would do the exact opposite of the statute's purpose. Courts will not interpret  
11 a statute to defeat its own purpose or to achieve an absurd result. *See Gen. Motors v. Jackson*,  
12 111 Nev. 1026, 1029, 900 P.2d 345, 348 (1995) ("A statute should always be construed to avoid  
13 absurd results."); *Nat'l Fed'n of Indep. Bus. v. Sebelius*, 567 U.S. 519, 646, 132 S. Ct. 2566, 2642  
14 (2012) (the Court's "endeavor must be to conserve, not destroy, the legislature's dominant  
15 objective.") (J. Ginsburg, concurring).

17 Attempting to salvage their argument, Defendants cite to various California decisions  
18 purportedly to support the contention that, "proceedings before the trial court, including discovery,  
19 are stayed pending an appeal of an order denying an anti-SLAPP motion." Objection. at 4. One  
20 of the decisions cited by Defendants is *Varian Med. Sys., Inc. v. Delfino*, 35 Cal. 4th 180, 106  
21 P.3d 958, (Cal. 2005). However, *Varian* actually supports the Land Owners' position. While the  
22 *Varian* Court did find that an appeal would stay certain proceedings subject to the anti-SLAPP  
23 statute, the court likewise held, "**Such an appeal does not, however, stay proceedings relating**  
24 **to causes of action not affected by the motion.**" *Id.*, 35 Cal. 4th at 195 n. 8. (emphasis supplied).  
25 Here, the Court has found that the Land Owners' claims based upon intentional, fraudulent, and/or  
26 wrongful conduct are not subject to the anti-SLAPP statute. Therefore, the stay of discovery  
27 contained therein likewise does not apply to the same. *See, e.g., SPG Artist Media, LLC v.*  
28

1 *Primesites, Inc.*, No. 69078, 2017 WL 897756, at \*1, 390 P.3d 657 (Nev. Feb. 28, 2017) (“whether  
2 the communication at issue here should be afforded the protections of NRS 41.660 depends upon  
3 whether the form of communication was such that it would procure action from the judiciary.”).

4 Several California courts have declined to stay proceedings pending an anti-SLAPP appeal,  
5 particularly where there are claims that are not subject to the anti-SLAPP statute. *See, e.g.,*  
6 *Shanker v. Shoffner*, No. B255399, 2015 WL 1934620, at \*3 (Cal. App. April 29, 2015)  
7 (permitting discovery into malicious prosecution claim) *Mangine v. Steier*, No. B219022, 2011  
8 WL 3506159, at \*6 (Cal. App. Aug 9, 2011) (allowing claim on bad faith retention of security  
9 deposit to proceed); *Faro De Luz, Inc. v. Morales*, No. B223488, 2011 WL 5429470, at \*3 (Cal.  
10 App. Nov. 9, 2011) (permitting attorney’s fees motion); *Dinaali v. Equity Title Company*,  
11 No.B241381, 2014 WL 461851, at \* (Cal. App. Feb. 5, 2014) (continuation of trial court  
12 proceedings during appeal).  
13

14 In addition to California, states with statutes virtually identical to Nevada’s anti-SLAPP  
15 statute expressly limit the application of the procedural protections in the anti-SLAPP statute to  
16 causes of action covered by the same in order to prevent abuse of the statute and the absurd results  
17 that would be created by Defendants’ interpretation of the law. For example, in *Rogers v. Dupree*,  
18 340 Ga. App. 811, 815-16, 799 S.E. 2d 1, 5 (Ga. App. 2017), the Court of Appeals of Georgia  
19 held, “for the procedural protections of the anti-SLAPP statute to apply, there must be a threshold  
20 showing that the claims could be reasonably construed as a statement or petition in relation to or  
21 in connection with an *actual* official proceeding...The anti-SLAPP statute applies *only* to a  
22 SLAPP action.” *Id.* (emphasis in original). The Supreme Court of Rhode Island held the same,  
23 denying a stay of proceedings when the anti-SLAPP statute did not apply, in *In re McKenna*, 110  
24 A.3d 1126, 1147 (2015), stating, “[w]e find no merit in respondent’s claim that this process is  
25 somehow being used as a vehicle for chilling his free speech rights, not in his claim that the anti-  
26 SLAPP statute has any applicability to this type of proceeding. Accordingly, we deny  
27 respondent’s motion to stay these proceedings...” *Id.*  
28

