

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. 21-1155 a.m.
Elizabeth A. Brown
(lead clerk) Clerk of Supreme Court

Consolidated With:

82880

(same caption)

JOINT APPENDIX SUBMITTED BY APPELLANTS AND APPELLEES

VOLUME 6 (Pages 729-829)

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JOINT APPENDIX INDEX

Vol.	Description	Date	Bates No.
1	Complaint with Exhibits	3/15/18	1-95
2	Request for Judicial Notice in Support of Special Motion to Dismiss	4/13/18	96-147
2	Motion to Dismiss 12(b)(5)	4/13/18	148-162
2	Special Motion to Dismiss	4/13/18	163-197
2	Opposition to Special MTD	5/4/18	198-219
2	Opposition to MTD 12(b)(5)	5/7/18	220-235
2	Reply to Special Motion to Dismiss	5/9/18	236-251
2	Reply to MTD 12(b)(5)	5/9/18	252-262
2	Request for Judicial Notice in support of Reply to Special MTD	5/9/18	263-300
2	Plaintiff's First Supplement to their Opposition to Special MTD	5/11/18	301-305
3	Plaintiff's Second Supplement to their Opposition to Special MTD	5/11/18	306-327
3	Defendants' Supplement in Support of MTD	5/23/18	328-365
3	Plaintiff's Supplement in Support of Opposition to Special MTD	5/23/18	366-425
4	Plaintiffs' Errata to Complaint	6/11/18	426-523
4	Findings of Fact, Conclusion of Law denying Motion to Dismiss	6/20/18	524-537
4	Notice of Appeal to FFCOL	6/27/18	538-572
5	Plaintiffs' Motion for an Order Permitting Discovery	9/14/18	573-631
5	Defendants' Opposition to Mtn for Discovery	10/1/18	632-639

5	Plaintiffs' Reply to Mtn for Discovery	10/12/18	640-664
5	Plaintiffs' Supplemental Exhibit in Further Support of Discovery Mtn	10/17/18	665-670
5	Defendants' Supplemental Exhibits in Further Support of Opposition to Mtn for Discovery	10/18/18	671-679
5	Minutes and Order from Discovery Commissioner	10/19/18	680-681
5	Defendants' Objections to the Discovery Commissioner's Report and Recommendation	1/3/19	682-688
5	Plaintiffs' Response to Objections to R&R	1/30/19	689-712
5	Order Denying Mtn for Discovery	4/11/19	713-715
5	Nevada Supreme Court Order on remand	1/23/20	716-728
6	Nevada Supreme Court Order on Rehearing	2/27/20	729-730
6	Supplemental brief for limited discovery	5/6/20	731-737
6	Opposition to request for discovery	5/11/20	738-748
6	May 29, 2020, Minute Order		749
6	Defendants' Request for Clarification	5/29/20	750-752
6	Minute Order on Request for Clarification	6/5/20	753
6	Defendants' Motion for protective order	7/2/20	754-799
6	Plaintiff's response to motion for protective order	7/7/20	800-815
6	Reply in support of protective order	7/9/20	816-821
6	July 21, 2020 Minute order	7/21/20	822

6	Order granting protective order	8/3/20	823-829
7	Plaintiffs' Supplemental Opposition to Motion to Dismiss (PART 1)	10/14/20	830-995
8	Plaintiffs' Supplemental Opposition to Motion to Dismiss (PART 2)	10/14/20	996-1216
9	Errata to Supplemental Opposition to Motion to Dismiss	10/14/20	1217-1222
9	Defendants' Supplemental Reply to Motion to Dismiss	10/30/20	1223-1254
9	Declaration of Mitchell Langberg in Support of Supplemental Brief (Reply) to Special MTD	10/30/20	1255-1257
9	November 9, 2020, Minute Order	11/9/20	1258-1259
9	Findings of Fact and Conclusions of Law granting Motion to Dismiss	12/3/20	1260-1272
9	Plaintiffs' Objections to Proposed Findings of Fact, Conclusions of Law as Proposed by Plaintiff	12/3/20	1273-1286
9	Notice of Entry of Order on FF, COL and Order granting Special MTD	12/10/20	1287-1302
9	Motion to Reconsider Order Granting Special MTD	12/24/20	1302-1356
9	Motion for Attorneys Fees and Costs	12/31/20	1357-1420
10	Defendants' Opposition to MTN to Reconsider Order Dismissing	1/7/21	1421-1428
10	Plaintiffs' Reply to Mtn to Reconsider	1/14/21	1429-1440
10	Errata to Reply to Mtn Reconsider	1/14/21	1441-1477
10	Opposition to Motion for Attorney's Fees and Costs	1/22/21	1478-1591
11	Minute Order Denying Motion to Reconsider	1/25/21	1592

11	Mtn to Reconsider Minute Order dated 1/25/21	2/2/21	1593-1596
11	Order Denying Mtn to Reconsider Order Dismissing	2/4/21	1597-1604
11	Declaration of Lisa Rasmussen submitted as Supplement to Mtn for Attorney's Fees	2/12/21	1605-1607
11	Reply in support of Motion for Attorney's Fees and Costs	2/12/21	1608-1614
11	Order Granting Motion for Attorney's Fees and Costs	4/16/21	1615-1620
11	Notice of Appeal Case No. 82338	1/8/21	1621-1639
11	Notice of Appeal Case No. 82880	5/5/21	1640-1650
11	Reporter's Transcript of Proceedings on SLAPP Motion to Dismiss	5/14/18	1651-1712
11	Reporter's Transcript of Discovery Commissioner Proceedings	10/19/18	1713-1728
11	Reporter's Transcript of Post Remand Hearing	4/29/20	1729-1744
11	Reporter's Transcript of Proceedings, Discovery/Protective Order Hearing	7/13/20	1745-1775
11	Reporter's Transcript of Proceedings, Discovery/Protective Order Hearing	7/29/20	1776-1781
11	Reporter's Transcript of Proceedings, on Special Motio to Dismiss, Post Remand	11/9/20	1782-1792
11	Reporter's Transcript of Proceedings on Motion for Attorney's Fees	3/31/21	1793-1815

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

FEB 27 2020


ELIZABETH L. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK


ORDER DENYING REHEARING


On January 23, 2020, we entered an order vacating the district court's order denying appellants' anti-SLAPP special motion to dismiss and remanding for the district court to consider respondents' request for discovery under NRS 41.660(4). Appellants have petitioned for rehearing, arguing that this court overlooked the connection between its conclusion that appellants met the first prong of the anti-SLAPP analysis and the applicability of the absolute litigation privilege. They assert that remanding for the district court to consider the discovery request is unnecessary because the privilege applies and bars respondents' claims. Appellants contend that by not expressly addressing their arguments regarding the litigation privilege but stating that all issues have been considered, our order suggested that we rejected the applicability of the litigation privilege.

Having considered the rehearing petition, we deny it, as appellants have failed to demonstrate that rehearing is warranted. NRAP 40(c). Specifically, as provided in our order vacating and remanding, because the challenged order did not rule on the merits of respondents' request for limited discovery, we declined to decide in the first instance whether respondents met the standard in NRS 41.660(4) for obtaining such discovery. Our order did not reject appellants' arguments regarding the litigation privilege but merely stated that additional arguments not expressly addressed did not warrant a different outcome beyond vacating the district court's order and remanding for the district court to consider respondents' request for discovery in the first instance. Thus, although we deny rehearing, we clarify that our January 23 order should not be construed as precluding appellants from challenging limited discovery on remand based on application of a litigation privilege or any other reason.

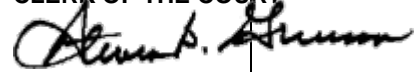
It is so ORDERED.


Gibbons J.


Stiglich J.


Cadish J.

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



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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 THROUGH
100,

Defendants.

Case No.: A-18-771224-C

Dept: II

**BRIEF IN SUPPORT OF REQUEST
FOR LIMITED DISCOVERY**

COME NOW the Plaintiffs, by and through their counsel, Lisa A. Rasmussen, Esq.
of the Law Offices of Kristina Wildeveld & Associates, and hereby submit this brief, as
permitted by the Court in support of Plaintiffs request for limited discovery.

BRIEF IN SUPPORT OF REQUEST FOR LIMITED DISCOVERY - 1

APP 0731

1 **I. Procedural History**

2 Plaintiffs filed their Complaint in May 2018 alleging intentional and negligent
3 interference with a prospective business relationship, intentional and negligent
4 misrepresentation and civil conspiracy seeking monetary damages in addition to
5 equitable relief. In April 2018 Defendants filed a Motion to Dismiss pursuant to NRS
6 41.635, et seq. (Nevada's Anti-SLAPP statutory scheme) as well as a Motion to Dismiss
7 pursuant to NRCP 12(b)(5). A hearing was held on May 14, 2020 on the Motion to
8 dismiss, which was denied. Plaintiffs requested the opportunity to conduct discovery
9 at that hearing. Supplemental briefing followed the hearing. This court determined on
10 May 29, 2018, *inter alia*, that the defendants had not established by a preponderance of
11 the evidence that their communication was made in good faith.

12 The defendants filed a notice of appeal, which the statute allows, in June 2018.
13 While the appeal was pending, Plaintiff filed a motion to permit discovery to commence.
14 The discovery commissioner granted that motion in part and the defendants objected to
15 her report and recommendation. This court sustained the objection and, relying on NRS
16 41.5660(3)(e), denied the motion to commence discovery, effectively staying any
17 discovery in this matter.

18 The Nevada Supreme Court vacated and remanded this matter to this court to
19 the extent that (a) intentional tort allegations are not immune from anti-SLAPP treatment
20 and (b) that this court erred in concluding that the appellants/defendants had not met
21 their burden at step one of the anti-SLAPP analysis. The Nevada Supreme Court also
22 stated that the Plaintiffs/Respondents did not present prima facie evidence as required
23 by NRS 41.660(3)(b) of demonstrating a probability of prevailing on their claims, instead
24 relying on the fact that the claims were not made in good faith. The Supreme Court
25 noted, however, that it appeared that this issue got conflated with other issues related
26 to California law. Thus, the Nevada Supreme Court, on the record before it, believed
27 that this court erred in its determination that the Plaintiffs/Respondents had met their
28 BRIEF IN SUPPORT OF REQUEST FOR LIMITED DISCOVERY - 2

1 two-step burden. What the Nevada Supreme Court did not conclude is that the
2 Plaintiffs/Respondents could never meet their two-step burden.

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

7
8 Whether respondents met the standard in NRS 41.660(4) for
9 obtaining discovery relevant to a special motion to dismiss is a decision the
10 district court is better situated to address, and we therefore decline to
11 address it in the first instance in the context of this interlocutory appeal.

12 Accordingly, for the reasons set forth above, we vacate the portion
13 of the district court's order denying appellant's anti-SLAPP special motion
14 to dismiss and remand to the district court for it to determine whether
15 respondents are entitled to discovery under NRS 41.660(4).

16 NSC Order, page 12.

17 Thus, despite the disingenuous urging of defense counsel at the remand/status
18 check hearing on April 29th before this Court, there are actually determinations that need
19 to be made by this Court and the Nevada Supreme Court did not direct this Court to
20 find for the Defendants and dismiss the case. The Nevada Supreme Court's findings
21 were made based on the record before that court.

22 Plaintiffs' previous requests for discovery, at the hearing on the defendant's
23 motion, and after the appeal was taken are incorporated herein.

24 **II. NRS 41.660 Specifically Permits and Contemplates Limited Discovery**

25 NRS 41.660(3)(e) states:

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

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

11 The Nevada Supreme Court held that: “NRS 41.660(4) provides that “the court
12 shall allow limited discovery” when a party needs access to information held by the
13 opposing party to meet or oppose the plaintiff’s burden under the second prong of the
14 anti-SLAPP statute:
15

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

21 Toll v. Wilson, 135 Nev. at 1220.

22 And, as the Nevada Supreme Court also noted in its order in this case, the anti-
23 SLAPP statutes contemplate “consideration of the substantive merits of the plaintiff’s
24 complaint, but Plaintiff must produce evidence that would be admissible at trial.” NSC
25 Order, page 10, *citing to* HMS Capital, Inc. v. Lawyer’s Title Co, 12 Cal.Reptr.3d 786, 791
26 (Ct. App. 2004), De Havilland v. FX Networks LLC, 230 Cal. Rptr. 3d 625, 634 (Ct. App.
27 2018) and Bikkina v. Mahadevan, 193 Cal. Rptr. 3d 499, 511 (Ct. App. 2015).

1 A determination as to whether Plaintiff can meet his burden of a probability of
2 prevailing on the merits of the case requires that this Court make credibility findings
3 about statements made by the defendants. On the record before this Court, this Court
4 cannot determine whether or not the Defendants' declarations about what they relied on
5 are truthful, accurate, believable, or not believable. And that is because Plaintiffs have
6 not had an opportunity to depose the Defendants. See Shapiro v. Welt, 133 Nev. Adv Rep.
7 6, 389 P.3d 262, 267-68 (Nev. 2017) (no communication may seek refuge under NRS 41.660
8 unless it is truthful and made without knowledge of falsehood.). To demonstrate a
9 probability of success on the merits, Plaintiff must show by a preponderance of the
10 evidence that he is likely to prevail on the merits of some or all of his claims. "A
11 preponderance of evidence requires that the evidence lead the fact finder to conclude that
12 the existence of a contested fact is more probable than its non-existence." In re M.F., 132
13 Nev. 209, 217 (2016).

14
15 It is central to Plaintiffs' burden that they be permitted to depose the Defendants
16 and that they be permitted to propound limited written discovery prior to those
17 depositions, including limited requests for production, requests for admission and
18 interrogatories. This court may limit the number of each discovery request made to each
19 defendant if it wishes. Plaintiffs must be able to ask the Defendants what documents they
20 are relying on, what information they are relying on, or if that information was provided
21 to them by third persons.

22 This Court must then make a credibility determination as to whether or not it
23 believes the testimony of the defendants proffered thus far, in addition to any responses
24 that provide that address the merits of Plaintiffs' claims. That determination is central to
25 this Court's ultimate determination as to whether Plaintiffs can show by a preponderance
26 of the evidence that they are likely to prevail on the merits. This court cannot make that
27 credibility determination on the face of the declarations without more information.