1 Defendants erroneously argue that “[i]f Plaintiff’s assertion of their own argument on  
2 appeal were sufficient to prevent application of NRS 41.660(e)(2), the statute would be rendered  
3 entirely meaningless” Objection at 5. Instead of addressing the Land Owners’ true position—that  
4 this Court’s finding that three claims wholly fall outside the scope of NRS 41.660, thus preventing  
5 the application of the statute’s clause providing for a stay of discovery—Defendants crudely  
6 attempt to mischaracterize and misrepresent Plaintiff’s position. Defendants are wrong. What is  
7 significant about the Court’s ruling on the special motion to dismiss is not just that it found in the  
8 Land Owners’ favor, it is the specific findings that certain claims were not subject to the anti-  
9 SLAPP statute. If the Court found that the claims were subject to the statute, but that factual  
10 issues prevented granting the special motion to dismiss, the provisions of NRS 41.660 would  
11 govern, including the stay of discovery. But the Court did not; which is why there should be no  
12 stay of discovery as to those claims. Defendants’ failure to address this particular point combined  
13 with their desperate attempt to falsely portray the Land Owners’ position are self-inflicted wounds  
14 and further demonstrate the frailty of Defendants’ arguments. *See Budget Rent-A-Car Sys., Inc.*  
15 *v. Consol. Equity LLC*, 428 F.3d 717, 718 (7th Cir. 2005) (“Budget’s mischaracterization further  
16 undermines the credibility of its submissions.”).

17  
18 The Court has already ruled that the statute does not apply to certain causes of action  
19 asserted by the Land Owners. Defendants cannot avail themselves of the procedural protections  
20 from a statute that has no application to the claims at issue. To hold otherwise would be an  
21 invitation to rampant abuse of the anti-SLAPP statute’s protections and would improperly and  
22 unjustly handcuff district courts across the State.

23 **B. Discovery Can Commence Regardless of the Filing of an Answer**

24 Defendants’ second objection to the Report and Recommendations is that discovery  
25 cannot commence because no answer has been filed. While ordinarily the filing of an answer  
26 precedes the commencement of discovery, NRCP 26 does not mandate an answer to be filed  
27 before discovery commences. Indeed, NRCP 26(a) permits the commencement of discovery upon  
28



1 the filing of a joint case conference report or “**upon order by the court or discovery**  
2 **commissioner.**” *Id.* (emphasis supplied) (“At any time after the filing of a joint case conference  
3 report... or upon order by the court or discovery commissioner, any party who has complied with  
4 Rule 16.1(a)(1) may obtain discovery.”).<sup>1</sup> As such, the Court may compel the commencement of  
5 discovery without the filing of an answer<sup>2</sup> consistent with NRCP 16.1 and NRCP 26. Defendants’  
6 second objection should be overruled.  
7

### 8 **III. CONCLUSION**

9 The Land Owners’ respectfully request that the Court find that discovery is appropriate as  
10 to the claims that are not properly subject to Nevada’s anti-SLAPP stature and affirm and adopt  
11 the Discovery Commissioner’s Report and Recommendations.

12 Dated this 30<sup>th</sup> day of January, 2019.

13  
14 **THE JIMMERSON LAW FIRM, P.C.**

15  
16 By: /s/ James J. Jimmerson, Esq.

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21 *Attorneys for Plaintiffs*

22  
23  
24  
25 <sup>1</sup> NRCP 26(d) and NRCP 16.1(f) also permit the Court to waive certain discovery requirements. *See, e.g.,*  
26 *Shuette v. Beazer Homes Holdings Corp.*, 121 Nev. 837, 852, 124 P.3d 530, 541 (2005) (“NRCP 16.1(f)  
permits district courts to waive pretrial discovery requirements...”).

27 <sup>2</sup> To the extent the Court would require an answer to be filed prior to commencing discovery, the Court  
28 should order Defendants to file an answer.

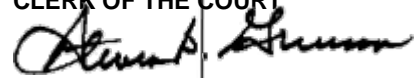
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# EXHIBIT 1

# EXHIBIT 1



1 **FFCL**

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10 **DISTRICT COURT**

11 **CLARK COUNTY, NEVADA**

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

17 Plaintiffs,

18 v.

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

22 Defendants,

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

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

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

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

JUN 12 2018

APP 0699

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

### FINDINGS OF FACT

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

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

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

4. Plaintiffs' Complaint alleged the following facts:

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

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

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

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

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

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

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

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

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

24 TO: City of Las Vegas

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

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

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

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

6 *See Comp., Ex. 1.*

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

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

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

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

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

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

## CONCLUSIONS OF LAW

APP 0703



1           9. Nevada’s anti-SLAPP statute is predicated on protecting ‘well-  
2 meaning citizens who petition the government and then find themselves hit with  
3 retaliatory suits known as SLAPP[] [suits].” *John v. Douglas Cnty. Sch. Dist.*, 125  
4 Nev. at 753, 219 P.3d at 1281. (citing comments by State Senator on S.B. 405 Before  
5 the Senate, 67th Leg. (Nev., June 17, 1993)).  
6

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

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

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

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

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

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

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

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

1           *NRS 41.637*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4           31. A complaint will not be dismissed for failure to state a claim “unless  
5 it appears beyond a doubt that the plaintiff could prove no set of facts which, if  
6 accepted by the trier of fact, would entitle him [or her] to relief.” *See Breliant*, 109  
7 Nev. at 846, 858 P.2d at 1260 (*quoting Edgar v. Wagner*, 101 Nev. 226, 228, 699  
8 P.2d 110, 112 (1985) (citation omitted)).