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CONCLUSION

Wherefore, it is respectfully requested that for each of the reasons set forth herein, that this Court enter an order permitting limited discovery in this case, to include the depositions of the three defendants and limited written discovery prior to those depositions. Plaintiffs do not object to the court reasonably limiting the written discovery requests for this purpose only. Following this limited discovery, Plaintiffs will request supplemental briefing on the merits prong and Plaintiffs' ability to establish by a preponderance of the evidence that they are likely to prevail in this matter.

The Nevada Supreme Court's order contemplates that this Court will determine what is before it and what additional information would guide its decision. Respectfully, this Court does not have all the information it needs to determine whether Plaintiffs can establish a probability of prevailing on the merits without assessing the Declarations of the defendants in their appropriate context. This is Plaintiffs' burden, but Nevada's anti-SLAPP statute does not contemplate precluding a plaintiff from meeting his burden. Instead, it specifically allows for limited discovery where appropriate. Limited discovery as proposed herein is appropriate in this case.

DATED: May 6, 2020.

Respectfully submitted,

THE LAW OFFICES OF KRISTINA WILDEVELD & ASSOCIATES,

/s/ Lisa A. Rasmussen

LISA A. RASMUSSEN, ESQ.

NEVADA BAR NO. 7491

ATTORNEYS FOR PLAINTIFFS

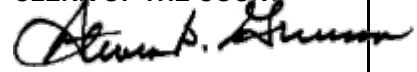
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CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the foregoing BRIEF IN SUPPORT OF REQUEST FOR LIMITED DISCOVERY via this court's EFile and Serve program on all parties receiving service in this case on this 6th day of May, 2020, including but not limited to:

/s/ Lisa A. Rasmussen

Lisa A. Rasmussen, Esq.



OPPS

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DANIEL OMERZA, DARREN BRESEE, and
STEVE CARIA

DISTRICT COURT

CLARK COUNTY, NEVADA

FORE STARS, LTD., a Nevada limited
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SEVENTY ACRES, LLC, a Nevada
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Plaintiffs,

v.

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

Defendants,

CASE NO.: A-18-771224-C

DEPT. NO.: II

**DEFENDANTS' BRIEF IN OPPOSITION
TO REQUEST FOR LIMITED DISCOVERY**

COME NOW Defendants, DANIEL OMERZA, DARREN BRESEE, and STEVE CARIA, by and through their counsel, Mitchell J. Langberg, Esq. of Brownstein Hyatt Farber Schreck, LLP, submitting this brief in opposition to Plaintiff's Request for Limited Discovery.

I. INTRODUCTION

The sole issue for this Court to determine is whether Plaintiffs ("Developers") are entitled to discovery to oppose Defendants' ("Residents") anti-SLAPP motion.

All of Developers' claims arise from Defendants' First Amendment activities directly connected to and in anticipation of a quasi-judicial proceeding. Therefore, all of the claims are barred by the absolute litigation privileged. Though Residents never made a false statement of fact, it does not matter. The absolute privilege applies regardless of truth or falsity, whether knowing or otherwise.

Because the Residents' statements are all absolutely privileged, Developer cannot meet its statutory burden to show discovery is "necessary." No discovery could overcome the privilege and allow Developer to make a *prima facie* showing that its claims have merit.

II. HISTORY ON APPEAL AND SCOPE OF REMAND

As this Court will recall, and as described in the Nevada Supreme Court's Order Vacating and Remanding (the "Order") in this matter, this case arises out of Residents' efforts to collect declarations to be submitted as part of a quasi-judicial City Council proceeding. Residents were working in opposition to the Developers' campaign seeking an amendment to a master plan and/or a general plan.

The Residents filed an anti-SLAPP motion which was denied by this Court. The Residents appealed. The denial was reversed and remanded.

Considering the first prong of the anti-SLAPP two-prong analysis, the Nevada Supreme Court found the Residents' speech *was* within the categories protected by the anti-SLAPP statute and that they had "*met* their burden of showing that the communications were truthful or made without knowledge of their falsehood." Order at 3-4 (emphasis added). The Court also found that "[Developers] failed to meet their burden of demonstrating with *prima facie* evidence a probability of prevailing on their claims." Order at 9.

1 However, because Developers made a request for discovery before the anti-SLAPP
2 motion was decided and because this Court never reached the issue of whether discovery was
3 appropriate, the case was remanded to this Court to make that determination. Order at 12.¹

4 Developers suggest they are *entitled* to discovery on remand. But, they have not provided
5 the Supreme Court's comments when it denied Residents' rehearing request on this very issue:

6 [O]ur January 23 order should not be construed as precluding
7 appellants from challenging limited discovery on remand based on
application of a litigation privilege or any other reason.

8 February 27, 2020, Order Denying Rehearing (attached as Exhibit A).

9 The litigation privilege makes the requested discovery unnecessary and, therefore,
10 inappropriate. Discovery should be denied and the anti-SLAPP motion should be granted.

11 **III. ARGUMENT**

12 **A. The Statutory Standard for Discovery**

13 NRS 41.660(4) expressly provides:

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

18 Thus, there are two critical elements. First, discovery is only allowed to help a party meet its
19 burden under NRS 41.660(3)(b)—the prong two obligation for Developers to make a *prima facie*
20 showing on each of its claims. Second, the discovery must be "necessary" to meet that burden.

21
22 ¹ A matter of professionalism requires this Court's attention. Developers' counsel has accused
23 Residents' counsel of violating his ethical duty of candor to this Court. On Page 3, lines 15-20 of
24 her brief, she states that counsel was "disingenuous." She incorrectly claims counsel told this
25 Court it did not have to determine anything and that the Nevada Supreme Court had directed this
26 Court to dismiss the case. The Court will recall that at the April 29, 2020, hearing, it was
27 *Residents'* counsel who summarized the proceedings in the Supreme Court and identified the
28 issue of discovery as the matter to be considered on remand. *It was then this Court* that inquired
whether there would be anything left to consider *if it determined discovery was inappropriate*.
Residents' counsel correctly responded by explaining if discovery is denied, the Supreme Court's
determination that Developers failed to make their prong two *prima facie* showing would mean
there was nothing left but to grant the anti-SLAPP motion and dismiss the case (subject to a
motion for fees). Residents' counsel was accurate and candid. The accusation, itself, is
inappropriate. Counsel should be admonished by this Court, particularly in light of the true facts.

On Page 5, lines 3-5 of their brief, Developers seems to seek discovery in relation to the Residents' first prong showing that their statements were truthful or made without knowledge of falsity. Developers say:

...this Court cannot determine whether or not the Defendants' declarations about what they relied on are truthful, accurate, believable, or not believable."

But, as set forth above, the Supreme Court already determined the Residents' had demonstrated by a preponderance of the evidence that their statements were truthful or made without knowledge of falsity. Moreover, the statute does not allow for discovery in connection with the prong one obligations set forth in Subsection 3(a).

B. When the Litigation Privilege Applies, No Discovery is Appropriate

Because NRS 41.660(4) allows for discovery *only* when "information necessary" to meet the burden of making a *prima facie* showing is not otherwise available," no discovery is appropriate when the litigation privilege applies.

The Nevada Supreme Court has often noted (including in Footnote 2 of the Order) that Nevada courts "routinely look[] to California courts for guidance in this [anti-SLAPP] area." The issue of the interplay between the litigation privilege and discovery on anti-SLAPP motions was directly addressed by the California courts in *Blanchard v. DIRECTV, Inc.*, 20 Cal.Rptr.3d 385, 123 Cal.App.4th 903 (Cal.App. 2 Dist., 2004). There, the court explained that when the litigation privilege has been triggered, it "applies without regard to 'motives, morals, ethics or intent.'" *Id.* at 922, 398. Therefore, the court concluded that when the privilege applies, no discovery should be allowed because "the litigation privilege renders any such evidence irrelevant" and discovery would not "negate the privilege." *Id.*

C. The Litigation Privilege Applies in this Case

1. The litigation privilege

Nevada recognizes "the long-standing common law rule that communications uttered or published in the course of judicial proceedings are absolutely privileged so long as they are in some way pertinent to the subject of controversy." *Circus Circus Hotels, Inc. v. Witherspoon*, 99 Nev. 56, 60, 657 P.2d 101, 104 (1983) (citation omitted). *This rule includes "statements made in*

1 *the course of quasi-judicial proceedings.*" *Knox v. Dick*, 99 Nev. 514, 518, 665 P.2d 267, 270
2 (1983) (emphasis added) (citation omitted); *see also Circus Circus*, 99 Nev. at 61 ("the absolute
3 privilege attached to judicial proceedings has been extended to quasi-judicial proceedings before
4 executive officers, boards, and commissions") (citations omitted).

5 Critically, the statement at issue does not have to be made during any actual proceedings.
6 See *Fink v. Oshins*, 118 Nev. 428, 433, 49 P.3d 640, 644 (2002) (emphasis added) ("the privilege
7 applies not only to communications made during actual judicial proceedings, but also to
8 communications preliminary to a proposed judicial proceeding") (footnote omitted). "[B]ecause
9 the scope of the absolute privilege is broad, a court determining whether the privilege applies
10 should resolve any doubt in favor of a broad application." *Clark County Sch. Dist. v. Virtual*
11 *Educ. Software, Inc.*, 125 Nev. 374, 382, 213 P.3d 496, 502 (2009) (citation omitted) (*citing Fink*,
12 *supra*).

13 2. **The relevant City Council proceedings were quasi -judicial**

14 In the Order, the Nevada Supreme Court determined that the statements underlying each
15 of Respondents' claims were made in good faith in connection with issues under consideration by
16 a legislative body. In this case, that was the Las Vegas Council's consideration of "amendment to
17 the Master Plan/General Plan affecting Peccole Ranch." Order, p. 6.

18 Those City Council proceedings are quasi-judicial. As set out more fully in the original
19 anti-SLAPP briefing, Unified Development Code (UDC) section 19.16.030, *et. seq.* addresses
20 amendments to the General Plan. It provides an extensive set of standards establishing how the
21 City Council must exercise judgment and discretion, hear and determine facts, and render a
22 reasoned written decision. In the course of those proceedings, the Council has the power to order
23 the attendance of witnesses and the production of documents. Las Vegas City Charter
24 §2.080(1)(d),(2)(a). This entire process meets the judicial function test for "determining whether
25 an administrative proceeding is quasi-judicial." *State ex rel. Bd. of Parole Comm'rs v. Morrow*,
26 127 Nev. 265, 273, 255 P.3d 224, 229 (2011). Moreover, the Developers have admitted it was a
27 quasi-judicial proceeding. *See*, Defendants' Request for Judicial Notice filed on May 9, 2018,
28 Exh. 1, p. 16, lines 415-420 (Mr. Hutchison (as counsel for these Developers) explaining that the

proceeding are quasi-judicial).

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

D. The Developers Requested Discovery Should be Denied

Developers have not done much to explain to this Court what specific discovery they are seeking. About all they say is on page 5 of their brief, arguing that, on the current record, this Court cannot determine whether the Residents' "declarations about what they relied on are truthful, accurate, believable, or not believable." Then, Developers merely state they want some written discovery and the depositions of each of the defendants. They do not even attempt to articulate what information they think they might garner that would be *necessary* for meeting their burden of making out a *prima facie* case on each of their claims.

Again, discovery is not permitted for the first prong of the anti-SLAPP analysis. And, in any event, the Nevada Supreme Court has determined that the Residents' demonstrated by a preponderance of the evidence that what they said was truthful are not knowingly false.

As it relates to the second prong and as set forth above, the litigation privilege clearly applies. Therefore, even if Developers had been more specific about what discovery they seek, such discovery would be superfluous.

Simply, after getting the opportunity to do yet another round of briefing, Developers unsupported demand for unspecified discovery to figure out "what they relied on" does not meet their burden of showing discovery is *necessary* to meet their prong two obligations under the anti-SLAPP statute—particularly in light of the absolute litigation privilege.

After being granted a week to submit their third brief the subject, any new facts, law or argument in their reply would be improper sandbagging.

The request for discovery should be denied. The anti-SLAPP motion should be granted. An order of dismissal should be entered.

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DATED this 11th day of May, 2020.

BROWNSTEIN HYATT FARBER SCHRECK, LLP

BY: /s/ Mitchell J. Langberg

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

mlangberg@bhfs.com

100 North City Parkway, Suite 1600

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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' BRIEF IN OPPOSITION TO REQUEST FOR LIMITED DISCOVERY** be submitted electronically for filing and/or service with the Eighth Judicial District Court via the Court's Electronic Filing System on the 11th day of May, 2020, to the following:

James J. Jimmerson, Esq.
The Jimmerson Law Firm, P.C.
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Email: ks@jimmersonlawfirm.com

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

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

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

EXHIBIT A

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

FEB 27 2020


ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

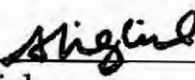
ORDER DENYING REHEARING

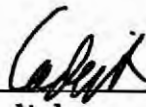
On January 23, 2020, we entered an order vacating the district court's order denying appellants' anti-SLAPP special motion to dismiss and remanding for the district court to consider respondents' request for discovery under NRS 41.660(4). Appellants have petitioned for rehearing, arguing that this court overlooked the connection between its conclusion that appellants met the first prong of the anti-SLAPP analysis and the applicability of the absolute litigation privilege. They assert that remanding for the district court to consider the discovery request is unnecessary because the privilege applies and bars respondents' claims. Appellants contend that by not expressly addressing their arguments regarding the litigation privilege but stating that all issues have been considered, our order suggested that we rejected the applicability of the litigation privilege.

Having considered the rehearing petition, we deny it, as appellants have failed to demonstrate that rehearing is warranted. NRAP 40(c). Specifically, as provided in our order vacating and remanding, because the challenged order did not rule on the merits of respondents' request for limited discovery, we declined to decide in the first instance whether respondents met the standard in NRS 41.660(4) for obtaining such discovery. Our order did not reject appellants' arguments regarding the litigation privilege but merely stated that additional arguments not expressly addressed did not warrant a different outcome beyond vacating the district court's order and remanding for the district court to consider respondents' request for discovery in the first instance. Thus, although we deny rehearing, we clarify that our January 23 order should not be construed as precluding appellants from challenging limited discovery on remand based on application of a litigation privilege or any other reason.

It is so ORDERED.


Gibbons J.


Stiglich J.


Cadish J.

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

A-18-771224-C

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Civil Matters

COURT MINUTES

May 29, 2020

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

May 29, 2020 10:00 AM Minute Order

HEARD BY: Scotti, Richard F.

COURTROOM: Chambers

COURT CLERK: Elizabeth Vargas

PARTIES Minute Order- No parties present.

PRESENT:

JOURNAL ENTRIES

- The Court GRANTS in part, and DENIES in part, Plaintiff's request for limited discovery. Plaintiff may serve one set of requests for production of documents, with no more than a total of fifteen (15) requests for documents to be allocated among the defendants, as Plaintiff sees fit; Defendants shall have two weeks to respond to such requests. Further, Plaintiff may take the depositions of the three defendants, each limited to four (4) hours. This limited discovery period commences immediately, and concludes on Friday, July 17, 2020, absent stipulation of the parties. The defendants have the option of appearing for deposition in person, or appearing by audio/visual means (at their own arrangements). The depositions may be set on two week's notice, at the time and place noticed by Plaintiff - after good faith attempt to meet and confer on the same. Any discovery dispute shall be brought before this Court upon request for an Order Shortening Time. Plaintiff may file a supplemental brief in opposition to the Motion to Dismiss by Wednesday, July 22, 2020. Plaintiff may file a supplemental reply by Monday, July 27, 2020. The Court will conduct a Hearing on the Defendants' Motion to Dismiss on Wednesday, July 29, 2020. The parties may modify this schedule by written stipulation approved by the Court.

7/29/20 9:30 AM DEFENDANTS' MOTION TO DISMISS

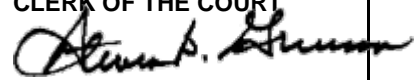
CLERK'S NOTE: This Minute Order was electronically served by Courtroom Clerk, Elizabeth Vargas, to all registered parties for Odyssey File & Serve. //ev 5/29/20

PRINT DATE: 05/29/2020

Page 1 of 1

Minutes Date: May 29, 2020

APP 0749



REQT

MITCHELL J. LANGBERG, ESQ., Bar No. 10118
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Counsel for Defendants,
DANIEL OMERZA, DARREN BRESEE, and
STEVE CARIA

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

v.

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

Defendants,

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

**DEFENDANTS' REQUEST FOR
CLARIFICATION RE MAY 29, 2020
MINUTE ORDER**

COME NOW Defendants, DANIEL OMERZA, DARREN BRESEE, and STEVE
CARIA, by and through their counsel, Mitchell J. Langberg, Esq. of Brownstein Hyatt Farber
Schreck, LLP, submitting this request for clarification of the Court's May 29, 2020, minute order.

...

...

POINTS AND AUTHORITIES

In its May 29, 2020, Minute Order regarding discovery, the Court granted limited discovery to Plaintiffs. However, the Court did not identify the substantive scope limits for such discovery.

As the Court knows, anti-SLAPP consists of a two prong analysis. The first prong (NRS 41.660(3)(a)) pertains to whether Defendants can show that “the claims are based upon a good faith communication in furtherance of the right to petition or the right of free speech.” The Nevada Supreme Court has already determined that Defendants have made that showing in this case. The second prong (NRS 41.660(3)(b)) pertains to whether Plaintiffs “have demonstrated with prima facie evidence a probability of prevailing on the claim.”

NRS 41.660(4) creates a discovery stay while the motion is pending. Only “*upon a showing*” by a party that information necessary to meet or oppose the burden pursuant to paragraph (b) of subsection 3 [the *second* prong] is in the possession of another party or a third party” will the court allow limited discovery “*for the purpose of ascertaining such information.*” (emphasis added).

Therefore, Defendants request that the Court clarify its order allowing discovery to make clear that discovery is only permitted in relation to the second prong of the anti-SLAPP analysis. Further, Defendants request that the Court clarify its order to limit the scope of such discovery to such prong two issues as were identified in Plaintiff’s papers (the only matters on which any “showing” could have been made).

DATED this 29th day of May, 2020.

BROWNSTEIN HYATT FARBER SCHRECK, LLP

BY: /s/ Mitchell J. Langberg
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mlangberg@bhfs.com
100 North City Parkway, Suite 1600
Las Vegas, NV 89106-4614

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of Brownstein Hyatt Farber Schreck, LLP, and pursuant to NRCP 5(b), EDCR 8.05, Administrative Order 14-2, and NEFCR 9, I caused a true and correct copy of the foregoing **DEFENDANTS' REQUEST FOR CLARIFICATION RE MAY 29, 2020 MINUTE ORDER** be submitted electronically for filing and/or service with the Eighth Judicial District Court via the Court's Electronic Filing System on the 29th day of May, 2020, to the following:

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

/s/ Paula Kay
an employee of Brownstein Hyatt Farber Schreck, LLP

A-18-771224-C

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Civil Matters

COURT MINUTES

June 05, 2020

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

June 05, 2020 12:00 AM Minute Order

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

COURT CLERK: Elizabeth Vargas

PARTIES Minute Order- No parties present.
PRESENT:

JOURNAL ENTRIES

- With regard to this Court's May 29, 2020 Minute Order, granting in part and denying in Part Plaintiff's request for limited discovery, the Court issues this clarification: The discovery permitted by the prior order must relate to the second prong of the anti-SLAPP analysis, and is limited to the matters identified in Plaintiff's papers, or the matters identified by the Plaintiff at the April 29th hearing.

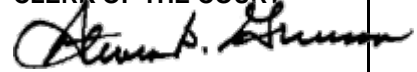
CLERK'S NOTE: A copy of this Minute Order was electronically served to all registered parties by the Courtroom Clerk, Elizabeth Vargas via Odyssey Efile and Serve. //ev 6/5/20

PRINT DATE: 06/08/2020

Page 1 of 1

Minutes Date: June 05, 2020

APP 0753



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

DISTRICT COURT
CLARK COUNTY, NEVADA

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

Plaintiffs,

v.

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

Defendants.

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

**DEFENDANTS' MOTION FOR
PROTECTIVE ORDER LIMITING
DISCOVERY ON ORDER SHORTENING
TIME**

Hearing Requested

HEARING REQUIRED
DATE: 7.13.2020
TIME: 9:00 AM



Defendants DANIEL OMERZA, DARREN BRESEE, and STEVE CARIA (collectively
“Defendants”), by and through its counsel of record Mitchell J. Langberg, Esq. of the law office
of Brownstein Hyatt Farber Schreck, LLP, hereby submit this Motion for Protective Order
Limiting Discovery on Order Shortening Time (the “Motion”).

This Motion is made and based on the following memorandum of points and authorities,
the declaration of Mitchell J. Langberg, Esq., the exhibits attached hereto, the papers

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1 and pleadings filed herein, and any oral argument this Court may consider.

2
3 DATED this 2nd day of July, 2020.

4 BROWNSTEIN HYATT FARBER SCHRECK, LLP

5 BY: /s/ Mitchell J. Langberg

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

7 mlangberg@bhfs.com

8 100 North City Parkway, Suite 1600

9 Las Vegas, NV 89106-4614

10 Telephone: 702.382.2101

11 Facsimile: 702.382.8135

12 *Counsel for Defendants*

13 DANIEL OMERZA, DARREN BRESEE, and

14 STEVE CARIA

ORDER SHORTENING TIME

Good cause appearing therefore, IT IS HEREBY ORDERED that **Defendants' Motion for Protective Order Limiting Discovery on Order Shortening Time** shall be heard on shortened time on the 13th day of July, 2020, at 9AM a.m./p.m. before the above entitled Court located at the Regional Justice Center, Department II, 200 Lewis Avenue, Las Vegas, Nevada 89155. Any opposition thereto shall be filed and served no later than the 7th day of July, at 5PM a.m./p.m. **Reply due NLT July 9, 2020 at 5PM.**

IT IS SO ORDERED. Blue Jeans call in: 408.419.1715; meeting ID:

DATED this 2nd day of July, 2020. **527 103 628**



DISTRICT COURT JUDGE

BWT **A-18-771224-C**



Respectfully Submitted By:

BROWNSTEIN HYATT FARBER SCHRECK, LLP

By: /s/ Mitchell J. Langberg
MITCHELL J. LANGBERG, ESQ., Bar No. 10118
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Las Vegas, Nevada 89106-4614
Telephone: 702.382.2101
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Counsel for Defendants
DANIEL OMERZA, DARREN BRESEE, and
STEVE CARIA

DECLARATION OF MITCHELL J. LANGBERG

I, Mitchell J. Langberg, hereby declare as follows:

1. I am an attorney with the law firm of Brownstein Hyatt Farber Schreck, LLP ("BHFS"), and counsel of record for Defendants Daniel Omerza, Darren Bresee, and Steve Caria ("Defendants") in this action. I have personal knowledge of the matters set forth in this Declaration, except for those matters stated upon information and belief, and, if called as a witness, could and would competently testify thereto.

2. On May 29, 2020, the Court issued an order (the "Order") permitting Plaintiffs' to conduct limited discovery pursuant to NRS 41.660(4).

3. The Court clarified by way of minute order on June 5, 2020 (the "Clarification").

4. The Order provides that any discovery dispute shall be brought before the Court on a request for an Order Shortening time.

5. Plaintiffs served requests for production of documents on June 24, 2020 at 5:59 PM.

6. Defendants believed the requests were beyond the scope of permissible discovery based on the Order, the Clarification, the remand order of the Nevada Supreme Court and the applicable statute.

7. On June 25, 2020, at 1:21 PM, Defendants' counsel requested a meet and confer conference for the next day.

8. Plaintiffs' counsel promptly responded. A meet and conference was scheduled for June 26, 2020. It took place and both counsel participated in good faith.

9. As a result of the conference, there were issues on which the parties could not agree, particularly as to the scope of permissible discovery. Amended requests were provided. But, they cured the quantity of requests, not the scope issue.

10. With respect to the scope of discovery, Plaintiffs' contention is that because the Clarification states that discovery "is limited to the matters identified in Plaintiff's papers..." and because "Plaintiffs' papers" must include their Complaint, they necessarily are permitted to conduct discovery on any issue in their Complaint.

11. My response was that Plaintiffs' requests were limited to the topics expressly identified by Plaintiffs in their brief to this Court.

12. Plaintiffs' sent new requests on Tuesday June 30, 2020 at 4:49 PM.

13. The scope issues which counsel have discussed remain.

14. Thus, counsel submits that, in the interest of justice and judicial economy, good cause exists to hear the Motion on an order shortening time.

15. The undersigned requests that the Court set the Motion for hearing as soon as the Court's calendar permits.

I declare under penalty of perjury under the laws of the State of Nevada that the forgoing is true and correct.

DATED this 3rd day of July, 2020.

/s/ Mitchell J. Langberg
MITCHELL J. LANGBERG, ESQ.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiffs and defendants have a fundamental disagreement about the scope of discovery authorized by this Court. Defendants' view is that this Court has allowed limited discovery consistent with NRS 41.660(4) and the Nevada Supreme Court ruling in this case as specifically identified in Defendants' supplemental briefing. Plaintiffs' view is that they can conduct discovery on anything that relates to their complaint.¹

Based on their theory, Plaintiffs have propounded 15 requests for production of documents that are incredibly overbroad. Plaintiffs don't have many of the documents requested. But, the issue of scope must be resolved because they will come up again during Defendants' forthcoming depositions.

II. THE SPECIFIC DISCOVERY PLAINTIFFS REQUESTED

As the Court will recall, this case generally arises from the three Defendants opposing Plaintiffs efforts to develop the Badlands golf course. Judge Crocket had made a determination that Plaintiffs could not do so without obtaining modifications of the Pecole Ranch master plan. Defendants, who opposed any such modification, were involved in circulating (one of them signing) declarations that were to be presented to the Las Vegas City Council as evidence to be considered in its quasi-judicial proceedings. Plaintiffs offended by such efforts and believing them to be wrongful, filed this lawsuit. Defendants contend the claims against them should be dismissed under the anti-SLAPP statute. The Nevada Supreme Court determined that Defendants have proven by a preponderance of the evidence that their conduct was the type protected by the anti-SLAPP statute and that their statement were either truthful or made without knowing they were false. But, the Nevada Supreme Court instructed this Court to determine whether Plaintiffs were entitled to conduct limited discovery (which would otherwise be statutorily stayed) under the statute.

¹ Declaration of Mitchell J. Langberg ("Langberg Decl."), ¶ 10.

At the last hearing on this matter—a status check to discuss the discovery issue—
Plaintiffs' counsel said:

Let me do some additional briefing just *on what discovery is requested*, why it's relevant, and how it comports with the Nevada Supreme Court's ruling.²

This Court allowed Plaintiffs to submit a supplemental brief regarding discovery. The Court and Defendants rightfully relied on Plaintiffs' representation that they would identify the discovery they were seeking. In their brief, Plaintiffs expressly identified the areas of discovery they wanted:

Plaintiffs must be able to ask the Defendants what documents they are relying on, what information they are relying on,³ or if that information was provided to them by third persons.

As set forth more fully below, based on these representations, the Court authorized a small number of document requests and short depositions of Defendants. The Court did not allow interrogatories or requests for admission, presumably because such discovery would be unnecessary and duplicative in an effort merely to find out what documents and information Defendants relied on.

III. THE LEGAL CONTEXT OF THE REQUEST AND THE COURT'S GRANTING OF DISCOVERY

This Court permitted Plaintiffs to engage in limited anti-SLAPP discovery pursuant to NRS 41.660(4). Of course, "limited" is not merely a function of the *quantity* of discovery, but also the scope. NRS 41.660(4) defines that scope explicitly:

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

Thus, there are three statutory elements limiting the scope of discovery that can be permitted in relation to an anti-SLAPP motion:

² See Exh. 1 (April 29, 2020, Hearing Transcript (the "Transcript")), 9:16-18 (emphasis added).

³ See Exh. 2 (Plaintiffs Brief in Support of Request for Limited Discovery), 5:19-21.

1. Plaintiffs can only seek information necessary to meet or oppose the burden under paragraph (b), which, as the Court has ordered, is only relating to Prong 2 of the anti-SLAPP analysis;
2. The information must be in the possession of Defendants and "not reasonably available without discovery;"
3. The discovery is limited to that which is necessary to "ascertain[] such information."