9           32. *LT Intern. Ltd. v. Shuffle Master, Inc.*, 8 F.Supp.3d 1238, 1248 (D.  
10 Nev. 2014) provides that allegations of tortious interference with prospective  
11 economic relations need not plead the existence of a valid contract and must only  
12 raise plausible claim for relief under NRCP 8 to avoid dismissal.

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

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

19           35. Generally, the court will not take judicial notice of facts in a different  
20 case, even if connected in some way, unless the party seeking such notice  
21 demonstrates a valid reason for doing so. *Mack v. Estate of Mack*, 125 Nev. 80,  
22 91, 206 P.3d 98, 106 (Nev. 2009) (holding that the court will generally not take  
23 judicial notice of records in other matters); *Carson Ready Mix v. First Nat’l Bk.*,  
24  
25  
26  
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1 97 Nev. 474, 476, 635 P.2d 276, 277 (Nev. 1981) (providing that the court will not  
2 consider evidence not appearing in the record on appeal).

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

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

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

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

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

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

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

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

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



**ORDER**

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

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

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


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


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

  
DISTRICT COURT JUDGE


Respectfully Submitted:

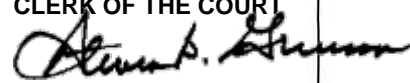
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11 STEVE CARIA

12 **DISTRICT COURT**

13 **CLARK COUNTY, NEVADA**

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

19 Plaintiffs,

20 v.

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

24 Defendants,

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

**ORDER DENYING PLAINTIFFS'  
MOTION TO COMMENCE DISCOVERY**

DATE OF HEARING: 2/20/19

TIME OF HEARING: 9:00AM

25  
26  
27  
28 APR 03 2019

1 Plaintiffs' Motion to Commence Discovery (the "Motion") came on for hearing on  
2 February 20, 2019, at 9:00 am before the Honorable Richard F. Scotti. James J. Jimmerson and  
3 James M. Jimmerson of the Jimmerson Law Firm appeared on behalf of Plaintiffs. Mitchell J.  
4 Langberg of Brownstein Hyatt Farber Schreck appeared on behalf of Defendants.

5 After considering the Motion, Defendants Objection to the Report and Recommendation  
6 on the Motion issued by the Discovery Commissioner, all related papers, the pleading and papers  
7 on file in this matter, and the argument of counsel, and good cause appearing:

8 The Court makes the following findings:

9 1. The Court previously denied Defendants' Special Motion to Dismiss, in part, on  
10 the grounds that Defendants did not "meet their threshold burden of establishing, by a  
11 preponderance of the evidence, that the Landowners' claims against Defendants are based on  
12 their good faith communication in furtherance of the right to petition or the right to free speech in  
13 direct connection with an issue of public concern pursuant to NRS 41.660(3)(a);

14 2. Thereafter, and pursuant to statute, Defendants filed a timely appeal of this Court's  
15 order denying the Special Motion to Dismiss;

16 3. Plaintiffs now seek to commence discovery;

17 4. Plaintiffs filed the Motion with the Discovery Commissioner seeking an order  
18 allowing Plaintiffs to commence discovery;

19 5. The Discovery Commissioner issued a report and recommendation that discovery  
20 should commence;

21 6. Defendants filed a timely objection to that report and recommendation.

22 The Court makes the following conclusions of law:

23 1. NRS 41.660(3)(e) mandates that a District Court stay all discovery pending an  
24 appeal from an order denying the Special Motion to Dismiss.

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26 //

27 //

ORDER

Therefore, IT IS HEREBY ORDERED that Plaintiffs' Motion to Commence Discovery is  
DENIED.

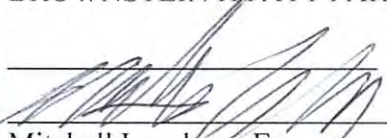
DATED this 5<sup>th</sup> day of March, 2019.

  
Hon. Richard F. Scotti, District Court Judge

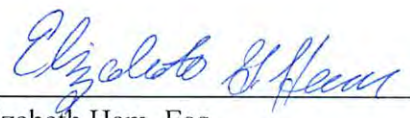
TM

Respectfully submitted by:

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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.<sup>1</sup> 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

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<sup>1</sup>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))).<sup>2</sup> 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.<sup>3</sup> As

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<sup>2</sup>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.

<sup>3</sup>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)).<sup>4</sup> 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).

<sup>4</sup>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).<sup>5</sup> See *Rosen*, 135 Nev., Adv. Op. 59, \_\_\_ P.3d at \_\_\_ (observing that “[a] determination of good faith

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<sup>5</sup>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



plaintiffs' 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.<sup>6</sup> We therefore conclude that the district court erred in determining that

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<sup>6</sup>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.

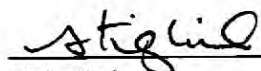
*Whether respondents are entitled to discovery relevant to opposing the special motion to dismiss is an issue the district court must address in the first instance on remand*

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.<sup>7</sup>

  
Gibbons

  
Stiglich

  
Cadish

<sup>7</sup>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