The Nevada Supreme Court was also clear in its remand order. The only discovery that this Court had to consider was the limited discovery addressed by NRS 41.660(4): "we . . . remand to the district court for it to determine whether respondents are entitled to discovery under NRS 41.660(4)." This Court's May 29, 2020 order (the "Order") and June 05, 2020 clarification (the "Clarification") did not (nor could they) expand the scope of discovery beyond that which the Nevada Supreme Court instructed this Court to consider.

IV. THIS COURT'S ORDERS

In the Order, the Court allowed Plaintiffs to take Defendants' depositions and to propound 15 requests for production of documents (to be allocated among the Defendants). Because the Order did not address the scope limitations, Defendants sought clarification. In the Clarifications, this Court made clear that such discovery would have two limits. First, the Court made clear that the discovery was limited to the second prong of the anti-SLAPP analysis (as required by NRS 41.660(4)). The Court made clear that there was a second limit: "**and** is limited to the matters identified in Plaintiff's papers, or the matters identified by Plaintiff at the April 29th hearing." (emphasis added).

This was only fair. Defendants vehemently opposed any discovery because they believe the litigation privilege makes it all moot. The Court gave Plaintiffs the opportunity to identify what discovery they were seeking and gave Defendants the opportunity to respond by explaining why it was not appropriate. Limiting the discovery to ***what was identified by Plaintiffs*** is not only reasonable, it is the only course the complies with notions of fair play and substantial justice in the context of anti-SLAPP where all discovery is stayed ***unless Plaintiffs show the requisite need for the specific discovery.***

A review of the attached transcript makes clear that Plaintiffs did not identify any areas of

inquiry at the April 29th hearing. And, as set forth above, the areas identified in Plaintiffs' brief for discovery are limited, as they should be. They seek only information about what documents and information Defendants relied on. That is the only discovery this Court has permitted.

V. THE REQUESTS AND WHY THEY ARE BEYOND THE PERMISSIBLE SCOPE

After being granted discovery to determine what Defendants relied on, Defendants propounded requests that went way beyond the scope allowed by this court. Defendants' served 8 requests on Defendant Omerza.⁴ A subset was served on each of the others. Because all the requests are incorporated in Mr. Omerza's set, only those are addressed here. Defendants challenge each of the corollaries in Mr. Bresee and Mr. Caria's requests.

Each of the requests reveal that Plaintiffs are attempting to conduct substantive discovery on issues already determined by the Nevada Supreme Court, on Prong 1 (even though explicitly excluded by this Court), beyond the scope of Prong 2 because it is not discovery that meets the criteria of NRS 41.660(4), and beyond the scope of what was requested.

<u>DOCUMENT REQUEST</u>	<u>WHY IT IS BEYOND THE PERMISSIBLE SCOPE</u>
1. Produce all documents by and between you and any other individual concerning the Land upon which the Badlands golf course was previously operated, including but not limited to, any past or present homeowner within the Queensridge common interest community (hereinafter "Queensridge"), any employee of the management company that manages the Queensridge HOA, any Las Vegas City Council member, any Las Vegas Planning	<p>A request for any documents concerning the Badlands golf course is well beyond what Defendants relied on when they were working with the declarations that underlie this lawsuit. The declarations, summarized in Request 3 below, covered a specific issue. This request clearly is designed to challenge the truth or falsity of issues (something already determined by the Nevada Supreme Court).</p> <p>Because it is beyond the discovery authorized by this Court and beyond that which</p>

⁴ Exh. 3.

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	Commissioner, and any Las Vegas City employee.	is allowed by statute, Plaintiffs are not entitled to pursue this topic.
22 23 24 25 26 27 28	<p>2. Produce all title and escrow documents concerning or related to Your purchase of a residence/lot in Queensridge as stated in the Declaration.</p> <p>The Undersigned purchased a residence/lot in Queensridge which is located within the Peccole Ranch Master Planned Community.</p> <p>The undersigned made such purchase in reliance upon the fact</p>	<p>Plaintiffs again seek to go beyond the information they said they wanted— information about what Defendants relied on. Now, they want all title and escrow documents regarding their real property. Most of those documents contain information that is none of Plaintiffs' business, other than that which is publicly available. That which is publicly available does not meet the criteria for discovery under the statute. As to the rest, Plaintiffs have no right to know things such as how much a real estate agent was paid, how much was spent on home upgrades, or the myriad other topics contained in such documents.</p> <p>What they are entitled to is what they asked for: what Defendants relied on with respect to the declarations.</p> <p>This request amounts to literally full blown discovery on Plaintiffs' claims, without any limitation. Not only does it go way beyond what this Court permitted, it does not constitute "limited" discovery, at all. The purpose of anti-SLAPP is to allow defendants in cases arising out of the exercise of First Amendment rights</p>

1 2 3 4 5 6 7 8 9	that the open space/natural drainage system could not be developed pursuant to the City's Approval in 1990 of the Peccole Ranch Master Plan and subsequent formal actions designating the open space/natural drainage system in its General Plan as Parks Recreation – Open Space which land use designation does not permit the building of residential units. At the time of purchase, the undersigned paid a significant lot premium to the original developer as consideration for the open space/natural drainage system....	to quickly dispose of meritless lawsuits, without the burden and expense of discovery. This request defeats that policy. Instead, it would make Defendants (the parties protected by the statute) have to deal with the burden of nearly complete discovery at the outset of the case, when their own discovery is stayed. That is not the law.
10 11 12 13 14 15 16 17 18 19 20 21 22	4. Produce all documents concerning or related to Your statement in the Affidavit that you have “no understanding that any of the statements are false.”	The Supreme Court has already determined that, on Prong 1, Defendants "met their burden of showing that the communications were truthful or made without knowledge of their falsehood." Plaintiffs do not get to relitigate that issue by conducting discovery on it. Further, this Court has limited to exclude Prong 1, as required by the statute. Finally, this attack on truth and falsity for all documents that relate to the statement is beyond Plaintiffs' request for documents on which Defendants relied.
23 24 25 26 27 28	5. Produce all of Your non-privileged communications concerning or related to the good faith component of Your Special Motion to Dismiss.	As noted above, the Nevada Supreme Court has already determined that Defendants proved by a preponderance of the evidence that their statements were made in good faith. Moreover, this is Prong 1 issue. No

1		such discovery is permitted.
2		
3	6. Produce all non-privileged	Again, this request constitutes full
4	communications between You and any other	blown discovery on the issue in the Complaint.
5	resident member or former member of the	That is beyond what the statute allows, beyond
6	Queensridge HOA regarding the allegations in	what this Court allowed, and beyond what
7	the Complaint on file in this case.	Plaintiffs requested.
8	7. Produce all documents	This request also ignores the scope of
9	establishing that You did not receive any of the	information requested by Plaintiffs and allowed
10	disclosures listed in paragraph 12(a) through	by this Court. Moreover, the question of
11	(d) inclusive of the Complaint on file in this	disclosures is clearly centered on the
12	case.	Queensridge community documents when
13		Defendants' statements were focused on the
14		Pecole Ranch master plan. The Nevada
15		Supreme Court made clear that this distinction
16		was important on Pages 8-9 of its decision
17		finding that Defendants' statements were
18		truthful or made without knowledge of falsity.
19		So, again, this is Prong 1 discovery. And, in
20		any event, it is not properly about the
21		declarations (as noted by the Supreme Court).
22		Beyond that, it is beyond the scope of what was
23		requested and what this Court ordered.
24	8. Produce any and all documents	All of the arguments above could (and
25	in Your possession between you and the other	are) incorporated here. It is beyond the scope
26	two defendants named in this case that are	of what is allowed, what was requested and
27	related to the declarations you gathered and	what this Court ordered.
28		

your Affidavit in this case.

Simply stated, Plaintiffs have failed to ask for documents that Defendants relied on. That is what was requested in Plaintiffs' papers. That is what this Court ordered. Each of the requests should be stricken.

VI. CONCLUSION

Plaintiffs have overreached in grand fashion. Granted leave to conduct very specific discovery, they did not even ask for the documents this Court allowed. Defendants are entitled to a protective order. They should not be required to respond to the document requests. And, at deposition, Plaintiffs should be ordered to restrict their questions to the limited topics they asked for and which this Court allowed.

DATED this 2nd day of July, 2020.

BROWNSTEIN HYATT FARBER SCHRECK, LLP

BY: /s/ Mitchell J. Langberg
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STEVE CARIA

EXHIBIT 1



RTRAN

DISTRICT COURT
CLARK COUNTY, NEVADA

FORE STARS, LTD., et al,
Plaintiffs,

vs.

DANIEL OMERZA, et al,
Defendants.

CASE#: A-18-771224-C
DEPT. II

BEFORE THE HONORABLE RICHARD F. SCOTTI, DISTRICT COURT JUDGE
WEDNESDAY, APRIL 29, 2020

**RECORDER'S TRANSCRIPT OF VIDEO CONFERENCE HEARING
STATUS CHECK: SUPREME COURT APPEAL**

APPEARANCES (via BlueJeans):

For the Plaintiff:

LISA RASMUSSEN, ESQ.
ELIZABETH M. GHANEM, ESQ.

For the Defendant:

MITCHELL J. LANGBERG,
ESQ.

RECORDED BY: BRITTANY AMOROSO, COURT RECORDER

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Las Vegas, Nevada, Wednesday, April 29, 2020

[Case called at 9:32 a.m.]

THE COURT: -- which is Fore Stars versus Daniel Omerza, A771224. All right, let's see if -- oh, this is the one with Ms. Rasmussen was here and this is Fore Star's counsel, I believe; is that correct?

MS. RASMUSSEN: Yes, Your Honor, that's correct. Good morning, Lisa Rasmussen.

THE COURT: Great, and you substituted in in place of Jimerson [phonetic]; is that correct?

MS. RASMUSSEN: I didn't substitute in. I think he's previously already withdrawn. So I just filed a notice of appearance. And I believe that Ms. Ham [sic] is also on the line.

MS. GHANEM: Good morning, Your Honor, Elizabeth Ghanem, bar number 7987. Yes, I'm on the line as well.

THE COURT: And who do you represent?

MS. GHANEM: I'm in-house counsel for Fore Stars, 180 Land, and been associated into the case some time ago during Mr. Jimerson's representation.

THE COURT: All right, very good. And then, who do we have representing Daniel Omerza?

MR. LANGBERG: Good morning, Your Honor, Mitchell Langberg from Brownstein Hyatt Farber Schrek on behalf of all the Defendants.

THE COURT: Very good. And so, let me look at the status

1 here. It looks like this is the really complex anti-SLAPP suits case. Well,
2 there was an anti-SLAPP motion to dismiss filed by your client, Daniel
3 Omerza.

4 And the Court denied that motion to dismiss. And then, I think
5 Defendants appealed that denial of the motion to dismiss.

6 And looks like Fore Stars wanted discovery. They did a motion
7 to commence discovery. And the Court denied the Plaintiff's motion for
8 commencement of discovery, believing that under the anti-SLAPP suit
9 statute, Defendants were entitled to a stay of discovery, pending decision
10 by the supreme court on the denial of the motion to dismiss.

11 I think that's where we were. Counsel?

12 MR. LANGBERG: This is Mitch Langberg. Can I set the table a
13 little bit more?

14 THE COURT: Yes, please.

15 MR. LANGBERG: Because the -- I'd like to, because there's
16 two different aspects to discovery and one of them is relevant to the
17 remand from the supreme court. And --

18 THE COURT: Okay.

19 MR. LANGBERG: -- you're correct, this was a complicated anti-
20 SLAPP motion that the Court -- the supreme court had much less
21 published anti-SLAPP jurisprudence at the time we were first debating the
22 issues.

23 So you and I just disagreed on some of the issues and the
24 Court has the benefit -- we now have the benefit of hindsight of lots and
25 lots of cases.

1 The motion to commence discovery that you just referred to, I
2 don't think that that itself was at issue. You -- that was just the Plaintiff's
3 desire to commence discovery in the overall case while the appeal was
4 pending in this Court, Your Honor.

5 I -- you then correctly found that the stay continued in place until
6 such time as the supreme court ruled. So that's kind of a
7 compartmentalized issue that's no longer relevant.

8 But the supreme court in its decision did determine, contrary to
9 this Court's best efforts initially, that the Defendant did meet the first prong
10 on the anti-SLAPP statute, that the activity related to matters of First
11 Amendment import, and therefore, the SLAPP statute applied.

12 And it also found that the Defendant -- I'm sorry, the Plaintiff did
13 not meet their prong 1 burden of making a prima facie showing to support
14 the elements of each of their claims.

15 However, rather than just reversing and entering judgment, the
16 supreme court noted that in the initial briefing on the anti-SLAPP motion,
17 the Plaintiffs had made a request for discovery.

18 As Your Honor probably knows, the anti-SLAPP statute, while it
19 stays discovery during the pending motion, allows a party to seek limited
20 discovery if it's necessary to meet their burden on the second prong.

21 And the supreme court noted that they have made that request.
22 Your Honor has not ruled on that request because you have not passed
23 the first prong. You have found that we didn't meet the first prong, which
24 the supreme court has reversed.

25 And so, the supreme court remanded, so that Your Honor could

1 consider whether discovery ought to have been granted or not before
2 Plaintiff had to make their second prong prima facie showing.

3 And so, it's our belief that the only issue that remains is
4 whether, as if this was still a pending anti-SLAPP motion, and Plaintiff was
5 making a discovery request, whether they meet the criteria for obtaining
6 discovery in the limited circumstances that the statute allows. We think
7 they don't.

8 And, by the way, we believe that that issue has been briefed.
9 Your Honor may recall that there was the anti-SLAPP motion opposition
10 reply. And also, the Court asked for supplemental briefing after the oral
11 argument where this discovery issue was further briefed.

12 THE COURT: Right.

13 MR. LANGBERG: I think that accurately sets the table.

14 THE COURT: Right. Thank you very much for recounting all
15 that. You did help refresh my memory. I appreciate that.

16 So before -- let me go back to the Plaintiff, Ms. Rasmussen.
17 First of all, is that a correct statement of the procedural history in this
18 case?

19 MS. RASMUSSEN: Well, Your Honor, I think it's largely correct,
20 but it is our position that this is the time that we would be requesting
21 discovery based on -- specifically on the [indiscernible] the Nevada
22 Supreme Court. And based on this Court's prior rulings, the discovery
23 should be stayed because the case was pending on appeal.

24 So it is our position that Plaintiff is entitled now to do discovery,
25 the discovery that was previously requested --

1 THE COURT: Hold on, hold on.

2 MS. RASMUSSEN: -- which the Court didn't address.

3 THE COURT: Hold on, hold on, hold on. Yeah, I didn't ask for
4 argument yet. I'm wanted to compartmentalize this first before we get to
5 the --

6 MS. RASMUSSEN: Right.

7 THE COURT: Right, so all I wanted to know is, procedurally, is
8 that correct how counsel explained it? Is the issue --

9 MS. RASMUSSEN: Yes.

10 THE COURT: The issue is still pending on whether Plaintiff is
11 entitled to discovery, that limited discovery, that might be necessary to
12 allow you to oppose the motion to dismiss? That's the issue that's still
13 pending in your mind, correct?

14 MS. RASMUSSEN: That's correct.

15 THE COURT: Okay, but everything else is pretty much largely
16 correct as Mr. Hyatt has -- I'm sorry, Mr. Landers? Mr. Langberg, sorry.

17 MR. LANGBERG: I [indiscernible], Your Honor.

18 MS. RASMUSSEN: Yes, Your Honor.

19 THE COURT: Pardon me?

20 MR. LANGBERG: I'll happily respond to any name that starts
21 with an "L".

22 THE COURT: Okay. So I guess what I would need to know
23 then, I know there was extensive briefing on this, Ms. Rasmussen, I guess
24 I need to know from you then whether there is anything new from the
25 supreme court's decision that you would need to brief as relating to your

1 request for limited discovery or if I should just rule on the motions or the
2 briefing that I already have?

3 Do you think the supreme court decision necessitates some
4 additional briefing on the issue whether you're entitled to limited
5 discovery?

6 MS. RASMUSSEN: Your Honor, I think it does. And I'd like the
7 opportunity to brief the additional limited discovery that we would request
8 that the Court permit us to do.

9 THE COURT: Mr. Langberg, what's your position on that and
10 whether you think any additional briefing might be necessary in light of the
11 supreme court's decision?

12 MR. LANGBERG: I don't think so for two reasons, Your Honor.
13 Number one, our initial -- this is supposed to be an expedited process.
14 And our motion was first filed almost two years to the day, just a few more
15 days before two years.

16 And if they wanted discovery, they were put to the task to
17 request that before the Court ruled on the motion. And they did make the
18 request. We think that it was not sufficient to meet their burden, but they
19 made their request.

20 And so, I don't think anything that happened for my first point
21 changed that they have their opportunity to request it. They made their
22 request. And the Court should rule as if this motion were pending since
23 the supreme court merely remanded because you -- the Court has not
24 ruled.

25 Second, the supreme court confirmed that we met the first

1 prong, because of the official proceedings that were at issue that these
2 related to.

3 And, therefore, the supreme court confirms what we said in our
4 existing pleadings, which is that the litigation privilege applies. And as we
5 briefed, when the litigation privilege applies, no amount of discovery could
6 possibly let you get past that.

7 And so, since these issues have been briefed and the supreme
8 court has merely confirmed what we contended, I don't see any reason
9 why they should get yet another round of briefing to debate this issue
10 even further, when my clients have had hanging over their head what they
11 contend is a meritless lawsuit for over two years under a statute that's
12 supposed to have these things resolved very quickly.

13 THE COURT: Thank you very much, Mr. Langberg.

14 All right, last word on this, Ms. Rasmussen, on whether you
15 need additional briefing and why.

16 MS. RASMUSSEN: Well, thank you, Your Honor. I think that
17 Mr. Langberg's describes -- establishes precise --

18 [Ms. Rasmussen's video connection freezes]

19 THE COURT: Go ahead. Yeah, sorry.

20 MS. RASMUSSEN: -- of what discovery would have requested
21 and why.

22 THE COURT: All right, you cut out for a second. That's what
23 makes this -- all of these --

24 MS. RASMUSSEN: Yeah.

25 THE COURT: -- BlueJeans hearings a little bit difficult, a little

1 bit frustrating. You cut out --

2 MS. RASMUSSEN: Okay.

3 THE COURT: -- for a moment. Can you get ahead and restate
4 that, please?

5 MS. RASMUSSEN: I can. And thank you for your patience.

6 THE COURT: That's okay.

7 MS. RASMUSSEN: So I think that the response from
8 Defendants illustrates exactly why additional briefing is needed.

9 They started telling you about what the supreme court had
10 ruled. So, yes, there was an initial request made by Plaintiff by my -- by
11 Plaintiffs, my clients, for discovery, but 100 things have happened since
12 that time.

13 So I think just to obtain that for the Court, allow the Court to
14 make an educated decision, an informed decision, based on everything
15 that's happened since that initial request for discovery is appropriate.

16 Let me do some additional briefing just on what discovery is
17 requested, why it's relevant, and how it comports with the Nevada
18 Supreme Court's ruling.

19 THE COURT: Give me two examples of these 100 things that
20 have happened that you just mentioned?

21 MS. RASMUSSEN: Well, okay, so this Court made its ruling
22 denying the motion to dismiss. And then, the notice of appeal was filed.

23 And then, there was a motion for discovery made after that
24 happened. That went to the Discovery Commissioner, was litigated there.

25 And then, Defendants objected to that. They filed objections.

1 And then this Court made a ruling on it.

2 And then, the Nevada Supreme Court litigation ensued and
3 then the Nevada Supreme Court order.

4 So I think some supplemental briefing on why the discovery is
5 necessary, how it comports to the Nevada Supreme Court order, and why
6 this Court should allow it would be beneficial to the Court.

7 THE COURT: So it's supposed to be an expedited process and
8 I have a lot of briefing now. I will look at and study very carefully the
9 supreme court decision.

10 And I will look at and read very carefully the briefs that were
11 submitted to the supreme court. And I'll re-read all the briefing that was
12 done on the discovery issues leading up to this point.

13 I don't think I'm going to need much more than that, but I will
14 give you a very, very limited opportunity to provide me with anything else
15 that you think I might need to know on this, Ms. Rasmussen, but I'm
16 only -- it's supposed to be expedited. I'm only give you a week and five
17 pages.

18 If you think there's something critical that I need to know before
19 I rule on this issue of giving you limited discovery, you need to get it to me
20 within a week.

21 And I'll give you five pages. And then, I'll give two days -- well,
22 how much time, Mr. Langberg, would you want to respond to that? Two
23 days, five days?

24 MR. LANGBERG: I'm not going to tell you that I have a -- I'm
25 not going to tell you that I have long planned, uncancellable vacation, but

1 if she's -- if I have a motion in another case on anti-SLAPP, Your Honor.

2 I have a petition due on the 8th, sorry, after the 11th. So then I
3 have the weekend if she's going to be turning it in on the 6th.

4 THE COURT: Very good. So on the 6th then. That's about
5 one week from today is the deadline for Plaintiff to provide this Court with
6 supplemental briefing on why limited discovery should be allowed in
7 connection with the opposition to Defendant's special motion to dismiss.

8 Defendant's opposition to that motion will be due on the 11th.
9 And I don't think I would need a reply brief from the Plaintiff. If you feel it's
10 necessary, I'll give you two days to get in a reply brief.

11 Do you want that opportunity, Ms. Rasmussen?

12 MS. RASMUSSEN: Your Honor, I don't know that I need it, but
13 let's just keep it as an option.

14 THE COURT: All right. Well, I'll go ahead and give you the
15 right to file a reply. And that'll be two days after the 11th.

16 What day of the week is the 11th?

17 MR. LANGBERG: It's a Monday, Your Honor.

18 THE COURT: All right, so Wednesday, the 13th is the deadline
19 for a reply. And then, I'll have my decision the following Monday.

20 So 13th, 14, 15, 16, 17. 8 -- I think that's the 18th?

21 THE CLERK: 18th.

22 THE COURT: All right, the 18th will be my decision. I don't
23 need any further argument on this, but May 18th will be my decision on
24 the motion for limited discovery.

25 If I were to deny the request for limited discovery, are there any

1 issues that the supreme court has still left for me to resolve on the motion
2 to dismiss?

3 Mr. Langberg, let me hear from you on that?

4 MR. LANGBERG: No, Your Honor, I believe that if she's the
5 denied the motion for discovery, all that would be left for you to do is
6 essentially an order presenting the anti-SLAPP motion in an order of
7 dismissal, such as post-judgment motions for attorneys' fees.

8 THE COURT: Right. I -- that was my initial feeling, but Ms.
9 Rasmussen, is there anything else that you think the supreme court left
10 for me to decide, other than whether you have a right to limited discovery?

11 MS. RASMUSSEN: Your Honor, you cut out for a minute. Can
12 you say that again? I'm sorry.

13 THE COURT: Yes, is there anything that the supreme court left
14 for me to decide, other than whether you get limited discovery? Because
15 if you do get limited discovery, then I would assume -- well, I know that
16 after that discovery period, then I need to re-look at the motion to dismiss.

17 If you don't get limited discovery --

18 MS. RASMUSSEN: Your Honor --

19 THE COURT: If you don't get limited discovery, then I think I
20 just need to move forward in issuing the -- granting the motion to dismiss.
21 I don't think anything would be left for me to resolve. What do you think
22 on that?

23 MS. RASMUSSEN: Your Honor, I actually don't think that's
24 accurate. I think that the supreme court opinion discusses the context in
25 which this Court made its prior ruling, which focused on one prong and not

1 the other prongs.

2 So I think that there are additional things that this Court needs
3 to address. So I don't know if you want briefing on that.

4 I mean I -- should we just get through this discovery matter and
5 then have a status check after that? I mean, I don't agree that the
6 supreme court sent it back for you to decide whether or not discovery was
7 appropriate only.

8 I think the supreme court sent it back because they thought that
9 the analysis should be more wholesome than focusing on a single prong.

10 THE COURT: Seems that they may --

11 MR. LANGBERG: Can I respond, Your Honor?

12 THE COURT: Very, very briefly, because I'm looking at this and
13 it seems like they made some affirmative rulings that establish the law of
14 the case. And I thought they addressed more than just the first prong, but
15 go ahead, Mr. Langberg.

16 MR. LANGBERG: Yeah, I was just going to read from the
17 penultimate issue they said. They said that, and apologies, Your Honor,
18 that we therefore conclude that the District Court erred in determining that
19 Respondents met their two-step burden of demonstrating the prima facie
20 evidence of probability of prevailing on their claim.

21 THE COURT: Right.

22 MR. LANGBERG: So Your Honor's correct. That is law of the
23 case and that somehow they can make a showing that this is one of the
24 unusual cases where discovery is allowed, and as a result of such
25 unusually allowed discovery, they can somehow create a prima facie

1 showing. Barring that --

2 THE COURT: Yeah.

3 MR. LANGBERG: -- if you deny discovery, the supreme court
4 has directed what should happen.

5 THE COURT: So I -- what I'm going to do is, in the event I deny
6 limited discovery, I am going to simply move forward in ruling on the
7 motion to dismiss. I'll do that expeditiously.

8 In the event that I find that I need additional briefing on the
9 motion to dismiss, then I'll go ahead and request it. But at this point, don't
10 anticipate that I will need additional briefing. I may just go forward and
11 resolve the motion to dismiss in the event I deny limited discovery. All
12 right?

13 MR. LANGBERG: Thank you, Your Honor.

14 THE COURT: That's my plan.

15 And so, the date again, Madam Clerk, for my resolution?

16 THE CLERK: That's May 18th at 9 a.m.

17 THE COURT: May 18th at 9 a.m. and then again in the event I
18 deny limited discovery, let's say that my decision on the motion to dismiss
19 will be issued one week after that?

20 THE CLERK: It is May 25th.

21 THE COURT: May 25th is the date for that decision. Now --

22 THE CLERK: In chambers.

23 THE COURT: That will be chambers unless further indicated.
24 Now in the event -- here, I'll leave it to the parties to decide if there's -- if
25 you want to make an emergency request for additional briefing, I'll at least

1 consider that, all right, Ms. Rasmussen? If I --

2 MS. RASMUSSEN: Okay, thank you, Your Honor.

3 THE COURT: So what I'm saying is if I am going to deny your
4 request for limited discovery, you will know by whatever is the date you
5 get the minute order on that.

6 And then, in the event that you think and have a good
7 compelling reason that you need to brief something further, I will consider
8 that request, but you'd have to get it into me before or the date that I gave
9 you for my ruling. Do you understand?

10 MS. RASMUSSEN: Understood. Thank you so much.

11 THE COURT: All right, I just want to move this quickly.

12 All right, Mr. Langberg, anything further from you, sir?

13 MR. LANGBERG: No, thank you, Your Honor.

14 THE COURT: All right, then, we'll move forward with some
15 resolutions on this. Thank you, counsel for your patience and sorry for
16 the -- any difficulty you had hearing me through this system. All right.

17 MS. RASMUSSEN: Thank you so much. I'm sorry, too, Your
18 Honor.

19 THE COURT: No problem. All right, have a good day, counsel.

20 MS. RASMUSSEN: Okay.

21 MS. GHANEM: Thank you, Your Honor.

22 THE COURT: Thank you.

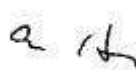
23 [Proceedings concluded at 9:55 a.m.]

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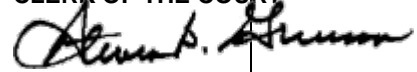
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ATTEST: I do hereby certify that I have truly and correctly transcribed the audio/video proceedings in the above-entitled case to the best of my ability.



Chris Hwang
Transcriber

EXHIBIT 2



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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 THROUGH
100,

Defendants.

Case No.: A-18-771224-C

Dept: II

**BRIEF IN SUPPORT OF REQUEST
FOR LIMITED DISCOVERY**

COME NOW the Plaintiffs, by and through their counsel, Lisa A. Rasmussen, Esq.
of the Law Offices of Kristina Wildeveld & Associates, and hereby submit this brief, as
permitted by the Court in support of Plaintiffs request for limited discovery.

BRIEF IN SUPPORT OF REQUEST FOR LIMITED DISCOVERY - 1

APP 0785

1 **I. Procedural History**

2 Plaintiffs filed their Complaint in May 2018 alleging intentional and negligent
3 interference with a prospective business relationship, intentional and negligent
4 misrepresentation and civil conspiracy seeking monetary damages in addition to
5 equitable relief. In April 2018 Defendants filed a Motion to Dismiss pursuant to NRS
6 41.635, et seq. (Nevada's Anti-SLAPP statutory scheme) as well as a Motion to Dismiss
7 pursuant to NRCP 12(b)(5). A hearing was held on May 14, 2020 on the Motion to
8 dismiss, which was denied. Plaintiffs requested the opportunity to conduct discovery
9 at that hearing. Supplemental briefing followed the hearing. This court determined on
10 May 29, 2018, *inter alia*, that the defendants had not established by a preponderance of
11 the evidence that their communication was made in good faith.

12 The defendants filed a notice of appeal, which the statute allows, in June 2018.
13 While the appeal was pending, Plaintiff filed a motion to permit discovery to commence.
14 The discovery commissioner granted that motion in part and the defendants objected to
15 her report and recommendation. This court sustained the objection and, relying on NRS
16 41.5660(3)(e), denied the motion to commence discovery, effectively staying any
17 discovery in this matter.

18 The Nevada Supreme Court vacated and remanded this matter to this court to
19 the extent that (a) intentional tort allegations are not immune from anti-SLAPP treatment
20 and (b) that this court erred in concluding that the appellants/defendants had not met
21 their burden at step one of the anti-SLAPP analysis. The Nevada Supreme Court also
22 stated that the Plaintiffs/Respondents did not present prima facie evidence as required
23 by NRS 41.660(3)(b) of demonstrating a probability of prevailing on their claims, instead
24 relying on the fact that the claims were not made in good faith. The Supreme Court
25 noted, however, that it appeared that this issue got conflated with other issues related
26 to California law. Thus, the Nevada Supreme Court, on the record before it, believed
27 that this court erred in its determination that the Plaintiffs/Respondents had met their
28 BRIEF IN SUPPORT OF REQUEST FOR LIMITED DISCOVERY - 2

1 two-step burden. What the Nevada Supreme Court did not conclude is that the
2 Plaintiffs/Respondents could never meet their two-step burden.

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

7
8 Whether respondents met the standard in NRS 41.660(4) for
9 obtaining discovery relevant to a special motion to dismiss is a decision the
10 district court is better situated to address, and we therefore decline to
11 address it in the first instance in the context of this interlocutory appeal.

12 Accordingly, for the reasons set forth above, we vacate the portion
13 of the district court's order denying appellant's anti-SLAPP special motion
14 to dismiss and remand to the district court for it to determine whether
15 respondents are entitled to discovery under NRS 41.660(4).

16 NSC Order, page 12.

17 Thus, despite the disingenuous urging of defense counsel at the remand/status
18 check hearing on April 29th before this Court, there are actually determinations that need
19 to be made by this Court and the Nevada Supreme Court did not direct this Court to
20 find for the Defendants and dismiss the case. The Nevada Supreme Court's findings
21 were made based on the record before that court.

22 Plaintiffs' previous requests for discovery, at the hearing on the defendant's
23 motion, and after the appeal was taken are incorporated herein.

24 **II. NRS 41.660 Specifically Permits and Contemplates Limited Discovery**

25 NRS 41.660(3)(e) states:

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

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

11 The Nevada Supreme Court held that: “NRS 41.660(4) provides that “the court
12 shall allow limited discovery” when a party needs access to information held by the
13 opposing party to meet or oppose the plaintiff’s burden under the second prong of the
14 anti-SLAPP statute:
15

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

21 Toll v. Wilson, 135 Nev. at 1220.

22 And, as the Nevada Supreme Court also noted in its order in this case, the anti-
23 SLAPP statutes contemplate “consideration of the substantive merits of the plaintiff’s
24 complaint, but Plaintiff must produce evidence that would be admissible at trial.” NSC
25 Order, page 10, *citing to* HMS Capital, Inc. v. Lawyer’s Title Co, 12 Cal.Reptr.3d 786, 791
26 (Ct. App. 2004), De Havilland v. FX Networks LLC, 230 Cal. Rptr. 3d 625, 634 (Ct. App.
27 2018) and Bikkina v. Mahadevan, 193 Cal. Rptr. 3d 499, 511 (Ct. App. 2015).

1 A determination as to whether Plaintiff can meet his burden of a probability of
2 prevailing on the merits of the case requires that this Court make credibility findings
3 about statements made by the defendants. On the record before this Court, this Court
4 cannot determine whether or not the Defendants' declarations about what they relied on
5 are truthful, accurate, believable, or not believable. And that is because Plaintiffs have
6 not had an opportunity to depose the Defendants. See Shapiro v. Welt, 133 Nev. Adv Rep.
7 6, 389 P.3d 262, 267-68 (Nev. 2017) (no communication may seek refuge under NRS 41.660
8 unless it is truthful and made without knowledge of falsehood.). To demonstrate a
9 probability of success on the merits, Plaintiff must show by a preponderance of the
10 evidence that he is likely to prevail on the merits of some or all of his claims. "A
11 preponderance of evidence requires that the evidence lead the fact finder to conclude that
12 the existence of a contested fact is more probable than its non-existence." In re M.F., 132
13 Nev. 209, 217 (2016).

14
15 It is central to Plaintiffs' burden that they be permitted to depose the Defendants
16 and that they be permitted to propound limited written discovery prior to those
17 depositions, including limited requests for production, requests for admission and
18 interrogatories. This court may limit the number of each discovery request made to each
19 defendant if it wishes. Plaintiffs must be able to ask the Defendants what documents they
20 are relying on, what information they are relying on, or if that information was provided
21 to them by third persons.

22 This Court must then make a credibility determination as to whether or not it
23 believes the testimony of the defendants proffered thus far, in addition to any responses
24 that provide that address the merits of Plaintiffs' claims. That determination is central to
25 this Court's ultimate determination as to whether Plaintiffs can show by a preponderance
26 of the evidence that they are likely to prevail on the merits. This court cannot make that
27 credibility determination on the face of the declarations without more information.

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CONCLUSION

Wherefore, it is respectfully requested that for each of the reasons set forth herein, that this Court enter an order permitting limited discovery in this case, to include the depositions of the three defendants and limited written discovery prior to those depositions. Plaintiffs do not object to the court reasonably limiting the written discovery requests for this purpose only. Following this limited discovery, Plaintiffs will request supplemental briefing on the merits prong and Plaintiffs' ability to establish by a preponderance of the evidence that they are likely to prevail in this matter.

The Nevada Supreme Court's order contemplates that this Court will determine what is before it and what additional information would guide its decision. Respectfully, this Court does not have all the information it needs to determine whether Plaintiffs can establish a probability of prevailing on the merits without assessing the Declarations of the defendants in their appropriate context. This is Plaintiffs' burden, but Nevada's anti-SLAPP statute does not contemplate precluding a plaintiff from meeting his burden. Instead, it specifically allows for limited discovery where appropriate. Limited discovery as proposed herein is appropriate in this case.

DATED: May 6, 2020.

Respectfully submitted,

THE LAW OFFICES OF KRISTINA WILDEVELD & ASSOCIATES,

/s/ Lisa A. Rasmussen

LISA A. RASMUSSEN, ESQ.

NEVADA BAR NO. 7491

ATTORNEYS FOR PLAINTIFFS

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CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the foregoing BRIEF IN SUPPORT OF REQUEST FOR LIMITED DISCOVERY via this court's EFile and Serve program on all parties receiving service in this case on this 6th day of May, 2020, including but not limited to:

/s/ Lisa A. Rasmussen

Lisa A. Rasmussen, Esq.

EXHIBIT 3

RFP

LISA A. RASMUSSEN, ESQ.
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Attorneys for Plaintiffs

**DISTRICT COURT
CLARK COUNTY, NEVADA**

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

Plaintiffs,

vs.

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

Defendants.

Case No.: A-18-771224-C

Dept. No.: II

**PLAINTIFFS' FIRST SET OF REQUESTS
FOR PRODUCTION OF DOCUMENTS
TO DEFENDANT DANIEL OMERZA
RELATED TO DEFENDANTS' ANTI-
SLAPP SPECIAL MOTION TO DISMISS**

TO: DEFENDANTS DANIEL OMERZA

**TO: MITCHELL LANGBERG, ESQ., of the law firm of BROWNSTEIN HYATT
FARBER SCHRECK, LLP, Defendants' counsel of record.**

Plaintiffs Fore Stars, LTD. (hereinafter "Fore Stars"), 180 Land Company LLC
(hereinafter "180 Land Company"), and Seventy Acres, LLC (hereinafter "Seventy Acres")
(collectively "Land Owners" or "Plaintiffs"), by and through their undersigned counsel, Lisa A.
Rasmussen, Esq., of the Law Offices of Kristina Wildeveld & Associates and, hereby request that

1 Defendant Daniel Omerza (hereinafter “Omerza”) produce each of the documents and other
2 tangible things within Defendants’ “possession, custody, or control.” N.R.C.P. 34(a).

3
4 **DEFINITIONS AND INSTRUCTIONS**

5 1. Documents and photographs sought in these Requests for Production shall include
6 documents and photographs within the knowledge, possession, control or access of any agent,
7 employee, attorney, or investigator of Defendant, or any person acting as Defendant’s
8 representative or on behalf of Defendants including, but not limited to, any otherwise independent
9 attorney, agent, or investigator.
10

11 2. “You,” “you,” “Your,” or “your” refers to Defendant as well as all present or past
12 employees, agents, attorneys, investigators, and any other person or entity directly or indirectly
13 subject to your respective control.

14 3. As used in these Requests, the following definitions shall apply: The term
15 “Complaint” shall mean Plaintiff’s Complaint filed in this case on or about March 15, 2018. The
16 terms “Special Motion to Dismiss” and/or “Anti-SLAPP Motion” shall mean Defendant’s Special
17 Motion to Dismiss filed in this case on or about April 13, 2018. The term “Declaration” shall
18 mean the declaration sent by Defendants’ to their Queensridge neighbors in March 2018 and
19 attached to the Complaint as Exhibit 1. The term “Affidavit” shall mean the affidavit executed
20 by Defendant and attached to Defendants’ Special Motion to Dismiss.
21

22 4. Whenever appropriate, the singular form of a word shall be interpreted as plural,
23 and the masculine gender shall be deemed to include the feminine.
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1 5. As used in this Requests for Production, the term “and” as well as “or” shall be
2 construed either disjunctively or conjunctively, as necessary, to bring the scope of these Requests
3 for Production any information which might otherwise be construed to be outside their scope.
4

5 6. As used in these Requests for Production, the term “document” includes, without
6 limiting the generality of its meaning, all originals or copies, where originals are unavailable, and
7 non-identical copies (whether different from originals by reason of notation made on such copies
8 or otherwise) of all written, recorded or graphic matter, however produced or reproduced, whether
9 or not now in existence, or correspondence, electronic mail, e-mail(s), electronic files, text
10 messages, SMS messages, iMessages, telegrams, notes or sound recordings of any type of
11 conversation, meeting or conference, minutes of meetings, memoranda, reports, summaries and
12 results of investigations and tests, reviews, contracts, agreements, working papers, tax returns,
13 statistical records, ledgers, books of account, vouchers, bank checks, bank statements, invoices,
14 receipts, computer data, stenographers’ notebooks, manuals, directives, bulletins, desk calendars,
15 appointment books, diaries, maps, charts, photographs, plats, drawings or other graphic
16 representations, logs, investigators reports or papers similar to any of the foregoing, however
17 denominated.
18
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20 7. As used in these Requests for Production, the term “photograph” includes, without
21 limiting the generality of its meaning, all originals or copies (whether different from originals by
22 reason of notation made on such copies or otherwise) of all photographs, recorded or graphic
23 matter, however produced or reproduced, whether or not now in existence, maps, charts, diagrams,
24 plats, drawings or other graphic representations, or any other possible representations similar to
25 any of the foregoing, however denominated.
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9. If any document or photograph requested is not within your physical possession, so state. If the document or photograph is not in your physical possession, identify every person or entity you know or believe has physical possession of such document. If you at any time had possession or control of a document called for under this request and if such document has been lost, destroyed, purged, or is not presently in your possession or control, you shall describe the document, the date of its loss, destruction, purge or separation from possession or control, and the circumstances surrounding its loss, destruction, purge, or separation from possession or control.

10. As used in these Requests for Production, the term “person” includes, without limiting the generality of its meaning, every natural person, corporate entity, partnership, association, governmental body, or agency.

11. As used in these Requests for Production, the terms identification of a “person or entity” includes stating his, her or its full name, his or her most recent home address and telephone number, his, her or its most recent known business address and telephone number, his or her present position, and his, her or its prior connection or association with any party to this litigation.

12. If you cannot produce any document or photograph requested, after exercising diligence to secure the document or photograph, so state and answer to the extent possible, specifying your inability to produce and stating whatever information or knowledge you have concerning the document or photograph you are unable to produce.

13. If you claim privilege as to any communication as to documents or photographs requested, specify the privilege claimed, the communication and/or answer as to which that claim is made, the parties to the communication, the topic discussed in the communication and the basis for your claim.

1 14. These Requests for Production are continuing and require supplemental answers if
2 you obtain further information with respect to the same between the date your answers are served
3 and the entry of judgment.
4

5 **REQUESTS FOR PRODUCTION**

6 1. Produce all documents by and between you and any other individual concerning
7 the Land upon which the Badlands golf course was previously operated, including but not limited
8 to, any past or present homeowner within the Queensridge common interest community
9 (hereinafter “Queensridge”), any employee of the management company that manages the
10 Queensridge HOA, any Las Vegas City Council member, any Las Vegas Planning Commissioner,
11 and any Las Vegas City employee.
12

13 2. Produce all title and escrow documents concerning or related to Your purchase of
14 a residence/lot in Queensridge as stated in the Declaration.
15

16 3. Produce all documents concerning or related to Your statement in the Declaration
17 that:

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

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

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

25 4. Produce all documents concerning or related to Your statement in the Affidavit
26 that you have “no understanding that any of the statements are false.”
27
28

5. Produce all of Your non-privileged communications concerning or related to the good faith component of Your Special Motion to Dismiss.

6. Produce all non-privileged communications between You and any other resident member or former member of the Queensridge HOA regarding the allegations in the Complaint on file in this case.

7. Produce all documents establishing that You **did not receive** any of the disclosures listed in paragraph 12(a) through (d) inclusive of the Complaint on file in this case.

8. Produce any and all documents in Your possession between you and the other two defendants named in this case that are related to the declarations you gathered and your Affidavit in this case.

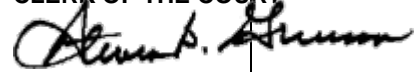
DATED this 30th day of June, 2020.

By: Lisa A. Rasmussen
Attorneys for Plaintiffs

The Law Offices of Kristina Wildeveld
& Associates

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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 THROUGH
100,

Defendants.

Case No.: A-18-771224-C

Dept: II

**PLAINTIFFS' RESPONSE TO
MOTION FOR PROTECTIVE ORDER**

COME NOW the Plaintiffs, by and through their counsel, Lisa A. Rasmussen, Esq.
of the Law Offices of Kristina Wildeveld & Associates, and hereby provide this Response
to the Defendants' Motion for Protective Order, filed on July 2, 2020 and requesting an
order shortening time.

PLAINTIFFS' RESPONSE TO MOTION FOR PROTECTIVE ORDER - 1

APP 0800

1 **I. THIS COURT SHOULD HAVE PERMITTED PLAINTIFFS TO**
2 **RESPOND TO THE DEFENDANTS' "REQUEST FOR**
3 **CLARIFICATION."**

4 As a preliminary matter, the Defendants did not agree with this Court's Minute
5 Order dated May 29, 2020, which stated:

6 Plaintiff may serve one set of requests for production of documents,
7 with no more than a total of fifteen (15) request for documents to be
8 allocated among the defendants, as Plaintiff sees fit; Defendants shall have
9 two weeks to respond to such requests.

10 Defendants do not want to respond to any discovery. That much is clear.
11 Defendants then filed a "Request for Clarification" with this Court. It was not because
12 Defendants needed clarification of this Court's order, it was because they sought to
13 further limit any discovery. It was a motion and a request for relief, the relief being a
14 further limitation on discovery.

15 On June 5, 2020, the undersigned notified this Court's law clerk that she would be
16 filing a response to the "Request for Clarification." The law clerk responded that the
17 undersigned could file whatever she wanted, but that the court was going to issue an
18 order. See Exhibit 1, attached hereto. Motions in civil cases are not granted on less than
19 14 day's notice, which includes a 14-day response time, absent an order shortening time.
20 None of that happened here.

21 Plaintiffs lay this out in order to say, this is generally what the response to the
22 "Request for Clarification" would have been that:

- 23 1. Any discovery undertaken by Plaintiffs must include the ability to question
24 the defendants about the Declarations submitted by Omerza, Bresee and Caria.
25 To conclude anything different would defeat this Court's role in making
26 credibility determinations, which it must make before ruling on the pending
27 Motion to Dismiss.

1 2. Plaintiffs are entitled to inquire as to the beliefs formed by the Defendants and
2 the documents that support their beliefs. These issues go to the second prong
3 of the analysis.

4 3. Plaintiffs were not required in their Supplemental Brief for Discovery to
5 identify in advance every question they would ask, nor should they be limited
6 to what they put in their papers. The brief, and prior motions provided this
7 court with an explanation as to why and when limited discovery should be
8 allowed but did not require that Plaintiff set forth every question it would ask.
9 Thus, discovery should not be limited to “what is in the papers,” because what
10 is in the papers is *types* of questions, not *actual* questions.

11 This Court’s “Clarifying Order” was filed shortly thereafter, without any input
12 from Plaintiffs. It would have been helpful to this case in general if the Court had
13 permitted Plaintiffs to respond and it could have avoided the current scenario, which is
14 discussed substantively below.

15
16 **II. THIS COURT’S CLARIFYING ORDER PERMITS THE QUESTIONS**
17 **ASKED BY PLAINTIFFS IN THEIR VERY LIMITED REQUESTS FOR**
18 **PRODUCTION**

19 This Court’s “Clarifying Order” dated June 5, 2020 states:

20 With regard to this Court’s May 29, 2020 Minute Order, granting in part
21 and denying in Part Plaintiff’s request for limited discovery, the Court
22 issues this Clarification: The discovery permitted by the prior order must
23 relate to the second prong of the anti-SLAPP analysis, and is limited to the
24 matters identified in Plaintiff’s papers, or the matters identified by the
25 Plaintiff at the April 29th hearing.

26 . . .

27 . . .

28 . . .

1 **A. The Anti-SLAPP Prongs and the Nevada Supreme Court's Order**

2 The second prong of the anti-SLAPP analysis is as follows: "whether
3 plaintiff has "demonstrated with prima facie evidence a probability of prevailing
4 on the claim." NRS 41.660(3)(b). As the Nevada Supreme Court noted in its
5 order remanding:

6 In opposing the anti-SLAPP motion to dismiss, respondents alternatively
7 requested limited discovery related to their step-two burden under NRS
8 41.660(3)(b), but the district court did not rule on the merits of that request
9 given its conclusion that appellants failed to meet their step-one burden.
10 Whether respondents met the standard in NRS 41.660(4) for obtaining
11 discovery relevant to a special motion to dismiss is a decision the district
12 court is better suited to address, and we therefore decline to address it in
13 the first instance in the context of this interlocutory appeal.

14
15 NSC Order dated January 23, 2020.

16 The Nevada Supreme Court also stated:

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

20 Id. This issue goes to whether or not the statements made by the Defendants were made
21 knowing that the statements were false.

22 Thus, there are essentially two areas that must be permitted for discovery:

- 23 1. What information supports the Defendants' Declarations wherein they state
24 that they made truthful statements or that they did not know the statements to
25 be false; and
26 2. Can Plaintiffs establish, "with prima facie evidence" a probability of prevailing
27 on the claim.

1 **B. Plaintiffs' Complaint**

2 In order to meet the second prong burden, "a probability of prevailing on a claim,"
3 the Court must necessarily look at the claims in Plaintiffs' Complaint. Plaintiff has
4 alleged the following claims:

- 5 1. Equitable and Injunctive Relief ¹
6 2. Intentional Interference with Prospective Economic Relations
7 3. Negligent Interference with Prospective Economic Relations
8 4. Conspiracy
9 5. Intentional Misrepresentation
10 6. Negligent Misrepresentation

11 These are the claims at issue and based on the Nevada Supreme Court's Order,
12 Plaintiffs must show a probability of prevailing on some or all of these claims and
13 Plaintiffs can address the second part of prong one, whether Plaintiffs have evidence that
14 directly overcomes the information set forth in the Declarations of Defendants.
15

16 Thus, questions that go to what the Defendants relied on when they made their
17 statements, as well as what they relied on when they made their declarations, as well as
18 information that goes to the merits of any of Plaintiffs' claims is relevant to the limited
19 discovery that has been granted in this case.

20 **C. Plaintiffs' Papers**

21 This Court authorized discovery, even after the "Clarification Order" regarding
22 "Matters identified in Plaintiffs' papers, **or** the matters identified by the Plaintiff at the
23 April 29th hearing.

24 What is in Plaintiffs' papers are the following:

- 25 1. The Complaint. See claims alleged above in Section B, *supra*.

26
27
28 ¹ Defendants have never explained how this claim for relief can be subject to a Special Motion to
Dismiss pursuant to NRS 41.660, yet they seek dismissal of the entire complaint.

2. Plaintiffs' Motion to Permit Discovery, filed on September 14, 2018.
3. Plaintiffs' Reply to the Motion and its Supplements filed on October 12, 17 and 18th respectively.
4. Plaintiffs' requests at the April 29th hearing.
5. Plaintiffs' examples of the types of discovery that should be permitted, which included information that would permit this Court to make credibility assessments, set forth in Plaintiffs' Supplemental Brief regarding Discovery, filed on May 6, 2020.

This is what is contained in Plaintiffs' "papers," and this is what this Court authorized.

Defendants position during the meet and confer was something akin to "we believe the court meant XYZ." See Declaration of Lisa Rasmussen, attached hereto. When a party is attempting to divine what a court meant, it is going beyond the plain language of the order. This courts order authorized discovery on what is in the Plaintiffs' papers and issues addressed at the April 29th hearing. Obviously, Plaintiffs must be permitted to inquire as to matters that go to the second part of prong one and questions that go to prong 2. It is Plaintiffs' position that this Court did not intend to place restrictions on these categories of inquires because to do so would be to prevent a meaningful inquiry consistent with the already narrow discovery permitted by statute and by this Court's rulings.

D. The Discovery Requests Address the Permitted Issues

As a threshold matter, Plaintiffs should not be required to set forth their attorney work-product and thought process in their pleadings, but Plaintiffs' believe that each question asked goes to the permitted issues.

1 Document Request 1.²

2 This request for documents requests documents that go specifically to the
3 second part of prong one and directly to prong two's analysis of Plaintiffs' claims in
4 the Complaint.

5 Document Request 2.³

6 This request for documents requests documents that go specifically to the
7 second part of prong one and directly to prong two's analysis of Plaintiffs' claims in
8 the Complaint. Plaintiff has averred that there were very specific disclosures included
9 at the time that each defendant purchased their home in Queensridge, including
10 disclosures that the subject land is developable.

11 Document Request 3.⁴

12 This request asks for documents directly stated in the Defendants' Declaration
13 and it asks for underlying documents to support the statement. This could not be more
14 relevant to all of the limited discovery this court permitted *and* it goes directly to the
15 credibility of each defendant, an issue that this court is required to assess.

16 Document Request 4.⁵

17 Defendants stated in their Affidavits that they have "no understanding that any
18 of the statements are false." Not only does requesting documents about something
19 submitted by the Defendants as part of their Special Motion to Dismiss comport with
20 precisely what this Court permitted Plaintiffs to ask, it also goes directly to the causes
21 of action in the Complaint. Defendants are not saying that they knowingly made false
22 statements, they are saying that if they are false, they did not know it. Plaintiffs have
23 alleged not only intentional claims, but also negligent claims. This goes directly to
24

25
26 ² See Defendants' Motion, page 9.

27 ³ See Defendants' Motion, page 10.

28 ⁴ See Defendants' Motion, page 10.

⁵ Id.

1 prong two. It also goes to the credibility of the defendants, an issue this court must
2 address.

3 Document Request 5. ⁶

4 Defendants seem to be confused as to what the Nevada Supreme Court
5 actually said, and they object that this request for production is impermissible
6 because the Nevada Supreme Court excluded prong one. The Nevada Supreme
7 Court's order, as noted above, expressly states "[A]bsent evidence that clearly and
8 directly overcomes such declarations [Defendants' Declarations], the sworn
9 declarations are sufficient for purposes of step one." It then remands the matter
10 to this Court to make any further necessary determinations on discovery. The only
11 thing the Nevada Supreme Court concluded definitively was that the statements
12 met the first part of the first prong. It noted that absent evidence to the contrary,
13 the Defendants' Declarations were sufficient. Inquiring about communications
14 that support the Good Faith element of the Special Motion to Dismiss goes directly
15 to the permitted, and very limited, issues. See also response to Document Request
16 4, incorporated herein.

17 Document Request 6. ⁷

18 Defendants state that this too constitutes "full blown discovery on the issue in
19 the Complaint." It makes no sense that Plaintiffs would be entitled to ask questions
20 related to prong two (whether they can prevail on the claims) but not be permitted to
21 ask about anything in the Complaint. The question is narrowly tailored to
22 communications with others in the Queensridge community specifically regarding
23 allegations contained in the Complaint. And, it limits it to non-privileged
24 communications.
25

26
27 ⁶ See Defendants' Motion, page 11.

28 ⁷ See Defendants' Motion, page 12.

1 Document Request 7.⁸

2 Defendants assert that this is beyond the scope of what was requested and
3 beyond what the court allowed. This request for documents goes directly to the
4 second part of prong one and to prong two. Defendants' attempt to give an
5 interrogatory response here to a request for documents. Plaintiffs were not permitted
6 to ask interrogatories and the defendants are free to make whatever distinctions they
7 would like in defending themselves as to the Queensridge Community documents or
8 the Pecole Ranch Master Plan. Plaintiffs, however, have alleged, in paragraph 12 of the
9 Complaint, that certain disclosures were provided to all three defendants when they
10 purchased their property. If the defendants have evidence to the contrary, they would
11 seemingly be eager to produce it as it would establish a nice defense for them.
12

13 This question goes directly to prong two and to the second part of prong one
14 and it also goes to the credibility of the defendants, an issue this court must determine.

15 Document Request 8.⁹

16 Plaintiffs have made claims for intentional misrepresentation and negligent
17 misrepresentation as well as conspiracy claims and claims regarding intentional and
18 negligent interference with prospective economic relations. Asking for documents
19 between the three defendants, who have no privilege, where those documents are
20 related to their declarations and affidavits. Documents responsive to this would go
21 directly to prong two and the second part of prong one. It would also go to the
22 credibility of the defendants, which this court is required to analyze. None of this is
23 beyond the scope of what was permitted.

24 In sum, the questions presented to the Defendants are very limited, by virtue of
25 this Court's order. Eight questions were presented to Omerza, four to Caria and three

26
27 ⁸ See Defendants' Motion, page 13.

28 ⁹ Id, pages 12-13.

1 to Bresee. The court permitted 15 questions total. All of the questions go to issues that
2 are identified in the Plaintiffs papers, to prong two and to issues raised at the April 29,
3 2020 hearing. This Court should permit each of the questions asked and direct the
4 defendants to respond.

5 Plaintiffs incorporate herein their supplemental brief filed on May 6, 2020,
6 setting forth the case law on what discovery should be permitted in an anti-SLAPP
7 case.

8 CONCLUSION

9 The defendants in this case have gone from making false statements in
10 declarations and securing false statements from others in furtherance of their own
11 financial interests to stating that they have “no understanding that any of the
12 statements are false.” Plaintiffs must be permitted to request documents that go to the
13 issue of not just this assertion, but also the underlying merits of the case, because it is
14 Plaintiffs’ burden to establish a probability of prevailing.

15 This Court’s initial analysis of this case was correct, but the analysis needed to
16 comport with the anti-SLAPP statute. The anti-SLAPP statute is not intended to shield
17 tortfeasors or negligent actors from liability, it is intended to prevent against the
18 chilling of certain First Amendment rights, including the right to petition the
19 government for appropriate redress. It does not permit parties to be shielded from
20 liability in all instances and it does impose burdens on a plaintiff. In turn, a plaintiff is
21 to be permitted a reasonable opportunity to respond and if appropriate, limited
22 discovery. In all instances the court must determine whether the
23 defendants’ statements are credible.

24 The requests for production submitted to the defendants were limited and
25 narrowly tailored to comport with this Court’s order and with its “Clarifying Order.”
26 The Clarifying order was nothing more than the Defendants’ attempt to further limit
27 any discovery because the defendants do not want to answer any questions.

28 PLAINTIFFS’ RESPONSE TO MOTION FOR PROTECTIVE ORDER - 10

1 Not only should this court permit the requests for production propounded by
2 Plaintiffs, it should also make clear that Plaintiffs may ask questions at the depositions
3 related to these requests for production. The court has already imposed substantial
4 limitations on Plaintiffs and Plaintiffs' counsel are clear on their directives. The
5 defendants' motion should be denied.

6 DATED: June 7-, 2020.

7 Respectfully submitted,

8 **THE LAW OFFICES OF KRISTINA WILDEVELD & ASSOCIATES,**

9 */s/ Lisa A. Rasmussen*

10

LISA A. RASMUSSEN, Esq.

11 NEVADA BAR NO. 7491

12 ATTORNEYS FOR PLAINTIFFS
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Mitchell Langberg, Esq., counsel for the defendants.

Lisa A. Rasmussen, Esq.

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State of Nevada as follows:

- Executed this 7th day of July, 2020 in Las Vegas, Nevada.

Lisa A. Rasmussen

Exhibit 1

Exhibit 1

From: Lisa Rasmussen
Sent: Monday, June 8, 2020 2:02 PM
To: Langberg, Mitchell; Dept02LC@clarkcountycourts.us
Cc: Elizabeth Ham (EHB Companies)
Subject: RE: A-18-771224-C, Fore Stars, Ltd., Plaintiff(s)vs. Daniel Omerza, Defendant(s)

Mr. Thompson,

I am actually preparing a response to the Defendant's Request for Clarification and will be filed later today. I have no objection to scheduling this matter for a status check.

Lisa Rasmussen
Counsel for Plaintiffs

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

Sent from Mail for Windows 10

From: Langberg, Mitchell
Sent: Friday, June 5, 2020 11:24 AM
To: Dept02LC@clarkcountycourts.us
Cc: Elizabeth Ham (EHB Companies); Lisa@Veldlaw.com
Subject: RE: A-18-771224-C, Fore Stars, Ltd., Plaintiff(s)vs. Daniel Omerza, Defendant(s)

Mr. Thompson,

I know that the Court is incredibly busy. In light of the Court's order and the pending request for clarification, would it be appropriate to schedule this matter for a status check?

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

From: Langberg, Mitchell
Sent: Friday, May 29, 2020 1:46 PM
To: 'Dept02LC@clarkcountycourts.us'
Cc: 'Elizabeth Ham (EHB Companies)'; 'Lisa@Veldlaw.com'
Subject: A-18-771224-C, Fore Stars, Ltd., Plaintiff(s)vs. Daniel Omerza, Defendant(s)

Mr. Thompson,

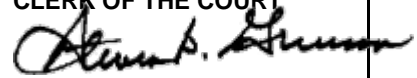
I am sending this note (with copy to opposing counsel) to make sure you are aware that Defendants filed a Request for Clarification with respect to the minute order the Court issued today. I don't know how matters come to your attention without courtesy hard copies. So, I wanted to alert you.

Thank you,

Mitch Langberg

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

STATEMENT OF CONFIDENTIALITY & DISCLAIMER: The information contained in this email message is attorney privileged and confidential, intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copy of this email is strictly prohibited. If you have received this email in error, please notify us immediately by calling (303) 223-1300 and delete the message. Thank you.



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

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

v.

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

Defendants.

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

**DEFENDANTS' REPLY IN SUPPORT OF
MOTION FOR PROTECTIVE ORDER
LIMITING DISCOVERY**

Hearing Date: July 13, 2020
Hearing Time: 9:00 a.m.

MEMORANDUM OF POINTS AND AUTHORITIES

Plaintiffs *asked* this Court for an opportunity to "do some additional briefing just on what discovery is requested. . . ." Plaintiffs then *asked* this Court to allow it to "ask the Defendants" what documents and information "they are relying on" with respect to their declarations. The Court gave them exactly what they asked for. Yet, they are not satisfied. The truth is, their opposition to this motion is a supplemental motion in disguise. They want more discovery than they asked for. They are not entitled to it.

The Court has correctly noted that anti-SLAPP is "supposed to be an expedited process."¹ Plaintiffs' iterative efforts regarding discovery is inappropriate and repugnant to the very goal of the anti-SLAPP statute to quickly ferret out meritless lawsuits implicating First Amendment rights before defendants are put to the burden and expense of extensive discovery. In this case, this Court was not tasked to consider whether the requested discovery is "relevant" under the broad standards of NRCP 26. Discovery in the context of anti-SLAPP motions is the exception, not the rule. Before any discovery is allowed, plaintiffs are required to make a showing of necessity. Even then, any such discovery is very limited in scope.

The procedural posture of this case matters, particularly because Plaintiffs ask this Court to ignore the directives of the Nevada Supreme Court and the express provisions of the applicable statute. The opening paragraphs of Plaintiffs' opposition reveals their intent is to abuse the discovery process. Indeed, this Court would be acting within its inherent powers to order that no discovery should be allowed as a result of that abuse.²

Lengthy discussion is not necessary to address Plaintiffs' opposition:

- Plaintiffs claim this Court acted improperly by issuing the Clarification. Of course this is wrong. A court "has inherent power to construe its judgments and decrees

¹ Transcript, 10:7-9.

² Plaintiffs conclude that Defendants do not want there to be any discovery. It is true that Defendants believe Plaintiffs failed to meet their burden for obtaining discovery under the statute. But, Defendants did not challenge this Court's decision by writ. Rather, they have been prepared to respond to discovery on the very limited issues Plaintiffs requested in the brief they submitted to this Court in May.

1 for the purpose of removing any ambiguity." *Kishner v. Kishner*, 93 Nev. 220,
2 225, 562 P.2d 493, 496 (1977). This Court clarified—not modified—its order.
3 "[A] modification alters the parties substantive rights, while a clarification
4 involves the district court defining the rights that have already been awarded to the
5 parties and leaves their substantive rights unchanged." *Mizrachi v. Mizrachi*, 132
6 Nev. 666, 674, 385 P.3d 982, 987 (Nev. App. 2016) (internal quotations and
7 citations omitted). The *Mizrachi* court held that an order clarifying what it meant
8 by visitation during the "Jewish holidays" in an original order was just that, a
9 clarification. The substantive right was visitation during the Jewish holidays. The
10 clarification was which holidays constituted Jewish holidays. Here, the
11 substantive right was the grant of 15 requests for production and 3 depositions.
12 The clarification was this Court's explanation of what topics could be covered.

- 13 • Plaintiffs claim that everything in their complaint is the proper subject of
14 discovery. Translation: they think they are entitled to the full blown scope of
15 discovery under Rule 26, even if limited in quantify. But, this Court's order was
16 clearly based on Plaintiffs' promise to identify the discovery they were requesting
17 in their Brief in Support of Request for Discovery. In that brief, they expressly
18 identified what discovery they were requesting.³ The Court granted *that*
19 discovery. Plaintiffs forget that pursuant to NRS 41.660(3)(e), discovery was
20 stayed as soon as the anti-SLAPP motion was filed. Consistent with the Nevada
21 Supreme Court's ruling in this case and NRS 41.660(4), Plaintiffs were only
22 entitled to discovery "*upon a showing*" by Plaintiffs that "information necessary"
23 to meet their Prong 2 burden was "not reasonably available without discovery."
24 The requirement for a *showing* has meaning. They are only eligible to obtain
25 discovery that they were able to *show* was necessary. And, even then, they are
26 eligible only for "limited discovery for the purpose of ascertaining such

27
28 ³ Were Defendants' expected to omnisciently anticipate the discovery Defendants wanted in order to oppose their request?

1 information." Thus, the Court's Clarification that the scope was only that which
2 they requested in their brief (the only thing they made any showing on) was
3 perfectly appropriate.

- 4 • Plaintiffs admit that they are seeking discovery on Prong 1 of the anti-SLAPP
5 analysis. But, NRS 41.660(4) only allows Plaintiffs to request discovery for the
6 Prong 2 analysis (referencing "paragraph (b) of subsection 3). Moreover, the
7 Nevada Supreme Court already determined that Defendants met their Prong 1
8 burden and remanded *only* for this Court to "determine whether respondents are
9 entitled to discovery under NRS 41.660(4). Again, that section expressly limits
10 discovery to Prong 2 and only after the party seeking discovery makes the requisite
11 showing.
- 12 • The Nevada Supreme Court has already determined that, *with respect to the*
13 *declarations*, Defendants "met their burden of showing that the communications
14 were truthful or made without knowledge of falsity." Plaintiffs did not seek
15 reconsideration or rehearing of that determination. The time has passed for
16 Plaintiffs to challenge that determination. It is the law of the case.

17 Plaintiffs clearly wish to do what the anti-SLAPP statute is designed to prevent. Win or
18 lose, they want to drag Defendants through intrusive discovery. Plaintiffs have made it clear that
19 through their 15 document requests and *twelve hours* of depositions, they intend to conduct the
20 full blown scope of discovery they believe they would be entitled to if there were no anti-SLAPP
21 statute, or discovery stay, or limit on the scope of discovery if a showing of necessity were even
22 made.

23 ///

24 ///

25 ///

26 ///

27 ///

1 This abuse cannot be countenanced. In fact, having gone so far afield of what was
2 ordered by the Nevada Supreme Court, was is permitted by statute, and what was granted by this
3 Court, they should be prevented from doing any discovery at all.

4 DATED this 9th day of July, 2020.

5 BROWNSTEIN HYATT FARBER SCHRECK, LLP

6
7 BY: /s/ Mitchell J. Langberg

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

mlangberg@bhfs.com

100 North City Parkway, Suite 1600

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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' REPLY IN SUPPORT OF MOTION FOR PROTECTIVE ORDER LIMITING DISCOVERY** be submitted electronically for filing and/or service with the Eighth Judicial District Court via the Court's Electronic Filing System on the 9th day of July, 2020, 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

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

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

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

A-18-771224-C

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Civil Matters

COURT MINUTES

July 21, 2020

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

July 21, 2020 3:00 PM Minute Order

HEARD BY: Scotti, Richard F.

COURTROOM: Chambers

COURT CLERK: Carolyn Jackson

PARTIES

PRESENT: None

JOURNAL ENTRIES

- The Court GRANTS Defendants Motion for Protective Order Limiting Discovery. Discovery is limited to the second prong of the anti-SLAPP analysis. Discovery is limited to what is identified by Plaintiffs on p.5, lines 15-21 of Plaintiffs Brief in Support of Request for Limited Discovery (5-6-20). The Defendants shall prepare the proposed Order, consistent with the relief sought in their motion.

CLERK'S NOTE: This Minute Order was electronically served by Courtroom Clerk, Carolyn Jackson, to all registered parties for Odyssey File & Serve. /cj 07/21/20

PRINT DATE: 07/21/2020

Page 1 of 1

Minutes Date: July 21, 2020

APP 0822

1 **CSERV**

2
3 **DISTRICT COURT**
4 **CLARK COUNTY, NEVADA**

5
6 Fore Stars, Ltd., Plaintiff(s) | CASE NO: A-18-771224-C
7 vs. | DEPT. NO. Department 2
8 Daniel Omerza, Defendant(s)
9

10 **AUTOMATED CERTIFICATE OF SERVICE**

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

14 Service Date: 8/4/2020

15 Shahana Polselli	sp@jimmersonlawfirm.com
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17 Todd Davis	tdavis@ehbcompanies.com
18 Jennifer Knighton	jknighton@ehbcompanies.com
19 Mitchell Langberg	mlangberg@bhfs.com
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21 James Jimmerson	jmj@jimmersonlawfirm.com
22 James J Jimmerson	ah@jimmersonlawfirm.com
23 Efiling Email	efiling@jimmersonlawfirm.com
24 Lisa Rasmussen	Lisa@Veldlaw.com
25 Kristina Wildeveld	Kristina@Veldlaw.com

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APP 0823

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Heather S. Linn

CLERK OF THE COURT

ORDER

MITCHELL J. LANGBERG, ESQ., Bar No. 10118
mlangberg@bhfs.com
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Counsel for Defendants,
DANIEL OMERZA, DARREN BRESEE, and
STEVE CARIA

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

v.

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

Defendants,

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

**ORDER GRANTING DEFENDANTS'
MOTION FOR PROTECTIVE ORDER
LIMITING DISCOVERY**

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

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

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

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

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

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

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

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

7. This Court granted the request for additional briefing.

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

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

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

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

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

1 authorized by the Court based on the Nevada Supreme Court decision in this case, NRS
2 41.660(4), and the specific topics Plaintiffs identified in their request for limited discovery.
3 Defendants requested that the Court limit the document requests and the scope of depositions
4 accordingly.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Dated this 3rd day of August, 2020

DATED this ____ day of August, 2020.



DISTRICT COURT JUDGE

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

Respectfully Submitted By:

BROWNSTEIN HYATT FARBER SCHRECK, LLP

By: /s/ Mitchell J. Langberg
MITCHELL J. LANGBERG, ESQ., Bar No. 10118
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Counsel for Defendants

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STEVE CARIA

1 Approved as to form:

2 THE LAW OFFICES OF KRISTINA WILDEVELD & ASSOCIATES

3 By: /s/ Lisa A. Rasmussen

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11 FORE STARS, LTD., 180 LAND CO., LLC; and

12 SEVENTY ACRES, LLC